

Based on the record in this case, however, the Commission will not yet implement a surcharge to fund the new USF, nor specifically authorize further proceedings to implement the new USF.

PROCEDURAL HISTORY

This case was initiated in December 1997 when the Commission opened a docket to "select and/or develop an appropriate cost model for intrastate high cost support." Order No. 27269, p. 2, Case No. GNR-T-97-22. The Commission initiated Case No. GNR-T-97-22 "to gather information to make an informed choice or to develop a forward-looking economic cost model" for the primary purpose of "determin[ing] the cost of providing support for universal service in high cost areas in the State of Idaho." Order No. 27269, p. 3.

The Commission convened an initial hearing in the cost model case on March 9-10, 1998. See Order No. 27310. At the hearing, the Commission received evidence regarding cost models to determine forward-looking cost of providing local telephone service. Evidence regarding the Hatfield Model or HAI Model, was presented by AT&T Telecommunications of the Mountain States, Inc. (AT&T). U S WEST Communications, now Qwest Corporation, presented evidence regarding its Benchmark Cost Proxy Model, and Staff sponsored a model called Telcom Economic Cost Model.

The 1998 Idaho Legislature enacted *Idaho Code* § 62-610A-F, authorizing the Commission to establish a "neutral funding mechanism which will operate in coordination with federal universal service support mechanisms" as a new intrastate USF. In response to the legislation, the Commission opened Case No. GNR-T-00-2 on January 18, 2000 with Order No. 28261 and also consolidated it with Case No. GNR-T-97-22, the cost model case.

As the case progressed, the Commission and the parties monitored activities of the Federal Communications Commission (FCC), which also was investigating cost models to predict costs of providing universal service in high cost areas. In an order issued November 24, 1999, the Commission, noting that *Idaho Code* § 62-610B requires the new USF mechanism to operate in conjunction with federal universal support mechanisms, notified the parties that it sought comments "on adoption of the same [FCC] model for calculating high cost support for non-rural LECs in Idaho." Order No. 28223, p. 2, footnote omitted. The Commission directed the parties to investigate the feasibility of using the FCC approved cost model in Idaho rather than any of the separately advocated models. The Commission subsequently notified the parties that "the Commission proposes to use both the FCC model and the FCC input values as a starting place for any discussion and directs the parties to make recommendations as to what input values may be more appropriate for Idaho purposes." Order No. 28260, p. 3. A hearing to assess the FCC model was scheduled to convene August 1-4, 2000.

Before the August hearing convened, Verizon Northwest (formerly GTE Northwest), on August 2, 2000 filed a Motion to Suspend Docket. Verizon's Motion was based on legal proceedings challenging the FCC's use of its model to determine forward-looking costs in high cost areas. Following an oral argument on Verizon's Motion, the Commission suspended the August hearing date and set a prehearing conference for August 22, 2000. Order No. 28474. The parties were directed to "attend the prehearing conference and come prepared to discuss the implications of GTE/Verizon's appeal to the Supreme Court on the use of the FCC Synthesis Model to establish an Idaho high cost fund." Order No. 28474, p.1.

Following the presentation of oral arguments at the August 22, 2000 prehearing conference, it became clear to the Commission that, although the pending litigation might not affect "the legal ability of the Commission to adopt the cost model, using the FCC cost model undoubtedly creates significant practical problems for the Commission and the parties attempting to use it." Order No. 28503, p. 2. The Commission "determined that it may be appropriate to consider alternatives to adopting any of the forward-looking cost models advocated by the parties or adopted by the FCC," and directed the parties to look "at alternatives as a way to simplify this process and achieve the legislature's directive sooner rather than later." Order No. 28503, p. 2. The Commission directed focus away from the cost models in favor of "approaches that are simple, accessible and affordable and satisfy the statutory requirements for a methodology that is specific, predictable and sufficient in conjunction with the federal universal service support and provides for calculating universal service costs using a forward-looking cost methodology." Order No. 28503, p. 2. The Commission subsequently set another prehearing conference for September 18, 2000, in order to "establish a schedule for proceeding to hearing in this case and to discuss alternatives of adoption of the FCC cost model, or any of the currently advocated cost models, as a means to complying with the legislature's directive to establish a high cost

universal service fund." Order No. 28503, p. 3. A hearing convened March 20-21, 2001, to consider alternatives to adoption of a cost model to develop the new Idaho USF. The parties subsequently requested an opportunity to file post-hearing briefs on May 15, 2001, and reply briefs on May 31, 2001.

