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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-96-5STAFF’S ANSWER AND CROSS-PETITION FOR RECONSIDERATION AND/OR CLARIFICATION |

COMES now the Staff of the Idaho Public Utilities Commission by and through its attorney of record and respectfully submits this Answer to U S WEST Communications’ Petition for Reconsideration of issues decided in Order No. 27100 dated August 12, 1997.  IDAPA 31.01.01.331.95.  The Staff also submits this Cross-Petition for Reconsideration in response to several issues raised by U S WEST in its Petition for Reconsideration.  Idaho Code § 61-626 and Rule 331.02, IDAPA 31.01.01.331.  The Staff’s Answer to U S WEST’s Petition for Reconsideration and Staff’s Cross-Petition for Reconsideration are discussed in greater detail below.

I. PLANT-IN-SERVICE ISSUES

A.  Direct Assignment of Plant-in-Service(Answer)

The Company has requested that the Commission reconsider its decision to directly assign various plant accounts to Title 62.  The Company objects to the Commission’s direct assignment in that it is unsupported by the record and is contradicted by other portions of the Commission’s Order No. 27100.  U S WEST Petition at 3-10.  In its work papers, the Commission adjusted plant-in-service by $29.988 million on Workpaper A-4 (U S WEST Exhibit 67, p. 4, line 16).(footnote: 1)  The Staff urges the Commission to deny reconsideration of this issue (with the exception of the correction noted below for the 1.89% retirement).

Staff witness Syd Lansing argued that the accounts represented on page 5 of his Exhibit 101 (the same accounts as appears in the Commission’s Workpaper A-5 (U S WEST Exhibit 67, p. 5) should be directly assigned.  The initial booking of this account is dictated by the Uniform System of Accounts.  The Uniform System of Accounts requires cable used exclusively for toll services to be classified as toll plant and cable used exclusively for local exchange service to be classified as exchange plant.  Cable which is used for both exchange and toll service is classified entirely as either exchange or toll based on its predominant use.  U S WEST Exhibit 44A; Lansing, Tr. at 1656-58.  For example, Account 845TC (buried fiber cable-toll) was directly assigned to Title 62 by the Commission in its Workpaper A-5 (Exhibit 67, page 5.)

As Company witness Dallas Elder testified, the joint use accounting classification “is [made] at the time the investment is placed, and that the classification does not change over time.  With the implementation of the EAS regions, any of the existing interoffice facilities that may have been classified as ‘Toll’ will not change to ‘Exchange’ even though usage will change. . . .”  Tr. at 3706; U S WEST Petition at 4.  Although the Company’s field accounting practices require that cable used for both exchange and toll be classified entirely as either exchange or toll based upon the cables predominant use (i.e., 100% toll or local), the  Company has allocated 68% of this account (and CWF2, CWF2A, CWF3, CWF4) based upon its allocation of cable and wire investment.  Workpaper A-2 note for line 13 (Exhibit 67, p. 2); Workpaper A-3 (U S WEST Exhibit 67, p. 3).  Thus, accounting practices require that these accounts are exclusively or predominantly Title 62 toll accounts, but the Company has assigned 68% of the account to Title 61.

On page 8 of its Petition, the Company argues that its interoffice fiber accounts 85TC, 845TC, and 852TC (underground fiber cable-toll, buried fiber cable-toll, and buried fiber cable-toll, respectively) are used for Title 61 local exchange services as well as for toll services.  However, as Company witness Elder pointed out, the classification of existing interoffice facilities do not change even though usage changes.(footnote: 2)  Tr. at 3706; U S WEST Petition for Reconsideration at 4.

B.  Local Loop Allocation(Answer)

U S WEST requests that the Commission reconsider its method of allocating the CWF1 plant (the local loop) between Title 61 and Title 62.  In its direct testimony, U S WEST proposed an allocation methodology that weights loop counts by average loop lengths.  However, the Commission’s work paper shows an allocation based on relative loop counts alone.  The Company asserts that the Commission rejected the Staff’s 5% allocation to local loop and the spare capacity allocation.  Adoption of the Company’s local loop allocation will raise the Title 61 allocator from 62% to 63.8%.  U S WEST Petition at 14; Exhibit 73.  The Staff maintains that the local loop should be allowed as shown in the work papers and that Order No. 27100 should be clarified to reflect this position.

