(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-96-4  ORDER NO.  26728 |

On November 22,1996, Sharon Ullman filed a Petition for Reconsideration of Order No. 26672 issued in this case on November 1, 1996, approving the creation of extended area service (EAS) or local calling areas. Ullman did not participate as a party in this case, but presented testimony during the public hearing in Caldwell.

Ullman’s Petition states five grounds for reconsideration.  The first ground is that the Order is unreasonable because, although the majority of individuals testifying at the public hearing in Caldwell favored the Boise EAS, the Commission did not “give enough consideration to the rights of the ratepayers who did not testify.”  As the second ground, the Petition states Ullman’s belief that three of the community-of-interest criteria the Commission utilizes to determine whether to implement EAS are not satisfied by the Treasure Valley EAS.  She identified the three unmet criteria as the county seat relationship (the affected exchanges do not share a county seat), the relationship to school districts (the exchanges are not part of the same school district), and the willingness of customers to pay increased rates.  Paragraph three of the Petition states that Order No. 26672 is unreasonable because residential but not business rates will increase, although businesses will also benefit from the expanded calling area.  Ullman’s fourth statement of grounds for reconsideration is similar to the first.  Referring to the Commission’s decision as a “socialist Order” by which “the toils of the many will benefit the few,” Ullman stated that “the people who make long-distance telephone calls should bear the cost of those calls.”  Finally, the Petition for Reconsideration states, without elaborating, that Ullman has “been informed that the Commission instructed the Staff in regard to the EAS proposal in clear violation of IPUCRP 273.”  Ullman requested reconsideration by written briefs and interrogatories.

As the Commission outlined in the background section of Order No. 26672, the process that culminated in the approval of the Stipulation to create EAS regions was lengthy, and involved many issues and voluminous documents and evidence.  A number of interested parties intervened and were provided an opportunity to participate and present different views and issues.  The Commission received hundreds of letters and petitions and convened hearings throughout the proposed EAS regions to receive testimony from interested individuals.  All the testimony and correspondence were part of the record and were considered by the Commission, including those opposed to the Stipulation.  Although the majority of public input supported the EAS regions, opposing views, including Ullman’s, raised legitimate issues that were considered by the Commission.

Order No. 26672 reflects due consideration by the Commission of the first four issues urged by Ullman for reconsideration.  The Commission was mindful that the monthly rate increase for some customers under the EAS proposal was more than the customers may spend on toll calls in any given month.   An increase in rates for customers who make few toll calls is always a concern when the Commission is asked to approve an EAS request.  Indeed, that issue is one basis for the development of the community-of-interest criteria.  The existence of a community-of-interest within a given area helps to minimize the number of customers who pay more rather than less after implementation of the expanded calling area.  By examining calling data, and the other specific community-of-interest criteria to support implementation of EAS, the Commission can be reasonably assured that a majority of customers will benefit from the expanded calling area. In this case, the proposed EAS rates were below the rates that would be necessary to recover the lost toll revenue, which reduced the risk that too many customers would be disadvantaged by the EAS rates. This issue was duly considered by the Commission and is reflected in Order No. 26672.

We also believe Order No. 26672 demonstrates due consideration of the community-of -interest criteria, and that the standards are adequately met. Ullman argues that three criteria were not met for the Boise expanded calling area.  It is not necessary that every single criteria be specifically satisfied. Instead, the Commission’s review of the community-of-interest is a comprehensive review of the shared interests and economic cohesiveness of the proposed calling area. Some criteria will be clearly demonstrated in some cases than others.  In the Boise EAS,  different counties and school districts are contained within the calling area, but other criteria clearly demonstrated the existence of a strong community-of-interest.  It is not necessary or possible for local calling areas to be preserved for each county and school district in order to meet these community-of-interest criteria.  Finally, the willingness of customers to pay increased rates for EAS was clearly demonstrated by the preponderance of evidence, and is adequately addressed in Order No. 26672.

The Petition also contends Order No. 26672 is unreasonable because business rates did not increase, although many businesses would pay higher rates as the result of  moving to a new rate group.  This issue was not thoroughly discussed in Order No. 26672 because the evidence clearly demonstrated that the proposed rates would become a nullity as a result of the Commission’s review of rates in U S WEST’s pending rate case. Accordingly, Order No. 26672 stated that “[t]he Stipulation’s rate and credit provisions will be superseded by the rates the Commission establishes in the rate case.” Order No. 26672 at 22.

The first four grounds for reconsideration urged by Ullman appear to be no more than a disagreement with the Commission regarding the weight the Commission accorded testimony presented at the hearings and the decision reached.  The Commission as a fact finding body has a responsibility to consider the evidence presented and base its findings on substantial, competent evidence.  Boise Water Corp. v. IPUC, 97 Idaho 832, 555 P.2d 163 (1976).  When conflicting evidence is presented, the Commission also must weigh the evidence and determine which evidence is most persuasive.  Boise Water, 97 Idaho at 838 (the Commission has discretion to rule that it was not persuaded by the Company’s evidence).  SeealsoRosebud Enterprises v. IPUC, \_\_\_ Idaho \_\_\_, 917 P.2d 766, 775 (1996) (the Supreme Court will not displace the Commission’s choice between two fairly conflicting views).  Accordingly, it is not grounds for reconsideration that Ullman disagrees with the Commission’s decision.

The final ground for reconsideration urged by Ullman raises an issue not presented or considered in the case, and for which Ullman provides no offer of proof or evidence.  Idaho Code § 61-626 provides for reconsideration of an order “in respect to any matter determined therein.”  Additionally, Rule 331 requires a petitioner to provide “a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted.”   The final ground for reconsideration is an allegation apparently based on a hearsay statement provided by an unidentified individual to Ullman, and was not a matter decided in Order No. 26672.  It is not, therefore, a proper ground for granting the Petition for Reconsideration.

O R D E R

IT IS HEREBY ORDERED that the Petition for Reconsideration is denied.

THIS IS A FINAL ORDER DENYING RECONSIDERATION.  Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No.  USW-S-96-4 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.  See Idaho Code  § 61-627.

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

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

December 13, 1996