DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

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WORKING FILE

FROM:SUSAN HAMLIN

DATE:SEPTEMBER 26, 1996

RE:CASE NO.  GNR-T-96-4

PROPOSED PROCEDURAL ORDER, SUMMARY OF COMMENTS

On August 14, 1996, the Commission issued a Notice of Proposed Order and Order clarifying the filing requirements in Rules 111 and 112 for local telecommunications providers for issuance or amendments to Certificates of Public Convenience and Necessity.  The Commission sought comments on the Proposed Order and asked for specific language if changes were recommended.  The Commission also sought specific comments on the performance bond requirement listed under Rule 111.11 of the Proposed Order.  The Commission asked whether the performance bond is necessary to protect customers’ deposits or advance payments or what viable options are available.  Several parties filed comments to the Proposed Order.  The following is a synopsis of the comments.

ACHD

The Ada County Highway District (ACHD) filed comments in support of the Proposed Order.  ACHD indicated that they are responsible for maintenance, operation and rehabilitation of Ada County streets and bridges.  Currently, ACHD has signed right-of-way agreements with four telecommunications companies.  ACHD indicates that the Certification process described in the Proposed Order will assist ACHD with evaluation of companies’ qualifications and ability to perform in acceptable manners pursuant to Right-of-Way Use Agreements.

U S WEST

U S WEST supports the Procedural Order.  U S WEST proposed the following changes. a.  Rule 111

 U S WEST proposes changes to Section 3 “Service Territory” and Section 6 “Maps.”  U S WEST urges the Commission to require all providers, whose service territory is not precisely defined by existing Certificates, to periodically update the information relating to service territory so that the Commission’s records will be complete and accurate.

U S WEST recommends that Section 7 “Tariff Filings” should include a clause that requires all certified carriers to keep current tariffs and price lists on file with the Commission.  It also recommends that all providers be subject to the same requirements for cost support for tariff filings which pertain to Title 61 services.

U S WEST indicates that it does not have experience in the area relating to Section 11

“Performance Bonds.”  However, U S WEST claims that such a provision will be effective only if the regulator carefully monitors it.  U S WEST  indicates that the size of the bond will depend on the Commission receiving reliable and accurate information regarding the number of customers served and the size of the deposit collected.

b.  Rule 112

U S WEST indicates that it generally support the proposed requirements for amendments to Certificates under Rule 112.  U S WEST believes that it is appropriate to require an applicant to supply a written statement of its familiarity and intention to comply with all applicable Commission rules in connection with providing service under the expanded Certificate.

U S WEST indicates that it is unclear whether the Commission intends to include the prior requirement of Rule 112(e) relating to cost of expansion, the number of additional customers to be served and the revenues derived from the expansion.  U S WEST suggests that if this information is required it should be required of all providers of local service both Title 61 and Title 62, including new entrants that were not previously certified.  U S WEST suggests in the alternative that the requirement should be deleted from both Rule 111 and Rule 112.

U S WEST believes that reference to “MTS, WATS, and dedicated service” as samples of local services is not appropriate.  U S WEST claims as providers entering the market they may want to provide local exchange service to small businesses which could easily include those with either more or less than five lines in a given location.  U S WEST suggests that all providers of local exchange service be required to obtain a Certificate prior to providing local service.

c.  Other Issues

U S WEST claims that there are several broader issues relating to the new Act that remains unanswered.  U S WEST raises the issues of the regulatory status of new entrants Title 61 operations and cost allocations between Title 61 and Title 62 operations.  U S WEST also asks what are the duties of incumbents and new entrants relating to service territory, and who is designated as an “eligible carrier” according to Section 214(e)(2).  U S WEST urges the Commission to address these issues, if not in this case, then in an expeditious manner in another appropriate docket.

Electric Lightwave Incorporated

Electric Lightwave Incorporated (ELI) generally supports the Proposed Order.  ELI’s major concern is with the level of required detail to satisfy the requirements.  ELI offers the following comments:

Paragraph 3—Proposed Service Territories: ELI seeks clarification of what would constitute  a full description of the proposed location, route or routes of a utility service including the description of the manner of construction if any.  ELI recommends that the Commission require new entrants to provide a general network description and a list of incumbent local exchange carriers with whom it will be competing.  ELI believes that the general network description should also provide sufficient information to provide the Commission with an understanding as to how the new entrant proposes to provide basic local exchange service.  ELI considers detailed information, such as network topology and specific route information, to be highly confidential and competitively sensitive information.  ELI indicates that it is willing to provide this information to the Commission and its Staff, if it is determined to be necessary, so long as it is treated as confidential information.

Paragraph 6—Maps:  ELI believes that it is appropriate to require new entrants to provide local exchange maps depicting its local calling area, only if those calling areas are different from  existing local calling areas.  ELI believes that the new entrant should be able simply to reference the incumbent’s LECs local exchange map, if it is the same local calling area.

Paragraph 7—Tariff Filing:  ELI’s major concern regarding tariff filing is that ELI does not believe that all rules currently applicable to incumbent local exchange carriers are also appropriate for new entrants.  ELI recommends that the Commission allow new entrants to file price lists containing the rates, terms, and conditions for basic local exchange service and the same price list, and under the same condition, as allowed for Title 62 services.

Paragraph 10—Compliance with Commission Rules:  ELI reiterates that it believes that not all rules currently applicable to incumbent local exchange carriers are appropriate for new entrants.  ELI recommends that the Commission include an allowance for waiver of specific rules and procedural requirements.

GTE

GTE filed comments and indicated that they have reviewed the Proposed Order and find the proposal acceptable.

Staff

 Staff offers an alternative to the“Performance Bond” described in Proposed Rule 111.11.  Staff suggests that the Commission consider requiring companies to establish an escrow account with a bonded escrow agent for customer advance deposits collected by a company. Staff believes that an escrow account may be preferable to a performance bond because an escrow account secures a specific amount of the funds that will be necessary to meet customer deposit refunds.  Staff also recommends that the Company may be waived or exempted from the escrow account requirement after complying for a certain period of time, such as two years.  Staff attached a sample Agreement to its comments that could be used to establish an escrow account.

Commission’s Decision

Does the Commission wish to issue the Procedural Order?  Does the Commission wish to modify the proposed procedural Order given the comments by the parties?  Which sections does the Commission wish to modify?

Susan Hamlin

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