ALJ/emk/jc *

Decision 84 04 014 April 4, 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ADVANCED MOBILE PHONE SERVICE, INC. and the LOS ANGELES SMSA LIMITED PARTNERSHIP for a certificate of public convenience and necessity under Section 1001 of the Public Utilities Code of the State of California for authority to provide a new Domestic Public Cellular Radio Telecommunications System to the public in the greater Los Angeles Metropolitan area.

Application 83-01-12
(Filed January 7, 1983)

(See Decision 83-06-080 for appearances.)

Additional Appearances

Dinkelspiel, Donovan & Reder, by Roni M. Crichton, Attorney at Law, for Allied Telephone Companies, protestant.
Brobeck, Phleger & Harrison, by Robert N. Lowry and Jeanne L. McJoynt, Attorneys at Law, for Motorola Cellular Service, Inc., interested party.
Patrick L. Gileau, Attorney at Law, for the Commission staff.

I N D E X

I N D E X

SECOND INTERIM OPINION

DECISION SUMMARY

This decision grants the requested CPC&N to the Partnership to provide a cellular radio telecommunications system to the public in the greater Los Angeles Metropolitan area. It becomes effective when either PMA replaces LACGSA as the general and a limited partner in the Partnership or LACGSA is fully staffed so as to be a completely independent, self-sufficient entity capable of operating the cellular system.

The decision provides that the Partnership will provide both retail and wholesale servicesand establishes the appropriate tariffs for such services. The retail tariffs are based on what market research information indicated would be an appropriate price to charge and the wholesale tariff rates are sufficiently below the retail rates to provide a viable business opportunity to prospective resellers but sufficiently high to provide the Partnership a reasonable return on equity for its wholesale operations. Because the cellular telecommunications industry is in its infancy and all economic feasibility studies are of necessity based on untested and unverified projections, the decision requires the Partnership to submit a comprehensive results of operation study detailing its first 12 months' operations. The decision is granted on an interim basis so as to facilitate prompt rate changes should the study indicate the necessity of such changes.

The decision also provides that all resellers be certificated utilities, but permits the expanded operations of presently certificated radiotelephone utilities (RTUs) to include cellular operations by the expedience of an advice letter filing.

I - BACKGROUND

Advanced Mobile Phone Service, Inc. (AMPS or applicant), on behalf of itself and its Pacific area successors, and the Los Angeles SMSA Limited Partnership (Partnership), seek a certificate of public convenience and necessity (CPC&N) under Public Utilities (PU) Code Section 1001 for authority to provide a new domestic public cellular radio telecommunications system to the public in the greater Los Angeles Metropolitan area.

After seven days of public hearing were held on this matter in Los Angeles before Administrative Law Judge (ALJ) N. R. Johnson from March 1, 1983 through March 22, 1983, the matter was adjourned to a date to be set while this Commission considered whether or not it should issue an interim order authorizing the construction and installation of facilities contingent upon the appropriate disposition of environmental impact considerations but specifically withholding authorization to operate the system in service to the public pending further hearings.

Interim Decision (D.) 83-06-080 dated June 29, 1983 ordered that:

> "1. A certificate of public convenience and necessity is granted to the Los Angeles SMSA Limited Partnership to construct but not operate in public service a cellular radio telecommunications system to serve the Los Angeles Cellular Geographic Service Area consisting of a mobile telephone switching office, 24 cell sites, and appurtenant facilities.
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> "2. The Los Angeles SMSA Limited Partnership shall not operate this system in service to the public without further authorization from this Commission. There is absolutely no guarantee that such operating authority will be forthcoming.

"3. Within 60 days from the effective date of this order, applicant shall file evidence as contemplated by Findings 9, 25, 26, 27, 28, 29, and 30. Hearings will be scheduled shortly thereafter." (Mimeo. pp. 41-42.)

Seven days of additional hearing were held before ALJ Johnson in Los Angeles between October 31, 1983 and December 13, 1983, and the matter was submitted subject to the receipt of concurrent opening briefs due January 16, 1984[1/] and concurrent closing briefs due February 6, 1984. Opening and/or closing briefs were received from applicant, GTE Mobilnet, Incorporated (GTE Mobilnet), the Commission staff (staff), ICS Communications Corporation and MCI Communications Corporation (ICS/MCI), Allied Radiotelephone Utilities of California (Allied), and Pacific Bell (Pac Bell), formerly The Pacific Telephone and Telegraph Company. We also received amicus curiae briefs from Executive Cellular Telephone Company (Executive) and Dynatel Communications Corporation (Dynatel).[2/]

Since the issuance of D.83-06-080 the divestiture of American Telephone & Telegraph Company (AT&T) and its subsidiaries has been completed. Consequently, as contemplated by applicant, AMPS, as a general and limited partner in the Partnership, has been replaced by Los Angeles CGSA, Inc. (LACGSA); the Pacific Region Holding Company (PRHC) is now known as Pacific Telesis (Pac Tel); the Pacific Region Cellular Company is now known as

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1/ At the request of staff counsel and with the concurrence of other parties, the due date was changed to January 23, 1984.

2/ On February 21, 1984 this Commission received a motion from ICS/MCI to strike these briefs on the bases they are replete with extra-record testimony, and representations of counsel are not supported by affidavit nor presented by a knowledgeable person who would be subject to cross-examination. The motion to strike is denied.

Pac Tel Mobile Access (PMA); and The Pacific Telephone and Telegraph Company is now Pacific Bell. LACGSA is a wholly owned subsidiary of PMA.

Further testimony was presented on behalf of applicant by its director of pricing, Robert A. Steuernagel; by its general manager-service costs for the Pacific Region, Jeff Chessher; by its director of engineering for the Pacific Region, Gloria Everett; by its designated vice president, chief financial officer and treasurer of the Pacific Region, Hank M. Hickey; by district staff manager-special services product management of Pac Bell, Richard S. Normington; and by the vice president and treasurer of Pac Tel, William E. Downing; on behalf of ICS/MCI[3/] by the senior manager of budgets and financial analysis for MCI Airsignal, Inc. (MCI-Air), Joseph G. NeCastro; and the vice president, planning and business development for MCI-Air, David W. Ackerman; and on behalf of staff by one of its public utility financial examiners II, Mark Bumgardner, and by one of its senior utilities engineers, Willard A. Dodge, Jr.

3/ ICS/MCI entered into a partnership agreement on August 19, 1983 with Cellular Mobile Systems of Los Angeles, Inc. wherein they are to jointly prosecute an application for a CPC&N before the Federal Communications Commission (FCC) and this Commission.

II - GENERAL

In D.83-06-080 we noted that in compliance with the Modified Final Judgment AMPS and/or its succeeding company will form seven new corporate units, one for each regional holding company. According to applicant's proposal, LACGSA, a wholly owned subsidiary of PMA, will be both the general and a limited partner in the Partnership. The other limited partners in the Partnership are GTE Mobilnet, Continental Mobilcom, Inc. (Continental), and United States Cellular Corporation (US Cellular). The Partnership is to be the carrier for cellular service for the Los Angeles SMSA (LA SMSA).

The San Diego CGSA, Inc. and the San Francisco CGSA, Inc. are also wholly owned subsidiaries of PMA.

According to the testimony of witness Steuernagel, LACGSA will execute service agreements between itself and PMA. Employees of PMA will perform day-to-day management for the general partner (LACGSA) and will fully account to the Partnership for expenses related to that effort. Under the proposed operations the Partnership will provide cellular service only on a wholesale basis and each of the limited partners may participate in the Los Angeles market as resellers so long as it is done on an "arm's length" basis. Furthermore, according to applicant, with LACGSA as the general partner, PMA may resell cellular service through its retail division.

III - FURTHER EVIDENCE

Findings of Fact (Finding) 9, 21, 25, 26, 27, 28, 29, and 30 of D.83-06-080 required the submittal of additional evidence by applicant as follows:

1. The capitalization of PMA.
2. A strong and compelling showing why LACGSA should replace PMA as the General Partner in the Partnership.
3. A resale plan that constitutes a viable business opportunity and thereby permits the nonwireline carrier to enter the marketplace as a bona fide competitor.
4. A definite proposed tariff for our consideration including an evaluation of the effect of the proposed cellular rates on Pac Tel's Improved Mobile Telephone Service (IMTS) investments and on the investments of the competing RTUs in the LA SMSA.
5. The details of the interconnection arrangements including the complete costs of obtaining facilities from a wireline company.
6. A plan, agreed to by the local exchange company, to provide directory assistance and directory listings to all cellular mobile radiotelephone subscribers.
7. The actual costs, terms and conditions, and timing of cellular equipment purchase.

Testimony relating to all or portions of the above additional evidence was presented on behalf of applicant, staff, and some of the parties to the proceeding as subsequently discussed by subject matter.

IV - CAPITALIZATION OF PMA

General

Findings 8 and 9 of D.83-06-080 state as follows:

> "8. The source of monies by which PRHC will fund PRCC for construction of the Los Angeles SMSA cellular system is not set forth on the record in this proceeding.
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> "9. Because of the deficiency of information set forth in Finding 8, the PRCC or the PRHC should present specific evidence of the capitalization of the PRCC to this Commission." (Mimeo. p. 36.)

As previously noted, PRHC is now Pac Tel and PRCC is now PMA.

