BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE EVALUATION OF)

U S WEST COMMUNICATIONS’ REVENUE)CASE NO. USW-S-94-3

SHARING PLAN FOR THE FIRST FIVE YEARS)

OF OPERATION.)ORDER NO. 25923

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On December 13, 1994, the Commission issued final Order No. 25826 following its evaluation of U S WEST Communications’ Revenue Sharing Plan.(footnote: 1)  This Order found that the Sharing Plan should be extended for at least one more year and established a workshop proceeding to examine suggested improvements to the Sharing Plan or to develop a new regulatory plan.  The Commission also directed that the workshop proceeding be used to evaluate other industry issues including universal service, network plant investment and cost allocation methodologies.  The Order also called for opening a new docket to address intraLATA 1+ equal access(footnote: 2) in southern Idaho.  Finally, the Order solicited written comments on proposed quality service standards for U S WEST.

  On December 23, 1994, the Commission granted U S WEST’s request to stay the effective date of Order No. 25826.  Postponing the effective date of the Order provided the Company and other interested parties additional time in which to file comments concerning the service quality standards and, if necessary, Petitions for Reconsideration.  On February 9, 1995, U S WEST filed a timely Petition for Reconsideration.  No other petitions or cross-petitions were filed.  After reviewing U S WEST’s Petition and the record in this case, we grant reconsideration in part and deny reconsideration in part.

FINAL ORDER NO. 25826

This case was initiated by the Commission to evaluate the Revenue Sharing Plan after its first five years of operation.  Given the progress of technology and increased competitive pressures in the industry, several of the parties filed comments urging the Commission to examine a host of issues such as universal service, subsidy mechanisms, cross subsidization, service pricing, and intraLATA equal access.  In particular, U S WEST recommended that the Commission convene an industry-wide workshop to generally examine these issues.  Although the Commission Staff acknowledged that the Sharing Plan had provided funding for infrastructure modernization projects, the Staff recommended that sharing funds not be used for future modernizations and several other changes to the plan.  In particular, the Staff recommended implementation of service quality standards, the elimination of rural zone charges, and changes in the manner U S WEST is compensated when toll routes are converted to toll-free, extended area service (EAS) routes.  Other commenters also identified other alleged deficiencies in the Sharing Plan.

After reviewing the comments, the Commission issued Order No. 25826.  The Order generally addressed three areas.  First, the Commission determined that additional scrutiny of the Revenue Sharing Plan was appropriate.  More specifically, the Commission indicated that it would convene a workshop proceeding to discuss, examine, and recommend improvements to the Sharing Plan.  Second, the Commission directed that the same workshop proceeding address several industry-wide concerns such as universal service, embedded subsidies, and other issues as they relate to both the Revenue Sharing Plan and to the industry in general.  Finally, in response to concerns raised by Staff about the decline in U S WEST’s quality of service to its customers, the Commission proposed to implement quality of service standards and monetary penalties in the event the standards were not met.  The Commission invited interested persons to comment on the proposed service quality standards no later than February 9, 1995.

THE PETITION FOR RECONSIDERATION

In its Petition, U S WEST requests that the Commission reconsider or clarify nine issues contained in Order No. 25826.  U S WEST generally asserts that because the parties’ comments in this case were filed simultaneously, it has had no opportunity to respond to comments made by other parties.  Consequently, the Company maintains that it has not been able to present rebuttal evidence.  The Company also insists several of the Commission’s findings are not supported by the evidence and that the workshop proceeding is an inappropriate delegation of the Commission’s authority over the Sharing Plan.  Petition at 17.  For purposes of reconsideration, these issues are outlined below.

1.  IntraLATA equal access (dialing parity).  In Order No. 25826, the Commission directed that a docket be opened to address intraLATA 1+ equal access in U S WEST’s southern Idaho service territory or LATA.  U S WEST states that no party to this case commented on the need for intraLATA equal access.  In addition, the Company argues that it was not given an opportunity to comment.  To remedy this deficiency, U S WEST asserts that it should be allowed to conduct discovery followed by a full evidentiary hearing demonstrating that the intraLATA toll market is already open to competition.  Petition at 3-4.  Finally, U S WEST requests that the Commission clarify its Order that “it has not made any decision on the policy issues surrounding intraLATA equal access.”  Petition at 6.

