BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE INVESTIGATION  CONCERNING U S WEST COMMUNICA­TIONS’ COMPLIANCE WITH TELECOM­MUNI­CA­TIONS SERVICE RULE 503, IDAPA 31.41.01.503. | )  )  )  )  )  )  ) | CASE NOS.USW-N-95-2  USW-S-95-8  ORDER NO. 26303 |

As part of its Telephone Customer Relations Rules, the Commission has promulgated quality of service rules.  Rule 503 requires that a telephone company generally restore local service within twenty-four (24) hours from the time a service outage is reported.  IDAPA 31.41.01.503.01.   The Rule further provides that telephone companies “clear” ninety percent (90%) of the out-of-service trouble reports within 24 hours each month.  Rule 503.03.  With one exception, U S WEST Communications reports that during 1995 it has failed to meet the monthly 90% standard in both its northern and southern Idaho operating areas.

On December 21, 1995, the Commission Staff and U S WEST filed a joint motion requesting that the Commission adopt a Consent Agreement entered into between the parties.  The Consent Agreement provides that U S WEST will voluntarily pay a civil penalty of $5,000 for each month 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 improve its out-of-service performance level for northern Idaho.  As explained in greater detail below, the Commission accepts the Consent Agreement and initiates this investigation to review U S WEST’s compliance with our Rule 503.

REPAIR STANDARDS

Rule 503 establishes telephone service repair standards.  More specifically, Rule 503.01 provides that each local exchange company

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, whichever is sooner.

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.

IDAPA 31.41.01.503.01.  An outage (or out-of-service report) is described as a condition in which “the customer cannot make local calls, cannot receive local calls, or cannot use the service for voice grade communications because of crosstalk, static or other transmission problems. . . .”  Rule 503.02, IDAPA 31.41.01.503.02.  Local exchange companies are required to keep service repair records and “notify the Commission whenever the record indicates the ninety percent (90%) level has not been met for a period of three consecutive months.”  Rule 503.03, IDAPA 31.41.01.503.03.  In addition, Rule 503.02 recognizes extenuating circumstances that relieve the Company of its obligation to provide monthly service credits.  These situations include natural disasters, safety concerns, customer-caused outages, or when the customer cannot provide repair technicians with access to facilities.

PROCEDURAL HISTORY

Following extensive discussions with the Staff, U S WEST formally advised the Commission in March 1995 that it had failed to achieve the 90% standard(footnote: 1) for both its northern and southern Idaho operations for the months of October through December 1994.  For southern Idaho, U S WEST reported it had fallen below the 90% standard by less than 1% each month.  For northern Idaho, the Company stated that its service levels ranged between 82% and 86% for the last half of 1994.(footnote: 2)  The Company declared that it was extremely concerned about falling below the 90% standard and indicated it was conducting a “root cause” analysis to determine appropriate corrective actions.  This analysis was to be completed by mid-March at which time the Company would be prepared to discuss its plans with the Commission.

The Commission reviewed this matter at its March 28, 1995, public meeting.  At that time, U S WEST indicated that it was diligently working to achieve compliance with the 90% repair standard of Rule 503. The Company asked the Commission to defer taking any action and allow the Company to bring itself into compliance.

In September 1995, the Staff advised the Commission that U S WEST had been unsuccessful in meeting the 90% standard since March.  The Commission again took up this matter at its decision meeting of October 17, 1995.  The Staff reported that with one exception(footnote: 3) U S WEST failed to meet the 90% standard in either its northern or southern Idaho operating areas during 1995.  At that time, the Commission observed that U S WEST’s failure to meet the repair standard was unacceptable.  The Commission generally discussed imposing civil penalties for U S WEST’s inability to meet the repair standard.  Following this meeting, the Commission Staff and the Company entered into discussions which culminated in the Consent Agreement outlined below.

CONSENT AGREEMENT

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

Based upon the Commission’s discussion at its October 17 decision meeting, the Staff and Company agreed 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 an increase of five percentage points (5%) in its performance level for northern Idaho beginning in October 1995.  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 will terminate.

The parties acknowledge in the Consent Agreement that the Company’s agreement to pay a civil penalty “is given for the convenience of the parties, is intended to avoid costly and protracted regulatory proceedings for civil actions and shall not be construed as precedent for any other payments or penalties.”  Consent Agreement at 4, ¶ 9.  So long as U S WEST is honoring the terms of the Agreement, the Staff will not initiate any further actions to enforce the 90% standard in northern or southern Idaho. Id. at 5, ¶ 10.

The Agreement also recognizes that the Staff and the Company disagree on the proper method of calculating the 90% standard.  Nonetheless, the parties adopt U S WEST’s method of calculation for purposes of the Consent Agreement.  Id.  at 3, ¶ 5.  Staff retains the option of initiating a petition for declaratory order requesting that the Commission determine the appropriate manner of calculating the service outage standard of Rule 503.

DISCUSSION

Despite its assurances and best efforts, U S WEST has generally failed to meet the minimum 90% restoration of service standard set out in Rule 503.  As indicated in the table below, U S WEST has met the 90% standard only in September 1995.

