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

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| IN THE MATTER OF THE JOINT PROPOSAL  TO IMPLEMENT EXTENDED AREA SERVICE (EAS) REGIONS IN U S WEST COMMUNICA­TIONS’ SOUTHERN IDAHO SERVICE AREA. | ))))) | CASE NO.USW-S-96-4ORDER NO.  26672 |
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IDENTIFICATION OF PARTIES

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| U S WEST COMMUNICATIONS:COMMISSION STAFF:CENTURY TELEPHONE OF IDAHO,POTLATCH TELEPHONE CO.AND TROY TELEPHONE CO:IDAHO TELEPHONE ASSOCIATION:GTE NORTHWEST INCORPORATED: | Dennis R.  LopachU S WEST Communications 1801 California St., Rm. 5100Denver, CO 80202Mary S.  Hobson, Esq.Elam & Burke702 W. Idaho St.Boise, ID 83702Weldon StutzmanDeputy Attorney GeneralIdaho Public Utilities CommissionPO Box 83720Boise, ID 83720-0074M.  W.  RichardsMoffatt, Thomas, Barrett, et alPO Box 829Boise, ID 83701-0829Conley WardMichael C. CreamerGivens Pursley & HuntleyPO Box 2720Boise, ID 83701-2720Ray HendershotGVNW, Inc./ManagementPO Box 25969Colorado Springs, CO 80936Fred LoganGTE Northwest, Inc.17933 NW Evergreen ParkwayBeaverton, OR 97006 |

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INTRODUCTION

We are asked in this case to review and approve a Stipulation and Settlement of U S WEST Communications, Inc. (U S WEST) and the Commission Staff executed April 17, 1996.  The Stipulation addresses three major issues.  First, the Stipulation terminates the Revenue Sharing Plan approved by the Commission in 1989 as a method of allocating costs between the fully regulated (Title 61) and partially regulated (Title 62) services of U S WEST in its southern Idaho service area.  Second, the Stipulation creates four extended area service (EAS) regions allowing customers within each region to make local toll-free calls to each exchange located within the region.  Third, the Stipulation provides for the use of 1995 and 1996 revenue sharing funds to defray the cost of implementing the local calling regions and provide billing credits to customers within the regions.  Although we modify the Stipulation in its selection of the date for termination of the Revenue Sharing Plan, we approve the Stipulation.

BACKGROUND

This case has its genesis in other now closed proceedings before the Commission.  In Case No. USW-S-94-3, the Commission reviewed the first five years of operation of the Revenue Sharing Plan.  Among the issues identified in that case by the Commission for modification was the Plan’s requirement that U S WEST be fully compensated with revenue sharing funds when long distance toll routes are converted to toll-free, extended area service routes.  In a final Order issued in Case No. USW-S-94-3, the Commission instructed “the Commission Staff and the Company to explore the implementation of improvements [to the Plan] identified by the Commission and others they wish to recommend.”  Order No. 25923, p. 5.

Prior to the start of Case No. USW-S-94-3, and in response to the filing of numerous petitions for EAS, the Commission initiated Case No. GNR-T-93-13 to identify criteria it would consider in reviewing EAS requests.  The Commission Staff provided a comprehensive report of customer interest and specific routes that would be appropriate for EAS.  In Order No. 26311, the final order issued in the EAS case, the Commission declined to adopt a threshold point for automatic approval of EAS based on calling data and instead identified criteria to evaluate whether a community-of-interest exists in the affected exchanges to justify approving EAS.  Many of the parties in this case, including MCI Telecommunications and AT&T, were also intervenors in Case No. GNR-T-93-13.

In March 1995, the Commission initiated Case No. USW-S-95-4 directing the Staff and U S WEST to propose modifications to the Revenue Sharing Plan or to suggest an appropriate replacement to the Plan.  In October 1995, the Staff and U S WEST submitted a Joint Proposal for a New Regulatory Plan to Replace the Revenue Sharing Plan.  That joint proposal addressed service quality issues and proposed increases in U S WEST’s monthly residential rates of $3.00 over a three-year period if the Company met certain service quality standards.  The joint proposal, however, did not provide an alternative to the Revenue Sharing Plan’s EAS compensation component.

On February 7, 1996, MCI filed a motion asking the Commission to reject the joint proposal filed in Case No. USW-S-95-4, and initiate a new proceeding to examine the issues in light of the newly passed federal Telecommunications Act of 1996 (Telecom Act), that became effective February 8, 1996.  U S WEST subsequently filed a motion to withdraw the joint proposal, that was supported by Staff in its response to U S WEST’s motion.  In an order granting U S WEST’s motion to withdraw the joint proposal, the Commission noted U S WEST’s intent to file a rate case and that a rate case “would determine issues such as cost of service and cost allocations, thereby replacing the Revenue Sharing Plan as the method of allocating costs between Title 61 and Title 62 services.”  Order No. 26395, p. 4.  The Commission also expressed its concern regarding service quality and “the treatment of new EAS routes during the continued operation of revenue sharing and until a rate case is concluded.”  Id.  The Commission stated its intent “to move expeditiously to examine the host of pending EAS Petitions,” and requested written comments by April 17, 1996, regarding the issues of service quality and EAS compensation.  Id.

In response to our request in Order No. 26395, comments were filed by MCI and GTE Northwest Incorporated.  U S WEST and the Staff filed the Stipulation before us in this case, along with a motion for approval of the Stipulation, including its creation of four extended local calling areas in southern Idaho.  On May 6, 1996, the Commission initiated this case by issuing a Notice of Stipulation and Settlement Filing, Notice of Prehearing Conference, and Deadline for Intervention.  To consider the Stipulation and the evidence of the parties and the public, the Commission convened public hearings in Blackfoot (August 28), Jerome (August 29), and Caldwell (September 16), and a technical hearing in Boise on September 4, 1996.  Post hearing briefs were submitted jointly by AT&T and MCI and by U S WEST and the Staff.

