(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-96-5  ORDER NO.  27785 |

On July 27, 1998, the Commission issued Order No. 27659 granting U S WEST Communications a rehearing regarding the regulatory status of “toll restriction” service.  More specifically, the Commission decided to reconsider whether it had authority under Idaho Code § 62-605(5) to require that toll restriction be removed from the Commission’s Title 62 jurisdiction and re-regulated under Title 61.(footnote: 1)  Order No.  27659 also included a procedural schedule for the rehearing and directed that interested parties desiring to participate in the rehearing to notify the Commission.  The only parties participating in the rehearing were the Commission Staff and U S WEST.

In accordance with the rehearing schedule, both parties prefiled direct testimony supporting their diverse positions.  On September 2, 1998, the parties filed a “Fourth Stipulation and Settlement” purportedly resolving the toll restriction dispute.  The parties urged the Commission to approve the Settlement thereby concluding this case.  The Commission convened a hearing on September 8, 1998, at which time the parties offered testimony supporting the Settlement.  Following our review of the Fourth Stipulation and the parties’ testimony in support of the settlement, we approve the settlement as set out in greater detail below.

BACKGROUND

The procedural history of this matter is set out in detail in Order No. 27659.  Briefly, U S WEST appealed the Commission’s decision that toll blocking or toll restriction service should be re-regulated under the “claw back” statute, Idaho Code § 62-605(5).  Toll blocking prohibits a customer from gaining access to a long-distance carrier, or, in other words, from making long-distance telephone calls.  In July 1998, the Commission, on its own motion, found that the administrative record regarding toll restriction was inadequate.  Consequently, the Commission amended its prior Order No. 27152 and partially granted the Company’s Petition for Reconsideration.  The parties subsequently filed a Motion with the Supreme Court to suspend the appeal and the Court ordered the appeal suspended until November 11, 1998.

Pursuant to the rehearing schedule contained in Order No. 27659, the Staff and U S WEST prefiled their direct rehearing testimony on August 12 and 26, respectively.  On September 2, 1998, the parties filed the Fourth Stipulation settling the disputed issues surrounding toll restriction.  Instead of prefiling its rebuttal testimony, Staff filed supplemental testimony in support of the Stipulation.  The parties suggested that the Commission use the scheduled September 8 hearing to review the Stipulation.  At the hearing, Staff witness Wayne Hart and Company witness John Souba testified in support of the settlement.  The parties did not introduce their direct prefiled testimony.  With this background, we now turn to the Stipulation.

FOURTH STIPULATION AND SETTLEMENT

In settling the toll restriction issues, U S WEST sought to retain the pricing flexibility for toll restriction afforded by Title 62, while the Staff wanted to ensure that the rates, terms and conditions for toll restriction remain just and reasonable.  Stipulation at 2.  With these goals in mind, the parties entered into the Stipulation and Settlement under the following terms and conditions.

1.  Regulatory Status and Length of Agreement.  First, the parties agreed and recommended that the Commission allow toll restriction to remain under Title 62 conditioned upon  the terms contained in the Stipulation.  Stipulation at ¶1.  The parties agreed that the Stipulation shall remain in effect for a period of three years from the date of the Commission’s approval.  Id. at ¶4.  The parties agreed that during the term of the settlement, toll restriction rates “for residential and single-line business customers shall be changed only upon Application by U S WEST and approval by the Commission.”  Id. at ¶5.

2.  Scope of Agreement.  The parties agreed and recommended that the Stipulation govern the rates for toll restriction for residential and single-line business customers.  The terms of the Stipulation do not apply to multi-line business customers and toll restriction for these customers will remain subject to Title 62.  In addition, the toll restriction Stipulation shall not apply in those individual U S WEST local exchanges where the Commission has determined effective competition exists for basic local exchange service.  Id. at ¶4.

3.  Rates.  Customers subscribing to toll restriction service will be assessed an initial non-recurring charge of $13.50 except when toll restriction is requested by residential customers at the time local exchange service is first ordered.  “In other words, residential customers requesting Toll Restriction service [when] they initiate local service for the first time would not be charged the $13.50 non-recurring fee on a single residential line.”  Stipulation at ¶2.  Residential customers subscribing to toll restriction on more than one line when local service is first initiated, shall be assessed only one $13.50 charge for the toll restriction services.  The initial service waiver exception for the $13.50 non-recurring charge does not apply to business customers.  No fee will be charged for customers to discontinue toll restriction service.  Id.

The parties further agreed and recommended that the Commission adopt recurring charges for toll restriction service of $0.25 per month for residential customers and $1.00 per month for single-line business customers.  Id. at ¶3.  The parties agreed that the rates set forth above are reasonable.  The imposition of a monthly charge will serve to remind customers that they are subscribing to toll restriction service.  Customers eligible for the Idaho Telephone Service Assistance Program (ITSAP) shall receive toll restriction without recurring or non-recurring charges.  Id.

