

Decision 87 11 029**ORIGINAL** NOV 13 1987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

General Telephone Company of
California (U 1002 C),

Complainant,

vs.

Wang Communications, Inc.,

Defendant.

Case 87-07-024
(Filed July 16, 1987)OPINION

General Telephone Company of California (General) alleges in this complaint that Wang Communications, Inc. (WCI) proposes, plans, and threatens to provide telephone service within the franchise territory of General without having received a certificate of public convenience and necessity (CPC&N) from this Commission authorizing it to do so.

Background

In Application (A.) 85-07-045 WCI requested a CPC&N to provide intraLATA private line high-speed data transmission services at a data speed of 1.544 megabits per second (MBPS) or higher in portions of Local Access Transport Area (LATA) No. 1. In A.85-07-046 WCI requested similar authority in portions of LATA No. 5. In Decision (D.) 85-12-082, this Commission granted those applications, with certain qualifications which General states are not pertinent to its complaint. WCI also has pending

A.87-02-033¹ for a CPC&N to provide intraLATA private line high-speed data transmission within all LATAs in California.

General's complaint concerns WCI's operating authority granted in response to A.85-07-046. In that application, WCI stated that transmission services would be provided using intercity facilities leased from Pacific Bell (Pacific) and distribution equipment owned and maintained by WCI. It stated that the network would consist of two terminals, one in Los Angeles and the other in the Anaheim area, and that services would be offered to customers "in the general vicinity" of the terminal locations. Pacific was the only likely competitor specified by WCI.

The relevant ordering paragraph in D.85-12-082 is as follows:

- "2. The application of WCI for a CPC&N to provide intraLATA private line high-speed data transmission services at a data speed of 1.544 MBPS or higher between Los Angeles and Anaheim in LATA No. 5 is granted, subject to the terms and conditions of the Stipulation filed in this matter on November 20, 1985 (Appendix B hereto)...." (D.85-12-082, mimeo. p. 25.)

General's Complaint

General states that WCI has signed a contract with the Bullock's Department Stores (Bullock's) to provide private line high-speed transmission services in southern California, and that a portion of that service will be provided along a route between Los

¹ A.87-02-033 has been consolidated with two other matters: Case (C.) 86-10-12, a complaint filed by Pacific Bell against WCI, and A.87-02-034 in which WCI requests a CPC&N to provide interLATA private line high-speed data transmission services within California. Hearings have been held in that proceeding, and briefs filed.

Angeles and City of Industry. General asserts that this route is not along the Los Angeles-to-Anaheim route authorized by D.85-12-082, and that it runs approximately in an east-west direction whereas the Los Angeles-to-Anaheim route runs in an approximately north-south direction.

General states that City of Industry is within General's franchise serving area, and that WCI's agreement with Bullock's will result in the replacement by WCI of services presently provided by General to Bullock's. It asserts that WCI is in the process of, or has already completed, constructing facilities and plans and intends to commence providing service along this route in July 1987.

General requests that this Commission issue a cease and desist order directing WCI to refrain from commencing service in City of Industry or elsewhere within General's franchise service area, or to discontinue rendering such service if WCI has already commenced the service until such time, if ever, as it obtains a CPC&N. General also requests that this Commission require WCI to reimburse General for any revenues lost and/or costs incurred by General due to the alleged unlawful conduct.

General further requests that the cease and desist order be issued immediately and on an ex parte basis. General states that it requests this extraordinary relief because WCI may already be, or plans to shortly be, offering the alleged unlawful service. General asserts that we may grant such relief without hearing, affidavits, or declarations since, in its view, all evidence establishing the alleged unlawful conduct is available to the Commission by means of official notice.

General states that the Commission may by official notice ascertain the fact that the only CPC&Ns for intraLATA service which have been issued to WCI are those issued by virtue of D.85-12-082, and may note that D.85-12-082 only authorized WCI to provide service along a Los Angeles-to-Anaheim route. General further

states that the Commission may, by consulting the exchange maps of Pacific and General, ascertain and take official notice of the fact that a Los Angeles-to-Anaheim route is wholly within the franchise territory served by Pacific, whereas the Los Angeles-to-City of Industry route intrudes into General's franchise serving territory in and around City of Industry.

Finally, General asserts that the fact that WCI intends to provide service along the Los Angeles-to-City of Industry route commencing in July 1987 is shown by the testimony of WCI's witness Michael W. Tabb given on June 5, 1987 in A.87-02-033 et al. General attaches copies of relevant transcript pages and exhibits from that proceeding to its request for an immediate ex parte cease and desist order.

