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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF REVIEWING U S WEST COMMUNICATIONS’ SOUTHERN IDAHO REVENUE SHARING PLAN FOR THE COMPLETED 1994 SHARING YEAR. | )))))) | CASE NO. USW-S-95-1ORDER NO.  26434 |

On March 28, 1996, the Idaho Cable Telecommunications Association (ICTA), AT&T Communications of the Mountain States and MCI Communications filed a joint Petition for Reconsideration from that portion of Order No. 26355 approving a digital switch infrastructure project for U S WEST Communications.  In Order No. 26355 issued March 7, 1996, the Commission authorized the use of $1.244 million in Title 61 revenue sharing funds to partially fund the purchase of three new digital switches for the rural exchanges of Burley, Jerome and Declo.  The petitioners assert that the use of the 1994 revenue sharing funds in this manner is contrary to: (1) provisions of the Idaho Telecommunications Act of 1988; (2) provisions of the recently enacted federal Telecommunications Act of 1996; and (3) not based on competent and substantial evidence in the record.  They urge the Commission to reconsider its prior ruling and rescind the use of revenue sharing funds to partially fund the purchase of the digital switches.  In the alternative, the petitioners request the Commission schedule a rehearing “for the purpose of presenting additional evidence in the form of qualified, telecommunications switching and/or engineering experts to explain why the current #2 BESS switches . . . are currently adequate to serve and have sufficient capacity to serve the future needs of the Title 61 customers of U S WEST in these three communities.”  Petition for Reconsideration at 11.

On April 17, 1996, U S WEST filed a Response to the Petition for Reconsideration.  U S WEST urges the Commission to deny the Petition for Reconsideration.  If the Commission is inclined to grant reconsideration, then U S WEST suggests that the matter be reconsidered upon written submissions supplemented with oral argument.  Having reviewed the joint Petition for Reconsideration, the U S WEST Response and the record in this matter, we deny reconsideration for the reasons set out below.

THE COMMISSION’S FINAL ORDER

In Order No. 26355 the Commission approved the disposition of approximately $6.5 million of 1994 Title 61 sharing funds.(footnote: 1)  More specifically, the Commission allocated approximately $1.25 million to continue monthly credits for 65,000 rural zone customers, reserved approximately $4 million for educational communication services, and earmarked $1.244 million to be used as matching funds to replace three older technology switches with new digital switches in the Burley, Jerome and Declo exchanges.  The Declo exchange switch is a “remote” hosted by the Burley switch.  The Title 61 funds would be “matched” with an equal amount of U S WEST funds to purchase the new switches.  The petitioners contest only the use of revenue sharing funds for the digital switch proposal.

At the hearing ICTA, MCI, and the Commission Staff all opposed U S WEST’s infrastructure proposal to replace the three existing electronic-analog switches.  ICTA witness Dr. Hunt, MCI witness Bennett, and Staff witness Eastlake all indicated that replacement of the switches should occur in the normal course of the Company’s capital investment and the switches did not warrant special consideration for use of revenue sharing funds.  Tr. at 200, 434, 454, 552.

In its Order No. 26355, the Commission found that the proposal to use available revenue sharing funds as a 50% match “is an appropriate use of the 1994 revenue sharing funds.  As indicated in the Company’s testimony, these older switches would be replaced with state-of-the-art digital switches.”  Order No. 26355 at 13.  The Order continued by noting that:

Funding of these switches in smaller rural exchanges is nothing more than an extension of the five-year Tech Plus project that updated digital switches across Idaho.  The Tech Plus program was completed in 1992.  The Jerome, Burley and Declo exchanges were not included in the prior Tech Plus upgrade due to funding limitations and the capability of the switches some nine years ago.  Consequently, the availability of 1994 revenue sharing funds permits the Commission to reasonably fund more digital switch upgrades.  We find that it is reasonable to use $1.25 million in sharing funds, to be matched equally with funds from U S WEST, to purchase these three switches.  The Company shall account for this expenditure of revenue sharing in a manner similar to that used in the Tech Plus program.

