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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF CTC TELECOM, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE SERVICE AS A COMPETITIVE LOCAL CARRIERAND FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER | )  )  )  )  )  )  )  ) | CASE NO. GNR-T-98-4  COMMISSION STAFF COMMENTS FILED IN RESPONSE TO CTC’S REPLY COMMENTS |

COMES  NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of Record, Cheri C. Copsey, Deputy Attorney General, and submits the following brief comments in response to CTC’s Reply Comments dated July 21, 1998.

The issue before the Commission in any Application for a Certificate of Public Convenience and Necessity is whether granting the Application is in the public interest.(footnote: 1)  Cambridge Telephone Co., Inc. v. Pine Telephone System, Inc., 109 Idaho 875, 878,  712 P.2d 576, 579 (1984).  As part of that examination, in the face of recent legislation, the Commission must not only weigh the traditional issues of financial ability and ability to provide service, but it must consider the competitive effects of its decisions.  Idaho Code § 62-602(2); 47 U.S.C. § 253.  The burden of establishing that an Application for a Certificate of Public Convenience and Necessity is in the public interest is on the applicant — not Staff.

In this case, as detailed in its Comments, the Commission Staff has had a series of concerns about this Application.  At this juncture, given the posture of the parties, Staff reiterates its opinion that further development of the evidentiary record, as it relates to the existence of competition, is necessary.  Staff is attempting to respond to CTC’s concerns about expediting the Commission’s decision by requesting a shortened response period.  see Staff Discovery Motion, dated July 21, 1998.

Moreover, CTC’s Reply did nothing to allay Staff’s concerns about the real possibility that simple approval of this Application without any conditions would create a non-price regulated monopoly.  CTC maintains that TCI’s recent, July 15, 1998, demand for access to Hidden Springs’ utility trenches as required by the federal 1984 Cable Act demonstrates competition.  Reply at p. 10; Reply Exhibit 1.  Staff notes that it does not know the resolution of TCI’s complaints or its threat to file for an injunction.

In fact, the exhibit attached to that Reply not only does not support CTC’s contention, it illustrates why Staff is concerned about competition in the area.  CTC states that it does not know what type of cable TCI intends to install, but “it is reasonable to conclude that it will lay dual purpose cable TV and telecommunications facilities similar to CTC’s equipment.”  Id.  CTC goes on to state “[e]ven if TCI does not immediately install dual purpose facilities, they can be easily added in the future.”  Id. If that is the case, that is yet another reason to create the evidentiary record to establish that fact and to establish that the Commission has considered the competitive implications.  It is generally acknowledged that one of the “disappointments” of the federal Telecom Act is that telephony competition between the telephone industry and the cable industry has not occurred — some two and a half years after enactment.  In addition, a careful reading of TCI’s attorneys’ letters to the subdivider’s attorney, L. Edward Miller of Givens, Pursley, reveals that TCI’s attorney believes that the subdivider is acting in concert with CTC under a “gentlemen’s agreement” to effectively prevent competition.  Exhibit 1, p. 4.  Mr. Kantor wrote on July 15, 1998:

United Cable has explained to us that Hidden Springs Community, L.L.C., (hereinafter “HSC”), has denied it access to the trenches within Hidden Springs development in order to lay cable distribution lines so to provide cable service to those residents who so desire to receive that service.  We further understand that HSC has entered into a “gentlemen’s agreement” with CTC Telecom, Inc. in order to allow that company to be the exclusive provider of multichannel video programming services to the residents of the Hidden Springs development.  Finally, we understand that the Ada County Highway District has attempted to work with HSC in order to allow United Cable access to the trenches so as to avoid the disruption of the development at a later date; however, the District officials have been unsuccessful in this endeavor.

Reply Exhibit 1 at p. 4. (emphasis added).

Our legislature is not concerned about side by side competition between providers.  It wrote in 1997:

It is the intent of this legislature that effective competition throughout a local exchange calling area will involve a significant number of customers having both service provider and service option choices and that actual competition means more than the mere presence of a competitor.  Instead, for there to be actual and effective competition there needs to be substantive and meaningful competition throughout the incumbent telephone corporation’s local exchange calling area.

Idaho Code § 62-602(2) (emphasis added).  The focus of its concerns is the customer.  It intended that significant numbers of customers should have the option of choosing a different service provider.  Without a more fully developed record, the Commission cannot at this point find that granting this Application will provide customer choices and not create a non-price regulated monopoly.

The Staff urges the Commission to grant its Discovery Motion.

RESPECTFULLY submitted  at Boise, Idaho, this            day of July 1998.

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Cheri C. Copsey

Deputy Attorney General

Technical Staff:  Wayne Hart

**FOOTNOTES**

1:

 The issue is not other Applications or allegations of delay or “dilatory conduct.”  Those assertions are diversions.  Staff was not dilatory and did not delay. Staff notes that many of CTC’s representations concerning Staff’s progress are inaccurate.  For example, the first meeting with Staff was held on July 8, not July 7.  By the time that meeting occurred, Staff had already filed its Second Motion for Extension that same day.  Staff filed that motion because its comments were due in two days and it did not have the information regarding CTC’s financial arrangements with Cambridge which it had requested on June 22, 1998.  Indeed, as of July 13, 1998, CTC still has not developed ledgers or opened its own checking account.  Moreover, contrary to CTC’s assertions, Staff first recognized the competitive implications during the July 8 meeting when representatives of CTC indicated competitors could simply overbuild.  Staff voiced its concerns then and the next day.  Likewise, for the record, ELI’s Application was very complete when it was received.  ELI’s representatives met with Staff prior to filing its Application.  ELI was a fully separate and functioning subsidiary, not dependent on its parent.  It had its own balance sheet, its own assets, its own facilities, its own capital and had existed since 1990.