

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF PROCEDURAL</b>	)	
<b>REQUIREMENTS FOR APPROVAL OF</b>	)	<b>CASE NO. GNR-T-96-4</b>
<b>CERTIFICATES OF PUBLIC CONVENIENCE</b>	)	
<b>AND NECESSITY FOR TELECOMMUNICA-</b>	)	<b>PROCEDURAL</b>
<b>TIONS PROVIDERS DESIRING TO PROVIDE</b>	)	<b>ORDER NO. 26665</b>
<b>LOCAL SERVICE IN IDAHO.</b>	)	
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On February 8, 1996, the Telecommunications Act of 1996 (the Act) became law. One purpose of the Act is to foster competition in the local telecommunications market. Since the enactment, the Commission has received several documents from potential telecommunications providers stating their intent to provide local telecommunication services in Idaho. These documents range from a one sentence notice, to form letters citing rules and laws that do not exist in Idaho, to others addressing the applicant's business affiliation, financial ability and managerial qualifications. In addition, the Commission Staff has received numerous inquiries from companies seeking information concerning how to apply and operate as a local service provider.

These applicants request that the Commission issue a Certificate of Public Convenience and Necessity (Certificate) to provide local exchange services within the state of Idaho pursuant to *Idaho Code* ' ' 61-526 through -528 and IDAPA 31.01.01.111 (Rule 111).<sup>1</sup> Most, if not all, of the applications filed do not provide the necessary information for the Commission to determine if a Certificate should be issued. In this procedural Order, the Commission sets out the necessary information to be included with an Application for a Certificate submitted by a new provider of local exchange service in Idaho and the requirements to amend a Certificate. Those telecommunications companies intending to offer only non-basic local exchange

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<sup>1</sup>Telephone corporations providing basic local exchange service to residential and business customers with five or fewer lines are subject to the Commission's Title 61 jurisdiction. The Commission's traditional regulatory authority is found in Title 61 of the Idaho Code. The Idaho Telecommunications Act of 1988 added a new chapter to Title 62 of the Code and created a modified form of regulation for telephone companies providing other than basic local exchange services in Idaho.

service (e.g., MTS, WATS, dedicated service) need not apply for a certificate but must comply with the filing requirements of *Idaho Code* ' 62-604.

**On August 14, 1996, the Commission issued a Notice of Proposed Order and Order No. 26547 seeking comments from interested persons on the attached Proposed Procedural Order clarifying the requirements of Rule 111 and Rule 112 for telecommunication providers.**

**The Commission received comments on the Proposed Order from the following parties: Ada County Highway District, U S WEST Communications (U S WEST), Electric Lightwave Inc. (ELI), GTE and the Commission Staff. All parties who filed comments generally supported the Proposed Order clarifying the rules. ELI, U S WEST and Staff recommended specific changes to the wording of the requirements. This Procedural Order No. 26665 incorporates some of the changes suggested by these parties.**

For the convenience of the reader, the complete filing requirements for a new Certificate and for amending a Certificate are attached as an Appendix to this Order.

## **DISCUSSION**

The Commission is vested with the authority to grant Certificates to the public utilities operating in Idaho. *Idaho Code* ' ' 61-526 through -528. The Commission reviews applications to determine if the applicant has the necessary qualifications to obtain a Certificate. Commission Rules 111 and 112 outline the data to be included in an application for a Certificate. IDAPA 31.01.01.111 and 112.

We believe that the certification process is the appropriate mechanism for examining applications to become a local telecommunications provider in Idaho. However, given passage of the federal Telecommunications Act, the Commission desires to streamline the certification process for new local service providers in Idaho. Rules 111 and 112 give the Commission discretion to determine what information is relevant and necessary to grant or amend a Certificate. The Commission has determined that the filing requirements as currently set out in Rule 111 and Rule 112 should be clarified so that applicants for local telecommunications service supply the relevant and necessary information. By clarifying the information that must be submitted in the application, we can make the certification process more efficient and facilitate the introduction of competition into the local exchange market.

