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Federal Communications Commission
Office of the Secretary
Portals
445 Twelfth Street SW
Washington DC 20554

98-221

RE: Petition for Declaratory Ruling Concerning Section 251(h)(2)

Dear Secretary:

Enclosed for filing is an original and 12 copies of the Idaho Public Utilities Commission's Reply Comments in CC Docket No. 98-221. Please acknowledge receipt of this document by date stamping the duplicate copy of this letter and returning it in the enclosed self-addressed, stamped envelope.

Sincerely,

Cheri C. Copey
Deputy Attorney General

Enclosure

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**Before the
FEDERAL COMMUNICATIONS COMMISSION**

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IN THE MATTER OF)	
)	
IDAHO PUBLIC UTILITIES COMMISSION)	
)	
PETITION FOR DECLARATORY RULING)	CC Docket No. 98-221
concerning Section 251(h)(2) of the)	
Communications Act)	
)	
Treatment of CTC Telecom, Inc. And Similarly)	IDAHO PUBLIC UTILITIES
Situated Carriers as Incumbent Local Exchange)	COMMISSION REPLY
Carriers under Section 251(h)(2) of the)	COMMENTS
Communications Act)	
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SUMMARY

On November 23, 1998, the Idaho Public Utilities Commission (IPUC) filed a Petition for Declaratory Ruling pursuant to Section 251(h)(2) of the Telecommunications Act of 1996 (Telecommunications Act). Specifically, the IPUC requested the Commission treat CTC Telecom, Inc., a local exchange carrier planning to offer basic local exchange service in Idaho to Hidden Springs Community Development, as an incumbent local exchange carrier for the purposes of Section 251(c) of the Telecommunications Act. The IPUC further requested that the Commission provide for the treatment of all similarly situated local exchange carriers as incumbents for the purposes of Section 251(c) by rulemaking. Eight parties filed comments.

The Telecommunications Resellers Association, MCI Worldcom, Inc., AT&T Corp., Ameritech Operating Companies, and U S WEST Communications, Inc. support the Petition requesting CTC Telecom be treated as an incumbent under Section 251(h)(2). AT&T suggests it may be premature to promulgate a rule of general applicability. CTC Telecom, Inc., Time Warner Telecom and Electric Lightwave, Inc. oppose the Petition. They suggest, among other things, that the IPUC has not established that CTC should be treated as an incumbent because CTC is small, there is alleged competition, and that any other local exchange carrier could have and still can over build or duplicate CTC's facilities.

In response to those comments opposing the Petition, the IPUC argues that the number of loops or access lines a local exchange carrier has is irrelevant to whether it should be treated as an incumbent. In addition, the IPUC contends that there is no competition in CTC's study area. Finally, the IPUC argues that competition as envisioned by Congress when it enacted the

Telecommunications Act is not created by requiring all competitors to over build an existing telecommunications network.

The IPUC's position is quite straight-forward: Where a local exchange carrier provides local exchange service to all or virtually all of the subscribers in an area that did not receive telephone exchange service from a NECA member as of February 8, 1996, and that local exchange carrier controls the bottleneck local exchange network, it should be treated as an incumbent local exchange carrier for the purposes of Section 251(c) in order to realistically promote competition. Granting this Petition would encourage competition in CTC's study area, Hidden Springs Community Development, by imposing the pro-competitive standards enacted by Congress in Section 251(c).

With respect to the IPUC's request for a general rule to apply to similarly situated local exchange carriers, the IPUC acknowledges that it is difficult to draft a rule that is neither overly broad nor overly narrow. Therefore, the Commission could do as it did in the *Guam* case and decline to adopt a rule of general applicability.¹ *Final Guam Order at ¶9*. In the alternative, the IPUC urges the Commission to modify 47 C.F.R. § 51.223 to allow state commissions to address similarly situated LECs within their jurisdictions.

¹ *In the Matters of Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act and Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act*, CC Pol. 96-18, CC Docket No. 97-134 (adopted on July 15, 1998 and released July 20, 1998). (*Final Guam Order*).

I. INTRODUCTION

Boiled down to its simplest terms, timing is everything. Had CTC Telecom, Inc. been providing telephone service on February 8, 1996, and all other facts been the same -- CTC's service territory, the number of loops, etc. -- this Petition would have been unnecessary. CTC would have been an incumbent local exchange carrier under Section 251(h)(1). It would have been subject to the obligations imposed by Section 251(c) and customers in the Hidden Springs Community Development would have had the practical and economic opportunity for choice in local exchange carriers. Without Commission action, those customers will be deprived of the benefits of competition.

The Telecommunications Act of 1996² (Telecommunications Act) fundamentally changed telecommunications in this country.³ Prior to the Telecommunications Act's passage, local telephone services were provided by local exchange carriers (LECs), many of which had been issued exclusive geographic franchises by state licensing authorities. Each LEC operated its own local telephone network and controlled the strategic bottleneck to those essential facilities. The Telecommunications Act was not simply an attempt to deregulate the existing telecommunications system. Instead, Congress sought to promote competition in the nation's telecommunications system by opening up traditionally monopolistic local exchange networks to new competitors and by removing those barriers that have protected telephone monopolies from competition.

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.* Hereinafter, all citations to the Telecommunications Act of 1996 will be to the Telecommunications Act as codified in the United States Code unless otherwise indicated.

³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 95-185, ¶1, FCC 96-325 (released August 8, 1996), 61 Fed. Reg. 45476 (August 29, 1996) ("Interconnection Order").

To facilitate the introduction of new competing local exchange carriers (CLECs), the Telecommunications Act included two important sections -- Sections 251(c) and 251(h)(2) -- designed to eventually eliminate the ability of an incumbent local exchange carrier to use its control of the bottleneck local facilities to impede free market competition. *Interconnection Order*, ¶4. Section 251(c) requires incumbent local exchange carriers (ILECs) to provide CLECs with access to the ILEC's services and networks. More specifically, Sections 251(c)(2)-(4) impose three specific requirements on ILECs designed to foster competition: (1) interconnection -- ILECs must allow CLECs to interconnect with the ILEC's local exchange networks at fair, nondiscriminatory rates; (2) lease of unbundled network elements -- ILECs must allow CLECs to lease parts of the ILEC's network at fair, nondiscriminatory rates; and (3) resale -- ILECs must allow CLECs to purchase telephone services at wholesale rates for resale to the CLEC's customers. Relevant to this Petition, Congress also delegated to the Commission the authority to impose those same requirements on any LEC that enjoys the same monopolistic advantages as those LECs providing service before February 8, 1996. 47 U.S.C. §251(h)(2). This Petition asks the Commission to exercise that authority and designate CTC Telecom as an ILEC for the purposes of imposing Section 251(c) requirements.

Those parties who support this Petition have a fundamentally different understanding than those who oppose the Petition of what Congress envisioned by encouraging competition when it enacted the Telecommunications Act.

The IPUC, the Telecommunications Resellers Association, MCI Worldcom, Inc., AT&T Corp., Ameritech Operating Companies and U S WEST Communications, Inc. all understand Congress did not intend to simply encourage side-by-side competition by LECs for segregated or isolated markets. This would only perpetuate the existence of monopolies. Moreover, division of

markets or allocating territories between competitors who operate at the same level of market structure is considered anti-competitive. *See e.g., United States v. Topco Associates*, 405 U.S. 586, 607-08 (1972). In fact, if done by agreement, whether or not express, it violates Section 1 of the Sherman Act. *Id.*

Instead, Congress intended to give customers the opportunity for choice in local exchange carriers. As customers gain choices, competition will replace the need for regulation because the threat of customer defections acts to restrain the LEC from abusing its monopoly power. Section 251(c) embodies many of the antitrust principles generated in antitrust telephone litigation and is intended to preclude the type of anti-competitive behavior earlier Sherman Act cases addressed.

CTC Telecom, Inc., Time Warner Telecom (Time Warner), and Electric Lightwave, Inc. (ELI), on the other hand, ignore the role of the customer in their comments. They analyze this Petition solely from the standpoint of a LEC. They assume the “competition” occurs when a developer requests bids from different LECs. While this may give the developer choice, it does nothing to promote competition for end-user customers. Clearly, a developer’s interests do not necessarily coincide with a customer’s interests. CTC, Time Warner and ELI do not explain how the customer living in the Hidden Springs Community Development (CTC’s service area) will have the opportunity for practical and economical choices in LECs. None explains what will restrain CTC, other than good will, from increasing customer rates or failing to provide good customer service.

II. SECTION 251(C) EMBODIES TRADITIONAL ANTITRUST PRINCIPLES

To better understand why CTC should be treated as an ILEC under Section 251(h)(2), the genesis for the obligations enumerated in Section 251(c) and the legal underpinnings are important. Section 251(c) incorporates and responds to a long history of antitrust telephone litigation. Antitrust laws are rooted in the proposition that the public interest is best protected by competition, free from artificial restraints such as price-fixing and monopoly. *United States of America v. American Telephone & Telegraph Company*, 461 F.Supp. 1314, 1321 (D.D.C. 1978). On the other hand, the theory for regulation presupposes that with respect to certain areas of economic activity, the judgment of expert agencies may produce results superior to those of the marketplace and in those cases, competition will not necessarily serve the public interest. *Id.* Balancing these two divergent objectives, the pre-Telecommunications Act antitrust cases held that telephone local networks were essential facilities such that telephone companies controlling them were subject to the “essential facilities” or “strategic bottleneck” antitrust principles.⁴ This legal principle was the basis for divestiture and the various Consent Decrees.

The “essential facilities” doctrine was first applied to a monopoly by the United States Supreme Court in 1912. *United States v. Terminal R.R. Assn. of St. Louis*, 224 U.S. 383 (1912). The Supreme Court held that any company that controls an “essential facility” or a “strategic bottleneck” in the market violates the antitrust laws if it fails to make access to that facility available to its competitors on fair and reasonable terms that do not disadvantage them. *See also Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973); *Hecht v. Pro-Football, Inc.*, 570 F.2d 982, 992-93 (D.C.

⁴ *See e.g., United States of America v. AT&T*, 524 F.Supp. 1336 (D.D.C. 1981); *United States of America v. AT&T*, 461 F.Supp. 1314 (D.D.C. 1978).

Cir. 1977), *cert. denied* 436 U.S. 956 (1978); *Gamco, Inc. v. Providence Fruit & Produce Building, Inc.*, 194 F.2d 484 (1st Cir. 1952); *Woods Exploration and Producing Co., Inc. v. Aluminum Corp. of America*, 438 F.2d 1286, 1300-09 (5th Cir. 1971). Such access must be afforded “upon such just and reasonable terms and regulations as will, in respect of use, character and cost of services, place every such company upon as nearly as equal plane as may be.” *Terminal R.R.*, 224 U.S. at 411. In *United States v. AT&T*, 524 F.Supp. 1336, 1353 (D.D.C. 1981), Judge Greene found that local network facilities controlled by the local exchange carrier are “essential facilities” within the meaning of these decisions and that, to the extent that the antitrust laws provide the legal standards governing the local exchange carrier’s conduct it was obligated to provide non-discriminatory access.

There were four elements developed to establish liability under this doctrine:

- (1) control of the essential facility by a monopolist;
- (2) a competitor's inability practically or reasonably to duplicate the essential facility;
- (3) the denial of the use of the facility to a competitor; and
- (4) the feasibility of providing the facility.

MCI Communications Corporation v. AT&T Company, 708 F.2d 1081, 1133 (7th Cir. 1982). In applying these elements, the D.C. Circuit found that any market condition that makes entry more costly or time-consuming reduces the effectiveness of potential competition as a constraint on the pricing behavior of the dominant firm. *Southern Pacific Communications Co. v. AT&T*, 740 F.2d 980,1001 (D.C. Cir. 1984), *cert. denied* 470 U.S. 1005 (1985). Likewise, Judge Greene found in the divestiture cases that further barriers to entry that made a telephone company a monopoly included the control of network bottlenecks, large capital investment requirements, and the lengthy

construction time necessary to enter the market. *United States v. AT&T*, 524 F.Supp. 1336, 1347-48 (D.D.C. 1981).

It was against this backdrop that Section 251 was developed. CTC clearly enjoys the attributes and advantages of a monopoly under traditional antitrust principles. It cannot argue that it does not control the bottleneck local exchange network in Hidden Springs. It does. Likewise, CTC must admit that any competitor who is required to duplicate or over build CTC's facilities would have large capital investment requirements. Indeed, CTC itself argues the size of its investment is one reason to not impose Section 251(c) obligations. And clearly lengthy construction would be necessary for any competitor to enter the market by over building CTC's facilities.

By any standards, CTC is a monopoly in Hidden Springs. Applying the four elements that establish liability under the "essential facilities" doctrine, it is clear that under traditional antitrust rules, CTC would be obligated to provide the kind of non-discriminatory access which those cases contemplate. It is against that backdrop that the Commission should evaluate whether CTC meets the criteria established by Section 251(h)(2) to be treated as an ILEC.

