

Decision 89 02 020 FEB 8 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Bell
(U 1001 C),

Complainant,

vs.

Wang Communications, Inc.
(U 5098 C),

Defendant.

And Related Matters.

Mailed

FEB 9 1989

Case 86-10-012
(Filed October 3, 1986)

Application 87-02-033
(Filed February 13, 1987;
amended October 25, 1988)

Application 87-02-034
(Filed February 13, 1987)

(See Decision 88-02-044 for appearances.)

FINAL OPINION

On February 13, 1987, Wang Communications, Inc. (WCI) filed Application (A.) 87-02-033 in which it requested authority to provide intraLATA private line high speed data transmission services at a data speed of 1.544 megabits per second (mbps) or higher within all LATAs in California. On October 25, 1988, WCI amended A.87-02-033 so that the services for which authority is requested now conform to the intraLATA high speed digital private line services defined in Decision (D.) 88-09-059 issued in Phase I of Investigation (I.) 87-11-033, the Commission's investigation of alternative regulatory frameworks for local exchange carriers.

The Proposed Decision of Administrative Law Judge (ALJ) Ford was filed and served on all parties on January 6, 1989 pursuant to Rule 77.1 et seq. of the Commission's Rules of Practice and Procedure. No party filed comments on the Proposed Decision. Today's decision grants WCI's amended request as recommended by the ALJ. Certain changes to the proposed decision have been made, however, to conform it with similar decisions issued today in A.88-10-052, A.88-10-053, A.88-11-009, and A.88-11-014.

Background

In 1985, WCI filed A.85-07-045 and A.85-07-046 requesting authority to provide high speed data transmission services within portions of LATA 1 and LATA 5. In D.85-12-082 the Commission granted WCI the requested authority in accordance with terms and conditions of a stipulation among WCI, Pacific Bell (Pacific) and the Division of Ratepayer Advocates (DRA). ✓

In A.87-02-033, WCI requests that the authority granted in D.85-12-082 be extended to all LATAs statewide. Pacific and GTE California Incorporated (GTE) initially protested WCI's application, and this matter was consolidated for hearing with A.87-02-034 (WCI's comparable application for statewide interLATA authority) and Case (C.) 86-10-012 (a complaint which Pacific filed alleging that WCI's operations have violated D.85-12-082). Nine days of evidentiary hearings were held in mid-1987. In D.88-02-044 the Commission denied Pacific's complaint and granted WCI statewide interLATA authority. However, it deferred consideration of WCI's request for statewide intraLATA authority until after Phase I of I.87-11-033. D.88-02-044 discussed the connection between the two proceedings as follows:

"We believe that, after four years, the time is ripe to revisit the question of intraLATA competition on a generic rather than a case-by-case basis. To this end, we recently initiated a new investigation, I.87-11-033, in which we will both reconsider the efficacy of further intraLATA competition and address local exchange carrier pricing flexibility.

"It is our intent in I.87-11-033 to establish the scope of allowable intraLATA competition in private line high-speed data transmission services and certain other services...in early 1988. To ensure consistency with actions in that proceeding, we prefer to delay action on WCI's request for statewide intraLATA authority until that time. We leave this proceeding open for further consideration of WCI's request after a decision is issued in Phase I of I.87-11-033." (D.88-02-044, mimeo. p. 63.)

On March 21, 1988, WCI filed a petition requesting that the Commission modify D.88-02-044 to grant WCI intraLATA authority throughout LATA 1 and LATA 5 pending resolution of Phase I of I.87-11-033. GTE opposed WCI's petition for modification.

On September 28, 1988, the Commission issued D.88-09-059, approving with certain modifications a settlement reached by many of the parties in Phase I of I.87-11-033. As one of its components, the adopted settlement permits competition in the provision of intraLATA high speed digital private line services subject to certain conditions. Parties to the settlement in Phase I of I.87-11-033 also agreed that the Commission should grant WCI's request in A.87-02-033 for statewide intraLATA authority and, if WCI so requests, should make WCI's intraLATA authority consistent with the conditions approved in D.88-09-059 for other carriers.

