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

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| IN THE MATTER OF THE APPLICATION OF U S WEST COMMUNICATIONS, INC.  FOR AUTHORITY TO INCREASE ITS RATES AND CHARGES FOR REGULATED TITLE 61 SERVICES.    IN THE MATTER OF THE APPLICATION OF U S WEST COMMUNICATIONS, INC.  FOR AN INTERCONNECTION COST ADJUSTMENT MECHANISM. | )  )  )  )  )  )  )  )  )  )  )  ) | CASE NO. USW-S-96-5  CASE NO. USW-T-97-2  ORDER NO.  26824 |

On February 3, 1997, AT&T Communications of the Mountain States filed a Motion to Consolidate U S WEST Communication’s Interconnection Cost Adjustment Mechanism (ICAM) case (No. USW-T-97-2) with the U S WEST rate case (No. USW-S-96-5).(footnote: 1)  On February 14, 1997, the American Association of Retired Persons (AARP) filed a Motion to Compel U S WEST to answer discovery.  On February 19, 1997, the Commission Staff filed a Motion to Compel U S WEST to answer discovery and a Motion for an Extension of Time to file surrebuttal testimony.  Given the urgency of the Motions, the Commission issued Order No. 26806 scheduling oral argument on the Motions and a prehearing conference to convene on February 20, 1997.

THE MOTIONS

1.  AARP Motion to Compel.  AARP requested that the Commission compel U S WEST to answer Discovery Request No. 11 filed on January 22, 1997.  This Request asked U S WEST to provide “all testimony, exhibits, attachments, schedules, studies and documents that have been filed in Docket Nos. USW-T-96-15/ATT-T-96-2,(footnote: 2) that relate to the economic costing studies and results of U S WEST’s service territory in southern Idaho.” See AARP Second Discovery Request to U S WEST. AARP asked for all costing studies (including TSLRIC, TELRIC, ASIC, etc.) in the arbitration proceeding involving U S WEST and AT&T.

On February 6, 1997, U S WEST objected to this request on several grounds.  The Company claimed that the information sought was not relevant to matters involved in the rate case and “was not reasonably calculated to lead to the discovery of admissible information in the rate case.”  U S WEST Response at 2.  U S WEST also objected because the discovery request would circumvent the Commission’s arbitration procedures for interconnection which preclude third parties from participating in the arbitration proceeding.  Finally, the Company further objected that the requested information “is not geared to any issue raised in U S WEST’s rebuttal filing and is therefore not a proper request for preparing intervenor ‘surrebuttal’.”  Id.

2.  Staff Motion to Compel.  The Staff requested that the Commission compel U S WEST to answer 69 production and audit requests.  The Staff asserted in its Motion that 48 requests were unanswered and at least nine days past due under the Commission’s scheduling Order.  In Order No. 26739 issued December 31, 1996, the Commission directed that U S WEST answer discovery requests within 11 days of receiving the requests.  Id. at 3.  In addition, the Staff’s Motion noted that U S WEST was at least two days late in answering 17 audit requests submitted by the Staff during the Denver audit conducted February 3-6, 1997.

3.  Staff Motion for Extension.  Given the inability of U S WEST to timely answer Staff’s discovery requests, the Staff also asked that the deadline for filing its surrebuttal testimony be extended by six days—from February 21 to February 27, 1997.  The Staff asserted that its inability to examine and analyze the responses to its discovery request precluded it from adequately preparing and filing its testimony.  Staff noted that nine parties supported the Staff’s Motion for the extension, but U S WEST did not.  The Staff urged the Commission to schedule an oral argument on the Motion for February 20, 1997.

ORAL ARGUMENT AND PREHEARING CONFERENCE

1.  AARP’s Motion.  AARP’s counsel asserted that the Commission is at a crossroads and must determine which economic cost model should be used to calculate U S WEST’s revenue requirement in this case.  He noted that both U S WEST and the Staff used an “embedded cost” model, while AARP and AT&T suggested that the appropriate cost model be based upon a “prospective or future economic [cost] model.”  Tr. at 36, 35-37.

He argued that compelling U S WEST to provide access to itscost studies on file in the arbitration case is not burdensome.  AARP is not attempting to become a party in the arbitration case.  Tr. at 38.  AARP did not ask for an extension of time in which to file its testimony but simply wanted to review U S WEST’s cost studies that are presently before the Commission in the arbitration case.  Tr. at 38.

Addressing the relevancy of the requested material, counsel observed that AARP and AT&T have both addressed forward-looking cost models in the rate case.  Although U S WEST has not addressed AARP’s economic cost model, U S WEST’s use of a cost model in the arbitration case is irrelevant to the question of which cost model the Commission intends to use in this rate case.  Tr. at 36.

U S WEST’s counsel argued that the 30 cost studies submitted as part of the arbitration case “are solely for the purpose of setting the wholesale rates and the discounts in the unbundled element rates in the [arbitration] docket. . . . No matter what AARP is allowed to discover, those issues are not going to be resolved in this [rate] case and the fact that consumers may be affected by them does not mean that they cannot [be] resolved in the general rate case.”  Tr. at 40.  She characterized AARP’s argument as urging the Commission to “reject embedded costs and adopt a TSLRIC costing methodology.  It is a novel idea, but there is no basis in statute, case law, or Commission precedent for it.”  Tr. at 42.