THE STIPULATION AND SETTLEMENT OF U S WEST

AND THE COMMISSION STAFF

The Stipulation filed by U S WEST and the Staff calls for termination of the Revenue Sharing Plan, proposes four regional EAS calling areas, and provides for the use of 1995 and 1996 revenue sharing funds to defray the cost to U S WEST and its customers of implementing the local calling regions.  In more particular, the Stipulation provides for the following:

●The Revenue Sharing Plan is terminated as of April 15, 1996.

●U S WEST is required to file a general rate case by September 30, 1996.

●The Staff and U S WEST agree that the 1995 revenue sharing funds will include the following elements:

Title 61 growth over the base year in the amount of $7,500,000.

$652,000 in Tech II funds from the exchanges that were sold in USW-S-94-4.

$1,228,215 of Tech II funds which were assigned to the interstate jurisdiction.

●Agreement on the amount of $1,500,000 for 1996 revenue sharing funds to April 15, 1996.

●U S WEST agrees to pay interest on 1995 revenue sharing funds at the rate of 5.44% until September 30, 1996.

●Continued funding of the $1.60 rural zone credit for customers until EAS is implemented and rural zone charges are eliminated.

●Elimination of monthly rural zone charges as EAS is implemented in each region.

●$105,000 to U S WEST for those routes previously granted EAS during the Revenue Sharing Plan.

●Implementation of the following EAS regions in U S WEST’s southern Idaho area:

Boise region—Boise, Eagle, Idaho City, Middleton, Emmett, Caldwell, Melba, Nampa, Star, Kuna, and Meridian.

Twin Falls region—Twin Falls, Jerome, Buhl, Castleford, Hagerman, Dietrich, Shoshone, Gooding, Bliss, Kimberly, Hazelton, Eden, Murtaugh, and Wendell.

Pocatello region—Pocatello, Inkom, American Falls, Lava Hot Springs, McCammon, Downey, Grace, Bancroft, and Soda Springs.

Idaho Falls region—Idaho Falls, Rigby, Ririe, Roberts, Blackfoot, Shelley, Firth, and Rexburg.

●Compensation for EAS implementation, reflected in rates, based on rate of $.082 per minute for each originating and terminating toll minute in the affected exchanges.

●Reimbursement to U S WEST of capital costs of implementing the EAS regions up to $1,500,000.

●Establish a new Rate Group 3 for the EAS regions.

●All revenue sharing funds not required for rural zone credits and capital costs to be put toward offsetting the new Rate Group 3 rates as EAS is implemented in a region.

●U S WEST will continue its Service Guarantee Program.

●A schedule to complete hearings by June 1996.

The establishment of a new Rate Group 3 by the Stipulation alters the price groups that differentiate rates for residential customers in U S WEST’s service area.  U S WEST customers currently fall within one of three price groups.  Rate Group 1 customers currently pay the lowest monthly rate for basic service ($10.17), but also have access to the fewest lines in their toll-free or local calling area.  Rate Group 3 customers currently pay the highest monthly rate ($12.06), and are in larger urban areas with a greater number of access lines that can be dialed toll-free.

Under the compensation formula in the Stipulation, rates for residential customers in Rate Group 1 would rise by $5.10 per month, Rate Group 2 rates would increase by $4.20, and Rate Group 3 rates would increase by $3.21 per month.  However, the Stipulation also provides for billing credits to customers of $3.21 per month, so the net monthly increase for Rate Group 1 customers would be $1.89 and $.99 for Group 2 customers, while Rate Group 3 customers would see no net monthly rate increase.  The billing credits would come from 1995 and 1996 revenue sharing funds and would last so long as such funds are available.  As proposed by the Stipulation, all customers within the EAS regions would be Rate Group 3 customers with toll-free calling to all the access lines in the regions.  Title 61 business customers currently in Rate Groups 1 and 2 would also move to Rate Group 3, resulting in a monthly increase of $5.08 (Group 1) and $2.61 (Group 2) in basic monthly rates.  Existing Rate Group 3 business customers would see no increase in rates.

Following the public hearing in Blackfoot, U S WEST filed an additional exhibit (Exhibit No. 8) to provide three alternatives to the Stipulation’s EAS proposals for eastern Idaho.  Option 1 combines the two eastern regions, with Idaho Falls and Pocatello as hub cities.  Under Option 1, the one eastern Idaho EAS region would allow Pocatello and Idaho Falls customers to call the other community, as well as each city’s adjacent exchanges, toll-free.  Blackfoot customers could call either city toll-free.  Option 1 would also add $.41 to the monthly rate of every residential customer in the proposed regions, which could be offset by a corresponding increase in the customer credit from revenue sharing funds.

Option 2 in Exhibit 8 would allow Blackfoot customers to call both Idaho Falls and Pocatello, but would not combine the Idaho Falls and Pocatello exchanges together.  This Option would increase residential customer monthly rates by $.16.

Option 3 would leave the current calling area for Blackfoot customers unchanged.  The Stipulation proposed including Blackfoot in the Idaho Falls EAS region, and Option 3 would simply remove the Blackfoot calling area from the Idaho Falls region.  Telephone calls between the Blackfoot and Idaho Falls and Pocatello exchanges all would remain toll calls.  This Option would reduce the proposed residential service rate by $.04 per month.  Exhibit 8 was admitted into the record without objection.  Tr. p. 806.

ISSUES RAISED BY THE INTERVENORS

Thirteen Petitions to Intervene were subsequently filed by the various parties identified at the outset of this Order, but only U S WEST, the Commission Staff, MCI, AT&T and the State Board of Education presented testimony.  Some of the other intervenors participated in hearings but did not provide witnesses.