U S WEST mischaracterizes the Commission’s findings on spare capacity when the Company suggests that the Commission is left with a record “which utterly fails to support a loop allocation which does not take loop length into account.”  U S WEST Petition at 14.  In fact, the Commission expressed concern about the Company’s spare capacity but rejected Staff’s specific proposed method of allocating costs associated with spare capacity.  Order No. 27100 at 38.  The volatility of serving business lines (which requires the Company to maintain excess capacity above and beyond a level that would be necessary for serving Title 61 services) creates a cost which is unaccounted for in the Company’s cost allocation methodology.  These costs more than offset the costs identified by U S WEST associated with loop lengths.  That is, the cost of serving the more rapidly growing Title 62 lines substantially offset the fact that Staff’s cost allocation methodology does not deaverage loop costs based upon length for the purpose of developing cost allocators. Baldwin, Tr. at 2875-76. This fact, combined with the Commission’s expressed concern about residential second-line excess capacity, makes the 82% allocation entirely reasonable.

As Staff witness Baldwin observed in her surrebuttal testimony, U S WEST’s proposal, while purportedly more accurate in that it explicitly takes into account an average difference in loop lengths, fails to take into account the differing requirement for spare capacity between Title 61 and Title 62 services.  Because of their inherently greater volatility, and the larger scope of competition for them, the Company must build relatively more spare capacity for its Title 62 services than its Title 61 services.  Even when the spare capacity in question is more or less functionally capable of providing either a Title 61 or a Title 62 service (such as a local loop), such spare capacity should be allocated in a manner that reflects Title 62 unique network design requirements.

Although the Commission declined to adopt proposed allocation and assignment of TPIS that would have explicitly taken into account this disparity between Title 61 and Title 62  (Order No. 27100 at 38-39), the Commission did conclude that “there may be some question concerning the Company’s deployment of plant in excess of demand.”  The Commission’s decision has the effect of “canceling out” the difference in loop length (which would tend to shift plant to Title 61) with the need to recognize that spare capacity is primarily driven by Title 62 services (which would tend to shift plant away from Title 61).  Staff believes that simply using the relative number of Title 61 lines in service to Title 62 lines in service is a conservative method for taking both factors into account, and developing an appropriate allocation between Title 61 and Title 62.  If reconsideration is granted on this issue, the Staff requests an evidentiary hearing.

C.  Unlit Fiber(Answer)

Although the Company is accepting the Commission’s decision that 80% of Staff’s unlit fiber adjustment should be considered “used and useful” during the 1995 test year, the Company argues that the Commission’s disallowance of this amount, $2.035 million (Workpaper A-1, line 12 (U S WEST Exhibit 67, p.1), should not impact the plant allocators.  Staff urges the Commission to deny reconsideration on this point as this allocator is consistent with all Staff options in exhibits.

D.  Direct Assignment of Tech Plus and Tech II to Title 61(Answer and Cross-Appeal)

The Company urges the Commission to reconsider its decision regarding the allocation of Tech Plus and Tech II.  U S WEST Petition at 16-19.  The Staff believes that the Commission’s directives on the Tech Plus and Tech II investment warrant clarification.  On page 42 of the Order, the Commission “declines to adopt the Staff’s first and second alternatives” which implies that the Commission may be seeking to adopt the Staff’s third alternative.  Yet on page 40, the Commission states, “[a]fter reviewing the conflicting testimony on this subject, the Commission adopts the Staff’s recommendation where both the plant and accumulated depreciation are directly assigned to Title 61.”  Under the Staff’s third alternative (reflected in Schedules 3a, 3b, and 3c of Exhibit 159), all TPIS is allocated between Title 61 and Title 62 according to the Company’s proposal, which means that the Tech Plus and Tech II investment is allocated between Title 61 and Title 62, but the entire $45-million accumulated depreciation is directly assigned to Title 61 because this amount represents funds that would otherwise have flowed to Title 61 customers.

