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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE ADOPTION OF TEMPORARY AND PROPOSED RULES GOVERNING ACCESS AND INTERCON-NECTION IN UNSERVED AREAS, IDAPA 31.42.01.401 ET SEQ. | )  )  )  )  )  ) | CASE NO. 31-4201-9801  COMMENTS OF THE  COMMISSION STAFF |

COMES  NOW  the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Cheri C. Copsey, Deputy Attorney General, in response to Order No. 27674, issued August 10, 1998, submits the following comments.

BACKGROUND

On August 10, 1998, in Case No. GNR-T-98-4, the Commission ordered this rulemaking docket to be opened.  Order No. 27673.  That case involved an Application for a Certificate of Public Convenience and Necessity filed by CTC Communications, Inc. to provide facilities-based basic local exchange service as a competitive local exchange carrier to a presently undeveloped area within U S WEST’s certificated area in Ada County.  No facilities-based carrier presently provides basic local exchange service to any customer in Hidden Springs Development.  After considering the merits in that case, the Commission found that conditioning CTC’s Certificate would only protect basic local exchange customers located in Hidden Springs Development and would not address future applications or those local exchange carriers that have already received certificates for larger service areas.  Rather, the Commission found that adopting rules setting the standards for interconnection and access in unserved areas is the better approach and ordered this rulemaking docket be opened and temporary rules adopted, effective immediately.

The Commission found that temporary rules are necessary to promote the public welfare by guaranteeing telephone customers have basic local exchange service provider choices in those areas served by non-incumbent, facilities-based competitive telephone corporations.  The Commission further found that the temporary rules promoted competition throughout local exchange calling areas as envisioned by the Legislature in 1997 when it amended the 1988 Telecommunications Act and precluded telephone corporations from creating non-price regulated virtual monopolies depriving customers of choices in providers.  The Legislature wrote in 1997:

It is the intent of this legislature that effective competition throughout a local exchange calling area will involve a significant number of customers having both service provider and service option choices and that actual competition means more than the mere presence of a competitor.  Instead, for there to be actual and effective competition there needs to be substantive and meaningful competition throughout the incumbent telephone corporation's local exchange calling area.

Idaho Code § 62-602(2) (emphasis added). Providing customers choice is also consistent with the Congress’ intent to foster competition in local service markets, as embodied in the Federal Telecommunications Act of 1996.  Order Nos. 27236 and 27043.

The Commission stated it had authority to promulgate these rules pursuant to Idaho Code §§ 62-602, 62-606, 62-611, 62-614, 62-615, 62-616 and 62-622.

STAFF RECOMMENDATION

Staff reviewed the proposed rules and recommends a number of modifications to those proposed rules.  With those modifications, Staff recommends that the proposed rules be adopted as pending rules.  Appendix A reflects Staff’s recommendations. A discussion of those modifications follows.

1.  Delete IDAPA 31.42.01.411 and IDAPA 31.42.01.401.05 -- the suspension rule.

Staff recommends deleting this proposed rule for several reasons.  First, while the proposed rule mirrors the existing exemption provided to incumbent rural local exchange carriers, it is not appropriate for competitive local exchange carriers.  Idaho Code § 62-615(2) only applies to incumbent rural local exchange carriers and is intended to protect existing incumbent rural companies from certain interconnection requirements.  In those cases, the incumbent is rate regulated and the “protection” is necessary to protect existing rate payers.  By definition, these rules only apply to competitive local exchange carriers that are not rate regulated.  No such protection is necessary and, in fact, if the Commission’s intent in enacting these rules is to protect customers from non-price regulated monopolies, this proposed rule is inconsistent with that goal.  Moreover, it could encourage companies to create “small” subsidiaries to avoid the implications of interconnection and, therefore, may be anticompetitive.  If the Commission agrees to delete this proposed rule, it should also delete IDAPA 31.42.01.401.05 because defining a rural company is no longer necessary.

2.  Rewrite proposed Rule 401 - the definition of “unserved area.”

Staff recommends rewriting the proposed definition of “unserved area” to exclude areas in which there are municipal, cooperative or mutual non-profit companies already serving customers and deleting “incumbent” from the proposed definition.  This would make clear that those geographic areas where other competitive local exchange carriers or municipal, cooperative or mutual non-profit companies are already serving customers are not “unserved” and companies operating there are not covered by these proposed rules.  The new rule would read as follows:

07. Unserved area. “Unserved area” means a geographic area in which no incumbent telephone corporation, including a municipal, cooperative, or mutual nonprofit telephone company, has facilities providing basic local exchange service to customers.

3.  Clarify proposed Rule 403.

Staff recommends deleting the language “at least” from the first sentence.  The new rule would read as follows:

403. EXCHANGE ACCESS QUALITY STANDARDS.  (Rule 403)

If a facilities-based competitor builds facilities to provide basic local service within an unserved area, it shall provide exchange access at any technically feasible point within its network that is at least equal in quality to that provided to itself or to any subsidiary, affiliate, or any other party to which it provides interconnection.

4.  Clarify proposed Rule 406.

Staff recommends the following language be added to proposed Rule 406 to make clear that virtual collocation is also acceptable.  The addition is underlined.

406. PHYSICAL COLLOCATION STANDARDS.  (Rule 406).

Subject to Rule 407, if a facilities-based competitor builds facilities to provide basic local service within an unserved area, it shall provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the telephone corporation, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

5.  Amend proposed Rule 408 to allow parties to request mediation.

Staff recommends that the proposed Rule 408 be amended to allow parties to request mediation during the negotiation process.  That rule would read as follows.  The additional language is underlined.

408.VOLUNTARY NEGOTIATION.  (Rule 408).

Upon receiving a request for interconnection, services, or network elements, a facilities-based competitor that built facilities to provide basic local service within an unserved area may negotiate and enter into a binding agreement with the requesting telephone corporation without regard to the standards set forth in Rules 402 through 407.  The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement and shall be submitted to the commission for approval.  Any party negotiating an agreement under this Rule may, at any point in the negotiation, petition the commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

6.  Rewrite the proposed Rule 409 to more clearly address requests for arbitration.

Staff recommends that the proposed Rule 409 be changed to clearly recognize Commission arbitration.  This would allow the Commission to arbitrate those issues that the parties cannot agree on in interconnection agreements.  That rule would read as follows:

409. ARBITRATION.  (Rule 409).

No earlier than ninety (90) days after the date on which a facilities-based competitor receives a request for negotiation pursuant to Rule 408, any party to the negotiation may petition the commission to arbitrate any open issues. The commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required.

7.  Delete proposed Rule 410.

Staff recommends deleting this proposed rule because it adds nothing to the rules.

DATED  at Boise, Idaho, this    29th   day of October 1998.

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