

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EVALUATION & COMPLIANCE DIVISION
Telecommunications BranchRESOLUTION NO. T-12041
July 29, 1987R E S O L U T I O N

RESOLUTION NO. T-12041. JOINT PROTEST OF FRESNO CELLULAR TELEPHONE COMPANY (U-1040 C) AND McCAW COMMUNICATIONS OF FRESNO, INC. AND OF LEE AND NEVA BROOKS, TO ADVISE LETTER NO. 6 OF FRESNO MSA LIMITED PARTNERSHIP (U-3005 C).

SUMMARY

Fresno MSA Limited Partnership ("Partnership") proposes to introduce service into the Visalia Cellular Geographic Service Area (CGSA) and into the Bakersfield CGSA, to provide a single integrated expanded service area. The Partnership proposes to offer an extended calling area airtime rate for usage between two local calling areas; the combined Fresno/Visalia CGSAs, and the Bakersfield CGSA. Both the joint protest of Fresno Cellular Telephone Company/McCaw Communications of Fresno, Inc., and the protest of Lee and Neva Brooks appear to be without merit and are denied.

BACKGROUND

Fresno MSA Limited Partnership was granted a Certificate of Public Convenience and Necessity (CPCN) (D. 85-11-055) on November 13, 1985, to construct and operate a cellular mobile telecommunications system in the Fresno CGSA. Fresno was also authorized by that Decision to file wholesale and retail tariffs in compliance with the Decision and General Order 96-A. Fresno has filed the required tariffs, constructed their system, and has operated the Fresno cellular system since on or about April 22, 1986.

By its Advice Letter No. 3, filed December 18, 1986, the Partnership extended its cellular service area into the contiguous territories of Visalia and Bakersfield. Construction of the extensions had been previously authorized by the FCC. Without protest, Advice Letter No. 3 was made effective January 18, 1987.

With their Advice Letter No. 6, the Partnership proposes to offer customers the ability to call from the Fresno/Visalia CGSA to the Bakersfield CGSA, over their cellular network. For this service, the Partnership introduces an extended calling area rate on a per minute basis. In addition, the Advice Letter amends the contour of the Bakersfield CGSA pending approval by the FCC. The Partnership indicates that this approval should be forthcoming on or about the effective date of the Advice Letter.

The Protestants cite five facts as grounds for protest. They are as follows:

1) Service by Fresno in the Visalia and Bakersfield MSAs cannot lawfully be provided in that Fresno has not received or applied for a CPCN for either of the MSAs.

a. Fresno is only authorized to provide facilities-based service in the Fresno MSA.

b. Paragraph 2 of Section 1001 of the Public Utilities Code does not apply to Fresno.

c. Fresno's service extensions to Bakersfield in Advice Letter No. 3, and to Visalia in Advice Letter No. 6 are unlawful, in that

i) The Bakersfield and Visalia MSAs were, at the time of Advice Letter No. 3, served by a public utility of like character.

ii) The Bakersfield MSA is not contiguous with the Fresno MSA nor was it contiguous when Fresno filed Advice Letter No. 3, by which it extended service to Bakersfield.

iii) Assignment of a single System Identification Number (SID) for Fresno does not constitute approval by the FCC to integrate their cellular operation.

iv) The FCC has not redefined the Bakersfield MSA, nor have they approved the expansion of the areas served by Fresno. Protestants allege that Fresno has not filed to combine the Fresno and Visalia MSAs.

2) Fresno's construction and operation of their cellular system in Bakersfield and Visalia MSAs violates the requirements of the California Environmental Quality Act of 1970 (CEQA) and Rule 17.1 of the Commission's Rules of Practice and Procedure, in that Fresno has

not filed a Proponent's Environmental Assessment (PEA) for systems in either of these extensions, has not received a notice of determination, nor has it obtained any exemptions from the requirements of CEQA or Rule 17.1.

3) Fresno is proposing to carry cellular telecommunications across a Local Access Transport Area (LATA) boundary. Fresno should be required to specify the requirements, if any, for providing such service which is carried across LATA boundaries.

4) The proposed tariff revisions by Fresno for "single integrated expanded service" in Fresno/Visalia and Bakersfield are unjust and discriminatory as they preclude Fresno's competitors from offering like services on competitive terms.