Following the issuance of final Order No. 25826, AT&T Communications of the Mountain States filed a Petition requesting that the Commission institute intraLATA 1+ equal access and carrier pre-subscription in U S WEST’s service territory.  AT&T’s Petition requests the same relief that we intended to explore in an equal access docket.

U S WEST’s request to develop an evidentiary record is granted.  To avoid redundant proceedings, the issue of intraLATA equal access will be examined in the AT&T Petition proceeding, Case No. GNR-T-94-5.  We also reiterate that the Commission has not made any decision on the merits of implementing intraLATA equal access except that this issue should be explored in greater detail in a separate proceeding.

2.  Continuing or revising the revenue sharing plan in a workshop proceeding.  In its Order, the Commission noted that the Revenue Sharing Plan has operated successfully for the past five years and has brought substantial benefits to U S WEST customers.  Given the emergence of competition and other changes in the industry, the Commission directed that an industry workshop “be established to discuss and recommend ways of either modifying the current Revenue Sharing Plan or creating a new method by which to regulate U S WEST’s southern Idaho operations.”  Order No. 25826 at 5.  Among other things, workshop participants were to explore issues of promoting universal service, enhancing effective competition, ensuring quality of service, and setting fair rates for Title 61 customers.  The workshop would convene as soon as possible with a workshop report due June 1, 1995.  This timetable would allow sufficient time to establish the form of regulation to be implemented on January 1, 1996.  Id.

U S WEST requests the Commission reconsider its intent to develop a new regulatory program for the Company through a workshop process.  It objects to the Order’s language which appears to “delegate to an industry workshop the Commission’s authority to regulate that portion of [U S WEST’s] operations subject to Title 61 and to perform cost allocations.”  Petition at 17.  Moreover, the Company maintains that promoting “effective competition” contravenes the intent of the Telecommunications Act which creates a “balanced program of regulation and competition.”  Id.  Although U S WEST recommended in its comments that the Commission convene an industry workshop, the Company insists it envisioned the workshops would be a means to obtain industry input on regulatory issues of general concern, not to have the industry devise a regulatory scheme for U S WEST.  It argued that the “hurried” workshop approach to answer the question “how to regulate U S WEST” will not protect the Company’s due process rights.  The Company requests that the Staff be directed to “work with the Company to devise mutually agreeable modifications to the Revenue Sharing Plan which meet the [Commission’s] concerns.”  Id. at 24.  If an agreement is achieved, then it can be presented to the Commission and interested parties in an appropriate proceeding.

The Company acknowledges that a workshop would be the appropriate forum to consider the issue of subsidies in existing rates; define capital recovery needs of the industry; review policies concerning the recovery of economic costs; protect universal service; develop service quality standards; and discuss procedures for streamlining pricing changes.  The Company submits that any future form of regulation must “be a product of an agreement between the Commission and the Company operating under the guidelines of Idaho Code § 61-622A or a contested case procedure.”  Petition at 23.  U S WEST states that deciding the issues outlined above would permit implementation of a new form of regulation by 1997.  If revenue sharing is to be discontinued in the future, the Company argues that the necessary proceeding will not lend itself to completion by June 1, 1995.  The Company suggested that the emphasis of the workshop process should be “to devise a plan to move traditional regulation toward replication of competitive market conditions to accommodate the emergence of competition.”  Petition at 19.

We grant U S WEST’s request to reconsider this issue.  On reconsideration, we believe our intent to improve the Sharing Plan or to develop a new regulatory scheme while at the same time deliberate on a myriad of other significant industry issues was clearly ambiguous and unmanageable for a single proceeding.  We find it is reasonable to divide the various tasks we wish to accomplish in a more wieldy fashion.  Rather than address modifications to the Sharing Plan or development of a new cost allocation model in a workshop, we shall direct the Staff to work with the Company to improve the Sharing Plan consistent with the goals outlined in Order No. 25826.  They shall report to the Commission on or before June 1, 1995.  Their recommendations, whether joint or individual or both, will be presented to the Commission and other interested parties in an appropriate public proceeding.  On the basis of the record created, the Commission will determine whether revenue sharing or some form of it shall continue or whether another method of cost allocation should be adopted.  The Commission’s “hurry” in this case is to complete the review of the Revenue Sharing Plan or other regulatory plan and have any changes ready for implementation in 1996.

