BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

|  |  |  |
| --- | --- | --- |
|   VALLEY LINK COMMUNICATIONS, INC. Petitioner,vs. U S WEST COMMUNICATIONS, INC.Respondent. | )))))))))) | CASE NO. USW-S-95-3ORDER NO.  26048 |

On May 30, 1995, Valley Link Communications filed a Complaint and Petition for Stay against U S WEST Communications seeking to postpone the termination of Valley Link’s extended area service (EAS) bridging services.  U S WEST notified Valley Link on May 22, 1995 that it would disable Valley Link’s EAS bridging services at noon on June 1, 1995.  Valley Link asserts it is unable to convert its bridging services to long-distance switched access services prior to disconnection.  Valley Link requests that the Commission stay disconnection for 30 days or until July 1, 1995.  After reviewing the Complaint and U S WEST’s response, the Commission grants Valley Link’s request.

BACKGROUND

In February 1995, the Commission issued Order No. 25885 in Case No. GNR-T-94-1.  In that case, Upper Valley Communications was providing EAS bridging services by using  U S WEST facilities.  Following a hearing on the merits, the Commission found that EAS bridging services are unlawful and ordered Upper Valley to discontinue its bridging services.  In addition, the Commission also ordered U S WEST “to submit appropriate tariffs and price lists that specifically prohibit EAS bridging services in [U S WEST’s] service areas.”  Order No. 25885 at 20.  The Commission approved U S WEST’s tariff prohibiting EAS bridging on March 9, 1995.(footnote: 1)  Valley Link was an intervening party in that case but did not actively participate at the hearing or on reconsideration.

THE COMPLAINT

In its Complaint and Petition, Valley Link asserts that it has attempted to negotiate “with U S WEST for the orderly transition of telecommunication services to switched access.”  Petition at 3.  Valley Link maintains that it had contacted U S WEST in August 1994 to purchase sufficient switched access services to accomplish the transition.  Valley Link alleges that it had encountered numerous delays in processing its request for switched access services.  In addition, Valley Link states that it has experienced difficulties in sending automatic number identification (ANI) to the local U S WEST switch.  Id. at 4-6.  This inability to interface with U S WEST’s network has impeded the transition.  Valley Link asserts that its customers should be converted to switched access

in an orderly fashion to limit disastrous consequences caused by customers being added to the new system.  At no time has Valley Link sought delay of the transition to switched access service on its own accord.  A large proportion of the delay is solely attributable to U S WEST and, more importantly, it is only with unclean hands that U S WEST can now demand immediate connection to switched access after the many months of delay caused by U S WEST in this case.

Id. at 6.

U S WEST’S RESPONSE

U S WEST opposes the stay and insists that the Complaint fails to state a claim upon which relief can be granted.  U S WEST indicates that Valley Link actually placed its order for switched access service in November of 1994 and that the requested services were completely installed by April 26, 1995.  U S WEST attributes the transition difficulties to “incompatibility between Valley Link’s equipment and USWC’s service.”  U S WEST Opposition at 2.  U S WEST asserts that discontinuing EAS bridging facilities is consistent with the Commission’s decision in the Upper Valley case (No. GNR-T-94-1) and its recently approved tariff.

U S WEST further alleges that any delay in disabling the bridging services only allows Valley Link to continue offering unlawful bridging services while it prepares to offer its existing customers long distance services.  U S WEST concludes that there “is no reason why Valley Link should illegally use USWC’s facilities and reap the profits of its EAS arbitrage scheme while this business plan unfolds.”  Id. at 3.

DISCUSSION

Given the imminence of the disconnection, the Commission convened an emergency open meeting to consider the Complaint and Petition.  After reviewing the pleadings, the Commission issued a bench ruling granting the stay.  This Order affirms our prior bench ruling.

The primary issue in this dispute is which party bears responsibility for the difficulties and delay in converting Valley Link’s bridging services to toll services.  Valley Link claims that U S WEST is responsible for the difficulties.  On the other hand, U S WEST maintains that the difficulties result from the incompatibility of Valley Link’s equipment and Valley Link’s desire to fully develop a business plan before disconnection.  Resolution of this disputed issue cannot be accomplished before the scheduled termination.  Consequently, we find:  That it is reasonable based on the facts of this case to grant Valley Link’s Petition for Stay.  Although we grant a stay of 30 days, we are not inclined to grant further extensions.  Accordingly, Valley Link is directed to take all necessary actions to complete the transition to switched access services as soon as possible.  If Valley Link completes its transition before July 1, it shall notify the Commission and U S WEST.  In the event Valley Link cannot complete its transition prior to July 1 it shall notify the Commission of this fact no later than June 15, 1995.

We further direct the Commission Staff to make an independent inquiry into Valley Link’s Complaint.

O R D E R

IT IS THEREFORE ORDERED that Valley Link’s Petition for a 30-day stay of disconnection by U S WEST Communications is granted.  Unless otherwise directed by the Commission, U S WEST is authorized to terminate Valley Link’s EAS bridging services at noon on July 1, 1995.

IT IS FURTHER ORDERED that if Valley Link is unable to complete its transitional activity prior to the scheduled disconnection on July 1, 1995, then it shall inform the Commission Secretary in writing no later than June 15, 1995.

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

RALPH NELSON, PRESIDENT

    See Separate Opinion

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

vld/O-USW-S-95-3.dh

SEPARATE OPINION OF COMMISSIONER SMITH

Case No. USW-S-95-3

I write separately to express my opinion in this matter.

Given the disputed facts surrounding the transition of Valley Link’s bridging services to switched access services, I am inclined to grant the Petition to Stay.  However, Valley Link was not unaware of this Commission’s decision that EAS bridging services are unlawful.  Accordingly, I am inclined only to stay disconnection until such time as we could review the Complaint in greater detail, i.e., until June 19, 1995.

DATED this             day of June 1995.

Marsha H. Smith, Commissioner

vld/O-usw-s-95-3.dh

**FOOTNOTES**

1:

Case No. GNR-T-94-1 is currently on appeal to the Idaho Supreme Court (Docket No. 22024).