Position of Applicant

Testimony on the capitalization of applicant was presented by the vice president and treasurer of Pac Tel, W. E. Downing. According to his testimony, PMA, upon divestiture, is expected to be funded entirely by Pac Tel in the form of advances which will periodically be converted into equity investments made by Pac Tel. He further testified that as with any other investments, Pac Tel must be assured that the investment offers a realistic likelihood of being a profitable undertaking which has already been established in the case of PMA's participation in LA SMSA. Once PMA has established its credit worthiness it is conceivable that PMA can raise its own debt from the capital markets. Each of the subsidiaries of Pac Tel is expected to recover the cost of capital invested in it which will be returned to Pac Tel as a dividend. The retained portion of these dividends will provide a source of funds which Pac Tel can reinvest in its subsidiaries. Furthermore, proceeds received from the issuance of additional common equity and the issuance of debt by Pac Tel offer additional possible sources of funds which Pac Tel can use to fund its subsidiaries including PMA. This witness noted that upon divestiture Pac Tel will have about $16 billion in assets and will, therefore, by any standard be capable of funding PMA. According to the testimony, in no case will the source of funds produce any detrimental effect on Pac Bell or its ratepayers.

Prior to January 1, 1984, all assets acquired for the Partnership were in the name of AMPS through funding by AT&T. These assets were divested to PMA as of January 1, 1984. PMA will, in turn, according to the proposed operations, transfer these assets to the Partnership. In the predivestiture period AT&T will have paid approximately 82% of the construction costs billed by Western Electric Company, Inc. (Western Electric) and 83% of the $19.1 million total cost for the Partnership system. Such payment is in the form of advances to PMA who actually paid or will pay the monies to Western Electric and other parties. The Partnership will then reimburse PMA in accordance with its partnership shares. In the event that the other partners do not provide their proportionate share of the funding Pac Tel will provide additional funding to make up the difference provided it is convinced that this particular investment is viable.

Testimony presented by designated vice president, chief financial officer, and treasurer of PMA, Hank M. Hickey, indicated that the Partnership will be a financially sound and viable entity. He presented a pro forma balance sheet and income statement reflecting a cellular business that will be financially healthy and in a strong position to provide returns to the investors. The financial statements indicate a projected third operating year profit margin of 21%, return on assets of 19%, and return on equity of 26% at the proposed wholesale rates. This witness further testified that PMA and the Partnership offer a number of strengths including a strong and well-documented market demand, growth through investment for Pac Tel, availability of capital from the limited partners, and financial self-sufficiency in a reasonably near term. In addition, further studies indicated that variation of 10% in usage and/or potential market penetration does not significantly affect estimated profitability margins.

In its brief applicant notes that although staff would have preferred the identification of a precise source of Pac Tel funds and a commitment to fund the Partnership even if it were not profitable, it does not believe the lack of these two items should prevent the grant of the CPC&N because of the de minimis nature of the amount required for the Partnership in relation to the expected value of Pac Tel.

Position of Staff

Testimony on the capitalization of PMA was presented by financial examiner II M. K. Bumgardner. According to this witness, the subject matter of the capitalization of PMA can be divided into two major components consisting of the amount of capitalization required and the source of funds for such amounts. Using PMA-provided financial data staff accountants prepared a statement of changes in financial position for the Partnership showing that AT&T should provide approximately $20.2 million, Pac Tel should provide approximately $15.8 million, and the remaining limited partners should provide approximately $17.1 million, a total of $53.1 million. Pac Tel's net capital required (capital required less dividend) would be $5.8 million for the next three years if the minority partners fund their full share or $17.6 million if they do not. Staff witness testified that Pac Tel should not have any trouble funding either amount.

This witness noted that, according to the testimony of witness Downing, there is no firm commitment from Pac Tel to fund the Partnership should it not be profitable nor did Pac Tel provide a definitive source of funds for the Partnership. He stated, however, that since the amount required for the Partnership is immaterial in relation to the expected value of Pac Tel, the above two items should not stop the issuance of a CPC&N in this application.

Position of ICS/MCI

In its brief ICS/MCI notes that under the proposed operations, all of applicant's revenues will be derived from its wholesale sales and to the extent that resellers do not meet the projected demands, the Partnership may incur revenue shortfalls. ICS/MCI argues that while applicant anticipates that from 5 to 20 resellers might materialize, it provided no evidence of any genuine interest in its actual resale proposal by any unaffiliated entity; and that if resale is not a viable business opportunity, resellers will not surface to serve the 40% of market demand that applicant hopes it would satisfy and, therefore, applicant will not meet its projected revenue goals.

ICS/MCI further argues that while applicant insists the revised wholesale tariff and draft retail tariff contained in Exhibit 39 are not proposals, they could, if implemented, have a substantial impact on applicant's financial position.

When Pac Tel's witness Downing testified about its interest in investing in the Partnership, he had no knowledge of this potential change. Consequently, according to ICS/MCI, while it is necessary for applicant to devise a new viable resale plan, it cannot be approved in the absence of full financial information and a proper assessment of applicant's financial position. Until such information is obtained ICS/MCI believes the application cannot be granted.

Position of Allied

In its brief Allied asserts that applicant has failed to make any showing of assured financing from any source, as follows:

1. As noted by this Commission, the only evidence on record regarding funding for the Los Angeles system is a letter to the FCC from Mr. D. E. Guinn, chief executive officer of Pac Tel, indicating that "/b/arring any unforeseen changes, it is the intent of the Pacific RHC, after divestiture, to fund and support this project and aggressively pursue the cellular service business." According to Allied, Finding 9 in D.83-06-080 found such a showing inadequate and requested further evidence of funds, which applicant has not supplied.

2. The deficiency of applicant's showing is quickly apparent when compared with the showing of financial feasibility presented by other cellular applicants, such as the Los Angeles Cellular Corporation's Application 83-04-21.

3. Many unforeseen changes such as the failure of the limited partners to fund the project, overestimation of internally generated funds, and the effect of

funding other cellular systems could create a greater monetary obligation for Pac Tel than it would choose to sustain with a devastating effect on the public.

4. If the system does not provide the returns which applicant anticipates, neither Pac Tel nor the limited partners have any legal obligation to supply the funds and once a CPC&N has been issued, the Commission has limited powers to ensure that they do so.

Discussion

The additional evidence requested of applicant in D.83-06-080 with respect to its capitalization was the source of moneys by which Pac Tel will fund PMA for construction of the LA SMSA cellular system. The record is quite clear that the source of funds for the construction of the cellular system is 65% from AT&T prior to January 1, 1984 and from Pac Tel subsequent to January 1, 1984, 20% from GTE Mobilnet, 10% from Continental, and 5% from US Cellular. In the event that one or more of the limited partners decline to participate in the funding of the project, the remaining limited partners may elect to advance the required monies in proportion to their relative limited partnership shares. According to the record, Pac Tel would be willing to make up any funding deficiencies provided it was assured that the investment offers a realistic likelihood of being a profitable undertaking which applicant states has been established in case of PMA's participation in LA SMSA.

Additionally, as of January 1, 1984 AT&T will have paid approximately 82% of Western Electric costs and 83% of the $19.1 million total cost of the system. For the next three years, Pac Tel's net capital required is computed by staff to be $5.8 million if the minority partners fund their full share or $17.6 million if they do not. The pro forma balance sheets and income statements entered into the record reflect a cellular business for the LA SMSA that will be financially healthy and in a strong position to provide returns to the investors. Such evidence, coupled with the relatively small amount of funding required as compared to Pac Tel's assets of in excess of $16 billion, assures the overall financial integrity of the proposed cellular system.

Furthermore, it is clearly established on the record that funding is advanced not later than the time the facilities are installed. As a result, the facilities will be completely funded at the time when the system becomes operational.

V - LACGSA AS THE GENERAL PARTNER

General

In D.83-06-080 we stated:

> ". . . After divestiture, AMPS will be superseded as a general and limited partner in the Partnership by its Pacific region successor. As previously discussed, the AMPS successor in the Partnership could be either the PRCC or the LACGSA. It would appear that the LACGSA would be formed as an expedient as a way of allocating costs appropriately to each of the markets as well as creating a vehicle for the management of the local market. The record to this point does not persuade us that either reason justifies the formation of the LACGSA.

> Because of the relationship of CCS to the PRCC, it will be necessary for the PRCC to allocate costs to the Los Angeles SMSA via the General Partner. It would appear that the existence of the LACGSA would necessitate additional allocations of costs that would not be required if the PRCC were the General Partner in the Partnership. Furthermore, there appears to be a distinct possibility, even probability, that were it formed, the LACGSA would duplicate some of the operations of the PRCC, thus creating unnecessary duplicative costs. Furthermore, it appears to us that a precise delineation of duties and responsibilities of the parent PRCC and the subsidiary LACGSA would be difficult if not impossible. Under these circumstances, we place AMPS and the PRCC on notice that lacking a strong and compelling showing of the necessity of the LACGSA, we will not grant a CPC&N to the Partnership with the LACGSA as the actual or prospective general and/or limited partner in the Partnership." (Mimeo. pp. 20-21.)

