(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  NOTICE OF HEARING  ORDER NO.  26452 |

On February 5, 1996, U S WEST Communications (U S WEST) filed Tariff Advice No. 96-03-SC to restrict the availability of its Centrex Plus service in southern Idaho effective February 20, 1996.  Centrex Plus services are central office-based services that provide internal switching capabilities to business customers.  U S WEST proposed to restrict Centrex Plus to existing customers and to have a similar product for new customers within six to nine months.  The Commission subsequently received a formal complaint from MCI Telecommunications (MCI) and AT&T Communications, Inc. (AT&T) concerning U S WEST’s filing.  MCI and AT&T contend the attempted withdrawal of Centrex Plus with respect to new customers is discriminatory and contrary to both state and federal law.

On February 21, 1996, the Commission issued Order No. 26336 suspending the Tariff Advice filed by U S WEST.  The Commission, noting that “fair questions are raised by U S WEST’s tariff filings and the complaints filed by the various companies regarding the Commission’s authority in these matters,” decided to “first consider and determine whether and to what extent it has jurisdiction to address the issues raised by the filings.”  Order No. 26336 at pp. 2-3.  Accordingly, the Commission requested that the parties submit written briefs addressing the jurisdictional issues.  MCI and U S WEST  filed written briefs and requested oral argument, for which the Commission convened a hearing on April 9, 1996.  Following oral argument and a review of the briefs, we conclude the Commission has jurisdiction to conduct a hearing to determine whether Centrex Plus is subject to our review under Idaho Code § 62-605(5) and, if so, to hear the complaints of MCI and AT&T.

THE JURISDICTIONAL ISSUE

The threshold question regarding the Commission’s jurisdiction arose because Centrex Plus is not a fully regulated telecommunications service pursuant to Title 61, Idaho Code.  Instead, it is only partially regulated by the provisions of Title 62, Idaho Code.  The Commission’s traditional, ratemaking regulatory authority is found in Title 61.  The Idaho Telecommunications Act of 1988 added a new chapter to Title 62 and created a modified form of regulation for telephone corporations providing services other than basic local exchange service.  Under the 1988 Act, a local exchange company (LEC), such as U S WEST, is given a choice.  The LEC can continue to have all its telecommunication services regulated by the Commission under Title 61.  Alternatively, the company may elect to remove its nonbasic telecommunication services from traditional Title 61 regulation and have them subject to the provisions found in Title 62.  Basic local exchange service, defined as  residential and small business customers with five or fewer access lines, remains subject to Title 61 authority.  U S WEST removed its nonbasic local services from Title 61 regulation and placed them under Title 62 regulation in March 1989.  See Order No. 22416 in Case No. MTB-T-89-1.

MCI and AT&T contend that the Commission has jurisdiction under both state and federal law to hear their complaint regarding the tariff advice.  The Complainants point to Idaho Code  § 62-605(5) that gives the Commission authority to review the quality, general availability, and terms and conditions of Title 62 telecommunication services that were previously regulated under Title 61.  In particular, subsection (5) states:

For any telecommunication service which was subject, on the effective date [July 1, 1988] of this act, to title 61, Idaho Code, and which at the election of the telephone corporation became subject to this chapter, the commission shall have continuing authority to review the quality of such service, its general availability, and terms and conditions under which it is offered.  Upon complaint to the commission and after notice to the telephone corporation providing such service and hearing, the commission finds that the quality, general availability or terms and conditions for such service are adverse to the public interest, the commission shall have authority to negotiate or require changes in 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.

Idaho Code § 62-605(5).

The opening phrase of subsection (5) makes its provisions applicable only to telecommunication services available prior to July 1, 1988.  For the purposes of analyzing the jurisdictional question, the Complainants ask the Commission to accept as true their allegation that Centrex Plus was offered by U S WEST prior to July 1, 1988, although they concede the allegation “might be subject to later evidentiary dispute.”  Brief of MCI and AT&T on Jurisdiction, p. 3.

MCI and AT&T contend the precise scenario outlined in Idaho Code § 62-605(5) is presented in this case.  The Commission has received a complaint against a telephone corporation regarding a telecommunications service in existence and regulated under Title 61 prior to July 1, 1988.  After notice to the telephone corporation complained against, the Commission may conduct a hearing to determine whether the quality, general availability, or terms and conditions of the service are adverse to the public interest.

The Complainants also find jurisdiction for the Commission in the recently enacted federal Telecommunications Act of 1996.  Section 251(b) of the Act imposes on LECs a duty to not prohibit and not impose unreasonable or discriminatory conditions or limitations on the resale of its telecommunications services.  Moreover, section 251(c)(4) requires LECs to offer for resale telecommunications services it provides at retail to subscribers, and not to impose discriminatory limitations on the resale of such services.  AT&T and MCI contend U S WEST’s attempted with­drawal of Centrex Plus violates both provisions of the Act.

In response to MCI and AT&T’s jurisdictional arguments, U S WEST asserts that Idaho Code § 62-605(5) is inapplicable because Centrex Plus was not available prior to July 1, 1988.  U S WEST contends Centrex Plus is similar to, but is not the same, as a telecommunications service it provided prior to that date and that Centrex Plus is a package of services, not a “telecommunication service” as defined in Title 62.  U S WEST also argues that because it is not required by Title 62 to file price lists for Centrex Plus, the Commission has no authority to review the availability of the service.  Regarding the Commission’s suspension of its filing, U S WEST contends that Idaho Code § 62-605(5) authorizes the Commission to act only after a hearing, and does not specifically authorize the Commission’s suspension of a filing prior to conducting a hearing.  U S WEST also disputes Complainant’s conclusion that the 1996 Telecommunications Act confers jurisdiction on the Commission to determine allegations of unfair discrimination by an LEC.  U S WEST claims the Commission has only the jurisdiction given it by the state legislature.

