

ORIGINAL

Decision 89 09 022 SEP 7 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application)	
of Cable & Wireless Management)	
Services, Inc. (U-5131-C) for a)	
Certificate of Public Convenience)	Application 88-11-014
and Necessity to Operate as a)	(Filed November 7, 1988)
Reseller of Telecommunications)	
Services Within California.)	

OPINION MODIFYING DECISION 89-02-028

On June 22, 1989 Cable & Wireless Management Services, Inc. (CWMS) (U-5131-C) filed a petition for modification (petition) of Decision (D.) 89-02-028 dated February 8, 1989. CWMS in its petition seeks modification of D.89-02-028 to delete Ordering Paragraph 1.e., which requires that CWMS must establish its rates and charges above costs.

CWMS' Request

CWMS presented its petition in accordance with D.89-05-066 dated May 26, 1989, in which we relieved MCI Telecommunications Corporation (MCI) of this same condition and indicated that we would entertain similar motions from other similarly situated new entrants to the intraLATA high speed digital private line markets.

CWMS asserts that it is similarly situated to MCI as a new entrant in this market and its request for the same modification should be granted.

Protests

No timely protests were received relative to CWMS' petition of D.89-02-28.

Discussion

Recently, by D.89-05-066, dated May 26, 1989,¹ we dealt with a similar petition by MCI regarding D.89-02-025, dated February 8, 1989. The following rationale was set forth in D.89-05-066 for granting MCI's request.

"When we added this requirement to MCI's CPCN in D.89-02-025 we did not anticipate any controversy. We were mistaken in that expectation.

"The settlement agreement in Phase I of I.87-11-033 contained a requirement that Pacific Bell and GTEC offer cost justifications to establish the lower bound of their pricing flexibility in this market. No such requirement was prescribed for new entrants. Given that Pacific Bell and GTEC were starting in this newly-competitive market from a near-monopoly position with monopoly local service as a potential source of cross-subsidy, the cost-justified price floors were an appropriate measure to help assure that the market would develop fairly. We believe that the parties had precisely these concerns in mind in drafting the specific terms of the settlement on this issue.

"As a new entrant in this market, MCI has neither market share nor potential recourse to any source of monopoly revenues to cross-subsidize prices for anticompetitive reasons. Further, it is difficult to anticipate how MCI could make such anticompetitive conduct pay, as it would need to become dominant in the market and determine a means to exclude others (in particular, Pacific Bell or GTEC) before becoming able to sustain prices high enough above cost for long enough to recoup its losses from initial predatory pricing. Such a

1 More recently by D.89-07-044 dated July 19, 1989 we granted a similar request by US Sprint Communications Company Limited Partnership, for modification of D.89-02-027 dated February 8, 1989.

scenario may be theoretically possible, but from this vantage it is certainly far-fetched and there is no evidence in its favor. As described later in this order and elsewhere, we will continue to monitor the development of this market closely to assure that it develops fully and fairly. Also, we retain our full investigative authority to respond to evidence of anticompetitive conduct on the part of MCI or others, whether brought to our attention through our own formal monitoring or by aggrieved parties.

"We are therefore left with no good policy rationale to support this requirement, and a good argument that its imposition would disturb the integrity of the settlement's implementation. We will grant MCI's motion to delete Ordering Paragraph 1.e. from D.89-02-025, and will entertain similar motions from other new entrants similarly situated." (D.89-05-066, mimeo. pp. 5 & 6.)

There is also good cause to grant CWMS' similar request to delete Ordering Paragraph 1.e. from D.89-02-028, and we will do so in this order.

Findings of Fact

1. The Phase I settlement in I.87-11-033 included cost-justification requirements only for the intraLATA high-capacity private line prices of Pacific Bell and GTE California Incorporated.
2. There is a good argument that the integrity of the Commission's implementation of the Phase I settlement would be better preserved if the requirement to price above cost were deleted from CWMS' Certificate of Public Convenience and Necessity (CPCN) granted in D.89-02-028.
3. CWMS as a non dominant telecommunications services carrier has no intraLATA monopoly markets from which cross-subsidies could be extracted to support predatory pricing in the high-capacity intraLATA private line market.

