

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Joint Application of)
AT&T COMMUNICATIONS OF THE)
MOUNTAIN STATES, INC., and)
CABLE PLUS COMPANY, L.P., for)
Forbearance of UCA § 54-8b-18, a)
Waiver of the Commission's Rules, and)
Informal Adjudication)

DOCKET NO. 00-087-03

REPORT AND ORDER

ISSUED: June 20, 2000

SYNOPSIS

Having concluded that approval of the Request for Forbearance, Waiver and Informal Adjudication is appropriate and does not contravene the public interest, the Commission hereby grants and approves the Joint Application.

HISTORY

On May 10, 2000, AT&T Communications of the Mountain States, Inc. ("AT&T"), and Cable Plus Company, L.P., d/b/a Telephone Plus ("Cable Plus") (collectively "Parties") requested that the Commission informally adjudicate the above-referenced matter and grant its approval on or before May 31, 2000. The Parties requested swift consideration and approval of their Application to allow Cable Plus to timely cease its shared tenant operations in Utah and ensure seamless telecommunications service to the former Cable Plus customers.

FINDINGS OF FACT

1. AT&T, joint applicant and transferee, is a certificated telephone corporation in the State of Utah. Cable Plus, joint applicant and transferor, owns and operates a master antenna television system and telephony system providing limited services to residential apartments and condominiums in Utah as a shared tenant services ("STS") provider.⁽¹⁾ Cable Plus offers such service to its end-user customers under the name of "Telephone Plus." Cable Plus provides telephone service to residents through the use of its PBXs located on the premises of the respective properties.
2. Cable Plus along with its affiliates,⁽²⁾ and AT&T Broadband LLC ("Broadband") have executed an Asset Purchase Agreement ("Agreement").⁽³⁾ In the Agreement the proposed transaction is structured as a transfer of assets from Cable Plus to Broadband. Upon receipt of the necessary regulatory approvals and completion of the closings, Broadband will acquire the Cable Plus assets. Each of the ten Utah properties will have separate dates upon which the customers' service is actually switched. However, all Utah customers' service is expected to transition from Cable Plus to AT&T on or before August 15, 2000.
3. Upon each closing for the individual properties, Cable Plus will cease providing telephone services and AT&T, using its own facilities, will provide telephony services to the former Cable Plus customers. AT&T will offer the same or similar services to the residents of the apartments and condominiums through upgraded facilities at each property. The proposed asset transfer will result in a change in the ultimate telephone provider for the affected residents, and it will result in a wider range of telecommunications service offerings and calling plans available to each such customer.⁽⁴⁾
4. The Parties propose that the services currently being provided by Cable Plus will, as nearly as AT&T can match such⁽⁵⁾

plans with its own, continue to be offered pursuant to AT&T's price lists currently on file with this Commission. After the proposed transaction and approvals, AT&T will continue to offer all its local exchange and toll service customers a choice of carriers in compliance with its obligations under the Telecommunications Act of 1996 ("Act") and Utah law.

5. Cable Plus and AT&T intend to notify residents of each property of the transfer and carrier switch once before and once after the customer "cut-over" dates.⁽⁶⁾ The proposed notices inform the customers that Cable Plus will cease being their telecommunications provider and that AT&T will provide service thereafter. The notices state further that the Parties intend to provide a seamless cut-over such that customers' service will not be significantly disrupted during the transaction. Furthermore, the notices assure the customers that their current Cable Plus service will be replaced, as closely as possible, by similar AT&T service. Finally, the customers, while asked to remain with Cable Plus for a short period of time immediately prior to the actual switch to AT&T, are ultimately able to switch to any carry of their choosing or stay with AT&T.

6. The Parties request that customers not switch away from Cable Plus for a period of 30 days ("quiet time") prior to the actual cut-over from Cable Plus to AT&T to allow AT&T the necessary time to create individual accounts for these customers.⁽⁷⁾ The Parties also need this time to coordinate their customer records and ensure as little disruption to the customers' service as possible. Because the Cable Plus customers were previously served through a PBX, the block of numbers held by Cable Plus must be converted into individual accounts that will identify the individual end-user customers. Creation of the individual accounts will allow the customers greater mobility and choice of carriers after the switch of service to AT&T.