III. CTC TELECOM MEETS THE CRITERIA ESTABLISHED BY SECTION 251(h)(2)

Those parties who oppose the IPUC's Petition argue that CTC does not meet the criteria for treatment as an ILEC pursuant to Section 251(h)(2). They argue that it does not occupy a dominant position in its market suggesting alternatively that the market is larger than CTC's designated service area, that CTC is too small a LEC and that other LECs could have over built CTC's facilities but did not. Such arguments ignore one salient fact -- CTC is the only facilities based provider in the Hidden Springs service area -- a service area CTC designated in its Application

to the IPUC -- and CTC will serve all or virtually all of the subscribers in that area. Exhibit 1. CTC controls the bottleneck local exchange network in Hidden Springs.

CTC concedes that any competitor will need to over build CTC's facilities or resell service under Section 251(b)(1) in order to offer service to customers in CTC's service area. CTC Comments at 16 and 18. In other words, CTC refuses to allow use of its facilities. It suggests, instead, that its general duties imposed by Sections 251(a) and (b) are adequate. As this Commission ruled in the *Guam* case,⁵ however, a LEC's general duties for interconnection and resale under Sections 251(a) and 251(b) are not equivalent to the duties imposed on ILECs under Section 251(c). *Guam Report and Order* at ¶19. Sections 251(a) and 251(b) assume a competitive environment where a LEC's prices and terms for resale are mediated by the existence of competition. Whereas Section 251(c) imposes obligations that operate without recourse to the market. Therefore, the Commission's decision that these sections are not equivalent is correct.

The facts demonstrate that CTC occupies a dominant position in the Hidden Springs market comparable to an ILEC's and that it controls the bottleneck to the essential network facilities in that service area. Moreover, there are no alternative technologies, such as wireless telephone service, capable of competing with CTC. Cusick Affidavit at 3. These facts support the Commission concluding that CTC should be classified as an incumbent LEC pursuant to the authority of Section 251(h)(2).

⁵ *In the Matters of Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act and Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act*, CC Pol. 96-18, CC Docket No. 97-134 (released May 19, 1997) 12 FCC Rcd 6925 (1997) (adopted July 15, 1998 and released July 20, 1998) ("*Guam Report and Order*").

A. CTC occupies a dominant position in the Hidden Springs market that is comparable to a traditional ILEC's dominance.

CTC, Time Warner and ELI argue that CTC does not occupy a dominant position in the market. Their argument relies on two erroneous assumptions -- that the market the Commission analyzes for Section 251(c) purposes is greater than or different from CTC's certificated service territory and that CTC's dominance is measured relative to U S WEST's or some other Bell operating company's dominance in its own market.

When measuring CTC's dominance, the Commission must determine CTC's dominance in its own market, its service area. The Commission cannot measure a LEC's dominance in a market in which it does not operate. It is obvious that if it has no market presence, it has no dominance to measure.

Furthermore, a LEC's dominance is not relative to another LEC's independent dominance. The Commission should not rule that because one LEC is dominant in a smaller market than another, it is somehow less dominant. Dominance should be measured where the LEC offers service.

1. CTC's market is Hidden Springs. While CTC, ELI and Time Warner argue that the relevant "market" for determining whether CTC occupies a comparable market position to an ILEC is either the entire nation or at least the Boise EAS⁶ region, all are wrong. CTC carefully defined its "market" as the Hidden Springs Community Development in its Application for a Certificate of Public Convenience and Necessity to the IPUC. Exhibit 1, p. 3 (*see* Exhibit C attached to the Application). CTC requested it be designated an eligible telecommunications carrier for the

⁶ Toll-free calling between and among local exchanges is usually provided via a service arrangement known as extended area service (EAS).

purposes of receiving state and federal universal service funds and further requested that its service territory for the purpose of universal service obligations be limited to its Hidden Springs certificated area. *Id.* at pp. 5-6.

Therefore, CTC's market is not the entire Boise EAS region, as it implies in its Comments. CTC Comments at 16. It specifically requested that its certificated service area be confined to Hidden Springs. *Id.* This market is separate and identifiable. CTC will not be offering service beyond its service territory and where a company cannot provide service outside its territory, its market is clearly defined as that territory. Just as the Commission did in *Guam*, the Commission should evaluate the dominance of CTC's market power within its certificated service territory. *Guam Report and Order*, ¶¶25-26.⁷

In making its argument, CTC also relies on several cases to suggest that the relevant market for CTC should be larger than its Hidden Springs certificated service territory. Its reliance is misplaced for several reasons. First, the cases cited by CTC involve violations of the Sherman Act and the Clayton Act. They do not involve the Telecommunications Act. Second, the cases do not stand for what CTC asserts. Finally, even in antitrust law, the relevant geographic market is "the area of effective competition" or the area "in which the seller [CTC] operates, and to which the purchaser [Hidden Springs customer] can practicably turn for supplies [telephone service]." *Tampa Electric Co. v. Nashville Coal Co.* 365 U.S. 321, 327, 328 (1961) *quoted in Hecht v. Pro-Football, Inc.*, 570 F.2d 982, 988 (D.C. Cir. 1977) *cert. denied* 436 U.S. 956 (1978) (emphasis added).

⁷ "Regarding the first requirement, we tentatively conclude that GTA occupies a position in the market for telephone exchange service in its service area that is comparable to an incumbent LEC's, because GTA appears to occupy a dominant position in that market. . . . Incumbent LECs typically occupy a dominant position in the market for telephone exchange service in their respective operating areas" *Guam Report and Order*, ¶¶ 25 and 26 (emphasis added).

Clearly, CTC operates and sells its services solely in Hidden Springs and, as will be demonstrated below, the Hidden Springs customer can only practicably turn to CTC for telephone service.

Moreover, while CTC cites *United States v. Grinnell Corporation*, 384 U.S. 563 (1966), to imply that CTC's relevant market is national, the United States Supreme Court has made clear that the relevant market for analyzing antitrust allegations should reflect the reality of the way in which a company built and conducts its business. *Id.* at 575-76. In *Grinnell*, because the alarm companies marketed, priced and integrated their service nationally, the court held the relevant market was national. *Id.* CTC only operates in its service territory. Contrary to CTC's suggestion, it is well settled that the relevant market need not be nationwide. *Hecht*, 570 F.2d at 988, *citing Standard Oil Co. v. United States*, 377 U.S. 293, 299 n. 5 (1949).

“[W]here the relevant competitive market covers only a small area the Sherman Act may be invoked to prevent unreasonable restraints within that area.” Indeed, courts have regularly identified relevant markets as single cities or towns, and even portions thereof.

Id., 570 F.2d at 988 *quoting United States v. Columbia Steel Co.* 334 U.S. 495, 519 (1948).

CTC also cites *RSR Corporation v. Federal Trade Commission*, 602 F.2d 1317, 1323 (9th Cir. 1979) *cert. denied* 445 U.S. 927 (1979) and *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 219 (D.C. Cir. 1986) *cert. denied* 479 U.S. 1033 (1987) for the proposition that the IPUC must show that there is price independence between the Boise EAS region and Hidden Springs to justify limiting CTC's relevant market in Hidden Springs. CTC Comments at 19. Again, CTC is wrong. Neither case stands for that proposition. In both cases, the interrelationship of pricing was one factor in determining the geographic market area. Moreover, there is no evidence that CTC's prices will be interrelated with those in the Boise EAS region. That is one of the IPUC's concerns.

Under Idaho law, CTC is exempt from price regulation by the IPUC. *Idaho Code* §§ 62-603(6) and 62-622(2). Without the real threat of competition, CTC will be free to charge whatever it wishes.⁸

2. CTC will be one of Idaho's larger rural LECs. Some commenters suggest that CTC is so small as to preclude the imposition of Section 251(c) obligations or to make them unnecessary. They are wrong on both counts. Size is not relevant to whether a LEC is an incumbent subject to Section 251(c) obligations. Furthermore, at completion, CTC will not be a small LEC by Idaho or national standards. *See FCC Monitoring Report*, CC Docket No. 98-202, dated December 1998, Table 3.22.

Size does not determine whether a LEC is an incumbent. An "incumbent local exchange carrier" is simply a local exchange carrier that provided telephone exchange service in an area on the date of enactment of the Telecommunications Act of 1996 (February 8, 1996) and was a member of an exchange carrier association. 47 U.S.C. §251(h)(1). Size is only relevant to whether a LEC is rural. Furthermore, it is not unusual to have rural LECs with fewer than 100 loops or access lines. *See FCC Monitoring Report*, CC Docket No. 98-202, dated December 1998, Table 3.22. While an ILEC may be defined as rural based on its size, significantly Congress did not automatically exempt rural ILECs from Section 251(c) obligations. It simply provided a mechanism to obtain an exemption or suspension from Section 251(c) obligations and left the decision to grant exemptions to state commissions. 47 U.S.C. §251(f). Had Congress wanted to make size determinative, it could have done so.

⁸ This, however, is not the basis upon which a LEC should be designated an ILEC under Section 251(h)(2). This Petition would still have been necessary even if CTC's prices were regulated by the IPUC. The only difference is that CTC would have been a price regulated monopoly and the pro-competitive purposes for the Telecommunications Act would still have been frustrated.

In addition, CTC is not small by Idaho standards or by most state standards. By contract, it may be required to provide up to six (6) access lines per lot in Hidden Springs. The community is anticipated to include more than nine-hundred (900) homes and an undisclosed number of small businesses and a school. Mr. Cusick, Chief of the IPUC Staff Telecommunications Section, testified in his Affidavit that it is reasonable to assume that CTC could have more than 3,000 loops or access lines when the project is completed. Cusick Affidavit at 1. Of the thirteen (13) IPUC regulated rural LECs reported on the most recent FCC *Monitoring Report*, nine (9) have fewer than 2,000 loops and four (4) have fewer than 1,000 loops. *FCC Monitoring Report*, CC Docket No. 98-202, dated December 1998, Table 3.22, excerpt attached as Exhibit 3. Cambridge, CTC's parent, only reported 2,001 loops. *Id.* Therefore, in Idaho, CTC will be one of the larger rural LECs.

3. CTC enjoys market power and seeks to exercise dominance in the Hidden Springs market by controlling the bottleneck local exchange service. CTC seeks to dominate the Hidden Springs market and enjoys a position comparable to a statutorily defined ILEC, because it is the sole provider of telephone service in its service territory -- Hidden Springs Community Development. To avoid this obvious fact and change the focus of the Commission's inquiry, CTC, ELI and Time Warner argue that any LEC could have built facilities as CTC did. That may be true, as a matter of law, but that is irrelevant to these proceedings.

The important inquiry is not whether other LECs could have entered into an agreement with the developer or simply over built CTC's facilities. The relevant question is whether CTC controls the only network facilities in the Hidden Springs service territory today. It does. Thus, regardless of the way CTC became the sole provider, it now controls the bottleneck local exchange network to the Hidden Springs Community Development and absent compliance with the obligations

of Section 251(c), it has the ability to impede the development of telephone exchange service competition in that community. The issue is not its contract; the issue is CTC's present monopoly position.

Furthermore, CTC and ELI are wrong in assuming that any LEC would have simply over built CTC's facilities at the time of trenching without a development agreement. Cusick testified in his Affidavit that Development Agreements are necessary for more than determining costs; coordination, specifications and other construction requirements are also covered. Cusick Affidavit at 2-3. Ms. Carlock, Supervisor of the IPUC Staff Accounting Section, testified that no rate regulated LEC (whether it is U S WEST or any other rate regulated company) should simply build facilities in a large new development without complying with its line extension tariff. Carlock Affidavit at 1; U S WEST Tariff attached to Carlock Affidavit. Carlock stated:

Rate regulated companies are at risk for facilities they build on speculation. Every investment in plant by a rate regulated company must be justified as "used and useful" before it can be included in rate base for the purposes of earning a rate of return. Where a rate regulated company has a tariff addressing speculative investments, such as building facilities in a new development, it must comply with that tariff or run the risk that the investment will be disallowed.

Carlock Affidavit at 1. Therefore, to the extent it is relevant at all, U S WEST could not simply have shown up and over built CTC's facilities as CTC and ELI suggest. Besides, it makes no economic sense for any LEC, whether rate-regulated or not, to over build or duplicate CTC's facilities especially where there is a three year exclusive marketing agreement and, therefore, it is unlikely those duplicate facilities will have sufficient customers to be economically viable.

Finally, CTC ignores the economic realities created by its contract with the developer. This developer paid CTC a non-refundable payment of \$60,000 and a refundable facilities charge

of \$35,250. CTC admits that U S WEST's tariff would have required a similar construction charge. CTC Comments at 2. In addition, by virtue of the fact that the refund of the facilities charge is directly tied to the number of CTC customers, the developer has a financial interest in not entering into any other development agreements. Indeed, the developer did not enter into such agreements and rejected U S WEST's proposal. *Id.*; Exhibit 2.

While CTC uses the presence of TCI Cable in its trenches to bolster its assertion that other LECs, and in particular U S WEST, could have over built its facilities during the development phase, CTC ignores two important facts. TCI had to threaten litigation to obtain an injunction in order to get the developer to comply with the Cable Communications Policy Act requirements, 47 U.S.C. §621(a), *as amended*, 47 U.S.C. §541(a)(2). Exhibit 4. And TCI is neither providing rate regulated telecommunications services or local exchange service nor is bound by a tariff.