Position of Applicant

Testimony supporting LACGSA as the general and a limited partner in the Partnership was presented by PMA's witness Steuernagel. According to his testimony, LACGSA will be the successor to AMPS as the general partner in Los Angeles and thus maintain the appropriate relationship between PMA and the carriers in accordance with the Partnership agreement approved by the FCC.[4/] Employees of PMA will perform day-to-day management for LACGSA in accordance with service agreements

4/ In accordance with the FCC Memorandum Opinion and Order adopted December 29, 1983 and released December 30, 1983 under File No. 29015-CL-P-83, LACGSA became the assignee of AMPS' interest in the Los Angeles SMSA Limited Partnership.

between PMA and LACGSA. Similar arrangements will be made between PMA and other affiliates such as the San Diego and San Francisco CGSAs. This witness further testified that there are economies which result from centralization and from the application of accumulated relevant experience at a core location which is the principal justification for PMA managing the Los Angeles and other cellular systems under contract.

Additional advantages of this arrangement, according to the record, are that planning and management services can be adequately accounted for between systems and/or partnership interests and the separate corporate structures will create a level of accountability to further evidence that cross-subsidies or misallocations do not occur.

Furthermore, under the provisions of the FCC decision in "Computer Inquiry II", a carrier may not have a terminal business in the same entity that provides the carrier service. Consequently, according to the record, should the FCC permit PMA to enter the cellular terminal equipment business in the current Notice of Proposed Rulemaking on that subject, it would be unable to do so were PMA rather than LACGSA the general partner. Under these circumstances, PMA would either have to forego the cellular equipment business or form a separate subsidiary to handle such an activity. As proposed by applicant, with LACGSA as the general partner, and subject to FCC approval, PMA could both enter the cellular equipment business and resell cellular service through its retail division.

In its brief, applicant argues that it is a basic tenet of California regulatory policy that the Commission will not disturb the form and structure of utilities unless there is evidence that such form or structure is adverse to the public interest. According to applicant, there is no showing of an adverse impact on any public (or private) interest as a result of LACGSA being the general partner of the Partnership and both the limited partners and this Commission will have the ability to scrutinize the appropriateness of any cost, charge, or action of PMA. In further support of its position applicant argues there is strong record evidence of the benefits of the planned structure consisting of a level of structural accountability, the ability of PMA to enter the equipment business without structural modifications should the FCC change the cellular rules, and the appropriate demarcation between the partnership carrier activities and the resale activities permitted under the FCC-approved partnership agreement.

Furthermore, according to applicant, since the recent action of the FCC confirms the authority of LACGSA to exercise the Partnership's right to operate on the wireline cellular frequencies in Los Angeles, any Commission action which would attempt to change the licensee to the wireline cellular frequencies in Los Angeles would be void because the right to determine licensees to operate on portions of the radio spectrum is exclusively within the power of the FCC and state action is preempted.

Position of Staff

Testimony leading to the staff recommendation that the LACGSA should not replace PMA as the general partner of the Partnership was presented by staff witness Bumgardner. The bases for this recommendation set forth in the record are as follows:

1. Separate corporate structures are not essential to ensure that the provision of planning and management be adequately accounted for between systems, nor will they create a level of accountability to further evidence that cross-subsidies and/or misallocations do not occur.
2. PMA as a general partner would not cause a competitive disadvantage in the sale of terminal equipment because: (a) the FCC has not yet authorized PMA to enter the terminal equipment business; (b) PMA's authorized agents can independently offer terminal equipment; (c) PMA currently has no plan to provide terminal equipment upon FCC approval; and (d) equipment could be sold by existing separate subsidiaries.
3. LACGSA will have no employees so that its only functional purpose will be as a vehicle to allocate costs.

In arguing this position in its opening brief, staff notes that LACGSA is little more than a corporate shell, with little or no responsibility for the day-to-day operations of the business. It notes that each of the corporate officers is an employee of PMA, receiving no additional compensation for whatever role they play in the various CGSAs, and that the system would be operated and maintained through a service agreement with PMA with absolutely no interface between LACGSA and the carrier's customers. Staff further notes that the service agreement will be executed on behalf of the Partnership by LACGSA's chief executive officer who is an employee of PMA. Staff recommends that this service agreement be submitted for review prior to issuance of a final CPC&N. For the above reasons, staff recommends against LACGSA as the general partner in the Partnership.

In its reply brief, staff reiterated its position that LACGSA not be permitted as the general partner in the Partnership for the additional reasons that: (1) the FCC has not mandated the type of separation advocated by applicant; (2) the corporate shell structure proposed by applicant fails to serve the major underlying purpose of a separation requirement; (3) the FCC's affirmation of the existing partnership structure is not binding upon the Commission; and (4) this is not a case where the Commission is asked to pierce the corporate veil.

According to staff, the FCC's cellular separation requirement was initially promulgated in 1981 and is found at 47 CFR Section 22.901. The net effect of the regulation is to require that cellular service be offered by a corporate entity separate and distinct from the local exchange telephone company. According to staff, there is absolutely nothing in the regulations requiring that cellular operations in each CGSA be conducted through an additional tier of separate corporate entities. Furthermore, the FCC has held that states have authority to require cellular operators to provide service through a separate subsidiary subject to whatever reasonable restrictions the states deem appropriate.

Staff notes the FCC further stated that the separate entity providing cellular service must:

> "'...operate independently in the furnishing of cellular service. It shall maintain its own books of accounts, have separate offices, utilize separate operating, marketing, installation, and maintenance personnel, and utilize separate computer and transmission facilities in the provision of cellular services.' (Emphasis added.) (47 CFR Section 22.901(c)(2))"

and in the Computer II decision:

> "'More specifically, the separation of regulated and unregulated activities and associated costs requires that the subsidiary have its own operating, marketing, installation, and maintenance personnel for the services and equipment it offers. (Id. 77 FCC 2d at 476-477; 35 PUR 4th at 231).'"

Based on the above, staff argues that the major thrust of a separate subsidiary requirement is to avoid misallocation of joint and common costs by creating separate corporations with separate staffs and applicant's proposal to create a shell corporation with no staff and which will experience no costs simply fails to meet the expressed terms of the separation test. Staff further argues that under the proposed operations there is no assurance against the misallocation of joint costs associated with wholesale and retail operations nor against misallocation of joint costs between different localities.

Staff also argues that FCC approval of LACGSA as the general partner of the Partnership is neither binding on the Commission nor nonreversible. Staff notes that while, in general, each regional cellular company including PMA will create one or more local cellular service companies, such as LACGSA, New Vector Communications, the northwest equivalent of PMA, has controlling interest in two limited partnerships similar to the Los Angeles Partnership and the FCC transferred AMPS' interest in each of the partnerships directly to the regional cellular company. This is precisely the arrangement staff advocates in this matter.

Staff states that applicant, in its opening brief, took the position that the Commission should recognize PMA's subsidiary as the general partner on the grounds that there are insufficient facts to support piercing the corporate veil and looking directly to the parent corporation. Staff argues that the Commission is not being asked to pierce the corporate veil surrounding LACGSA but rather is being asked to decline certification of the subsidiary on the grounds that it is a mere shell which will enter into a service agreement with its parent for the operation of the system with the net result that customers will be unjustifiably insulated from the certificated entity. Staff further argues that while the Commission could pierce the corporate veil if and when the need arises, the problem is better avoided at the outset.

Position of ICS/MCI

It is the basic position of ICS/MCI as set forth in its briefs that the proposed organizational structure is not in the best interest of consumers and would frustrate effective regulatory oversight, create incentives for abuse and anticompetitive behavior, and impair the efficient delivery of cellular services to the public without having any countervailing public benefits. Consequently, ICS/MCI believes that PMA, not LACGSA, should be the general partner of the certificated carrier.

In support of this position ICS/MCI notes that LACGSA is a "shell" corporation and will itself perform none of the functions normally associated with a communications public utility. Instead, LACGSA intends to enter into a service agreement with PMA providing that PMA will exercise complete control over the construction and operation of the system and the provision of service to the public. LACGSA will have no full-time employees, will maintain no office, and will have only three PMA employee officers who will receive no compensation for their LACGSA duties and who will occupy similar positions in the CGSA entities created for San Diego and San Francisco. According to ICS/MCI, PMA has assumed complete control for system planning and construction, and will operate and maintain the system including the customer service functions. Other activities that will be performed by PMA instead of LACGSA include: (1) receiving orders for wholesale service; (2) responding to inquiries; (3) billing wholesale customers; (4) providing marketing services including advertising; (5) providing financial and accounting service; and (6) developing rate and tariff proposals.

Since all essential functions will be conducted by an entity other than the certificated utility, ICS/MCI believes effective accountability for the carrier's business would be absent, it would be difficult for this Commission to exercise jurisdiction, and the operations will create confusion among members of the public.

ICS/MCI asserts there is absolutely no merit to applicant's implication that the FCC has approved, mandated, or blessed the proposed organizational structure and this Commission is thereby barred from requiring a different structure. To the contrary, according to ICS/MCI, the FCC has held that consistent with its Computer II decisions the states have authority to require cellular operators to provide this service only through a separate subsidiary subject to whatever reasonable restrictions the states deem appropriate. Consequently, should this Commission require PMA as the general partner, the parties could file a simple application with the FCC requesting a pro forma assignment to effect the change which would probably be granted as a routine matter in about 60 days.

ICS/MCI further argues that applicant's justification of the proposed organization to enable applicant to enter the cellular equipment business if the FCC changes its rules, to provide an appropriate demarcation between the partnership carrier activities and resale activities, and to provide a level of structural accountability consistent with the accounting findings of the FCC is without merit.