D.88-09-059 prescribes the following conditions for competition for intraLATA high speed digital private line services:

"Competitive providers in high speed digital markets may hold out the availability of and provide multiplexing equipment or services, including voice services, as part of such high speed digital services.

"For purposes of this document, digital private line services at 1.544 megabits per second (mbps) or above are considered to be 'high speed digital private line' service. As used herein, 'intraLATA high speed digital private line' service is defined as the dedicated connection of two or more end user premises within a LATA for the purpose of providing

intraLATA high speed digital non-switched services. Competitive carriers may provide multiplexing service for voice and/or data at the end user's premises such that the transmission speed from or to the end user's premises is at 1.544 mbps or above.

"This document does not permit the transport from or to the end user's premises for intraLATA service of either analog or digital transmissions at speeds less than 1.544 mbps." (D.88-09-059, Appendix A, mimeo. p. 8.)

In D.88-09-059 we also concluded that the effectiveness of authorization granted for the provision of competitive intraLATA high speed digital private line services should be coincident with the effectiveness of local exchange carrier pricing flexibility for such services (D.88-09-059, mimeo. p. 8). Since that time, Pacific and GTE have requested pricing flexibility for these services in A.88-10-012 and A.88-10-017, respectively. Workshops were held in those matters and they are scheduled for Commission consideration at today's meeting as well.

On October 25, 1988, WCI amended A.87-02-033 to seek authority to provide intraLATA high speed digital private line services as defined in D.88-09-059. To make A.87-02-033 consistent with D.88-09-059, WCI requests that the representations in A.87-02-033 that WCI will not multiplex below 1.544 mbps or offer voice services be stricken. WCI notes that Pacific and GTE, the only two protestants of WCI's original application, have as parties to the Phase I settlement in I.87-11-033 agreed that WCI's application should be granted and that a request by WCI to conform its intraLATA authority to that allowed by the Phase I settlement should also be granted.

In its protest to WCI's amendment, Pacific expresses concern that WCI may be applying to provide services other than as authorized by the modified settlement. Pacific states that the amendment does not indicate whether all multiplexing would be done

at the end user's premises as the settlement requires. Further, in Pacific's view it is not clear from the amendment that the transmission service between end user premises would be at 1.544 mbps or higher as is also required. Pacific states that should WCI provide Pacific with written assurances that it will only multiplex and transmit its high speed digital services consistent with the terms of D.88-09-059, Pacific will withdraw its protest on this point.

Pacific also comments that the settlement approved in D.88-09-059 requires that no intraLATA authority should be granted to competing carriers prior to the Commission approving Pacific's A.88-10-012 to restructure its own high speed digital services tariffs. Pacific requests that the Commission not make effective the modifications WCI requests until such time as Pacific's revised tariffs are made effective.

In its response to Pacific's protest, WCI contends that its amendment is clear on its face and that no "written assurances" are necessary to clarify WCI's intent. WCI emphasizes that the amendment explicitly states that the intraLATA high speed digital private line service authority sought is exactly that intraLATA high speed digital private line service authority allowed by D.88-09-059. WCI agrees with Pacific that the effective date of its requested statewide intraLATA authority should be governed by the timing provisions of D.88-09-059.

Discussion

A lengthy record was developed through the hearings in mid-1987 regarding whether the public convenience and necessity require that WCI's existing limited intraLATA authorization be expanded statewide. D.88-02-044 summarized the positions of the parties at that time as follows:

"WCI, supported by [Bay Area Teleport] and [MCI Telecommunications], argues that statewide expansion of its service would result in a host of benefits commonly attributed to marketplace competition. These parties contend that WCI's

expansion into the statewide intraLATA market would increase the availability of private line high-speed transmission services and lead to new applications for this efficient mode of transmission. WCI asserts that the local exchange carriers have an economic incentive to use existing copper facilities, that competition in this market would result in the use of improved technology and provision of better service, and that WCI would provide the higher reliability levels needed by customers with specialized data transmission applications.

"GTE argues, supported to large extent by Pacific, to the contrary. These local exchange carriers assert that they can offer services technically identical to and with at least as high reliability as WCI's services. In their view, only their lack of pricing flexibility prevents them from duplicating the customer-specific services which WCI offers. Pacific argues that WCI's costs of providing its services will always exceed Pacific's costs due to Pacific's ability to use embedded plant and other economies of scale and scope. Pacific and GTE contend that expansion of WCI's intraLATA authority would only lead to needless duplication of facilities, inefficient use of their systems, stranded investment, uneconomic bypass, and loss of contribution to basic services with a resulting negative impact on universal service. They conclude that WCI's request for statewide intraLATA authorization should be denied.

"If the Commission nevertheless grants WCI's request, Pacific and GTE urge that the authorization include the same restrictions which in their view exist in the current stipulation. Pacific reiterates its position that WCI is not permitted to offer, hold out, promote, or advertise in any way intraLATA voice and low-speed data services."
(D.88-02-044, mimeo. pp. 60-61.)

As WCI notes, Pacific and GTE have since that time entered into the settlement in Phase I of I.87-11-033 in which they now agree that competition in intraLATA high speed digital private line services should be allowed and that WCI's application should be granted.

In D.88-09-059 we concluded that competition to provide intraLATA high speed digital private line services according to the conditions in the adopted modified settlement is in the public interest, and accordingly allowed potential competitors to request such authorization. We see no reason to reach different conclusions in this case.

In its protest to WCI's amendment, Pacific expresses concern that WCI's request may not be in full conformance with D.88-09-059. Consistent with WCI's response to Pacific's protest, we will provide in this order that the authority granted is exactly that allowed by D.88-09-059.

Pacific also reminds us of the timing provisions in D.88-09-059. In that decision, we agreed to take action on all conforming requests for authority to provide competitive intraLATA high speed digital private line services which were filed no later than October 31, 1988, with any resulting authorizations to be effective coincident with the effectiveness of local exchange carrier pricing flexibility for these services. To that end, we will coordinate the effectiveness of WCI's expanded authority and the local exchange carriers' pricing flexibility to become effective at the same time, namely on February 15, 1989. ✓

In response to DRA recommendations, we today adopt reporting requirements for other competitive intraLATA high speed digital private line service providers in A.88-10-052, A.88-10-053, A.88-11-009, and A.88-11-014. We find that this reporting program should include WCI, to enhance the usefulness of the collected information. The adopted reporting requirements are as follow:

1. WCI will be required to submit semiannual reports for a two-year period beginning with the effective date of this order. The reports will be filed with the Commission's Advisory and Compliance Division (ACD) with copies to the DRA - Telecommunications Rate Design Branch and will contain the following recorded data for WCI's intraLATA high speed digital private line service:
 - a. Monthly in-service volumes.
 - b. Monthly inward movement volumes.
 - c. Monthly recurring billings by tariff rate item.
 - d. Monthly nonrecurring billings by tariff rate item.
2. The format of these semiannual reports should be determined in consultation with ACD.

This reporting requirement will sunset with the submission of the report for the semiannual period ending December 31, 1990.

We conclude that the authority which WCI requests should be granted as provided by this order. WCI's petition for modification of D.88-02-044 is moot and is therefore denied.

Findings of Fact

1. In D.88-09-059, we concluded that competition to provide intraLATA high speed digital private line services as provided in the adopted modified settlement in Phase I of I.87-11-033 is in the public interest and should be authorized.

2. In D.88-09-059, we concluded that it is reasonable to coordinate the effectiveness of any authorization granted to interexchange carriers to provide intraLATA high speed digital private line services with the effectiveness of local exchange carrier pricing flexibility for such services.

3. In its amended A.87-02-033, WCI requests a CPCN to provide intraLATA high speed digital private line services as defined in D.88-09-059.

4. Pacific protests WCI's amended application insofar as it seeks authority outside that permitted by D.88-09-059 or prior to the effective date of Pacific's tariffs implementing the modified settlement approved in D.88-09-059.

5. WCI agrees that the authority it seeks is exactly that intraLATA high speed digital private line service authority allowed by D.88-09-059 and that the effective date of its statewide authority should be governed by the timing provisions of D.88-09-059.