It is also true that as a matter of law, Hidden Springs customers may request telephone service from U S WEST or some other LEC certificated for the service area. However, customers are unlikely to actually use another carrier for one very simple reason -- cost. It is not economically reasonable to expect customers in CTC's service territory to use a competitor, because, by CTC's own admission, any competitor must over build CTC's facilities and that cost for over building is borne by the customer. CTC Comments at 16, 18. Those construction costs will be high⁹ and there

⁹ For example, U S WEST's tariff requires any customer pay all construction charges in excess of \$1,600. Cusick Affidavit at 2. Mr. Cusick testified that there is no way to definitively determine in advance what those construction charges might be -- they are directly related to customer location. However, the IPUC Staff has some experience with U S WEST's costs for constructing facilities to serve new customers in the same general area as the Hidden Springs Community Development. *Id.* at 2-3. Based on that experience, Mr. Cusick testified that most customers in the Hidden Springs Community Development would probably experience substantial construction charges in order to receive service from U S WEST over U S WEST's own facilities. *Id.* at 3. He based his opinion on IPUC Staff files. According to those files, in 1997, one customer located just north of the proposed Hidden Springs Community Development requested telephone service from U S WEST and the

will be delays associated with obtaining service from any LEC that must over build CTC's facilities. Both of these things make it unlikely a customer has real economic or practical choice. It is hollow to suggest customers have practical competitive choices in the absence of this Commission imposing Section 251(c) obligations. CTC clearly will enjoy market dominance similar to that dominance that any ILEC that had been providing service to Hidden Springs as of February 8, 1996, would have had. CTC satisfies the criteria contained in Section 251(h)(2)(A).

B. CTC is a substitute for an ILEC within the meaning of Section 251(h)(2)(B).

It is true that CTC is not "replacing" an ILEC in Hidden Springs. No LEC has ever provided network facilities to the Hidden Springs service territory. There have been no customers. However, in *Guam*, the Commission interpreted Section 251(h)(2)(B) regarding this very issue of "replacement." The Commission concluded that "any LEC that provides telephone exchange service to all or virtually all of the subscribers in its service area, where . . . no NECA member served the area at issue as of the date of the enactment of the 1996 Act" satisfies the second requirement (Section 251(h)(2)(B)) for treatment as an ILEC under Section 251(h)(2). *Guam Report and Order*, ¶¶ 25, 31. The Commission invited comment to its interpretation and in response to comments, adopted this interpretation on July 15, 1998, and released the Final Order, July 20, 1998. Agency interpretation is entitled to deference. *Chevron, USA, Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984).

Furthermore, the Commission's interpretation makes sense. To hold otherwise would mean that all non-incumbent LECs that build new facilities (no matter the size) in areas that have

construction costs for a one-half mile line extension were quoted at over \$14,000. *Id.* at 3. Moreover, IPUC Staff also found that because of the geography, even wireless phone service was problematic for this new community. *Id.* at 3.

no current facilities would always be exempt from the obligations of Section 251(c). This would undermine Congress' clear intent to promote competition.

In this case, CTC will provide telephone exchange service to all or virtually all of the subscribers in its service area (Hidden Springs Community Development). U S WEST, the incumbent LEC in the larger study area, has no facilities within Hidden Springs Community Development and virtually no subscribers located there. Moreover, CTC will enjoy that same monopolistic advantage as a traditional incumbent and has already indicated that other LECs may only "compete" if they over build CTC's facilities or resell CTC's services under Section 251(b). CTC controls the bottleneck network facilities. This alone gives it the economies of scale that make efficient competitive entry quite difficult, if not impossible, absent compliance with the obligations of Section 251(c). This will not open CTC's service area to competition. Therefore, CTC by virtue of the fact it serves all or virtually all subscribers in its service area satisfies Section 251(h)(2)(B) and the Commission should exercise its authority under Section 251(h)(2) to treat CTC as an incumbent LEC for the purposes of Section 251(c).

C. Treating CTC Telecom as an incumbent LEC is consistent with the public interest, convenience, and necessity and the purposes of Section 251.

Under Section 251(h)(2)(C), in order for the Commission to treat CTC as an ILEC for purposes of Section 251, "such treatment [must be] consistent with the public interest, convenience, and necessity and the purposes of [section 251]." The Commission found that "Congress has declared unequivocally that promoting competition in local exchange and exchange access markets serves the public interest, convenience, and necessity." *Guam Report and Order* at ¶¶ 32, 40. Therefore, because Congress has already unequivocally declared that promoting competition in the local exchange serves the public interest, convenience, and necessity, the only issue is whether

treating CTC as an ILEC would promote competition in the local exchange and exchange access markets in Hidden Springs.

CTC asserts these obligations are unnecessary to promote competition because competition in its service territory already exists or could potentially exist. It asserts that “TCI is presently a facilities-based competitor.” CTC Comments at 22. That is simply not true. If it were true this Petition would not have been filed. TCI is a franchised cable company. It has never either filed an Application for a Certificate of Public Convenience and Necessity with the IPUC or indicated in any way its intention to provide telephone service in Idaho. In fact, the *New York Times* recently described TCI’s and AT&T’s telecommunications plans. Exhibit 5. Even in the near future, there is no plan to offer telecommunications service to any location in Idaho and no plans to offer service specifically to Hidden Springs. Therefore, CTC is wrong. There is no facilities-based local exchange competitor.

CTC next asserts that Sections 251(a) and 251(b) obligations create competition and are equivalent to Section 251(c) obligations. In *Guam*, Guam Telephone made the same argument to the Commission and the Commission properly rejected that argument. *Guam Report and Order* at ¶19. Furthermore, those lesser obligations apply to all LECs, including CLECs, because the underlying assumption is that there is competition and competition mediates the prices and terms. The reason Section 251(c) is so specific is that Congress recognized that where there is no effective competition, the ILEC would be able to misuse its monopolistic advantages to charge discriminatory prices and impose discriminatory terms. Thus

Congress chose, *inter alia*, to impose on entities that are classified as incumbent LECs the duties of interconnection, access to unbundled network elements, resale of retail services, collocation, public notification of interoperability changes, and good faith negotiation specified in section

251(c). These duties require incumbent LECs to share with competitors some of their inherent economic advantages -- advantages that would otherwise render competitive entry very difficult, if not impossible.

Guam Report and Order at ¶32.

CTC also suggests that the IPUC has authority to resolve its concerns be simply ordering U S WEST to over build CTC's network pursuant to *Idaho Code* § 61-508.¹⁰ Essentially, CTC is arguing that the IPUC, or any other state commission faced with a similar dilemma, should order a rate-regulated LEC to over build and duplicate existing network facilities. This is contrary to IPUC policy and it should be contrary to the Commission's policy. The IPUC has an affirmative duty to prevent duplication and the resulting economic waste. In the past, the IPUC has even decertified a portion of a telephone utility's service territory in order to allow an unserved area to

¹⁰ *Idaho Code* § 61-508. Improvements may be ordered -- Cost. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to or changes in the existing plant, scales, equipment, apparatus, facilities or other physical property of any public utility or of any two (2) or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing such additions, extensions, repairs, improvements, or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, requires joint action by two (2) or more public utilities the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at the joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time, such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structures or structure, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

be served by a competitor because it was cheaper for the competitor to build the facilities. *Cambridge Telephone Co., Inc v. Pine Telephone System, Inc.*, 109 Idaho 875, 712 P.2d 576 (1985).

Furthermore, CTC's suggestion makes no regulatory or economic sense and the Commission should reject that argument. Clearly neither Congress nor the Commission would endorse over building and duplicating existing networks on a large scale basis as the sole means for providing effective competition and choice in local exchange markets. That is the precise reason Congress imposed the Section 251(c) obligations on those LECs that control the bottleneck network facilities.

D. The Petition is not premature.

CTC, ELI and Time Warner suggest that this Petition is premature because no customer is complaining or presently served. However, this places the burden of policing CTC and other similarly situated LECs on the customers who may not understand the complexities of telecommunications law and procedure. It ignores the impact of regulatory delay in addressing abuses and regulatory inefficiency in policing those abuses. Moreover, waiting until some customer complains does not promote competition. No competitor will even request to serve the territory when faced with the necessity to over build and duplicate CTC's facilities. The capital intensive nature of over building and duplicating facilities, the construction delays and the costs associated with construction that all get passed on to the customer make it improbable that any competitor will ever compete in Hidden Springs. This rule making is not premature.

IV. CTC TELECOM IS A RURAL LEC ENTITLED TO THE PROTECTIONS OF SECTION 251(f)

CTC, like Guam Telephone, has fewer than 100,000 access lines. Therefore, like Guam Telephone, it is a rural LEC under Section 3(37) of the Telecommunications Act. Nothing in this

Petition changes the fact that as a rural LEC, CTC will be entitled to avail itself of the exemptions enumerated in Section 251(f). Moreover, under Idaho law, upon petition it will enjoy an automatic exemption from the imposition of Section 251(c) obligations for a duration of three to five years.

Idaho Code § 62-615(2).¹¹

Therefore, its concern about immediate competition before it has a chance to recoup its investment are unfounded.

V. APPLICABILITY OF RULES TO SIMILARLY SITUATED LECs

Several commenters expressed concern about the proposed general application of the rule to other similarly situated LECs. AT&T suggested withholding decision on the proposed rule of general applicability but designate CTC as an ILEC for the purposes of imposing Section 251(c) obligations. The IPUC acknowledges that it is difficult to draft a rule that is neither overly broad nor overly narrow. Therefore, the Commission could do as it did in *Guam* and decline to adopt a rule of general applicability. *Final Guam Order* at ¶9. In the alternative, the IPUC urges the Commission to modify 47 C.F.R. § 51.223 to allow state commissions to address similarly situated LECs within their jurisdictions. There are two obvious reasons for this.

First, these decisions are clearly best left to the individual state commissions. What might be a problem in Idaho may not be a problem in New York. In addition, the state commissions

¹¹ *Idaho Code* § 62-615(2). Upon petition of a rural telephone company with fewer than two percent (2%) of the nation's subscriber lines installed in the aggregate nationwide, the commission shall suspend the petitioner's obligations pursuant to section 251(c) of the telecommunications act of 1996. The period of suspension shall be determined by the commission, consistent with the public interest, convenience, and necessity, provided that such suspension shall be for a period of not less than three (3) years nor more than five (5) years. All other suspensions, modifications or exemptions pursuant to the telecommunications act of 1996 shall be committed to the commission's discretion.

can more easily draft conditions or issue decisions that precisely meet the needs presented by the particular LEC's situation. For example, the IPUC proposed state rules¹² do not impose all the obligations that are in Section 251(c). Moreover, the Idaho proposed rules allow the IPUC to only apply a few of the obligations to the LEC or none of them if the IPUC finds it is in the public interest. IDAPA 31.42.01.410.¹³ In addition, if there is actual competition or functionally equivalent, the IPUC can exempt the LEC entirely. *Id.*

Second, CTC Telecom will not be the only LEC that decides to build the first network facilities in a newly developed area. As more LECs choose to follow CTC's lead, the Commission will face more Petitions from state commissions. Therefore, the IPUC suggests that the Commission's rule should be modified to allow states to first address this issue. The Commission still retains its authority under Section 253 to preempt any state commission that improperly creates a barrier to competition.

CONCLUSION

Based on this Petition, the record, the comments and the material included in the attached appendices, the IPUC requests:

¹² CTC suggests these state rules make this proceeding unnecessary. However, CTC is contesting these state rules within the state administrative process, and it ignores the fact that it threatened to sue the IPUC in the federal district court for an injunction enjoining the IPUC from enacting the proposed IPUC rules. Exhibit 6.

¹³ 410. PETITION FOR EXEMPTION FROM RULES 402-409. (Rule 410). Any facilities-based competitor may petition the commission to exempt it from the application of Rules 402 through 409. The commission may grant the petition if the petitioner demonstrates there are functionally equivalent, competitively priced basic local services reasonably available to both residential and small business customers within the unserved area from a telephone corporation unaffiliated with the petitioner, or the petitioner demonstrates exemption is in the public interest.

1. That the Federal Communications Commission find that the statutory criteria for the Commission to treat CTC Telecom, Inc. as an incumbent local exchange carrier for Section 251 purposes set forth in Section 251(h)(2) are satisfied, and

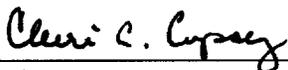
2. That the Commission further find that such treatment is necessary to avoid frustrating the Congressional intent to create the framework of competition in telecommunications, and

3. That the Commission treat CTC Telecom, Inc. as an incumbent local exchange carrier pursuant to Section 251(h)(2), and

4. That the Commission adopt a rule that treats all facilities-based local exchange carriers as incumbent local exchange carriers pursuant to Section 251(h)(2), that, after February 8, 1996, began to provide telephone exchange service exclusively over their own telecommunications service facilities, or predominantly over their own facilities in combination with the resale of telecommunications services of another carrier, to customers in a geographic area in which no other telephone corporation has facilities capable of providing basic local exchange service to customers.