5) The tariff revisions proposed by Fresno in Advice Letter No. 6 may, in certain instances, represent an increase in rates over those presently available through current tariffs and toll charges, and cannot be justified without financial showing.

The protest by Lee and Neva Brooks cites the same five major points as above.

DISCUSSION

By Advice Letter No. 3, the Fresno MSA Limited Partnership secured an extension of their service area by acquiring the contiguous MSAs of Visalia and Bakersfield. This acquisition, under Paragraph 2 of Section 1001 of the Public Utilities Code, exempts the Partnership from securing an application for a Certificate of Public Convenience and Necessity, since the acquisition represents an expansion into a contiguous area which has never been served by a utility of like character. The Commission recognizes a difference in character between a cellular telephone system and an Improved Mobile Telephone System (IMTS).

Fresno MSA Limited Partnership was granted construction permits for the Bakersfield and Visalia MSAs on April 30, 1987, and May 30, 1987 respectively. In addition, the FCC approved a single System Identification Number (SID) in a letter from the Chief of Mobile Services Division Common Carriers Bureau, dated August 4, 1986. This single SID, in and of itself, integrates all of the Partnership's areas, in that it is programmed into the switching system, and all of the cellular telephones in the entire extended service area. With this programming, the system identifies each subscriber as belonging to one system, that of the Partnership. Therefore, the single SID allows subscribers to travel between MSAs and receive service without being identified as foreign in the extended areas of Visalia and Bakersfield.

The Partnership was granted authorization by the FCC to modify their Bakersfield MSA on May 6, 1987. In addition, the Partnership has applied for a construction permit in order to begin the modification of the Bakersfield MSA. Fresno has not filed an application with the FCC to combine the Fresno and Visalia CGSAs and may not intend to. Combining CGSAs is not a requirement of the FCC, however, it can serve as a convenience to the utility.

Fresno has not filed a Proponent's Environmental Assessment (PEA) for either of its expanded areas, and is not required to do so by this Commission. Fresno's expansion does not constitute a project and as indicated above is exempt from filing an application for a CPCN. Fresno is, therefore, not required to file a PEA under Rule 17.1 of the Commission's Rules of Practice and Procedure.

The Fresno MSA Limited Partnership, whose general partner is Contel Cellular of Fresno, Inc., is a wholly-owned subsidiary of Contel Cellular, Inc., which is a wholly-owned subsidiary of Continental Telecom, Inc. Continental is not subject to any requirements with respect to carrying telecommunications across LATA boundaries.

Protestants allege that Fresno's Advice Letter No. 6 offers services which are unjust and discriminatory by precluding the competition from offering like services. The offering by Fresno is at the wholesale level, which means that all authorized resellers can pass these services on to the end users. Further, protestant alleges that Fresno's offering of extended area service is unjust with respect to the nonwireline carrier for the Fresno area, in that Fresno has the advantage of extending their service area before the nonwireline has obtained facilities based authority. The "head start" program, set up by the FCC, was intended to allow the wireline facility to begin operation first and to have the nonwireline resell the service until the completion of the their facility.

Fresno has recently determined that in a small number of instances, the proposed rates may result in increases over those rates presently authorized. In order to meet this situation, Fresno has filed modified tariff sheets, reducing said rates such that in no instance will there be an increase in rates as a result of Advice Letter No. 6.

In all, three of the five allegations by the Protestants have been addressed toward Fresno's Advice Letter No. 3, whose protest period has since passed. The remaining two are without merit, as discussed above.

FINDINGS

The protests of Fresno Cellular Telephone Company/McCaw Communications of Fresno, Inc. and Lee and Neva Brooks to Advice Letter No. 6 of Fresno Limited Partnership should be denied. Therefore, good cause appearing,

IT IS ORDERED that:

1) The protest of Fresno Cellular Telephone Company/McCaw Communications of Fresno, Inc. and Lee and Neva Brooks to Advice Letter No. 6 is denied.

2) Advice letter No. 6 of Fresno MSA Limited Partnership will become effective on regular otice, or upon approval by the FCC on Fresno's Bakersfield MSA modification, whichever is later.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on July 29, 1987. The following Commissioners approved it:



Executive Director

- STANLEY W. HULETT
President
- DONALD VIAL
- FREDERICK R. DUDA
- G. MITCHELL WILK
- JOHN B. OHANIAN
Commissioners