Order No. 26355 at 13-14 (citation omitted).

THE PETITION FOR RECONSIDERATION

As previously mentioned, the petitioners raise three general arguments on reconsideration.  These arguments are set out in greater detail below.

1.  The Idaho Telecommunications Act.  Petitioners assert that the Commission’s use of revenue sharing funds to partially fund the purchase of the digital switches violates the Idaho Telecommunications Act of 1988 in two ways.  First, the petitioners maintain that one of the three goals of the Idaho Act is to encourage innovation within the industry by a balanced program of regulation and competition. SeeIdaho Code § 62-602.(footnote: 2)  Petitioners claim the Commission’s Order violates this goal because providing “50% of the cost of new switches is anti-competitive.”  Petition at 3.

MCI witness Bennett and ICTA witness Dr. Hunt testified that using revenue sharing funds would give U S WEST an advantage over competitors.  More specifically, potential competitors (e.g., ICTA and MCI) do not have access to Title 61 funds for the purchase of digital switches in the three exchanges.  Thus, revenue sharing funds allow U S WEST to obtain a competitive advantage because such funds are not available to its competitors.  Moreover, they insisted the new digital switches will allow U S WEST to offer nonprice-regulated Title 62 services(footnote: 3) in the three exchanges that it otherwise would not have been able to offer.

Petitioners also maintain that use of the revenue sharing funds to purchase the three switches amounts to “an illegal cross-subsidy of Title 62 revenues using Title 61 revenue sharing funds.”  Petition at 3.  They note that Idaho Code § 62-613 prohibits a telephone corporation from subsidizing its Title 62 services with “those telecommunication services which are subject to regulation pursuant to title 61, Idaho Code.”  They assert that U S WEST’s own witness, James Wozniak, testified that the new digital switches would allow the Company to offer its customers “custom calling features such as call-forwarding, speed calling and three-way calling.  [Customers] also are able to select their preferred long-distance carrier for interLATA calling.”  Tr. at 86-87.  The petitioners insist the primary reason that U S WEST wanted to replace these three switches is to offer its customers Title 62 services.  They point to the fact that Wozniak acknowledged in his testimony that the existing “switches continue to provide good service to our customers.”  Tr. at 86.  He further stated that the company is able to maintain the existing switches with spare components on hand and “there is still capacity to grow these switches to serve increasing demand in these exchanges.”  Tr. at 87.

2.  Federal Telecommunications Act.  Petitioners argue that the Commission’s switch decision is inconsistent with the intent of the new federal Telecommunications Act of 1996.  Petition at 4.  More specifically, they allege the Commission’s decision violates two provisions of the federal Act:

Sec. 253(b). STATE REGULATORY AUTHORITY--Nothing in this section shall affect the ability of a State, to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continue quality of telecommunication services and safeguard the rights of consumers.

Sec.  253(k). SUBSIDY OF COMPETITIVE SERVICES PROHIBITED--A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition.

Telecommunications Act of 1996, Pub. L. No. 104-104, Stat. 56.

The petitioners maintain that the Commission’s Order will deter the development of competition in these exchanges by giving U S WEST “an additional financial advantage” not available to other competitors.  More specifically, U S WEST may use revenue sharing funds to assist in the purchase of three digital switches, yet the petitioners can only look to their shareholder to fund similar investments in switches.  Id. at 5.  The “$1.25 million advantage in the race to build infrastructure in the deregulated telecommunication markets of Burley, Jerome and Declo is not ‘competitively neutral’ within the meaning of § 253(b) of the federal Act.”  Id. at 6 (emphasis added).  Finally, they allege that using Title 61 funds to acquire new digital switches is a prima facie violation of § 253(k) which prohibits noncompetitive services from subsidizing services that are subject to competition.  Id.