Respectively submitted this 25th day of January 1999.

ALAN G. LANCE
Attorney General


Cheri C. Copsey
Deputy Attorney General
for the Idaho Public Utilities Commission

N:\fcc-ctc.rpy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS *25th* DAY OF JANUARY 1999, SERVED THE FOREGOING **IPUC REPLY COMMENTS**, IN DOCKET NO. 98-1221, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

MAGALIE ROMAN SALES
SECRETARY
FEDERAL COMMUNICATIONS COMM
PORTALS
445 12TH STREET SW
WASHINGTON DC 20554

JANICE M MYLES
FEDERAL COMMUNICATIONS COMM
COMMON CARRIER BUREAU
ROOM 544
1919 M STREET NW
WASHINGTON DC 20554

INTERNATIONAL TRANSCRIPTION SERVICES
1231 20TH STREET NW
WASHINGTON DC 20036

CONLEY E WARD
KENNETH R McCLURE
CYNTHIA A MELILLO
GIVENS PURSLEY LLP
277 NORTH 6TH STREET SUITE 200
PO BOX 2720
BOISE ID 83701-2720

BENJAMIN H DICKENS JR
GERARD J DUFFY
MICHAEL B ADAMS JR
BLOOSTON MORDKOFKY
JACKSON & DICKENS
2120 L STREET NW
WASHINGTON DC 20037

KECIA BONEY
MCI WORLDCOM INC
1801 PENNSYLVANIA AVE NW
WASHINGTON DC 20006

ROY E HOFFINGER
MARK C ROSENBLUM
AT&T CORP
ROOM 3249J1
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2445 M STREET NW
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ROBERT B McKENNA
JOHN L TRAYLOR
1020 19TH STREET NW
WASHINGTON DC 20036

WILLKIE FARR & GALLAGHER
THREE LAFAYETTE CENTRE
1155 21ST STREET NW
WASHINGTON DC 20036

ROBERT S TANNER
MARK TRINCHERO
MOLLY O'LEARY
DAVIS WRIGHT TREMAINE LLP
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1155 CONNECTICUT AVE NW
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Cheri C Capony

Conley Ward
Michael C. Creamer
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701
Telephone: (208) 388-1200
Facsimile: (208) 388-1201
CLIENTS\5101\1\PLEADING\APPLICAT

RECEIVED
JAN 26 1999
FCC MAIL ROOM

Attorneys for CTC Telecom, Inc.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE
APPLICATION OF CTC TELECOM,
INC. FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND
NECESSITY AND FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER.

CASE NO. GOR-T-93-4
APPLICATION OF CTC
TELECOM, INC. FOR A
CERTIFICATE OF PUBLIC
CONVENIENCE AND
NECESSITY AND FOR
DESIGNATION AS AN
ELIGIBLE
TELECOMMUNICATIONS
CARRIER

CTC TELECOM, Inc. ("CTC" or "Applicant"), through its counsel of record, Givens Pursley LLP, hereby files this Application for Certificate of Public Convenience and Necessity ("Application") with the Idaho Public Utilities Commission ("Commission"). CTC requests that the Commission issue an order: (1) granting CTC authority to provide local exchange service and other telecommunications services to the Hidden Springs area near Boise, Idaho; (2) designate CTC as an "Eligible Telecommunications Carrier" pursuant to section 214(e)(2) of the federal 1996 Telecommunications Act; and (3) providing further relief as more fully described herein. In support whereof, CTC states as follows:

I.

CTC is a corporation organized under the laws of the State of Idaho. CTC's Certificate of Existence from the Idaho Secretary of State is attached hereto as Exhibit A.

II.

CTC's Articles of Incorporation are attached hereto as Exhibit B.

III.

CTC is a wholly owned subsidiary of Cambridge Telephone Company, a certificated Idaho local exchange telephone company.

IV.

CTC's principal business office is located at the following address:

CTC TELECOM, Inc.
130 Superior Street
P.O. Box 88
Cambridge, ID 83610

Service of process may be accomplished by service on Mr. Richard Wiggins, at the aforementioned address.

V.

The following is a list of CTC's officers and directors:

Officers

Richard Wiggins - President
Kermit Wiggins - Vice President
Joana Wiggins - Secretary/Treasurer

Directors

Richard Wiggins
Joana Wiggins
Kermit Wiggins

VI.

CTC was organized for the primary purposes of providing local exchange telecommunications service and related services to unserved areas within the State of Idaho. CTC's officers and shareholders have extensive experience in constructing and operating telephone exchanges in the rural communities of Council and Cambridge, Idaho. As a recently formed corporation, CTC does not have current financial statements to provide to the Commission. CTC's parent company, Cambridge Telephone Company (Cambridge"), will provide the initial capital required by CTC, and Cambridge's financial statements are on file with the Commission. The Applicant respectfully requests that the Commission take official notice of those filed documents.

VII.

CTC requests Commission authorization to provide facilities-based, basic local exchange service and toll access telephone service to an area known as the Hidden Springs development ("Hidden Springs") in Ada County, Idaho. Hidden Springs is a planned community located north of Boise near Idaho State Highway 55. At full build out, Hidden Springs will contain roughly 900 residences and light commercial businesses. CTC has entered into a written contract with the Hidden Springs developer to provide telecommunications, cable television, high speed data transfer capabilities, and other services to the community and its residences. Maps and legal descriptions of the proposed Hidden Springs service territory are attached hereto as Exhibit C.

VIII.

CTC will provide Hidden Springs customers with the most technically modern communications services available in the industry today. These include basic local exchange service, extended area service to U S WEST's Boise calling area, touch-tone service, high speed data services, access to toll services, access to emergency services (911), and Lifeline and Link-Up services for low income residents. CTC's proposed telephone plant will include copper cable loops designed for broadband circuits, fiber optic cable transport facilities, next generation digital loop carrier, and a digital switch connecting to the toll network via a fiber cable to the nearest point of interconnection with U S WEST's network. CTC will construct the telephone plant in accordance with standards established by the federal Rural Utilities Services (formerly REA).

IX.

The name and address of the incumbent local exchange company with whom CTC is likely to compete is:

U S WEST Communications, Inc.
c/o Ms. Barbara Wilson
State CEO
999 main Street
Boise, ID 83702

X.

Pursuant to Idaho Code § 62-622(2), CTC will, before commencing service, file a price list with the commission reflecting the availability, price, terms and conditions for local exchange service. CTC's price for basic local exchange service will be comparable to the regulated basic local exchange price of U S WEST.

XI.

The name, address and toll free telephone number of the person responsible for both tariff questions and customer inquiries and complaints is:

Richard Wiggins
CTC TELECOM, Inc.
130 Superior Street
P. O. Box 88
Cambridge, ID 83610
(800) 259-3500

XII.

CTC has not yet initiated interconnection negotiations with U S WEST, but intends to do so in the near future.

XIII.

CTC has reviewed the Commission's Rules of Procedure, Customer Relations Rules for Telephone Corporations, Universal Service Fund Rules, and Telecommunications Relay Service Rules. CTC agrees to comply with all of these rules, although it has not yet arranged an Escrow Account or Performance Bond to secure the return of customer deposits, but will do so prior to commencing service.

XIV.

CTC will provide notice of this Application as may be required by Commission order.

XV.

If CTC is certificated by the Commission to provide local exchange service to Hidden Springs, CTC will meet the definitions of a "Common Carrier," "Telecommunications Carrier" and "Rural Telephone Company" under the federal 1996 Telecommunications Act. CTC will make its facilities and services available to

the public throughout its service territory, and will advertise its services throughout the Hidden Springs service area. Any federal universal service support which CTC is eligible to receive will be used to provide, maintain and upgrade facilities and services for universal service within CTC's certificated area. CTC will provide its customers with all services included under the federal definition of "universal service" except for "toll control", which currently is infeasible.

XVI.

CTC requests that all correspondence, pleadings or requests for information be directed to the following persons:

Conley E. Ward
Michael C. Creamer
GIVENS PURSLEY LLP
277 North Sixth Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1201

with copy to:

Richard Wiggins
CTC TELECOM, Inc.
130 Superior Street
P. O. Box 88
Cambridge, ID 83610
Telephone: 208-257-3314
Facsimile: 208-257-3310

WHEREFORE, the Applicant, CTC Telecom, Inc. respectfully requests that the Idaho Public Utilities Commission issue an order: 1) granting it a Certificate of Public Convenience and Necessity authorizing CTC to provide telecommunications services, including local exchange service, to the Hidden Springs area as designated and described in Exhibit C hereto; 2) designating CTC as an "Eligible Telecommunications

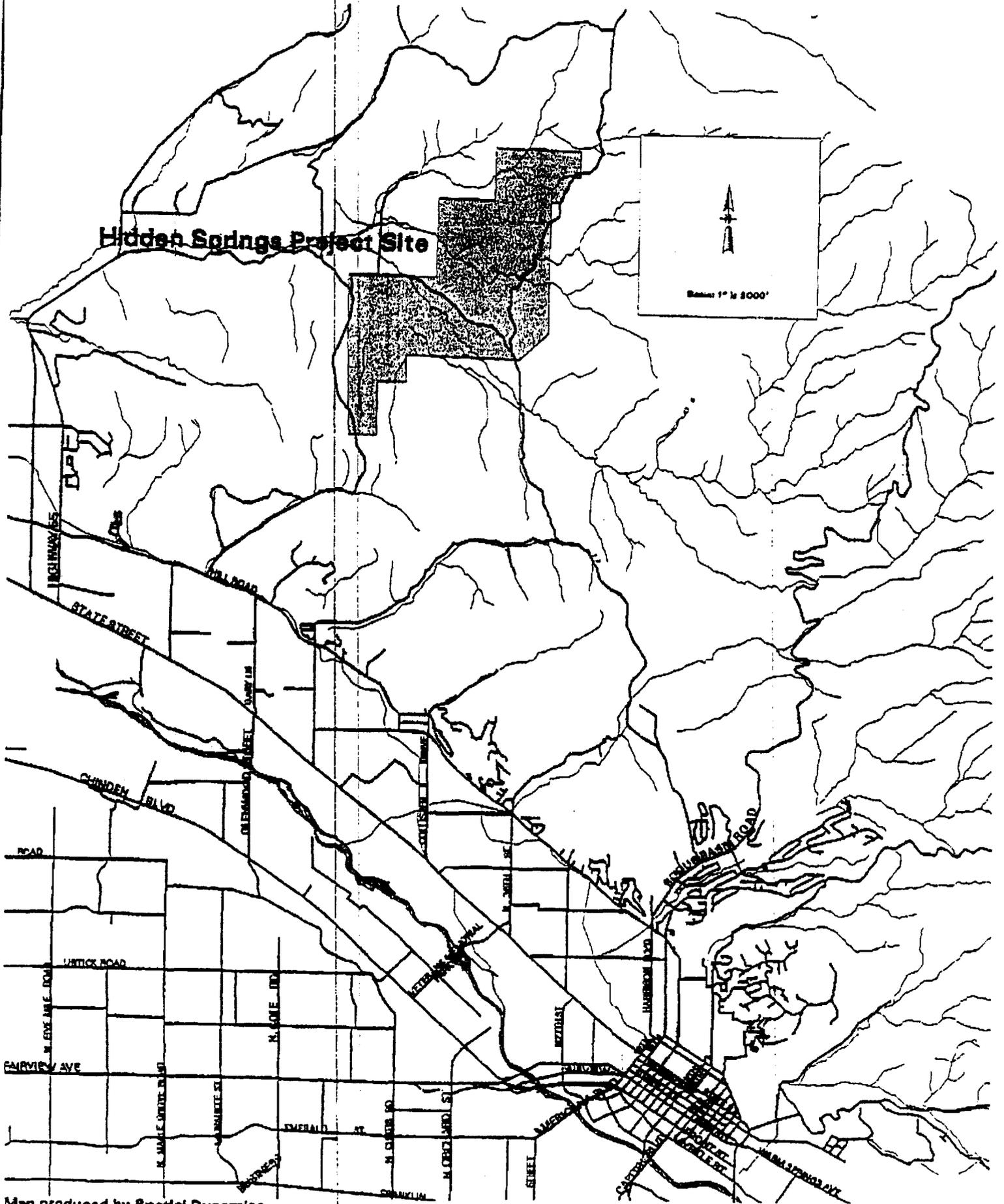
Carrier” pursuant to section 214(e)(2) of the 1996 Act for purposes of receiving all universal service supports, exemptions or other benefits that are or may be afforded to such Eligible Telecommunications Carriers; and 3) granting such further relief as the Commission may find just and reasonable.

DATED this 21st day of April, 1998.



Conley Ward
Michael C. Creamer
GIVENS PURSLEY LLP
Attorneys for CTC TELECOM, Inc.