### **A. Requirements for New Certificates for Local**

## Telecommunications Providers

New local telecommunications providers applying for a Certificate of Public Convenience and Necessity to provide basic local exchange service in Idaho must submit the following information:

### Form of Business

1. Name, Address and Form of Business

a. If the applicant is the sole proprietor, (1) the name and business address of the applicant, and (2) the business name of the sole proprietorship.

b. If the applicant is a partnership, (1) a list of the names and business addresses of all the partners, and (2) the business name of the partnership.

c. If the applicant is a corporation, (1) a short statement of the character of public service in which it may engage, (2) the name of the state in which it is incorporated, (3) its principal business address and its principal business address within Idaho, (4) a certified copy of its articles of incorporation, (5) if not incorporated in Idaho, a certificate of good standing issued by the Secretary of State, and (6) name and address of registered agent for service in Idaho.

d. If a corporation, the names and addresses of the ten common stockholders of applicant owning the greatest number of shares of common stock and the number of such shares owned by each, as follows:

<u>Name</u> <u>and</u> <u>Address</u>	<u>Shares</u> <u>Owned</u>	<u>Percentage of</u> <u>all Shares</u> <u>Issued and</u> <u>Outstanding</u>	<u>Percentage of</u> <u>Voting Control</u>
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e. Names and addresses of the officers and directors of applicant.

f. Name and address of any corporation, association, or similar organization holding a 5% or greater ownership or a management interest in the applicant. As to ownership, the amount and character of the interest must be indicated. A copy of any management agreement must be attached.

g. Names and addresses of subsidiaries owned or controlled by applicant.

The Commission desires to clarify in further detail the information required to be provided by corporations. The Commission feels it is necessary to supply more detailed information

on corporations doing business in Idaho. Further, the requirement to identify the registered agent for service is required by *Idaho Code* ' 30-1-12. Including this latter information will serve as notice that corporations must have a registered agent as required by the Idaho Business Corporation Act. We find the above requirements to be fair, just and reasonable.

### **Telecommunication Service**

2. The date on which applicant proposes to begin construction or anticipates it will begin to provide service. A written description of customer classes and customer service[s] that the applicant proposes to offer to the public.

Paragraph 02 of Rule 111 currently requires that the applicant state why the proposed utility service is in the public convenience and necessity. Given the federal Act, we believe that explanation is no longer relevant for certification of local service providers. The information addressing the construction of facilities and the proposed date to offer service is currently required by Rule 111.05. We find the above requirements to be fair, just and reasonable.

### **Service Territory**

ELI suggested in its comments that the description of the service territory should be a general network description rather than the previous wording of *A* full description of the proposed location, route, or routes of the utility's services, including a description of the manner of certification (if any). . . .@Given ELI suggestion, we modified the requirement for Proposed Service Territory to include a description sufficient for determining whether the service is offered in a particular location.

U S WEST suggests in its comments that companies should update the service territory information periodically as service territory changes. We acknowledge U S WEST's concern that information filed with the Commission should be current, however, we believe Commission rules already require that information filed with the Commission shall be current. The following incorporate the changes offered by the parties:

3. Proposed Service Territory. A description sufficient for determining whether service is to be offered in a particular location; and the names of all incumbent local exchange corporations with whom the proposed utility is likely to compete. Written description of the intended manner of service, for example, resold services or facilities based. A general description of the property owned or controlled by applicant.

Rule 111.03 currently requires a statement describing with whom the applicant is likely to compete. Given the presence of many rural telephone companies (as defined in Section 251(f) and Section 3(a)(42) of the Telecommunications Act) in Idaho, we find that this information is still relevant. A description of the property owned by the applicant clarifies the applicant's proposed services and operation. We find the above requirements to be fair, just and reasonable.

### **Financial Information**

4. Current detailed balance sheets, including a detailed income and profit and loss statements of applicant reflecting current and prior year balances for the twelve months ended as of the date of the balance sheet, or if not readily available, for the period since the close of the preceding calendar year. If a balance sheet and income statement are not available, the applicant must submit financial data sufficient to establish it possesses adequate financial resources to provide the proposed services.
5. Latest annual report, if any.

We believe that the above requirements for financial information are a further clarification of the necessary information currently embodied in Rule 111.07. We find the above requirements to be fair, just and reasonable.