6. It can be seen with certainty that there is no possibility that the granting of A.87-02-033 may have a significant adverse effect on the environment.

7. There is no reason to treat WCI differently than other interexchange carriers regarding the granting of authority to provide intraLATA high speed digital private line services.

8. Public convenience and necessity require the granting of A.87-02-033 in part, to the extent set forth in the Ordering Paragraphs.

9. WCI's petition for modification of Decision 88-02-044 is moot.

Conclusions of Law

1. WCI's request for authority to provide intraLATA high speed digital private line service set forth in its amended A.87-02-033 is consistent with the provisions of D.88-09-059 and should be granted to the extent set forth in the Ordering Paragraphs.

2. WCI should be prohibited from holding out the availability of intraLATA services it is not authorized to provide and should be required to advise its customers that intraLATA

communications it is not authorized to provide should be placed over the facilities of an authorized carrier.

3. The effective date of WCI's statewide intraLATA high speed digital private line service authority should be coincident with the effective date of similar tariffs to be filed by Pacific and GTE pursuant to decisions in A.88-10-012 and A.88-10-017, respectively. ✓

4. In order to allow WCI to make these service available as provided in Conclusion of Law 3, this order should be effective today.

5. WCI's petition for modification of Decision 88-02-044 should be denied.

6. Absent a determination of original cost of plant for applicant in an evidentiary hearing, only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

FINAL ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Wang Communications, Inc. (WCI) to provide intraLATA high speed digital private line services within all LATAs in California. The authority granted is subject to the following conditions:

- a. WCI may hold out the availability of and provide multiplexing equipment or services, including voice services, as part of such high speed digital services.
- b. Digital private line services at 1.544 megabits per second (mbps) or above are considered to be "high speed digital private line" service. "IntraLATA high speed digital private line" service is defined as the dedicated connection of two

or more end user premises within a LATA for the purpose of providing intraLATA high speed digital non-switched services.

- c. WCI may provide multiplexing service for voice and/or data at the end user's premises such that the transmission speed from or to the end user's premises is at 1.544 mbps or above.
- d. This authority does not permit the transport from or to the end user's premises for intraLATA service of either analog or digital transmissions at speeds less than 1.544 mbps.
- e. WCI must agree to establish rates and charges for its intraLATA high speed digital private line service above its cost of providing such service.
- f. WCI shall refrain from holding out to the public the provision of any intraLATA services it is not authorized to provide.
- g. WCI shall advise its subscribers that intraLATA communications which WCI is not authorized to provide should be placed over the facilities of an authorized carrier.

2. To the extent that Application (A.) 87-02-033 requested authorization to provide intraLATA telecommunications services other than those authorized in Ordering Paragraph 1, the application is denied.

3. WCI is hereby authorized to file an advice letter and associated tariff schedules for the provision of intraLATA high speed digital private line service. Such filing shall be made in accordance with General Order (G.O.) 96-A. The tariff schedules shall apply only to service rendered after their effective date which shall be at least five days after filing, but not earlier than February 15, 1989.

4. The requirements of G.O. 96-A relative to the effectiveness of tariffs after filing are waived in order that future tariff revisions may become effective on five days notice after filing.

5. WCI is subject to the user fee as a percentage of gross intrastate revenue under PU Code § 401, et seq.

6. Within 30 days after this order is effective, WCI shall file a written acceptance of the certificate granted in this proceeding; absent such filing, the authority granted by this certificate may be revoked.

7. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein will expire if not exercised within 12 months after the effective date of this order.

8. WCI shall monitor the implementation of its intraLATA high speed digital private line service and shall submit semiannual reports for a two-year period beginning with the effective date of this order. These reports shall be filed with the CACD with copies to the DRA-Telecommunications Rate Design Branch and shall include the following recorded data for applicant's intraLATA high speed digital service:

- a. Monthly in-service volumes.
- b. Monthly inward movement volumes.
- c. Monthly recurring billings by tariff rate item.
- d. Monthly nonrecurring billings by tariff rate item.

The format of these semiannual reports shall be determined in consultation with the CACD staff.

