(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. | )))))) | CASE NO. USW-S-96-5ORDER NO.  27721 |

On August 11, 1998, U S WEST Communications filed a Motion seeking to expedite discovery in the rehearing phase of this case.  U S WEST requested that the Commission shorten the time to object to discovery from 14 days to 6 days and to reduce the time for discovery responses from 28 days to 10 days.  Rule 225.03, IDAPA 31.01.01.225.03.  In other words, the Company sought approval to shorten the time for filing discovery objections to August 17, 1998 and discovery responses to August 21, 1998.

On August 21, the Staff filed its Objections and Responses to U S WEST’s nine interrogatories and requests for production.  On August 24, U S WEST filed a Motion requesting that the Commission compel the Staff to provide complete answers to discovery and produce the requested documents no later than August 31, 1998.  Given the pressing schedule set out for this rehearing, the Commission convened oral argument on the Motion to Compel on August 25, 1998.

THE HEARINGTO COMPEL

In its discovery requests, the Company generally sought information and documents pertaining “in whole or in part, to U S WEST’s provision of ‘toll restriction’ or toll blocking service.”  Data Request No. 1001.  In response, the Staff made two general objections, several specific objections, and provided some responses answering the discovery requests.  In its Motion to Compel, the Company generally asserted that all of the Staff’s responses were inadequate and non-responsive.

A.  Staff’s Objections

Turning to its general objections, Staff first asserted that U S WEST and the Staff had discussed the need for discovery in preparing the rehearing schedule issued in Order No. 27659, but the parties concluded that there was no need for discovery.  Second, Staff asserted that U S WEST’s Petition for Reconsideration also indicated there was no need to conduct additional discovery.  More specifically, “the Company stated that it sought reconsideration of the claw-back issue ‘based upon this Petition and the exhibits filed herewith.’” Staff Objection at 2.  Staff noted that none of the exhibits filed with the Company’s Petition addressed toll restriction.  Id., citing Order No. 27659 at 4.

The Staff also raised several specific objections.  Several of the Company’s interrogatories sought information concerning customer complaints/inquiries or Staff-Company meetings regarding toll restriction from July 1988 to the present.(footnote: 1)  The Staff maintained that answering these interrogatories would be unreasonable, unduly burdensome, and expensive given the constraints on the Staff’s schedule.  Moreover, the Staff asserted that the information requested by the Company is contained in documents already provided to the Company in discovery.  Staff asserted that the burden of deriving the requested information from the previously supplied records is substantially the same for the Company as the Staff.  Consequently, the Staff insisted that it was reasonable for the Company to utilize its own resources to obtain the data it seeks.  PUC Rule 228.01; I.R.C.P. 33(c).(footnote: 2)

The Staff made a similar objection to the Company’s requests for documents.  Request Nos. 1003, 1009.  Staff noted that it had already provided U S WEST with an electronic copy and a subsequent “hard copy” of the complaints, inquiries, and comments regarding toll restriction over the previous ten years.  The Staff renewed its offer made in November 1996 that it would make available at its office’s the “narrative information” for those complaints or those comments that the Company identified.  Rule 228.01; I.R.C.P. 33(c).

B.  The Company’s Request

At the hearing, the Company’s counsel clarified that it only sought information and documents concerning those complaints or inquiries that the Staff intended to rely upon to support its rehearing testimony.  The Company argued that the Commission’s failure to compel the Staff to answer will prohibit the Company from learning what customer complaints or inquiries were relied upon by Staff.  In response, Staff counsel indicated that the Staff did not rely on any specific or particular complaints to support its position that Title 62 toll restriction was adverse to the public interest.  Following these disclosures, the Commission called a brief recess and urged the parties to discuss whether there remained any need to compel discovery.

After the recess, U S WEST’s counsel informed the Commission that the Company would withdraw its Motion to Compel based upon assurances that the Staff did not base its prefiled direct testimony upon any specific or particular customer complaints about toll restriction. The Staff also agreed to supplement its prior answers to discovery in the event that it determined later to rely upon specific consumer complaints or inquiries in this phase of the case.

Given the agreement of the parties and U S WEST’s withdrawal of the Motion to Compel, we find there is no need to rule on the Motion.  We further find that the Company’s August 11 Motion to shorten the time frame for discovery is moot.

O R D E R

IT IS HEREBY ORDERED that U S WEST’s Motion to Compel is considered withdrawn.  See IDAPA 31.01.01.067.  In addition, no action need be taken on the Company’s Motion to shorten the time frame for discovery.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of September 1998.

                                                                                                                                       DENNIS S. HANSEN, PRESIDENT

                                                                                            RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**FOOTNOTES**

1:

At the hearing, U S WEST conceded that Request Nos. 1006 and 1007 were answered and, consequently, there was no need to compel a response on these interrogatories.

2:

I.R.C.P. 33(c) provides that “[w]here the answer to an interrogatory may be derived or ascertained from the business or other records of the party upon whom the interrogatory has been served . . . and the burden of deriving or ascertaining the answer is substantially the same for the parties serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertain. . . .”

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

September 4, 1998