### **Maps**

6. A map of reasonable size and detail showing where the applicant is proposing to provide service including exchanges (if different from existing exchanges), rural zones, and local calling areas. If service area is identical to an incumbent's existing service area then applicant may reference the incumbent's map.

The requirement for a detailed map is contained in Rule 111.04. The additional detail will assist the Commission in reviewing the applicant's ability to provide service. ELI suggested in its comments that maps should be submitted only if the service area and local calling exchange is different from incumbent LECs. We believe that referencing an incumbent, if it is identical to the applicant's service area, is an efficient manner to reduce paperwork submitted to the Commission. We therefore added the above language to the text of the requirement. We find the above requirement to be fair, just and reasonable.

## **Tariff Filings**

7. Proposed initial tariff and price sheets setting forth rates, rules, terms, and regulations applicable to the contemplated service. Initial tariff and price list filings must be in electronic form as well as paper. The format for the electronic form will be submitted on a 3.5 inch computer diskette in WordPerfect readable format or other format as prescribed by the Commission Secretary.

ELI recommended that the Commission allow new entrants to file price lists containing the rates, terms, and conditions for basic local exchange service and the same price list, and under the same condition, as allowed for Title 62 services. **U S WEST**, on the other hand, recommended that all providers be subject to the same requirements for cost support for tariff filings which pertain to Title 61 services.

We believe that in light of developing competition of local telecommunications service that detailed cost of service studies are not necessary. *Idaho Code* ' 61-305 provides, however, that public utilities shall file schedules showing rates and charges with the Commission. Rule 133, IDAPA 31.01.01.133, also provides that the Commission may order public utilities to file tariffs showing rates and charges with the Commission. The requirement for filing anticipated rates and charges is also contained in Rule 111.06 . The electronic format is a further clarification for ease of administration. We find the above requirements to be fair, just and reasonable.

## **Customer contacts**

8. Contact information for the applicant. This information must include the name, address, and telephone number for those persons responsible for tariff questions as well as customer contact. A toll-free number must be provided for customer inquiries and complaints.

The Commission Rules on Customer Relations, IDAPA 31.41.01.201, require that utilities provide a toll-free number for customer inquiries. We believe that incorporating this information with the application provides notice and assists the applicant in complying with additional Commission requirements to operate as a local service provider. We find the above requirements to be fair, just, reasonable and in the public interest.

## **Interconnection Agreements**

9. Statements of whether the applicant has initiated interconnection negotiations and, if so, when and with whom. Copies of any interconnection contracts which have been completed for the provision of telecommunications services.

Section 252 of the Telecommunications Act of 1996 requires that interconnection agreements reached by negotiation or arbitration shall be submitted to the Commission for approval. We believe that including this information with the application will assist the Commission in meeting its obligations pursuant to the Telecommunications Act. We find the above requirements to be fair, just and reasonable.

## **Compliance with Commission Rules**

ELI recommends that because all rules are not applicable to incumbent local exchange carriers, that the Commission include an allowance for waiver of specific rules and procedural requirements. Based on this suggestion, we have added the waiver language to the requirement below:

10. A written statement that the applicant has reviewed all of the Commission rules and agrees to comply with them, or a request for waiver of those rules believed to be inapplicable.

*Idaho Code* ' 61-528 provides that the Commission may require such terms and conditions as are necessary and in the public interest when issuing Certificates. Moreover, *Idaho Code* ' 61-406 provides every public utility shall comply with Commission rules. We believe that compliance with our Rules is a relevant and necessary element that should be included in the application for a Certificate. We find the above requirement to be fair, just, reasonable and in the public interest.

### **Escrow Account for Advance Deposits**

Staff offered as an alternative to the Performance Bond that the Commission require companies to establish an escrow account with a bonded escrow agent for customer advance deposits collected by a company. Staff believes that an escrow account may be preferable to a performance bond because an escrow account secures a specific amount of the funds that will be necessary to meet customer deposit refunds. Staff also recommends that the Company may be waived or exempted from the escrow account requirement after complying for a certain period of time, such as two years. We believe that an escrow account will be more accessible for companies to obtain than a performance bond. We therefore adopt Staff's proposal in the following requirement:

11. A signed copy of an escrow account with a bonded escrow agent, if a company requires advance deposits by its customers. The Company must also submit quarterly report filings from the agent recording any deposits or disbursements from the account.

The purpose of an escrow account is to assure the good faith, as required in *Idaho Code* ' 61-528, and financial ability of the applicant when it requires advances deposits from its customers. The Commission will review the individual requirement of establishing an escrow account by the Company upon good showing by the Company for a period of two years.

### **B. Requirements for Amendments to Certificates**

Utilities seeking to amend their certificates to provide basic local exchange service must submit the following information:

#### **Telecommunications Service**

1. The date on which applicant proposes to begin construction or anticipates it will begin to provide service. Written description of classes of customers and customer service[s] that the applicant proposes to offer to the public.

Paragraph (a) of Rule 112, currently requires that the applicant state why the proposed construction or expansion is in the public convenience and necessity. Given the federal Act, we believe this requirement is no longer relevant for certification of local service providers. The information addressing the construction of facilities and the proposed date to offer service is

currently required by Rule 112(b) and (d). We find the above requirements to be fair, just and reasonable.

### **Maps**

2. A map of reasonable size and detail showing where the applicant is proposing to provide service including exchanges (if different from existing exchanges), rural zones, and local calling areas. Written description of the proposed location of utility service including the manner of construction and the intended manner of service, for example, resold services or facilities based.

The requirement for detailed maps is contained in Rule 112(c). The additional detail will assist the Commission in reviewing the applications. We find the above requirements to be fair, just and reasonable.

### **Compliance with Commission Rules**

Both U S WEST and ETI have suggested that companies who apply to the Commission to amend their certificates should include a statement that they will comply with Commission rules. ETI further suggests a waiver as they previously recommended for new applicants. We adopt U S WEST and ETI suggestions and include it a part of the requirements for amending certificates.

3. A written statement that the applicant has reviewed all of the Commission's rules and agrees to comply with them, or a request for waiver of those rules believed to be inapplicable.

*Idaho Code* ' 61-528 provides that the Commission may require such terms and conditions as are necessary and in the public interest when issuing Certificates. Moreover, *Idaho Code* ' 61-406 provides every public utility shall comply with Commission rules. We believe that compliance with our Rules is a relevant and necessary element that should be included in the application for a Certificate. We find the above requirement to be fair, just, reasonable and in the public interest.

## **Tariff Filings**

4. Proposed tariff and price sheets setting forth rates, rules, terms, and regulations applicable to the amendment of a certificate. Tariff and price list filings must be in electronic form as well as paper. The format for the electronic form will be submitted on a 3.5 inch computer diskette in WordPerfect readable format or other format as prescribed by the Commission Secretary.

**U S WEST** indicated that it is unclear whether the Commission intended to include requirements relating to cost of expansion, the number of additional customers to be served and the revenues derived from the expansion. We do not intend to include those requirements and therefore have deleted the language which may indicate otherwise.

Further, *Idaho Code* ' 61-305 provides that public utilities shall file schedules showing rates and charges with the Commission. Rule 133, IDAPA 31.01.01.133, also provides that the Commission may order public utilities to file tariffs showing rates and charges. The requirement of the electronic format is a further clarification for ease of administration. We find the above requirements to be fair, just and reasonable.

### **ULTIMATE FINDINGS OF FACT**

Rule 13 of the Commission's Rules of Procedure allows liberal construction of the Commission Rules when the Commission finds compliance with them is impractical, unnecessary or not in the public interest. IDAPA 31.01.01.013. We believe that the above requirements clarify the necessary and relevant information to obtain from local telecommunications providers when applying for or amending Certificates. We find the above requirements to be fair, just, reasonable and in the public interest.

**ORDER**

IT IS HEREBY ORDERED that all local telecommunications providers=applications for Certificates or amendments to Certificates shall comply with the filing requirements as outlined in this Order.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* ' 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this      day of November 1996.