According to ICS/MCI:

1. The first justification hinges on speculation that the FCC may change its rules which appears unlikely in view of the recent FCC decision stating cellular customer-provided equipment (CPE) may be offered through the Computer II separate subsidiary but not the cellular subsidiary.

2. The FCC subsidiary requirements are not merely to prevent misallocations, cost-shifting, and cross-subsidization, but are to prevent abuses that can occur when the same entity both provides a regulated monopoly service and is engaged in competitive and unregulated activities. To preclude this, PMA was established to maintain separation between the wireline telephone operations and the corporations' cellular activities. Having achieved the required separation, no other apparent objective of the FCC is met by establishing an additional subsidiary of PMA.

3. PMA has not explained the perceived necessity or desirability for it to participate in both the wholesale and retail lines of business through separate business entities, one regulated and the other not. PMA can control both through

its ability to establish policy, costs, and pricing schemes for both markets to the detriment of the general public. Essentially, under the proposed structure, a noncertificated entity would be in a position to dictate policy for the certificated utility that might not be in the best interests of the Partnership or the ultimate users of the service. Such a conflict could be mitigated if the Partnership were to provide both the retail and wholesale service.

4. Applicant's citing of In re Trans-Arrow, Inc. (1963) 61 CPUC 304 as support for its position that the Commission not order structural changes is inappropriate as it involved a situation in which the CPUC endeavored to pierce the corporate veil of one entity in order to reach a more appropriate organization. According to ICS/MCI, if anything, the above case supports the proposition that it is important to establish a proper organizational structure before the applicant goes into business, so that the Commission will not at some future date become entangled in piercing LACGSA's shell in order to reach the actual system operator and provider or service, i.e. PMA.

ICS/MCI asserts that it is well within this Commission's authority to require the applicant and PMA to develop an organizational plan that more fully comports with public interest and suggests that now, before the service becomes operational, would be the most appropriate time to require such changes.

Discussion

In D.83-06-080 we expressed concern that the existence of LACGSA as the general partner of the Partnership would necessitate additional allocations of costs to the Partnership that would not be necessary if PMA were the general partner, that there would be a probability of duplication of operations, and that it would be difficult if not impossible to delineate precisely the duties and responsibilities of PMA and its subsidiary, LACGSA. We therefore requested a strong and compelling showing of the necessity of the proposed corporate structures. Obviously we did not contemplate the proposed LACGSA table of organization consisting of three PMA employees acting as the corporate officers, no specifically assigned personnel, and all of LACGSA's operations being performed by PMA under contract. We will therefore address the primary issue of LACGSA as the general partner in the Partnership by the following three subissues:

1. The FCC Separation Requirements;
2. The Advantages and Disadvantages of the Proposed Organizational Structure; and
3. Regulatory Commissions' Jurisdictional Limits.

As noted by staff, the FCC's cellular separation requirement was initially promulgated in 1981 and is found at 47 CFR Section 22.901. This regulation provides that cellular service be offered by a corporate entity separate and distinct from the local exchange telephone company. The purpose of the separation requirement was to "make the detection of anti-competitive conduct somewhat easier for regulatory authorities" (86 FCC 2d 469, 46; Fed Reg P.27665).

Further, the FCC required that the separate entity must:

> "...operate independently in the furnishing of cellular service. It shall maintain its own books of accounts, have separate offices, utilize separate operating, marketing, installation, and maintenance personnel, and utilize separate computer and transmission facilities in the provision of cellular services." (47 CFR Section 22.901 (c)(2).)

Similarly in the Computer II decision the FCC stated:

> "More specifically, the separation of regulated and unregulated activities and associated costs requires that the subsidiary have its own operating, marketing, installation, and maintenance personnel for the services and equipment it offers." (Id. 77 FCC 2d at 476-477; 35 PUR 4th at 231.)

It is axiomatic that PMA as the general partner in the Partnership responsible for the operations of the certificated carrier providing cellular service would fully satisfy the FCC separation requirements. It is equally obvious that with LACGSA as the general partner of the Partnership and PMA operating the system under contract with LACGSA, as proposed by applicant, the objectives of the separation requirement would not be fully met. This is true because, first of all, under the proposed operation the Partnership will in effect be controlled by the parent of the general partner rather than by the general partner itself as both the FCC and this Commission intend. The only personnel proposed for LACGSA are three officers employed and paid by PMA. Under these circumstances, it would be difficult, if not impossible, for these officers not to direct their attention to maximizing the profits of PMA rather than the Partnership. The proposed service agreement governing the costs for operating and maintaining the cellular system will be drafted by personnel of PMA, not LACGSA. Such an arrangement could conceivably result in wholesale rates high enough to preclude nonwireline carrier resellers from entering the cellular market. Furthermore, both the wholesale and a major portion, if not all, of the retail operations will in effect be provided and controlled by PMA. In addition, should PMA be successful in its attempts to obtain permission from the FCC to sell equipment through its retail division, PMA will have effective control and receive the profits and benefits from most or all of the entire wireline cellular system in the Los Angeles area. Consequently, the order that follows will condition the grant of the CPC&N on applicant either replacing LACGSA with PMA as the general partner in the Partnership or fully staffing LACGSA so that it becomes a completely self-sufficient and independent entity fully capable of operating the wireline cellular system for LA SMSA.

As previously set forth under party positions, applicant presented testimony indicating that PMA operating the cellular system under contract with LACGSA was advantageous and in the public interest because:

1. There are economies which result from centralization and from the application of accumulated relevant experience at a core location;

2. Planning and management services can be adequately accounted for between systems and/or partnership interests, and the separate corporate structures will create a level of accountability to further evidence that cross-subsidies or misallocations do not occur;

3. Should the FCC permit PMA to enter the cellular terminal equipment business, it would be unable to do so were PMA rather than LACGSA the general partner; and

4. It would provide the appropriate demarcation between the partnership carrier activities and the resale activities permitted under the FCC-approved partnership agreement.

While logic would tend to support applicant's contention that centralization and the accumulation of relevant experience at a core location would result in economies there is no evidence in the record indicating either the existence or magnitude of any such economies. Any such economies that do exist would be preserved with PMA as the general partner in the Partnership. Furthermore, if found to be cost-effective, a fully staffed LACGSA could use PMA's expertise on a consulting basis until such a time as it could develop its own expertise. Should the Partnership grow in the manner anticipated it should easily be able to maintain and fully use the services of its own staff of experts in the field of cellular communications.

Staff testimony to the effect that a good audit trail and documentation of the allocation procedures of the revenues, expenses, and costs assigned to the Partnership will allow the partners and this Commission to follow the allocation method of the general partner, to determine the appropriateness of costs and expenses, and to ensure that cross-subsidization and/or misallocations do not occur is convincing and will be adopted. Consequently we will not accept applicant's contention that a secondary subsidiary as the general partner in the Partnership will create a level of accountability to further evidence that cross-subsidies or misallocations do not occur.

It is true that with PMA as the general partner it will be unable to enter the cellular terminal equipment business should the FCC change its present policy. However, such a change is a matter of speculation rather than of anticipation. Furthermore, a recent FCC decision authorizing the offering of cellular CPE through a Computer II separate subsidiary, but not the cellular subsidiary, would tend to indicate that an FCC policy change in this respect is unlikely.

It is true that with the Partnership providing only wholesale cellular service the demarcation between retail and wholesale activities would be theoretically greater with PMA as the retailer and LACGSA as the general partner in the Partnership. However, as proposed by applicant, both the wholesale and retail operations would be under the control of PMA with the result that the demarcation would fade into obscurity. Furthermore, as subsequently discussed, the order that follows will require the Partnership to provide both retail and wholesale services rendering moot the demarcation argument.

Applicant argues that the recent action by the FCC confirms the authority of LACGSA to exercise the Partnership's right to operate on the wireline cellular frequencies in Los Angeles and that any Commission action which would attempt to change the licensee to the wireline cellular frequencies in Los Angeles would be void as the right to determine licensees to operate on portions of the radio spectrum is exclusively within the power of the FCC and, therefore, state action is preempted.

The "recent action by the FCC" referred to by applicant was the assignment of AMPS' interest in the Partnership to LACGSA. In this decision the FCC noted that the corporate structure proposed by AMPS and which included LACGSA satisfied its separation requirements. While this decision acknowledged that some of the Regional Bell Operating Companies were creating one or more local cellular companies, the propriety of such arrangements was not an issue and the FCC merely approved the applications presented to it. The fact that the FCC in no way mandated the establishment of local SMSA subsidiaries is readily evident by the fact that this same decision also approved the transfer of AMPS' controlling partnership interests in Seattle and Minneapolis directly to New Vector Communications (the northwest equivalent of PMA).

Furthermore, as noted by staff and ICS/MCI, Section 221 (b) of the Communications Act specifically provides for a dual federal-state regulatory scheme. The FCC has asserted federal primary jurisdiction with respect to technical standards, public need, and the competitive market, and has reserved to the states' jurisdiction the charges, classifications, practices, services, facilities, and/or regulations for services by licensed carriers. In this respect it states:

> "In this regard, we note that consistent with our decision in Computer II, supra, states have authority to require cellular operators to provide this service through a separate subsidiary, subject to whatever reasonable restrictions the states deem appropriate in order to effectively perform their duties regarding the economic regulation of cellular operators." (Report and Order of March 9, 1982 CC Docket No. 79-318, 89 FCC 2d 58,64.)

