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

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| IN THE MATTER OF WESTERN WIRELESS CORPORATION PETITION FOR ARBITRA­TION PURSUANT TO SECTION 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996 OF THE RATES, TERMS, AND CONDITIONS OF INTERCONNECTION WITH U S WEST.   | ))))))) | CASE NO. USW-T-96-11WST-T-96-1ORDER NO.  26689 |

On September 6, 1996, Western Wireless Corporation (Western) filed a Petition for Arbitration with the Commission pursuant to Section 252 of the federal Telecommunications Act of 1996 (Act).   Section 252 provides procedures for a telecommuncations carrier to obtain terms for interconnection with an incumbent local exchange carrier (LEC) through negotiation, mediation or arbitration. In this case, Western is a commercial mobile radio service (CMRS) provider and asks the Commissioin to arbitrate terms for interconnection and service with U S WEST Communications, Inc. (U S WEST), the incumbent LEC.

Western identified three issues for resolution by arbitration, the first of which is  rates for interconnection and transport and termination of traffic between Western and U S WEST.  Regarding the issue of rates, Western claimed that proxy rates established by the Federal Communications Commission (FCC) in an order implementing local competition provisions of the Act, issued August 8, 1996, should apply in the absence of a cost study to establish rates. The FCC Order recommends interconnection and service rates based on Total Element Long Run Incremental Cost (TELRIC) methodologies and, in the absence of a TELRIC analysis, developed proxy rates for use by state commissions. See FCC First Report and Order, CC Docket No. 96-98 and 95-185, para. 674-862.  Western stated in its Petition that “under the FCC’s rules implementing the Telecom Act, the default proxy rates apply, absent the establishment of rates for interconnection and the transport and termination of traffic based upon a forward looking economic cost study using TELRIC pricing methodology.”  Petition p. 6.

On October 1, 1996, U S WEST filed a response to Western’s Petition and also filed a Motion to Dismiss the first issue identified by Western.  U S WEST argued that the FCC’s default proxy rates apply only to entrant land line LECs and not CMRS providers.  Noting that Western and  U S WEST currently have a contract, U S WEST argued that CMRS providers should continue to pay the rates specified in contracts until the Commission establishes new TELRIC based rates.  The Commission heard oral argument on U S WEST’s Motion on October 22, 1996.

Section 252(d) of the Act establishes standards for interconnection and network element charges.  Such charges must be based on the cost of providing the interconnect or network element, must be nondiscriminatory, and may include a reasonable profit.  In this and other arbitration proceedings, the Commission will look to evidence to establish these pricing standards, and the parties to the arbitration proceeding must present evidence on which the Commission can base its determination.  Although its Motion to Dismiss the first issue is stated broadly, U S WEST asserted during the oral argument that its Motion to Dismiss “was directed solely to the issue of whether or not the proxy rates would apply pending a determination of the rates in this arbitration.”  Tr. p. 7.

 The Commission will not arbitrate the rate issue until the hearing in December.  The Commission has no authority, or responsibility under the Act, to make a determination regarding rates prior to the presentation of evidence during the arbitration hearing.  Nor does the Act by its terms require that rates in effect pursuant to an existing contract be set aside prior to a determination of cost-based rates in an arbitration proceeding.  Accordingly, the Commission will not attempt to alter the rates established in the existing contract prior to its arbitration decision.  To the extent that U S WEST’s Motion seeks to prevent replacement of the contract rates prior to an arbitrated decision, the Motion is granted.

The parties also submitted a proposed schedule for proceeding with this arbitration.  The schedule agreed to is the following:

November 12, 1996Direct testimony filed by both parties

November 25, 1996Rebuttal testimony filed by both parties

December 2, 1996Arbitration hearing

December 13, 1996Filing of legal briefs

The Commission adopts this schedule for the processing of this arbitration.

Based on the foregoing, IT IS HEREBY ORDERED that U S WEST’s Motion to Dismiss, only to the extent it asks that the contract rates remain in effect pending the arbitration decision, is granted.  The Commission will establish cost-based rates from the evidence presented following the conclusion of the arbitration hearing.

IT IS FURTHER ORDERED that this arbitration proceeding will be processed pursuant to the schedule proposed by the parties.

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

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**TEXT BOXES**

Office of the Secretary

Service Date

November 18, 1996