EVIDENCE PRESENTED AT THE MARCH HEARING

At the hearing in March, the Commission Staff presented evidence to support a Stipulation it filed on December 12, 2000, entitled Stipulation for the Non-Rural High Cost Fund (Staff Stipulation). The Staff Stipulation as filed was signed by Qwest, Idaho Telephone Association, Citizens Telecommunications of Idaho, Inc., Century Telephone of Idaho and TDS Telecom. After direct testimony was filed by the parties on December 15, 2000, Qwest discovered a discrepancy in its understanding of the Staff Stipulation, and subsequently filed on January 8, 2001, a Notice of Withdrawal from the Stipulation. Tr. p. 1508. Qwest stated it withdrew because "it realized that it might not have reached a meeting of minds with Staff regarding a critical issue: specific IHCF per line support for wire centers served by Qwest and Verizon." Qwest Motion, p. 2.

The Staff Stipulation purports to provide a basic structure to establish the new USF. The Stipulation provides for the use of the FCC Synthesis Model only to identify and rank the relative high cost areas in the state into five groups. Attachment A to the Stipulation identifies the high cost wire centers and illustrates the support per line required to achieve a fund size for Qwest and Verizon of approximately \$6 million. Under the Staff Stipulation, several high cost wire centers are divided into two zones. Zone 1, the more densely populated area would not be eligible for support while Zone 2, the lower densely populated area would be eligible for support. USF support would be available only after an eligible telecommunications carrier filed a formal application to receive USF funds and proposed a dollar for dollar reduction in its Title 61 rates to match the level of support it requests. The Staff Stipulation contains a recommendation for an initial USF fund size of \$2 million to \$6 million.

In its testimony and other evidence, Qwest supported much of the Staff Stipulation despite having withdrawn as a signatory party. Qwest's witness called the Stipulation's simplified approach to establishing a fund "the best way to benefit rural Idahoans at this time." Tr. p. 1418. Qwest also testified that the Stipulation "meets the guidelines of establishing 'a competitive and technologically neutral mechanism' as set out in *Idaho Code* § 62-610A." Tr. p. 1507. Qwest witness also testified that the Stipulation "clearly identifies geographic support areas and, by using the FCC's Synthesis Model (SM) to identify the high cost areas, is consistent with the legislative intent to calculate support using 'a forward-looking methodology' *Idaho Code* § 61-610F(2)." Tr. p. 1507.

Having withdrawn from the Staff Stipulation, Qwest also presented an alternative proposal to establish the new USF. Qwest would accept the identification of high cost areas as set forth in Attachment A to the Staff Stipulation, but recommended the Commission not establish a fund size in this case. Instead, Qwest proposes the determination of the fund size be made when an ETC presents an application for USF support. As part of its application, Qwest proposes an ETC make a request for USF support "based on the individual ETC's claim that certain aspects of its rates contain implicit subsidies the ETC proposes to remove and replace with IHCF support." Tr. p. 1511. Qwest proposes the Commission "then assess these claims and determine how much, if any, IHCF support is appropriate under that application." Tr. p. 1511.

An alternative proposal was submitted in a Stipulation signed by AT&T Communications of the Mountain States, Inc. (AT&T), Verizon Northwest, Inc. and Verizon Wireless (Verizon). See Exhibit 675. Under the AT&T/Verizon Stipulation, the Commission would do nothing to establish the new USF in this case. Instead, the Stipulation provides for "revenue neutral rebalancing of existing retail rates to promote efficient competition and to remove implicit universal service supports in lieu of establishing a non-rural high cost mechanism at the present time." Exhibit 675, p. 2. Tr. p. 1814. The Stipulation would require "the incumbent local exchange carriers that would be eligible for support from the non-rural high cost fund" – Qwest Corporation and Verizon Northwest, Inc. – to "undertake revenue neutral rebalancing of their existing retail rates to the extent that they determine it is necessary to reform their rate structures in line with the market conditions in their respective service areas." *Id.* Only after an ETC has rebalanced its existing rates, would the Commission under the AT&T/Verizon Stipulation "initiate a proceeding to establish the non-rural high cost mechanism and determine the appropriate surcharge as set forth *Idaho Code* § 62-610F(2)."