Intervenors MCI and AT&T raised similar issues in their testimony.  Both intervenor witnesses testified that the Stipulation’s creation of EAS regions is anti-competitive and thus not in the public interest, and that the Stipulation violates Section 253(a) of the Telecom Act.

The Intervenors’ testimony that the creation of EAS regions is anti-competitive is based in part on its elimination of toll routes.  According to MCI witness Bennett, “the Stipulation is anti-competitive for the intraLATA market because it remonopolizes extremely large areas and eliminates potentially competitive toll routes.”  Tr. p. 544.  Likewise, AT&T witness Stacy testified “the EAS proposal would eliminate the toll market,” and that “by doing so, the opportunity for other toll providers to compete for that market and all customer choice that currently exists in that market is also eliminated.”  Tr. p. 621.   Bennett also testified that the Stipulation is anti-competitive because “EAS will be subsidized with revenue sharing funds and will not reflect the true costs of providing service.”  Tr. p. 564.  Additionally, according to Bennett, U S WEST benefits by “being granted the advantage of appearing as if it were responding to consumers’ needs on its own initiative and for a very small amount of increase in local rates.”  Tr. p. 565.

Bennett and Stacy also testified that creation of the proposed EAS regions would violate Section 253(a) of the Telecom Act.  Section 253(a) states:

No state or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Bennett opined that elimination of the toll market on the proposed EAS routes would violate Section 253(a).  Tr. p. 567.  AT&T witness Stacy testified that if the EAS regions were approved, “the Commission would be endorsing the creation of a market barrier,” and that “the creation of such market barriers is contrary to Section 253(a).”  Tr. p. 623.  AT&T also objected to the use of revenue sharing funds to offset some of the costs and customer rate increases normally associated with implementation of EAS.  According to Stacy, such use of revenue sharing funds “would allow the funds to be used to put potential market entrants at a competitive disadvantage.”  Tr. p. 626.

MCI also pointed out that approval of the EAS regions would result in reductions in contributions to the Idaho Universal Service Fund (USF) and the Telecommunications Relay Service (TRS) fund.  Because the funds are supported in part by fees attached to toll calls in Idaho, eliminating toll routes would reduce revenues collected for those funds.  MCI recommended, if the EAS regions are approved, that additional fees “be collected from the local service contribution” to offset the reduction in toll-related fees.  Tr. p. 571.

MCI also argued that no evidence was provided demonstrating that a community-of-interest exists in the proposed EAS routes.  Bennett noted that the Commission has approved EAS between exchanges where a community-of-interest is demonstrated and that “the existence or non-existence of a community-of-interest was determined by analysis of calling data and other subjective community-of-interest standards.”  Tr. p. 553.  Likewise, AT&T and MCI argued in their Joint Post Hearing Brief that “the Stipulation fails to set forth any analysis demonstrating the existence of a community-of-interest for a single route that is subject to the proposal” and that “U S WEST and the Staff failed to present sufficient evidence in support of the proposed EAS regions.”  Joint Post Hearing Brief of AT&T and MCI, p. 8.

Testimony and post hearing briefing also were provided regarding the Stipulation’s proposed termination date for the Revenue Sharing Plan and its effect on the Commission’s statutory duty to determine a cost allocation for U S WEST services.  Idaho Code § 61-622A requires the Commission to “establish procedures for allocation of costs between telecommunications services provided pursuant to Title 61, Idaho Code, and telecommunications services provided pursuant to Title 62, Idaho Code.”  Although U S WEST has filed a general rate case during which cost allocations will be made, as the Stipulation requires, the rate case will not be concluded until early 1997.  Thus, there is a lapse between the proposed April 15, 1996 termination of the Revenue Sharing Plan and an order in the rate case that will establish a new cost allocation methodology.  AT&T and MCI argued, “because Section 61-622A requires that [cost allocation] procedures be established, termination of the Revenue Sharing Plan is prohibited, and the Commission cannot approve the Stipulation as written.”  Joint Post Hearing Brief, p. 4.

Finally, the Idaho State Board of Education (SBE) intervened to present an alternative use for a portion of the revenue sharing funds.  SBE witness Dr. Rayburn Barton testified regarding a plan for a “virtual” university, called the Western Governors’ University (WGU), throughout the western United States.  According to Dr. Barton, the WGU will broaden public access to higher education by the use of advanced technology for the delivery of educational services and will provide a way for formal recognition or certification of the learning achieved.  In addition, WGU will offer on-line services such as a catalog of programs, admissions and registration assistance, financial aid and scholarship information, and access to libraries.  Tr. p. 660.  The SBE requested $300,000 of revenue sharing funds to equip a WGU service center at the ISU-UI Center for Higher Education in Idaho Falls.  The funds would also be used to make telephone access to the center a local call for nearly 90% of southern Idaho telephone customers who would have toll-free access from Pocatello, Twin Falls and Boise.

DISCUSSION OF THE ISSUES

As we noted in the EAS standards case, Case No. GNR-T-93-13, “one of the most difficult tasks confronting this Commission in recent history has been the evaluation of EAS requests.”  Order No.  26311 at 1.  An increased dependence upon voice and data communications and growth in Idaho’s economy has stimulated customer demand for expanded toll-free EAS calling.  Even MCI “concede[s] that there might be a need for some EAS,” Tr. p. 575, and AT&T acknowledged “an undisputed demand for EAS in Idaho.” Tr. p. 623.  The Idaho Legislature recognized the demand for EAS when it adopted the Telecom 92 Reporturging the Commission to “review existing local-calling areas to determine the largest economically feasible extended area service (EAS) local-calling areas and to develop policies that will achieve that expansion.”  Telecom 92 Report at 29.  It is against this backdrop that we consider the appropriateness of the proposed EAS regions in the Stipulation.