3.  Lack of Competent and Substantial Evidence.  Finally, the petitioners assert the Commis­sion’s decision to use revenue sharing money to help purchase the digital switches is not based on substantial and competent evidence.  In particular, they allege that only Mr. Wozniak testified in support of the alternative switch proposal and that his testimony was “insufficient, contradictory and biased.”  Id. at 8.

In a related argument, the petitioners claim the Commission’s Order does not set forth sufficient finding to support its conclusion that the digital switch alternative was reasonable.  The petitioners insist the Commission’s rationale, that acquisition of the three switches is merely a continuation of the Tech Plus project completed in 1992, is arbitrary and capricious.

Nowhere in the record of this case is there any reference to the facts and circumstances that spawn the Tech Plus investment program in 1987. . . . The only evidence in this record, as supplied by Mr. Eastlake, is that the Tech Plus program replaced old mechanical, primitive switches, not electronic analog switches that are currently found in Burley, Jerome, and Declo.  Clearly, this fleeting reference to the Tech Plus program is insufficient to allow the Commission to base its extension of the Tech Plus program to this proceeding.

Id.  The petitioners maintain that where the Commission intends to consider and rely upon facts coming to its knowledge in other cases, it must place such facts in the record and allow the party to test the accuracy, applicability or irrelevancy of such facts.  Findings based on evidence not in the record, cannot be sustained.  Application of Citizens Utility Company, 82 Idaho 208, 214, 351 P.2d 487 (1960).

U S WEST’S RESPONSE

Although there is no Commission procedural rule which specifically grants the right to respond to a Petition for Reconsideration, U S WEST did file a Response to the Petition.  In addition to its Response, U S WEST also filed a Motion to Accept Additional Exhibits.  Both these pleadings are discussed in greater detail below.

1.  The Supplemental Exhibits.  U S WEST moved the Commission for permission to submit two supplemental exhibits if reconsideration is granted.  The first exhibit labeled Exhibit No. 2, is a single page document which indicates the total number of Title 61 and Title 62 access lines for each of the three exchanges.  More specifically, Exhibit No. 2 shows that Burley has 8,834.25 access lines of which 95% are Title 61 lines; Declo has 712.50 access lines, all Title 61 lines; and Jerome has 6,055.75 lines of which 96% are Title 61 lines.

U S WEST’s Exhibit No. 3 is a calculation purportedly showing the proportion of 1994 revenue sharing funds attributable to telephone directory revenues.  In essence, this exhibit indicates that approximately 59% of the 1994 revenue sharing amount is attributable to an increase in the Company’s Title 62 directory advertising revenues.  U S WEST maintains that the introduction of these exhibits does not interject new issues into the case but merely display information contained in the record in a different format.  “The introduction of these exhibits will not cause delay or prejudice to these proceedings or to any party.”  Motion at 2.

2.  U S WEST’s Response.  In its Response to the Petition, U S WEST urges the Commission to deny the Petition for Reconsideration.  U S WEST Response at 2.  The Company asserts that the current record is sufficient to support the Commission’s decision in this matter.(footnote: 4)  U S WEST insists the underlying question regarding the switch replacement proposal is not whether the existing switches provide adequate Title 61 services but whether it is appropriate to use revenue sharing funds to replace older, less reliable and less efficient technology.  Response at 2.

U S WEST maintains that the hearing record does contain substantial evidence supporting the switch replacement benefits to Title 61 customers.  The Company specifically points to the testimony of its witness Wozniak indicating that Title 61 customers would benefit from the switch replacement proposal.  In his rebuttal testimony, Wozniak testified that

the presence of the enhanced capabilities in the new switches is really just an incidental benefit to the Title 61 customer who will receive more reliable local switching and faster call set up times when the older technology is replaced.  As with the Tech II proposal, I believe that the Commission will recognize that the possibility of incidental benefit to Title 62 customers is not a reason to refuse to make infrastructure improvements which benefit Title 61 customers.

