(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE IMPROVING OR REPLACING U S WEST COMMUNICATIONS’ REVENUE SHARING PLAN FOR SOUTHERN IDAHO. | )  )  )  )  )  )  ) | CASE NO. USW-S-95-4  NOTICE VACATING  HEARING AND  REQUEST FOR COMMENTS  ORDER NO.  26395 |

On February 7, 1996, MCI Telecommunications requested the Commission issue an Order rejecting the Commission Staff and U S WEST Communications’ joint proposal in the above referenced case.  The joint proposal was to replace the existing Revenue Sharing Plan governing the operations of U S WEST in its southern Idaho service area.  In the joint proposal, the parties urged the Commission to adopt service quality standards for U S WEST.  The plan also provided that U S WEST may annually increase its one-party residential rate by $1.00 per month annually over a three-year period if it meets escalating measurements for service quality standards.  The increase in the residential rate would be offset by a reduction in long-distance (MTS) rates.  Adoption of the plan would also eliminate rural mileage charges and continue the service guarantee program recently implemented by U S WEST.

Following a Motion for More Time, the Commission issued Order No. 26354 on March 5, 1996, granting U S WEST additional time in which to answer MCI’s Motion.  On March 7, 1996, U S WEST filed its Answer in the form of a Motion to Withdraw the joint proposal.  On March 21, the Staff filed a Response to U S WEST’s Motion also recommending withdrawal of the joint proposal.  In this Order we allow the joint proposal to be withdrawn.

MCI’s MOTION

In its Motion, MCI urged the Commission to reject the joint proposal and initiate a new proceeding to examine the implementation of the federal Telecommunications Act of 1996.  MCI maintained that various provisions of the joint proposal are “inconsistent with, or at least do nothing to promote, the federal policy favoring competition in all [telecommunication] markets.”  MCI Motion at 7.  In particular, MCI argued that Section 251 of the Telecommunications Act precludes local exchange companies from imposing unreasonable or discriminatory conditions or limitations on the resale of telecommunications services.  MCI further asserted that the Act requires number portability, dialing parity, access to rights-of-way, and reciprocal compensation mechanisms for the origination and termination of telecommunication services.  It insisted that the joint proposal “does not bring the Commission any closer to implementation of the Section 251 interconnection pricing requirements detailed above.”  Id.  MCI declares it is critical for the Commission to move quickly to establish interconnection practices and cost-based pricing.

MCI also contended that the joint proposal is “aggressively anticompetitive” for three reasons.  First, MCI characterized the local residential rate increases embodied in the joint proposal as being without any credible cost justification.  MCI claimed that raising local residential rates “is part of the transparent U S WEST strategy to raise all rates now, then selectively lower them later in areas or markets where competition is threatened. . . .”  Id. at 7.  Second, MCI also suggested that allowing U S WEST to “write-down” its depreciation accounts is anticompetitive.  During the last five years of the Revenue Sharing Plan, U S WEST could have managed its expenses and depreciation accounts in any manner it pleased.  To provide U S WEST additional revenue now would result in an improper windfall.

Finally, MCI argued that the proposal to reduce intraLATA toll rates “without reducing carrier access rates creates a price squeeze on dependent competitors, who already labor under the competitive disadvantage of” not having dialing parity.  For these reasons, MCI requested that the Commission reject the joint proposal and institute a proceeding to implement the provisions of the Federal Telecommunications Act.

U S WEST’S ANSWER

Although it did not agree with the assertions or characterizations contained in the MCI Motion, U S WEST requested that the Commission allow it to voluntarily withdraw the joint proposal.  In light of the federal legislation, U S WEST asserted that the provisions of the proposed regulatory plan would inappropriately bind U S WEST’s residential rates which are now subject under the Act to immediate competition.  U S WEST argued that its residential rates are currently below-cost and reselling local service to new local service competitors is “a recipe for financial ruin.”  Id. at 4.  U S WEST also asserted that adoption of service quality standards applicable to only itself coupled with the proposed five-year duration of the regulatory plan are now unrealistic.