Hidden Springs Community LLC



Map produced by Spatial Dynamics

February 13, 1998

USWEST
COMMUNICATIONS 

Hidden Springs Community LLC
Jay S. Decker
118 S. Fifth St.
Boise, Idaho 83702

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JAN 26 1998

FCC MAIL ROOM

U S WEST Communications
Bruce L. Watson
999 Main St.
Boise, Idaho 83702

Dear Jay,

This letter is being sent to confirm my understanding of our telephone conversation February 11, 1998 in regards to Hidden Springs Development. I understand that Hidden Springs has chosen another telephone service provider other than U S WEST to provide communications service to the development. It is also my understanding that negotiations that were underway with Don Bottoms for U S WEST easements and fiber placement shall cease and that any future requests for U S WEST to provide any communications facilities to the Hidden Springs Project will come from the service provider that you have chosen. U S WEST will cancel the existing Land Development Contracts that were issued to the Development. New contracts can be provided should U S WEST get an opportunity to be your service provider in the future.

Please do not hesitate to call myself or Don Bottoms if we can be of assistance or if you feel that my understanding of U S WEST's involvement in the project as stated above is incorrect.

Thank you;



Bruce L. Watson

cc; Don Bottoms
Don Sichterman

HIDDEN SPRINGS

November 11, 1997

Bruce L. Watson, Field Engineer
Land Development Coordination
US West Communications
999 Main Street 9th Floor
Boise, Idaho 83702

RE: Request for Telephone Service
Hidden Springs Community, L.L.C.

Dear Bruce:

Please accept this letter as the formal request for telephone service for Hidden Springs Community, L.L.C. (Hidden Springs), a planned rural community in the Boise Foothills. The requested telephone and data service will ultimately serve approximately 1,000 homes plus accessory units and 100,000 sq. ft. of commercial space. Construction of the community will occur over the next eight to ten years.

The first phase of the development will include 141 residential lots. First phase construction will begin in 1998 and is expected include construction of 50 residences and 10,000 to 15,000 sq. ft. of commercial space. We anticipate the construction of underground residential telephone service to occur in March of 1998.

Over the past several weeks, we have discussed the Hidden Springs development plan and worked toward a telephone and data service plan for the community. We have enjoyed developing a positive working relationship with the US West Communications (US West) team assigned to the project and offer our assistance however possible.

We understand that US West normally works with new developments under PUC tariff-based contracts. Therefore, we request that this contract process be initiated for our first construction phase of 141 residential lots and the commercial space presently contemplated. We also request that the contract reflect servicing each residence with six (6) telephone lines. Per our first meeting with you, Don Sichterman and Don Bottoms, we expect the contract to reflect charges of \$ 430.00 per residential lot and a developer cost recovery rate of \$ 860.00 per residential lot at the time the purchaser of a lot requests telephone service.

We understand that the service provide by US West will readily afford residents of Hidden Springs with T1 data service. Should T1 data service not be immediately available, or if T1 data service would require installation of other

HIDDEN SPRINGS

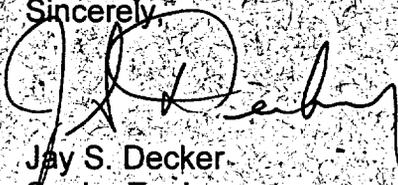
November 11, 1997

facilities, e.g., a remote switch, we request that US West provide alternatives for servicing the Hidden Springs residents with T1 service and any associated costs.

Per communications with Don Bottoms, we will grant US West an easement to locate a fiber optic cable termination cabinet in a wedge shaped parcel near the intersection of Dry Creek Road and Seaman Gulch Road. We are prepared to grant this easement as soon as necessary in order to facilitate US West's construction of a fiber optic cable to service the Dry Creek Valley. However, we grant will this easement with the mutual understanding that Hidden Springs intends to plat this parcel as a utility service area that would be used as the entry location for other utility providers to the community, including telephone, electrical, cable and natural gas. This easement would be revocable if not occupied and put into active service by US West within three months of its granting date.

We look forward to reviewing a proposed telephone service contract. Please notify me if there are anything questions regarding our service request. I can be reached at the address above or by telephone at 342-7339.

Sincerely,



Jay S. Decker
Senior Engineer
Hidden Springs Community, L.L.C.

C: Don Sichterman, US West Communications
Don Bottoms, US West Communications

MONITORING REPORT

CC DOCKET No. 98-202

DECEMBER 1998

RECEIVED
JAN 26 1999
FCC MAIL ROOM

Prepared by Federal and State Staff for the

Federal-State Joint Board in

CC Docket No. 96-45

This report is available for reference in the Common Carrier Bureau Reference Room, 2000 M Street NW, Room 575, Federal Communications Commission, Washington, DC 20554. Phone (202) 418-1370. Copies may be purchased by calling International Transcription Services, Inc. at (202) 857-3800. The report can also be downloaded from the **FCC-State Link** internet site, which can be reached at <http://www.fcc.gov/ccb/stats> on the World Wide Web. Names for print image files: mr98-all.pdf for the whole report and mr98-0.pdf, mr98-1.pdf, ... , mr98-11.pdf for the introduction and each section separately. Names for condensed files in WordPerfect 5.1 and Lotus 123 .wk4 format: mr98-0.zip, mr98-1.zip, ... , mr98-11.zip. The report can also be downloaded from the **FCC-State Link** computer bulletin board system at (202) 418-0241.

TABLE 3.22
NUMBER OF LOOPS BY STUDY AREA

S A ID	STUDY AREA NAME	1992	1993	1994	1995	1996
TOTAL: DELAWARE		431,021	446,623	465,492	486,562	507,860
565010	DIAMOND STATE TEL. CO.	431,021	446,623	465,492	486,562	507,860
TOTAL: DISTRICT OF COLUMBIA		839,415	838,869	848,419	883,538	901,311
575020	C & P TELEPHONE COMPANY OF WASHINGTON D.C.	839,415	838,869	848,419	883,538	901,311
TOTAL: FLORIDA		8,239,508	8,567,809	8,985,572	9,388,048	9,897,855
210291	FLORALA TELEPHONE COMPANY-FLORIDA	3,690	3,841	3,999	4,255	4,436
210318	FRONTIER COMMUNICATIONS OF THE SOUTH-FL	3,329	3,444	3,503	3,639	3,807
210328	GTE FLORIDA INCORPORATED	1,787,798	1,826,957	1,890,080	1,963,237	2,082,160
210329	GULF TEL. CO.- FL	7,906	8,047	8,357	8,439	8,969
210330	VISTA-UNITED TELECOMMUNICATIONS SYSTEMS	12,314	9,252	8,991	10,681	14,129
210331	INDIANTOWN TELEPHONE SYSTEM	2,762	2,945	3,073	3,125	3,259
210335	NORTHEAST FLORIDA TEL. CO., INC.	6,244	6,495	6,787	7,144	7,539
210336	ALLTEL FLORIDA, INC.	58,952	62,253	67,246	69,424	74,014
210338	QUINCY TELEPHONE CO-FL DIV.	9,734	10,609	11,634	12,262	13,052
210339	ST. JOSEPH TEL. AND TELE. CO.	23,842	24,971	26,308	26,870	29,134
210340	CENTRAL TELEPHONE COMPANY OF FLORIDA	300,642	322,974	343,967	359,116	381,316
210341	UNITED TELEPHONE CO. OF FLORIDA	1,150,793	1,212,639	1,283,347	1,342,209	1,420,660
215191	SOUTHERN BELL-FLORIDA	4,871,502	5,073,382	5,328,280	5,577,647	5,855,380
TOTAL: GEORGIA		3,646,907	3,808,356	4,008,482	4,247,630	4,512,195
220324	VALLEY TEL. CO.	4,244	4,588	4,671	4,787	5,045
220338	QUINCY TELEPHONE CO-GA DIV.	636	629	677	716	757
220344	ALMA TELEPHONE CO INC	5,837	6,020	6,138	6,338	6,533
220346	BLUE RIDGE TELEPHONE COMPANY	6,606	7,377	8,106	8,623	9,488
220347	BRANTLEY TELEPHONE COMPANY INC.	3,704	3,858	4,154	4,332	4,776
220348	BULLOCH COUNTY RURAL TEL. COOP INC.	6,742	7,158	7,645	8,182	8,730
220351	CAMDEN TEL & TEL CO INC - GEORGIA	13,955	15,022	15,445	16,977	18,852
220354	CHICKAMAUGA TEL. CORP.	5,305	5,126	5,380	5,729	5,729
220355	CITIZENS TELEPHONE CO INC - GEORGIA	4,242	4,386	4,580	4,720	4,822
220356	COASTAL UTILITIES, INC.	24,274	26,549	29,257	30,897	32,904
220357	ALLTEL GEORGIA, INC.	41,916	44,426	48,020	51,296	55,010
220358	DARIEN TELEPHONE CO. INC.	4,165	4,277	4,595	5,024	5,283
220360	ELLIJAY TEL. CO.	8,121	8,652	9,249	9,715	10,373
220362	FRONTIER COMMUNICATIONS OF FAIRMOUNT	1,735	1,878	1,995	2,031	2,142
220364	GEORGIA TELEPHONE CORPORATION	5,630	5,918	6,130	6,412	6,662
220365	GLENWOOD TELEPHONE COMPANY	705	733	763	812	830
220368	HART TELEPHONE COMPANY	7,477	7,876	8,201	8,452	9,103
220369	COMSOUTH TELECOMMUNICATIONS	3,833	3,844	4,021	4,314	4,540
220371	INTERSTATE TELEPHONE COMPANY	10,238	10,823	12,225	13,102	14,267
220375	NELSON-BALL GROUND TEL. CO.	4,215	4,550	4,893	5,262	6,057
220376	PEMBROKE TELEPHONE CO. INC.	3,021	3,136	3,272	3,350	3,534
220377	PINELAND TELEPHONE COOP	9,968	10,306	10,680	11,205	11,711
220378	PLANTERS RURAL TEL. COOP., INC.	5,975	6,311	6,540	7,190	7,719
220379	PLANT TELEPHONE COMPANY	8,010	8,204	8,545	8,907	9,165
220380	PROGRESSIVE RURAL TEL. COOP., INC.	3,933	4,011	4,239	4,424	4,641
220381	PUBLIC SERVICE TELEPHONE CO.	8,564	8,969	9,515	9,814	10,237
220382	RINGGOLD TEL. COMPANY	8,998	9,684	10,262	10,930	11,701
220386	STANDARD TEL. CO.	47,397	49,660	52,907	56,712	61,799
220387	FRONTIER COMMUNICATIONS OF GEORGIA, INC.	15,963	18,916	20,474	21,599	22,777
220389	TRENTON TELEPHONE COMPANY	5,085	5,305	5,549	5,631	5,912
220392	WAVERLY HALL TEL. CO., INC.	1,078	1,153	1,198	1,228	1,252
220394	WALKES TEL. & ELECTRIC CO.	9,784	10,057	10,295	10,623	11,981
220395	ACCUCOMM TELECOMMUNICATIONS	3,772	3,902	4,054	4,143	4,215
223036	GEORGIA ALL TEL TELECOM	67,342	72,407	74,835	77,630	80,581
223037	ALLTEL GEORGIA COMMUNICATIONS CORP.	224,031	230,153	242,940	259,229	273,015
225192	SOUTHERN BELL-GEORGIA	3,060,426	3,192,492	3,357,032	3,557,294	3,780,052
TOTAL: HAWAII		633,033	659,988	645,083	674,283	693,630
623100	GTE HAWAIIAN TEL. CO. INC.	633,033	659,988	645,083	674,283	693,630
TOTAL: IDAHO		521,942	549,041	584,084	614,333	642,225
472213	ALBION TEL. CO. INC.	914	915	956	1,010	4,693
472215	CAMBRIDGE TEL. CO.,INC.-ID	883	891	906	944	2,001
472218	CUSTER TEL. COOPERATIVE INC.	1,489	1,534	1,687	1,823	1,926
472220	FILER MUTUAL TELEPHONE COMPANY - ID	1,802	1,864	1,923	2,052	2,057
472221	FARMERS MUTUAL TEL CO LTD. - ID	2,141	2,278	2,425	2,587	2,898
472222	FREMONT TELCOM CO.	0	0	0	0	5,917
472223	GEM STATE UTILITIES CORP-ID	1,167	1,244	1,301	1,348	1,446
472225	CENTURY TELEPHONE OF IDAHO	3,025	3,096	3,405	3,552	3,844
472226	MIDVALE TEL. EXCH. INC.	348	362	373	428	1,043
472227	MUD LAKE TEL. COOP. INC. ASSOC.	1,289	1,332	1,313	1,325	1,428
472230	POTLATCH TELEPHONE COMPANY INC.	895	928	949	991	1,078
472231	PROJECT MUTUAL TEL. COOP. ASSN.	6,879	7,042	7,401	7,497	8,458
472232	ROCKLAND TEL. CO.,INC.	319	329	355	343	1,203
472233	RURAL TELEPHONE COMPANY - ID	334	442	401	397	425
472234	TROY TELEPHONE COMPANY	764	798	810	876	902
472295	SILVER STAR TEL. CO. INC.-ID	426	450	477	484	518
472416	GTE NORTHWEST INC. - IDAHO	87,101	92,759	107,085	113,027	121,733
472423	INLAND TELEPHONE COMPANY - ID	260	283	291	307	324
474427	CITIZENS TELECOMMUNICATIONS COMPANY OF ID	15,319	16,365	17,609	18,989	19,242