In Baldwin’s surrebuttal she presented three distinct options: the recommended option (Schedules 1a, 1b, and 1c of Exhibit 159); a second option (Schedules 2a, 2b, and 2c of Exhibit 159); and a third option ( Schedules 3a, 3b, and 3c of Exhibit 159).  Tr. at 2895-2901.  The Commission determined that the Tech Plus and Tech II plant, and associated accumulated depreciation should be directly assigned to Title 61—this recommendation is incorporated in Staff’s first recommended option.  Order No. 27100 at 40.  Staff is concerned that by adopting only one component of Staff’s integrated cost allocation plan (the first Staff option), the Commission has directed a methodology that is inconsistent with the Commission's other cost allocation directives.

As U S WEST observes in its Petition for Reconsideration, the effect of this Commission directive — which results in the assignment of the underlying secondary investment and related expenses to Title 61 — is to increase relative to the Company’s recommendation the allocation of plant to Title 61, a result which may not have been intended by the Commission.  The problem stems from the piecemeal adoption of Staff’s cost allocation methodology. Although, Staff had recommended the direct assignment of Tech Plus and Tech II to Title 61, Staff had also recommended the direct assignment of other certain digital investment to Title 62.  The consequence of the fact that the Commission adopted the former recommendation, but rejected the companion component of Staff’s preferred proposal, is, as U S WEST discusses in its Petition for Reconsideration, to over-allocate plant to Title 61.

Staff recommends that the Commission either clarify or reconsider this aspect of its decision.  It appears that the Commission adopted U S WEST's proposal to allocate plant based upon after-the-fact use, and rejected Staff's proposal to allocate plant based upon cost causation (e.g., to assign urban digital switches to Title 62 because the analog switches were adequate for Title 61 services, etc.).  Therefore the Commission’s specific recommendation to adopt one attribute in isolation of the other related aspects of Staff’s cost allocation methodology, should be revisited.  Staff recommends that although the Tech Plus and Tech II TPIS (and all other plant) would be allocated between Title 61 and Title 62, the $45-million in accumulated depreciation should be directly assigned to Title 61.  Tr. at 2895-2901.  The $45-million represents monies that —were it not for the Company’s network modernization plan—would have flowed directly and solely to Title 61 customers.  This alternative is reflected in Schedules 3a, 3b, and 3c of Exhibit 159.

Should the Commission reject this recommendation, the Commission should simply adopt U S WEST’s request that the Commission reconsider its decision and allocate the Tech Plus and Tech II primary and secondary investment.(footnote: 3)

II.  EXPENSE ISSUES

A.  AT/Bellcore Expenses (Answer/Cross-Appeal)

Staff suggests that the Commission clarify its Order No. 27100 at page 51 to show the methodology used to allow 20% for Advanced Technologies (AT) and Bellcore Expenses.  Exhibit No. 190, page 1 (attached) reflects the total Idaho intrastate costs for Advanced Technologies and Bellcore on lines 1 and 2 as previously reflected on Staff Exhibit No. 115.  The directly assigned amounts for Title 61 and Title 62 identified by Staff witness Faunce, Tr. 1756, is reflected in lines 3-6.  The reengineering expenses were stipulated to, therefore, the reengineering for Advanced Technologies and Bellcore reflected on lines 7 and 8 are deducted from the total to arrive at the amount available for allocation of $1,642,503.  The Commission’s 20% allowance would be applied to this number resulting in an Idaho intrastate number of $328,501.  Staff has utilized an allocator for the AT and Bellcore expenses based on Company Exhibit 79 and Staff Exhibit 190, page 2 reflecting a combined allocator of 44.38%.  This produces a Title 61 amount of $154,789 plus the direct assignment of $7,447 resulting in a total Title 61 allowance for Bellcore and Advanced Technologies expenses of $153,236.

Other than the clarification set out above, the Staff urges the Commission to deny U S WEST reconsideration on this issue.  As the Commission noted in its Order, “the Company has failed to meet its burden of demonstrating the reasonableness of its affiliate transactions by simply relying on its use of the CAAS system.”  Order No. 27100 at 50.  It is U S WEST that has the burden of proving that its affiliate transactions are reasonable.  If the Commission is inclined to grant reconsideration on the AT/Bellcore issue, the Staff contests the accuracy of U S WEST Exhibit 79.  In particular, the Staff believes that expenses directly assignable to Title 62 should total approximately $812,000 of intrastate costs instead of the $506,594 as shown on page 2 of Exhibit 79.  Tr. at 1756.  Staff would request an evidentiary hearing on this issue.