According to General, this evidence presents a prima facie, if not conclusive, case that WCI's present conduct with regard to the Los Angeles-to-City of Industry leg of its routes to provide service to Bullock's exceeds its present authority to provide intraLATA service in California, and thus that the evidence supports its request for an immediate ex parte cease and desist order.

WCI's Response

WCI denies that its service to Bullock's between Los Angeles and City of Industry is unlawful and beyond the authority granted in D.85-12-082, and alleges the service is authorized by D.85-12-082 and offered pursuant to WCI's Tariff Schedule Applicable to California Intrastate IntraLATA Private Line High Speed Data Service, Original Cal. P.U.C. Sheet No. 7-T.2, approved by the Commission and effective February 3, 1987.

WCI denies that it represented in A.85-07-046 that service would only be offered along the route between Los Angeles and Anaheim, and states instead that it represented that service would be provided using intercity facilities leased from Pacific and distribution equipment owned and maintained by WCI. According

to WCI, the intercity facilities referred to were fiber optic facilities between Los Angeles and Anaheim, and the distribution equipment referred to was that necessary to provide premise-to-premise service to the end-user via point-to-point digital microwave or other digital transmission mediums.

In A.85-07-046 WCI stated that "[p]oint to point private line services will be offered to customers in the general vicinity of the terminal locations." WCI asserts that this language contemplated service between customer locations in the general vicinity of the Los Angeles terminal that would not use the backbone intercity network (completely "off-net"), as well as service between customer locations in Los Angeles and the Anaheim area that would use the intercity network ("on-net").

WCI states that it determined shortly after D.85-12-082 was issued that it would use a digital microwave system for intercity transmission instead of leasing facilities from Pacific, and that it has since constructed a microwave network between Los Angeles and Anaheim. WCI admits that certain microwave facilities used in providing service to Bullock's between its Los Angeles and City of Industry sites are not part of WCI's backbone network between Los Angeles and Anaheim, but represents that such service does use a portion of WCI's Los Angeles-to-Anaheim network. At the time WCI filed its answer, the service was being tested and acceptance was expected in September 1987.

WCI admits that Pacific was the only likely competitor listed in A.85-07-046, but notes that General entered an appearance as an interested party and had a full opportunity to participate in the proceeding leading to D.85-12-082.

WCI admits that City of Industry is within General's franchise serving area, but states that WCI is without information sufficient to determine whether General provides any of the cross-boundary tielines being replaced between City of Industry and Los Angeles, which is in Pacific's serving area.

Other than the instant complaint, no party has protested WCI's service in any of these cities.

We have no desire to evaluate these or future tariff filings on a case-by-case basis to determine whether the sites are "in the general vicinity" of either Los Angeles or Anaheim. It is clear that guidelines are needed to allow noncontroversial determination of whether proposed WCI services fall within the bounds of service authorized in D.85-12-082. However, General has not proposed in its complaint any guidelines for defining "general vicinity."

WCI has filed tariffs pursuant to D.85-12-082 for service in the six cities aforementioned, and those tariffs have gone into effect uncontested. Because of this, we conclude that WCI has constructed its facilities with a reasonable expectation that such service is authorized by its CPC&N.

Since General was fully aware of WCI's A.85-07-046 and no party questioned the bounds of the requested operating authority at that time, we conclude that "general vicinity" should be construed liberally in WCI's favor. The Los Angeles Standard Metropolitan Statistical Area (SMSA), as established by the federal government, is a known, verifiable geographic location. We find that it is reasonable to interpret WCI's operating authority granted in D.85-12-082 as encompassing the Los Angeles SMSA.

Based on this interpretation, we conclude that WCI's service in City of Industry is lawful, and that General's complaint and request for an immediate, ex parte cease and desist order should be denied.

CORRECTION

**THIS DOCUMENT HAS
BEEN REPHOTOGRAPHED**

TO ASSURE

LEGIBILITY

to WCI, the intercity facilities referred to were fiber optic facilities between Los Angeles and Anaheim, and the distribution equipment referred to was that necessary to provide premise-to-premise service to the end-user via point-to-point digital microwave or other digital transmission mediums.

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WCI asserts that there is no basis for the Commission to grant an immediate ex parte cease and desist order, since it believes that General has presented no evidence establishing unlawful conduct or imminent harm from any unlawful conduct. WCI concludes that the Commission should deny General's request for a cease and desist order, and should dismiss General's complaint.

