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COMMISSION**

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Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

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RE: FCC No. 96-182
CC Docket No. 96-68

Dear Secretary:

Enclosed for filing is an original and twelve copies of the Idaho Public Utilities Commission's comments in the above referenced file. Please acknowledge receipt of this document by date-stamping the duplicate copy of this letter and returning it in the enclosed self-addressed, stamped envelope.

Sincerely,

Weldon B. Stutzman
Deputy Attorney General

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comments respond to specific Commission proposals that too eagerly adopt a national approach to local competition and improperly strip authority from state and local authorities.

Section II of the IPUC comments addresses the Commission's proposal to develop national rules for competition. Noting that competition will be primarily a local phenomenon, the IPUC comments recommend "flexible rules with the ability to accommodate individual differences rather than unyielding national rules." Subsection B of Section II addresses the Commission's assumption that "minimizing variations among states" would enhance local competition. The IPUC believes smaller state markets require close attention to individual circumstances, thus recommending flexibility for states to develop rules to enhance local competition.

Section III comments on specific paragraphs of the NPRM. The IPUC provides information regarding the partial opening of Idaho's telecommunications market in 1988. The opportunity for competition in Idaho has not garnered much interest among potential competitors, suggesting that natural monopoly exchange service may remain where a market is of insufficient size to prompt competition.

The remainder of IPUC's comments address specific paragraphs of the NPRM, providing discussion consistent with IPUC's belief that local competition is best served by preserving broad discretion for state regulatory bodies. The IPUC specifically adopts the analysis and comments of the New York Department of Public Service regarding limits on the Commission's preemptive authority under the Act and of the National Association of Regulatory Utility Commissioners (NARUC) regarding the proper scope of Commission interconnection rules.

II. GENERAL COMMENTS ON NPRM

A. Are National Rules a Necessary Solution?

Explicit national rules are clearly the FCC's preferred course of action. In the abstract, there appear to be sound reasons to prefer one set of rules, applicable across jurisdictions and state lines and telecommunication service providers. Transactions costs, the dollars spent to deal with and overcome institutional friction in business dealings, have become an increasing source of concern in our more litigious and increasingly international markets. To some, such costs are essentially non-productive and thus a clear target for possible reduction. In an increasingly deregulated world, one would indeed expect transactions costs to undergo a relative decline as businesses face fewer jurisdictions and fewer rules.

But it is not fair to treat such costs as if they apply only in the regulated world of what we used to call public utilities. We called them public utilities because we thought they provided services with a strong flavor of public necessity and we regulated them because we thought they were natural monopolies, services most economically provided by a single producer.

We already have a wide variety of regulations, environmental and health and public safety and service quality. All create demands on business of any type and all may differ significantly from state to state, even from city to city. They represent the institutional environment of modern business. We do not intend to suggest such regulations should not be kept to a minimum and be as cost-effective as possible, only to point out that even very competitive lines of ordinary business already deal with a myriad of institutional concerns surrounding the product or service they provide through the market. Are telecommunications services different?

The apparent predilection of the Commission for a set of national rules seems based on the belief that telecommunications competition will take place primarily on a national scale among large firms whose needs will best be served by a uniform set of rules. At least for small states like Idaho, we believe competition will be primarily a local phenomenon, with an emphasis on smaller firms willing to provide service to particular niche markets. Such competition will be better served by flexible rules with the ability to accommodate individual differences rather than unyielding national rules. State commissions are the parties best able to decide what sort of flexibility is truly in the public interest.

B. The Need for Further Work

Echoing the comments of Idaho and many other states in the NPRM on Universal Service (FCC Docket No. 96-45), we believe this proposed rulemaking also fails to set out with sufficient specificity the terms and conditions under which interconnection, collocation, and unbundling shall occur. Nor does it go into much detail beyond expressing a certain fondness for prescriptive federal rules. The arena in which many specific experimental rules and decisions have already been made, the laboratory of individual states, seems to be mentioned only in passing. Where state actions are mentioned specifically, there is usually an accompanying negative note asking for comment on their compatibility with the spirit of the Telecommunications Act, for example in **Para. 29** where the Commission seeks “comment on the extent to which existing state initiatives are consistent with the new federal statute” and “the wisdom of using existing state approaches as guideposts or benchmarks for our national rules.”

Such vagueness means that this round of comments will just begin to unveil some of the specific measures various parties wish to propose or actually utilize. Only with reply comments will the desired level of detail begin to develop. Especially if the desire is to establish prescriptive federal rules, some further proceeding appears necessary to identify those rules and seek alternative ways of reaching the same end.

