DECISION MEMORANDUM

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FROM:WELDON STUTZMAN

DATE:JUNE 20, 1996

RE:CASE NO. ATT-T-96-1

COMMENTS REGARDING AT&T’S APPLICATION TO AMEND ITS CERTIFICATE TO PROVIDE LOCAL EXCHANGE SERVICES

On February 29, 1996, AT&T Communications of the Mountain States, Inc. (AT&T) filed a Notice and Application for amended Certificate of Public Convenience and Necessity requesting that its certificate be amended to authorize local exchange service in the state of Idaho.  AT&T asserted that the federal Telecommunications Act of 1996 promotes the development of competition in local exchange service markets and that any limitations on its ability to provide local exchange services contained in Title 61 and Title 62, Idaho Code, are preempted by the federal Act.  AT&T’s Application stated that it intends to provide local exchange service in those areas currently served by U S WEST Communications and GTE Northwest Incorporated, after completing negotiations with those companies for the necessary interconnection and operational arrangements.

On March 29, 1996, the Commission issued a Notice of Application, and on May 15, 1996 issued a Notice of Modified Procedure.  The Notice of Modified Procedure provided a written comment period that expired on June 14, 1996.  Comments were filed by a group of small independent telephone companies (Telcos), U S WEST, GTE, Commission Staff and a private individual.  The individual’s comments were a statement in support of approving AT&T’s Application in order to provide consumers a choice and competition for U S WEST.

The Telcos that filed comments are the companies that are in the process of completing the purchases of rural exchanges from U S WEST.  These companies state that they are rural telephone companies as defined by the Telecommunications Act, which provides them with a “right to heightened scrutiny by the Idaho Commission of requests to provide competitive telecommunications services in the rural telephone company’s existing service area.”  These companies assert that if the Commission approves AT&T’s Application, the Commission should not include the purchased exchange areas within the scope of its Order.  These companies believe a formal hearing is required if AT&T intends that its Application continue to overlap the purchased exchanges.  The Telcos also remind the Commission that it retains a responsibility in state law to determine whether an applicant is ready, willing and able to immediately commence service to a certificated area.  The Telcos also suggest that the Commission retains responsibility for an oversight role for new entrants and that the Commission should process AT&T’s Application under existing state statutes and rules to further the goals of guaranteeing the public continuous, reasonable cost, high quality service.  The Telcos suggest that the important issues raised by AT&T’s Application cannot be resolved satisfactorily through modified procedure.

The U S WEST comments, noting that AT&T’s request is the first from any party to provide competitive service in the previously fully regulated local exchange market, presents unique issues which require the Commission’s consideration.  U S WEST makes the following points in its comments:

1.The Commission should impose the same regulatory requirements on both incumbent local exchange companies and new entrants for the provision of retail services to end users.

2.The Commission should understand exactly where new entrants intend to make services available and where the incumbent will continue to be the only providers.  Thus, the Commission should require new entrants to provide a metes and bounds description or detailed map of the areas in which they will provide service within the next 12 months, a description of the classes of customers that will be served, whether the new entrant intends to construct or rely upon its own facilities, and an implementation schedule that defines a reasonable interval for the actual provision of service.

3.Noting that AT&T indicated it may build its own facilities, U S WEST identifies several issues.  For example, what is AT&T’s obligation to serve Title 61 and Title 62 customers in the certificated area?  What is AT&T’s obligation to extend facilities to serve customers if no facilities are currently available from the incumbent?  Will the presence of AT&T as a facilities based certificated carrier have any impact on the provider of last resort obligations of U S WEST and GTE?  How will AT&T provide for the resale of its facilities based services and at what price?

4.AT&T’s Application by itself is inadequate to provide the Commission with sufficient information to perform the various functions it will be required to perform under state and federal law.  The Application does not make clear where AT&T will provide service, or how it will be provided.  The Commission must determine where and when AT&T will provide facilities and which classes of customers AT&T will serve using its own facilities.

