

ALJ/RAB/btr

Decision 89 10 030

OCT 12 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 WTC - WEST, INC., for a Certificate)
 of Public Convenience and Necessity)
 to Construct Fiber Optic Tele-)
 communications Facilities and to)
 Operate as a Facilities-Based Carrier)
 of InterLATA Telecommunications)
 Services within California.)

Application 89-05-026
 (Filed May 11, 1989)

OPINION

WTC - West, Inc. (applicant), a Delaware corporation qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) authorizing it to construct telecommunications facilities within California and to operate as a facilities-based carrier of interLATA telecommunications within California.

Applicant is a wholly owned subsidiary of Williams Telecommunications Group, Inc. (WTGI), a Delaware corporation. The Williams Companies (Williams) owns 83.675% of Williams Telecommunications Group, Inc. Williams is a publicly held Delaware corporation.

Applicant and the other facilities-based carriers owned by WTGI are authorized to provide interstate telecommunications services throughout the United States. Applicant is authorized by the FCC to operate common carrier microwave facilities. WTC of California, Inc. (WTC California), doing business as Wiltel of California, Inc., is a wholly owned subsidiary of WTGI. WTC California holds a CPCN from the Commission to operate as a reseller of interLATA telecommunications services within California. WTC California's certificate was issued on March 25, 1987 and its CPUC number is U-5124-C. With the exception of WTC California, neither applicant nor any other subsidiary of Williams

owns an interest in any carrier offering telecommunications services within California. Neither applicant nor any other subsidiary of Williams is controlled by any other carrier offering telecommunications services within California.

In the mid-1980's, Williams' management concluded that an opportunity existed for Williams to compete in the interexchange telecommunications market by installing fiber optic cable in its extensive network of decommissioned petroleum and natural gas pipelines. Although Williams was a newcomer to the telecommunications industry, it had a great deal of experience in pipeline network operations, it had substantial financial and organizational resources, and it had the unique ability to offer telecommunications customers cost effective and highly secure transmission by enclosing fiber optic cables in existing steel pipe. With these considerations in mind and, in response to the FCC's policy of deregulating the interexchange telecommunications market, Williams formed a telecommunications group and entered the interexchange telecommunications market. The Williams telecommunications group currently provides telecommunications services nationwide. The Williams telecommunications group initially constructed a fiber optic telecommunications system in the midwestern United States. Then it became a member of National Telecommunications Network (NTN) and obtained access to fiber optic systems operated in the eastern half of the United States.

In 1987, the Williams telecommunications system was expanded to the western United States. Most of the western link of the system is served by a fiber optic system constructed by applicant from Kansas City to Denver, Salt Lake City, Las Vegas, and Los Angeles. A digital microwave network connects major cities in the Pacific Northwest to rest of the Williams system. In addition, the Williams telecommunications group uses facilities leased from other carriers to connect San Francisco and San Diego to its system.

Applicant is one of the entities which comprise the Williams telecommunications group and it operates the western portion of the Williams system. Applicant currently provides interstate interexchange service on a common carrier basis. Applicant makes its services available to all members of the public. For the most part, applicant has found that its services are used by other interexchange carriers and by large corporations and institutions for their internal telecommunications networks. Applicant also provides a portion of its capacity in California to its affiliate, WTC California and WTC California resells that capacity to California customers under a tariff on file with this Commission.

Applicant requests authority to construct a fiber optic telecommunications facility within California, to operate as a facilities-based carrier providing interLATA telecommunications services within California, and to offer intrastate interexchange telecommunications services to the general public or segments thereof within California. Applicant seeks authority to offer statewide telecommunications services only as an interLATA carrier and will not hold itself out as an intraLATA carrier of such services until it obtains appropriate authority from the Commission.

The services applicant proposes to provide are the same types of services that it currently provides on an interstate basis. To provide intrastate service in California (and in order to provide interstate service to Sacramento and San Francisco over its own facilities), applicant intends to construct a fiber optic telecommunications system from Los Angeles to San Francisco and Sacramento (the California system). Upon completion of the California system, applicant will provide voice grade and high speed digital channels suitable for use in a wide range of voice, data, and image transmission applications. Service will initially be provided between locations in Los Angeles, San Francisco, and

Sacramento. With respect to interstate services to be provided over this system, applicant has authority to construct and to offer such services under FCC rules. Most of the 550-mile fiber optic system will be buried in existing or new pipeline or conduit at a maximum depth of four feet below ground level. Substantially, all of the proposed route will be in existing utility, road, and railroad rights-of-way (ROW). Construction of the California system will take four to six months to complete. Applicant estimates that the California system will cost approximately \$28,134,800 to construct. WTGI will finance the construction costs by making a loan to applicant under a long term revolving credit arrangement.

To serve additional cities within California, applicant may lease capacity on microwave, fiber optic, or other telecommunications facilities owned by other carriers or extend its California system by constructing additional fiber optic facilities within California. In the event that applicant decides to extend its California system by constructing additional facilities, applicant will seek authority from this Commission for such construction.

Applicant has selected fiber optic technology for its California system because it is the most advanced telecommunications technology now available. Fiber optic technology is immune from electromagnetic interference, noise, and crosstalk and therefore provides a higher quality of sound and digital data transmission than conventional cable and satellite systems. Fiber optic technology has a broader bandwidth and, as a result, it is capable of transmitting far more information per cable than copper. Applicant's California system will diversify the telecommunications facilities available in California by providing a highly secure telecommunications alternative to facilities owned and operated by other intrastate interLATA carriers.