III. COMMENTS ON SPECIFIC ASPECTS OF THE NPRM

A. Section I, Introduction and Overview

Para. 5. The FCC observes that at least "19 states had in place some rules opening local exchange markets to competition." Idaho is not among the listed states. It is unfortunate that the FCC overlooked Idaho. Since 1988 Idaho has permitted competitors to provide local exchange service to business customers with more than five access lines in Idaho's largest LATA (U S WEST Communications, Inc.'s Boise LATA No. 652), as provided for in the Idaho Telecommunications Act, specifically Idaho Code Section 62-604. Since 1988 not one competitor has entered this open local exchange market. Prior to passage of the federal Telecommunications Act, there were no competitors seeking to serve these approximately 31,000 potential business customers. We believe this illustrates the need for state discretion to the greatest extent allowed under the Act, to make markets available for competition while protecting monopoly customers where no competition yet exists. Idaho has the smallest total population and the smallest population density (13 people per square mile) of any state listed in footnote 10 of the NPRM. Indeed, Idaho's Telecommunications Act recognized that rural LECs would face particular challenges if competition were introduced into their local markets. It is encouraging to see that the federal Telecommunications Act also recognizes

these economic and service challenges as evident in Section 251(f) and that the Commission emphasizes them in **Para. 17** of the NPRM.

Para. 6. While in complete agreement with the Commission's statements about the commanding market advantage offered incumbent LECs by the ubiquity of their existing infrastructure, we wish to emphasize that this fact represents the major reason that all new and revised rules must place on the incumbent LEC the burden of proof in proceedings involving the negotiated agreements the Commission evidently expects to be the major vehicle in the move toward a more competitive telecommunications industry. Given that commanding market advantage, most negotiations between incumbents and fledgling competitors will not be a meeting of equals. For that reason, we believe state commissions and the Commission must stand ready to take a steadfast position on the need for incumbent LECs to negotiate in good faith and to be willing to buttress that position with fitting sanctions if incumbents abuse their market power.

Para. 19. This brief section appears to confuse the distinction between arbitration and negotiation. The second and third sentences refer to state commission review of the results of "arbitrated" agreements to ensure that they comply with the requirements of Section 251 and its attendant regulations. We believe a state called upon to arbitrate will already be guided by Section 251, and thus there will be no further need to review an arbitrated agreement for compliance with that section.

Para. 21. Though the emphasis here seems to be on the Commission's requirement that RBOCs need to comply with Sections 251 and 252 before offering interLATA services, this is the

critical juncture at which state commissions have the most leverage over RBOCs. In its consultative role, each State should here insert its additional and specific issues into the proceedings.

B. Section II, Provisions of Section 251

Para. 27-29. The NPRM expresses a preference for explicit rules “to address those issues that are most critical to the successful development of competition, and with respect to which significant variations would undermine competition.” Then it outlines “the many benefits in adopting such rules,” explaining that “minimizing variations among states” would facilitate rapid private sector deployment of advanced telecommunications technologies by swiftly opening all markets to competition.

Idaho questions this assumption for several reasons. First, in few other competitive markets is there a broad set of common national rules for the conduct of business. There seems no obvious technical or public interest reason that telecommunications policy must be tightly governed by explicit national rules. The need for efficient interconnection between and among the various modes of telecommunication in order to fully exploit the revenue potential means that competitive market forces themselves will likely work out the purely technical problems and allow maximum integration among various telecommunication modes and providers.

Idaho emphasizes the importance of “preserving broad discretion for states” and notes that most smaller states have markets and telecommunications providers that are so small as to require close attention to individual circumstances. Rules set for broad national applicability will inevitably serve the interests and concerns of the major national (even multinational) telecommunications companies. Only such companies “need” or even seek national rules to ease the burden of

transactions costs associated with doing business ubiquitously. The very small companies that serve some of Idaho will likely be burdened rather than aided by a set of national prescriptions. Either the national rules will have to have specific allowances for smaller companies or a process for petition and waiver of selected rules that simply do not apply. In either case, actual regulation will continue to be performed at the local level by state commissions with knowledge of the real dimensions of the local public interest.

The important question for a state like Idaho to answer is how can national rules help a small state like ours. The only answer lies with a minimum set of national guidelines that provide general guidance and perhaps a set of minimum technical standards. Whatever national sameness is required would be achieved by the minimum standards. States would not be penalized for setting their own higher standards, for service quality, for example, as local conditions require. That is Idaho's view of how the federal-state balance should exist in telecommunications.

Para. 39. The IPUC has reviewed and expressly adopts certain comments of the State of New York Department of Public Service (NYDPS) filed in this docket. Specifically, the IPUC adopts NYDPS comments rejecting the Commission's conclusion that Section 251 of the Act supersedes Section 2(b) of the 1934 Act. The IPUC believes the Commission's preemptive power is limited to the authority **expressly** given it in Section 251. Rather than restate the sound legal analysis for this conclusion, the IPUC adopts the analysis and discussion provided by the NYDPS in its comments.