4.  Precedential Effect.  At the expiration of the three years, the Commission and/or its Staff may pursue claw-back of toll restriction service pursuant to Idaho Code § 62-605(5) “should the facts and circumstances justify such action.”  Id. at ¶6.  The parties specifically agreed that the Commission’s prior Order Nos. 27100 and 27152 and any Order adopting this Stipulation “shall not be deemed evidence of a final Commission decision on the regulatory status [of] Toll Restriction service.”  Id.

5.  Implementation and Dismissal of Appeal.  If the Commission enters an Order adopting this Stipulation, U S WEST agreed to voluntarily dismiss its appeal of this matter before the Idaho Supreme Court.  Id. at ¶7.  Each party to the appeal shall bear its own costs.  The Stipulation further provided that the price changes specified in the Settlement shall go into effect following actual notice to affected customers and filing of changes to U S WEST’s service catalog pages relating to toll restriction service.  Id. at ¶8.

In conclusion, the parties recognized the complexity of the issues presented in this matter, the resources expended thus far, and the length of elapsed time since this case was initiated in June 1996.  They agreed that the Stipulation presents an opportunity to finally resolve the remaining issues in this case to the mutual benefit of both the Company and its customers.  The parties asserted that the Settlement represents a reasonable resolution of the issues and urge the Commission to adopt the Stipulation.  Finally, they acknowledged that the Settlement represents a compromise of the contested issues and should not be construed as an admission on the part of either party that its position regarding the contested cases was not correct or factually supported.  If the Commission does not adopt the Stipulation; then the parties are ready to proceed.

THE SETTLEMENT HEARING

At the hearing, both parties offered testimony in support of the Stipulation.  Staff witness Hart testified that adoption of the Settlement will enhance universal service in two ways. First, the customer will be assured that prices for toll blocking service will be reasonable and represent significant savings for at least the next three years.  Tr. at 102.  Prior to the rate case, U S WEST charged $2.00 per month for toll restriction service.  In the Commission’s Order No. 27512, the Commission determined that there should be no monthly rate but allowed the Company to assess a $6.00 non-recurring charge when the customer initiated and terminated toll restriction service.  Under the terms of the Settlement, residential customers would pay a single non-recurring charge of $13.50 when the service was installed unless toll restriction was ordered at the same time local service was initiated.  Tr. at 97.  The lower monthly rates for residential and single-line business customers make toll restriction “more affordable and more reflective of the costs of providing service.”  Tr. at 96.

Second, Hart indicated that toll restriction enhances universal service because it allows customers with poor credit history to forego the need for making a substantial deposit in order to obtain service.  Tr. at 96.  Customers who have poor credit history and desiring service must either sign-up for toll restriction or pay the average of  two months’ billing (approximately $125) as a deposit.  For many customers in this situation, paying $0.25 per month is substantially easier than providing the two months’ deposit.  Id.  In addition, toll restriction helps customers keep their service by controlling the amount of toll charges that are incurred.  He stated that approximately 92% of all toll restriction customers are residential customers.  Tr. at 96.

Hart explained that the Company agreed to keep prices at this level for a period of three years with two exceptions.  The first exception would be if the Company can demonstrate to the Commission’s satisfaction that it faces effective local competition in an exchange.  Tr. at 98.  The second exception was that the Company may request changes in the rates “by providing cost information and other justification, but the Commission must approve the change(s) using Title 61 standards.”  Tr. at 98.  In conclusion, Hart stated that the settlement allows the Commission to control toll restriction rates for most customers for at least three years.  After three years the Commission or Staff may seek to claw back toll restriction to Title 61 if effective competition has not yet emerged.  Tr. at 99, 102.

Company witness John Souba also testified that the Stipulation is in the public interest.  He stated that the Stipulation allows U S WEST to continue to offer toll restriction as a Title 62 service.  At the same time, the Stipulation meets the Staff’s concerns about insuring “the price level and structure of toll restriction were not a barrier to customers who need the service. . . .” Tr. at 106.  He also acknowledged that settlement saves considerable time and expense for both parties.  Id. at 107.

Mr. Souba did take issue with one statement made by Staff witness Hart.  In particular, he “agreed with the spirit” but “quibbled” with Mr. Hart’s reference to the Commission using Title 61 standards to approve a rate change.  Tr. at 108.  More specifically, Mr. Souba observed that the language of the Stipulation merely refers to a request for a price change requiring “an Application by U S WEST and approval by the Commission.”  He suggested that the Commission’s approval of rate changes should not be evaluated under “a Title 61 rate case sort of analysis” but the Commission should review the filing based upon “cost and competitive information.”  Id.  Despite this minor disagreement, he acknowledged that the Commission would retain the right to approve or disapprove of any price change for toll restriction during the three-year term of the Stipulation.”  Id.

When asked why the parties chose a three-year term, he acknowledged that U S WEST would “have been happier with a little bit shorter period, but in the spirit of compromise, 36 months was chosen [based upon] the presumption that there will be a significant different telecommunica­tions market within 36 months that may require less regulation of this service going forward.”  Tr. at 110.

