Office of the Secretary

Service Date

May 27, 1999

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

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| **IN THE MATTER OF THE PETITION FROM WEISER AND PAYETTE RESIDENTS REQUESTING EXTENDED AREA SERVICE (EAS) BETWEEN THESE COMMUNITIES.** | **)****)****)****)****)****)** | **CASE NO. USW‑S‑96‑6** **USW-T-96-6****ORDER NO. 28053** |

On April 20, 1999, Farmers Mutual Telephone Company filed a Petition for Clarification or Modification of Commission Order No. 27774 pursuant to *Idaho Code* § 61-624 and Commission Rule 326. More specifically, Farmers requested that the Commission order U S WEST Communications, Inc. to implement two-way extended area service (EAS) between the U S WEST Treasure Valley EAS Region and all Farmers’ exchanges.

On April 28, 1999, U S WEST filed a response indicating it did not oppose modification of Order No. 27774. In addition, U S WEST stated granting the Petition would create an estimated rate increase of approximately seven cents ($0.07) for all U S WEST customers throughout its three EAS regions. Staff opposed the Petition contending that the existing Commission record was not adequate to support the requested action – EAS and a rate increase for U S WEST customers. Oral argument was held on May 18, 1999, at which Staff, U S WEST and Farmers appeared. At the oral argument, additional petitions from U S WEST customers for EAS into the Farmers’ exchanges were received.

Based on the law, comments, oral argument, and the Commission record, the Commission orders U S WEST and Staff to submit a stipulation documenting all costs to U S WEST and any associated rate increase for U S WEST customers that will result from modifying Order No. 27774 to implement two-way extended area service (EAS) between the U S WEST Treasure Valley EAS Region and all Farmers’ exchanges. The Commission further orders U S WEST to include the calling data for its customers calling into the Farmers’ exchanges and to make such data a part of the record. The Commission reserves the authority to determine whether the requested rate increase for U S WEST customers is just and reasonable. *Idaho Code* §§ 61-307 and 61-502.

## BACKGROUND

Final Order No. 27774 in Case No. USW-S-96-6/USW-T-96-6 was issued November 4, 1998, granting EAS between the U S WEST exchanges of Weiser, Payette and New Plymouth and the U S WEST Treasure Valley EAS calling region. The case was initiated on November 4, 1994, when the Commission received petitions containing more than 180 signatures from U S WEST customers living in Weiser and Payette for toll-free calling[[1]](#footnote-1) between Weiser and Payette. Toll-free calling between exchanges is usually provided via a service arrangement known as EAS. Approximately 75% of Idahos exchanges have EAS calling to other exchanges. Additional petitions were filed in late 1997 requesting EAS among the Midvale, Cambridge, Fruitland, Ontario (Oregon) and U S WEST Treasure Valley calling region exchanges.

On October 27, 1997, the Commission decided it would consider the extension of EAS to the Ontario, Cambridge and Midvale exchanges separately after concluding its consideration of the U S WEST exchanges. The Commission determined it could not unilaterally grant the Petitions because the establishment of an EAS to Ontario, Oregon would cross a state boundary. An EAS route to Ontario would also require the concurrence of the Oregon Public Utilities Commission and ultimately the approval of the Federal Communications Commission. This Commission earlier denied a Petition for EAS to Ontario. See Case No. MTB-T-90-7, Order No. 23827.

On August 26, 1998, the Commission consolidated this case with USW-T-97-6 for public and technical hearings. Order No. 27680. Intervention was granted to Citizens Telephone Company and to the Idaho Telephone Association. Order Nos. 27725 and 27748. The technical hearing was held September 24, 1998, and testimony taken from Staff witness Wayne Hart, ITA witness Ray Hendershot, and U S WEST witness John Souba. Staff witness Hart testified regarding the estimated rate increase that would be necessary to accommodate EAS among the various exchanges. Hart did not testify regarding the costs for EAS with the Farmers’ exchanges.

On October 7, 1998, a hearing was held in Payette to take public testimony regarding the Petitions. Jay Garrett, Farmers’ general manager, testified that if the Commission granted the request, Farmers’ shareholders would want a similar EAS plan. Tr. pp. 251-255. Farmers is a telephone cooperative and, with a few exceptions, its operations are not regulated by the Commission. *Idaho Code* §§ 61-104 and 61-121. In addition, Farmers’ exchanges are surrounded by the U S WEST exchanges that requested EAS. Farmers did not indicate whether it would accept toll-free calling into its exchanges from the U S WEST exchanges.

Farmers now, by its Petition, requests the Commission modify Order No. 27774 to order U S WEST to implement two-way extended area service (EAS) between the U S WEST Treasure Valley EAS Region and all Farmers’ exchanges. The result of such an Order would be to increase rates for all U S WEST customers in U S WEST EAS regions.