Id. at 3, citing Tr. at 98-99.

Mr. Wozniak further testified that Title 61 customers will receive a benefit pursuant to the Company’s intention to “expense” those portions of the switches allocated to the revenue sharing fund.  He stated that with the

expensing of any sharing plan investment, the new switches would be put into service without any increase to the rate base.  This puts Title 61 ratepayers in a considerably better position than if the Company used 100% investor funds to replace the switches and thereby increased the rate base by the entire amount of the switch amount.  The Company believes this offer is reasonable and consistent with prior network upgrade programs.

Tr. at 101.

U S WEST also argues that Staff witness Eastlake recognized that the switch proposal would provide benefits to Title 61 customers.  The Company states that Mr. Eastlake

admitted that he did not take issue with the prudency of the investment, (Tr. p. 591) and further admitted that the expensing of the switch replacements benefited Title 61 rates.  (Tr. p. 596, L. 2-25; p. 597, L. 1-9).  Mr. Eastlake’s only reservation was concerning whether Title 61 customers would see a larger benefit from a direct credit, (Tr. p. 596, L. 9-16) but he had not made a calculation demonstrating the impact on Staff’s credit proposal of diverting $1.25 million to the switch replacement proposal.  (Tr. p. 597, L. 20-25, p. 598, L. 1).  Mr. Eastlake’s testimony on this point concluded with his concession that in addition to the rate base benefits to Title 61 customers, they also benefitted from higher quality switching and new services.  (Tr. p. 599, L. 1-11).

Response at 5.

U S WEST argues the petitioners characterization of self-dealing or bias exhibited in Mr. Wozniak’s  testimony is no more than the “self-interest” exhibited by any witness testifying on behalf of a company.  This difference of opinions exhibited by the witnesses is attributable to the fact that U S WEST believes that rural Idaho customers will be better served in the near term by replacing the switches versus the petitioners’ beliefs that these “same customers are better served by waiting for the benefits of competition to reach them.  It is a sincere difference of opinion which is driven, in part, by self interests on both sides.  It is the kind of difference in opinion that the Commission is repeatedly called upon to resolve.” Id.

Addressing the petitioners’ alternative request that the Commission conduct an evidentiary rehearing, U S WEST maintains there is no benefit in further evidentiary hearings.  The Company stipulates that the existing switches are providing adequate Title 61service to customers in the three exchanges. Thus, there is no need to grant the petitioners alternative request to examine the adequacy of the switches. Petition at 11. The Company argues that the material issue is whether it is appropriate to use revenue sharing funds to replace older, less reliable and less efficient technology. Response at 2.  If the Commission is inclined to grant reconsideration, then U S WEST suggests the matter be reconsidered upon written submissions supplemented with oral argument, if necessary.  Id. at 6.

DISCUSSION

1.  Standards for Reconsideration.  The Commission’s Procedural Rule 331.01 provides that Petitions for Reconsideration “must set forth specifically the ground or grounds why the petitioner contends that the Order or Rule is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument that the petitioner will offer if reconsideration is granted.”  IDAPA 31.01.01.331.01.  When the grounds for reconsideration present only issues of law or issues of fact not requiring a hearing, then the Commission may grant reconsideration by submission of briefs, or other written format.  Reconsideration provides an opportunity for an aggrieved party to bring to the Commission’s attention any issue previously determined or omitted.  Likewise, reconsideration provides the Commission with an opportunity to rectify any mistake or omission.  Washington Water Power Company Co. v. Kootenai Environmental Alliance, 99 Idaho 875, 551 P.2d 122 (1979); Idaho Code § 61-626.  Once an Order of the Commission has been challenged, the Commission usually sets forth its findings of fact in greater detail.  We first turn to the evidentiary issues.

