DECISION MEMORANDUM

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WORKING FILE

FROM:DON HOWELL

JOE CUSICK

DATE:APRIL 12, 1996

RE:APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FILED BY GST IDAHO LIGHTWAVE, INC., CASE NO. GST-T-96-1

On March 28, 1996, GST Idaho Lightwave, Inc. (GST) filed a set of documents “to be considered for a Certificate of Public Convenience and Necessity in the State of Idaho.”  GST intends to offer local exchange and long-distance services within Idaho.  This is the first telecommunications company to seek a Certificate of Public Convenience and Necessity from the Commission following passage of the new federal Telecommunications Act of 1996.(footnote: 1)  GST desires to offer services  primarily in the Boise exchange.  This filing requires that the Commission examine the interplay between Title 61 and Title 62 and the filing requirements for a Certificate of Public Convenience and Necessity to offer Title 61 telecommunications services and the informational filing requirements for Title 62 telecommunications services.

BACKGROUND

The Idaho Telecommunications Act of 1988 created a new regulatory scheme for telecommunication corporations operating within Idaho.  Briefly, the Idaho Act eliminated the entry and exit requirements for companies desiring to provide Title 62 services in Idaho.(footnote: 2)  More specifically,  companies offering Title 62 services no longer need to obtain a Certificate of Public Convenience and Necessity pursuant to Idaho Code § 61-526.  See also Idaho Code § 62-604.  In addition to filing an annual notice, the Idaho Act required Title 62 service providers to: file informational price lists for MTS, WATS and toll access services with the Commission (§ 62-606); average MTS rates within the state (§ 62-607); remit monthly surcharge revenues to the Administrators of Idaho’s Universal Service Fund (USF) and the Telecommunications Relay Service (TRS); and pay a regulatory fee based on gross revenues (§ 62-611).  The Commission retains authority to resolve subscriber complaints and intercompany disputes.  With the exception of AT&T(footnote: 3), none of the more than 180 Title 62 providers have a Certificate.

For Idaho’s incumbent local exchange companies (ILECs), the Idaho Act provides that “their existing Certificates of Public Convenience and Necessity shall represent an exclusive service area franchise for telecommunication services which remain subject to Title 61.”(footnote: 4)  Idaho Code § 62-615.  Thus, all of Idaho Title 61 providers (i.e., ILECs) have Certificates.  Section 253 (Removal of Barriers to Entry) of the federal Act preempts those state laws that prohibit “the ability of any entity to provide any . . . intrastate telecommunications service” with some exceptions (most notably rural local service providers may retain their exclusive service rights if the state PUC allows exemption from competition, § 251(f)(1)).  Consequently, the federal Telecommunications Act preempts exclusive local franchises and permits new entrants to compete with ILECs to provide local (i.e., Title 61) services.

Although Title 62 providers do not need to obtain a Certificate of Public Convenience and Necessity, the provision of the local services pursuant to Title 61 seems to require a service provider to obtain a Certificate of Public Convenience and Necessity.

CERTIFICATE STATUTES

Idaho Code § 61-526 provides that no telephone corporation shall begin construction of its system “without having first obtained from the commission a certificate that the present or future  public convenience and necessity require or will require such construction.”  This statute clearly contemplates obtaining a certificate before beginning operations. Idaho Code § 61-528 also provides the

commission shall have [the] power, after hearing involving the financial ability and good faith of the applicant and necessity of additional service in the community to [:(1)] issue said certificate as prayed for, or [(2)] to refuse to issue the same, or [(3)] to issue it for the construction of any portion only of the . . . system or extension thereof, . . . and may attach to the exercise of the rights granted by said certificate, such terms and conditions as in its judgment the public convenience and necessity may require.

The Commission has also promulgated Procedural Rules governing the issuance of Certificates of Public Convenience and Necessity.  Rule 111 provides that a new utility applying for a Certificate of Public Convenience and Necessity must submit the following data:

1.  Name, address and form of business.  If the applicant is a corporation, it must provide  a statement of the services it intends to provide, the name of the state in which it is incorporated, its principal business address and principal business address within Idaho, a certified copy of its articles of incorporation, and if not incorporated in Idaho, a Certificate of Good Standing issued by the Secretary of State.