A.  Community-of-Interest.

AT&T and MCI correctly point out in testimony and post hearing briefing that the Commission looks for a community-of-interest to determine whether EAS is appropriate between telephone exchanges.  In Order No. 26311, the Commission established specific criteria it will consider in determining the existence of a community-of-interest.  The primary criteria are the following:

(1) Geographic proximity (distance between exchanges); (2) the presence of geographic or other physical barriers (mountains, rivers, valleys) between exchanges; (3) county seat relationship (are both exchanges in the same county); (4) the relationship to school district (do both exchanges share the same school district); (5) proximity to medical facilities and services; and (6) the willingness of customers to pay increased rates.

Order No. 26311 at 9.

These and a secondary set of factors, in addition to calling data, are the criteria the Commission utilizes to evaluate EAS requests.  Additionally, the Commission will balance the community-of-interest standards against the costs of providing EAS service.  See Order No. 26311 at 14.  The Commission in Order No. 26311 declined to adopt a bright line determination for EAS based on calling data, and instead determined that calling data should be evaluated as part of the community-of-interest standards.

The Intervenors’ argument that the EAS regions do not meet the community-of-interest standards stems in part from the configuration of the proposed regions.  The proposed regions are a “hub and spoke” configuration, i.e., a principal city (hub) exchange is surrounded by smaller spoke exchanges.  It is undisputed, as AT&T and MCI point out and Staff and U S WEST concede, that a traditional community-of-interest analysis would not favor EAS between each of the spoke exchanges in the proposed regions.  However, it is the relationship between the hub city exchange and each spoke exchange that is critical; it is not necessary that each spoke exchange meet the community-of-interest criteria with every other exchange in the region.  The Commission indicated in Order No. 26311 that EAS regions may be appropriate, despite the inability of all included exchanges to meet strict community-of-interest criteria.  See Order No. 25311 at 13.

The testimony and exhibits presented in this case by Staff, U S WEST, and many members of the public addressed the criteria and demonstrate the significant community-of-interest that exists in the proposed EAS regions.  Exhibits No. 5 and 6 filed by U S WEST provide call volume data and distribution statistics for all the proposed regions.  The data provided in these exhibits demonstrate each outlying exchange in the regions sufficiently meets call volume criteria for approval by the Commission.  Tr. p. 305.

Perhaps the greatest indication of a community-of-interest in the regions was demonstrated at the public hearings and in the hundreds of letters received by the Commission.  The public testimony directly relates to the community-of-interest criteria identified in Order No. 26311, and it is worthwhile to briefly discuss the public hearing testimony for each region.

1.  The Boise EAS Region.

The Commission convened a public hearing for customers in the proposed Boise EAS region on September 16, 1996, in Caldwell, Idaho.  In addition, customers had an opportunity to testify during the technical hearing in Boise on September 4, 1996.  Despite good publicity by the local news media about the proposal and the Boise hearing, no customers appeared at the hearing to speak in support of or against the proposed Boise EAS region.

Thirty-four customers presented testimony at the public hearing in Caldwell, most  strongly supporting the proposal.  The first witness was Richard H. Winder, the Mayor of the City of Caldwell.  Mayor Winder testified that an extended calling area would save time and money for business people and individuals who make frequent calls within the area.  Mayor Winder stated, as a residential customer, he would be happy to pay the increased rate for EAS and, as Mayor of Caldwell, would “also be happy to pay less for the taxpayers money to provide the telephone service that we need to do the City’s business.”  Tr. p. 701.

Jay Clemens, the president and chief executive officer of the Boise Area Chamber of Commerce (BACC), also presented testimony.  Although the BACC did not adopt a formal position, Mr. Clemens testified to the “extended community of interdependent communities” that has developed in the Boise region.  Tr. p. 703.  According to Mr. Clemens, “employers look at this area as one extended market place,” and he testified that “we need the ability to communicate without long-distance barriers which no longer reflect the social and economic makeup of our valley.”  Tr. p. 704.

Other witnesses testified to the proximity of medical facilities and the current costs to call such facilities, Tr. pp. 710-11, the fact that many families have relatives who live within the region and now pay long-distance toll charges to stay in touch, Tr. pp. 712-13, 717, and that a petition drive supporting expanded calling in the area had obtained approximately 15,000 signatures.  Tr. p. 717.  The director of the Southwest District Health Department testified that most of the people it serves reside in the proposed EAS region.  Tr. p. 719.  A church pastor from Emmett testified that many church members reside in Boise, resulting in expensive toll calls to conduct church business.  Tr. pp. 719-20.  A representative of the Amalgamated Sugar Company, a significant business in the Nampa area, told of the many business calls to and from the facility that currently are long-distance calls.  Tr. pp. 724-25.  Although exchanges included in the proposed region do not share public school districts with Boise, a representative of Boise State University did testify to the benefit to the university and its students of toll-free calling to Boise.  Tr. pp. 728-30.  State Senator David Kerrick, a practicing attorney in Caldwell, testified of the many business reasons to call Boise, including to call the US District Courthouse, the Ada County Courthouse, the Industrial Commission, the US Bankruptcy Court, and other attorneys.  Tr. pp. 740-41.  Senator Kerrick stated that “anybody who has any commercial activity at all in this valley knows how vital and important this is going to be for our whole area.”  Tr. pp. 740-41.  Most of the customers testifying in support of the Boise proposal indicated a willingness to pay a higher monthly rate for the increased calling area.  Numerous references occur in the Caldwell hearing transcript to an approximate $3.00 monthly increase, although the Stipulation rates would result in a net monthly increase of only $1.89 to most customers in the outlying exchanges.