2.  Staff Motions.  Staff counsel stated that after the Staff’s Motion to Compel was prepared, the Company submitted 54 answers to the discovery requests.(footnote: 3)  Although the answers to the discovery requests have been received, they were still nine days late.  Consequently, the Staff asserted that it still needed the extension to its filing deadline to analyze the discovery responses and prepare its testimony.  For those requests outstanding, the Staff listed those production requests that were still considered “critical,” necessary, and no longer needed.  Tr. at 15.  Staff counsel indicated that only six were critical to preparation of its testimony.

In responding to Staff, counsel for U S WEST indicated that three of the critical responses were to be delivered that day, two more the following day, and was unsure of one other response.  Tr. at 22.  Responding to Staff’s request for extension, the Company continued to object “for the simple reason that it works a substantial prejudice” against the Company.  Granting the Staff’s extension would move the due date for final discovery responsesfrom March 4 to March 10—the day the rate case hearing is to commence.  She argued that if the Commission grants the Staff’s Motion, then the Company will have no time to analyze Staff’s discovery answers before the beginning of the hearing.  To alleviate the hardship on the Company, she suggested that the Commission consider moving the entire hearing schedule backward or bifurcating the hearing.  Tr. at 31.

Following a brief recess, the Commission issued bench rulings on the motions.  The Commission denied the two Motions to Compel but granted the Staff Motion for Extension.  This Order reaffirms those discovery and procedural motions.

DISCUSSION

Addressing the Staff’s Motion to Compel first, we find that it is reasonable to deny this Motion.  As was brought out at the hearing, the majority of the Company’s discovery answers were filed on February 20 or the following day.  In essence, it appears there is no critical discovery to compel.  Although we denied the Staff’s Motion to Compel, we find there is sufficient justification to grant it an extension of time in which to file its surrebuttal testimony.  U S WEST did not respond to all the production requests within the time limit set in our prior Order.  Consequently, it is reasonable to grant the Staff an extension until Wednesday, February 26, 1997.  Having granted an extension, however, the Staff is required to expeditiously file its witnesses’ testimony as they are completed.

With regard to AARP’s Motion to Compel, the Commission finds the Motion should be denied.  Without prejudging the merits of the parties’ positions concerning the appropriate cost model(s) to use in the rate case, we find the use of cost studies to calculate the rates for unbundled services in an interconnection setting (i.e., the arbitration case) may differ from determining the Company’s costs of providing services to its customers in the rate case.  In addition, many of the arbitration cost studies address Title 62 services—services that are beyond the scope of the rate case.  Moreover, it appears that some of the U S WEST cost studies requested have already been produced in response to Staff Production Request Nos. 37 and 164.

Finally, turning to U S WEST’s procedural concerns, it is our intent to maintain our current hearing schedule, beginning March 10 through March 20.  It is our intent to take U S WEST’s direct witnesses, then the intervenor and Staff direct and surrebuttal witnesses, followed by the Company rebuttal witnesses and live surrebuttal.  Depending on the number of witnesses we complete each day, the parties are advised that the Commission may schedule some evening hearings.  The Commission further intends to recess the hearing on March 20 and reconvene on March 25.  This four-day break will provide all the parties with an opportunity to prepare for the Company’s rebuttal case.  It is our desire to conclude the rebuttal case on March 27, but if it is not finished, we will reconvene on April 1, 1997, until our hearing has been completed.

O R D E R

IT IS THEREFORE ORDERED that AARP’s Motion to Compel is denied.

IT IS FURTHER ORDERED that the Staff’s Motion to Compel is also denied but Staff’s Motion for an Extension of Time is granted.  The Staff shall file its surrebuttal testimony no later than February 26, 1997.  In addition, Staff shall file its witnesses’ testimony as they are completed.

IT IS FURTHER ORDERED that the hearing schedule is modified as set out in the body of this Order.  Order No. 26820 scheduling public hearings in this matter was issued February 28, 1997.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of March 1997.

                                                                                                                                      RALPH NELSON, PRESIDENT

                                                                                           MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

Vld/O:usw-s-96-5.dh4

PARTIAL DISSENT OF

COMMISSIONER RALPH NELSON

ORDER NO. 26824

CASE NO. USW-S-96-5

While I agree with my colleagues on the rest of the Order I must respectfully dissent on that part of the Order denying AARP access to documents filed in Commission case USW-T-96-15.  Without deciding whether any of the information would be admissible in the current case, the information is on file with the Commission Secretary and there is no burden on U S WEST in allowing AARP to examine it.

RALPH NELSON, PRESIDENT

**FOOTNOTES**

1:

1On February 20, 1997, AT&T filed a Notice withdrawing its Motion to consolidate the two cases.  Given the withdrawal, the Commission did not take up this Motion at the oral argument/prehearing conference.

2:

2This docket is commonly referred to as the arbitration case.

3:

3In addition, Staff counsel also acknowledged that the Motion had erroneously claimed the Company had not answered 11 production requests contained in the Sixth Production Request.  In fact, the Staff had received timely answers to the requests.

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

March 4, 1997