Applicant's California system generally parallels the I-5 corridor from Los Angeles to Coalinga and then diverges from I-5 to the west and proceeds north through Salinas to San Jose. From San Jose, one leg of the system proceeds north to San Francisco and another leg of the system proceeds in a northeasterly direction to Sacramento. Applicant asserts that long distance telecommunications facilities owned by other intrastate carriers in California are not in the vicinity of applicant's California system. Facilities owned by Pacific Bell and AT&T generally follow the I-5 corridor, MCI's facilities generally follow the California Aqueduct and Sprint's facilities follow the Southern Pacific railroad ROW along the east side of the San Joaquin Valley. The bulk of applicant's California system is west of the facilities operated by the other major carriers in California. As a result, applicant's project will provide a secure alternative to existing telecommunications networks in California.

In April of 1989, applicant filed an application with the California State Lands Commission (CSLC) for environmental review and approval of the California system. At the same time, applicant submitted an environmental analysis of the California system to CSLC. CSLC is the lead agency for the environmental review of the California system and was the first state agency to act on the project. This Commission is a "responsible agency" as that term is used in the California Environmental Quality Act (CEQA).

CSLC has filed its final environmental impact report and has found that "the proposed action will not result in any significant adverse environmental impacts. All potential adverse impacts will be mitigated to levels of insignificance. The proposed route, which maximizes use of existing idle pipe and existing disturbed rights-of-way, is the preferred alternative of the SLC."

Upon completion of applicant's California system, WTC California and other affiliates of applicant may be merged into

applicant as part of a general reorganization of WTGI's subsidiaries. Until then applicant and WTG California will operate as separate legal entities. To the extent that these two carriers offer identical services, their rate structures will be identical. With respect to intrastate California service, WTG California will continue to act as a reseller of telecommunications services obtained from other carriers; applicant will offer services provided over its own facilities as well as interstate services.

Applicant anticipates that the prices for its services will generally be below the prices offered by AT&T Communications, the dominant carrier in the intrastate interLATA market in California, and below the prices offered by most other providers of intrastate interLATA services in California.

Applicant asserts that public convenience and necessity require its service because:

1. Competition in the interexchange telecommunications market serves the public interest by (a) reducing the cost and increasing the quality of telecommunications services available to consumers, (b) making innovative telecommunications services available to consumers and increasing consumer choice, and (c) increasing the diversification and reliability of supply of communications services.

2. California consumers of intrastate interexchange telecommunications services will directly benefit from the approval of this application because applicant will provide a cost-efficient alternative for long distance intrastate communications using advanced digital technologies and because the resulting competition will reduce long distance communication rates in California.

3. All citizens of California will indirectly benefit from the approval of this application because the increased availability of low-cost, technologically advanced communications services will stimulate California's economy by reducing the cost of goods and

services of California businesses and encouraging businesses to locate in California.

4. Applicant's interstate customers will benefit from the approval of this application because they will have the ability to obtain similar intrastate services from the same source.

Notice of the application was served according to the Commission's rules and was published in the Commission's Daily Calendar. There are no protests. A public hearing is not necessary.

Findings of Fact

1. Applicant has the ability, equipment, and financial resources to perform the proposed service.

2. Public convenience and necessity require the proposed service.

3. The rates proposed in the application are deemed reasonable.

4. CSLC is the lead agency for this project under the California Environmental Quality Act and on September 11, 1989 approved its final Environmental Impact Report (EIR) which has been filed with the Commission. The Commission has considered the final EIR on this project and finds that:

- a. The environmental impact of the proposed action is insignificant.
- b. The planned construction is the most feasible and economical that will avoid any possible environmental impact.
- c. There are no known irreversible environmental changes involved in this project.

Conclusions of Law

1. The certificate should be granted.
2. 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.

3. As a telephone corporation operating as a telecommunication service supplier, applicant is subject to: (a) the current 2.5% surcharge on gross intrastate interLATA revenues, (PU Code § 879), (b) the current 0.3% surcharge on gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf, (PU Code § 2881; Resolution T-13061), and (c) the user fee provided in PU Code §§ 431-435. For the 1988-89 fiscal year the user fee is 0.1% of gross intrastate revenue.

4. Applicant should be required to send a copy of this decision to concerned local permitting agencies.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to WTG - West, Inc. for the construction and operation of a public utility fiber optic telecommunications system and to provide interLATA telecommunications services, subject to the following conditions:

- a. Applicant shall offer and provide its services only on an interLATA basis;
- b. Applicant shall not provide intraLATA services;
- c. Applicant shall not hold out to the public that it has authority to provide, or that it does provide, intraLATA services; and
- d. Applicant shall advise its subscribers that they should place their intraLATA calls over the facilities of the local exchange company.

2. To the extent that applicant requests authority to provide intraLATA telecommunication service, it is denied.

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

4. Applicant is authorized to file with this Commission, 5 days after the effective date of this order, tariff schedules for the provision of interLATA service. Applicant may not offer service until tariffs are on file. If applicant 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 service. If applicant has no effective FCC tariffs, or wishes to file tariffs applicable only to California intrastate interLATA 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 (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than 1 day after filing.

5. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's (CACD) Telecommunications Branch. Tariff filings shall reflect all surcharges to which applicant is subject, as reflected in Conclusion of Law 3.

6. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived to the extent that changes in FCC tariffs may become effective on the same date for California interLATA service for those companies that adopt the FCC tariffs.

7. Applicant shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 4, a service area map.

8. Applicant shall notify this Commission in writing of the date service is first rendered to the public within 5 days after service begins.

9. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Part 32 of the FCC rules.

10. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the CACD Auditing and Compliance Branch and contained in Attachment A.

11. 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.

12. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

13. The corporate identification number assigned to applicant is U-5192-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

14. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

This order is effective today.

Dated OCT 12 1989, at San Francisco, California.

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

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call
(415) 557-2484.

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)