DISCUSSION

The settlement of an appeal calling for Commission action is addressed in Rule 350-56 of the Commission’s Rules of Procedure, IDAPA 31.01.01.351 to -.356.  As is the case with other settlements, the proponents of a proposed settlement on appeal carry the burden of showing that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy.  Rule 355, IDAPA 31.01.01.355.  The Commission is not bound by Settlement Agreements and will independently review any settlement proposed.  Rule 356, IDAPA 31.01.01.356.  In particular, the Commission may accept the Settlement, reject the Settlement, or state additional conditions under which the Settlement will be accepted.  Id.

Having reviewed our prior Orders, the parties’ Fourth Stipulation and Settlement, and the testimony offered in support of the Settlement, we approve and adopt the Stipulation.  Taken as a whole, we believe that the Settlement represents a reasonable and fair compromise of the issue involved and protects the public interest.  More specifically, the protections afforded residential customers and single-line business customers are significant.  As Staff witness Hart pointed out, 92% of all toll restriction customers are residential customers.  Although the Stipulation allows toll restriction service to remain a Title 62 service, it imposes strict terms and conditions on the rates and terms under which the service is offered.  By the same token, the Stipulation does allow U S WEST to seek rate changes based upon a showing that the requested rate changes are just and reasonable.  Thus, residential and single-line business customers are protected during the term of the Stipulation  from unreasonable rate increases.

We further find that the terms of the Stipulation promote the goal of universal service.  In particular, customers with poor credit history may acquire telephone service by subscribing to toll restriction instead of paying a hefty deposit.  This also protects the Company from the possibility of unpaid toll bills.  Consequently, the universal service goal of increased subscribership is embraced while protecting the Company (and ultimately its other ratepayers) from uncollectibles.

Finally, at the end of the three-year term, the Commission and/or the Staff may pursue the issue of whether toll restriction should be re-regulated as a Title 61 service.  Rather than look forward to additional litigation on this matter in three-years’ time, the parties hoped that competition would emerge in the local exchange market thereby supplanting the need for the regulation of toll restriction service.  We too hope that local competition will become established during this period. Viewing the Stipulation in its entirety, we believe that it strikes the appropriate balance by protecting ratepayers and promoting universal service on the one hand, and allowing the Company to seek rate changes on the other.  Thus, we conclude that adoption and approval of the Stipulation is reasonable and serves the public interest.

O R D E R

IT IS HEREBY ORDERED that the Fourth Stipulation and Settlement entered into between the Staff and U S WEST is approved.  Pursuant to the terms of the Stipulation, U S WEST shall dismiss its appeal.  Each party shall bear its own costs.

IT IS FURTHER ORDERED that U S WEST file Service Catalog pages for toll restriction in conformance with the rates set out in the Stipulation.  The Company is further directed to notify its toll restriction customers of the rate changes.

IT IS FURTHER ORDERED that the terms and conditions embodied in this Order shall be effective twenty-one (21) days from the service date of this Order.  The three-year term of the Stipulation shall run from the effective date of the Order for a period of three years subject to the conditions contained in the Stipulation.

THIS IS A FINAL ORDER ON RECONSIDERATION.  Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. USW-S-96-5 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 October 1998.

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

Commissioner Smith Dissenting Opinion is Attached

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

Vld/O:USW-S-96-5.dh5

DISSENTING OPINION OF

COMMISSIONER MARSHA H. SMITH

Case No. USW-S-96-5

I must respectfully dissent.  In my view, the appropriate course of action would be to decide whether toll restriction is appropriately classified as a Title 61 service.  The evidence, if this matter were presented to us, may show ample evidence to support the regulation of toll restriction under Title 61 pursuant to Idaho Code § 62-605(5).  I adhere to the findings in Order Nos. 27100 and 27152 that there is no appreciable distinction between those toll restriction services which were and are classified as Title 61 services and this toll blocking service.  Not only was toll blocking service offered prior to enactment of the Telecommunications Act of 1988, this Commission as early as 1985 directed the Company to implement a service that would allow customers to block toll calls.  Although I share my colleagues’ hope that local exchange competition will materialize during the term of this stipulation, I see no reason to postpone our decision on the appropriate legal status of toll restriction service.

Marsha H. Smith, Commissioner

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**FOOTNOTES**

1:

The Commission’s traditional rate setting authority is found in Title 61 of the Idaho Code.  The Idaho Telecommunications Act of 1988 added a new chapter to Title 62 and created a modified form of regulation. Idaho Code  § 62-604(2) allows telephone companies to remove telecommunications services other than “basic local exchange service” from the Commission’s Title 61 rate or price setting authority. In March 1989, U S WEST elected to remove its non-basic local services from Title 61.  Consequently, U S WEST alone sets the prices for its non-basic services provided in southern Idaho (e.g., local services to businesses with more than five access lines, long-distance services, and custom calling features) but such services are still subject to the Commission’s Title 62 jurisdiction.

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

October 27, 1998