Discussion

As General has noted, A.85-07-046 is entitled "Application of Wang Communications, Inc. for a Certificate of Public Convenience and Necessity to provide intraLATA private line high-speed data transmission services at a data speed of 1.544 MBPS or higher between Los Angeles and Anaheim in LATA No. 5." Nowhere in the application did WCI request LATA-wide authority. However, WCI did make clear that it intended to provide service "in the general vicinity" of the planned terminals to be located in Los Angeles and Anaheim. Thus, our determination regarding whether WCI's service in City of Industry is authorized by D.85-12-082 hinges on the meaning of "general vicinity."

Neither General nor any other party raised questions in A.85-07-046 regarding the exact bounds of WCI's requested service area. The specific locations of the planned terminals were not provided in the application. Further, there was no discussion of so-called "off-net" or "on-net" service in A.85-07-046 or D.85-12-082.

WCI has filed tariffs for service in six cities in southern California pursuant to D.85-12-082:² Los Angeles, City of Industry, Hollywood, Santa Ana, Van Nuys, and Woodland Hills.

² We take official notice of Sheet No. 7-T.2 and Sheet No. 7-T.3 of WCI's tariff effective, respectively, February 3, 1987 and April 23, 1987, which show the locations of service which have been approved to date.

Other than the instant complaint, no party has protested WCI's service in any of these cities.

We have no desire to evaluate these or future tariff filings on a case-by-case basis to determine whether the sites are "in the general vicinity" of either Los Angeles or Anaheim. It is clear that guidelines are needed to allow noncontroversial determination of whether proposed WCI services fall within the bounds of service authorized in D.85-12-082. However, General has not proposed in its complaint any guidelines for defining "general vicinity."

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Based on this interpretation, we conclude that WCI's service in City of Industry is lawful, and that General's complaint and request for an immediate, ex parte cease and desist order should be denied.

We note that the extent of WCI's operating authority in the San Francisco area granted in D.85-12-082 is an issue comparable to the one General has brought before us. Since no party has raised this issue, we will not make findings in this regard at this time. However, absent assertions otherwise, common sense implies that a service area encompassing the San Francisco SMSA would be consistent with our conclusions in the instant case.

Findings of Fact

1. General alleges that WCI proposes, plans, and threatens to provide telephone service within General's franchise territory without having received a CPC&N from this Commission authorizing it to do so.

2. In D.85-12-082, this Commission granted WCI's request in A.85-07-046 to provide intraLATA private line high-speed data transmission services in portions of LATA No. 5, with certain qualifications which General states are not pertinent to its complaint.

3. WCI has signed a contract with Bullock's to provide private line high-speed transmission services, and a portion of that service will be provided along a route between Los Angeles and City of Industry.

4. City of Industry is within General's franchise territory.

5. General requests that this Commission issue a cease and desist order directing WCI to refrain from commencing service in City of Industry or elsewhere within General's franchise service area, or to discontinue rendering such service if WCI has already commenced the service until such time, if ever, as it obtains a CPC&N.

6. WCI has filed tariffs for service to customers in Los Angeles, City of Industry, Hollywood, Santa Ana, Van Nuys, and Woodland Hills.

7. In A.85-07-046, WCI represented that service would be provided using intercity facilities leased from Pacific with

terminals in Los Angeles and Anaheim and that point-to-point private line service would be offered to customers in the general vicinity of the terminal locations.

8. General entered an appearance as an interested party in A.85-07-046.

9. Neither General nor any other party raised questions in A.85-07-046 regarding the exact bounds of WCI's requested service area.

10. Other than the instant complaint, no party has protested WCI's service in any of the six cities in which service has been approved to date.

11. Guidelines are needed to allow noncontroversial determination of whether proposed WCI services fall within the bounds of service authorized in D.85-12-082.

12. The Los Angeles SMSA, as established by the federal government, is a known, verifiable geographic location.

13. It is reasonable to interpret WCI's operating authority granted in D.85-12-082 as encompassing the Los Angeles SMSA.

Conclusions of Law

1. WCI's service in City of Industry as provided in Cal. P.U.C. Sheet No. 7-T.2, effective February 3, 1987, is lawful.

2. General's complaint and request for an immediate, ex parte cease and desist order should be denied.

ORDER

IT IS ORDERED that the complaint and request for an immediate, ex parte cease and desist order filed by General Telephone Company of California against Wang Communications, Inc. is denied.

Dated November 13, 1987, at San Francisco, California.

STANLEY W. HULETT
President
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

Commissioner Donald Vial, being necessarily absent, did not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weiss, Executive Director

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Dated NOV 13 1987, at San Francisco, California.

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