9. The reporting requirement of Ordering Paragraph 8 shall commence within 45 days after June 30, 1989, and shall terminate upon submission of the report for the semiannual period ending December 31, 1990, to be submitted on or before February 14, 1991.

10. Within 60 days after the effective date of this order, WCI shall prepare and issue to every employee who, in the course of his or her employment, has occasion to enter the premises of customers or subscribers of the corporation an identification card in a distinctive format having a photograph of the employee. WCI shall require every employee to present the card upon requesting entry into any building or structure on the premises of a customer or subscriber, as set forth in PU Code § 708.

11. A.87-02-033 is granted in part and denied in part as set forth above.

12. WCI's petition for modification of Decision 88-02-044 is denied

13. This proceeding is closed.

This order is effective today.

Dated FEB 8 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DODA
STANLEY W. HULETT
JOHN B. O'BANIAN
Commissioners

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


Victor Weiss, Executive Director

Decision _____

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FINAL OPINION

On February 13, 1987, Wang Communications, Inc. (WCI) filed Application (A.) 87-02-033 in which it requested authority to provide intraLATA private line high speed data transmission services at a data speed of 1.544 megabits per second (mbps) or higher within all LATAs in California. On October 25, 1988, WCI amended A.87-02-033 so that the services for which authority is requested now conform to the intraLATA high speed digital private line services defined in Decision (D.) 88-09-059 issued in Phase I of Investigation (I.) 87-11-033, the Commission's investigation of alternative regulatory frameworks for local exchange carriers. Today's decision grants WCI's amended request.

Background

In 1985, WCI filed A.85-07-045 and A.85-07-046 requesting authority to provide high speed data transmission services within portions of LATA 1 and LATA 5. In D.85-12-082 the Commission granted WCI the requested authority in accordance with terms and conditions of a stipulation among WCI, Pacific Bell (Pacific) and the Division of Ratepayer Advocates.

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D.88-09-059 prescribes the following conditions for competition for intraLATA high speed digital private line services:

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"This document does not permit the transport from or to the end user's premises for intraLATA service of either analog or digital transmissions at speeds less than 1.544 mbps." (D.88-09-059, Appendix A, mimeo. p. 8.)

In D.88-09-059 we also concluded that the effectiveness of authorization granted for the provision of competitive intraLATA high speed digital private line services should be coincident with the effectiveness of local exchange carrier pricing flexibility for such services (D.88-09-059, mimeo. p. 8). Since that time, Pacific and GTE have requested pricing flexibility for these services in A.88-10-012 and A.88-10-017, respectively. Workshops were held in those matters and they are scheduled for Commission consideration at our January 27, 1989 meeting.

On October 25, 1988, WCI amended A.87-02-033 to seek authority to provide intraLATA high speed digital private line services as defined in D.88-09-059. To make A.87-02-033 consistent with D.88-09-059, WCI requests that the representations in A.87-02-033 that WCI will not multiplex below 1.544 mbps or offer voice services be stricken. WCI notes that Pacific and GTE, the only two protestants of WCI's original application, have as parties to the Phase I settlement in I.87-11-033 agreed that WCI's application should be granted and that a request by WCI to conform its intraLATA authority to that allowed by the Phase I settlement should also be granted.

In its protest to WCI's amendment, Pacific expresses concern that WCI may be applying to provide services other than as authorized by the modified settlement. Pacific states that the amendment does not indicate whether all multiplexing would be done at the end user's premises as the settlement requires. Further, in Pacific's view it is not clear from the amendment that the transmission service between end user premises would be at 1.544 mbps or higher as is also required. Pacific states that should WCI provide Pacific with written assurances that it will only multiplex and transmit its high speed digital services consistent with the terms of D.88-09-059, Pacific will withdraw its protest on this point.

Pacific also comments that the settlement approved in D.88-09-059 requires that no intraLATA authority should be granted to competing carriers prior to the Commission approving Pacific's A.88-10-012 to restructure its own high speed digital services tariffs. Pacific requests that the Commission not make effective the modifications WCI requests until such time as Pacific's revised tariffs are made effective.