As previously stated in connection with parties' positions, applicant asserts that the Commission will not disturb the form and structure of utilities unless there is evidence that such form or structure is adverse to the public interest and cites Trans-Arrow, Inc., supra, in support of this position. Both ICS/MCI and staff argue that the above citation is inappropriate in that this Commission is not being asked to pierce the corporate veil of one entity in order to reach a more appropriate organization. We agree.

It is axiomatic that, as set forth in D.83-06-080, the Partnership is a telephone corporation and, as such, subject fully to our jurisdiction.

VI - THE RESALE PLAN

General

Finding 25 of D.83-06-080 states:

> "25. A resale plan that constitutes a viable business opportunity and thereby permits the nonwireline carrier to enter the marketplace as a bona fide competitor is necessary to mitigate any adverse effects of the early entry into the cellular marketplace of a wireline carrier in advance of a nonwireline carrier." (Mimeo. p. 38.)

Testimony on the viability of applicant's proposed resale plan was presented on behalf of applicant, staff, ICS/MCI, and Allied.

Position of PMA

PMA's witness Steuernagel presented testimony proposing a tariff that would provide cellular service "in bulk" as a wholesale-only business. In addition, on the last day of hearing he submitted additional testimony allegedly addressing the concerns of staff about the proposed wholesale tariff by offering for the consideration of the Commission modifications to the original tariff and a draft of a retail tariff. He was emphatic, however, that he was not modifying his original proposal but merely offering an alternative for Commission consideration should the Commission not fully accept his original proposal. Under the terms of the original proposal customers will purchase access numbers in minimum quantities of 100 telephone numbers for a minimum period of six months. The related minimum usage quantities will be 10,000 minutes of peak usage and 1,000 minutes of off-peak usage, an average of 100 peak and 10 off-peak minutes per end user per month. The customer could elect to have a three-year minimum contract period and receive a 4% discount on usage. In calculating the minimum contract period it is assumed that the last telephone numbers placed in service are the first ones discontinued. Therefore, if any lines had been purchased within six months of a cancellation, a minimum charge would apply to those lines.

The modifications presented for Commission consideration on the last day of hearing reduced the blocking for access numbers from 100 to 10 (minimum initial order of 50), and the related minimum usage quantities to 1,000 minutes of peak usage and 100 minutes of off-peak usage. The requirement to maintain numbers in service for at least six months is replaced with a requirement of 90 days advance notice of termination, and the last-in, first-out provision for the computation of minimum charges is deleted as is the requirement of a three-year contract for additional discounts.

The proposed wholesale rates, together with the possible modifications, are as follows:

	As Proposed	Possible Modification
Service Charges:		
(1) Number Activation		
To process an order for activation of access numbers, per number	$15.00	$15.00
(2) Change		
To add optional features or change an access number, per access number affected	$10.00	$10.00
Access Charge:	Per Month	
(1) For each access number up to 1,000 numbers (in blocks of 100 numbers)	$38.25	
(2) For each access number over 1,000 numbers (in blocks of 100 numbers)	$36.00	
		Per Month
(1) For each access number up to 100 numbers (minimum initial order of 50, and subsequent orders in blocks of 10 numbers)		$36.00
(2) For each access number over 100 numbers (in blocks of 10 numbers)		$33.75

	As Proposed	Possible Modification
Usage Rates:	Per Minute	
(1) Peak Period		
For usage up to 200,000 minutes (minimum of 10,000 minutes per 100 number block is required)	$.432	
With 4% discount	.4147	
For usage over 200,000 minutes	.4275	
With 4% discount	.4104	
(2) Off-Peak Period		
For usage up to 20,000 minutes (minimum of 1,000 minutes per 100 number block is required)	.2592	
With 4% discount	.2488	
For usage over 20,000 minutes	.2565	
With 4% discount	.24624	
		Per Minute
(1) Peak Period		
For usage up to and including 20,000 minutes per month (minimum of 1,000 minutes per 10 number block per month is required)		$.387
For usage over 20,000 minutes per month		$.383

	As Proposed	Possible Modification
		Per Minute
(2) Off-Peak Period		
For usage up to and including 2,000 minutes per month (minimum of 100 minutes per 10 number block per month is required)		$.232
For usage over 2,000 minutes		$.230

In addition to the specific rates set forth above, the proposed tariffs contained the usual provisions pertaining to applicability, territory, definitions, service area, timing of calls, rate periods for usage, optional features, availability of service, limitations of liability, the use of service, disconnection of service for cause, termination of service, deposits, operator assistance, provision of the mobile radio unit, payment of charges, adjustments for taxes, fees, etc., other carrier charges, directory assistance and operator services, directory listings, and sample forms.

The draft retail tariff submitted the last day of hearing for the consideration of the Commission contained the above tariff provisions and the following rates:

Service Charges:

(1) Service Establishment

To process an order for activation of access number, per access number per order	$50.00

(2) Change

To add or remove optional features or temporarily suspend service per a customer's request, or change an access number affected per order — $15.00

Access Charge:	Per Month
For each access number	$45.00
Usage Rates:	Per Minute
(1) Peak Period	$ .45
(2) Off-Peak Period	$ .27

Applying the above retail rate to an end user assumed to have a monthly peak usage of 320 minutes and a monthly off-peak usage of 80 minutes, together with the monthly access charge, yields a total monthly revenue of $210.60. The lowest possible original wholesale rate (including a 4% discount) results in a reseller cost of $187.03, a difference of $23.57. Deducting estimated operating expenses from this figure yields pretax gross margin of $16.75 or 8.0% of revenues. This witness used the above figures to prepare an incremental income statement for a hypothetical reseller/customer which he included as part of his exhibit. This study indicated a 175% return on nonrecurring investment, 180% return on service investment, and a return on combined first-year investment of 89%. This witness believes the assumptions leading to the above-computed returns are reasonable and that the proposed resale schedule does in effect provide a viable business opportunity for resellers. Were the wholesale rates submitted the last day of hearing used, the incremental income statement study would reflect a 303% return on nonrecurring investment, 193% return on service investment, and 92% return on combined first-year investment.

According to this witness, the true test of the viability of resale, in what will surely be a highly competitive cellular industry, will be the marketplace and that applicant's own financial well-being is highly dependent upon the combined successes of the individual participants within the distribution channel.

In its brief, applicant notes that the Partnership evaluated the following factors in developing its proposal to provide cellular service as a wholesale-only business:

1. Resale of cellular service is to be competitive;
2. Applicant's resellers will be competitive with each other and with nonwireline carriers;
3. The FCC has ordered no tariff provisions restricting resale;
4. This Commission's objective in regulating future competitive ventures is to allow competition to have the maximum impact on the market competitors; and
5. Between 5 and 20 parties expressed interest in being resellers.

It is applicant's view that this Commission should not involve itself in the competitive market of cellular resellers at the retail level in keeping with its expressed desire to: "...tailor /its/ regulatory activities to ensure that the public receives the maximum possible benefit from the competition that does exist." Re Pacific Telephone & Telegraph Co. (1978) 83 CPUC 428, 438. In further support of its position that the Commission not regulate the retail portion of the cellular service, applicant asserts that potential resellers may be discouraged from entering the resale business if they do not independently have the power to adjust their retail price immediately to reflect the cost improvements, competitive enhancements, and other programs and approaches they independently develop and that such retail regulation could constitute a restriction on resale and shared use of cellular services prohibited by the FCC.

Applicant further argues that the viability, or ability to exist, of any business is most substantially the result of the skill and quality of the management of the business over which the Commission has no control. Consequently, according to applicant, the Commission should not presume to direct or redirect competitive retail market forces, but should opt to permit the Partnership to provide wholesale-only service on a provisional basis in order to evaluate the development of the competitive reseller market. Applicant further asserts that no informed observer believes that cellular resale will not be other than incremental to other associated enterprises of the resellers who will be able to substantially improve profits above the indicated profit testified to by witness Steuernagel at even lower prices to the end users.

Applicant asserts that its original proposal positioned the wholesale rates 5% to 7% below the proposed retail rates of PMA, that the wholesale rates proffered subsequent to D.83-06-080 reflected discounts of from 11% to 14% from PMA rates, and that the wholesale rates offered for Commission consideration in response to the staff report presented wholesale rates discounted from 17% to 21% below the proposed PMA retail rates. Such discounts would, according to applicant, certainly produce an active reseller industry to support the Partnership.

According to the record, witness Steuernagel presented the above draft retail tariff for the consideration of the Commission and is not recommending its adoption. As discussed above, PMA believes retail rates should be set by the marketplace and not be tariffed. As previously discussed, applicant proposes that retail service be provided by the retail division of PMA.

Witness Steuernagel also presented testimony on the impact of cellular service on other mobile services. According to his testimony, there will be no significant impact because applicant has no plans to seek customers specifically from existing mobile services and existing customers probably will not switch to cellular service because:

1. Conventional mobile units are incompatible with cellular systems which operate at different frequencies;
2. It is inconvenient and expensive to switch;
3. There is not a significant price differential to encourage switching; and
4. It will be many years before cellular service coverage is as broad as for conventional mobile units.

Applicant also argues that those parties present at the hearings who engage in IMTS in the Los Angeles SMSA were in the best position to provide evidence on the impact of cellular service on IMTS. Applicant noted that none of these parties, i.e. Pac Bell, ICS, and Allied, provided any witnesses or any evidence of any impact on their investments as a result of the proposed rates of applicant.