We did not and are not delegating our authority to design an appropriate cost allocation methodology to anyone.  We are establishing a process to examine options for improving, changing or replacing the Revenue Sharing Plan.  Upon reconsideration, we believe that an appropriate and efficient way of making improvements to the Revenue Sharing Plan is to instruct the Commission Staff and the Company to explore the implementation of improvements identified by the Commission and others they wish to recommend.

We still believe a workshop to discuss issues of general concern to the industry has merit.  However, we recognize that neither the Commission nor the parties have unlimited resources.  Accordingly, we will direct the Staff to make the necessary preparations to conduct such workshops without a time line.

3.  Compensation for EAS funding.   Under the Sharing Plan when long-distance toll routes are converted to toll-free, extended area service (EAS) routes, Title 61 revenue sharing funds are used to compensate U S WEST for its lost toll revenue.  In Order No. 25826, the Commission found that this mechanism has an anti-competitive appearance because only U S WEST is compensated for its lost toll revenue on the affected toll route while other carriers on the route are not.  Order No. 25826 at 8.  The Commission stated that the practice of compensating U S WEST for its lost toll revenue should be discontinued in the future beginning with the 1995 sharing year.

In its Petition, U S WEST asserts that it was not given an opportunity to respond to the Staff’s claims that compensating U S WEST for lost toll revenue was anti-competitive.  In addition, U S WEST maintains that converting toll routes to EAS routes without compensation “constitutes a confiscatory ‘taking’ of property in violation of law.”  Petition at 8.  U S WEST concludes that converting toll routes to EAS routes primarily benefits Title 61 customers and the Commission should not unilaterally alter the terms of the revenue sharing “agreement.”

After reviewing U S WEST’s Petition, we believe that it may have misconstrued our intention to modify the EAS mechanism in the Revenue Sharing Plan.  The Commission has not changed the existing process of utilizing Title 61 sharing funds to compensate U S WEST for those toll routes which have already been converted to EAS.  See the 1994 Sharing Report, line 27, Case No. USW-S-95-1.  However, the use of revenue sharing funds to compensate U S WEST for lost toll revenues in future EAS conversions is an area of concern that must be addressed on a prospective basis if revenue sharing is to be continued beyond 1995.  U S WEST and the Staff are directed to examine alternative methods of satisfying this concern and to propose modification to the Sharing Plan.

U S WEST will have a full opportunity to present its views in this area as it meets with the Staff to review the Sharing Plan changes and when it presents its recommendations to the Commission.  U S WEST’s characterization of EAS routes as primarily benefitting Title 61 customers does not comport with reality.  It is self-evident that both Title 61 and Title 62 customers benefit by no longer paying toll charges on a route that is converted to EAS.  Indeed, in one sense, the primary beneficiaries are Title 62 customers who are able to make what were once long distance calls without charge.  Based upon this clarification and the fact that the Company will have a full opportunity to present its concerns, further reconsideration of this issue is unnecessary.

4.  Infrastructure improvements.  In Order No. 25826, the Commission found that Title 61 revenue sharing funds accrued during the 1994 sharing year “should not be used for infrastructure enhancements.”  Order No. 25826 at 7.  The Commission noted that calendar year 1994 was the last year of a three-year local network modernization project.  The Order observed that further upgrades or replacement of basic service facilities must be carefully reviewed to ensure that they are necessary and beneficial for Title 61 services.  Id. at 6.

Although U S WEST acknowledges that the Commission has discretion to decide in what manner 1994 revenue sharing funds should be employed, it urges the Commission to reconsider its decision barring the use of Title 61 revenue sharing funds for infrastructure improvements.  U S WEST observes that together with the Commission, it has provided many enhancements to the telecommunications infrastructure.  It urges the Commission to consider that competition will not bring advanced telecommunications technology to small Idaho communities.  “Indeed, all historical experience points to [the fact that competition will not provide advanced services to rural communities.]”  Petition at 13.  More specifically, U S WEST invites the Commission to reconsider several infrastructure programs including enhanced 911 service, telemedicine applications, distance learning and education facilities, and information exchange projects for public libraries.  Id. at 13-15.  As an alternative, the Commission may also consider using revenue sharing funds as “grants” for the installation or first year reoccurring charges for infrastructure projects.

