(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF U S WEST COMMUNICATIONS, INC.’S FILING  OF TARIFF ADVICE NO. 96-03-SC | )  )  )  ) | CASE NO. USW-S-96-1  ORDER NO. 26336 |

On February 5, 1996, U S WEST Communications, Inc.  filed to restrict the availability of its Centrex Plus service in southern Idaho effective February 20, 1996, and its Centron and Centraflex System 2 services in northern Idaho to customers of record as of March 11, 1996.  Centron and Centrex services are central office based services that provide internal switching capabilities to business customers.  U S WEST proposes to restrict such services to existing customers, and to replace the services for new customers with a new product within six to nine months.

On February 14, 1996, the Commission received a formal complaint from MCI Telecommunications (MCI) concerning U S WEST’s filing.  In the complaint, MCI states that “[t]he attempted withdrawal prevents MCI from competing in the local exchange market since MCI has no present ability to practically or economically duplicate Centrex Plus service from any other source.”  MCI asserted it “is contemplating applying for authority to provide local exchange service in Idaho which could include the resale of U S WEST Centrex Plus Service.”  MCI contends the attempted withdrawal of Centrex Plus services with respect to new customers is discriminatory and contrary to state and federal law in, among others, sections 251 (b)(1), (c)(2), and (c)(4) of the Telecommunications Act of 1996.

On February 15,1996, the Commission also received a formal complaint from AT&T concerning U S WEST’s filing.  AT&T echoed the concerns raised by MCI and cited the same statutes referenced by MCI. The next day, the Commission received a complaint from Shared Communications Inc., expressing concerns about the withdrawal of these services and also citing the provisions of Section 251 of the Telecommunications Act of 1996.

All of the complaining companies state that they are interested in entering the market for local exchange service as resellers and that resale of central office based services is a primary product of local exchange service.  Absent this service or an effective substitute, the complainants contend their ability to compete in this market will be severely curtailed.

Idaho Code § 62-605(5) provides that the Commission has authority to review the availability of Title 62 telecommunication services if such services were offered as of July 1, 1988.  This section further provides that upon

complaint to the commission and after notice to the telephone corporation providing such [Title 62] service in hearing, the commission finds that the ... general availability or terms and conditions for such service as adverse to the public interest, the commission shall have the authority to negotiate or require changes on how such telecommunication services are provided.  In addition, if the commission finds that such corrective action is inadequate, it shall have the authority to require that such telecommunication services be subject to the requirements of Title 61, Idaho Code, rather than the provisions of this chapter.

Assuming U S WEST offered these services on July 1, 1988, the Commission is empowered to examine the availability of these Title 62 services.  However, if the services affected by U S WEST’s tariff filing are “message telecommunications services, WATS service or access to their local exchange network for the provision of such services,” then Idaho Code § 62-606 requires the filing of tariffs only for “information purposes,” implying the Commission is without jurisdiction to change the tariffs.

Idaho Code § 61-501 vests the Commission with authority to supervise and regulate public utilities within the state.  However, the PUC’s jurisdiction  over public utilities, including telecommunications utilities, is not unlimited.  We are mindful  of the Idaho Supreme Court’s following discussion at Washington Water Power Co. v. Kootenai Etc. , 99 Idaho 875, 879, 591 P.2d 122 (1979): “as a general rule, administrative authorities  are tribunals of limited jurisdictions and their jurisdiction is dependent entirely upon  the statutes reposing power in them and they cannot confer it upon themselves, although they may determine whether they have it.  If provisions of the statutes are not met and compliance is not had with the statutes, no jurisdiction exists.”

We believe fair questions are raised by U S WEST tariff filings and the complaints filed by the various companies regarding the Commission’s authority in these matters.  Accordingly, it is appropriate for the Commission to first consider and determine whether and to what extent it has jurisdiction to address the issues raised by the filings.

The tariff filings by U S WEST and the complaints filed by the companies raise an initial issue regarding the Commission’s jurisdiction.  We find that the status quo should be maintained while the Commission receives legal briefs regarding its jurisdiction to decide the issues presented by the filings.  We conclude therefore that U S WEST tariff filing in Tariff Advice No. 96-03-SC should be suspended pending a determination by this Commission of its appropriate jurisdiction.  We further find that the parties should provide written briefs to the Commission within 21 days addressing the jurisdictional issues.

O R D E R

IT IS HEREBY ORDERED that U S WEST tariff advice filed in this case is suspended pending a further order issued by the Commission.  U S WEST is directed to continue the services it proposes to suspend by Tariff Advice No. 96-03-SC for existing and new customers pending further order of this Commission.

IT IS FURTHER ORDERED that U S WEST, MCI, AT&T and Shared Communications are hereby directed to file written briefs within 21 days of the date of this Order regarding the Commission’s jurisdiction to review the issues presented by the parties.  Each party may file a responsive brief within seven days after the deadline for the initial briefs.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of  February 1996.

RALPH NELSON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

February 21, 1996