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Decision 96-11-039 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Mammoth Cellular,)
Inc., (U-3045-C) the California)
wholly-owned subsidiary of Western)
Wireless Corporation, Petition for)
Arbitration Pursuant to Section)
252(b) of Telecommunications Act)
of 1996 of the Rates, Terms, and)
Conditions of Interconnection with)
GTE.)

Application 96-09-006
(Filed September 6, 1996)

ORIGINAL

David Wilson and David Simpson, Attorneys at Law,
for Mammoth Cellular Inc., applicant.
Susan D. Rossi, Attorney at Law, for GTE
California Incorporated, incumbent local
exchange carrier.
Karen Jones and Jonathan Lakritz, for the
Commission's Telecommunications Division.

O P I N I O N

1. Summary

We approve an Interconnection and Traffic Exchange Agreement (Agreement) between Mammoth Cellular, Inc. (Mammoth or applicant) and GTE California Incorporated (GTE) pursuant to the Telecommunications Act of 1996 (Act) and our Rules Governing Filings Made Pursuant To The Telecommunications Act of 1996, Resolution ALJ-168 (Rules).

2. Background

On September 6, 1996, Mammoth filed an application for arbitration pursuant to Section 252(b)(1) of the Act. Applicant provides cellular communication service in Inyo and Mono counties pursuant to authority granted in Decision 90-08-020. Applicant sought arbitration of two disputed areas in its on-going interconnection negotiations with GTE: (1) the rates for interconnection, transport and termination of traffic and (2) the definition of, and applicable charges for, non-local traffic.

On October 1, 1996, GTE filed its response. GTE reported its willingness to accept each of applicant's proposed rates except for local switching. GTE also reported a continuing dispute over the location from which a mobile call should be measured.

An arbitration hearing was held on October 10, 1996. The parties reported settlement of all issues, and presented a Memorandum Regarding Settlement. The proceeding was submitted without briefs at the urging of the parties. The Arbitrator's Report was filed and served on October 28, 1996.

The parties filed their Agreement on November 4, 1996. No comments were received from the public on either the Arbitrator's Report or the Agreement.

3. Agreement

3.1 Charges for Interconnection

Consistent with Resolution ALJ-168, Rule 4.3.1, the parties' request for approval of the Agreement states that the charges for interconnection are as follows:

Facilities: The facilities linking Mammoth's mobile telephone switching office with the switching office(s) of GTE will be priced at GTE's currently effective tariffed rates. The resulting charges will be shared between the parties in the same proportion as each originates traffic on such facilities.

Usage Sensitive Charges: The reciprocal charge by each party for terminating local traffic is 1.2 cents per minute of use. This rate is deemed by the parties to include local switching, transport, and tandem switching functions. The rate will remain in effect until December 31, 1997, or until adjusted as provided in the Agreement between the parties.

3.2 Review of Agreement

The Act and our Rules provide different standards for review of agreements, or portions thereof, reached through negotiation and reached through arbitration. The issues in this application were resolved by fully successful negotiation. Therefore, the standards for review are those that apply to negotiated agreements.

As such, we may reject this Agreement only if we find that (1) the Agreement discriminates against a telecommunications carrier not a party to the agreement; (2) the implementation of the Agreement is not consistent with the public interest, convenience, and necessity; or (3) the Agreement violates other requirements of the Commission, including, but not limited to, quality of service standards. (Sections 252(d)(2)(A) and 252(e)(3) of the Act; Resolution ALJ-168, Rules 4.2.4 and 4.3.1.) We can make no such finding justifying rejection of this Agreement. This conclusion is further supported by the fact that no member of the public asserts that the Agreement should be rejected.

The Agreement does not discriminate against any non-party. In fact, the Agreement provides that the charges will be adjusted for consistency with the results of arbitration and mediation proceedings between GTE and other non-parties. Moreover, nothing in the Agreement restricts access of other carriers to the resources and services of GTE.

Implementation of the Agreement is not inconsistent with the public interest, convenience and necessity. Rather, the public interest, convenience and necessity is served by interconnection between telecommunications carriers in a manner consistent with the new national telecommunications policy expressed in the Act. The Agreement satisfies this interest. Further, the public interest, convenience and necessity is served by resolution of interconnection disputes through voluntary negotiations, as occurred here.

Finally, the Agreement does not modify or relax any requirements of the Commission or other state agencies regarding intrastate telecommunications service quality standards and requirements.

Findings of Fact

1. On September 6, 1996, Mammoth filed an application for arbitration pursuant to Section 252(b)(1) of the Act.
2. Mammoth and GTE negotiated a resolution of all issues presented for arbitration.
3. On November 4, 1996, the parties filed a request for approval of a voluntary agreement under Section 252 of the Act.
4. No member of the public asserts that the Agreement should be rejected.
5. The Agreement does not discriminate against any telecommunications carrier not a party to the agreement.
6. Implementation of the Agreement is not inconsistent with the public interest, convenience, and necessity.
7. The Agreement does not violate any requirements of the Commission, including, but not limited to, quality of service standards.

Conclusions of Law

1. The Interconnection and Traffic Exchange Agreement should be approved.
2. This order should be effective today because it is in the public interest to implement new national telecommunications policy, to the extent accomplished through this Agreement, as soon as possible.

ORDER

IT IS ORDERED that:

1. Pursuant to the Telecommunications Act of 1996, the Interconnection and Traffic Exchange Agreement between Mammoth Cellular, Inc. and GTE California Incorporated is approved.

2. This proceeding is closed.

This order is effective today.

Dated November 26, 1996, at San Francisco, California.

P. GREGORY CONLON

President

DANIEL Wm. FESSLER

JESSIE J. KNIGHT, JR.

JOSIAH L. NEEPER

Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.

Remarks of Commissioner Jessie J. Knight, Jr. on
Items CA-13, CA-17, CA-26, Interconnection Agreements,
November 26, 1996 Agenda

I'd like to draw attention to the fact that included on the Consent Agenda we just voted to accept were three interconnection agreements which allow new telecommunications carriers to connect with the incumbent local phone companies. These agreements involve several Brooks Fiber Companies, Mammoth Cellular, and Electric Lightwave and their network interconnections with either Pacific Bell or GTE California. Two of these agreements were negotiated by the companies, and the third wound its way through our arbitration process, all within the deadlines established in the Telecommunications Act of 1996.

I'd like to personally acknowledge Commissioner Duque, his advisor Tim Sullivan, and the Telecommunications staff of the Commission for their diligent efforts to bring these agreements to us for consideration, in our continuing effort to expand local exchange competition in California in accordance with the intent of the Telecommunications Act of 1996.