If the Commission were to grant U S WEST’s Motion to Withdraw, the Company stated, it would begin to take “the necessary steps to separate its deregulated operations within the state and proceed under the laws of the state to invoke the Commission’s ratemaking authority as it pertains to those services which remain under economic regulation.”  Id. at 7.  U S WEST noted that the passage of the Telecommunications Act will intensify competition

in all of [U S WEST’s] markets including the intraLATA toll market.  The proposed regulatory plan’s provisions which require [toll] price reductions at specified times and in preset amounts does not accord the Company the flexibility to respond in a market of ever increasing competition.  It is no longer possible for U S WEST to guarantee revenue neutrality as the historical anomalies of regulated service prices are being redressed.

Id. at 4.  U S WEST concluded that allowing it to withdraw the proposed regulatory plan “will render the MCI Motion moot.”

STAFF RESPONSE

On March 21, 1996, the Commission Staff filed a Response to U S WEST’s Motion to Withdraw the Joint Proposal. In its comments, the Staff agreed with both MCI and U S WEST “that the Plan will not be workable as drafted and it should be withdrawn.” Staff Response at 2. The Staff also noted that withdrawal of the joint proposal would render MCI’s Motion to Dismiss moot.

The Staff lamented that one problem caused by withdrawal of the joint proposal was that service quality measurements are left unaddressed. Staff noted that developing service quality standards within the context of the plan “made sense at the time because it provided some incentive for the Company to improve its performance.” Id. at 3.  To address this adverse consequence, the Staff suggested that the Commission initiate a case to implement service quality rules applicable to all local exchange providers as soon as possible.

DISCUSSION

After reviewing the various motions and responses in this case, we believe it is appropriate for the joint proposal to be withdrawn.  As MCI recognizes in its Motion, the proposal was submitted more than four months prior to enactment of the federal Telecommunications Act.  MCI and U S WEST both observed that the federal Act makes sweeping changes in the telecommunications industry and appears to preempt several provisions of the Idaho Telecommunications Act of 1988, Idaho Code §§ 62-601 et seq.  Accordingly, we find it is reasonable to allow the parties to withdraw the joint proposal pursuant to our procedural Rule 67, IDAPA 31.01.01.067.  We further find that withdrawal of the proposal renders MCI’s Motion to Dismiss moot.

MCI also urged us to initiate a separate proceeding to examine implementation of the Telecommunications Act.  On March 28, 1996, the Commission convened an open meeting and informal workshop to examine the Telecommunications Act.  We solicited comments concerning the Commission’s role and responsibilities under the Act.  The various segments of the telecommunications industry were well represented and provided thoughtful comments to the Commission.  Following a review of the comments and material submitted at the workshop, the Commission will be in a position to determine how best to fulfill its responsibilities under the Telecommunications Act and the laws of Idaho.

Given the withdrawal of the joint proposal, we are now faced with the question of what remains of this case.  When the Commission initiated this case in March 1995, we directed the Staff and U S WEST to modify the Revenue Sharing Plan or to suggest an appropriate replacement to the Sharing Plan.  Order No. 25923 at 5, 12.  The Plan was adopted as a method of allocating costs between the fully regulated (Title 61) and partially regulated (Title 62) services of U S WEST.  In addition, the parties were directed to examine alternatives to the Extended Area Service (EAS) component of the Sharing Plan.  Under the Plan, sharing funds are utilized to compensate U S WEST for its lost toll revenue when the Commission orders the conversion of toll routes to EAS routes.

In light of U S WEST’s “statement” that it intends to file a rate case, we question whether there is a need to continue this proceeding.  We presume that a rate case, would determine issues such as cost-of-service and cost allocation, thereby replacing the Revenue Sharing Plan as the method of allocating costs between Title 61 and Title 62 services.  However, we remain concerned about service quality and the treatment of new EAS routes during the continued operation of Revenue Sharing and until a rate case is concluded.  The Commission intends to move expeditiously to examine the host of pending EAS petitions; waiting for resolution of a rate case is an unacceptable delay.  Accordingly, we invite the parties to submit written comments on how the issues of service quality and EAS compensation can be addressed and whether that should be done in this case or through another venue.

O R D E R

IT IS HEREBY ORDERED that U S WEST’s Motion to Withdraw the joint proposal in this case is granted.  Having authorized the joint proposal to be withdrawn, MCI’s Motion to Dismiss becomes moot.

IT IS FURTHER ORDERED that the hearing in this matter scheduled for April 9, 1996 is vacated.

IT IS FURTHER ORDERED that parties may submit written comments on the issues raised in this Order and whether this case should be continued.  Comments should be filed within 14 days of the service date of this Order.

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

O:usws954.dh3

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

April 3, 1996