2.  A written explanation explaining why the proposed utility service is or will be in the public convenience and necessity.

3.  A full description of the proposed location of utility service including a description of the manner of construction, and the name of all public utilities with whom the proposed utility is most likely to compete.

4.  Maps showing the location of utility service.

5.  A statement of the manner in which the applicant proposes to finance new utility construction, the time the applicant proposes to begin construction, and the time when the applicant proposes to begin service.

6.  Estimates of the cost of annually serving the territory for which the certificate is sought, the number of service connections already made or to be made, and the annual revenue.

7.  Schedule of rates and charges.

8.  A financial statement.

Rule 111, IDAPA 31.01.01.111.

STAFF REVIEW AND RECOMMENDATION

Returning to GST’s filing, the Company has requested that its combined price lists for Title 62 and 61 services be effective on April 12, 1996.  Based upon Staff’s review of the GST documents, it appears that the Company has met the filing requirements for Title 62.  However, the Staff believes the Company has not supplied all of the necessary information for the issuance of a Certificate of Public Convenience and Necessity to provide Title 61 services.  More specifically, GST has not provided a Certified copy of its Articles of Incorporation or the necessary financial statement for the Commission to determine its financial viability.  In addition, the Company has not indicated how it proposes to finance new utility construction.  Moreover, GST requests an effective date for its Title 61 services of April 12, 1996, even though the Commission has yet to issue a Certificate of Public Convenience and Necessity or approve the rates for its Title 61 services.(footnote: 5)  The filing also contains customer relations provisions that are contrary to the Commission’s Telephone Customer Relations Rules.  Finally, the Company has not provided any cost data justifying its proposed Title 61 rates.

The Staff recommends the following course of action in this case.  First, the Commission should issue a Notice of Application pursuant to Procedural Rule 113.  The Notice and Order should require that GST provide additional information not previously submitted pursuant to Rule 111. In addition, future applications for a certificate should expressly indicate that the company adopts the following rules:  Telephone Customer Relations Rules (IDAPA 31.41.01); Telephone Customer Information Rules (IDAPA 31.41.02); Title 62 Rules (IDAPA 31.42.01); and Operator Service Providers/Pay Telephone Rules (IDAPA 31.51.01).  Applications should contain a statement agreeing to report and remit data and revenue to the Universal Service Fund and Telecommunications Relay Service Administrators as required by the Idaho Universal Service Funds Rules (IDAPA 31.46.01) and the Telecommunications Relay Services Rules (IDAPA 31.46.02).  Once the Commission receives the necessary information, Staff recommends that this Application for a Certificate be processed under Modified Procedure.  The Staff recommends that the requirements imposed on GST become the blueprint for all future applications for certificates to provide Title 61 service.

Commission Decision

Does the Commission accept for filing the materials pertaining to GST’s offering of Title 62 services?

Does the Commission desire to process this Application or return it for further information?

Does the Commission adopt the Staff recommendation to use this filing as the proceeding to establish certification requirements?

Don Howell

vld/:M:GST-T-96-1.dh

**FOOTNOTES**

1:

On February 29, 1996, AT&T of the Mountain States filed an Application to amend its existing Certificate of Public Convenience and Necessity to provide local exchange service within Idaho.  See Case No. ATT-T-96-1.

2:

Title 62 services are generally described as telecommunication services other than local exchange services provided to residential customers and business customers with five or fewer local access lines.  Title 62 services generally include most types of long-distance intrastate services.

3:

AT&T was certificated to provide service at the time the Telecom Act of 1988 passage.

4:

Mutual and cooperative telephone corporations were given until June 30, 1989 to apply for a certificate for exclusive service areas, while maintaining their exempt regulatory status.  Idaho Code § 62-615(3).

5:

In its price list pages, GST states that it “has been granted authority by the Idaho Utilities and Transportation Commission (IUTC) to provide interLATA, intraLATA and local exchange service within the State of Idaho.”  Of course, there is no logical or legal basis for this statement.