A few customers did appear to testify against the EAS proposal.  The Chairman of the Southwest Idaho Senior Citizens Planning and Policy Committee testified that an increase in rates could jeopardize the availability of telephone service for certain senior and handicapped individuals, Tr. p. 707, but also recognized toll-free calling to Boise as a service that should be available.  Tr. p. 709.  Other objections, almost exclusively related to the proposed rate increases, were stated.  One elderly customer testified that a $3.00 increase now in her monthly telephone bill, along with “who knows what else in the future,” would be “something to worry about.”  Tr. p. 733.  Another customer objected because it was unclear when the billing credits would expire, Tr. p. 736, and three customers objected “because people who don’t use the expanded calling area will be forced to pay for those who use it.”  Tr. pp. 736-37, 784, 788-89.

Without further detailing the testimony, it is clear from the public hearing that a community-of-interest exists in the region regarding proximity to family and friends, medical facilities, business and government facilities and, at least at the university level, school facilities.  We find on the record in this case that a genuine community-of-interest exists in the proposed Boise EAS region.

As we said in Order No. 26311, the Commission’s community-of-interest inquiry is also concerned with the willingness of customers to pay increased rates normally associated with the implementation of EAS service.  We are mindful of the testimony presented by some witnesses against the proposed increase in rates, but the clear preponderance of evidence demonstrates support for a rate increase associated with the expanded calling area.  Overall, the public hearing, the petitions and correspondence received by the Commission regarding the Boise region indicate a willingness by customers to pay an increased rate for the greater local calling area.

2.  The Twin Falls EAS Region.

The evidence of a community-of-interest in the proposed Twin Falls region is even stronger than for the Boise EAS region.  The Commission convened a public hearing in Jerome, Idaho, on August 29, 1996, at 10:00 a.m.  Thirty-one customers testified, and many more attended.  The testimony was virtually unanimous in its support of the EAS proposal.  Witnesses discussed various community-of-interest criteria, including proximity and benefits to school districts and the College of Southern Idaho (Tr. pp. 150-154; 167-68; 179; 189-91), medical services (Tr. pp. 161; 179; 182-83; 198-99; 216), law enforcement and emergency services (Tr. pp. 163-65), business and farming interests (Tr. pp. 170-171; 192-96; 179-80; 187; 210-12; 203-05; 216-17; 219-23; 228; 266-67), friends and relatives (Tr. pp. 200-01; 234; 261-62), and government services (Tr. pp.  249-51).  The witnesses almost unanimously indicated a willingness to pay the proposed rate increase associated with implementing the Twin Falls EAS.  Only a few expressed reservations about the EAS-related rate increases, usually indicating that the amount of increase should be no more than five dollars.  Tr. p. 178; 208-09; 257.  Based on the record in this case regarding the Twin Falls EAS region, we find that a community-of-interest exists to support implementation of the EAS region and that a significant preponderance of the evidence indicates customers are willing to pay the proposed increase in rates for the expanded calling area.

3.  The Pocatello and Idaho Falls EAS Regions.

The Stipulation creates two EAS regions in southeastern Idaho, with Idaho Falls and Pocatello as the hub cities.  The Blackfoot exchange is included in the Idaho Falls region but is also adjacent to the Pocatello exchange.

The Commission convened a hearing in Blackfoot on August 28, 1996, to receive public testimony on the two eastern Idaho EAS proposals. It is apparent from testimony at the hearing that many customers are dissatisfied with the proposal to include the Blackfoot exchange in only one region rather than both.  The first witness, the Superintendent of the Soda Springs Joint School District, testified to the benefits to the schools of expanded local calling.  Tr. pp. 17-23.  The second witness, Mr. Sam Nettinga, is the General Manager of the Pocatello Chamber of Commerce.  Mr. Nettinga supported the concept of the EAS regions for the benefits it would bring to businesses, but testified that the EAS regions would “disadvantage the small business community owners in Pocatello.”  Tr. p. 25.  Noting there are no geographic barriers between Blackfoot and Pocatello, Mr. Nettinga recommended the Commission “open up the entire system area in one corridor for long-distance calling.”  Tr. pp. 25-26.

The remainder of the hearing, which lasted nearly three and one-half hours, proceeded much the same.  Most witnesses testified in support of expanded local calling for the area for reasons demonstrating that a community-of-interest exists in the area, but also discussed community-of-interest issues to be served by including Blackfoot in both the Idaho Falls and Pocatello regions.  For example, the Fort Hall School District currently is within the Blackfoot area, but would remain a long-distance call under the two-region EAS proposal.  Tr. pp. 30, 72-73, 83-84, 139-40.  Blackfoot was identified as being “right in the heart of the potato operating country and it would be nice if you could put Blackfoot in with Pocatello and Idaho Falls.”  Tr. p. 42.  Blackfoot business owners testified that many business venders are in Pocatello.  Tr. pp. 43-44, 57-58, 76, 113, 142-43.  Family members reside throughout the entire region.  Tr. pp. 61-62, 76, 101.  The need for Blackfoot residents to contact ISU in Pocatello was mentioned.  Tr. p. 72.  Medical services are available in both Idaho Falls and Pocatello for Blackfoot customers, Tr. pp. 73-74, as well as services provided by the regional offices of the Department of Health and Welfare.  Tr. pp. 105-06.  The overwhelming sentiment expressed at the hearing, as summarized by one witness, was that “the Idaho Falls/Pocatello corridor is becoming one metropolitan area and it should have one unified telephone communication system.”  Tr. p. 82.

Several customers from American Falls also testified to the community-of-interest that  exists with Pocatello, relating to schools, including Idaho State University, and proximity to family members, medical services and businesses.  Tr. pp. 63-64, 117, 122-25, 130-31, 132-33.

