Agenda ID # 5476
04/13/06

DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Telecommunications Division **RESOLUTION T-17013**
Market Structure Branch **April 13, 2006**

R E S O L U T I O N

Resolution T-17013. Winterhaven Telephone Company (U-1021-C). Request for Approval of a CMRS Interconnection Agreement between Winterhaven Telephone Company and T-Mobile USA, Inc., Pursuant to Section 252 of The Telecommunications Act of 1996.

By Advice Letter No. 179 Filed on January 25, 2006.

Summary

This Resolution approves a CMRS Interconnection Agreement submitted under provisions of Resolution ALJ-181 and G.O. 96-A. This Agreement involves Winterhaven Telephone Company (Winterhaven) and T-Mobile USA, Inc. (T-Mobile). The Agreement is effective today and will remain in effect until either party terminates upon 30 day notice.

Background

The United States Congress passed and the President signed into law the Telecommunications Act of 1996 (Pub. L. No.104-104, 110 Stat. 56 (1996)) (1996 Act). Among other things, the new law declared that each incumbent local exchange carrier (ILEC) has a duty to provide interconnection with the local network for any requesting telecommunications carrier. The new law also set forth the general nature and quality of the interconnection that the incumbent local exchange carrier (ILEC) must agree to provide.[1] The 1996 Act established an obligation for the ILECs to enter into good faith negotiations with each competing carrier to set the terms of interconnection. Any interconnection agreement adopted by negotiation must be submitted to the appropriate state commission for approval.

[1] An incumbent local exchange carrier is defined in Section §251(h) of the 1996 Act.

Section 252 of the 1996 Act sets forth our responsibility to review and approve interconnection agreements. On July 17, 1996, we adopted Resolution ALJ-167 that provides interim rules for the implementation of §252. On September 26, 1996, we adopted Resolution ALJ-168 that modified those interim rules. On June 25, 1997, we approved ALJ-174, which modified ALJ-168, but did not change the rules for reviewing agreements achieved through voluntary negotiation. On November 18, 1999, we adopted ALJ-178, which added pick-and-choose provisions to the rules established in ALJ-174, but again did not change the rules for reviewing agreements achieved through voluntary negotiation. On October 5, 2000, we approved Resolution ALJ-181 to require any potential Competitive Local Carrier which intends to make use of our rules to have a Certificate of Public Convenience and Necessity (CPCN), or at least have filed an application for CPCN, prior to applying for approval of an agreement. This new rule does not apply to CMRS carriers, which are not price-regulated by the State of California.

On August 8, 1996, the FCC issued its First Report and Order on Interconnection, CC Docket No. 96-98 (the Order). The Order included several regulations regarding the rights and obligations of Commercial Mobile Radio Service (CMRS) providers and ILECs in providing local interconnection. On October 15, 1996, the First Report and Order was stayed by the United States Court of Appeals for the 8th Circuit. While the stay was lifted for some sections, the 8th Circuit overturned several sections of the Order pertaining to pricing rules in its opinion issued on July 17, 1997. The United States Supreme Court later affirmed the FCC's jurisdiction to issue pricing rules in a reversal of the opinion from the 8th Circuit.[2]

Winterhaven filed Advice Letter No. 179 on January 25, 2006. This Advice Letter requests Commission approval of a negotiated CMRS Interconnection Agreement between Winterhaven and T-Mobile under Section 252.

In ALJ-168 we noted that the 1996 Act requires the Commission to act to approve or reject agreements. We established an approach that uses the advice letter process as the preferred mechanism for consideration of negotiated agreements. Under Rule 4.3.3, if we fail to approve or reject an agreement within 90 days after the advice letter is filed, then the agreement will be deemed approved.

The Agreement pertaining to this Advice Letter sets the terms and charges for interconnection between Winterhaven and T-Mobile. The Agreement provides for the following:

- Exchange of local traffic between parties with a provision for reciprocal compensation payments for call termination.

[2] AT&T Corporation v. Iowa Utilities Board

Notice/Protests

Winterhaven states that copies of the Advice Letter, and the Agreement were mailed to all parties on the Service List of ALJ 181, R.93-04-003/I.93-04-002/R.95-04-043/I.95-04-044. Notice of the Advice Letter was published in the Commission Daily Calendar. Pursuant to Rule 4.3.2 of ALJ-181, protests shall be limited to the standards for rejection provided in Rule 4.1.4.[3] No protests to this Advice Letter have been received.

Discussion

In November 1993, this Commission adopted a report entitled "Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure" (Infrastructure Report). In that report, the Commission stated its intention to open all telecommunications markets to competition by January 1, 1997. Subsequently, the California Legislature adopted Assembly Bill 3606 (Ch. 1260, Stats. 1994), similarly expressing legislative intent to open telecommunications markets to competition by January 1, 1997. In the Infrastructure Report, the Commission states that "…in order to foster a fully competitive local telephone market, the Commission must work with federal officials to provide consumers equal access to alternative providers of service." The 1996 Act provides us with a framework for undertaking such state-federal cooperation.