B.  Allocator for Corporate Operations(Answer)

The Company proposed to allocate 50% of corporate operations to Title 61.  The Commission used an allocator of 37%.  See U S WEST Exhibit 76, line 26.  The Staff urges the Commission to deny reconsideration of this issue.  In its CAAS Manual, the Company indicated that it assigns these expenses either based upon employee wages and salaries, or based on total expenses (CAAS Manual, Section III.O, at 13-14).  As indicated by Staff witness Baldwin, Corporate Operations include expenses for items such as legal, human resources, executive, planning, financial services, procurement, research and development, and external relations.  These activities are likely to be disproportionately associated with advanced, lucrative, and/or competitive services.  The fact that the Company proposes to allocate only approximately 33% of Customer Operations expenses to Title 61 supports the conclusion that the Company’s corporate activities are similarly likely to disproportionately support Title 62 services.

U S WEST indicates that it suffers a “double penalty”—the first penalty being the direct assignment of certain corporate expenses to Title 62 and then the second penalty being an allocation whereby a greater percentage of corporate expenses are assigned to Title 62. U S WEST Petition at 26-27.  There is no merit to the Company’s argument.  Staff examined various projects that were representative of the common “pool” of corporate expenses.  The composition of the “pool” of corporate expenses remaining to be allocated after all direct assignments were made is similar to the original pool of corporate expenses before any assignments were made.  Staff could not examine each and every separate expense within the corporate operations account.  Staff examined a sample of the expenses, and based upon that examination, directly assigned that sample as appropriate.

The Company also objects to the use of revenues as an allocator because the level of Title 61 revenue is an issue in this case.  According to the Company, the Commission’s use of a revenue-based allocation of corporate expenses relies on current Title 61 revenues, which the Company seeks to increase, and thus the Commission’s allocation method is inappropriate.  This argument suggest that if the approved Title 61 revenues, i.e., the revenue level established in this case, were used, this specific objection of the Company would be overcome.  Of course this is not entirely practical to implement because the math would be circular — the Commission cannot determine the Title 61 revenue requirement without determining the fair share of corporate expenses to allocate to Title 61.  Staff does not contend that a revenue-based allocator is the ideal cost allocator, but absent better information on these expenses, revenues are the best indication available as to the incentives for where the Company’s executive staff, lawyers, etc. should profitably devote their time.

As an alternative, the Commission could allocate 33% of corporate expenses to Title 61 to mirror the 33% of customer operations that are allocated to Title 61.  Section III.O, page 10 of the CAAS manual indicates that the allocation of customer operations expenses “reflect time reporting.”  The ultimate interest of U S WEST is to increase its revenue stream by selling products and services, and therefore, it is reasonable to expect that corporate overhead will generally track customer operations.

C.  Memorandum Expense (Cross-Appeal)

U S WEST has asked the Commission to reconsider the issue of memorandum expenses.  U S WEST Petition at 27.  More specifically, the Company alleges that the Commission’s calculation of the revenue requirement omitted $2.5 million in Title 62 expenses used to support Title 61 services.  These memo expenses were shown on line 9 in Company Exhibit 22 (attached).  If the Commission is inclined to reconsider this issue, then the Staff respectfully requests that the Commission also consider Staff’s Cross-petition for Reconsideration of this issue.  As explained in greater detail below, the Staff believes that the Company is not entitled to a memorandum expense in the full amount of $2.5 million for the reasons below.

First, the Company’s calculation of memo expense as shown on line 9 of Exhibit 22 is deficient in that it does not allocate any memo expense to the sold exchanges.  As indicated in the Company’s Exhibit 23, line 9 (attached), the Company did not attribute any memo expense to the sold exchanges.  The Company’s failure to attribute any memo expense to the sold exchanges on its face is unreasonable.