As with the other hearings, the testimony against the EAS region usually focused on the associated rate increase.  One customer testified the expanded calling area is not worth a $5.00 increase in monthly rates.  Tr. p. 56.  A Twin Falls resident noted that he had spent only $7.28 on calls to the outlying exchanges in seven years, and under the EAS proposal would pay an additional $38.00 per year once the billing credits ended.  Tr. p. 91.  Others were satisfied with the local calling area as currently comprised, and stated that customers making long distance calls should be willing to pay the toll charges.  Tr. pp. 94; 115; 144.  The large majority of testimony and correspondence provided to the Commission, however, demonstrates support for an expanded calling area and a willingness by customers to pay increased rates for the service.

Based on the evidence presented in this case, we find that a significant community-of-interest exists not only between the communities of Blackfoot and Idaho Falls, but also between the communities of Blackfoot and Pocatello.  In response to the testimony presented at the Blackfoot hearing, U S WEST filed Exhibit 8 providing three different options for the Blackfoot exchange.   Option 1 combines the Stipulation’s two eastern Idaho regions into one EAS region.  Based on the overwhelming testimony and correspondence provided to the Commission, we find on the record in this case that the existing community-of-interest is best served if the Blackfoot exchange is included in both the Idaho Falls and Pocatello regions.  Accordingly, we approve Option 1 in Exhibit 8 to create one calling area in southeast Idaho.

B.  Public Interest and Termination of the Revenue Sharing Plan

Settlement Stipulations are not binding on the Commission.  Instead, the Commission will “independently review any settlement proposed to it to determine whether the settlement is just, fair and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy.”  IPUC Rule of Procedure 276, IDAPA 31.01.01.276.  Thus, determining that a community-of-interest  exists in the proposed EAS regions does not end our inquiry.  We must also review the Stipulation as a whole to determine the broader public interest issues.  It is in this context that we address the remaining issues identified by the intervenors.

1.  The Telecom Act.

Clearly the Stipulation would be inconsistent with law or regulatory policy if it violated the Telecom Act.  AT&T and MCI witnesses testified that creation of the EAS regions would violate Section 253(a) of the Act, which preempts state statutes, regulations and other legal requirements that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”  The Intervenors contend that the creation of the EAS regions prevents competitive toll service in the regions, thereby preventing them from providing an intrastate telecommunications service in violation of Section 253(a).

We are not persuaded that the approval of EAS violates Section 253(a) of the Telecom Act.  Section 253(a) is a preemption by Congress of state statutes and regulations that historically have prohibited competition in telecommunication service areas.  For example, Idaho Code § 62-615 grants to telephone companies providing local service “an exclusive area franchise for telecommunication services.”  Section 253(a) expressly preempts such provisions in state statutes, regulations and other legal requirements.

The approval of EAS is an alteration in a market condition, but is not a legal prohibition against competition.  MCI witness Bennett testified that she was referring to a market or economic barrier, not legal barriers, when she testified that EAS violated Section 253(a).  Tr. pp. 592-93.  AT&T witness Stacey made clear that it is a change in market conditions wrought by EAS that, in his opinion, results in a violation of Section 253(a).  Tr. p. 623.  Section 253(a) does not address market conditions or economic barriers, and there is no indication in the plain language of the section that it is anything other than a direct preemption of state laws that previously made competition illegal.

Support for our conclusion that Section 253(a) does not proscribe a state commission’s authority to approve EAS is found in the Federal Communication Commission’s (FCC) First Report and Order to implement local competition provisions of the Telecom Act, CC Docket No. 96-98 and No. 95-185, issued August 8, 1996.  As Staff witness Cusick pointed out in rebuttal testimony, the FCC in paragraph 1035 of the order addresses issues of reciprocal compensation.  In paragraph 1035, the FCC recognizes that “state commissions have the authority to determine what geographic areas should be considered [local areas] for the purpose of applying reciprocal compensation obligations under Section 251(b)(5), consistent with the state commissions’ historical practice of defining local service areas for wire line LECs.”  Tr. p. 517.  If the FCC believed Section 253(a) prohibited state commission approval of EAS, it would not have deferred to “the state commission’s historical practice of defining local service areas.”

Finally, the record does not support a finding that approval of the Stipulation eliminates opportunities for AT&T and MCI to compete in the EAS regions.  The Telecom Act opens local markets to competition and MCI stated in testimony that it intends to compete with U S WEST in the local markets in Idaho.  Tr. p. 592.  The Commission recently issued an order approving AT&T’s application to amend its operating certificate to include local telephone service.  Tr. p. 531, and  see Order No. 26575.  U S WEST and Staff witnesses recognize that, although the immediate effect of EAS in the regions is elimination of toll traffic, other telecommunication service providers are free to offer alternative local calling options.  AT&T or MCI, for example, could offer much smaller toll-free calling areas within the regions, presumably at lower rates, for those customers who seldom call other exchanges.  Tr. p. 518.  Such options for customers are exactly the type of benefits the Telecom Act is intended to bring through competition.  We find that implementation of EAS regions is not anti-competitive or in violation of the Telecom Act.

2.  Use of the Revenue Sharing Funds.

The intervenors also challenge the use of 1995 and 1996 revenue sharing funds to partially offset U S WEST expenses and customer rate increases normally associated with the implementation of expanded local calling areas.  As MCI witness Bennett noted, “EAS often results in some amount of local rate increase.”  Tr. p 553.  Under the Revenue Sharing Plan, rate increases in the regions would be based on the Plan’s provision that U S WEST was entitled to recover lost toll revenues.  The formula in paragraph 12 of the Stipulation, based in part on annual toll minutes in each region, results in rates to partially compensate U S WEST “for the cost of creating and operating EAS for local calling regions.” According to U S WEST’s Exhibit No. 6, the annual toll revenue in the regions is $12,424,098, while the Stipulation’s reimbursement formula provides annual compensation of $7,604,559 from new customer rates. This calcualtion results in the residential rate group increases of $3.21 to $5.10 per month. With our approval of the combined region for eastern Idaho, these amounts increase by $.41 per month.