4. CWMS, as a new entrant in the intralATA high-capacity private line market, has no apparent means to exclude other competitors from any segment of this market.

5. It is unlikely that CWMS is now or will foreseeably be in a position to profitably pursue anticompetitive conduct in the competitive intralATA high-capacity private line market.

6. The better preservation of the integrity of the Commission's implementation of the Phase I settlement and the inability of CWMS to profitably pursue anticompetitive conduct are good cause to delete the requirement to price above cost from CWMS' intralATA high-capacity private line CPCN.

Conclusions of Law

1. Good cause having been shown, Ordering Paragraph 1.e. should be deleted from D.89-02-028.

2. Except to the extent set forth in Conclusion of Law 1 above, CWMS' petition seeks no other relief, and none should be granted.

ORDER

IT IS ORDERED that:

1. Ordering Paragraph 1.e of D.89-02-028 issued February 8, 1989 is deleted.

2. The ordering paragraphs and other provisions and requirements of D.89-02-028 dated February 8, 1989, except as expressly modified here, continue to apply to CWMS after the effective date of this order. Appendix A to this order restates

the currently applicable ordering paragraphs of D.89-02-028 as modified by this order.

This order is effective today.

Dated SEP 7 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. CHANIAN
PATRICIA M. ECKERT
Commissioners

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

- 5 -

Wesley Franklin
WESLEY FRANKLIN, Acting Executive Director
PB

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DECISION 89-02-028 ORDERING PARAGRAPHS
REVISED PURSUANT TO D. 89 09 02

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to applicant Cable & Wireless Management Services, Inc. (CWMS) to provide intralATA high speed digital private line services at 1.544 mbps or higher within all LATAs in California subject to the following conditions:

- a. CWMS 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 nonswitched services.
- c. CWMS 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.

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- e. (Deleted)¹
- f. CWMS shall refrain from holding out to the public the provision of any intraLATA services it is not authorized to provide.
- g. CWMS shall advise its subscribers that intraLATA communications which CWMS is not authorized to provide should be placed over the facilities of an authorized carrier.

2. CWMS is hereby authorized to file an advice letter and associated tariff sheets identical to Appendix A to this order for its initial offering of intraLATA high speed 1.544 mbps digital private line service.

3. The advice letter and associated tariff sheets described in Ordering Paragraph 2, above, shall be filed in compliance with the provisions of General Order 96-A after the effective date of this order. The revised 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 for this competitive intraLATA service may become effective on five days notice after filing.

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

¹ Deleted in accordance with D. effective September 7, 1989.

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6. Applicant shall notify the Commission Advisory and Compliance Division (CACD) Director in writing of the date service is first rendered to the public within 5 days after service begins.

7. Applicant shall monitor the implementation of its intraLATA 1.544 mbps high speed digital private line service and shall submit semiannual reports for a two-year period beginning with the effective date of the rates and charges for this service. 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 1.544 mbps 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.

8. The reporting requirement of Ordering Paragraph 7 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.

9. Within 60 days after the effective date of this order, CWMS 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. CWMS shall require every employee to present the card upon requesting

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entry into any building or structure on the premises of a customer or subscriber, as set forth in PU Code § 708.

10. 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.

11. The corporate identification number currently assigned to CWMS is U-5131-C, which should continue to be included in the caption of all original filings with this Commission, and in the title of other pleadings filed in existing cases.

12. IntraLATA 1.544 mbps high speed digital private line service is a utility service and is subject to the user fee as a percentage of gross intrastate revenue under PU Code §§ 431 through 435.

13. This proceeding is closed.

This order is effective today.

Dated February 8, 1989, at San Francisco, California.

(END OF APPENDIX A)