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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OFTHE JOINT APPLICATION OFU S WEST COMMUNICATIONS, INC. AND TOPP COMM, INC. FOR APPROVAL OF A RESALE AGREEMENT PURSUANT TO 47 U.S.C. § 252(e). | )  )  )  )  )  ) | CASE NO. USW-T-99-1  COMMENTS OF THE  COMMISSION STAFF |

COMES  NOW  the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Cheri C. Copsey, Deputy Attorney General, in response to Order No. 27940, issued March 4, 1999, submits the following comments.

BACKGROUND

On January 5, 1999, U S WEST Communications, Inc. and Topp Comm, Inc. filed a Joint Application for approval of a negotiated resale agreement between U S WEST and Topp Comm for the purposes of Topp Comm reselling U S WEST services in Idaho.  The Joint Application states that the agreement was reached through voluntary negotiations without resort to mediation or arbitration and is submitted for approval pursuant to Section 252(e) of the Telecommunications Act of 1996.  The Joint Application further states that the agreement will allow Topp Comm to resell U S WEST basic exchange telecommunications services, features and intraLATA toll originating from U S WEST exchanges to end user customers.  The resale agreement provides for compensation and other terms and conditions.

Under the terms of the Telecommunications Act of 1996, resale agreements must be submitted to the Commission for approval.  47 U.S.C. § 252 (e)(1).  The Commission may reject an agreement adopted by negotiation only if it finds that the agreement discriminates against a telecommunication carrier not a party to the agreement or implementation of the agreement is not consistent with the public interest, convenience and necessity.  47 U.S.C. § 252 (e)(2)(A).  If the Commission does not act to approve or reject the agreement within 90 days after its submission, the agreement is deemed approved.  47 U.S.C. § 252 (e)(4).  The Commission’s decision is not reviewable by the state courts.  Id.

U S WEST and Topp Comm jointly assert that the Agreement does not discriminate against other telecommunication carriers and that it is consistent with the public interest, convenience and necessity.

The Commission reviewed the filings of record in Case No. USW-T-99-1 and determined that the public interest may not require a hearing to consider the issues presented and that the issues raised by the Application may be processed under Modified Procedure, i.e., by written submission rather than by hearing.

STAFF ANALYSIS:

Staff reviewed the language of this Agreement and found the terms and conditions are essentially identical to those contained in other interconnection and resale agreements approved by the Commission.  Staff found that the resale rates included in this Agreement are identical to those reached through the arbitration between U S WEST and AT&T.  Those same arbitrated resale rates were included in other Commission approved interconnection agreements between U S WEST and AT&T, U S WEST and Sprint, and U S WEST and ATGI.

Staff, therefore, concludes that the terms or conditions in this Agreement are not discriminatory.  Staff concurs with the U S WEST’s and Topp’s claim that the Agreement is consistent with the pro-competitive policies of the Commission, the Idaho Legislature and the Telecommunications Act of 1996 and finds that the Agreement is consistent with the public interest.

STAFF RECOMMENDATION:

Staff recommends the Commission approve this interconnection agreement without any changes.

DATED  at Boise, Idaho, this 25th day of March 1999.

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Cheri C. Copsey

Deputy Attorney General

Technical Staff:  Wayne Hart

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