The Stipulation also provides billing credits from revenue sharing funds for residential customers of $3.21 per month, that increase by $.41 to $3.62 per month to match the rate adjustment resulting from the combined Pocatello/Idaho Falls region.  The total amount of revenue sharing funds available for customer credits is specified in the Stipulation, and come from 1995 revenue funds, revenue funds for the first quarter of 1996 in the amount of $1.5 million, and $2,780,215 relating to Tech II infrastructure improvements that the parties or the Commission previously agreed should be returned to the Revenue Sharing Plan.  The Stipulation estimated the 1995 revenue sharing amount at $7.5 million, which the Commission by order subsequently established to be $7,086,183, exclusive of interest.  See Order No. 26564. These amounts total $11,391,596, including interest through September 30, 1996, available for distribution through the Stipulation.  Exhibit No. 1.

 The entire amount of approximately $11.4 million is not applied to customer billing credits, however. Customer credits come from the funds that remain following other specific applications of the funds as identified in the Stipulation.   Paragraph 7 calls for continued funding of one-half the monthly rural zone charge credit ($1.60 per month) for U S WEST’s rural customers currently receiving the credit.  The Stipulation estimates a total of $312,000 to fund these customer credits until all EAS regions are implemented and rural zone charges are eliminated.  Paragraph 9 of the Stipulation provides compensation to U S WEST for past implementation of EAS service during operation of the Revenue Sharing Plan in the amount of $105,000. In addition, paragraph 12(f) provides $1.5 million to U S WEST to cover “incremental capital costs associated with changes and additions to network infrastructures required by the EAS conversions.”  If capital costs required to implement EAS exceed $1.5 million, the additional investment will be capitalized and will become part of rate base.  Tr. p. 451.

After application of funds for rural zone charge credits, and compensation for the capital costs of implementing EAS, the Stipulation applies the remaining funds to customer billing credits for U S WEST’s Title 61 customers.  Thus the amount available for billing credits to customers is approximately $9,579,596.  So long as funds are available for billing credits, customers would see rate increases only as a result of moving from price Groups 1 and 2 to price Group 3.  It is the use of these revenue sharing funds to offset customer rate increases and compensate U S WEST to which the Intevenors primarily object.

We find the Stipulation’s formula to establish rates to compensate U S WEST to be reasonable and in the public interest.  Under the Revenue Sharing Plan, U S WEST would have claimed rate compensation in excess of $12 million.  The Stipulation provides significantly less compensation to the Company as a compromise position.  At the same time, the Revenue Sharing Plan and its compensation to U S WEST of lost toll revenue is terminated, thereby accomplishing a goal this Commission has already advocated.

We also find that the Stipulation’s application of revenue sharing funds for customer billing credits is fair, reasonable and in the public interest.  The Commission previously has approved the use of revenue sharing funds to provide billing credits to customers.  In fact, customer credits were the sole disposition of the revenue sharing funds generated during the first two years of the Plan’s operation.  Without the billing credits, residential customer rates would increase from 26.6% to 50% once EAS service is implemented in the regions.  While most of the customer testimony regarding rates demonstrates a willingness to pay increased rates for EAS service, the rates proposed by the Stipulation, especially at the upper end of the range of increases, could be difficult for some customers.  Returning revenue sharing funds to customers in the form of billing credit is  the most equitable means of returning the funds to U S WEST Title 61 customers.

We also find, however, that the public interest as well as legal requirements demand one change to the Stipulation’s termination date for the Revenue Sharing Plan, and thus the amount of funds available from the Plan.  The Stipulation calls for termination of the Plan as of April 15, 1996, and includes a 1996 revenue sharing component of $1.5 million representing roughly the first quarter of 1996.  Tr. p. 495. The Stipulation also contemplates that this case would be completed by June 30, 1996, with an Order following soon thereafter.  Thus termination of the Plan in April and including only one-fourth of the 1996 funds may have seemed reasonable at the time the Stipulation was signed.  Given the lapse of time required to complete this case, we believe the public interest requires a greater contribution of 1996 revenue sharing funds generated by the Plan.

The proposed termination date of the Plan also implicates a legal responsibility of the Commission.  Idaho Code § 62-622A requires the Commission to make cost allocations between U S WEST’s Title 61 and Title 62 services.  U S WEST has filed a rate case during which such cost allocations will be made.  However, a gap exists between the proposed termination date of the Plan (April 15, 1996) and the date U S WEST’s rate case was filed (June 28, 1996), which began the formal process for the Commission to make new cost allocations.  Section 62-622A does not provide  specific guidance regarding how or when the Commission must complete cost allocations.  Staff and U S WEST argued that Section 62-622A grants the Commission “almost unlimited discretion to establish the procedure for accomplishing the cost allocation.”  Post Hearing Brief of Staff and U S WEST, p. 3.

Although we recognize that Section 62-622A provides discretion to the Commission to determine cost allocations, we find that a time lapse between termination of the Revenue Sharing Plan and initiation of the process to determine new cost allocations in the rate case is unacceptable under Section 62-622A.  U S WEST filed its rate case on June 28, 1996, roughly the end of the second quarter of 1996.   We find reasonable the Stipulation’s termination of the Plan, but we also find that the Revenue Sharing Plan should extend to the filing date of the rate case.

