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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF U S WEST COMMUNI-CATIONS, INC.’S TARIFF ADVICE FILING NOS.  97-12-N, 97-13-N AND 97-14-N REVISING ITS TERMINATION LIABILITY ASSESSMENT FOR CONTRACTS, PRIVATE LINE TRANS­PORT SERVICES AND ADVANCED COMMU­NICATIONS IN NORTHERN IDAHO. | ))))))) | CASE NO. USW-T-97-18COMMENTS OF THECOMMISSION STAFF |

COMES  NOW  the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Brad Purdy, Deputy Attorney General, and in response to the Notice of Modified Procedure issued on October 21, 1997, submits the following comments.

On August 7, 1997, U S WEST submitted Tariff Advice Nos. 97-12-N, 97-13-N

and 97-14-N to revise its liability assessments on contracts, private line transport and advanced services that are discontinued prior to the normal contract expiration date.  These tariffs were suspended on September 9, 1997.  On October 2, 1997, the Commission issued a Notice of Modified Procedure, requesting comments within 21 days.  On October 3, 1997, U S WEST submitted Tariff Advice No. 97-11-S which requested modification of termination liability assessments for Centrex 21 in U S WEST South.  Staff filed a Motion to Consolidate on

October 6, 1997 to include this latest tariff into this case because the tariff seeks to implement essentially the same changes as were requested in the other tariff advices in this case.  The Motion was granted by Order No. 27167 on October 17, 1997.  Finally, a Notice of Modified Procedure was issued on October 21, 1997 to extend the deadline for comments to

November 10, 1997.

DISCUSSION

In its tariff advice 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.

According to U S WEST, the Company only has two existing contracts in northern Idaho, indicating that the future application of 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 but was unable to provide Staff any data showing loss of business or costs related to the termination of a contract.

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.  When U S WEST submitted tariffs for services, it also provided evidence that the costs, including fixed costs, for providing these services are fully recovered by the one-time and recurring charges in the tariff.  While contract rates are less than monthly rates for the services, U S WEST cost support data routinely shows the costs of the services to be recovered by the reduced rates.  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.  As a rule, the services that U S WEST provides under long term contracts are services that are costly to begin with.  Small users can benefit from contract terms, but if the services do not provide the benefits they expect, small users need to be able to get out of onerous contracts.  Some small business owners have already indicated to me that they find the current termination penalties to be too much to risk.

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 can see the potential for stringent early termination policies where a Company faces competition waiting to snap the Company’s services away from it.  However, in an area like northern Idaho, where there is no competition, an early termination penalty just hurts the small customer who may have selected services that do not satisfy his needs as he had anticipated.  If, as U S WEST asserts, there are only two customers, and their contracts will not be modified by this tariff revision, then Staff does not believe it is in the public interest to increase penalties.

RECOMMENDATION

Staff recommends that these tariff revisions not be approved until such time as there are competitive providers who can provide the same services.

Respectfully submitted this                  day of November 1997.

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Brad Purdy

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