In addition, the IPUC wishes to affiliate itself specifically with Part I of the Initial Comments of the NARUC filed in this docket. This section outlines the proper scope of the Commission

interconnection rules, outlining clearly the reasons that detailed prescriptive Federal rules are not appropriate from a policy perspective and are not supported by the text or Congressional intent of the Act.

Para. 63. Idaho, as well as the other 13 states participating in the U S WEST Regional Oversight Committee, has serious concerns with the service quality provided by incumbent LECs and believes that such concerns should not be missing from this NPRM. There is a major difference between service quality as it applies between interconnecting service providers and service quality as it applies between a telecommunications company and its end-use customers. This section says all that is needed when it uses the term “at least equal in quality to that provided to itself” concerning quality in interconnection.

By omitting from the NPRM any specific consideration of service quality as it pertains to end-users the Commission is implicitly recognizing that this issue is properly an item of state concern and state responsibility That is as it should be.

There is a parallel to be pointed out from examination of the relationship between existing electric utilities and non-utility generators under the Public Utilities Regulatory Policies Act (PURPA). Utilities had *been* historically successful in emphasizing that such new generators were unable to meet their strict quality standards and would likely jeopardize system integrity and reliability. The IPUC experience with PURPA has led to the conclusion that the new entrants were perfectly capable of meeting utility standards.

The suggestion here is to let the new interconnectors be the judge of whether service quality is acceptable. Their reaction to the terms offered, rather than the assertions of the incumbent LECs, should be reinforced by state commissions in their role as mediators and arbitrators.

Para. 91. While it appears preposterous on its face to allow incumbent LECs to provide access inferior to that which it provides itself, simply because Section 251(c)(3) fails to mirror such wording as found in Section 251(c)(2), there is a point to be made that there may be circumstances under which the objectively “inferior” may still be acceptable. If the monopoly-regulated incumbent LEC is providing elements that are either higher-priced and/or higher quality than is necessary to provide adequate levels of service, some decline may actually be desirable. The key here is functionality. Any Commission rules should allow substitution of alternative components or methods that still allow acceptable performance. The mere fact that some element is different from what the incumbent used to provide itself is not by itself sufficient grounds for censure.

Para. 117-120. The Commission’s claim of authority to specify wholesale rates for purposes of resale may effectively circumvent states’ intact authority to set retail rates, a duty we believe states still have, guided by the principles of Section 252 of the Act. The interplay between retail and wholesale rates, and between inter- and intrastate jurisdictions, requires more flexibility than can be accommodated with a prescriptive set of Commission rules.

The IPUC also adopts NYDPS comments refuting the Commission's conclusion that the Act mandates uniform pricing. The IPUC believes the Act does not mandate uniform, national pricing. The IPUC agrees with the comments regarding uniform pricing filed by the NYDPS.

Para. 124-131. Specification of the Benchmark Cost Model or any other proxy, or of any particular LRIC-type methodology, or of precise definitions of cost terminology sounds easy but actually solves very little. In addition, specification of a required methodology may have the effect of freezing in place just the sort of individual differences states can and should account for in their deliberations. Whatever the model or whatever the set of definitions of costs, there will still be discussion, argument, and the need for some adjudication in their application to real rate-setting. **Para. 124** clearly recognizes this, that there “appears to be considerable difference of opinion” as to the precise form of LRIC methodology that should be used. Only when and if rate-setting is left entirely to markets will the choice of definitions become moot. Even when inter- and intrastate considerations have formally disappeared, as they will inevitably with the move of telecommunications services toward free markets, there will be questions about the allocation of joint and common costs, questions not solved cleanly by any models and questions that will remain of vital importance in the near future. **Para. 129** notes the likelihood of problems basing rates on LRIC if there are significant joint and common costs. Proponents of TSLRIC seem to use it to justify complete isolation of local loop costs from long distance costs, a position Idaho is unwilling to accept. These allocation questions are ultimately subjective and discretionary, and are driven by pricing considerations. Cost allocations remain vital to the relationship between local and long-distance rates, regardless of the jurisdictional questions about the balance between inter- and intrastate.

Para. 141. We take exception to the wording of the last sentence which refers to the question of “whether and how the existing subsidy to reduce the level of the SLC should be changed.”

NPRM 96-254 on Universal Service asked for honest discussion of whether there was such a subsidy. This notation seems to imply that the FCC takes for granted the existence of such a subsidy. Idaho is not alone among states in doubting whether such a subsidy exists.

Para. 201. Number portability costs must be shared by all telecommunications providers. However, the cost to be imposed on the system for necessary programming changes must be carefully monitored and must not be simply imposed on non-incumbents.

