DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

STEPHANIE MILLER

DAVE SCHUNKE

EILEEN BENNER

SUSAN HAMLIN

BEV BARKER

GARY RICHARDSON

WORKING FILE

FROM:DON HOWELL

DATE:DECEMBER 29, 1995

RE:CONSENT AGREEMENT ENTERED INTO BY THE STAFF AND U S WEST CONCERNING THE COMMISSION’S RESTORATION OF SERVICE STAN-DARD CONTAINED IN RULE 503; CASE NO. USW-N-95-2 AND USW-S-95-8

On December 21, 1995, the Commission Staff and U S WEST Communications filed a Joint Motion requesting the Commission adopt a Consent Agreement entered into between the parties.  The Joint Motion and Consent Agreement are attached for your review.

The Commission’s Telephone Customer Rule 503 requires that local exchange companies (LECs) generally restore local service within 24 hours from the time that an outage is reported.  This Rule further provides that at least 90% of out-of-service trouble reports should be “cleared” within the 24-hour standard each month.  LECs are required to notify the Commission whenever the 90% standard has not been met for a period of three months.  Pertinent provisions of the Rule are set out below.

503.REPAIR SERVICE STANDARDS (Rule 503).(7-1-93)

01.Restoration of Service.  When a telephone company providing local exchange service pursuant to Title 61, Idaho Code, is informed by a customer of a service outage as described in Rule 501.02, the telephone company must:(7-1-93)

. . . .

b.restore service within twenty-four (24) hours after the report of the outage if no emergency exists, except that outages reported between noon on Saturday and 6:00 p.m. on the following Sunday must be restored within 48 hours or by 6:00 p.m. on the fo­llowing Monday, which ever is sooner.

(7-1-93)

If the telephone company does not restore service within the times required by this paragraph, the telephone company must credit the customer’s account for an amount equal to the monthly rate for one (1) month of basic local exchange service.(7-1-93)

02.Extenuating Circumstances.  Following disruption of tel­ephone service caused by natural disaster or other causes not within the telephone company’s control and affecting large groups of customers, or in conditions where the personal safety of a repair technician would be jeopardized, the telephone company is not required to provide the credit referred to in paragraph 01 as long as it uses reasonable judgment and diligence to restore service, giving due regard for the needs of various customers and the requirements of the telecommunications service priority (TSP) program. . . .[The Company is also excused from providing the monthly service credit if the outage is caused by the customer or is attributable to the customer's equipment.]

03.Compliance Standard.  At least ninety percent (90%) of out-of-service trouble reports shall be cleared in accordance with paragraphs 01 and 02.  The telephone company shall keep a se­rvice record as described in 02.01 and shall notify the Commission whenever the record indicates the ninety percent (90%) level has not been met for a period of three consecutive months.  (7-1-93)

PROCEDURAL HISTORY

Following extensive discussions with the Staff, U S WEST advised the Commission in March 1995 that it had failed to achieve the 90% standard for both its northern and southern Idaho operations for the months of October through December 1994 and January through March 1995.(footnote: 1)  The Commission reviewed this matter at its public meeting held March 28, 1995.  At that time, the Company indicated that it was diligently working to achieve compliance with the 90% repair standard.  U S WEST asked the Commission to defer taking any action and allow the Company to bring itself into compliance within 90 days.

In late September 1995, the Staff advised the Commission that U S WEST has been unsuccessful in meeting the 90% standard since March.  The Commission again took this matter up at its decision meeting of October 17, 1995.  The Staff reported that with one exception,(footnote: 2) U S WEST failed to meet the monthly 90% standard in either of its northern or southern Idaho operating areas during 1995.  At that time, the Commission observed that U S WEST’s failure to meet the 90% repair standard was unacceptable.  The Commission generally discussed imposing civil penalties for U S WEST’s inability to meet the repair standard in both its service areas.  Following this meeting, the Commission Staff entered into discussions with the Company which culminated in the Consent Agreement.

THE CONSENT AGREEMENT

The Consent Agreement recites that U S WEST has almost uniformly failed to meet the 90% standard since August 1994 for its northern and southern Idaho operations.  The Agreement states that U S WEST has not intentionally violated the 90% standard and has undertaken a variety of actions to improve its performance in restoring its local service to customers within 24 hours.

As outlined at the October 17 decision meeting, the Staff and Company agree that U S WEST will voluntarily pay a civil penalty of $5,000 for each month beginning in October 1995 that the Company fails to meet the 90% standard in southern Idaho.  In addition, the Company agrees to pay a civil penalty in the amount of $2,500 for each month that it fails to achieve a 5% increase in its performance level for northern Idaho operations.  At such time as the Company meets the 90% standard for three consecutive months in both the northern and southern areas, U S WEST’s obligation to pay civil penalties shall be terminated.  See Consent Agreement at 3-4, ¶¶ 6-7.  Pursuant to these provisions, the Company owes $12,500 (two months for southern Idaho and one month for northern Idaho).

The parties acknowledge in the Consent Agreement that the Company’s agreement to pay civil penalties under the Consent Agreement “is given for the convenience of the parties, is intended to avoid costly and protracted regulatory proceedings or civil actions and shall not be construed as precedent for any other payments or penalties.”  Id. at 4, ¶ 9.  In addition, so long as U S WEST is honoring the terms of the Agreement, Staff will not initiate any further action to enforce the 90% standard in northern and southern Idaho.  Id. at 5, ¶ 10.  Staff will, of course, advise the Commission of the results of U S WEST’s efforts to meet the 90% standard after each monthly report is filed.

The Agreement also recognizes that the Staff and the Company disagree on the proper method of calculating the percent of service outages repaired in 24 hours and adopts the U S WEST method for purposes of this Agreement.  Staff retains the option to initiate a Petition for Declaratory Order requesting the Commission to determine the appropriate manner of calculating a LEC’s performance under Rule 503.

ANALYSIS

The Commission’s Procedural Rule 58 defines and discusses Consent Agreements.  In general, a Consent Agreement between a utility and the Commission Staff is where one party (e.g., U S WEST) agrees “to engage in certain conduct mandated by statute, rule, tariff or other provision of law. . . .”  IDAPA 31.01.01.058.  Consent Agreements usually require a utility or motor/rail carrier to comply with existing law.  Under the Rule, a Consent Agreement must recite the parties to the Agreement and fully state the conduct prescribed by the Consent Agreement.  The Consent Agreement may also recite the consequences for failure to abide by the Consent Agreement and provide for payment of civil penalties as authorized by the law.

In this case, the parties have asked the Commission to approve the Consent Agreement.  Consent Agreements are usually presented to the Commission at the conclusion of a case and usually resolve disputed issues (e.g., WWP’s line extension practices; UP’s Montpelier phone number; motor carrier violations/reinstatements).  This case is unusual in that the corrective action (meeting the 90% standard) has yet to be accomplished.  The Commission may certainly approve the Agreement but reserve further action on this matter as it deems warranted.

COMMISSION DECISION

1.  Does the Commission find that the contents of the Consent Agreement reasonably represent its instructions at the October 17 decision meeting?

2.   Does the Commission desire to approve or accept the Consent Agreement?  If the Commission accepts the Consent Agreement, are there any provisions that the Commission objects to, or does the Commission desire to expressly reserve the right to take additional actions if the 90% standard is not achieved?

3.  Anything else?

Don Howell

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**FOOTNOTES**

1:

The Company originally reported that it had met the 90% standard in southern Idaho for January 1995, but this assertion was subsequently withdrawn.

2:

U S WEST met the 90% standard in southern Idaho for September 1995.