

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

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In the Matter of Joint Application of: AT&T )  
COMMUNICATIONS OF THE MOUNTAIN )  
STATES, INC. and AT&T BROADBAND PHONE )  
OF UTAH, LLC For Forbearance of Utah Code )  
Ann. § 54-8b-18, and Waiver of the Commission's )  
Rules, and Informal Adjudication )

DOCKET NO. 02-087-01  
REPORT AND ORDER

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ISSUED: April 9, 2002

By the Commission:

On March 1, 2002, AT&T Communications of the Mountain States, Inc. ("AT&T-Mountain") and AT&T Broadband Phone of Utah, LLC ("Broadband"), filed a Joint Application stating its intention to: (1) transfer all AT&T-Mountain local exchange service customers who obtain local exchange service through the AT&T Broadband division of AT&T-Mountain to Broadband, and (2) switch all Broadband Customers who currently subscribe to AT&T-Mountain long distance plans to Broadband long distance plans that will either be the same as their current plan or of equal or better value. The Application requested permission from the Commission to do so without complying with the requirements of *Utah Code Ann.* §54-8b-18 and Commission Rule R746-349-5.

The requested transfer is part of a corporate restructuring. AT&T Corp., the parent corporation of both applicants, intends to establish its AT&T Broadband unit as a separate, publicly traded company. In connection with that restructuring, Broadband was formed to assume ownership and control of AT&T Mountain's broadband systems and operations in Utah. Applicants state that for the vast majority of affected customers the transfer will be effectively transparent. Applicants request permission to make the proposed transfer no later than April 15, 2002, to facilitate the corporate restructuring.

On April 3, 2002, the Division of Public Utilities recommended that the application be adjudicated informally under R746-110, and be approved. The Division's recommendation is conditioned on Applicants' representation that no customers will be switched to a higher-priced plan, and notes that if any customers are switched to higher-priced plans, the waiver of the rules should not apply and the Applicants would be in violation of the slamming rules.

DISCUSSION

The Application in this matter was accompanied by a Verification by an officer of AT&T Corporation, stating under oath that the contents of the Application are true and correct. The Applicants have provided sufficient sworn statements and evidence to establish the pertinent facts of the matter. The Commission finds that this petition can reasonably be expected to be unopposed and that this matter may be adjudicated informally under *Utah Admin. Code* R746-110. Without a waiver from this Commission, the proposed transfers may violate the anti-slamming provisions of *Utah Code Ann.* §54-8b-18 and Commission Rule R746-349-5.

Applicants state that neither the statute nor the rule was promulgated to address a transfer of customers between companies wholly owned by the same corporate parent. Applicants also cite previous orders by this Commission in which we reached a similar conclusion as support for their requested waiver.

We find that, based upon the representations of Applicants, for hearing enforcement of *Utah Code Ann.* §54-8b-18 and waiving Commission Rule R746-349-5 are appropriate and in the public interest in this case. Preauthorization of the transfer by customer will not be required. If any representations of Applicants are not fulfilled, however, including the

commitment that no customers will be switched to higher-priced plans, the anti-slamming statute and rules will apply.

Good cause exists to shorten the 20-day period before which orders issued under Utah Admin. Code R746-110 become effective and to make the Order effective on April 15, 2002, absent meritorious protest.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. The Application of AT&T Communications of the Mountain States, Inc., and AT&T Broadband Phone of Utah, LLC, is approved.
2. This Order is issued pursuant to Utah Admin. Code R746-110. The Commission having found good cause to waive the 20-day tentative period, this Order shall become effective automatically on April 15, 2002, absent meritorious protest.
3. Any person aggrieved by this Order should file a protest on or before April 15, 2002, stating the reasons why this Order should not become effective. If the Commission finds merit in such a protest or wishes to further consider such protest, it may delay the effectiveness of this Order.
4. Any person aggrieved by this Order after it becomes effective may file a written request for review or reconsideration in accordance with Utah Code Ann. §§ 54-7-15, 63-46b-12 and 63-46b-13, and the Utah Rules of Appellate Procedure. Failure to do so, may deprive the party of the right to seek judicial review of this Order.

DATED at Salt Lake City, Utah, this 9th day of April, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard,  
Commission Secretary

G#28924