Second, in its calculation of memo expense, the Company’s CAAS manual indicates that the Company uses “tariff or market rate” to calculate these costs.  Exhibit 64, page 2.  Staff believes that it is inappropriate when determining costs to base costs on market or tariff rates instead of actual costs.  Third, although the Company attempts to demonstrate in its Exhibit 81 “that memorandum expense was never included in intrastate booked expenses but was added as a function of the allocation process,” the actual expenses incurred to provide the services are included in the Company’s intrastate expenses.  To allow the memo expense to be transferred to Title 61 at market or tariff rates allows U S WEST to over recover these actual expenses.

Finally, the Staff maintains that it is unreasonable that there was no memo revenue to offset the memorandum expense.  What the Company would have the Commission believe is that there is no use of Title 61 facilities to support Title 62 facilities but the inverse is true—i.e., Title 62 facilities support Title 62 services.  As shown on the attached Company response to Staff Production Request 114A, the Company shows no Title 61 revenues to offset Title 62 expenses.  See Staff Exhibit 191, line 5, cols. A-G.  The Staff believes that it defies logic that there is no offset of Title 61 expenses supporting Title 62 services.  For example, when U S WEST solicits its non-published and non-listed customers to subscribe to other Title 62 services, the Company does not acknowledge that the Title 61 network bears the cost of selling Title 62 services.  Consequently, the Staff maintains that if the Commission is inclined to grant U S WEST reconsideration of this issue, that a full evidentiary hearing is necessary to properly decide this issue.  The Commission Staff stands ready to immediately submit additional interrogatories to the Company regarding this issue.

D.  Depreciation/Amortization (Answer/Clarification)

1.  Amortization.  The Company and Staff agree that the amortization expense capitalized leases needs to be adjusted by $706,000 on an intrastate basis, leaving $998,000 available to be allocated.

2.  Depreciation.  Depreciation expense needs to be adjusted based on the actual plant numbers that are allowed; the Company and Staff agree on this principle.  The current adjustments made by the Commission that require a change in depreciation expense include the 1.89% error factor which was replaced with the retirement of $4.4 million, the direct assignments, the unlit fiber, the Tech Plus and Tech II adjustments.  The actual plant-in-service that must be depreciated is reflected on Staff Exhibit 192 (attached).  The total intrastate depreciation is shown as $38.408 million.  Exhibit 192.

III. OTHER ISSUES

  A.  Cost of Equity(Answer)

In its Order No. 27100, the Commission determined that fair and reasonable return on equity was 11.2%.  Order No. 27100 at 48.  This return fell within Carlock’s recommended range of 11% to 12%.  Tr. at 2083.  In its Petition, the Company argues that the cost of equity should be at least 11.5% based upon the testimony of Staff witness Carlock.  U S WEST Petition at 32.  The Company incorrectly states that the 11.2% was within the Staff’s recommended range “only if the 50 basis point penalty for inadequate service is actively being considered.”  Id. at 32.  This statement is a mischaracterization of the record.  Carlock’s statement was “although any point within this range is reasonable, the return on equity would not normally be at either extreme of the fair and reasonable range.”  Tr. at 2089.  (emphasis added.)

Both the Company and Staff cost of equity witnesses recommended a range of equity using a number of methodologies and a specific point within those ranges.  Carlock emphasizes that “the main purpose is to establish a reasonable range.”  Tr. at 2127, lines 4 and 5.  As our Supreme Court has recognized, the question of “cost of equity” raises extremely complicated issues.  Deciding the cost of equity is a function of the Idaho Public Utilities Commission.  Utah Power & Light Company, 107 Idaho 446, 452, 690 P.2d 901, 907 (1984).  As the Court in Utah Power observed, “the Commission is not bound to accept Carlock’s recommendation . . . which admittedly was merely one point within the ranges of reasonableness she found applicable.  The Commission is not bound to accept this one point within the ranges but was free to choose another equally reasonable point within the ranges of reasonableness.”  Id. (footnote omitted).  Consequently, the Commission’s acceptance of a cost of equity within Carlock’s range is lawful and clearly supported by substantial and competent evidence.  The Staff urges the Commission to deny reconsideration on this issue.(footnote: 4)

B.  Toll Restriction (Answer)

U S WEST has asked the Commission to reconsider its decision that “toll restriction” is a Title 61 service.  In its Petition, the Company claims that toll restriction does not meet the statutory definition of a Title 61 service and that the Commission lacks authority under the “claw-back provision of Title 62 to regulate this service.”  U S WEST Petition at 35-38.  The Company also asserts that the Commission has inappropriately set the rate for toll restriction service.  Id. at 38.  As outlined below, the Commission Staff believes that the Commission appropriately classified toll restriction as a Title 61 service and urges the Commission to deny reconsideration on this issue.

