DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

TONYA CLARK

DON HOWELL

STEPHANIE MILLER

DAVE SCHUNKE

JOE CUSICK

GARY RICHARDSON

WORKING FILE

FROM:WELDON STUTZMAN

DATE:OCTOBER 18, 1996

RE:COMPLAINT FILED BY ROCKY MOUNTAIN COMMUNICATIONS, INC.  AGAINSTU S WEST; MOTION FOR ORDER TO SHOW CAUSE; CASE NO. USW-T-96-12

On September 24, 1996, Rocky Mountain Communications, Inc.  (Rocky Mountain) filed a Complaint against U S WEST Communications, Inc. and U S WEST Enterprise America, Inc.  (U S WEST) alleging the “quality, general availability, terms and conditions of Title 62 telecommunications services provided by [U S WEST] to [Rocky Mountain] have been unreasonable, inadequate, discriminatory, arbitrary and adverse to the public interest.”  The Commission Secretary issued a summons directing U S WEST to respond to the Complaint within 21 days pursuant to the Commission’s Rule of Procedure 57.  The time for filing an Answer ended October 17, 1996.

Rocky Mountain also filed a Motion for Order to Show Cause requesting that the Commission either issue an order directing U S WEST to fill all held orders within 10 days with respect to Rocky Mountain’s request for telephone access lines, T-1 facilities and ISDN single-line service, or schedule a hearing for U S WEST to show cause why such an order should not be issued.  Pursuant to the Commission’s Rule of Procedure 57, U S WEST had no more than 14 days to file a Response to the Motion.  U S WEST did not file a separate Response to the Motion for an Order to Show Cause.

Staff Analysis and Recommendation

The Commission’s procedural rules do not provide for the filing of motions for an Order to Show Cause by a complainant.  Rocky Mountain’s Motion states that it is filed pursuant to a state court rule, Idaho Rule of Civil Procedure 6(c)(2).  Nor do the statutes providing the Commission’s jurisdiction and authority address motions for orders to show cause filed by aggrieved utility customers.  Sections of Idaho Code Title 61, Chapter 6 provide for the Commission’s review of complaints against utilities.  Section 61-616 requires a hearing be set on a complaint on no less than 20 days notice.

Rocky Mountain contends it is entitled to immediate relief.  The affidavit of Michael Lukes filed with Rocky Mountain’s Motion lists the damage Rocky Mountain claims was caused by U S WEST’s failure to provide additional lines.  According to Mr. Lukes affidavit, “RMC has recently lost in excess of one hundred fifty Internet customers because of our inability to acquire more telephone lines from U S WEST and the busy signals experienced by our customers as a result of this bottleneck.”  The affidavits of Michael A. Lukes and Cameron Christian are attached to this memorandum.

Given the lack of a Commission rule or statute directly providing for issuance of an Order to Show Cause on a motion by a utility customer, the Commission could schedule a hearing as soon as possible to hear arguments on Rocky Mountain’s Motion.  In particular, the Commission could hear argument on whether it has jurisdiction to issue an Order to Show Cause when a Complaint is filed against a utility and, if so, what standards would control the determination whether to issue the Order.

A hearing for oral argument could be scheduled for Friday, October 25, 1996 or Tuesday, October 29, 1996.

Commission Decision

Should the Commission schedule an oral argument to consider whether it has jurisdiction to issue the Order to Show Cause on Rocky Mountain’s Motion?

Weldon Stutzman

vld/M:USW-T-96-12.ws