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BEFORE  THE  IDAHO  PUBLIC  UTILITIES  COMMISSION

IN THE MATTER OF THE APPLICATION)

OF AT&T COMMUNICATIONS OF THE)CASE  NO.  ATT-T-96-1

MOUNTAIN STATES FOR AN AMENDMENT)

TO ITS CERTIFICATE OF PUBLIC)

CONVENIENCE AND NECESSITY TO)

PROVIDE LOCAL EXCHANGE TELE-)

COMMUNICATIONS SERVICES.)COMMENTS OF

 )THE COMMISSION

 )STAFF\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_          )

COMES  NOW  the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Weldon B. Stutzman, Deputy Attorney General, and submits the following comments in response to the application of AT&T of the Mountain States, Inc. (AT&T; the Company) to amend its existing certificate of public convenience and necessity (CPCN or certificate).

As the Commission is aware, Staff is currently working on guidelines for IDAPA 31.01.01.111 (Rule 111) which addresses filing requirements for a company to receive a CPCN.  Along with that Staff will propose to apply some of these requirements as a revision to Rule 112 which applies to amendments to existing certificates.  The proposed requirements for an amendment to an existing CPCN will eliminate some of the current requirements in Rule 112 and Staff does not anticipate adding any new requirements other than a requirement that tariff updates to reflect any changes brought about by the amendments be filed with it.

To this date, the Commission has received five applications to provide local service in addition to AT&T’s.  AT&T’s application is peculiar in that the Company already possesses a CPCN and is seeking to amend it.  AT&T received a CPCN on January 1, 1984, at the time of the divesture of the Bell System, and has held it ever since.  Following the enactment of the Idaho Telecommunication Act of 1988, the Company elected regulation under Title 62, Idaho Code.

At that point, the Company probably did not need to retain a CPCN, however it did retain it and it is still in effect.  Both companies with whom AT&T has stated it intends to compete, U S WEST and GTE, have had ample opportunity to comment on the Company’s certificate.  In Case No. GNR-T-91-10, which was an investigation into a change in rates by AT&T, the Company’s CPCN was discussed.  Both U S WEST and GTE were granted intervention status, however neither company filed comments in that case.

Under the circumstances, although the Company’s certificate may be unusual in that the Company currently only provides Title 62 services, it should be considered as valid and thus the Company’s application is properly processed as an amendment to its current CPCN.

The next point to be addressed is the scope of the application.  AT&T’s  request to amend its CPCN should be examined in light of the standards for certification in the state.  Specifically: is it in the public interest, does the Company have the technical and financial wherewithal to accomplish its expansion, and how is the expansion going to be accomplished?

This application should not be viewed as an occasion to examine the myriad of issues presented by the federal Telecommunication Act of 1996 (the Act), that is, issues such as interconnection and number portability.  U S WEST raised many of these concerns in its comments on this proceeding and clearly those issues will need to be addressed once AT&T begins providing local exchange service.  However, they will be addressed in separate dockets as needed.  Certification is not the proper venue to do that.

Staff does have some concerns regarding AT&T’s applications which Staff believes AT&T can easily resolve.  Staff believes the Company’s map of its intended service area is not adequate in detail and an improved map is required.  In addition, AT&T did not file tariffs with its application.  Staff believes that such tariffs are necessary to determine the type of services the Company intends to offer and the scope of those offerings.  Finally, the Company should be required to provide a full description of its proposed construction or expansion and the manner in which it intends to serve customers, that is:  facilities based, resale, unbundled service, or some combination of these.  These details should be supplied before an amendment should be granted.

The final issue to be addressed is that of granting of multiple certificates for an area.  On this point the Act is clearly at odds with state law.  Idaho Code §62-615 states that:

For telephone corporations, or their successors in interest, which provide basic local exchange service, their existing certificates of public convenience and necessity shall represent an exclusive service area franchise for telecommunication services which remain subject to title 61, Idaho Code, within the certificated area of such telephone corporation, provided that the commission may alter or amend the geographic area of a certificate upon a finding that such alteration or amendment is required by the public interest.  No telephone corporation shall provide telecommunications services to customers or end-users located within another telephone corporation's certificated service area, except through interconnection arrangements consented to by the certificate holder or required by the commission pursuant to section 61-513, Idaho Code.

In contrast to that, Section 253(a) of the Act states that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”  The Act goes on to state in Section 253(d) that “[i]f, after notice and an opportunity for public comment, the [Federal Communications] Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.”  Clearly, Idaho Code §62-615 is preempted by the Act.

For these reasons, Staff encourages the Commission to approve AT&T’s application for an amended certificate of public convenience and necessity if the Company revises its application to include the following:

1.A detailed map of intended service area, showing the specific exchange areas.

2.Tariffs detailing the services the Company intends to offer.  (A separate filing should be made for T62 services.)

3.A full description of its proposed construction or expansion and the manner in which it intends to serve customers, that is, facilities based, resale, unbundled service, or some combination of these.

DATED  at Boise, Idaho, this            day of June 1996.

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Weldon B. Stutzman

Deputy Attorney General

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