Para. 203. The IPUC has opened Case No. GNR-T-94-5 to discuss whether to implement intraLATA presubscription. In light of the Telecommunications Act it will proceed to resolve issues concerning implementation. The Telecommunications Act has the effect of removing LATA barriers, therefore IPUC Staff has recommended that inter- and intrastate dialing parity should be implemented without regard to LATAs. GTE and all rural LECs can be ordered by the IPUC to implement immediately. U S WEST's conversion will depend on its other activities to comply with the Section 271 of the Act.

Para. 207. Largely as a result of the FCC's requirement for interchangeable area codes, expandable carrier identification codes and 800 number portability delay requirements, nearly all Idaho central offices have upgraded their switches to the generic level necessary to support 2-PIC technology. IPUC Staff has proposed in the Idaho proceeding that 2-PIC be the minimum technological requirement for the provision of intrastate equal access within a year of the date of the order. Where it is not economical to require offices to upgrade their switches solely to provide this dialing parity, companies may request waivers from the proposed time frame. If intrastate dialing

parity is provided in this manner, a large part of the cost of implementation will be included with the costs for providing interstate dialing parity and satisfying other FCC requirements.

Para. 209-210. There seems basic agreement on a number of issues in the Idaho proceeding. 2-PIC technology is the technology preferred by nearly all parties. 1-PIC and modified 2-PIC are seen as stop-gap measures whose usefulness is past. 2-PIC technology should be a minimum standard, but not preclude companies from using AIN to move up to “multi-PIC” or “smart-PIC” when the need and the resources dictate.

Competition will drive LECs to provide the best technical ability they can afford. National standards that preempt standards set by the states to provide dialing parity will be of no advantage. As long as the customer has reasonable choice, companies should not be required to provide a higher degree of technology than is economically feasible. The same choice should be adopted for interstate and international calling.

Para. 213. Balloting as performed during the transition to interstate equal access was very expensive and there is consensus among parties to the Idaho case that it is not necessary for intrastate conversion in areas where interstate equal access has already been converted. We expect carriers to maintain their momentum by actively seeking and marketing new services to customers. Balloting will not serve either a selection or an educational function, particularly where customers have been through the whole presubscription process once before with the implementation of interstate equal access.

Para. 219. Incremental costs of implementing dialing parity, which will include the purchase and installation of “feature” software, billing and administration software, training, service order

entry, initial changes and customer education should be recovered by the local exchange carriers by means of an "Equal Access Recovery Charge" (EARC) which should be calculated and tarified by each company based on the actual amount of costs incurred for these expenses for a specific limited time. IPUC Staff believes that various rural local exchange companies have different concerns and recommends that each company decide which way to assess its charges. Tarified EARCs should be charged to all telecommunications providers providing intrastate toll in Idaho, not allocated to local customer rates. The expense of paying an EARC will be considered part of the cost of providing toll which the toll carriers will include in their total costs when setting rates.

Para. 260-261. The Commission notes the exemptions for rural telephone companies in Section 251(f)(1)(A) and the procedures for state commissions to terminate the exemptions. Section 251(f)(2) allows a state commission to modify or suspend certain requirements for rural telephone companies. The Commission seeks "comment on whether the Commission can and should establish some standards that would assist the states in satisfying their obligations under this section."

We believe the Commission should not attempt to establish additional standards for the application of Section 251 in regard to rural telephone companies for three reasons. First, Section 251 itself clearly establishes the exemptions applicable to rural telephone companies and the standards that apply when a state commission is asked to suspend or modify requirements for such companies. Second, by definition rural telephone companies are small companies that serve unique, isolated areas of various states. Idaho currently has twenty-one local exchange carriers. Of these, only two [U S WEST(southern Idaho) and GTE] fail to qualify for the rural exemption by virtue of their small size. It is not possible for the Commission to mandate universal, precise rules applicable

to all rural telephone companies where geographic and other interests create great diversity among them. Third, the Commission is not directed or authorized by the Telecommunications Act to prescribe more specific standards for the states' application of Section 251.

C. Section III, Provisions of Section 252

RESPONSE TO REGULATORY FLEXIBILITY ANALYSIS

Para. 275-277. This section concerns regulatory flexibility analysis, particularly the Commission findings about the economic impact of proposed rules on small businesses. In Idaho, there is no need to extend the scope of analysis to telecommunications carriers other than incumbent LECs to reach down to a size of business likely to feel a significant negative impact. Reiterating concerns for small incumbent LECs noted above, we believe that the most "appropriate steps to ensure that the special circumstances of the smaller incumbent LECs are carefully considered" is to leave room for state commissions to deal with the needs of individual companies in the light of public interest concerns. The sorts of rules likely to be devised to deal with the major players in telecommunications markets will be de facto burdensome to virtually all of Idaho's incumbent LECs and probably to many potential new entrants as well. These small companies have neither the need nor the resources to provide the voluminous and exhausting level of detail that may be appropriate for a major telecommunication provider operating in and across all states.

Respectfully submitted this 15th day of May 1996.



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