Our decision not to utilize the 1994 revenue sharing money for infrastructure projects was made to eliminate an extended tug-of-war concerning the appropriate disposition of sharing funds.  The Commission’s main focus on a going-forward basis is to improve the Revenue Sharing Plan.  However, the Company is not foreclosed from recommending infrastructure projects.  The Commission does not want consideration of any such projects to delay progress on revenue sharing issues and implementation for 1996 and future years.

5.  Universal service.  Under the concept of universal service, U S WEST believes that it “must be allowed to reprice services to remove broad-based subsidies which are contained in its current rates.”  Petition at 25.  How these subsidies are to be removed from average rates and re-targeted to customers with specific needs, is an appropriate issue to be considered in the workshops.  The Company recommends that the Commission consider designating high cost areas in Idaho using long-run incremental investment as a “proxy” and provide monetary incentives for companies providing efficient service in these areas.  The Company concludes that this issue should not be linked uniquely with U S WEST.

As we have previously indicated, how to maintain and promote universal service is an issue to be presented in the workshops.  Accordingly, it is inappropriate for us to address the merits of various cost-allocation methodologies.  Our aim is to advance the goals of universal service by making telecommunication services reasonably available to Idaho’s citizens.

6.  Cost allocation.  In its final Order, the Commission expressed concern that the Revenue Sharing Plan not be utilized to “enrich, subsidize, or otherwise contribute to [U S WEST’s] non-Title 61 operations.”  Order No. 25826 at 10.  Although the Commission acknowledged that the risk of cross-subsidy is low, it directed the workshop participants to propose procedures to ensure that cross-subsidation not occur.  In pursuit of this policy, the Order recited several principles that should be followed including: (1) Title 62 services must not be subsidized by Title 61 services; (2) Title 62 services must be assigned a reasonable portion of the common and joint network costs as well as general overhead costs (all services using the local loop should be included in the allocation); and (3) direct cost assignments must be used when facilities or other operating expenses are clearly necessary for only Title 61 or Title 62 services.  In commenting on the third principle, the Order recited if the level of costs exceeds what is necessary for the delivery of Title 61 services alone, the additional costs should be directly allocated to Title 62 services.  Id. at 10-11.

U S WEST specifically objects to the second and third principles on the grounds “that they define policy in an attempt to determine key cost allocation issues without allowing any party the opportunity to provide comment or testimony.”  Petition at 28.  The Company urges the Commission to initiate a docket to examine alternative forms of cost allocation that would affect all telephone companies, not just U S WEST.  The Company reminded the Commission that “it does not advocate that the Commission undertake cost allocation proceedings.”  Id.

The Company’s Petition for Reconsideration concerning this issue is denied because its opportunity to provide comment or testimony is in the Sharing Plan review proceeding that is still ongoing.  Consequently, we find: U S WEST’s objection to the second and third principles is premature.  Because the issue of cost allocation is to be examined in the Sharing Plan review, U S WEST will have an opportunity to fully present its views concerning our second and third principles in that case.  Therefore, we decline to separately reconsider this issue.

7.  Eliminating rural zone charges.  The Commission’s Order directed that U S WEST’s rural zone charges should be discontinued after 1995.  For customers who live in the rural portions of each exchange, U S WEST charges $3.19 per month.  In recent years, the Commission has used Title 61 sharing funds to provide a 50% credit to the 55,000 Title 61 rural zone customers in U S WEST’s southern territory.  Order No. 25826 at 13.

The Company requests that the Commission reconsider this directive.  More specifically, the Company argues that the proposition that rural zone charges “hinder” access to the network is unsupported by any actual data in the record.”  Petition at 30.  Although U S WEST acknowledges that the Staff recommended eliminating rural zone charges in its comments, the Company asks the Commission to reconsider.

