

APR 24 1998

Decision 98-04-056 April 23, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Mammoth Cellular, Inc. and Eclipse Communications Corporation for Authority to Transfer a Certificate of Public Convenience and Necessity from Mammoth Cellular, Inc. to Eclipse Communications Corporation on an Ex Parte Basis.

Application 97-11-021
(Filed November 7, 1997)

ORIGINAL

OPINION

1. Summary

Mammoth Cellular, Inc., and Eclipse Communications Corporation, pursuant to Public Utilities (PU) Code § 851, seek authority to transfer Mammoth Cellular's certificate of public convenience and necessity to its subsidiary, Eclipse. The application is granted.

2. Background

Mammoth Cellular is a Delaware corporation and an indirect, wholly owned subsidiary of Western Wireless Corporation. Eclipse Communications is a wholly owned subsidiary of Mammoth Cellular and, consequently, an indirect wholly owned subsidiary of Western Wireless. Western Wireless is a wireless communications company providing cellular, personal communications services, specialized mobile radio services and paging services in 22 states.

Mammoth Cellular was granted authority by the Commission in Decision (D.) 96-02-072 (February 23, 1996) to resell local exchange service in California as a competitive local carrier. Its utility identification number for that authority has not been issued. Its identification number for its authority to provide cellular service is U-3025-C. The company states that it currently provides cellular

videotelephone service in California, but it has not exercised its authority to provide competitive local exchange telephone service. By letter dated February 10, 1998, the Commission's Executive Director granted Mammoth Cellular's request for a one-year extension (to February 23, 1999) in which to exercise the authority. Having not exercised this authority during this time, Mammoth Cellular requested a second extension. By letter dated February 21, 1997, the Commission's Executive Director granted Mammoth Cellular's request for a one-year extension in which to exercise its authority.

Eclipse was granted authority in D.94-02-040, 53 CPUC2d 215 (1994), to resell interLATA service¹ in California, but it has not yet initiated service. Eclipse's utility identification number for its interexchange authority is U-5366-C.

3. Nature of Application

The joint applicants seek authority to transfer the 1996 certificate of public convenience and necessity (CPCN) of Mammoth Cellular to Eclipse. The CPCN issued to Mammoth Cellular in 1996 permits the company to resell local exchange service in the existing territories of Pacific Bell and GTB California Incorporated.

Applicants state that their parent company, Western Wireless, has decided to centralize the provision of California local exchange and interexchange services into one entity, Eclipse, so that Eclipse can offer both local exchange and long distance service to subscribers. No property, stock, customer lists or other assets, other than the CPCN, would be transferred. No money would change hands. Eclipse states that it will adopt the existing local exchange tariff of Mammoth Cellular now on file with the Commission.

¹ InterLATA service describes calls between one Local Access Transport Area and another.

Applicants state that no customers will be affected by the proposed transfer of the CPCN, since Mammoth Cellular is not yet providing local exchange service and Eclipse has not exercised its authority to offer interLATA telephone services. Applicants state that the transfer will serve the public interest by allowing Mammoth Cellular to concentrate on providing wireless services in California, while permitting Eclipse to offer one-stop shopping for local exchange and interexchange services.

Eclipse states that it will draw on the management and financial resources of Western Wireless in conducting its telecommunications business, and applicants have submitted exhibits that demonstrate that Western Wireless meets the financial, management and technical qualifications required of telephone providers in California.

4. Discussion

This application is filed pursuant to PU Code § 851, which requires Commission approval of a transfer of control and transfer of assets of a public utility. Under the proposed transfer, Eclipse would continue to be bound by current tariffs of Mammoth Cellular. Since the application involves only a change in the underlying corporate structure, there is no possibility that the transaction will have a significant impact on the environment. Applicants have shown through their accompanying exhibits that Eclipse will have the financial, technical, and managerial abilities to operate successfully.

Normally, the Commission does not approve transfers of CPCN authority, ordering instead that the acquiring company seek its own CPCN and utility identification number and, when granted, revoking the CPCN and identity number of the acquired company.² This practice is intended to avoid customer

² In re Teleport Communications (1995) 58 CPUC2d 743.

confusion as to the entity providing the service. Here, however, there are no telephone customers, since neither Mammoth Cellular nor Eclipse has exercised the telecommunications authority granted to it. Accordingly, we will permit the transfer of Mammoth Cellular's 1996 CPCN to Eclipse, and we will authorize Eclipse to operate both its competitive local carrier service and interexchange service under its current identification number, U-5366-C. We will require Eclipse to file new tariffs in its own name before exercising the authority transferred from Mammoth Cellular.

Findings of Fact

1. Notice of the filing of this application appeared in the Commission's Daily Calendar on November 18, 1997.
2. Applicants seek authority to transfer the CPCN of Mammoth Cellular to Eclipse, a subsidiary.
3. Mammoth Cellular is authorized to resell local exchange service in California as a competitive local carrier, pursuant to D.96-02-072.
4. Eclipse is a nondominant interexchange carrier authorized as a switchless reseller of interLATA telecommunications service in California, pursuant to D.94-02-040.
5. Neither Mammoth Cellular nor Eclipse has initiated telecommunications services as authorized, and neither company has telecommunications customers.
6. After the transfer of CPCN authority, Eclipse will continue to operate in California with no change in Mammoth Cellular's tariffed rates or services. Mammoth Cellular's tariffs will be refiled under Eclipse's name.
7. The information and documentation provided in the exhibits to the application show that Eclipse possesses sufficient technical and managerial expertise and financial resources to meet the obligations it will incur should the application be granted.

8. There is no known opposition to the proposed transfer of control.

Conclusions of Law

1. Applicants' request for authority under PU Code § 851 for Mammoth Cellular to transfer its CPCN to Eclipse should be granted.
2. A public hearing is not necessary.
3. Since there has been no protest filed, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order, Mammoth Cellular, Inc. (Mammoth Cellular) is authorized to transfer its certificate of public convenience and necessity (CPCN) for competitive local carrier telecommunications service to Eclipse Communications Corporation (Eclipse), pursuant to Public Utilities (PU) Code § 851, in accordance with the terms and conditions set forth in Application (A.) 97-11-021.
2. Mammoth Cellular and Eclipse shall jointly notify the Director of the Commission's Telecommunications Division in writing of the actual transfer date as authorized herein, within 10 days thereafter.
3. Eclipse shall file a new tariff incorporating Mammoth Cellular's present rates into a single new tariff under the name of the transferee, Eclipse Communications Corporation.
4. Mammoth Cellular and Eclipse shall make all books and records available for review and inspection upon Commission staff request.
5. Upon compliance with all of the conditions of this order, including the payment of all fees due under PU Code § 431 to the date of transfer, Mammoth

Cellular shall stand relieved of its public utility obligation for competitive local carrier service in California.

6. Eclipse shall operate its competitive local carrier and interLATA authority under its current Identification Number, U-5366-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.

7. The authority granted in this order shall expire if not exercised within 12 months after the effective date of this order.

8. Application 97-11-021 is closed.

This order is effective today.

Dated April 23, 1998, at Sacramento, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners