

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF AT&T COMMUNICATIONS OF THE)
MOUNTAIN STATES, INC., TO AMEND)
ITS CERTIFICATE OF PUBLIC CON-) DOCKET NO. 96A-080T
VENIENCE AND NECESSITY TO PRO-)
VIDE LOCAL EXCHANGE TELECOMMUNI-))
CATIONS SERVICE.)

IN THE MATTER OF THE NOTICE BY)
AT&T COMMUNICATIONS OF THE MOUN-) DOCKET NO. 96A-081T
TAIN STATES, INC., OF ITS INTENT)
TO EXERCISE OPERATING AUTHORITY.)

INITIAL COMMISSION DECISION

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Mailed Date: August 30, 1996
Adopted Date: August 28, 1996
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Appearances: Rebecca B. DeCook, Esq., Denver,
Colorado, for AT&T Communications of the
Mountain States, Inc.;

M. Kathryn E. Sheffield, Esq., and William
for Ojile, Jr., Esq., Denver, Colorado,
U S WEST Communications, Inc.;

for Roy A. Adkins, Esq., Denver, Colorado,
the Colorado Independent Telephone
Association; and
Carol Smith-Rising, Assistant Attorney
General for the Staff of the Colorado
Public Utilities Commission.

I. BY THE COMMISSION:

A. Statement

1. On February 29, 1996, AT&T Communications of the

Mountain States, Inc. ("AT&T"), filed an application to amend its certificate of public convenience and necessity to provide local exchange telecommunications service within the State of Colorado, and notice of intent to exercise operating authority, pursuant to 4 *Code of Colorado Regulations* ("CCR") 723-35.

2. On March 6, 1996, the Commission issued notice of the application to all interested persons, firms, or corporations.

3. Notices of Intervention were filed by the Colorado Independent Telephone Association ("CITA"); U S WEST Communications, Inc. ("U S WEST"); TCI Communications, Inc. ("TCI"); Eagle Telecommunications, Inc./Colorado, doing business as PTI Communications, Inc. ("PTI"); the Staff of the Colorado Public Utilities Commission ("Staff"); and the Colorado Office of Consumer Counsel ("OCC"). On May 6, 1996, PTI withdrew its intervention.

4. On April 5, 1996, AT&T filed a Motion for Extension of Time to May 1, 1996 to file certain supplemental information requested by Staff. We granted the motion on April 17, 1996 in Decision No. C96-422. AT&T filed supplemental information on May 1, 1996.

5. On May 8, 1996, in Decision No. C96-502, we issued an order directing AT&T to supplement its application or to file an appropriate request for a rule waiver no later than May 17, 1996. In response to the order, AT&T filed supplemental information on May 17, 1996 and also requested a

waiver from the provisions of Rule 4.1.11 of the Emergency Part A Rules, 4 CCR 723-35 which requires a statement identifying any decision entered by any court or regulatory body within the last five years regarding an applicant's provision of local exchange telecommunications services or other related telecommunications services that resulted in penalties. On May 29, 1996, in Decision No. C96-572, we granted AT&T's request for a waiver of Rule 4.1.11, to the extent that the information required by the rule would be provided at hearing of this docket for the period of time from January 1, 1994 to the filing date of the applications. We also deemed AT&T's applications complete and referred this matter to an Administrative Law Judge to hear the application.

6. On June 24, 1996, in Decision No. R96-652-I, Administrative Law Judge William J. Fritzel scheduled the matter for hearing for July 26 and 30, 1996.

7. The hearing commenced as scheduled on July 26, 1996. As a preliminary matter, the parties requested a recess in order to negotiate settlement of the issues. The request was granted. After a period of negotiation, AT&T, Staff, and OCC offered a stipulation and request that all the terms of the stipulation be approved as a complete resolution of all the issues in this proceeding. The stipulation was marked for purposes of identification as Exhibit E and admitted into evidence. The other parties of record, U S WEST, CITA, and

TCI had no objection to the terms of the stipulation. Testimony in support of the stipulation was received from Gregory F. Allen and William A. Steele. Exhibits A through E were marked for identification and admitted into evidence. The matter was taken under advisement.

8. Due and timely execution of the Commission's functions require that we issue an initial decision.

B. Findings of Fact and Conclusions of Law

1. The Commission has jurisdiction over the parties and subject matter of this action.

2. The Federal Telecommunications Act of 1996, 47 U.S.C. 251 *et seq.* and the Colorado telecommunications statute, 40-15-501 *et seq.*, C.R.S., provide for competition in local exchange markets. Pursuant to the above enactments of Congress and the Colorado General Assembly, AT&T filed an application to amend its certificate of public convenience and necessity to provide local exchange telecommunications services in the State of Colorado.

3. AT&T is a corporation engaged in providing telecommuni-cations services. AT&T is a wholly owned subsidiary of AT&T Cor-poration, a worldwide telecommunications provider.

4. AT&T proposes to provide local exchange services within the State of Colorado as modified by the stipulation dated July 26, 1996 and introduced into the hearing record as Exhibit E.

5. AT&T is financially, technically, and managerially fit to provide local exchange service in Colorado.

6. Under the terms of the stipulation, the parties agree that AT&T's current operating authority to provide local exchange service: (1) on a resale basis; (2) through its own facilities; (3) through leased facilities; or (4) through any

combination thereof, shall be limited to those areas in Colorado currently served by U S WEST.

7. AT&T does not request relaxed regulation for local exchange services by this application, however the parties agree that nothing in the stipulation shall prevent AT&T from requesting relaxed regulation in the future.

8. The relaxed regulation granted to AT&T of its inter-exchange services under Commission orders in Application No. 39020 is unaffected by the terms of the stipulation.

9. The Staff agrees to work with the telecommunications industry and the OCC to determine the scope, content, and format of annual reports or other reports to be filed with the Commission by all local exchange services providers.

10. AT&T agrees to comply with all relevant provisions of applicable state and federal laws, including, but not limited to:

- (a) The Federal Telecommunications Act of 1996 - 47 U.S.C. 251 *et seq.*, and any rules adopted by the Federal Communications Commission implement-ing the act;
- (b) The State Telecommunications Statute 40-15-501 through 40-15-510, C.R.S.; and
- (c) Statutes and rules relating to the funding of the Commission and Office of Consumer Counsel 40-2-109, 40-2-111, 40-2-113, 40-2-114, and 40-6.5-107 C.R.S.

The parties agree that nothing in the stipulation shall prevent AT&T from applying for waivers of any of the above rules.

11. AT&T agrees to comply with all relevant provisions of Commission rules, including, but not limited to:
- (a) Rules concerning the Colorado High Cost Fund;
 - (b) Low income telephone assistance fund;
 - (c) Colorado disabled telephone users fund;
 - (d) 911 service;
 - (e) Costing and Pricing Rules;
 - (f) Cost Allocation Rules;
 - (g) Rules Regulating Telephone Service Providers;
and
 - (h) The Commission's Rules of Practice and Procedure.

The parties agree that nothing in the stipulation prevents AT&T from applying for a waiver of any rule.

12. AT&T agrees to use Part 32, (47 CFR) accounting until such time as a different accounting methodology is required by the Commission; or agreed upon by AT&T and Staff, and approved by the Commission; or AT&T applies and is granted a waiver. AT&T agrees to include the OCC in discussions concerning elimination of AT&T's use of Part 32 accounting. Nothing by the terms of the stipulation shall prevent OCC from protesting any agreement reached between AT&T and Staff.

13. The stipulating parties request that the Commission approve the stipulation and grant the application to amend the certificate of public convenience and necessity of AT&T. The parties agree that a Commission order shall

constitute sufficient documentation of authority for providing local exchange services within the State of Colorado as specified in the stipulation and this order, and that a document entitled "Amended Certificate" need not be issued by the Commission.

14. The United States Congress and the Colorado General Assembly, by their enactments, have determined that it is in the public interest to promote competition in the local exchange tele-communications markets.

15. We find that the granting of the application of AT&T to provide local exchange service is in the public interest, and should be granted under the terms of the stipulation and this decision and order.

II. ORDER

A. The Commission Orders That:

1. The stipulation of the parties entered into the record as Exhibit E, which is attached and made a part of this Decision and Order as Exhibit E, is approved in part and modified in part as specified below.

2. The application of AT&T Communications of the Mountain States, Inc., to amend its Certificate of Public Convenience and Necessity to provide local exchange telecommunications service as specified in the Stipulation is granted. The Commission shall issue a new statewide Certificate to Provide Local Exchange Tele-communications Services and an Operating Authority for the service territory specified in the application. Together the certificate and operating authority constitute a new Certificate of Public Convenience and Necessity to provide local exchange telecommunication services in all territories currently served by U S WEST Communications, Inc., as specified in AT&T Communications of the Mountain States, Inc.'s application. This Certificate of Public Convenience and Necessity is for

local exchange telecommunications services, including local exchange service.

3. AT&T Communications of the Mountain States, Inc., shall file appropriate tariffs with the Commission at least 30 days prior to the date it proposes to commence provision of local exchange service in the State of Colorado.

4. AT&T Communications of the Mountain States, Inc., shall be required to provide, with any and all rate proposals, tariff filings, and reports to the Commission, the entire range of cost studies specified in the *Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Service Providers*, 4 Code of Colorado Regulations 723-30, and all the studies and reports required by the *Cost Allocations Rules for Telecommunications Service and Telephone Utilities Providers*, 4 Code of Colorado Regulations 723-27. AT&T Communications of the Mountain States, Inc., shall also be subject to all Commission rules. AT&T Communications of the Mountain States, Inc., is not precluded from requesting waivers of any Commission rule.

5. AT&T Communications of the Mountain States, Inc., shall work with the Commission Staff in the design of annual and special reports for the Commission. The reports shall be designed in such a manner so as to assist the Commission in gathering data essential and useful in managing a transition to a competitive local exchange telecommunications service

market.

6. AT&T Communications of the Mountain States, Inc., is authorized to provide service initially on a resale basis, but is authorized to construct its own network for the provision of local exchange telecommunications services. AT&T Communications of the Mountain States, Inc., is reminded of the timeframes specified at Rule 9 of 4 *Code of Colorado Regulations* 723-35 regarding the commencement of service, specifically, three years for resale, five years for facilities-based provision. AT&T Communications of the Mountain States, Inc., is authorized for both methods of service, therefore, both timeframes apply. AT&T Communications of the Mountain States, Inc., shall notify the Commission, on a confidential basis if it chooses, no less than 30 days prior to the commencement of local exchange telecommunications services provision over its own facilities, and the location of said service. Upon notification, the Commission may require AT&T Communications of the Mountain States, Inc., to modify, accordingly, its tariffs for local exchange telecommunications services.

7. For AT&T Communications of the Mountain States, Inc.'s local exchange telecommunications services provided on a resale basis, AT&T Communications of the Mountain States, Inc., shall have the obligation to serve all customers in its

service territory on a non-discriminatory basis. Specifically, AT&T Communications of the Mountain States, Inc., shall not be allowed to refuse service to a qualified customer, that is, a customer who has the ability to pay for said services. However, AT&T Communications of the Mountain States, Inc., shall not be required to extend service to customers where the underlying facilities-based provider has no facilities.

8. For AT&T Communications of the Mountain States, Inc.'s local exchange telecommunications services provided on a facilities-basis, AT&T Communications of the Mountain States, Inc., shall have the obligation to serve all customers in its service territory on a non-discriminatory basis only in areas in which it has such facilities. Specifically, AT&T Communications of the Mountain States, Inc., shall not be allowed to refuse service to a qualified customer, that is, a customer who has the ability to pay for said services. However, AT&T Communications of the Mountain States, Inc., shall not be required to extend service to customers where the underlying facilities-based provider has no facilities. For areas in which AT&T Communications of the Mountain States, Inc., provides service on both a resale and a facilities-basis, AT&T Communications of the Mountain States, Inc., shall not be required to extend facilities to meet a customer, but where AT&T Communications of the Mountain States, Inc., has

facilities or can provision service on a resale basis, AT&T Communications of the Mountain States, Inc., shall provide service to all qualified customers on a non-discriminatory basis.

9. AT&T Communications of the Mountain States, Inc., did not seek designation as a Provider of Last Resort. AT&T Communications of the Mountain States, Inc., is not designated by this order to be a provider of last resort. However, nothing shall preclude AT&T Communications of the Mountain States, Inc., from applying in the future for such designation.

10. The 20-day time period provided in 40-6-114(1), C.R.S., to file an application to the Commission for rehearing, reargument, or reconsideration, begins on the day after the Mailed Date of this Decision.

11. This Order is effective on its Mailed Date.

B. ADOPTED IN OPEN MEETING August 28, 1996.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

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