Position of Staff

In its brief, staff notes that a viable resale plan is a requirement imposed by the FCC for cellular service to act as a safeguard against the anticompetitive effect of a separate wireline allocation of spectrum resources in each cellular market, to further a secondary level of competition within each cellular market, and to alleviate the "headstart" problems by permitting the nonwireline entities to enter the cellular market in a limited role before they have obtained a license to provide such service.

According to staff, the indicated viability of the proposed resale plan presented by witness Steuernagel is suspect because the parameters used consisting of a 60% share of the market and discounts for usages in excess of 200,000 minutes of peak and 20,000 minutes of off-peak air time and a three-year contract are applicable to PMA and not to a typical reseller. Consequently staff concurs with witness NeCastro's view that a more realistic appraisal of the potential profitability of a resale operator indicates a 2.5% to 5% pretax return on sales rather than the 8% presented by witness Steuernagel. Staff further argues that the above figures, based on applicant's assumptions, are misleading in that they fail to take into account all expenses a reseller will incur, such as labor, utilities, office space, insurance, and expenses associated with carrying an inventory of unused numbers. According to staff, the proposed tariff appears aimed at ensuring that PMA does in fact become the dominant reseller through its ability to operate its retail operation at little or no profit by reason of the profits earned through the wholesale operation.

Furthermore, testimony presented by senior utilities engineer Willard A. Dodge, Jr. and financial examiner II Mark K. Bumgardner supports the conclusion that the resale plan proposed by applicant is not viable. Witness Dodge notes that, as proposed by applicant, another organizational element of PMA would engage in unregulated retailing and, absent an explicit showing demonstrating that no undue advantage can accrue to PMA, staff recommends some form of retail tariff. Staff further objects to the combination of blocks of 100 numbers and six months' minimum contracts for access numbers with the requirement that "last connected is the first disconnected" be used in computation of the access charges. Because of these objectionable tariff features staff recommends that rates and charges be initially authorized on a provisional basis, for some period such as 18 months.

According to staff witness Bumgardner, the above-discussed discount provisions favoring the larger resellers, such as PMA, could allow these large resellers to set the retail price low enough to drive other resellers out of business. Witness Bumgardner also noted that PMA has the ability to subsidize its resale operation from revenues generated in the Partnership's wholesale operation and compares the Partnership profit margin of 19% by year 2 with the maximum profit margin of 8% for the resale operation. He believes that if the risk associated with the two businesses are equal, the return should be equal.

To determine the financial effect on a nonwireline carrier wishing to resell the Partnership's service prior to its entry into the cellular marketplace, this witness developed an income statement for a hypothetical reseller for year 1 and found that a reseller who does not sign a three-year contract would lose $411,593 in the first year of operation. He believes that such a loss is totally unacceptable on a short-term basis and would discourage entry into the resale business.

He suggests that a possible solution to alleviate a portion of this problem would be to initiate a service establishment charge of $165 to cover the costs of adding each customer to the system consisting of $100 for advertising, $50 for sales commission, and $15 to establish service. The resulting increase in the service establishment charge from $50 to $165 per customer would result in a year 1 net income of $416,507 for the above hypothetical reseller.

With respect to the retail operations of the proposed cellular system, it is staff's position that a Commission decision not to regulate retail service would be clearly contrary to the public interest in that PMA presently enjoys a monopoly position through its control over the single cellular carrier in the Los Angeles area and, therefore, has the ability to subsidize low retail rates through its monopoly wholesale revenues. Staff further maintains it is abundantly clear that both the State Constitution and PU Code grant the Commission the authority to regulate not only the Partnership as set forth in D.83-06-080, but also those engaged in the resale of cellular service. Staff asserts that should this Commission relinquish its regulatory authority over the provision of retail cellular service, there would be a possibility of anticompetitive conduct by the members of the Partnership which would be contrary to the public interest.

Staff notes that since there are presently no pending reseller applications for CPC&Ns, the manner in which the Commission should exercise regulatory authorities over independent resellers is not an issue in this proceeding and is a matter more appropriately left to a subsequent decision.

Since the Partnership has dedicated its cellular system to providing cellular phone service to the public, it is staff's position that the Partnership should provide both wholesale and resale services. According to staff, the Partnership is proposing to isolate itself from the ultimate consumer in all cases except businesses desiring to purchase in bulk quantities under the wholesale rate. Requiring the Partnership to provide service at both the wholesale and retail levels would, according to staff, help ensure the financial viability of the Partnership and, also, remove any incentive on the part of PMA to misallocate costs between wholesale and retail.

Staff believes that the revised tariffs, submitted on the last day of hearing as an alternative to be considered by the Commission in the event it agreed with staff's criticism of the original proposal, which included a reduction in wholesale rates, the removal of the 100-block purchasing requirement, the elimination of a six-month minimum contract, and the elimination of the additional 4% discount when a three-year contract is signed, are all desirable in that such revisions would reduce the discriminatory provisions of the initial tariff which favored the dominant reseller and thereby enhance the wholesale rates. However, according to staff, there has been no showing that the revised tariffs present a realistic business opportunity to independent resellers.

Consequently staff recommends the Partnership be given authority to place the system in service to the public on a wholesale-only basis under the terms and conditions contained in the revised wholesale tariff until such a time as applicant presents a resale plan that will ensure a competitive market for the resale of cellular service.

In response to the opening briefs of applicant and GTE Mobilnet advocating that the Partnership provide only wholesale service with the retail service to be regulated by the forces of supply and demand in the competitive marketplace, staff argues that both applicant and GTE Mobilnet assume existence of a competitive resale market and ignore the structural differences between PMA as a retailer, with its ability to misallocate costs between the wholesale operations of the Partnership and its retail operations, and other resellers who lack that opportunity. According to staff, applicant and GTE Mobilnet use the existence of a competitive resale market as a basis for not regulating resale when, in fact, with the cellular telecommunications industry in its infancy, there is no competitive secondary resale market. Furthermore, staff notes that unlike independent resellers in the LA SMSA, PMA proposes to control both the wholesale and retail segments of its cellular business through service agreements between LACGSA and PMA. Such an arrangement will permit the misallocation of costs to wholesale service, thereby permitting PMA's retail service to operate successfully at a low markup over the wholesale rates and thereby place independent resellers at a competitive disadvantage.

Position of ICS/MCI

Testimony on the viability of the proposed resale plan was presented on behalf of ICS/MCI by the senior manager of budgets and financial analysis for MCI-Air, Joseph G. NeCastro. According to his testimony, witness Steuernagel's presentation showing a pretax return on sales of 8% was overstated. This witness supervised the preparation of a detailed analysis which showed a pretax return on sales of 2.5% for a reseller having fewer than 1,000 subscribers and 5% for a reseller having more than 1,000 subscribers. In addition, witness NeCastro took issue with the proposed method of accounting for cancellations which would force the reseller to "bundle" access and usage charges to ensure the recovery of his prepaid amounts. As a result, low usage customers must either pay for service they do not use or they will make unnecessary calls to meet their allotment. Furthermore, according to the record, the required "bundling" of access and usage charges would effectively preclude a reseller from competing for the business of customers who might have roamer requirements.

This witness also performed an additional study entitled "Reseller Breakeven Analysis" (Exhibit 34, Attachment B). Most of the assumptions, i.e. operating and marketing expenses and the ratio of fixed and variable costs, were provided by applicant. According to this study, a typical reseller having less than 1,000 subscribers would take from five to seven years to break even, which the witness does not consider a viable business opportunity.

With respect to the tariff modifications presented on the last day of hearing, ICS/MCI believes they should be given little weight because applicant does not believe in them; the financial consequences of the tariffs have not been explained, justified, or subjected to adequate cross-examination; and the effect of the decrease in net profit on the Partnership's financial status has not been examined.

In its opening and reply briefs ICS/MCI argues that:

1. Financial experts testifying on behalf of ICS/MCI and staff demonstrated the inadequacy and nonviability of applicant's resale plan and, therefore, the application should be denied.

2. The requirements that resellers purchase numbers in blocks of 100 under a six-month contract with minimum usage requirements create substantial financial risks for a potential reseller.

3. The incremental income statement relied upon by applicant is misleading because it failed to account for the cost of money for investment, misapplied the financial concept of "contribution", and mischaracterized and improperly calculated returns.

4. The revenues of the hypothetical reseller shown by applicant are probably inflated because they are based on assumed customer usage of 400 minutes per month even though applicant assumes a new customer will use service 290 minutes a month.

5. Since PMA is involved in both wholesale and retail services, it has the ability to resell service at little or no margin and still earn a profit.

6. Applicant's assertion that resellers will have the flexibility to set their own prices is belied by applicant's admission that the retail levels are set at those levels which its market research shows customers are willing to pay, thus establishing a ceiling while the inadequate profit margins are establishing a floor.

7. Applicant's alternate tariffs submitted on the last day of hearing should be disregarded.

8. Staff, ICS/MCI, and Allied all conclude that the proposed resale plan is not viable and does not afford independent entities any reasonable business opportunity.

9. An essential consideration is whether or not individual businesses can survive in light of the economics of the industry and, as demonstrated by witnesses NeCastro, Bumgardner, Harris, and Cook, this is far from certain, and even doubtful, for a nondominant reseller under applicant's plan.

10. PMA will set both the wholesale and retail prices for service and resellers will thus have no control over the cost of providing cellular service.

