DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

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CAROLEE HALL

BEVERLY BARKER

DAVID SCOTT

TONYA CLARK

WORKING FILE

FROM:BIRDELLE BROWN

DATE:AUGUST 29, 1997

RE:U S WEST ADVICES 97-12-N, 97-13-N AND 97-14-N TO REVISE ITS TERMINATION LIABILITY ASSESSMENT FOR CONTRACTS, PRIVATE LINE TRANSPORT SERVICES AND ADVANCED COMMUNICATIONS IN NORTHERN IDAHO; EFFECTIVE SEPTEMBER 7, 1997.

U S WEST has submitted these tariff advices to revise its liability assessments on contracts, private line transport and advanced services that are discontinued prior to the normal contract expiration date.  U S WEST proposes to eliminate the language that specifies a 15% assessment factor.  Where currently U S WEST charges a termination charge of  “100% of the Minimum Service Period . . . and 15% of the Minimum Billing Level for the remaining term of the agreement,” the Company proposes to charge “10% of the rates for the Minimum Service Period . . . plus the Minimum Billing Level multiplied by the Termination Liability percentage specified in the service agreements.”  This revision will not affect existing contracts.

DISCUSSION

According to U S WEST, the Company only has two existing contracts in northern Idaho, indicating that the future application this tariff revision will only affect a very small number of customers.  U S WEST says that history has proven that the 15% assessment is not a sufficient deterrent to customers who terminate contracts before their expiration date.

At first blush, it seems that this tariff revision will only affect large companies.  However, the revision will also apply to private line subscription and various data services that might be used by individuals and small business customers.  Staff has the following concerns:

1) The Termination Liability Assessment is a penalty charge and is not related to any costs.  U S WEST’s costs for providing these services are fully recovered by the one-time and recurring charges in the tariff.  Staff reluctantly recommended approval of this Assessment when U S WEST first proposed it, but felt, and still feels that penalty charges are not an appropriate function of a regulated entity.

2)Staff believes the possibility exists that contract cancellations in the face of a 15% penalty may be a result of performance and availability conditions.  U S WEST was not able to provide the reasons for cancellations.  If the cancellations are a result of inadequate products or services, then increasing the penalty won’t help.

3)U S WEST advises that in all of the northern LATA there are presently only two customers with contracts, although the contract option has been available for several years.  U S WEST does not expect many, if any new contracts which will be subject to this increased penalty in northern Idaho.  Staff feels that “if it isn’t broke, don’t fix it.”

4)U S WEST advises that the penalty is necessary in a competitive environment to keep customers.  Staff does not feel there is competition for these services in northern Idaho.

5)Large penalties may be prohibitive to small users who want or need U S WEST private line and data services and do not have any alternative providers.

6)U S WEST indicates that the primary reason for proposing this tariff is to maintain consistency in its tariff over its 14-state area.  Staff does not believe this is a valid reason for accepting a tariff that may otherwise be harmful.

Staff advised U S WEST of its concerns and requested that U S WEST provide in writing information to justify this tariff and/or counter Staff’s objections.  U S WEST’s letter is attached.

U S WEST has enacted a similar tariff in southern Idaho.

DECISION

Staff does not recommend approval.  Does the Commission agree?

Birdelle Brown

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