No other parties presented testimony or evidence at the hearing.

DISCUSSION

Changes made to *Idaho Code* § 62-610F since it was enacted mirror shifting positions by the parties in this case. Section 62-610F became effective March 17, 1998 pursuant to a declaration of emergency by the legislature. *See* 1998 Sess. Laws, ch. 37, Sec. 12. Paragraph (1) of the new statute required establishment of the new USF "on or before March 1, 1999." The Commission convened the first hearing in this case on March 9-10, 1998 to move expeditiously to approve a "forward-looking economic cost model" to "determine the cost of providing support for universal service in high cost areas of the State of Idaho." Order No. 27269, p. 3.

As time passed and the debate over cost models intensified, both in this case and at a national level at the FCC, it became clear that the case could not be completed by the March 1, 1999 deadline. The 1999 legislature accordingly amended Section 62-610F, eliminating the March 1 deadline, but creating a new one for "no later than six (6) months after the federal communications commission's implementation date of a new mechanism for determining high cost support for non-rural carriers, or December 31, 2000, whichever occurs first." 1999 Sess. Laws, ch. 114, Sec. 5.

By then it was apparent that the parties would not reach agreement on the use of a particular model or specific model inputs to assess costs of service in Idaho. In addition, the Commission hoped to avoid duplicating efforts underway at the FCC to develop a cost model if the FCC's model could be adapted for use in Idaho. The Commission accordingly issued its Order, notifying the parties that the Commission "proposes to use both the FCC model and the FCC input values as a starting place for any discussion and directs the parties to make recommendations as to what input values may be more appropriate for Idaho purposes." Order No. 28260, p. 3. A hearing to receive evidence on the FCC model was set for August 1-4, 2000. Because of the ongoing debate over cost models and litigation over the FCC's model, the 2000 Legislature again amended Section 62-610F; this time eliminating any deadline for the Commission to establish the new USF. *See* 2000 Session Laws, ch. 158, Sec. 1, p. 400.

Litigation over the FCC model prompted a motion to suspend this case. On August 2, 2000, Verizon filed a Motion to Suspend Docket due to pending litigation regarding the FCC Synthesis Model. In one case, Verizon appealed to the U.S. Supreme Court its case challenging the FCC's use of its model to determine forward-looking costs in non-rural areas. *See Texas Office of Public Utility Counsel, et al v. FCC*, 183 F.3d 393 (5th Circuit 1999), *cert. granted sub nom.*, *GTE Services Corp. v. FCC*, 120 Sup.Ct. 2214 (June 5, 2000). The Commission granted Verizon's Motion, suspending the August hearing date, and set a prehearing conference for August 22, 2000. Order No. 28474. The Commission subsequently notified the parties that it was "interested in approaches that are simple, accessible and affordable and satisfy the statutory [USF] requirements. . . ." Order No. 28503, p. 2. It was in this context that the hearing on March 20, 2001 convened.

During the March hearing, two things became increasingly clear. The first is that the parties interested in a new USF will never agree on the details of establishing the fund. As Staff's expert witness advised the Commission, "every time you try to reach consensus, you're going to fail, is what we've learned." Tr. p. 1294. According to the witness, the unwillingness to agree is not based on concerns over universal service or the nature of the models:

I don't think it turns out that the battles over the [model] inputs or the battles over pet models really had much to do with the technical, arcane nature of those issues. It really has to do with fundamental core business interests of the players, and some carriers are very worried that setting up this fund will hurt them in their bottom line, and some are very hopeful that it will help them.