11. Applicant's defense of its position assumes that resellers will offer cellular service as an adjunct to other business and, therefore, need consider only incremental costs; and, further, that resellers will be able to differentiate their services and offer various packaged arrangements. These assumptions were not substantiated on the record.

12. There is no justification for pursuing a resale business in connection with the sale of cellular CPE unless the resale business will provide reasonable returns.

Position of Allied

It is Allied's position that applicant has presented three nonviable resale plans, i.e. the first plan was presented with the application and consisted of both an "agent" and a "resale" program, the second plan was presented subsequent to interim D.83-06-080 and provided a wholesale tariff only, and the third plan was presented on the final day of hearing as a response to a staff proposal rather than an actual recommendation.

In its brief, Allied supported its position by summarizing the three plans and portions of the testimony of applicant's witness Steuernagel, Allied's witness Cook, ICS/MCI's witnesses NeCastro and Harris, and staff witness Bumgardner.

Allied noted that under the first plan the total revenue to the reseller, under applicant's assumptions, as testified to by witness Cook, would range between 5.25% and 6.1% of gross revenues and was totally inadequate in light of AMPS' FCC Exhibit K-2 indicating business development, billing, and marketing expenses totaling between 15.8% and 32% of revenues for the first three years of operation.

With respect to the second plan, Allied asserts there are numerous aspects of the proposal which make it a decidedly unattractive business opportunity for an independent reseller. Included in these adverse aspects are the requirements that the reseller prepay for both numbers and access time in blocked minimum amounts, the provision of a discount rate of benefit only to the largest reseller, and the minimum six-month commitment period with its last-number-acquired, first-number-disconnected provision. In addition, according to Allied, at no time has applicant provided an analysis of the financial feasibility of its proposed resale program for a third-party reseller who has no existing business against which to assess the basic costs of rent, utilities, and salaries. Allied argues that witness Steuernagel's analysis projecting a pretax profit margin of 8% excludes most of the costs that a reseller must incur and that witness NeCastro's pretax profits, using applicant's assumptions, of between 2.5% and 5% are much more realistic. Allied also notes that staff witness Bumgardner, also using applicant's assumptions, found that a reseller who does not sign a three-year contract would lose $411,593 in the first year of operation and that the assumptions leading to the above operation results do not take into account the losses the reseller would incur for bad debt losses on the wireline portions of calls within the CGSA, the losses inherent in the minimum blocking of numbers and access line, or any of the ordinary costs of an ongoing business.

According to Allied, the third proposal filed on the final day of hearing presents a variety of new issues as follows:

1. The decrease in revenues from the revised wholesale tariff greatly aggravates the problem of funding the Los Angeles cellular system;

2. Applicant's analysis of projected costs still does not include fully allocated costs, such as rents, utilities, salaries, and insurance for a stand-alone reseller; and

3. The hypothetical reseller's pro forma statement showing a gross margin of 17% does not enable the reseller to break even as indicated by applicant's estimate of between 15.8% and 32% needed for marketing, business development, and billing costs alone for the first three years and witness Cook's testimony that marketing expenses alone for a typical startup cellular operation can be realistically projected at 20% of revenues.

Another factor of great concern to Allied is the impact of the proposed cellular system operations on either Pac Bell's IMTS system or on existing radio common carriers (RCCs). According to Allied, applicant has failed to fully address such an impact.

Allied asserts that the importance of an analysis of the impact of cellular systems on existing RTU operations cannot be overemphasized as these existing systems are the only independent competition to applicant during the critical head-start period. Allied notes that the "traditional" mobile telephone systems presently serve many thousands of subscribers in the Los Angeles area as well as in the other major populated parts of California. According to Allied, existing mobile telephone systems have invested large sums in implementing their systems and this Commission has an obligation to such utilities and their subscribers to analyze the competitive impact of the cellular system and to determine whether in their entirety such proposals constitute fair competition, which is in the public interest, or contain unfair elements the impact of which ought to be mitigated prior to full certification. Allied notes that the limited comparison proferred for the record compares rates which include charges for the wireline portion of calls within the CGSA with rates which do not contain such charges and that witness Steuernagel admitted under cross-examination that he could not state whether the existing RCC rates, when combined with the wireline portion of calls within the CGSA, would be lower or higher than the retail cellular rates on the record in this proceeding. Should it be found that the cellular rates, similarly compared, are less than the existing mobile rates, Allied argues it is indisputable that IMTS's subscriber base will be threatened by the proposed system.

Allied asserts that the competitive consequences of granting a CPC&N must be considered by the Commission. Allied notes that the proposed dual distribution system, i.e. the seller competes with its own buyers in the resale of products, may contravene the restrictions of the antitrust laws. According to Allied, in evaluating the legality of dual distribution systems, courts and administrative agencies must determine whether the restrictions imposed by the system are horizontal, i.e. placed by one competitor upon another, or vertical, i.e. restraints imposed by a seller upon a buyer. Horizontal restraints are illegal and vertical restraints are examined under the "rule of reason" and may be found justified if it can be shown that they are based on sound economic considerations and thereby regulate rather than destroy competition. Consequently, under a dual distribution system agreements can be generated which appear both horizontal and illegal or vertical subject to conditional approval. According to Allied, the proposed resale program does not present a viable business opportunity and the independent reseller cannot hope to make a profit, or even cover costs as contrasted to the proposed profitable operations of applicant's own retail agents. Allied further asserts that under the proposal, applicant will hold 100% of the wholesale cellular market during the head-start period, and will be able to stymie the development of third-party resellers in the Los Angeles market.

Position of GTE Mobilnet

GTE Mobilnet's position on the instant proceeding was presented in its briefs and addresses two issues: (1) whether resellers of cellular services should be required to comply with the full scope of traditional utility regulation that may otherwise be applicable; and (2) the propriety and necessity of requiring a wholesaler of cellular services to sponsor a retail tariff for providing cellular services to the ultimate user of the service.

According to GTE Mobilnet, the FCC regards resale as an effective means of increasing competition and providing a robust marketplace and, therefore, conditioned the award of cellular radio licenses so that cellular carriers cannot prohibit the resale of cellular services. GTE Mobilnet notes that resellers of cellular mobile service are not natural monopolies, do not have the ability to control the availability of service to their competitors or otherwise to restrict market entry, and are not of sufficient size to effect economies of scale. Consequently, regulation of such resellers is not only unnecessary but because of the time and money necessary to prosecute an application for CPC&N, such regulation might discourage potential resellers from entering the market. In further support of its position, GTE Mobilnet cites recent FCC action forbearing from the application of traditional regulation to resellers and nondominant providers of interstate communication services in order to foster innovation and efficient development of the telecommunications industry. GTE Mobilnet further argues that a Commission decision to forebear from regulating resellers would not only ensure the public the best service at reasonable prices, but would also avoid the potential of unnecessary conflict between federal and state policy.

GTE Mobilnet notes that the Partnership does not propose to offer cellular services at the retail rate and under such a proposal the ultimate retail customer will obtain service from any one of a number of reseller entities that will have obtained blocks of numbers from the Partnership. Should the Commission assume jurisdiction over resellers, such resellers would be required to disclose the rates they will charge for their service. However, the presence or absence of a retail tariff applicable to a wholesaler that does not intend to offer retail service is, to GTE Mobilnet, irrelevant. It is GTE Mobilnet's belief that the consumer will be best served by resellers that are free to price their product competitively and with flexibility to respond to market conditions. GTE Mobilnet further asserts that the Commission has recognized that effective competition serves as a safeguard for the consumer by preventing unreasonably high rates and decreases the level of showing necessary to justify a particular rate. GTE Mobilnet suggests that under the above-outlined circumstances, should this Commission conclude that it is required to exercise some jurisdiction over resellers of cellular services, it should limit its jurisdiction to:

1. Requiring resellers to register with this Commission, disclosing relevant and necessary information.
2. Having resellers acknowledge they are subject to Commission jurisdiction.
3. Requiring resellers to file and keep current prices for cellular service.

Such a streamlining of the regulatory process would permit resellers to enter the market.

Position of Dynatel

Dynatel, a California communications corporation serving the Pasadena and Los Angeles areas, is a recently appointed registered agent of PMA. It submitted its brief in response to the opening concurrent brief of staff. In January 1984 Dynatel signed a contract with PMA which permitted it to sell, install, and service cellular telephones (such operations do not require a contract with PMA) and representing PMA in the consumer market as an official conduit between PMA's retail outlet and the consumer, providing log-on services to the consumer. Dynatel states that it has engaged in numerous preparatory activities in anticipation of its entry into the Los Angeles cellular radio market as an agent of PMA. It is anticipated the start-up costs for such entry into the cellular market will approximate $350,000. The expenditure of such funds is for increased staffing, new administrative offices, extensive advertising, and the scheduling of deliveries of cellular telephone equipment.

Dynatel asserts that the following statement appearing on page 22 of the staff brief does not accurately reflect the relationship between the consuming public and the actual supplier of the service, the Partnership:

"'/the Partnership/ intends to isolate itself from those consumers by requiring that they obtain service from some other entity. Under the proposal, the only time the ultimate consumer whould /sic/ have the option of purchasing cellular phone services directly from the carrier is when a buisness /sic/ desires to purchase in bulk quantities under the tariff.'"