DISCUSSION, FINDINGS AND CONCLUSION

Subsection (5) of Idaho Code § 62-605 unequivocally authorizes the Commission to review, among other things, the general availability of a Title 62 telecommunications service that was subject to Title 61 regulation prior to July 1, 1988.  U S WEST’s desire to withdraw Centrex Plus for new customers directly affects its “general availability.”  Thus, the Commission has jurisdiction to review the primary issue presented by the withdrawal of Centrex Plus and the subsequent complaints by MCI and AT&T, as expressly authorized by Idaho Code § 62-605(5) if it is a service provided prior to July 1, 1988.

Our jurisdiction under Idaho Code § 62-605(5) is limited to a review of services previously regulated under Title 61.  The parties disagree on whether Centrex Plus was a telecommunications service offered by U S WEST prior to July 1, 1988.  The Complainants contend it is the same service, albeit under a different name, and that it was provided on the 1988 Act’s effective date.  U S WEST concedes the service is similar to a previous service, but argues that it is, in fact, a different service and thus not subject to review under § 62-605(5).

The question whether Centrex Plus is a telecommunications service previously subject to Title 61 presents a factual issue that cannot be resolved on the basis of the existing record.  The exercise of the Commission’s jurisdiction under Idaho Code § 62-605(5) includes review of factual issues raised by the parties and is necessary to decide our jurisdiction to review the complaints.

Regarding U S WEST’s contention that the Commission lacks specific authority to suspend U S WEST’s filing pending a hearing, it is well established that the Commission may reasonably exercise its authority to effectuate the proper use of its express jurisdiction.  Although the Commission’s jurisdiction is limited to that granted by the Legislature, the Commission is allowed “all power necessary to effectuate its purpose.”  United States v. Utah Power & Light Company, 98 Idaho 665, 667, 570 P.2d 1353 (1977) (“Every power expressly granted, or fairly to be implied from the language used, where necessary to enable the commission to exercise the powers expressly granted should be afforded.”), quoting AmJur 2d, Public Utilities, § 232 (1972).  Our suspension of U S WEST’s withdrawal of Centrex Plus is intended to maintain the status quo at the time the Company sought to withdraw the service.  Maintaining the status quo pending the hearing authorized by Idaho Code § 62-605(5) is necessary to effectuate the purpose of holding the hearing.  It is, accordingly, authority implied from the express jurisdiction accorded the Commission in § 62-605(5).

Nor are we persuaded by U S WEST’s argument that the Commission has no authority to review Centrex Plus because Idaho Code § 62-606 does not require tariffs or price lists for the service.  Section 62-605(5) authorizes the Commission’s review of any Title 62 service previously regulated under Title 61, not just services for which tariffs or price lists are required.  Likewise, nothing in § 62-606 indicates that it is intended as a limitation on the Commission’s jurisdiction under § 62-605(5).  In fact, Idaho Code § 62-605(4) states that “nothing contained in the provisions of this chapter shall be construed to prevent any telephone corporation from maintaining on file with the Commission a tariff or price list describing the details of its services.”  Clearly a telephone corporation may file tariffs and price lists in addition to those mandated by § 62-606.  Whether or not it chooses to make voluntary filings, the Commission is authorized by Idaho Code § 62-605(5) to review any Title 62 service that was previously regulated under Title 61.

For the reasons discussed in this Order, we find that the Commission has jurisdiction pursuant to Idaho Code § 62-605(5) to conduct a hearing to determine whether Centrex Plus is a telecommunications service previously subject to Title 61 and, if so, to hear MCI’s and AT&T’s complaints.   At the hearing, the parties should present evidence regarding the availability of Centrex Plus prior to July 1, 1988.  Because we find jurisdiction under § 62-605(5), we need not address the claims of Commission jurisdiction pursuant to the 1996 Telecommunications Act.

In order to proceed to a hearing as soon as possible, we adopt the following schedule:

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| Filing of Direct Testimony | July 12, 1996 |
| Filing of Rebuttal Testimony | August 5, 1996 |
| Filing of Surrebuttal Testimony | August 19, 1996 |
| Hearing Dates | August 27-28, 1996 |

O R D E R

IT IS HEREBY ORDERED that the Commission will hold a hearing pursuant to Idaho Code § 62-605(5) on the complaints of MCI and AT&T.  The hearing will be processed according to the schedule previously identified in this Order.

IT IS FURTHER ORDERED that the Commission’s previous Order No. 26336 suspending Tariff Advice No. 96-03-SC shall remain in effect pending further Order of this Commission.

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that a public hearing in this matter has been scheduled for TUESDAY, AUGUST 27, 1996, AT 9:30 A.M. IN THE COMMISSION HEARING ROOM, 472 WEST WASHINGTON STREET, BOISE, IDAHO, (208) 334-0300.

YOU ARE FURTHER NOTIFIED that all hearings and prehearing conferences in this matter will be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act.  Persons needing the help of a sign language interpreter or other assistance of the kind that the Commission is obligated to provide under the Americans with Disabilities Act in order to participate in or to understand the testimony and argument at a public hearing may ask the Commission to provide a sign language interpreter or other assistance at the hearing.  The request for assistance must be received at least five (5) working days before the hearing by contacting the Commission Secretary at:

IDAHO PUBLIC UTILITIES COMMISSION

PO BOX 83720

BOISE, IDAHO  83720-0074

(208) 334-0338  (TELEPHONE)

(208) 334-3151  (TEXT TELEPHONE)

(208) 334-3762  (FAX)

YOU ARE FURTHER NOTIFIED that all proceedings in this matter will be conducted pursuant to the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq.

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

June 7, 1996