**COMMISSION FINDINGS**

The Commission finds that it has jurisdiction to hear this Petition and decide its merits under *Idaho Code* §§ 61-301, 61-307 and 61-502. The Commission has clear jurisdiction to determine whether the rates charged by any regulated telephone corporation are just and reasonable and to fix those rates. *Idaho Code* §§ 61-301, 61-307 and 61-502. U S WEST is a regulated telephone corporation subject to the Commission jurisdiction. The Commission agrees with Farmers that it does not regulate a mutual nonprofit or cooperative’s decision to offer a particular service like EAS to its members or shareholders. However, where that decision compels a regulated carrier to increase rates or change services to the regulated carrier’s customers, the Commission does exercise authority. Indeed, it is the Commission’s duty to do so. Moreover, the Commission also has the authority to resolve inter-telephone corporation disputes regarding “any matter” when the dispute involves a mutual telephone corporation and a regulated telephone company like U S WEST. *Idaho Code* § 62-614(1).

The Commission finds that the action requested by Farmers may result in a rate increase for U S WEST customers in all U S WEST EAS regions. This is the first time that a non-profit mutual telephone company’s decision to offer a service to its members has instigated a rate increase for a regulated carrier’s customers.[[2]](#footnote-2) The Commission has both the jurisdiction and the obligation to review any rate increase to determine whether it is just and reasonable. The Commission further finds that to the extent that Farmers is requesting the Commission order U S WEST to provide EAS into Farmers’ exchanges, the Commission clearly has jurisdiction to determine whether EAS into Farmers’ exchanges meets the Commission’s criteria for ordering EAS.

Furthermore, while the Staff suggested that there was no evidence in the existing record to demonstrate a community-of-interest between the Farmers’ exchanges and the U S WEST region, the Commission disagrees. At the Payette public hearing held on October 7, 1998, a representative of the Weiser School District testified that the school district called Fruitland, as well as, the Treasure Valley EAS Region for various intramural activities. Tr. pp. 209-210. Fruitland Police Officer Steele testified

As a police officer, I see both my agency and the agencies we work with, which is Payette City and Plymouth City and Payette County, spend incredible amounts of money on long distance -- just a phenomenal amount. Because most of our calls are into the valley dealing with agencies and personnel in Boise, Nampa, Caldwell, Emmett. Like the gentleman from the Juvenile Probation department, we deal with a lot of juvenile problems, so we're calling the same places they are. Just an incredible amount of our budget is spent on long distance. That’s where I am speaking from as a police officer. . . . It is a fact that Weiser, New Plymouth, Payette, Fruitland, Emmett, Canyon County, Sand Hollow, all those areas are tied, I think, without question, to the Boise Valley. They're tied, both, as has been said, by medical needs, by business needs.

Tr. pp. 258-259.

 In addition, pursuant to Commission Rule 263, the Commission takes official notice of the fact that the Farmers’ exchanges are contiguous to or encompassed by the U S WEST exchanges seeking two-way EAS. IDAPA 31.01.01.263. Furthermore, Commission agrees with Farmers that normally the Commission assumes the calling data to be the same both ways. Therefore, it is not necessary to have Farmers’ calling data into U S WEST exchanges.[[3]](#footnote-3) The Commission finds that with the addition of U S WEST calling data into the Farmers’ exchanges and information relating to the rate increase impact, the Commission will have a sufficient record upon which to determine whether EAS into the Farmers’ exchanges is appropriate.

Finally, the Commission finds that the additional petitions from U S WEST customers filed at the oral argument requesting EAS into the Farmers’ exchanges are relevant to the Petition. The customers’ petitions demonstrate a continued interest in two-way calling between the U S WEST Treasure Valley EAS Region and the Farmers’ exchanges. Therefore, the Commission orders that these petitions be made part of the Commission record in this case.

The Commission finds that it will reserve its final judgment on whether to grant the ultimate relief requested by Farmers – ordering U S WEST to implement two-way EAS between the Treasure Valley EAS Region as established by Order No. 27774 and Farmers’ exchanges. However, the Commission is inclined to grant the ultimate relief and will issue a final order upon receipt of the stipulated cost information and calling data.

Finally, pursuant to Commission Rule 323(b), the Commission finds that Order No. 27774 is a final order as to all issues finally decided in that Order. IDAPA 31.01.01.323(b). The Commission further finds that it is not necessary to reconsider or modify that Order in order to grant the relief requested. The relief requested is not inconsistent with the issues actually determined in that Order. Therefore, the Commission declines to modify any issues finally determined in that Order.

## O R D E R

IT IS HEREBY ORDERED that the Petition is granted in part as described above.

IT IS FURTHER ORDERED that U S WEST and Staff file the appropriate cost information and necessary rate increase in the form of a Stipulation within two-weeks of this Order.

IT IS FURTHER ORDERED that U S WEST file the appropriate calling data demonstrating the U S WEST customer calls into the Farmers’ exchanges within two-weeks of this Order.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this

day of May 1999.

DENNIS S. HANSEN, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

PAUL KJELLANDER, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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1. Toll-free EAS is something of a misnomer because the costs associated with converting a former long-distance toll route to a toll-free EAS route are usually recovered from the affected customers by increasing their rates for local service. [↑](#footnote-ref-1)
2. In Case No. FIL-T-97-1, the Commission was not asked to increase customer rates to U S WEST customers as a result of Filer Mutual Telephone Company’s decision to implement EAS to U S WEST regions. *See* Order Nos. 27249 and 27314. [↑](#footnote-ref-2)
3. To the extent that a party believes that the data is insufficient, the burden is on that party to present that evidence. [↑](#footnote-ref-3)