1.  Definitional Argument.  Idaho Code § 62-603(1) defines “basic local exchange service” as the “provisions of access lines to residential and small business customers with the associated transmission two-way interactive switch voice communication within a local exchange calling area.”  Given the joint use telecommunication network (i.e., the public switch network is used for both local and toll calls), “access” to the toll network is part of basic local service.  Without an access line, there can be no access to toll.  As Staff witness Hart explained in his testimony, toll restriction “is a condition that prohibits out-bound calls from reaching the toll carrier.”  Tr. at 1213.

Generic toll restriction is no different than the 900 and 976 blocking which is currently classified as a Title 61 service.  At the time the Company elected to remove its non-basic services from the Commission’s regulatory jurisdiction under Title 61, the Company proposed that 900 and 976 blocking be classified as Title 61 services.  See Order No. 22416.

The Company claims that 900 and 976 blocking is a Title 61 service simply because the Company has not elected its option of claiming it as a Title 62 service.  U S WEST Petition at 35-36.  Staff submits that the Commission’s decision in Order No. 27100 defines 900 and 976 blocking as well as all other services that block or restrict a telecommunication customers access to toll services as an integral part of basic local exchange service, and therefore, properly included in the Title 61 services.

2.  “Claw-Back” Authority.  The Company also maintains that the Commission cannot exercise its “claw-back” authority under Idaho Code § 62-605(5).  This statute provides that the Commission shall have continuing authority to review “the quality, general availability or terms and conditions for [any service which was a Title 61 service] or adverse to the public interest the Commission shall have authority . . . to require that such telecommunication services be subject to the requirements of Title 61.”  The Company claims that toll blocking was not subject to Title 61 regulation on July 1, 1988.  U S WEST Petition at 38.  However, U S WEST acknowledges in its Petition that toll restriction for 900 and 976 services were subject to Title 61 regulation before July 1, 1988.  In addition, the Commission had previously approved toll restriction service as part of a service package implemented by U S WEST’s predecessor, Mountain Bell, on April 1, 1986.  See Order No. 20349 at 1.

It is clearly in the public interest to regulate toll blocking as a Title 61 service.  In the recent Universal Service Order No. 97-157, the Federal Communications Commission (FCC) found that basic local service for low-income consumers (including Lifeline and Link-up customers) should include:  single party service; voice grade access; touch tone; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll-limitation services.  Id. at ¶ 384 (emphasis added).  In that Order, the FCC determined that Lifeline customers “should receive, without charge, toll-limitation services.”  Id. at ¶ 385.  The FCC observed that a primary reason customers lose their telecommunication service is the failure to pay long-distance telephone bills.  Consequently, it found that “toll-limitation services are ‘essential to education, public health or public safety’ and ‘consistent with the public interest, convenience, and necessity’ for low-income consumers in that they maximize the opportunity for those consumers to remain connected to the telecommunications network.”  Id.; See also Tr. at 1214-15.

3.  Rate Setting for Toll Restriction.  Finally, the Company claims that there is no evidence supporting the Commission’s rates “other than Mr. Hart’s unfounded recommendations.”  U S WEST Petition at 38.  In his surrebuttal testimony, Staff witness Hart stated that the Company had indicated in response to Staff production request that the actual cost providing toll restriction was approximately $5.00 to connect the service and $5.00 to disconnect the service and estimated an approximate cost of $.50 per month expenses.  Tr. at 1214.(footnote: 5)  Staff asserts that the $6.00 non-recurring rate for this service is sufficient to cover costs.(footnote: 6)

C.  Solicitation of Non-Published/Non-Listed Customers (Answer)

In its final Order, the Commission directed that customers subscribing to non-published and non-listed directory services should be removed from the Company’s telemarketing solicitation lists.  “These customers have a legitimate expectation that they will not receive solicitation from either U S WEST or other telephone solicitors.”  Order No. 27100 at 63.  The Company urges the Commission to reconsider this issue.  The Company maintains that such a prohibition is unnecessary, over burdensome and does not meet the needs of most customers.  To address this concern, the Company “proposes” to begin use of a modified confirmation mailer for all new privacy listing customers.  U S WEST Petition at 41.  The notification will provide customers who do not wish to be solicited by U S WEST representatives with an opportunity to remove their name from solicitation lists.