2.  Sufficiency of the Evidence in the Record.  Decisions of the Commission will be upheld if they are based on substantial and competent evidence.  ASARCO v. Idaho Special Indemnity Fund, \_\_\_ Idaho \_\_\_, 908 P.2d 1235, 1238 (1996).  Evidence is substantial and competent when reasonable minds might accept such evidence as adequate to support a conclusion.  Id.While there may be other testimony in the record capable of different interpretations, reviewing courts will not engage in weighing the evidence.  Hipwell v.  Challenger Pallet & Supply, 124 Idaho 294, 859 P.2d 330 (1993).  It is the function of the Commission to determine the credibility of witnesses, the weight to be assigned to the testimony, and to draw reasonable inferences from the record as a whole.  ASARCO, supra.

At the hearing and in the Petition for Reconsideration, the petitioners make two arguments.  First, they argue that the existing switches are “adequate” to provide service and, second, the switches are being replaced to primarily allow U S WEST to provide Title 62 services.  The Commission finds that there is substantial evidence to support the finding that  replacement of the digital switches will benefit Title 61 ratepayers.  In particular, the Company’s witness Wozniak testified that although the existing electronic analog switches are functional, the new digital switches will provide more reliable digital switching technology.  Tr. at 83.  He further testified that the digital switches will provide greater call-handling capability thereby minimizing call blocking and slow dial tone.  Tr. at 84.  One of the major factors in prompting the Company proposal to replace the switches was the fact that the existing switches are being discontinued by the manufacturer and the manufacturer is no longer developing new software for these switches.  Id.  Finally, he testified that the new digital switches will reduce the Company’s maintenance and operating costs.  Tr. at 85.

Although he supported another use of  the revenue sharing funds, Staff witness Eastlake did acknowledge on cross-examination that the three switches at issue are on the verge of non-support by the company producing them.  Tr. at 594.  He further acknowledged that the existing switches are not capable of providing exactly the same kinds of services provided to other Title 61 customers by new digital switches.  Tr. at 595.  He further acknowledged that using revenue sharing funds to purchase a portion of the digital switches provides some benefit to Title 61 ratepayers in that the revenue sharing portion of the switch purchase is not included in the rate base.  Tr. at 597-99.

Although the three existing switches provide customers in the three exchanges “adequate” services, they are technologically inferior to the digital switches deployed in U S WEST’s other local exchanges.  Upgrading the local switches will offer an increased level of switching reliability, reduce U S WEST’s mainten­ance and operating costs, and provide customers with the same level of service offered to customers in other U S WEST exchanges.  We find this evidence to be persuasive  and conclude that the switch proposal is a reasonable use of the Title 61 sharing funds.

Finally, using Title 61 funds to purchase 50% of the new switches reduces the total switch cost subsequently placed in the Company’s rate base. Although changes to rate base do not affect the calculation of the sharing amount under the Plan, U S WEST has indicated that it will file a general rate case no later than September 1996. Consequently, expensing the Title 61 contribution will benefit Title 61 customer by eliminating a portion of the switch costs normally added to rate base. Customers will not pay and the Company will not earn a return on the expensed portion of the switches not entered into rate base.  Admittedly, improvements to the telecommunications network jointly used to provide both Title 61 and Title 62 services enhance the opportunities to offer Title 62 services.  However, the purpose of the Idaho Telecommunications Act was to promote high-quality universal telecommunications by a balanced program of regulation and competition.  We believe that utilizing a portion of the revenue sharing fund fosters this goal and provides the appropriate balance.

Our reference to the five-year Tech Plus project contained in the Order was not the basis for our approval of the digital switch proposal.  The reference to the prior infrastructure project merely places this proposal in historical context with prior infrastructure projects.  The justification for authorizing the digital switch proposal is supported by the substantial and competent evidence set out above and serves as the basis for the Commission’s decision.  Considering all the testimony on this subject, the Commission was persuaded and placed the greater weight on that testimony substantiating the benefits of the switch proposal.