The Company implies that rural zone charges are still appropriate “because it is more costly for USWC to provide service to customers who locate at greater distances from their servicing central office and in areas of low population density.”  Id. at 30.  According to U S WEST, the elimination of rural charges results in urban customers subsidizing customers who choose to locate in rural areas.  The Company does acknowledge that there are states which have totally eliminated rural zone charges, nevertheless, it urges the Commission to reconsider this issue.

We reaffirm our initial determination to eliminate rural zone charges.  This should come as no surprise to U S WEST.  The Commission has indicated for several years its desire to eliminate rural zone charges.  See Order Nos. 21850, 22760, 24506, 24414, 25147, 25651, and 25733.  Elimination of such charges is consistent with this Commission’s direction to other telephone companies and also with nationwide practices.  In the past, U S WEST has been helpful in moving toward this Commission objective.  It may, of course, change its position, advocate retention of these charges, and provide support for that position.  This issue should be addressed in the discussions between the Company and the Staff and eventually in proceedings before the Commission.  We need not reconsider it further now.

8.  Depreciation.  In its final Order, the Commission acknowledged that the Company may, without our approval, use any depreciation rates it finds appropriate while the Revenue Sharing Plan is in operation.  Order No. 25826 at 11.  The Commission rejected U S WEST’s recommendation that accelerated depreciation rates be adopted for embedded plant when used in Title 61 operations.  Instead, the Commission directed that the issue of adopting appropriate depreciation rates be addressed in the workshops.  The Order concluded by observing that nothing in the Order “should suggest that we have drawn any conclusions regarding the adequacy of U S WEST’s depreciation rates.”  Id. at 12.

The Company specifically requests that the Commission delete the following language from its Order:

. . . we do not believe that it is appropriate to accelerate depreciation rates on embedded plant used for regulated operations in order to replace it with new plant as a means to remain or become competitive in Title 62 or other non-regulated services.

The Company argues that this statement adopts a depreciation policy without an adequate record and without providing the parties with an opportunity for hearing.  Petition at 31-32.  In addition, the Company stated that its current depreciation rate for Title 61 assets “are below industry standards and do not reflect a reasonable rate of recovery.”

We grant reconsideration on this issue to clarify our prior Order.  More specifically, we agree with the Company that the language set out above should be deleted.  Idaho Code § 61-624.  Having deleted the objectionable language from our Order, we recognize that the Company can change its depreciation rates at any time to any level.  The Sharing Plan does not specifically include an adjustment for increased or decreased depreciation or other Company “expense” except taxes and separations.  Consequently, the Company is at liberty to adjust its depreciation rates.  This is part of the “contract” represented by the Revenue Sharing Plan.

9.  Service quality standards and penalties for service deficiencies.  Both the Staff and MCI urged the Commission to adopt quality of service standards for U S WEST’s operations.  Based upon these comments and the Commission’s own observations, it directed the Staff to develop a set of service standards aimed at improving U S WEST quality of service for its customers.  To encourage improvement in U S WEST’s quality of service, the Commission proposed that monetary penalties be assessed if the Company fails to achieve the specific service standards.  Any penalties assessed were to be booked below the line and provided to Title 61 customers in the form of a billing credit.  Order No. 25826 at 17.  The Commission invited the Company and other interested parties to comment on the proposed service standards and penalties.

U S WEST requests that the Commission reconsider its proposed service quality standards for several reasons.  The Company disputes the Commission’s finding that service had declined and asserted it is undertaking a “massive program of reorganization and redesign of its core processes to improve service quality and become more efficient.”  Petition at 33.  U S  WEST also argues that service quality standards should be applicable to all telephone companies, not just U S WEST.  U S WEST maintains that singling it out for “stringent regulatory oversight” is discriminatory and notes that the Staff observed in its comments that the Commission should establish “statewide” standards.  The Company challenges the quality standards themselves and noted that Idaho Code § 61-302 only requires that the Company provide “adequate, efficient, just and reasonable” service.  The Company requests that the Commission pursue one of two procedures: convene a rulemaking proceeding applicable to the entire industry or allow U S WEST an opportunity to present evidence concerning the quality of service.

