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

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| ROCKY MOUNTAIN COMMUNICATIONS, INC.  Complainant,  vs.   U S WEST COMMUNICATIONS, INC.  Respondent. | )  )  )  )  )  )  )  )  )  )  ) | CASE NO. USW-T-98-4  AMENDED NOTICE OF SCHEDULING  NOTICE OF VACATED HEARING  ORDER NO.  27810 |

In April 1998, Rocky Mountain Communications (Rocky Mountain or RMC) filed a formal complaint with the Commission against U S WEST Communications.  In particular, Rocky Mountain claimed that U S WEST had billed it for services at rates exceeding the rates on file in an amount exceeding $108,000.  After unsuccessful attempts at informally resolving the complaint, the Commission issued a summons on October 21, 1998.  On November 4, 1998, the Commission issued Order No. 27792 adopting a procedural schedule to process this case.  On November 16, 1998, the parties (Rocky Mountain and U S WEST) advised Staff counsel that the schedule contained in Order No. 27792 should be amended.  The parties further suggested that the hearing originally scheduled for December 17th be canceled and a new hearing be scheduled at a later date.  In this Order, the Commission vacates the hearing date and issues an amended schedule.

BACKGROUND

A brief review of the procedural history of this case is helpful.  Rocky Mountain’s filing of the April 1998 complaint was the culmination of ongoing disputes between the two companies.

Rocky Mountain operates an Internet Access Service in Boise.

1.  The Initial Complaint.  In its activities as an Internet access provider, Rocky Mountain purchased twelve T-1 lines from U S WEST for a total of 288 access lines.  Complaint at ¶5.  The complaint involves a billing dispute concerning five of the twelve T-1 lines and “one hunt group of 71 analog lines that were previously used by [RMC] but phased-out in July 1997 [when RMC] converted from analog to digital T-1 service.”  Id.  Rocky Mountain attached a detailed billing analysis to its complaint allegedly portraying that U S WEST had overcharged RMC in excess of $180,000.  Id. at ¶6.  Despite bringing this complaint to U S WEST’s attention, Rocky Mountain complained that U S WEST “has been unwilling or unable to correct the billing errors....”  Id.  Rocky Mountain insisted that it has expended  significant time and expense in detailing the billing dispute and providing this information to U S WEST.  RMC requested that U S WEST reimburse RMC for these costs and expenses.  Id. at ¶7.  Rocky Mountain also requested that the Commission issue an Order directing U S WEST to immediately correct its billing records to remove the overcharges and to cease such erroneous overbillings in the future.  If U S WEST fails to correct the billing dispute within 30 days, then RMC requests that the Commission impose sactions or penalties against [U S WEST].”

Shortly after Rocky Mountain filed its April complaint, the Commission decided to handle the case on an informal basis.  The Commission directed the Staff to assist in the mediation of the dispute and to report on the progress made in resolving the issues identified in the complaint.  On May 22, 1998, Staff reported that significant progress had been made and was hopeful that the complaint could be resolved.

On August 3, 1998, the President of Rocky Mountain advised the Staff that U S WEST had not credited the Company’s bill with some of the disputed payments discussed during mediation and allegedly resolved in the Company’s favor.  He further alleged that the U S WEST representative who had been assigned to assist in the resolution of the billing dispute had recently been transferred and no one had been assigned to take his place.  In response, U S WEST renewed its offer to informally resolve the issues.  U S WEST subsequently advised the Staff that it appointed a new representative to deal with the dispute and had identified billing credits owed to Rocky Mountain.

On October 14, 1998, Rocky Mountain’s President again contacted the Staff and indicated that the billing credits proportedly promised the Company in May and again in August had not been received.  In addition, the Company’s latest bill did not include any of the additional credits previously promised.  Given these developments and the apparent inability of the parties to resolve the dispute, the Commission issued a summons to U S WEST on October 21, 1998, directing U S WEST to formally answer the complaint.

2.  Amended Complaint.  On October 30, 1998, Rocky Mountain filed an amended complaint.  In its amended complaint Rocky Mountain alleged that despite months of discussions between the parties, U S WEST “has been unwilling or unable to correct the billing errors, continues to assert that [RMC] is in arrears on payment to be made to [U S WEST], and continues to notify [RMC that its] services or portions thereof will be disconnected for failure to pay billed amounts.”  Amended Complaint at ¶6.  Rocky Mountain renewed its assertion that it has expended significant time and expense recalculating and correcting the billing errors of U S WEST including engaging outside experts and attorneys.  Consequently, RMC requested that the Commission order U S WEST to reimburse Rocky Mountain for its expenses in resolving the billing dispute.  Id. at ¶7.

Rocky Mountain also requested that U S WEST immediately correct its billing records and credit RMC for the overcharges.  If U S WEST fails to make the correction within 30 days, RMC recommended that U S WEST be subject to a civil penalty pursuant to Idaho Code § 62-620 for failure to correct its billing errors.

3.  Answer.  In its timely answer filed November 4, 1998, U S WEST acknowledged that it has “had months of discussions” with Rocky Mountain relating to its billing concerns but maintained that it “has corrected all billing errors which have been brought to its attention and remains willing to correct any other errors which are pointed out by our RMC in the future.”  U S WEST Answer at ¶4.  U S WEST further answered that the Commission does not have the jurisdiction to award RMC its costs and expenses in resolving the billing dispute.  Id. at p. 3.  Finally, U S WEST insisted there is “no actual dispute or controversy...and [U S WEST] has actually corrected all over-billings which have been brought to its attention.”  Id.

4.  Case Schedule.  On October 30, 1998, RMC filed a motion to adopt a procedural schedule in this matter.  In particular, the parties stipulated to holding a settlement conference on November 18, adopting dates for prefiled testimony, and convening an evidentiary hearing on December 17, 1998.  In Order No. 27792 issued November 4, 1998, the Commission adopted the stipulated procedural  schedule.

In a letter dated November 16, 1998, Rocky Mountain requested that the Commission “extend” the schedule established in Order No. 27792.  The letter did not reveal the reasons for the extension but stated that the parties have agreed to the following schedule changes.

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| January 20, 1999  February 4, 1999  February 25, 1999 | Settlement Conference  RMC prefiles direct testimony and exhibits  U S WEST prefiles its direct testimony and exhibits |

Rather than schedule a hearing date, the parties suggest that the Commission schedule a hearing at its convenience “anytime during the first three weeks of March” 1999.

DISCUSSION

We turn first to the case schedule.  Given the request of the parties, we vacate the schedule and the December 17th hearing established in Order No. 27792.  We further adopt the complaint schedule set out above.

We again encourage the parties to resolve this billing dispute.  Both parties have expressed a willingness to resolve the dispute but seem unable to complete the task.  At this time, the Commission will not schedule the evidentiary hearing in the hopes that the parties are able to resolve the dispute.

The Commission further finds that until the parties settle this matter or the Commission resolves this dispute, that U S WEST shall be prohibited from terminating service to Rocky Mountain during the pendency of this billing dispute.

O R D E R

IT IS HEREBY ORDERED that the previously issued schedule and December 17th hearing contained in Order No. 27792 are vacated.  The parties shall conform to the schedule contained in the body of this Order.

IT IS FURTHER ORDERED that U S WEST is prohibited from disconnecting or terminating services to Rocky Mountain that are the subject of this billing dispute.  This prohibition shall continue until such time as the parties have settled the dispute or the Commission has rendered its decision in this matter.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of November 1998.

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

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MARSHA H. SMITH, 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

December 1, 1998