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BEFORE  THE  IDAHO  PUBLIC  UTILITIES  COMMISSION

IN THE MATTER OF PROCEDURAL)

REQUIREMENTS FOR APPROVAL) CASE  NO.  GNR-T-96-4

OF CERTIFICATES OF PUBLIC)

CONVENIENCE AND NECESSITY)

FOR TELECOMMUNICATIONS)

PROVIDERS DESIRING TO PROVIDE)COMMENTS OF THE

LOCAL SERVICE IN IDAHO.)COMMISSION STAFF                                         )

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COMES  NOW  the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Susan Hamlin, Deputy Attorney General, and submits the following comments for the Commission’s consideration in Case No. GNR-T-96-4.

The Staff of the Idaho Public Utilities Commission (Commission) submits these comments in support of the clarifications to Rules 111 and 112 (IDAPA 31.01.01.111 and 112) as suggested in the Proposed  Procedural Order attached to Order No. 26547 issued on August 14, 1996.  Staff supports the proposed clarifications but suggests an alternative regarding the bonding requirement.

Rule 111 outlines the information and data which must be submitted when a utility applies for a Certificate of Public Convenience and Necessity and Rule 112 outlines the information and data which must be submitted when a utility applies to amend its existing Certificate.  Staff’s review focused on the usefulness of the information requested in these clarified rules given the mandate to allow competitive entry into the local exchange market contained in the federal Telecommunications Act of 1996.  While performing this review, Staff was mindful that the current Rule 111 and Rule 112 do not set out the rules, regulations, policies, reporting requirements, enforcement procedures, audit or other investigatory practices required or followed by this Commission in carrying out its duties to ensure that telecommunications utilities operate in the public interest.  In other words, Staff did not perceive it to be necessary to bring those processes into the Rules that deal simply with certifying a company to begin its efforts to provide service to Idaho customers under whatever other requirements and conditions may now or in the future be set by this Commission.  Therefore, in Staff’s opinion, the Rules need clarification at this time only to the extent information called for in the existing rules may no longer be relevant and/or could be submitted in a different, more expeditious manner.

The clarifications in the Proposed Procedural Order accomplish this purpose quite well.  Staff offers only a single alternative.  In lieu of the performance bond set out in proposed Rule 111.11, the Commission may wish to consider requiring companies to establish an escrow account for customer deposits collected by a company.  With this procedure, customers can be assured their deposit will be returned, if they abide by the terms of the deposit requirement, no matter what financial conditions the company may face at a future date.  An escrow account may also be preferable to a performance bond because an escrow account secures more precisely the amount of funds that will be necessary to meet customer deposit refunds whereas a bond relies upon someone’s estimate of the bond amount that will be sufficient, but not unreasonable to the company, for the same purpose.  A sample of the kind of agreement that could establish an escrow account for this purpose is attached to these Comments.

Respectfully submitted this                  day of September 1996.

                                                  AttachmentSusan Hamlin

Deputy Attorney General

gnrt964.sh/umisc/comments/gdk:eb:jwc

SUBSCRIBER DEPOSITS TRUST ACCOUNT AGREEMENT

THIS AGREEMENT is entered into this         day of                    , 1996 between         and                (herein sometimes                 or “Escrow Agent”).

WHEREAS,                       intends to register with the Idaho Public Utilities Commission (the “Commission”) as a Telecommunications company, and

WHEREAS, IDAPA xxxxxxx requires that, as a condition to registration,                 provides for the deposit of customer deposits in a federally insured interest bearing trust account, maintained by it solely for deposits;

NOW, THEREFORE, it is agreed as follows:

1.  TRUST ACCOUNT.              , acting as trustee of the deposit made by its Idaho customers, has established with                an interest bearing account, Account #                  , into which it shall deposit all customer deposits (the “Funds”), as that term is used in IDAPA xxxxx.

2.  PURPOSE.  Funds shall be accessed solely for the purpose of applying an amount to a customer’s bill in accordance with the deposit rules of the Commission for the purpose of refunding deposits to customers.                Shall hold such deposits and advances in trust for the benefit of its customers in accord with the terms of this agreement.

3.  TERMS OF THE DEPOSIT.  On deposit of any funds with              ,                 shall retain in its records a full accounting of the customer on whose behalf the Funds are being deposited and the amount of the deposit being made for such customer.                     shall provide monthly reports to the bank setting forth this accounting, which reports shall be retained by the bank in its records for a period of three years.               shall hold the Funds in such F.D.I.C. insured deposit accounts, money market funds or other liquid interest bearing investments as shall be designated by                 in writing upon the terms and conditions set forth in this agreement.

4.  RELEASE OF FUNDS.                will hold the funds in its possession until authorized hereunder to deliver the Funds or any specified portion thereof as follows:

(a) All interest shall be calculated in accordance with IDAPA xxxxx requirements and shall be paid to                            .

(b)                 shall deliver as much of the principal Funds to                 on behalf of designated customers as shall be requested by                   in writing signed by authorized signatory of the account in writing.  Such writing shall state that the funds are being disbursed to                         for the purpose of applying an amount to a customer’s bill in accordance with Commission deposit rules, or for the purpose of refunding the customer’s deposit.  Each such request shall state the name and account number of the customer on whose behalf the request is being made, the purpose for such distribution, and the precise amount requested to be distributed with respect to such customer.

(c) In the event of a dispute with respect to all or any portion of the Funds sufficient in the discretion of                    to justify its doing so,                  shall be entitled to tender into the custody of any court of competent jurisdiction all or that portion of the Funds equal to the amount of such claim, pursuant to any appropriate legal proceeding and thereupon to be discharged from all further duties under this Agreement with respect to such amount.

5.  OWNERSHIP OF FUNDS.                        and                 acknowledge that the Funds are owned by the customers on whose behalf they have been deposited with                until such time as they become properly payable to                       in full or partial satisfaction of delinquent bills, in accord with Commission deposit rules.

6.  SETTLEMENT OF DISPUTES.  Any dispute that may arise under this Agreement, other than disputes involving the responsibilities of               under this agreement, shall be settled by the mutual agreement of the parties to such dispute (evidenced by appropriate instructions in writing to                signed by all of the parties to such dispute), by a binding and final arbitration award, such arbitration to be conducted in accordance with the commercial rules of the American Arbitration Association by a single arbitrator, or by a judgement entered by a court of competent jurisdiction.  The Commission shall be permitted to intervene in a timely fashion in any dispute between                 and                    to protect the interests of the customers.

                       shall be under no duty to institute or defend any such proceedings and none of the costs and expenses in any such proceedings shall be borne by                unless                 chooses to institute or defend such a proceeding.  No part of the expenses of such a proceeding may be paid for out of the Funds.  Prior to the settlement of any dispute as provided in this paragraph,              is authorized and directed to retain in its possession, without liability to anyone, that portion of the Funds that is the subject of or involved in the dispute.