January 2, 1997

Joan Ellis

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New Mexico State Corporate Commission

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Re:  U S WEST Directory Imputation

Dear Ms. Ellis:

This letter is in response to your letter dated October 11, 1996 requesting information from NARUC attorneys concerning directory or yellow pages imputation.  You asked several questions concerning how different states treats directory revenues of RBOC.    We are currently in the midst of a rate case with U S WEST in which one of Commission Staff’s issues will be imputation of directory revenues, thus we are very interested in New Mexico’s impending law suit.

The first questions you ask is whether the RBOC operating in our state utilizes a separate subsidiary for directory advertising or yellow pages activities? U S WEST Communications Inc. (US WEST), formally Mountain States Telephone and Telegraph Co., is the local service provider for most of Idaho.    U S WEST does utilize a separate subsidiary U S WEST Media Group, Inc. and U S WEST Marketing Resources Group, Inc. for yellow pages activities. General Telephone Company of the Northwest, Inc (GTE) serves the second largest area, northern Idaho.

The next question you asked was whether our state asserts any jurisdiction over yellow pages or directory advertising,  and if so, do we utilize an imputation formula or other method for determining which revenues are allocated to the state? Before I explain previous Commission rulings it may be helpful to briefly explain how regulation of telecommunications companies is set up in Idaho. In 1988 the Idaho Telecommunications Act was passed in response to the divesture of MaBell. The Act set up a split between telecommunications companies providing local service (referred to as “Title 61 service” pursuant to the Commission’s regulatory authority in Idaho Code, Title 61) and telecommunications companies who do not provide local service to five or fewer lines (referred to at “Title 62 service” pursuant to Idaho Code Title 62). In general, the Commission does not regulate Title 62 services.

The Idaho Commission has asserted jurisdiction over directory revenues in several cases. The Commission has included Directory revenues to satisfy revenue requirements in setting local rates for both US WEST and GTE. See General Telephone Company of the Northwest, Inc., Case No. U-1002-67; Mountain States Telephone and Telegraph Co.,  Case No. U-1000-63.  The most recent cases in which the Commission addressed the issued of imputation of directory revenues has been in a series of cases involving a revenue sharing plan with US WEST.  This revenue sharing plan used excessive revenues, in part, to improve the capital structure of US WEST infrastructure in rural parts of our state. Beginning in 1989, the Commission has approved a Revenue Sharing Plan which included Idaho Directory revenue as part of the calculations for revenue sharing.

In case no. MTB-T-90-4, Order No. 23441 dated November 30 1990 the Commission considered allocation of telephone directory revenues.  The Commission ratified an agreement between Commission Staff and US WEST to allocated 54.90% directory allocation to the Oregon Malheur Bell which published a telephone directory for border town in Idaho/ Oregon.  See Order No. 23345.  The Commission also decided whether directory revenues should be attributed entirely to Title 61 as the Staff argued, or entirely to Title 62 as US WEST argued.  In a two to one vote the Commission held that directory revenues should be allocated entirely to title 62.  In a dissenting opinion Commissioner Ralph Nelson relied on Judge Greene’s Modified Final Judgement in the federal court and continued here for the proposition that directory revenues “provide a significant substitute to local telephone rates.”  Quoting United States v. AT&T, 552 F. Supp.131, 194, aff’d, Sub. Nob.  Maryland v. United States, 460 U.S. 1001 (1983).  Commissioner Nelson went on to say that “the Commission’s language in Order No 22738 requires the benefits of the directory revenues themselves must continue to float the regulated services,”therefore attributing directory revenues entirely to Title 62 revenues runs contrary to the language in the spirit of previous Commission Orders.

In Case No. MTB-T-90-3, Order No. 23531 issued January 22, 1991, the Commission again considered directory revenues in regard to the Revenue Sharing Plan.  In that Order the Commission held that it is reasonable for directory revenues to be apportioned to both Title 61 and Title 62 beginning in the 1991 revenue sharing year.  The Commission went on to say that sharing directory revenues better serves the interest of Idaho ratepayers. The Commission adopted Staff recommended a revenue effect of including the directory revenues for an increase of 41% of the Title 61 ratio,  additional $161,000 to Title 61 service.  The Company did not oppose this recommendation.

The most recent case to address this issue is Case No. USW-S-94-3, Order No. 25826 dated December 13, 1994.  In that case, again the Commission considered the issue of directory revenues for the Revenue Sharing Plan.  U S WEST recommended in that case that telephone directory revenues be removed from the sharing formula and used to increase the Company’s appreciation of revenue.  The Commission rejected the Company’s argument and stated that “we adhere to our previous findings that the benefit of the directory revenues themselves must continue to grow to the regulated services of telephone operations.”  Order No. 22738, p. 11 and Order No. 25826 at p. 12.

Since the inception of the Sharing Plan, the Commission has directed that Idaho directory revenues to be included in the revenue sharing formula.  In the first two sharing years, directory revenues was allocated to Title 62 services.  In 1991 sharing year, the Commission modified the Plan so that directory revenues was apportioned to both Title 61 and Title 62 services.  Order No. 23531.

As I mentioned earlier, we are currently involved in a rate case with US WEST, case no. USW-S-96-5. In Staff’s testimony filed before the Commission, witnesses Terri Carlock, Staff Accountant and Dr. Lee Selwyn, Staff’s expert from ETI, Inc., recommended 100% imputation of Directory revenues to Title 61 intrastate service. US WEST has taken the position that there is no Yellow Pages Directory Revenue that is imputable. The Hearing is set to begin March 10th.

The Supreme Court has affirmed the Commission imputation methods for goods and services related to affiliate transactions.  In General Telephone Company v. Idaho PUC, 109 Idaho 942, 712 P.2d 643 (1986) the Idaho Supreme Court affirmed the use of the “California approach” in which the affiliate is treated as a part of the utility for ratemaking purposes instead of permitting the utility to break up this enterprise to increase the return for its non-utilities activities. Under the California approach rather than determining the reasonableness of a variety of goods and services purchased from an affiliate, the Commission determines what the expense payments to affiliates should be limited to an amount which would reflect a return on the subsidiary’s investment corresponding to a utility’s allowed rate of return. The Supreme Court rejected the “traditional approach” approach which permits the affiliate to operate as an independent Company. Under the “tradition approach”  Commissions compares the prices and levels of profits on the affiliate transactions with the prices and profits of comparable enterprises.  A discussion of benefits and limitations of these two approaches is discussed by the Supreme Court in Washington Water Power Company v. Idaho Public Utilities Commission, 101 Idaho 567, 617 P.2d 1242 (1980), and Washington Water Power v. Idaho Public Utilities Commission, 105 Idaho 276, 668 P.2d 1007 (1983).

Finally, our statutes do not have “on-point” language dealing with the imputation of revenue sharings.  However, the Commission does have general jurisdiction over utilities and affiliate transactions and may make adjustments as deemed fair, just and reasonable. Idaho Code Section 61-

Hopefully this letter answers the questions outlined in your letter.   Please contact me at (208)334-0314 if you have further questions.

Sincerely,

Susan E. Hamlin

Deputy Attorney General

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