DECISION MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

MYRNA WALTERS

TONYA CLARK

DAVID SCOTT

DON HOWELL

STEPHANIE MILLER

DAVID SCHUNKE

JOE CUSICK

WORKING FILE

FROM:WELDON STUTZMAN

DATE:JUNE 19, 1997

RE:PETITION TO INTERVENE BY AT&T IN THE MCLEOD V. U S WEST (CENTREX) CASE; CASE NO.  USW-T-97-5, MTI-T-97-1

AT&T Communications of the Mountain States, Inc. (AT&T) on May 14, 1997, filed a Petition to Intervene in the McLeodUSA Telecommunications v. U S WEST Communications (Centrex) case.  U S WEST filed an objection to AT&T’s Petition on the basis that “AT&T’s participation in the present action amounts to an attempt to relitigate issues already finally decided between U S WEST and AT&T.”  U S WEST contends the issues to be decided in this case are solely between McLeod and U S WEST, and that AT&T’s intervention will “unfairly discriminate against U S WEST by forcing it to twice defend against an identical party on identical issues.”

In a response to U S WEST ’s objection, AT&T states that it has a direct and substantial interest in the subject matter of the proceeding and that its involvement will not unduly broaden the issues. That is the standard for intervention stated in IPUC Rule of Procedure 74.  AT&T states that “U S WEST’s res judicata argument is premature because AT&T has not attempted to litigate issues in the McLeod proceeding it previously litigated in the first Centrex Plus withdrawal proceeding.”  AT&T contends that, “if it is granted intervenor status and attempts to litigate issues in the McLeod proceeding already resolved in the first Centrex proceeding, or to raise facts in the McLeod proceeding which it should have raised in the first proceeding, nothing prevents U S WEST from arguing that res judicata, collateral estoppel, or general notions of fairness should bar such attempts.”   AT&T has indicated that it does not intend to present evidence at the hearing, but merely wants an opportunity to observe and perhaps cross-examine witnesses.

U S WEST initially indicated it might desire an oral argument on its objection, but since has indicated that oral argument may not be necessary.

Commission Decision:

Should the Commission: (1) deny AT&T’s Petition to Intervene; (2) grant AT&T’s Petition to Intervene, reserving for the hearing any objections U S WEST might have to any particular presentation of evidence by AT&T?

Weldon Stutzman

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