Turning to the proposed penalties, the Company asserts that imposing penalties is discriminatory and beyond the scope of the Commission’s jurisdiction.  Petition at 41.  U S WEST calculates that if all the proposed penalties were imposed, it would effectively reduce the Company’s rate of return from 10.4% to approximately 1%.  The Company maintains that there is an insufficient record to support the Commission’s proposed imposition of monetary penalties.  U S WEST maintains that if it was in violation of some statutory or other legally imposed duty, then the Commission’s recourse is to commence an action in District Court seeking penalties of up to $2,000 per day for each violation.  See Idaho Code §§ 61-701 et seq.  U S WEST concludes that judicial recourse provides critical procedural safeguards before financial penalties are imposed.

Although we deny reconsideration on this issue, the Company shall be afforded its requested relief.  As set out in Order No. 25826, the Commission proposed implementing specific service quality standards and monetary penalties.  Our Order specifically noted that Order No. 25826 was a final Order except as to that portion of the Order relating to service quality standards.  As explained in our procedural rules, parties may petition for reconsideration only from final Orders unless a party petitions the Commission to designate an interlocutory Order as a final Order.  See Rules 331; 322-323 (IDAPA 31.01.01.331, 322-23).  No party petitioned us to treat the service standards as final.  Consequently, the Commission has not issued a final Order which can be challenged by filing a Petition for Reconsideration.  Utah-Idaho Sugar Co. v. Intermountain Gas Co., 100 Idaho 368, 597 P.2d 105a (1979); Capitol Water Company v. Idaho PUC, 41 Idaho 19, 237 P. 423 (1925).

The reason why Order No. 25826 was not a final Order for the service quality and penalty issues is self-evident.  As that Order states, the Commission proposed that service quality standards and penalties be adopted.  U S WEST and other interested parties were invited to file comments regarding the proposed quality of service standards no later than February 9, 1995.  Without passing on the merits of such comments, the Commission must now decide how to proceed with the quality of service portion of this case.  Consequently, U S WEST has not been foreclosed from presenting evidence concerning its quality of service nor arguments addressing the monetary penalties.  Simply put, this issue is not ripe for reconsideration.  Although we initially envisioned that the service quality standards would become effective for the 1995 sharing year (beginning January 1, 1995), holding the Company to a certain level of service quality and presumably the imposition of penalties, cannot begin until we have issued a final Order concerning service quality standards.

In order to avoid confusion and provide a clear process for considering the proposed service quality standards, we find that this matter should be made a separate case and assigned Case No. USW-S-95-2.  Order No. 25826 and the responsive comments of U S WEST shall be made part of the record in the new case.

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IT IS HEREBY ORDERED that U S WEST Communication’s Petition for Reconsideration is granted in part and denied in part as set out in the body of this Order.

IT IS FURTHER ORDERED that the issue of intraLATA 1+ equal access be examined in Case No. GNR-T-94-5.

IT IS FURTHER ORDERED that the Staff is directed to work with the Company implementing modifications to the Revenue Sharing Plan or a replacement to the Sharing Plan.  They shall report to the Commission no later than June 1, 1995 their recommendations for continuing or modifying the Sharing Plan or developing a replacement to the Sharing Plan.  That filing shall be assigned a new case number and further proceedings will be scheduled.

IT IS FURTHER ORDERED that the Staff proceed with setting the agenda for the workshops consistent with this Order.

IT IS FURTHER ORDERED that Case No. USW-S-95-2 is established to consider the adoption of service quality standards and monetary penalties.

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. USW-S-94-3 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.  See Idaho Code §§ 61-627 and 62-619.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this              day of March 1995.

MARSHA H. SMITH, PRESIDENT

RALPH NELSON, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**FOOTNOTES**

1:

On December 20, 1994, the Commission issued an errata amending portions of Order No. 25826.

2:

The term “equal access” is the ability of a caller to have all interexchange calls automatically routed to the caller’s pre-selected long-distance service provider when the caller dials “1” plus the area code and a seven-digit telephone number.  Currently all toll calls within the LATA are routed to U S WEST when the caller dials “1” unless the caller uses an alternative dialing pattern such as “10XXX” and then the area code and telephone number.