3.  Cross-Subsidization and Competition.  The petitioners assert that the use of Title 61 revenue sharing monies to partially fund the purchase of the digital switches is contrary to cross-subsidization and anti-competitive provisions of both the state and federal Telecommunications Acts.  Having reviewed the arguments the Acts and the record, we conclude that authorization of the switch proposal is not a cross-subsidy or anti-competitive.

This case is not the first instance where a party has objected to the use of revenue sharing funds for infrastructure projects.  More specifically, in Case No. USW-S-92-1, the Commission reviewed allegations by MCI that use of revenue sharing funds violates the Idaho Telecommunications Act by being anti-competitive and a violation of the cross-subsidization prohibition.  At the hearing in this case, the Access 96 Coalition requested that the Commission take official notice of Order No. 24506 in Case No. USW-S-92-1.  The Commission granted this request without objection.  Tr. at 486-87.  The 92-1 case involved a three-year infrastructure improvement project commonly referred to as Tech II.

In that case, MCI argued that the Idaho Telecommunications Act prohibited U S WEST from subsidizing its Title 62 services with Title 61 revenues.  Order No. 24506 at 30.  In examining this issue, the Commission noted that the existence of a cross-subsidy can only be determined if the relevant costs of Title 62 and Title 61 services are known.  The Commission found that Idaho Code § 62-613 prohibits U S WEST from subsidizing Title 62 below cost sales with revenues from its Title 61 services.  The Commission continued by noting that

MCI offered no evidence concerning the relevant costs of U S WEST’s individual Title 61 or Title 62 services.  Consequently, there is no evidence in our record to sustain MCI’s assertion.  However, the use of revenue sharing dollars was specifically directed to the 29 smallest wire centers.   . . .Given the local network’s joint use by both Title 61 and Title 62 services, we acknowledge that Title 62 customers will benefit from the improvements but such benefits do not

constitute the subsidization prohibited by Idaho Code § 62-613.

Order No. 24506 at 31.

As in the previous case, the petitioners have presented no evidence in this proceeding concerning the relevant costs of U S WEST’s Title 61 or 62 services. Consequently, there is no evidence  of a prohibited cross-subsidy under the state or federal Acts.  Moreover, U S WEST witness Wozniak testified that simply because

a new switch can offer both dial tone and popular new services [i.e., Title 62 services] which, by the way, are enjoyed by Title 61 customers are as well, is no reason or proof that an illegal cross-subsidy occurs.  The statute prohibits Title 62 services from being subsidized by Title 61 services.  In order for this to occur, Title 62 services in question would have to be offered below their relevant costs.  The fact is, however, that all of the Title 62 services are being offered at prices which cover their costs so that no subsidy of services will occur if revenue sharing money is used as proposed by USWC.

Tr. at 97.

Even the Sharing Plan, recognizes that the increase in revenue per access line represents a combination of Title 61 and Title 62 gross revenues. The ratio of 61 to 62 revenues for the 1994 sharing year was 41.8% versus 58.2%, respectively.  Given this ratio, it is not unreasonable to employ Title 61 ratepayer funds and Company generated funds in equal amounts to acquire the switches.  As we have previously stated, any improvement to the “joint” telecommunications network benefits both Title 61 and Title 62 services and customers.  Unlike past infrastructure projects, the 1994 Title 61 monies are being used to fund only half of the switch proposal.  The petitioners cross-subsidization and competition arguments might have more validity if Title 61 funds were used to defray the entire cost of the switch project—but they are not.  Use of Title 61 sharing monies to fund the switch improvements do not constitute the subsidization prohibited by either telecommunications  Acts.