7. In the second proposed notice to customers, AT&T and Cable Plus intend to inform customers that the actual transfer has occurred to remind them that their service has switched to AT&T.⁽⁸⁾ The second notice also reminds customers of their ability at that juncture to remain with AT&T or switch away to another carrier.

8. AT&T's ultimate upgrade to the Cable Plus telephone service will increase each customers telecommunications service options and provide greater access to advanced services.⁽⁹⁾

9. In the Application the Parties are requesting that the Commission grant them a limited waiver of the authorization methods required under the Commission's rules through use of the Federal Communications Commission's ("FCC") rules so as to allow for the efficient movement of a block of customers currently served by a PBX.⁽¹⁰⁾ Once these customers are moved, AT&T will create separate customer accounts that will facilitate the efficient provisioning of customer service and choice of carriers.

DISCUSSION

1. Commission Rule R746-349-5 requires that all requests for termination of local exchange or intrastate toll service from an existing telecommunications corporation and subsequent transfer to a new carrier must be in compliance with 47 CFR §§ 64.1100 and 1150, 1996, incorporated by reference.⁽¹¹⁾

UCA § 54-8b-18 requires that all changes in subscribers' telecommunications carriers comply with the requirements contained in the statute. The statute and rule generally require prior customer authorization to change carriers through one of three methods: (a) written authorization; (b) electronic verification or (c) third party verification. The Commission's rule was promulgated, and the statute enacted, to prevent unscrupulous carriers from essentially stealing customers away from their designated carriers. The statute and rule do not address the lawful need to switch customers to other carriers where a transfer of assets and a discontinuance of service is contemplated.

2. The Parties intent is not to take customers away from their chosen carrier or deny them an opportunity to select another carrier.⁽¹²⁾ Rather, the customers will be fully informed of the transaction, the need for a quiet period, and their renewed ability to chose a carrier or stay with AT&T.

3. Several state commissions have previously approved this type of transaction wherein Cable Plus desired to sell its telephone assets and allow a certificated carrier to serve its former customers upon its ceasing operations.⁽¹³⁾ In these cases, the applications were unopposed.⁽¹⁴⁾ Similarly, the FCC has repeatedly allowed such a waiver and required that carriers employ notices similar to those proposed by the Parties here.⁽¹⁵⁾

CONCLUSIONS OF LAW

No detriment to the public interest appearing, we should approve the requested waiver and forbearance.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- AT&T and Cable Plus' Application, dated May 10, 2000, be and it is, hereby granted effective the date of this Order.

DATED at Salt Lake City, Utah, this Tuesday, June 20, 2000.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

1. Joint Application at 3.

2. Cable Plus Holding Company, a Washington corporation, Cable Plus Communications, Inc., a Washington corporation and Cable Plus/96 L.L.C., a Washington limited liability company are affiliates of Cable Plus Company, L.P.

3. Joint Application, Confidential Exhibit B.

⁴ See Confidential Attachment B, the Agreement between Cable Plus and Broadband.

5. Pre-filed Direct Testimony of Mary Jane Rasher at 7.

⁶ Id. at 10-13.

⁷ Id. at 10; Joint Application at 7-8.

8. Pre-filed Direct Testimony of Mary Jane Rasher, Attachment C.

9. Id. at 6.

10. Id. at 8-10.

11. Although the Commission's rule incorporates by reference 47 CFR §§ 64.1100 and 1150 (1996), the FCC's amended anti-slamming rules became effective on April 27, 1999.

¹² See Pre-filed Direct Testimony of Mary Jane Rasher at 8-13.

¹³ See In the Matter of the Joint Application of AT&T Communications of the Mountain States, Inc. and Cable Plus Company L.P. for Approval of a Transfer of Assets, Before the Public Utilities Commission of the State of Colorado, Docket No. 00A-220T, Dec. No. C00-558;

14. Id. at 3; Id. at **AZ**, respectively.

15. Pre-filed Direct Testimony of Mary Jane Rasher at 14, n. 4 (citation to the FCC's numerous decisions).