In its response to Pacific's protest, WCI contends that its amendment is clear on its face and that no "written assurances" are necessary to clarify WCI's intent. WCI emphasizes that the amendment explicitly states that the intraLATA high speed digital private line service authority sought is exactly that intraLATA high speed digital private line service authority allowed by D.88-09-059. WCI agrees with Pacific that the effective date of its requested statewide intraLATA authority should be governed by the timing provisions of D.88-09-059.

Discussion

A lengthy record was developed through the hearings in mid-1987 regarding whether the public convenience and necessity require that WCI's existing/limited intraLATA authorization be expanded statewide. D.88-02-044 summarized the positions of the parties at that time as follows:

"WCI, supported by [Bay Area Teleport] and [MCI Telecommunications], argues that statewide expansion of its service would result in a host of benefits commonly attributed to marketplace competition. These parties contend that WCI's expansion into the statewide intraLATA market would increase the availability of private line high-speed transmission services and lead to new applications for this efficient mode of transmission. WCI asserts that the local exchange carriers have an economic incentive to use existing copper facilities, that competition in this market would result in the use of improved technology and provision of better service, and that WCI would provide the

higher reliability levels needed by customers with specialized data transmission applications.

"GTE argues, supported to large extent by Pacific, to the contrary. These local exchange carriers assert that they can offer services technically identical to and with at least as high reliability as WCI's services. In their view, only their lack of pricing flexibility prevents them from duplicating the customer-specific services which WCI offers. Pacific argues that WCI's costs of providing its services will always exceed Pacific's costs due to Pacific's ability to use embedded plant and other economies of scale and scope. Pacific and GTE contend that expansion of WCI's intraLATA authority would only lead to needless duplication of facilities, inefficient use of their systems, stranded investment, uneconomic bypass, and loss of contribution to basic services with a resulting negative impact on universal service. They conclude that WCI's request for statewide intraLATA authorization should be denied.

"If the Commission nevertheless grants WCI's request, Pacific and GTE urge that the authorization include the same restrictions which in their view exist in the current stipulation. Pacific reiterates its position that WCI is not permitted to offer, hold out, promote, or advertise in any way intraLATA voice and low-speed data services."
(D.88-02-044, mimeo. pp. 60-61.)

As WCI notes, Pacific and GTE have since that time entered into the settlement in Phase I of I.87-11-033 in which they now agree that competition in intraLATA high speed digital private line services should be allowed and that WCI's application should be granted.

In D.88-09-059 we concluded that competition to provide intraLATA high speed digital private line services according to the conditions in the adopted modified settlement is in the public interest, and accordingly allowed potential competitors to request

such authorization. We see no reason to reach different conclusions in this case.

In its protest to WCI's amendment, Pacific expresses concern that WCI's request may not be in full conformance with D.88-09-059. Consistent with WCI's response to Pacific's protest, we will provide in this order that the authority granted is exactly that allowed by D.88-09-059.

Pacific also reminds us of the timing provisions in D.88-09-059. In that decision, we agreed to take action on all conforming requests for authority to provide competitive intraLATA high speed digital private line services which were filed no later than October 31, 1988, with any resulting authorizations to be effective coincident with the effectiveness of local exchange carrier pricing flexibility for these services. To that end, we will coordinate the effectiveness of WCI's expanded authority and the local exchange carriers' pricing flexibility.

We conclude that the authority which WCI requests should be granted as provided by this order. WCI's petition for modification of D.88-02-044 is moot and is therefore denied.

Findings of Fact

1. In D.88-09-059, we concluded that competition to provide intraLATA high speed digital private line services as provided in the adopted modified settlement in Phase I of I.87-11-033 is in the public interest and should be authorized.

2. In D.88-09-059, we concluded that it is reasonable to coordinate the effectiveness of any authorization granted to interexchange carriers to provide intraLATA high speed digital private line services with the effectiveness of local exchange carrier pricing flexibility for such services.

3. In its amended A.87-02-033, WCI requests a CPCN to provide intraLATA high speed digital private line services as defined in D.88-09-059.

4. Pacific protests WCI's amended application insofar as it seeks authority outside that permitted by D.88-09-059 or prior to the effective date of Pacific's tariffs implementing the modified settlement approved in D.88-09-059.