The petitioners also assert that allowing U S WEST to utilize revenue sharing funds provides it with an economic advantage over its competitors thereby hindering competition.  Under the Idaho Act, Idaho Code § 62-606 provides that the Commission shall administer the Act to maintain high-quality universal telecommunications at just and reasonable rates and encourage innovation within the industry by a balanced program of regulation and competition.  We believe that the use of revenue sharing funds in this case constitute such a “balance” between regulation and competition.  The petitioners erroneously focus exclusively on “competition” rather than on the balance between “competition” and “regulation.”  They also ignore the second goal of the Idaho Act — to maintain high-quality universal telecommunications services. As the Commission noted in its Order, digital switches use state-of-the-art technology. Order No. 26355 at 13; Tr. at 82-83.

As set out above, one of the reasons for replacing the three electronic analog switches was to improve the quality of the switch technology.  Although the switches may be considered “adequate” for the continuation of voice grade service, these switches are inferior to all of the other digital switches in U S WEST’s rural exchanges.

Section 253(a) of the federal Act provides that no state regulation may prohibit “the ability of any entity to provide any . . . intrastate telecommunications service.”   Use of revenue sharing funds for the digital switch proposal does not prohibit the petitioners or any other entity from providing intrastate telecommunications services in the three exchanges. U S WEST’s local exchange service is subject to competition. Competitors may construct their own facilities or acquire US WEST’s services for resale.  See §§ 251(b)(1) and 252(d)(3). All services provided via the switches (including Title 62 services) will be available for resale by competitors at rates less than U S WEST’s retail rates.

The federal Act also recognizes that this Commission may impose regulations that preserve and advance universal service, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. Without defining the exact parameters of universal service, we find that using revenue sharing funds to purchase 50% of these digital switches ensures that modern high-quality services are universally available and, in this instance, consumers benefit by the expensing required.  The Commission finds that the use of revenue sharing funds in this matter is not inconsistent with either the state or federal Act.

For the reasons set out above, we find that it is reasonable and appropriate to deny the petitioners’ Petition for Reconsideration.  In addition, we find there is no reason to take additional evidence regarding the switches and, accordingly, deny the petitioners’ alternative request for an evidentiary rehearing.  Having denied reconsideration, we also deny U S WEST’s Motion to File Additional Exhibits.

O R D E R

IT IS HEREBY ORDERED that the joint Petition for Reconsideration filed by ICTA, MCI and AT&T is denied in its entirety.

IT IS FURTHER ORDERED that U S WEST’s Motion to File Additional Exhibits is denied.

THIS IS A FINAL ORDER ON RECONSIDERATION.  Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No.  may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.  See Idaho Code § 61-627.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of April  1996.

                                                                                                                                       RALPH NELSON, PRESIDENT

                                                                                            MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O:USW-S-95-1.dh3

**FOOTNOTES**

1:

In 1989 the Commission authorized the implementation of a “Revenue Sharing Plan” as a method of allocating costs between the fully regulated (Title 61) and the partially regulated (Title 62) portions of U S WEST’s services in southern Idaho.  Each year since its implementation, the Plan has generated “sharing funds” for the Commission’s distribution.  The operation of the Sharing Plan is described in greater detail in Order No. 26355 at 1-3.

2:

The legislative intent statute of the Telecommunications Act encompasses three goals: (1) to provide universally available telecommunication services throughout the state; (2) to provide high-quality telecommunication services at just and reasonable rates; and (3) “to encourage innovation within the industry by a balanced program of regulation and competition.”  (Emphasis added).

3:

Title 62 services are generally all U S WEST telecommunication services in southern Idaho (e.g., long-distance and customer calling features) with the exception of local access service to residential and business customers with five or fewer access lines.  Idaho Code §§ 62-603(1), (5) and (8).

4:

U S WEST concedes that at the time the Commission conducted its hearing, the federal Telecommunications Act of 1996 was not enacted.  The Company argues that discussion of the federal Act contributes nothing more than “window dressing” for the petitioners’ argument concerning the impact on competition.

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

April 30, 1996