The Stipulation estimates $1.5 million of revenue sharing funds during the first quarter of 1996.  Our decision to extend the Plan through the second quarter should add an additional $1.5 million for distribution under the Stipulation.  This modification thus enhances the public interest benefits of the Stipulation and is responsive to the Commission’s legal responsibility under Idaho Code § 62-622A.  Our modification of the termination date for the Revenue Sharing Plan makes available approximately $11,079,596 of revenue sharing funds for customer billing credits under the Stipulation.

Our approval of the customer rates and credits in the Stipulation is limited to implementation of the EAS regions. Should U S WEST implement EAS in any or all of the regions prior to conclusion of the rate case, the Stipulation’s customer service rates and billing credits will apply.  However, because an order in the rate case is likely to predate the implementation of EAS service, the customer rates proposed by the Stipulation may never become effective.  Tr. p. 403, 423.  The Stipulation’s rate and credit provisions will be superseded by the rates the Commission establishes in the rate case. If so, revenue sharing funds will be available for disbursement in the rate case.  Both U S WEST witness Wozniak and Staff witness Cusick recommended any remaining revenue sharing funds be used as billing credits for the customer rates ultimately established in the rate case.  Tr. pp. 454-55; 536.

 The likely availability of revenue sharing funds for distribution in the rate case makes possible a benefit to all U S WEST customers, not just those customers in the EAS regions.   Revenue sharing funds may be used to provide billing credits to all U S WEST Title 61 customers in southern Idaho. Because we find the Stipulation’s dedication of revenue sharing funds to customer billing credits to be fair, reasonable and in the public interest, any revenue sharing funds not disbursed by the Stipulation or this Order will be applied to Title 61 customer credits in the rate case.

We also find beneficial to U S WEST’s customers the proposal presented by the SBE.  As discussed in Dr. Barton’s testimony, the WGU proposal for Idaho would allow customers a broader access to post-secondary education opportunities at home, on the job or through other means outside the formal education system.  The EAS regions “would extend that ‘local call’ opportunity to approximately 90 percent of the people in U S WEST’s service area in southern Idaho.”  Tr. p. 663.  We find the SBE proposal to be in the public interest and therefore approve the use of $300,000 of revenue sharing funds for the SBE proposal.

Finally, we briefly address MCI’s concern regarding reduced funding for the Idaho Universal Service Fund and the Telecommunications Relay Service fund.  Provisions are contained in Idaho statutes and our rules to annually review the funding levels for those accounts.   State law establishes the source of charges to fund the IUSF and TRS, as well as the Commission’s authority to determine the appropriate fee amounts.  Our approval of the Stipulation, as modified, does not alter the Commission’s responsibitity to review the funds.  The Commission will review the annual reports regarding the IUSF and TRS and make adjustments if and as necessary.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission has jurisdiction over this proceeding pursuant to Idaho Code Title 61 and Title 62, and the Commission’s Rules of Procedure.

We find the Stipulation submitted by U S WEST and the Commission Staff, as modified to reflect a June 28, 1996, termination date for the Revenue Sharing Plan, to be just, fair and reasonable, and in the public interest.  In particular, we find that a significant community-of-interest  exists in each of the EAS regions proposed in the Stipulation, and that the community-of-interest in the eastern Idaho regions justifies combining those regions as proposed in Option 1 of Exhibit 8.

We also find the Stipulation’s formula to establish rates in the EAS regions to be fair and reasonable, recognizing that the rates will only be effective if EAS is actually implemented in any or all of the regions prior to the determination of rates in Case No. USW-S-96-5.  If U S WEST implements EAS service in any region prior to completion of the rate case, the rates resulting from the Stipulation, along with the customer credits, will apply to customers in the region.

We also find reasonable and in the public interest the use of 1995 and 1996 revenue sharing funds as identified in the Stipulation.  The determination that $12,891,596 of revenue sharing funds, including the amount added by our modification of the Stipulation, are available for distribution is just and reasonable.  Consistent with the Commission’s established intent to return revenue sharing funds to the benefit of Title 61 ratepayers, we approve the use of most of the available revenue sharing funds for customer billing credits and to fund the SBE proposal.  We also find just, reasonable and in the public interest the use of revenue sharing funds to implement EAS as provided in the Stipulation.

We conclude that the Stipulation as modified is just, fair and reasonable, in the public interest, and in accordance with law and regulatory policy.

O R D E R

IT IS HEREBY ORDERED that the Stipulation, as modified in this Order, is approved.  U S WEST is directed to begin implementing EAS in the regions as soon as possible.  If EAS is implemented in any region prior to the conclusion of Case No. USW-S-96-5, the rates and customer credits identified in the Stipulation and this Order shall apply until such time as customer rates are determined in Case No. USW-S-96-5.  U S WEST is directed to provide to the Commission within 14 days of the date of this Order a proposed schedule for implementing the EAS regions.

IT IS FURTHER ORDERED that $12,891,596 is available for distribution from 1995 and 1996 revenue sharing funds.  A portion of the funds shall be applied to reimburse U S WEST for past implementation of EAS service ($105,000), to implement EAS in the regions (up to $1.5 million), and to fund the SBE proposal ($300,000).  As U S WEST implements EAS in each region, it shall provide a report to the Commission of the capital costs required to implement EAS service.  The balance of the available revenue sharing funds, $10,986,596, shall be used to benefit U S WEST’s Title 61 customers in the form of rural zone charge credits and customer billing credits.  All revenue fund amounts not used for customer credits pursuant to the terms of this Order shall be used for billing credits against the Title 61 rates established by the Commission in Case No. USW-S-96-5.

THIS IS A FINAL ORDER.  Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. USW-S-96-4  may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. USW-S-96-4 .  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code § 61-626.

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

                                                                                                                                       RALPH NELSON, PRESIDENT

                                                                                            MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

CM/O:usws964.ws

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

November 1, 1996