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | Jan | Feb | Mar | April | May | June | July | Aug | Sept | Oct | Nov |
| Northern Area  Southern Area | 43%  82% | 36%  84% | 51%  81% | 52%  85% | 56%  89% | 60%  84% | 53%  79% | 62%  75% | 68%  91% | 71%  86% | 89%  83% |

Source: U S WEST letter dated December 14, 1995.

The Company has not met the 90% standard in northern Idaho since August 1994.  We regard the prompt restoral of telephone service as a serious matter.  U S WEST’s failure to meet the repair standard is even more troubling in light of reports that other telephone companies are in compliance with the threshold.

After reviewing the terms of the Consent Agreement, we find:  The Consent Agreement conforms to the substance of our discussion at the October 17 decision meeting.  Rule 503 requires U S WEST to restore service outages as quickly and efficiently as possible.  Although the Company is required to compensate customers with credit for a month’s local service if such service is not restored within 24 hours, it is apparent that this provision does not address a continued failure to meet the requirements of Rule 503.  Accordingly, the Commission finds that it is appropriate to accept the Consent Agreement and the civil penalties incorporated into the Agreement.

Pursuant to the terms of the Consent Agreement, U S WEST owes $10,000 for failing to meet the 90% standard in southern Idaho for October and November.  In addition, the Company owes $2,500 for failing to achieve a 5% improvement in northern Idaho from September to October 1995.  The Company should deposit a check made payable to the General Fund in the amount of $12,500 with the Commission Secretary.

The Company stated in a December 21, 1995 letter to the Commission that restoring service “is our number one priority.”  To meet this challenge, the Company says it has added service technicians, implemented a Service Guarantee Plan, and moved its repair screening function from Seattle to Boise.  We are pleased that the Company has acknowledged the seriousness of this matter and is implementing actions to improve service restoration.  U S WEST should continue to monitor its compliance results and alter its practices as needed to achieve the requirements of Rule 503.

The Commission further finds:  It is appropriate that U S WEST continue to report its compliance with the 90% standard on a monthly basis.  The report shall indicate restoration of service percentage for both its northern and southern Idaho operations.  The Commission intends to review this matter in approximately six months, or following the June 1996 report.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

U S WEST Communications is a telecommunications corporation subject to our regulatory jurisdiction pursuant to Titles 61 and 62.  The Commission has jurisdiction over this matter as authorized by Idaho Code §§ 61-121, 61-302, 61-406, 61-705, and 61-706.

Having reviewed the reports submitted by U S WEST, we find that the Company is not in compliance with our Restoration of Service Rule 503.  IDAPA 31.41.01.503.  We further find that despite the efforts of the Company since March 1995, U S WEST has failed to achieve the 90% restoration of service standard.

We have reviewed the parties’ Consent Agreement and find it reasonable.  Consistent with our Procedural Rule 58, we find it is just and reasonable that U S WEST pay a civil penalty of $5,000 for each month that the Company does not meet the 90% service standard in its southern Idaho operations, effective October 1, 1995.  We further find it just and reasonable for the Company to pay a civil penalty of $2,500 for each month that it does not improve its restoration of service results by at least 5 percentage points until it has attained the 90% standard in its northern Idaho operations.  We conclude that it is reasonable for these civil penalties to continue until U S WEST meets the 90% standard in both areas for three consecutive months.

O R D E R

IT IS HEREBY ORDERED that the joint motion filed by the Staff and U S WEST Communications to accept the parties’ Consent Agreement is granted.

IT IS FURTHER ORDERED that U S WEST take the actions necessary to restore service to customers thereby meeting the 90% standard of our Telephone Service Quality Rule 503.  The Company shall continue to report its restoration of service data on a monthly basis.

IT IS FURTHER ORDERED that U S WEST submit a civil penalty of $5,000 for each month that the Company fails to meet the 90% standard for restoration of service in southern Idaho effective October 1, 1995.  Likewise, for its northern Idaho operations, the Company is ordered to pay a civil penalty of $2,500 for each month that the Company’s existing restoration of service percentage does not improve by at least 5 percentage points from the previous month beginning with the month of October 1995.  If U S WEST does not voluntarily make this contribution within 14 days of the service date of this Order, then the Commission shall request that the Attorney General institute an action to recover this civil penalty as authorized by law.

IT IS FURTHER ORDERED that these civil penalties shall remain in effect in each operating area until U S WEST maintains a 90% or better restoration rate for three consecutive months.  This matter shall be reviewed after maintaining 90% for three months or after the Company files its June 1996 monthly report, whichever occurs first.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of  January 1996.

RALPH NELSON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**FOOTNOTES**

1:

U S WEST and the Commission Staff disagree in how the 90% standard is to be calculated.  In calculating the compliance standard, the Staff uses the total number of out-of-service trouble reports.  In its calculation, U S WEST adjusts the number of out-of-service trouble reports by removing those reports of service trouble beyond its control.  See Rule 503.02.  The difference between the two methodologies has produced calculations that vary by as much as 20 percentage points.  For purposes of this inquiry and without deciding this issue, the Commission has utilized the Company’s calculations.

2:

For the reason outlined in footnote 1, the Staff disputed these calculations.

3:

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