RALPH NELSON, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

MYRNA J. WALTERS  
COMMISSION SECRETARY

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## APPENDIX

### Requirements for New Certificates for Local Telecommunications Providers

New local telecommunications providers applying for a Certificate to provide basic local exchange service must submit the following information:

#### Form of Business

1. Name, Address and Form of Business

a. If the applicant is the sole proprietor, (1) the name and business address of the applicant, and (2) the business name of the sole proprietorship.

b. If the applicant is a partnership, (1) a list of the names and business addresses of all the partners, and (2) the business name of the partnership.

c. If the applicant is a corporation, (1) a short statement of the character of public service in which it may engage, (2) the name of the state in which it is incorporated, (3) its principal business address and its principal business address within Idaho, (4) a certified copy of its articles of incorporation, (5) if not incorporated in Idaho, a certificate of good standing issued by the Secretary of State, and (6) name and address of registered agent for service in Idaho.

d. If a corporation, the names and addresses of the ten common stockholders of applicant owning the greatest number of shares of common stock and the number of such shares owned by each, as follows:

<u>Name</u> <u>and</u> <u>Address</u>	<u>Shares</u> <u>Owned</u>	<u>Percentage of</u> <u>all Shares</u> <u>Issued and</u> <u>Outstanding</u>	<u>Percentage of</u> <u>Voting Control</u>
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e. Names and addresses of the officers and directors of applicant.

f. Name and address of any corporation, association, or similar organization holding a 5% or greater ownership or a management interest in the applicant. As to ownership, the amount and character of the interest must be indicated. A copy of any management agreement must be attached.

g. Names and addresses of subsidiaries owned or controlled by applicant.

## **Telecommunication Service**

2. The date on which applicant proposes to begin construction or anticipates it will begin to provide service. A written description of customer classes and customer service[s] that the applicant proposes to offer to the public.

## **Service Territory**

3. Proposed Service Territory. A description sufficient for determining whether service is to be offered in a particular location; and the names of all incumbent local exchange corporations with whom the proposed utility is likely to compete. Written description of the intended manner of service, for example, resold services or facilities based. A general description of the property owned or controlled by applicant.

## **Financial Information**

4. Current detailed balance sheets, including a detailed income and profit and loss statements of applicant reflecting current and prior year balances for the twelve months ended as of the date of the balance sheet, or if not readily available, for the period since the close of the preceding calendar year. If a balance sheet and income statement are not available, the applicant must submit financial data sufficient to establish it possesses adequate financial resources to provide the proposed services.
5. Latest annual report, if any.

## **Maps**

6. A map of reasonable size and detail showing where the applicant is proposing to provide service including exchanges (if different from existing exchanges), rural zones, and local calling areas. If service area is identical to an incumbent's existing service area then applicant may reference the incumbent's map.

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### **Interconnection Agreements**

9. Statements of whether the applicant has initiated interconnection negotiations and, if so, when and with whom. Copies of any interconnection contracts which have been completed for the provision of telecommunications services.

### **Compliance with Commission Rules**

10. A written statement that the applicant has reviewed all of the Commission rules and agrees to comply with them, or a request for waiver of those rules believed to be inapplicable.

### **Escrow Account for Advance Deposits**

11. A signed copy of an escrow account with a bonded escrow agent, if a company requires advance deposits by its customers. The Company must also submit quarterly report filings from the agent recording any deposits or disbursements from the account.

## **B. Requirements for Amendments to Certificates**

Utilities seeking to amend their Certificates to provide basic local exchange service must submit the following information:

### **Telecommunications Service**

1. The date on which applicant proposes to begin construction or anticipates it will begin to provide service. Written description of classes of customers and customer service[s] that the applicant proposes to offer to the public.

### **Maps**

2. A map of reasonable size and detail showing where the applicant is proposing to provide service including exchanges (if different from existing exchanges), rural zones, and local calling areas. Written description of the proposed location of utility service including the manner of construction and the intended manner of service, for example, resold services or facilities based.

### **Compliance with Commission Rules**

3. A written statement that the applicant has reviewed all of the Commission rules and agrees to comply with them, or a request for waiver of those rules believed to be inapplicable.

### **Tariff Filings**

4. Proposed tariff and price sheets setting forth rates, rules, terms, and regulations applicable to the amendment of a certificate. Tariff and price list filings must be in electronic form as well as paper. The format for the electronic form will be submitted on a 3.5 inch computer diskette in WordPerfect readable format or other format as prescribed by the Commission Secretary.