5.It is not clear from AT&T’s Application how it will perform the statutory obligations of a Title 61 provider.  By Idaho law, providers of basic local exchange service must file tariffs, justify rates for service under traditional rate of return regulation, make an election to deregulate Title 62 services and utilize a cost allocation to determine the rates for Title 61 services, follow current rules relating to service quality and availability.  A methodology must be developed which will allow new entrants to enter the regulated Title 61 market while meeting the statutory requirements of Idaho law.

6.The Commission should ensure that new entrants will be bound by the same regulations that create standards for the existing incumbents.  For example, the customer relations rules form a complex and detailed policy for the provision of certain services within the state.  It would be unfair for the Commission to impose regulatory requirements on some providers of competitive services and not on others.  The Commission should make compliance with all rules and regulations of the Commission a condition of certification.  The Commission also needs to address the question of what consumer relation standards, if any, apply in regard to Title 62 services.  Other rules that must be applied to all carriers are the Commission’s rules pertaining to operator service providers and pay telephones, telecommunications relay services, safety rules for utilities, Title 62 telephone corporation rules, and universal service fund rules.  New entrants should be required to meet the same service quality standards, including recordkeeping and reporting requirements.

7.AT&T should meet the requirements of the Commission’s Rule of Procedure 111, rather than Rule 112, in its Application.  In addition the Commission must have sufficient information to support a finding that AT&T is willing and able to provide service consistent with applicable statutes and rules, AT&T will provide the service as promised to protect consumers and other providers, AT&T’s certification will enhance the universal service availability of basic local exchange service, and AT&T will contribute to the universal service and TRS funds and will contribute to Commission funding.

U S WEST disagrees that this case can be processed by modified procedure.  AT&T’s Application presents an opportunity to develop a model that will apply to all future applications.  U S WEST asserts that the determination of the rules under which multiple providers will operate in the future is an important task for the Commission.  The issues presented are to important to proceed without a well developed record and thorough discussion of the issues.  U S WEST recommends that the Commission look at the possibility of approaching the case as a rulemaking proceeding and allowing industry workshops to help in the development of a proposed set of rules.  In the absence of such an approach, U S WEST believes that a formal hearing is required.

GTE stated in its comments that its primary concerns if AT&T’s Application is approved relate to regulatory parity, rate rebalancing and universal support.  By Idaho law, AT&T would need to make an election between Title 61 and Title 62 regulation.  The appearance in GTE’s service territory of duplicate providers of local services calls into question traditional pricing of the Company’s services under years of regulation by the Commission.  Rates based on value of service criteria rather than underlining economic costs and market forces will need to be changed.  Such changes will remove internal cross subsidies which now support the state’s universal service objectives.

The Commission Staff in its comments stated that AT&T’s Application should not be seen as an occasion to examine all the issues presented by the federal Telecommunications Act such as interconnection and number portability.  These issues can be addressed in separate dockets as needed once AT&T begins providing local exchange service.  However, Staff does believe that AT&T’s map of its intended service area is not adequate in detail and that an improved map is required.  In addition, AT&T did not file tariffs with its Application which are necessary to determine the type of service the Company intends to offer and the scope of those services.  Staff believes that AT&T should also 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, whether its services will be facilities based or by resale.  Staff believes these details should be supplied before an amendment should be granted.  Staff encourages the Commission to approve AT&T’s Application if AT&T revises its Application to include a detailed map of intended service area showing specific exchange areas, tariffs detailing the services the Company intends to offer, and a full description of its proposed construction or expansion and the manner in which it intends to serve customers.

Commission Decision

1.  Should AT&T’s Application to amend its Certificate of Public Convenience and Necessity be approved as filed?

2.  Should AT&T’s Application be approved if it revises its Application to provide additional information and, if so, what additional information should be required?

3.  Should some other process be used to resolve the issues identified by the comments filed, either by an industry workshop or by a formal hearing?

Weldon B. Stutzman

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