DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

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WORKING FILE

FROM:WELDON STUTZMAN

DATE:JULY 23, 1996

RE:CASE NO.  USW-N-96-1

COMMENTS FILED REGARDING U S WEST COMMUNICATION INC.’S FILING OF TARIFF ADVICE NO.  96-01-N

On February 5, 1996, U S WEST Communications, Inc. (U S WEST) filed Tariff Advice No. 96-01-N (Case No. USW-N-96-1) restricting the availability of its Centron and Centraflex System 2 services in northern Idaho to customers of record as of March 11, 1996.  Tariff Advice No. 96-01-N was filed by U S WEST at the same time it filed Tariff Advice No. 96-03-SC (Case No. USW-S-96-1) to restrict a similar service, Centrex Plus, in the southern Idaho portion of its service territory.  The Commission thereafter received a formal complaint from MCI Telecommunications (MCI) and AT&T Communications, Inc. (AT&T) alleging that the withdrawal of these services prevents the complainants from competing in the local exchange market by preventing the resale of the services by MCI and AT&T.

The Commission adopted a hearing schedule to process the tariff filing and complaints regarding the proposed withdrawal of Centrex Plus in southern Idaho.  However, upon an initial determination that the public interest may not require a hearing in this case, the Commission on July 1, 1996, issued a Notice of Modified Procedure to process Tariff Advice No. 96-01-N.  The comment period terminated on July 22, 1996.  Comments were filed only by AT&T Communications.

In its comments, AT&T states that the federal Telecommunications Act of 1996 contains exclusive provisions relating to the resale of local exchange services.  According to AT&T, any restriction on resale creates a bias against new entrants and should be considered a violation of Section 251(b)(1) of the Act, which requires local exchange carriers to not prohibit and not impose unreasonable or discriminatory conditions on the resale of its telecommunications services.  AT&T also notes that Section 251(c)(4) creates a duty by a carrier to offer for resale at wholesale rates any service that the carrier provides at retail to subscribers.  AT&T states that a grandparented service, or even a deregulated service, is subject to the resale obligations.  AT&T asserts the Centrex type service provides more features and functionality to smaller scale customers, which is in the public interest.  AT&T concedes that U S WEST intends to provide a replacement service in the future, but argues the replacement service will be to satisfy large customers, thus eliminating options for the small and medium business customers.

AT&T requests a hearing, but suggests the decision on the necessity of a hearing for the northern Idaho tariff might be delayed until the conclusion of the hearing process for the tariff relating to southern Idaho.

Staff recommends, as AT&T suggests, that the Commission delay a decision on the necessity for a hearing in this case until the outcome of the hearing on the southern Idaho (Centrex Plus) tariff advice.

Commission Decision

1.Should U S WEST Tariff Advice No. 96-01-N, withdrawing Centron services in U S  WEST’s north Idaho service area, be approved?

2.Should AT&T’s request for a hearing be granted?

3.Should a decision regarding whether to conduct a hearing be delayed pending the conclusion of the hearing for the southern Idaho Centrex Plus tariff advice?

Weldon Stutzman

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