DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

STEPHANIE MILLER

EILEEN BENNER

JOE CUSICK

SYD LANSING

BEVERLY BARKER

GARY RICHARDSON

WORKING FILE

FROM:DON HOWELL

DATE:FEBRUARY 29, 1996

RE:MCI’S MOTION TO REJECT THE U S WEST-STAFF JOINT PROPOSAL IN THE AFOR CASE, U S WEST’S MOTION FOR MORE TIME, AND STAFF’S MOTION FOR SUSPENSION, CASE NO. USW-S-95-4

On February 7, 1996, MCI requested that the Commission issue an Order rejecting the U S WEST-Staff joint proposal in the AFOR case.  In the joint proposal, the parties urged the Commission to adopt service quality standards for U S WEST.  If the Company meets escalating measurements for service quality standards, then it may increase its 1FR rate by $1.00 per month annually for a three-year period.  The increase in the 1FR rate would be offset by a reduction in long-distance (MTS) rates.  The plan also eliminates rural mileage charges and continues the service guarantee program recently implemented by U S WEST.  On February 12, 1996, U S WEST filed a Motion for Additional Time to Answer MCI’s Motion.  U S WEST requested it be given an additional 14 days to respond to MCI’s Motion.  On February 28, 1996, Staff moved to suspend further proceedings until the Commission rules on MCI’s motion.

MCI’s Motion

In its Motion, MCI urges the Commission to reject the joint proposal in the AFOR case and initiate a new proceeding to examine the implementation of the Federal Telecommunications Act of 1996.  The Motion begins by reciting several specific provisions of the Federal Act including: Removing barriers to local market entry; interconnection; BOC entry into long-distance, and universal service funding reforms.  The Company maintains 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.  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 asserts that the Act requires number portability, dialing parity, access to right-of-way and reciprocal compensation mechanism for the origination and termination of telecommunication services.  It argues 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 declares that certain elements in the joint proposal are “aggressively anticompetitive.”  More specifically, MCI raises three issues.  First, MCI characterizes the local rate increases embodied in the joint proposal as being without any credible cost justification.  MCI claims that raising local 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 suggests that allowing U S WEST to “right-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 accounting in any manner it pleased.  To provide U S WEST revenues now would result to an improper windfall to U S WEST.

Finally, MCI argues 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” no dialing parity.  For these reasons, MCI requests that the Commission reject the joint proposal and institute a proceeding to implement the provisions of the Federal Telecommunications Act.

U S WEST’s Motion

In its Motion for Additional Time, U S WEST noted that at the time MCI filed its Motion, the President had not even signed the legislation into law.  U S WEST states that MCI’s Motion “raises questions not only of the proper interpretation of the comprehensive new [federal] legislation but also of the scope of federal jurisdiction to interfere with the actions of state legislators and administrative agencies.”  U S WEST Motion at 1.  The Company maintains that it needs additional time to complete an analysis of this comprehensive federal legislation before it may reasonably respond to MCI’s Motion.  Consequently, U S WEST asks for an additional 14 days or until March 7, 1996.(footnote: 1)

Staff’s Motion

On February 28, 1996, the Commission Staff filed a Motion requesting that the Commission suspend the prefile rebuttal date and the hearing date in this matter.  The Staff maintained that it would be appropriate for the Commission to suspend this proceeding until such time as the Commission has ruled on MCI’s substantive motion.  If the Commission were to grant U S WEST’s request for additional time, then U S WEST would file its Answer no later than March 7, 1996.  The Staff pointed out that its deadline for filing rebuttal testimony is eight days later, on March 15, 1996.  The hearing in this matter is scheduled for April 9, 1996.  Staff noted in its Motion that none of the 14 parties to this case opposed the Motion but Staff was unable to contact counsel for Electric Lightwave.

Analysis

There are two immediate motions before the Commission.  First, should the Commission grant U S WEST an extension of time in which to answer MCI’s Motion.  A 14-day extension would move the deadline for U S WEST’s response to March 7, 1996.  Second, Staff requests that the rebuttal filing date be postponed.  In the scheduling Order for the AFOR case, the Commission established a rebuttal filing date for U S WEST and the Staff of March 15, 1996.  The hearing is set for April 9, 1996.  No party opposed Staff’s motion.  Given the substance of MCI’s Motion urging the Commission to dismiss the AFOR case, the Commission may consider suspending further proceeding in this case until it has ruled on MCI’s Motion.

The Commission’s procedural Rule 256 provides that the Commission may consider and decide motions with or without oral argument.  In all three Motions, no party has requested oral argument.  Consequently, the Commission may grant the two procedural Motions before it and defer its decision on MCI’s Motion until U S WEST files its Answer (assuming U S WEST’s Motion is granted).  Generally, parties are not entitled to more than 14 days to answer a Motion but the Commission may deviate from its Rules when it finds compliance with the Rules is impractical, unnecessary or not in the public interest.  Compare Rules 57.03 and 13, IDAPA 31.01.01.013 and 057.03.

Commission Decision

Does the Commission desire to grant U S WEST an extension of time in which to answer MCI’s Motion?  Does the Commission grant an extension for U S WEST’s Answer until March 7, 1996?

Does the Commission desire to grant Staff’s Motion to Suspend the rebuttal filing date for the Commission Staff and U S WEST currently scheduled for March 15, 1996, as well as the hearing date of April 9, 1996?

Don Howell

vld/M:USW-S-95-4.dh

**FOOTNOTES**

1:

Although U S WEST’s Motion indicates that it desires an extension until February 28, 1996.  U S WEST’s counsel has orally requested an extension until March 7.