TABLE 3.22
NUMBER OF LOOPS BY STUDY AREA

S A ID	STUDY AREA NAME	1992	1993	1994	1995	1996
IDAHO (CONT.)						
475103	MOUNTAIN BELL-IDAHO	371,096	389,725	406,973	427,989	431,443
475162	PACIFIC NORTHWEST BELL-IDAHO	25,491	26,404	27,444	28,364	29,646
TOTAL: ILLINOIS		6,624,186	6,977,705	7,142,628	7,456,840	7,714,127
340976	ADAMS TELEPHONE COOPERATIVE	4,055	4,087	4,160	4,208	4,306
340978	ALHAMBRA-GRANTFORK TELEPHONE COMPANY	1,006	1,025	1,082	1,082	1,206
340983	CAMBRIDGE TELEPHONE COMPANY - IL	1,583	1,622	1,683	1,655	1,794
340984	CASS COUNTY TELEPHONE COMPANY	2,756	2,763	2,962	3,032	3,066
340985	CENTRAL TEL. CO. OF IL	187,320	193,112	196,020	200,440	208,316
340990	CLARKSVILLE MUTUAL TELEPHONE COMPANY	165	172	184	181	182
340993	CROSSVILLE TELEPHONE COMPANY	650	654	646	646	661
340998	FRONTIER COMMUNICATIONS OF DEPUE, INC.	785	767	770	804	805
341003	EGYPTIAN TELEPHONE COOPERATIVE ASSN.	2,673	2,709	2,765	2,641	3,061
341004	EL PASO TELEPHONE COMPANY	1,642	1,726	1,734	1,771	1,764
341009	C-R TELEPHONE COMPANY	883	908	923	949	951
341011	FRONTIER COMMUNICATIONS OF LAKESIDE, INC	803	788	808	866	866
341012	FLAT ROCK TELEPHONE CO-OP, INCORPORATED	470	483	504	519	574
341015	GTE NORTH INC. - ILLINOIS	567,597	608,343	595,325	615,133	636,315
341016	GENESEO TELEPHONE COMPANY	6,389	6,525	6,698	6,994	7,386
341017	GLASFORD TELEPHONE COMPANY	1,098	1,172	1,203	1,214	1,245
341020	GRAFTON TELEPHONE COMPANY	736	751	722	749	791
341021	THE GRANDVIEW MUTUAL TELEPHONE COMPANY	91	90	93	95	97
341023	GRIDLEY TELEPHONE COMPANY	1,187	1,226	1,240	1,360	1,380
341024	HAMILTON COUNTY TELEPHONE COOP.	2,199	2,208	2,238	2,279	2,295
341025	SHAWNEE TELEPHONE COMPANY	3,874	3,894	4,755	4,755	4,734
341026	HARRISONVILLE TELEPHONE COMPANY	15,261	15,629	16,029	16,571	17,263
341029	HENRY COUNTY TEL. CO.	1,457	1,487	1,505	1,503	1,519
341032	HOME TELEPHONE COMPANY - ST JACOB	765	857	898	912	928
341036	CONTEL OF IL, INC. DBA GTE ILLINOIS	159,879	167,719	169,464	174,125	181,904
341037	ILLINOIS CONSOLIDATED TELEPHONE COMPANY	74,294	75,385	75,514	75,207	74,904
341038	FRONTIER COMMUNICATIONS OF ILLINOIS, INC	4,256	4,290	4,362	4,555	4,640
341041	KINSMAN MUTUAL TELEPHONE COMPANY	80	81	84	91	91
341043	LA HARPE TELEPHONE COMPANY	1,063	1,056	1,088	1,090	1,088
341045	LEAF RIVER TELEPHONE COMPANY	593	581	614	622	619
341046	LEONORE MUTUAL TELEPHONE COMPANY	145	146	143	144	148
341047	MCDONOUGH TELEPHONE COOPERATIVE INC.	4,363	4,401	4,373	4,410	4,479
341048	MENABE TELEPHONE COMPANY	387	394	404	459	481
341049	MADISON TELEPHONE COMPANY	1,271	1,392	1,402	1,427	1,431
341050	MARSEILLES TEL. CO. OF MARS.	3,347	3,435	3,525	3,638	3,798
341053	METAMORA TELEPHONE COMPANY	3,096	3,216	3,403	3,565	3,714
341054	MID CENTURY TEL. COOP., INC.	4,233	4,254	4,321	4,414	4,499
341055	FRONTIER COMMUNICATIONS-MIDLAND, INC.	4,041	4,068	4,166	4,302	4,420
341058	MONTROSE MUTUAL TELEPHONE COMPANY	1,391	1,399	1,458	1,468	1,550
341060	MOULTRIE INDEPENDENT TELEPHONE COMPANY	650	669	689	778	766
341061	FRONTIER COMMUNICATIONS OF MT. PULASKI	1,842	1,928	2,111	2,120	1,924
341062	NEW WINDSOR TELEPHONE COMPANY	575	579	592	602	618
341065	ODIN TELEPHONE EXCHANGE INC.	1,100	1,101	1,108	1,142	1,173
341066	ONEIDA TELEPHONE EXCHANGE	502	503	510	573	568
341067	FRONTIER COMMUNICATIONS OF ORION, INC.	1,657	1,675	1,726	1,767	1,817
341073	FRONTIER COMMUNICATIONS-PRARIE, INC.	948	983	1,009	1,058	1,064
341075	REYNOLDS TELEPHONE COMPANY	508	510	522	531	543
341079	FRONTIER COMMUNICATIONS-SCHUYLER, INC.	2,672	2,746	2,827	2,932	2,992
341086	TONICA TELEPHONE COMPANY	499	501	520	514	511
341087	VIOLA HOME TELEPHONE COMPANY	714	717	727	745	766
341088	WABASH TELEPHONE COOPERATIVE INC.	4,488	4,474	4,543	4,584	4,846
341091	WOODHULL COMMUNITY TELEPHONE COMPANY	637	649	707	756	740
341092	STELLE TEL. CO.	65	63	69	73	73
341093	YATES CITY TELEPHONE COMPANY	520	513	517	531	523
343035	GTE SOUTH INC. - ILLINOIS	39,428	38,620	39,414	39,727	41,678
345070	ILLINOIS BELL TEL. CO.	5,499,497	5,796,659	5,965,769	6,248,531	6,464,254
TOTAL: INDIANA		2,850,502	2,968,533	3,076,691	3,220,347	3,342,186
320742	BLOOMINGDALE HOME TEL. CO., INC.	566	577	590	582	595
320744	CAMDEN TELEPHONE CO INC - INDIANA	1,552	1,566	1,623	1,670	1,715
320747	CENTURY TEL OF CENTRAL INDIANA	2,686	2,804	2,896	3,074	3,143
320750	FRONTIER COMMUNICATIONS OF INDIANA, INC.	2,278	2,276	2,334	2,399	2,509
320751	CITIZENS TELEPHONE CORP - WARREN	2,124	2,146	2,203	2,256	2,338
320753	CLAY CTY. RURAL TEL. COOP., INC.	9,082	9,413	9,818	10,233	10,716
320756	CRAIGVILLE TELEPHONE CO INC.	824	838	837	850	876
320759	DAVISS-MARTIN CTY. RURAL TEL. CORP.	2,601	2,642	2,736	2,803	2,965
320771	GEETINGSVILLE TELEPHONE CO INC.	432	431	446	454	478
320772	GTE NORTH INC. - INDIANA	607,965	621,596	649,543	677,523	709,114
320775	HANCOCK RURAL TELEPHONE CORP.	5,293	5,356	5,648	5,840	6,203
320776	COMMUNICATIONS CORP OF INDIANA	8,169	8,683	8,977	9,274	9,722
320777	HOME TELEPHONE COMPANY OF PITTSBORO INC.	1,686	1,780	1,871	1,966	2,074
320778	HOME TELEPHONE COMPANY INC.	1,946	2,013	2,081	2,117	2,111
320779	CONTEL OF INDIANA, INC. DBA GTE INDIANA	149,357	153,466	161,024	166,399	172,594
320783	LIGONIER TELEPHONE COMPANY	2,233	2,312	2,441	2,558	2,622
320788	MERCHANTS & FARMERS TELEPHONE CO	540	554	549	558	557
320790	MONON TELEPHONE CO. INC.	1,588	1,674	1,761	1,835	1,862
320792	MULBERRY COOP. TELEPHONE CO INC.	2,062	2,228	2,225	2,344	2,498

LAWYERS



Davis Wright Tremaine LLP

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July 15, 1998

Via telefax (208) 388-1201

RECEIVED
JUL 26 1998
FCC MAIL ROOM

L. Edward Miller Esq
Hidden Springs Community, L.L.C.
277 N. 6th Street
Suite 200
Boise, Idaho 83701

Re: Provision of Cable Service by TCI Cablevision of Treasure Valley to the Hidden Springs Development

Dear Mr. Miller:

We have been retained to serve as local counsel to assist TCI in obtaining access to utility trenches that are currently being excavated at Hidden Springs for the provision of cable television services. Our client has been illegally denied that access and is prepared to immediately initiate an action seeking a restraining order and injunctive relief if access is not immediately granted.

Attached hereto is a letter from TCI's national law firm specializing in access issues that contains a detailed exposition regarding Hidden Springs' legal obligation to permit TCI access to the trenches in your client's development. I urge you to review the letter carefully. Please let me know no later than 3 p.m. tomorrow (Thursday July 16, 1998) whether Hidden Springs will comply with the law and permit TCI to access the Hidden Springs development.

We have been in contact with Ennis Dale and have informed him of our intentions in this matter. I am therefore forwarding a copy of this letter to him for his review. One final note, I did attempt to reach you by telephone this afternoon to advise you of the urgency of this letter in advance. Unfortunately you were out of the office at the time of my call. However, due to the fact that Hidden Springs is rapidly bringing its excavation work to a conclusion, time is critical. Hence, the very short deadline for you to positively respond to our demand.

L. Edward Miller Esq
July 15, 1998
Page 2



Very truly yours,

Davis Wright Tremaine LLP

Peter J. Richardson

Cc: Ennis Dale

BIENSTOCK & CLARK

A Partnership Including Professional Associations
 FIRST UNION FINANCIAL CENTER
 SUITE 3100
 200 SOUTH BISCAYNE BOULEVARD
 MIAMI, FLORIDA 33131-2367
 Telephone: 305-370-1100
 Facsimile: 305-358-1228

Philip J. Kantor

July 15, 1998

L. Edward Miller Esq.
 Hidden Springs Community, L.L.C.
 277 N. 6th Street
 Suite 200
 Boise, Idaho 83701

**Re: Provision of Cable Service by TCI Cablevision of Treasure Valley
 to the Hidden Springs Development**

Dear Mr. Miller:

The undersigned represents United Cable Television Corporation, d/b/a TCI Cablevision of Treasure Valley (hereinafter "United Cable"), and has been asked to review the situation at the Hidden Springs development in Ada County, Idaho.

United Cable has explained to us that Hidden Springs Community, L.L.C. (hereinafter "HSC"), has denied it access to the trenches within the Hidden Springs development in order to lay cable distribution lines so to provide cable service to those residents who so desire to receive that service. We further understand that HSC has entered into a "gentlemen's agreement" with CTC Telecom., Inc. in order to allow that company to be the exclusive provider of multichannel video programming services to the residents of the Hidden Springs development. Finally, we understand that the Ada County Highway District has attempted to work with HSC in order to allow United Cable access to the trenches so to avoid the disruption of the development at a later date; however, the District officials have been unsuccessful in this endeavor.

We have been provided a copy of the Preliminary Plat for the Hidden Springs development which has revealed the following information. First, under Notes, the Plat contains the following specific statement concerning easements. It states: "Easements will be dedicated for all storm drainage and utility improvements installed outside of dedicated rights-of-way as required." Additionally, there are easements listed in the Legend to the Plat. Finally, there is a note in the Plat that it "Is being recorded under the provisions of Idaho Code 50-1331 through 50-1333. United Cable is a cable operator,

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 Santa Monica, California 90405
 Telephone: 310-314-8880
 Facsimile: 310-314-8882

311 South Wacker Drive, Suite 4550
 Chicago, Illinois 60608
 Telephone: 312-897-4906
 Facsimile: 312-897-4908

5360 Holiday Terrace
 Kalamazoo, Michigan 49008
 Telephone: 616-353-3900
 Facsimile: 616-353-3008

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franchised under the laws of Ada County. Under its franchise with Ada County, United Cable was granted the right and authority to use all public easements and rights-of-way within the County.

In 1984, the Congress enacted the Cable Communications Policy Act of 1984 (hereinafter the "1984 Cable Act"). In enacting § 621(a)(2) of the Cable Act (the 1992 Cable Act amendments and the 1996 Telecommunications Act had no impact on this provision of the 1984 Cable Act), Congress, acting for the public, authorized cable operators to use compatible easements, including, but not limited to, utility easements. Section 621(a)(2) declares:

Any franchise shall be construed to authorize the construction of a cable television system over public rights-of-way, and through easements which is [are] within the area to be served and which have been dedicated for compatible uses...