5. WCI agrees that the authority it seeks is exactly that intraLATA high speed digital private line service authority allowed by D.88-09-059 and that the effective date of its statewide authority should be governed by the timing provisions of D.88-09-059.

6. It can be seen with certainty that there is no possibility that the granting of A.87-02-033 may have a significant adverse effect on the environment.

7. There is no reason to treat WCI differently than other interexchange carriers regarding the granting of authority to provide intraLATA high speed digital private line services.

8. Public convenience and necessity require the granting of A.87-02-033 in part, to the extent set forth in the Ordering Paragraphs.

9. WCI's petition for modification of Decision 88-02-044 is moot.

Conclusions of Law

1. WCI's request for authority to provide intraLATA high speed digital private line service set forth in its amended A.87-02-033 is consistent with the provisions of D.88-09-059 and should be granted to the extent set forth in the Ordering Paragraphs.

2. WCI should be prohibited from holding out the availability of intraLATA services it is not authorized to provide and should be required to advise its customers that intraLATA communications it is not authorized to provide should be placed over the facilities of an authorized carrier.

3. The effective date of WCI's statewide intraLATA high speed digital private line service authority should be coincident with the effective date approved for tariffs to be filed by Pacific and GTE pursuant to A.88-10-012 and A.88-10-017, respectively.

4. In order to allow WCI to make these service available as provided in Conclusion of Law 3, this order should be effective today.

5. WCI's petition for modification of Decision 88-02-044 should be denied.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

FINAL ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Wang Communications, Inc. (WCI) to provide intraLATA high speed digital private line services within all LATAs in California. The authority granted is subject to the following conditions:

- a. WCI may hold out the availability of and provide multiplexing equipment or services, including voice services, as part of such high speed digital services.
- b. Digital private line services at 1.544 megabits per second (mbps) or above are considered to be "high speed digital private line" service. "IntraLATA high speed digital private line" service is defined as the dedicated connection of two or more end user premises within a LATA for the purpose of providing intraLATA high speed digital non-switched services.

- c. WCI may provide multiplexing service for voice and/or data at the end user's premises such that the transmission speed from or to the end user's premises is at 1.544 mbps or above.
- d. This authority does not permit the transport from or to the end user's premises for intraLATA service of either analog or digital transmissions at speeds less than 1.544 mbps.
- e. WCI must agree to establish rates and charges for its intraLATA high speed digital private line service above its cost of providing such service.
- f. WCI shall refrain from holding out to the public the provision of any intraLATA services it is not authorized to provide.
- g. WCI shall advise its subscribers that intraLATA communications which WCI is not authorized to provide should be placed over the facilities of an authorized carrier.

2. To the extent that Application (A.) 87-02-033 requested authorization to provide intraLATA telecommunications services other than those authorized in Ordering Paragraph 1, the application is denied.

3. WCI is authorized to file with this Commission, five days after the effective date of this order, tariff schedules for the provision of intraLATA service. If WCI has an effective FCC-approved tariff, it may file a notice adopting such FCC tariff with a copy of the FCC tariff included in the filing. Such adoption notice shall specifically exclude the provision of intraLATA services which WCI is not authorized to provide. If WCI has no effective FCC tariffs, or wishes to file tariffs applicable only to California intrastate service, it is authorized to do so, including rates, rules, regulations, and other provisions necessary to offer service to the public. Such filing shall be made in accordance

with General Order (G.O.) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than one day after filing.

4. The requirements of G.O. 96-A relative to the effectiveness of tariffs after filing are waived in order that changes in FCC tariffs may become effective on the same date for California intrastate service if WCI adopts FCC tariffs on an intrastate basis.

5. WCI is subject to the user fee as a percentage of gross intrastate revenue under Public Utilities Code Sections 401, et seq.

6. Within 30 days after this order is effective, WCI shall file a written acceptance of the certificate granted in this proceeding.

7. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

8. A.87-02-033 is granted in part and denied in part as set forth above.

9. WCI's petition for modification of Decision 88-02-044 is denied

10. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.