Sections 252(a)(1) and 252(e)(1) of the Act distinguish interconnection agreements arrived at through voluntary negotiation and those arrived at through compulsory arbitration. Section 252(a)(1) states that:

> "An incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251."

Section 252(e)(2) limits the state commission's grounds for rejection of voluntary agreements. Section 51.3 of the First Report and Order also concludes that the state commission can approve an interconnection agreement adopted by negotiation even if the terms of the agreement do not comply with the requirements of Part 51--Interconnection.

Based on Section 252 of the 1996 Act, we have instituted Rule 4.3 in Resolution ALJ-181 for approval of agreements reached by negotiation. Rule 4.3.1 provides rules for the

[3] See below for conditions of Rule 4.1.4.

content of requests for approval. Consistent with Rule 4.3.1, each of the requests have met the following conditions:

1. Winterhaven has filed an Advice Letter as provided in General Order 96-A and stated that the CMRS Interconnection Agreement is an agreement being filed for approval under Section 252 of the 1996 Act.

2. The request contains a copy of the Agreement which, by its content, demonstrates that it meets the standards in Rule 2.18.

3. The Agreement itemizes the charges for interconnection and each service or network element included in the Interconnection Agreement.

Rule 4.3.3 of ALJ-181 states that the Commission shall reject or approve the agreement based on the standards in Rule 4.1.4. Rule 4.1.4 states that the Commission shall reject an interconnection agreement (or portion thereof) if it finds that:

A. the agreement discriminates against a telecommunications carrier not a party to the agreement; or

B. the implementation of such agreement is not consistent with the public interest, convenience, and necessity; or

C. the agreement violates other requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.

We make no determination as to whether the rates in this Agreement meet the pricing standards of Section 252(d) of the 1996 Act. Our consideration of this Agreement is limited to the three issues in Rule 4.1.4 of ALJ-181.

The Agreement is consistent with the goal of avoiding discrimination against other telecommunications carriers. We see nothing in the terms of the proposed Agreement that would tend to restrict the access of a third-party carrier to the resources and services of Winterhaven.

Section 252(i) of the 1996 Act ensures that the provisions of this Agreement will be made available to all other similarly situated competitors. Specifically, the section states:

> "A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting

> telecommunications carrier upon the same terms and conditions as those provided in the agreement."

We previously concluded that competition in local exchange and exchange access markets is desirable. We find no provisions in this Agreement, which undermine this goal or are inconsistent with any other identified public interests. Hence, we conclude that the Agreement is consistent with the public interest.

We also recognize that no party protested the Advice Letter alleging that it was discriminatory, inconsistent with the public interest, convenience, and necessity or in violation of Commission requirements.

Several who commented on previous interconnection agreements sought assurance that the Commission's treatment of those interconnection agreements would not impair their rights and opportunities in other proceedings.[4] We wish to reiterate such assurances as clearly as possible. This Resolution stands solely for the proposition that T-Mobile and Winterhaven may proceed to interconnect under the terms set forward in this Agreement. We do not adopt any findings in this Resolution that should be carried forth to influence the determination of issues to be resolved elsewhere.

If the parties to this Agreement enter into any subsequent Agreements affecting interconnection, those Agreements must also be submitted to the Commission for approval. In addition, the approval of this Agreement is not intended to affect otherwise applicable deadlines. This Agreement and its approval have no binding effect on any other carrier. Nor do we intend to use this Resolution as a vehicle for setting future Commission policy. As a result of being approved, this Agreement does not become a standard against which any or all other agreements will be measured.

With these clarifications in mind, we will approve the proposed Agreement. In order to facilitate rapid introduction of competitive services, we will make this order effective immediately.

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to PU Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings

1. Winterhaven's request for approval of a CMRS Interconnection Agreement between Winterhaven and T-Mobile, pursuant to the Federal Telecommunications Act of 1996 meets the content requirements of Rule 4.3.1 of ALJ-181.

[4] A.96-07-035 and A.96-07-045.

2. The Agreement requested in Winterhaven's Advice Letter No. 179 is consistent with the goal of avoiding discrimination against other telecommunications carriers.

3. We conclude that the Agreement is consistent with the public interest.

4. We conclude that the Agreement does not present terms that violate quality of service standards adopted by the Commission, as per Rule 4.1.4 of ALJ-181.

THEREFORE, IT IS ORDERED that:

1. Pursuant to the Federal Telecommunications Act of 1996, we approve the CMRS Interconnection Agreement between Winterhaven Telephone Company and T-Mobile USA, Inc. that was requested in Advice Letter No. 179.

2. This Resolution is limited to approval of the above-mentioned Interconnection Agreement and does not bind other parties or serve to alter Commission policy in any of the areas discussed in the Agreement or elsewhere.

3. The CMRS Interconnection Agreement between Winterhaven Telephone Company and T-Mobile USA, Inc. is approved today.

4. Winterhaven Telephone Company Advice Letter No. 179, which requests approval of a CMRS Interconnection Agreement between Winterhaven Telephone Company and T-Mobile USA, Inc. shall be marked to show that it was approved by Resolution T-17013.

This Resolution is effective today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on April 13, 2006. The following Commissioners approved it:

STEVE LARSON
Executive Director