In one of the earliest interpretations of Section 621(a)(2), the Eleventh Circuit Court of Appeals in Centel Cable Television Co. of Florida v. Admiral's Cove Assoc. Ltd., 835 F.2d 1359, 1363 n.7 (11th Cir. 1988), held that: "However obtained, once an easement is established for utilities it is well within the authority of Congress to include cable television as a user." The facts of that case are almost identical to the situation at the Hidden Spring development. The court stated in the first two paragraphs under the section of its opinion entitled "Background" that:

Centel alleges that the Town of Jupiter, Florida granted it a franchise to provide cable services. Currently, Admiral's Cove Associates, Ltd. ("Admiral's Cove") is constructing a residential community within the franchise area. Prior to construction, Admiral's Cove recorded plats listing easements for telephone and electric utilities. The utilities have already begun to lay their cables in the easements.

Centel attempted to place its cables in these same easements. Admiral's Cove, however, prohibited Centel from laying the cables. Centel became concerned that Admiral's Cove prevented its access to the easements in order to negotiate an exclusive deal with a competing cable company to provide cable to the future residents. Also concerned that installation costs would rise if it did not act quickly, Centel sought a preliminary injunction allowing it to place its cables in the easements. The basis for Centel's claim rested on section 621(a)(2), which authorizes cable franchises to construct cable systems through easements dedicated for compatible uses.

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Id. at 1360-81 (footnotes omitted).

The court noted that "[t]he legislative history informs us that Congress intended to authorize the cable operator to 'piggyback' on easements 'dedicated for electric, gas, or other utility transmission. *Id.* at 1362, n. 5. Furthermore, the court noted that "Congress forbade any private agreements which would prevent a cable franchise from using utility easements." *Id.* at 1362. Judge Fay also stated: "Admiral's Cove argue[s] that Congress only authorized cable franchises to place their cables in publicly owned easements rather than utility easements.... We disagree with this line of reasoning." *Id.* at 1363 (emphasis added).

The Eleventh Circuit then faced this issue again in Centel Cable Television Co. of Florida v. Thos. J. White Dev. Corp., 902 F.2d 905 (11th Cir. 1990). A review of that case reveals that it was a very similar factual case to *Admiral's Cove*. In *Thos. J. White*, Centel sought a injunction against a developer "guaranteeing access to utility easements in St. Lucie West, a development in southern Florida." *Id.* at 906-07 (for a detailed discussion of the facts, see page 907). The court held that:

In the present case, White's plat and White's agreement with FP & L [the electric company] and Southern Bell allowing those utilities to use the private roads in St. Lucie West were designed to control access to the dedicated easements. Accordingly, White's allowing FP & L and Southern Bell access to St. Lucie West's private roads while prohibiting Centel access to those roads is a private agreement in violation of the Cable Act. (footnote omitted).

Id. at 909.

The Ninth Circuit Court of Appeals has only addressed this issue once in Century Southwest Cable Television, Inc. v. CIE Assocs., 33 F.3d 1068 (9th Cir. 1994). The Court, though, found that it "need not decide this disputed question" [because] Century has offered no evidence of easements within the 12 buildings of the Apartments which would come under the statute." *Id.* at 1071. Recently, though, the United States District Court for the Western District of Washington granted TCI Cablevision of Washington, Inc. a preliminary injunction under almost identical facts. TCI Cablevision of Washington, Inc. v. Port Blakely Communities, Inc., No. C98-0292Z (W.D. Wash. Apr. 22, 1998) (order granting preliminary injunctive relief) (a copy of that order is enclosed herein for your review).

As shown above, the easements that United Cable desires to use so to piggyback in order to serve all future residents of the Hidden Springs development are of the type of easements that the Cable Act intended for franchised cable operators, such as

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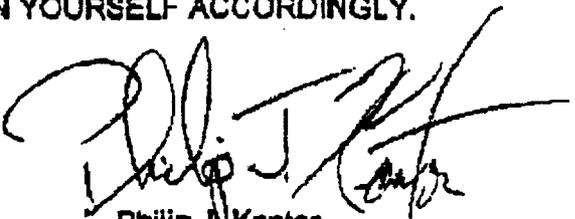
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United Cable to use. Consequently, HSC cannot legally prohibit United Cable from coming onto the property of the Hidden Springs development in order to lay cables on these compatible easements in order to serve the future residents of the development.

United Cable crews are ready to come onto the property of the Hidden Springs development in order to jointly lay its cables and other necessary equipment within the utility trenches already opened by the other utility companies constructing their systems within the development. We ask that HSC reconsider its earlier decision to prohibit United Cable access to those utility easements in order to allow United Cable to construct a cable system so to provide service to the future residents. Should HSC not reconsider its position, United Cable will have no other choice than to seek court intervention for a preliminary and permanent injunction for access and damages for any additional costs it may incur by not being allowed to jointly lay its cables in the open trenches with the other utilities companies.

PLEASE GOVERN YOURSELF ACCORDINGLY.



Philip J. Kantor

PJK/pc

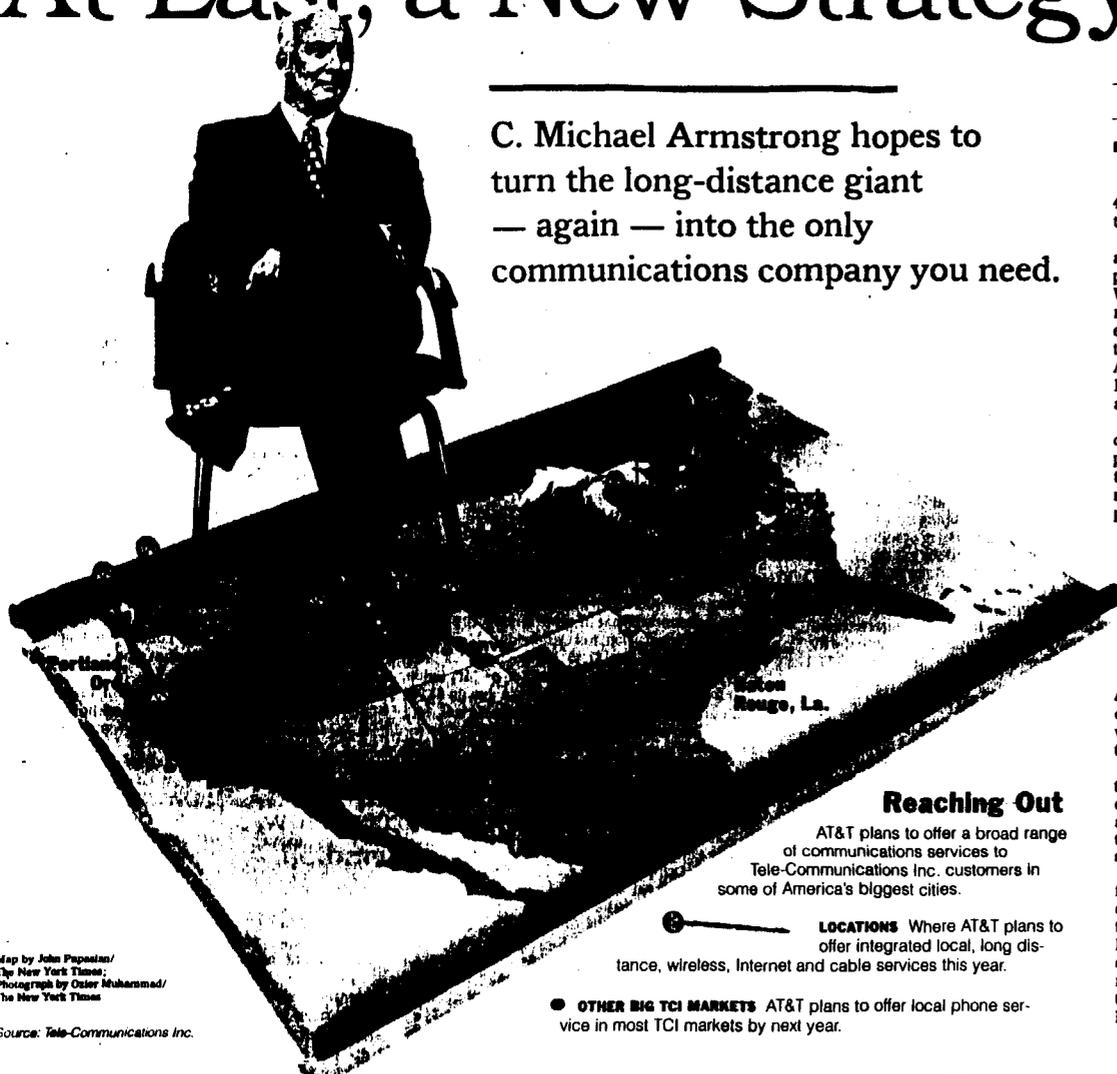
cc: Terrel Davis, Esq.
Mike Brand, Esq.
Mr. Robert Trafton
Mr. Dan Clark.

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At Last, a New Strategy for AT&T

C. Michael Armstrong hopes to turn the long-distance giant — again — into the only communications company you need.



By SETH SCHIESEL

THE future of the AT&T Corporation is not hard to find — if you can read a floor plan. It is in Room 4430G2 at AT&T's sprawling headquarters in Basking Ridge, N.J.

There are five PC's in Room 4430G2, a big-screen television and a bunch of phones. Nothing special in any of that. What distinguishes the setup is what's missing: telephone wires. All the key equipment links to the outside world through a single cable television line. And the line is providing lightning-quick Internet connections, crisp video images and, of course, a dial tone.

Simple as it seems, that ribbon of coaxial cable represents what may prove to be the most important strategic shift in decades at AT&T, the nation's biggest communications company and its most widely owned stock.

Fifteen years after the break-up of the Bell System severed AT&T's hard-wire link to United States consumers, its pending acquisition of Tele-Communications Inc., the No. 2 cable operator, will allow AT&T to again reach out and directly touch millions of homes. And trying to re-create AT&T's glory days, the company's new chairman, C. Michael Armstrong, wants AT&T to be the only communications provider its customers need.

Is that a pipe dream in an arena teeming with competition — wireless companies, long-distance companies and local phone companies, not to mention Internet providers and satellite TV services?

Maybe not. Three thousand miles from Basking Ridge, dozens of technicians in Fremont, Calif., are preparing to move Mr. Armstrong's vision out of Room 4430G2 and into the living rooms of paying customers. Soon after the merger closes, as soon as this spring, the TCI brand will start to disappear in Fremont, a middle-class suburb of San

Francisco, and Mr. Armstrong's operators will be calling consumers to offer AT&T's new wares.

The pitch will go something like this: "Hi, this is AT&T. Did you know that we can now offer not only long-distance phone service but also four lines of local service with call-waiting and Caller ID? And may we interest you in our high-speed Internet service, called AT Home? It lets you download from the Internet at speeds as much as 100 times faster than you can today — and at prices comparable to what you're already paying."

The salesperson will pause to catch a breath, and then continue:

"If you don't want high-speed access, how about a more traditional Internet service, like AT&T Worldnet? And a wireless phone that includes nationwide calling for as little as 10 cents a minute? Oh, yes, we can provide all of these services on a single bill with one number to call if you have questions."

But AT&T's proposition to consumers will be about more than a simple variety of services; it will be about the extra perks that come from becoming a full member of the AT&T family. So the closer will be along these lines:

"By the way, if you use any three of our other services, we would be happy to add HBO and the Disney Channel to your basic cable package for no additional charge."

By the end of 1999, AT&T intends to offer this integrated package of communications services not only in Fremont but also in another, undisclosed community in the San Francisco area as well as in Chicago, Dallas, Pittsburgh, Seattle, Denver, Salt Lake City, Portland, Ore., and St. Louis. By the end of 2000, the company intends to expand its competition against its progeny, the Baby Bells, by offering local phone service in most of TCI's other markets.

It is one of the biggest gambles in AT&T's 114-year history — a test of technology, of financial might and of

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Reaching Out

AT&T plans to offer a broad range of communications services to Tele-Communications Inc. customers in some of America's biggest cities.

LOCATIONS Where AT&T plans to offer integrated local, long distance, wireless, Internet and cable services this year.

OTHER BIG TCI MARKETS AT&T plans to offer local phone service in most TCI markets by next year.

Map by John Popasian/
The New York Times;
Photograph by Omer Muhammed/
The New York Times

Source: Tele-Communications Inc.

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At AT&T, a Plan To Rebuild Its Place Atop an Industry

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regulatory flexibility. For Mr. Armstrong, it is the ultimate test of managerial prowess: whether he can reshape one of the country's most hide-bound corporations to his vision of a lithe competitor in some of technology's fastest-moving sectors.

If he succeeds, AT&T will again be not just big, but also dominant, a mantle it lost because of competition from the likes of MCI Worldcom, Sprint, SBC Communications and Bell Atlantic.

If he fails? The critics will say he failed to gauge adequately the difficulty and cost of upgrading TCI's somewhat antiquated cable systems. That he did not understand the complexity of the local phone business. That he reached too far, too fast.