Tr. p. 1293.

Second, parties who in 1998 advocated establishment of the new USF without delay, now believe it is not necessary to establish the fund at all. Thus for example, Verizon's expert witness testified that "there is no evidence that a fund is needed at this time." Tr. p. 1435. In fact, the Verizon/AT&T proposal would have the Commission do nothing to establish the fund, and instead favors mandatory rate adjustments before a new USF is established. One Staff witness testified that "no parties to this case, with the possible exception of Qwest, believe that a fund is warranted at this time." Tr. p. 1582. Staff's expert witness also testified that "Staff believes that existing support mechanisms provide sufficient support for universal service," Tr. p. 1642, and "given the trends that we've seen to date at the pace of growth and competition, I can't really visualize an urgent need for either Verizon or Qwest to have explicit [USF] support prior to, say, two or three years from now." Tr. p. 1174. Even Qwest's testimony indicates that a new USF is not needed.

Qwest's witness, when asked if there is a "need for the Commission to size the fund now," responded "no." Tr. p. 1313. Indeed, Qwest's alternative proposal for setting the fund size delays that decision until such time as an eligible carrier files an application for USF support. In addition, Qwest's witness agreed "that if the existing rates are sufficient to cover costs, there is no need for a fund at all." Tr. p. 1314. There is no evidence in the record that existing rates are not sufficient to cover the costs of service. Nor was any evidence presented to show the goal of universal service – comparable accessibility by all customers to basic telecommunication services at just and reasonable rates – is not being met under the current USF system.

On this record, the Commission finds it would be reasonable to accept the part of the Verizon/AT&T proposal that recommends the Commission not establish the new USF. However, Section 62-610F contains an affirmative duty for the Commission to act to establish the fund. The Commission accordingly approves the Staff Stipulation insofar as it provides a basic structure for the new USF.

The Staff Stipulation utilizes a result from the FCC's Synthesis Model solely to identify and rank the relative high-cost areas into five groups. Those results were admitted into the record as Attachment A to Exhibit 105. That exhibit and attachment were admitted without objection and, in fact, "none of the parties opposed to the stipulation [came] forward with any evidence or even any cross-examination attacking that basic list." Tr. p. 1298. Thus, the Commission finds that the Stipulation's identification and ranking of relative high-cost areas in the state is reasonable and appropriate. The Commission also finds, based on the testimony presented, that the use of the model to identify and rank high cost areas for support satisfies the statutory requirement that a "forward-looking cost methodology" be used to determine costs. *Idaho Code* § 62-610F(2). Tr. pp. 1507, 1630, 1640, 1662.

We also find fair and reasonable the Stipulation's separation of some wire centers into two zones, where the lower density zone is eligible for USF support and the higher density zone is not. The Commission also approves the Stipulation provisions requiring an eligible telecommunications carrier to file a formal application to receive funds and to propose a dollar-for-dollar reduction in its existing Title 61 rates to match the level of support it requests. These provisions garnered little or no opposition, and the Commission finds them to be just and reasonable as core USF requirements.

The Commission will not determine on this record the issues that remain contested, including what lines are eligible for support, the initial size of the fund, and when or whether mapping of customer locations is necessary. The Commission intends to close this docket and open a new one if an eligible carrier files an application for support from the new USF. In that case the Commission will hear evidence to resolve the remaining issues for establishment of the fund. In the meantime, additional administrative details for the fund can be resolved in existing dockets, such as the rulemaking docket, Case No. GNR-U-00-1, if any party believes it necessary to move forward with further implementation of this new non-rural USF.

ORDER

IT IS HEREBY ORDERED that the Stipulation for the Non-Rural High Cost Fund, Exhibit 105, is approved in part to provide a core structure for the Idaho non-rural USF established pursuant to *Idaho Code* § 62-610F. Specifically, the Commission approves and adopts the Stipulation, along with Attachment A, with the exception of Paragraphs 5 and 7 of the Stipulation.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in these Case Nos. GNR-T-97-22 and GNR-T-00-2 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in these cases. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this

day of August 2001.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell

Commission Secretary

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