DECISION MEMORANDUM

TO:COMMISSIONER NELSON

COMMISSIONER SMITH

COMMISSIONER HANSEN

MYRNA WALTERS

DON HOWELL

TONYA CLARK

GARY RICHARDSON

STEPHANIE MILLER

DAVID SCHUNKE

JOE CUSICK

WORKING FILE

FROM:WELDON STUTZMAN

DATE:DECEMBER 18, 1996

RE:CASE NO.  USW-S-96-1

PETITIONS FOR RECONSIDERATION FILED BY AT&T, MCI AND MCCLOUD TELEMANAGEMENT, INC.

(Fully Submitted Matter.)

On December 5, 1996, a Joint Petition for Reconsideration was filed by AT&T and MCI.  A separate Petition for Reconsideration was filed by McLeod Telemanagement, Inc. (McLeod).  The Petitions request that the Commission reconsider its Order No. 26677 issued November 14, 1996.

As grounds for granting a Petition for Reconsideration, AT&T and MCI make the following assertions:

1.  The Commission concluded that the complaining parties (AT&T and MCI) had the burden of proof under Idaho Code § 62-605(5) to show an adverse effect on the public interest.  AT&T and MCI argue that, because this is a tariff advice filing, the burden of proof should lie with U S WEST.

2.  AT&T and MCI interpret the Commission’s Order to require proof of immediate or permanent harm to the public interest to entitle them to relief under Section 62-605(5).  AT&T and MCI assert that “requiring proof of immediate and permanent harm to a specific person or company is an erroneous interpretation of the ‘adversity to the public interest’ test.”

3.  AT&T and MCI state that prior to enactment of the federal Telecommunications Act, resale of Centrex Plus in Idaho was illegal.  Thus, AT&T and MCI state that their current absence from the local market is an unreasonable basis upon which to conclude that consumers are not adversely effected by the Centrex Plus withdrawal.

4.  AT&T and MCI assert that the Commission decision was based in part on the finding that withdrawal of Centrex Plus would not have a permanent effect on local competition.  AT&T and MCI ask that the Commission reconsider its finding that the nonpermanent impact of Centrex Plus withdrawal demonstrates that the public interest is not adversely effected by the withdrawal.

5.  AT&T and MCI contend that the fact that alternative services to Centrex Plus are available does not support a conclusion that the public interest is not harmed by the withdrawal of the service.

For these reasons, AT&T and MCI ask that the Commission grant their Petition for Reconsideration of Order No. 26677.

McLeod was not a party in the case and, in fact, has not been authorized to provide services in Idaho.  Simultaneous to its filing of a Petition for Reconsideration in this case, McLeod filed an Application with the Commission for a Certificate of Public Convenience and Necessity. McLeod states in its Petition that it “plans to enter in designated Idaho markets in the near future by reselling Centrex Plus if the service is available from U S WEST.”  McLeod currently provides local exchange services in Iowa and Illinois exclusively through resale of Centrex Plus services.

On December 12, 1996, U S WEST filed a response to the Joint Petition for Reconsideration of AT&T and MCI, and also filed an Objection to the Petition for Reconsideration of McLeod.  In response to the Petition filed by AT&T and MCI, U S WEST contends the Commission correctly determined that AT&T and MCI carry the burden of proof under Section 62-605(5).  U S WEST also points out that Centrex Plus was available for resale prior to February 1996, and that AT&T and MCI never sought to purchase the product and resell it to local customers.  U S WEST argues that MCI and AT&T failed to present any credible evidence that the withdrawal of Centrex Plus would adversely impact competition and thus the public interest in Idaho.  U S WEST argues that Section 62-605(5) was not created to address theoretical wrongs, and that “damage to the idea of competition, or to unparticipating competitors who might possibly take advantage of Centrex Plus as a reseller, are clearly insufficient to reach the level of adversity to the public interest.”

In its objection to McLeod’s Petition, U S WEST asserts that McLeod was required to Petition to Intervene and participate in this case.  U S WEST argues that “McLeod’s effort to participate in this docket for the first time upon reconsideration plainly disrupts, creates prejudice and unduly broadens the issues.”  According to U S WEST, McLeod’s request to participate as an active party is untimely under the Commission’s Rules “and results in the disruption of these proceedings, prejudice to existing parties and an undue broadening of the issues of this proceeding.”  U S WEST notes that McLeod’s position is different than AT&T’s and MCI’s and thus McLeod seeks reconsideration of issues or arguments not presented to the Commission in the case.  U S WEST contends that McLeod’s desire to assert new legal theories are not appropriate for reconsideration of the case.  U S WEST states that “the reconsideration format does not allow the Company an adequate opportunity to respond to the entirely new factual allegations and issues that are raised by the Petition.”  U S WEST suggests that a separate case and forum is available to McLeod to assert that withdrawal of Centrex Plus violates federal law.

Pursuant to Idaho Code Section 61-626, the Commission must issue an order on the Petitions for Reconsideration by January 2, 1997.

Commission Decision

Should the Petition of AT&T and MCI or of McLeod for Reconsideration be granted?

Weldon Stutzman

vld/M:USW-S-96-1.ws