AT&T declined to comment, citing a "quiet period" mandated by regulators before shareholders vote next month on the TCI merger. And for now, the critics are lying low. That is because Mr. Armstrong has already seemed to make a huge change in an organization that long had seemed to be inertia's captive.

Though it lost its monopoly on phone service in 1984, AT&T never seemed able to shake off its monopoly mindset. Well into the 1990's, under Mr. Armstrong's predecessor, Robert E. Allen — whose entire career was spent at AT&T — the company continued to rely on the regulatory process to protect its core long-distance business and to keep potential competitors off balance.

"The shared belief in the company was that the single most important entity that affected their future was the Federal Government and the regulators," said Richard S. Bodman, who was AT&T's chief of strategy and business development for most of the 90's and who is now managing general partner of AT&T Ventures, a venture capital firm backed by AT&T. "That was a contest that maybe they couldn't win, but it was a contest in which they felt they had pretty good skills and tools to play the game adequately well."

ARRIVING in November 1997, after Mr. Allen's choice as heir, John Walter, quickly lost the board's confidence, Mr. Armstrong saw things differently. At Hughes Electronics, he had presided over the transformation of a military contractor into an entrepreneurial dynamo, building its Direct TV satellite business. And under him, AT&T has begun to shed its reputation as a company that would rather lobby than compete.

"From the time that MCI was created in the 60's until Mike Armstrong, AT&T was essentially a defensive and reactive company," said Reed E. Hundt, who stepped down as chairman of the Federal Communications Commission just as Mr. Armstrong joined AT&T. "Since he arrived, the company has been proactive, creative and aggressive."

John I. Nakanata, who resigned as chief of staff for Mr. Hundt's successor at the F.C.C., William E. Kennard, late last year, said: "It seems that AT&T has realized that they need a business solution, not a regulatory solution, to their business problem, which is that they have not had a way to touch the customer in the local market."

Of course, even as its share of the long-distance business slid and its earnings gains came to rely mostly on cost-cutting, the company always had ideas about how to grow.

Some proved disastrous, like its \$4 billion foray into the computer business by buying the NCR Corporation in 1991, a debacle reversed five years later at an additional cost of \$2 billion. Others were inspired, like the acquisition of McCaw Cellular for \$12.6 billion in 1993, making

AT&T a national player in wireless communications, and the spinoff of AT&T's equipment operation as Lucent Technologies in 1996.

Indeed, the seeds of every major move that AT&T has made in Mr. Armstrong's 14-month tenure were planted long before his arrival. His achievement has been in getting those plans off the drawing board — or out of the dust bin — and into the marketplace.

TCI ACQUISITION The most important strategic move of Mr. Armstrong's tenure, the TCI deal is meant to give AT&T a high-capacity pipe into millions of homes and a leg up in striking deals with other cable companies.

AT&T had been talking to cable operators, including TCI, about various sorts of joint ventures since at least 1991. But for years those talks never went anywhere, partly because, in its arrogance, AT&T refused to promise that it would not go into competition with the cable companies by jumping into the "content" business, whether by buying cable television networks, for instance, or even a movie studio.

It was not until 1997 that AT&T agreed to curb its media ambitions, thereby bringing the cable companies back to the table. Around Christmas that year, AT&T began having serious joint-venture discussions with carriers including TCI, Comcast, Cablevision, Cox and Time-Warner, the No. 1 cable company.

Boldly, Mr. Armstrong made the key decision to acquire TCI rather than simply form a joint venture. AT&T is now close to joint-venture deals with Time Warner and wants to sign agreements with the other big cable carriers by midyear. Together, these deals could give AT&T a line into more than half the nation's homes.

TELEPORT ACQUISITION Just as the TCI deal gives AT&T a wire into homes, the \$11.3 billion deal for Teleport Communications last January gave AT&T entry into the business of providing local voice and data communications to corporate customers.

This deal was loaded when Mr. Armstrong arrived. But he pulled the trigger, adding a unit that is expected to provide billions of dollars in revenue.

OVERSEAS DEALS, WITH LIMITS Mr. Armstrong led AT&T into a \$10 billion joint venture with British Telecommunications P.L.C. All their international communications behemoth needs now is a big Asian partner — and a chief executive.

But in some ways the deal highlights one of AT&T's toughest choices. When the company decided that a big part of its future lay in the huge investments it would make to get into the domestic local phone market, it had no choice but to limit its international aspirations and rely on strong partnerships.

Previously, AT&T had been negotiating investments in Germany and France — and had been thinking about investing in Italy or building a network in Shanghai — even as it participated in loose overseas ventures.

Fittingly, Room 4430G2, where AT&T now demonstrates its ambitions for local communications services, used to be a reception area for visiting foreign executives.

NATURALLY, the rich benefits that AT&T stands to reap if its new strategy succeeds are threatened by a commensurate set of daunting challenges. Foremost is the competition — both from the Bells and AT&T's long-distance rivals.

As a group, the Bells — seven of them when AT&T was broken up in 1984, now consolidated to five — have more money, more customers and

arguably more influence in Washington than AT&T has. Whether the Bells or AT&T emerge as the most powerful players in communications depends on timing and technology.

Both AT&T and the regional Bells know that whatever competitor is first to offer customers an integrated package of local and long-distance service in a given market stands a good chance of holding on to that customer for the foreseeable future.

The problem for the Bells is that none has yet convinced the F.C.C. that, as required by the Telecommunications Act of 1996, it has opened its local phone networks to competition enough to win entry to the long-distance market. Even as AT&T introduces local service over TCI's cables, the Bells will still have to face that test.

Bell Atlantic, the regional Bell serving 13 states from New England to Virginia, thinks it can put together a winning application sometime before the middle of this year. That would be later than originally anticipated but could still give Bell Atlantic a head start on AT&T in the lucrative Northeast.

Even then, the technology that Bell Atlantic would have to use — providing high-speed Internet access over standard copper telephone wires — appears to some analysts as less developed than the cable technology that AT&T plans to employ. (Bell Atlantic was one of the first companies to have the vision of delivering a

full array of communications services over cable lines. But its proposed merger with TCI fell apart in 1993, the victim of regulatory uncertainties and concerns over the costs of upgrading TCI's systems.)

The flip side of Bell Atlantic's problem, though, is that AT&T's most cost-efficient technology for delivering phone calls over cable wires — one that uses Internet systems — is itself at least a year away. In Fremont and its other initial markets, AT&T plans to start out delivering phone calls using an older technology that could cost as much as \$900 a house (though the company is counting on that figure being \$550). The Internet option, however, could cost as little as \$350 a house.

The costs of delivering local services to all of TCI's 10 million customers could total as much as \$6 billion, and those costs will be absorbed by AT&T's shareholders. Most analysts expect the TCI acquisition to dilute AT&T's earnings for at least three years.

Just as important, AT&T faces big technical challenges in getting TCI's systems to work with its own — and big human-resources challenges in getting TCI's sales force to work with its own. Complicated new computer systems will be needed, both to connect AT&T's old long-distance network to TCI's cable systems and to provide integrated bills for the company's millions of customers.

There is no chance, meanwhile, that MCI Worldcom and Sprint, AT&T's two big rivals in the long-distance business, will stand still.

Sprint has already unveiled its own plan to offer a bundle of local services, though how the company will reach large numbers of consumers remains unclear. Sprint has tried to make deals of its own with big cable companies. But in that competition, AT&T may have an edge.

For one thing, once AT&T acquires TCI it will be part of the club with the other big cable operators. For another, Sprint has already worked with some of the major cable carriers in forming the Sprint PCS wireless joint-venture — and that relationship did not go as smoothly as it could, because the cable operators were expecting a higher, quicker return on their investments.

MCI Worldcom runs the biggest Internet service provider, Unet, and one of the Bells' biggest competitors in local phone service, MFS. Both those units, however, are geared to business customers, and it is unclear how MCI Worldcom means to make a big splash in local consumer markets.

FOR years, AT&T was a burr in the hide of the Federal regulators whose power still plays a big role in how competition unfolds in the communications world. In consummating the TCI deal, however, Mr. Armstrong and AT&T seem to have a special friend: the F.C.C.



Oster Muhammad/The New York Times

Since taking over late in 1997, C. Michael Armstrong seems to have brought about change at one of the nation's most rigid corporations. But can he reshape AT&T into a lithe competitor in a fast-moving industry?

From the moment AT&T's deal with TCI was announced, Mr. Kennard, the commission's chairman, has not seemed able to say enough good things about it. And it isn't hard to understand why. For Federal regulators, the main issue of the last few years has been the fostering of competition in local telephone markets. AT&T's strategy promises just that.

Mr. Kennard, however, wants to make sure that AT&T follows through, and not just for wealthy people able to afford the full panoply of 21st-century services.

"The AT&T-TCI merger holds competitive promise because it's a long-distance company joined with a cable company to compete against the local phone companies," Mr. Kennard said. "That's what all the hoopla is all about. But we need to make sure there's a commitment to deploy these networks to all residential consumers — not only the afflu-

ent but to everybody, not only in the suburbs but also in the inner city."

More grave could be challenges to AT&T's plans to limit access to its speedy new cable pipelines. Unlike local phone companies, cable TV operators do not have to open their systems to all comers. TCI, for instance, is under no obligation to let America Online offer direct high-speed access over its lines. That ability to use cable lines exclusively — while the local phone companies have to open their systems — is a cornerstone of AT&T's plan.

But together, the Bells and leading Internet companies like America Online are challenging the disparity, on both the Federal and municipal levels. That puts the regulators in a tough spot, because AT&T — on which the regulators are counting to create competition for local phone service — will say it makes no sense to build advanced networks in the first place if it must open them to still other competitors.

Nonetheless, the consensus — both in the industry and on Wall Street — is that by moving boldly to deliver his basket of services, Mr. Armstrong has given AT&T a new lease on market leadership. Investors have bid up the company's shares 73 percent since his hiring was announced, including a 29 percent increase since the announcement of the TCI deal in June.

If he succeeds, Mr. Armstrong — who once longed to run I.B.M., another giant that needed stiff medicine — will make good on his bid to become a corporate icon.

"There is no guarantee that 20 years from now the AT&T's of the world will even survive," said Mark S. Fowler, a chairman of the F.C.C. in the 1980's.

"What Armstrong recognizes is that they will have to take some very bold decisions in terms of changes of direction, committing capital, changing the culture within the company. Or they may not be around."

Surrounded by Rivals

With its strategy of bundling together a wide range of communications services, AT&T under the leadership of C. Michael Armstrong invites comparison with a broad range of competitors. Here are key financial facts on important rivals in each of AT&T's main businesses and assessments of the companies by two money managers.

	Friday's close	Percent change since Dec. 31, '97	Price-to-earnings ratio	Estimated 1998 earnings	Projected earnings growth		Observations from fund managers	
					1999	2000	Stephen R. Waite, co-manager, Warburg Pincus Global Telecommunications fund	Michael Mahoney, senior portfolio manager, AIM Global Telecommunications fund
AT&T	\$84.25	+ 37.4%	\$1.20	\$3.45	+\$0.69	+\$0.60	"My favorite turnaround story. Sick with Armstrong."	"Restructuring and increase in financial leverage makes a buy."
Long distance								
NCI Worldwide	75.0625	+148.1	—	0.86	+ 1.29	+ 0.86	"A global leader. Well positioned for the 21st century."	"Despite strong stock performance, still a buy."
Sprint	77.875	+ 48.8	38.94	3.49	+ 0.30	+ 0.64	"Core holding in telecom portfolio."	"It is a long-term buy."
Local phone calling								
Bell Atlantic	53.125	+ 16.6	29.11	2.72	+ 0.29	+ 0.35	"Not favorable."	"Sell-off in shares recently presents a buying opportunity."
SBC Communications	55.9375	+ 52.7	27.83	2.07	+ 0.31	+ 0.33	"Most attractive regional Bell operating company."	"A core holding."
Wireless								
Airtouch Communications	83.375	+100.6	78.66	1.03	+ 0.33	+ 0.59	"A jewel in the cellular sector."	"Arbitrage opportunity makes a buy."
Sprint (PCS group)	25.375	+ 78.8	—	-6.67	+ 0.87	+ 0.61	"An attractive franchise in a fast-growing sector."	"It is a buy, though valuation is a bit less attractive after recent run."
Internet								
America Online	146.50	+547.5	610.42	0.47	+ 0.21	+ 0.27	"Internet superstar."	"It is a long-term buy, though ahead of itself."
Midspring Enterprises	94.00	+739.3	318.95	0.32	-0.08	+ 0.58	No comment.	"A sell; the stock is overvalued."
Cable television								
Time Warner	61.6125	+ 99.4	6,181.25	-0.06	+ 0.33	+ 0.23	"Great buy. Must own."	"The company is hitting on all cylinders. A buy."
Comcast	61.625	+ 93.3	52.22	-0.69	+ 0.27	-0.04	"Very attractive cable franchise."	"A buy on this asset-rich company."

Sources: First Call, Bloomberg Financial Markets

Forging a New AT&T

In 15 months under C. Michael Armstrong, its new chief executive, AT&T has engaged in rapid-fire deal making that has revamped the company and revived its stock