The record in this case reveals that a number of U S WEST customers have complained to the Commission and the Company about solicitation calls from U S WEST when they have subscribed to non-published or non-listed directory services.  Several customers at the public hearings also testified that they chose to purchase non-published or non-listed services to avoid solicitation calls.  Tr. at 822-23; 837-38; 855.  Customers perceive that they are paying for protection from unwanted telephone solicitation and have a legitimate expectation of confidentiality.  The Commission’s Order does not prohibit U S WEST from marketing its products to non-listed and non-published customers, but does direct the Company to stop telemarketing to these customers.

If the Commission is inclined to reconsider this issue and examine the confirmation mailer, Staff believes that the mailer does not go far enough.  U S WEST should be required to verbally advise its non-listed and non-published customers at the time of subscription that they may remove their name from U S WEST telemarketing calls.  In addition, the Company should be required to notify all of its existing non-published and non-listed customers of this option, not just new customers.  If customers were told of this option when they originally subscribe to the services, they could decline or choose further solicitation at this point.  To require action on the part of the customer at a later date inconveniences those customers who wish to avoid solicitation and introduces another step into the process of being placed on the “do-not-call list.”  Customers currently are not made aware of this list unless they call the Company to complain about an unwanted solicitation call.  Requiring the Company to verbally advise its customers at the time they place a non-published and non-listed subscription would be a pro-active solution to this problem.

RESPECTFULLY submitted this   9th   day of September 1997.

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**FOOTNOTES**

1:

As mentioned in the Staff’s Petition for Reconsideration and/or Clarification, $2.999 million representing an adjustment for the 1.89% error factor should be removed from the adjustment for plant-in-service.  Staff Petition for Reconsideration at 6, ¶ 3.  Consequently, the $29.988 million from page A-4, line 16 must be reduced by the $2.999 million.  This adjustment must also be carried over to the calculation of the allocation and total plant-in-service illustrated on the Commission’s Workpaper A-1 at line 18 — $17.379 million reduction to Title 61 (which represents 62% of the total $29.988 million from page A-4.  See U S WEST Exhibit 67, p. 1, line 18 and p. 2 note for line 18.

2:

It is possible for the classification to change when the plant is reconfigured.

3:

Depreciation expense associated with Tech Plus and Tech II is also discussed in Section II.C. below.

4:

On page 33 of its Petition, the Company suggests that the Commission use the current IBES forecast growth rate for U S WEST of 5%.  The Staff urges the Commission to reject this invitation for two reasons.  First, the Company has presented neither competent evidence nor invited the Commission to take official notice of this information.  This information is clearly outside the record in this case.  Second, the Commission cannot accept the forecast growth rate without examining the myriad of all the other factors which may change since the Commission closed the record in this case.

5:

The Company also suggests that the Commission has confiscated the Company’s property when it eliminated toll restriction as a Title 62 service “and made no effort to reimburse the Company for its revenue loss.”  U S WEST Petition at 39.  However, as the Commission is well aware, it is under no obligation to reimburse the Company for lost Title 62 revenues so long as the Company is able to recover its costs in providing Title 61 services.  For example, the Commission was not required to compensate the Company for its lost toll revenue when it created the three EAS calling areas.  In its Order No. 27100, the Commission allowed the Company to recover its costs for providing such EAS service.

6:

In the event that the Company is entitled to additional Title 61 revenues, then the Staff believes that the rates for all the Company’s Title 61 services, including toll restriction are subject to change.  See U S WEST Petition at 42-43.  This would include possible changes in the Commission’s business-residential rate ratio.  Order No. 27100 at 65.