According to Dynatel, under applicant's proposed operations the Partnership will be no more isolated from the consumer by using its retail division and the agency program than the consumer will be isolated from the Partnership if it purchases its cellular service from any reseller in the Los Angeles market. It notes that PMA will purchase the numbers from the Partnership and release them to Dynatel as needed, but all billings for the service will be by PMA and not Dynatel. Other resellers will either have to develop agents or deal directly with the consuming public. In either case, according to Dynatel, the ultimate consumer deals indirectly with the Partnership through a reseller the same as with PMA's proposed operations.

Finally, Dynatel asserts there is a great pent-up demand for cellular service and were the Commission to accept staff's suggestion that Los Angeles cellular telephone service be activated on a wholesale-only limited basis will cause untold hardships upon Dynatel due to the activities it has already engaged in to expand its business operations and the financial commitments it has made for its entry into the cellular market.

Position of Executive

Executive states that on or about October 1, 1983 it signed an authorized agency agreement with PMA for the purpose of selling, as a nonexclusive authorized agent of PMA, cellular radio service and to sell or lease, install, and provide service and maintenance of equipment necessary for such service for the subscribers. The amicus curiae brief was filed in support of the agency concept which will allow PMA to offer the sales and service through authorized agents.

Executive asserts that given the fact that a great demand for cellular service exists, the agency method of selling and servicing the equipment and the system will provide an advantage to the public. According to Executive, the appointed agent is a local businessperson within the general community or geographic area represented. Consequently the customers will be dealing with a local businessperson motivated to provide service and more efficient response time. Furthermore, such an agent will be able to provide information and products which are more pertinent and consistent with local needs and tailor his service to meet those needs. In its brief, Executive detailed its marketing and development efforts to date and concludes by requesting that this Commission recognize the public need which exists for the cellular system and the importance and viability of the use of sales agents for the purpose of serving the public with this product.

Discussion

With the myriad assertions relating to a viable resale plan before us it is easy to overlook the basic concept leading to the imposition of such a plan by the FCC. Simply stated, a viable resale plan is required to foster competition and mitigate any adverse effects of the early entry into the cellular marketplace of a wireline carrier in advance of a nonwireline carrier by providing a means whereby a nonwireline carrier may enter the cellular marketplace as a bona fide competitor in a limited role before it has obtained a license to provide such service. It is axiomatic that such an objective can be achieved only if the resale service opportunity provided by the cellular entity does in fact constitute a viable business opportunity for such a nonwireline carrier. As previously discussed, staff, ICS/MCI, and Allied are in complete agreement that the resale plans proposed by applicant do not provide a potential nonwireline reseller an opportunity to enter the cellular marketplace as a bona fide competitor.

The resale of cellular service is a complex, many-faceted matter. Among the component parts of such resale service requiring resolution are:

1. The certification requirements for the reseller.
2. The provision of both wholesale and retail services by certificated cellular carriers.
3. The full costs of providing wholesale service.
4. Rate design for wholesale and retail rates.

5. The impact of cellular service on IMTSs.

6. The role of PMA agents.

The FCC intends, and this Commission concurs, that a viable resale plan will permit a nonwireline carrier to enter the cellular marketplace in a limited role prior to obtaining the necessary regulatory approval to provide such service on its own. Such nonwireline carriers are generally certificated utilities. Furthermore, in accordance with the provisions of PU Code Sections 216(b), 233, and 234, resellers are public utilities subject to this Commission's jurisdiction.

Section 233 defines telephone line to include "...all conduits, ducts, poles, wires, cables, instruments, and appliances... owned, controlled, operated, or managed in connection with or to facilitate communication by telephone..." Section 234 defines a telephone corporation as including "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this State..." Section 216(b) states: ". . . Whenever any...telephone corporation...performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such... telephone corporation...is a public utility subject to the jurisdiction, control, and regulation of the Commission and the provisions of this part..."

Under these circumstances, it therefore follows that only certificated utilities should be permitted to act as resellers. It will not be necessary, however, for presently certificated utilities to obtain separate certification to commence operations as a reseller. Rather, it only would be necessary for such certificated utilities to expand their existing operations to include cellular service by an appropriate advice letter filing of the proposed cellular service tariffs. In this respect, it should be noted that at the present time there are two nonwireline entities competing for FCC authorization to provide cellular service to the LA SMSA. With the availability of a viable resale plan, the unsuccessful candidate can still enter the cellular marketplace as a reseller. It is not intended that the requirement that a reseller be a certificated utility preclude large organizations from purchasing cellular service in bulk blocks at the wholesale rate for their own use. Nor is it intended that such a requirement create obstacles that will deter those presently or about to be engaged in the provision, operation, and/or maintenance of CPE cellular equipment from expanding their cellular involvement to encompass operations as a reseller. Consequently, while we will still require prospective resellers to file an application for a CPC&N under the Commission's Rules of Practice and Procedure, we will exercise our option to grant such certificates on an ex parte basis to the maximum extent possible.

A large portion of applicant's presentation and argument subsequent to the issuance of D.83-06-080 addressed the concept that the Partnership should provide cellular service "in bulk" as a wholesale-only business. As previously discussed in the parties' positions, it is proposed that PMA under contract with LACGSA provide only wholesale service to resellers including PMA's retail division. Applicant envisions the resellers as unregulated entities which will establish retail rates in accordance with the marketplace. As stated, we will permit neither unregulated resale of cellular service nor the operation of the Partnership by contract between LACGSA and PMA. Furthermore, the record is quite clear that, at least until such time as nonwireline carriers commence operation as cellular utilities, the wireline carriers will dominate the retail market and effectively establish price ceilings for the resale of cellular service. Under these circumstances the only way we can effectively exercise our jurisdiction so as to make certain of the proper allocation of costs between wholesale and retail operations necessary to ensure adequate retail sale margins to provide a viable reseller business opportunity is to establish both retail and wholesale tariffs for the Partnership. Our assumption of jurisdiction over both wholesale and retail operations of the Partnership will serve a twofold purpose. First of all, the tariffs we will authorize will provide sufficient returns on the retail rates to provide a viable business opportunity for the reseller and thereby preclude the wireline carrier from pricing competitive nonwireline carrier resellers out of the market and, secondly, will, as noted by staff, help ensure the financial viability of the Partnership by retaining the profits within the Partnership.

According to the testimony of applicant's witness Steuernagel, the retail rates used for the various feasibility studies were based on what market research information indicated would be an appropriate price to charge. The wholesale rates were then derived as a portion of the retail rates and compared, element by element, to make certain the component costs were fully covered. The establishment of wholesale and retail rates in this manner resulted in market-determined prices rather than cost-determined prices.

In response to a staff request during cross-examination, applicant's witness Jeff Chessher provided a summary of the access, usage, service establishment, and common cost elements for wholesale service. This study showed a total directly assigned usage cost of 33.7¢ per minute for peak period service and 3.2¢ per minute for off-peak service. To this would be added $37.31 per customer per month were the wholesale common costs allocated 100% to usage. The total directly assigned access costs were computed to be $9.24 per customer per month. To this would be added 8.9¢ per minute were the wholesale common costs allocated 100% to the access costs. It should be noted that the above wholesale costs include return on investment as well as income taxes.

Incremental income statements for a hypothetical reseller/customer were presented by applicant and ICS/MCI and for a hypothetical reseller with 60% of the market by applicant and staff. The retail operation expenses included in these studies consisted of the wholesale cost of the service provided, billing expense, bad debt expense, and market support.[5/] Also

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5/ The billing expense, bad debt expense, and market expense totaled $6.82 per customer per month.

shown on these studies were incremental nonrecurring investment costs per customer to the carrier consisting of \$100 per customer advertising, \$50 per customer sales commission, and \$15 per customer service establishment. These amounts were formulated by applicant and adopted by staff and ICS/MCI for illustrative purposes. The record indicates that such costs do not cover the full costs associated with the provision of retail cellular service. Excluded are such essential expenses as labor, utilities, office space, and insurance. The incremental income statement submitted by witness Steuernagel indicated an 8% pretax return on sales for a hypothetical reseller purchasing cellular service on applicant's proposed wholesale tariff. This 8% return was based on the maximum available discount, i.e. more than 1,000 subscribers with a three-year contract, and on estimated usage of 320 minutes of peak time and 80 minutes of off-peak time per month.

Testimony presented by ICS/MCI indicated a margin of 2.5% for a reseller having fewer than 1,000 subscribers using service 200 minutes a month and 4.9% for a reseller having more than 1,000 subscribers using service for 200 minutes a month. For resellers with subscribers using service for 400 minutes a month, ICS/MCI's testimony indicated a 3.1% return for less than 1,000 subscribers and 5.0% return for more than 1,000 subscribers. The income statement for a hypothetical reseller with 60% of the market presented by staff showed a first year loss of \$411,593 (negative 4.6%) if the reseller does not sign a three-year contract and thereby receive a 4% discount.

According to witness Steuernagel, if the alternate wholesale tariff were used for computing the cost of goods sold, the same hypothetical reseller would earn a net income of $420,160 or 4.65%. Similarly, the use of the alternate wholesale tariff in computing the incremental income statement with applicant's assumptions would yield a pretax return on sales of 13.80%. Staff witness Bumgardner notes that applicant's showing indicates a reseller's profit margin of 8% under the best possible circumstances as compared to a Partnership profit margin of 19% by year 2 and asserts that if the risk associated with the two businesses is equal, then the return should be equal. In any event, it is quite clear that the profit margin for the reseller as proposed by applicant is entirely inadequate to constitute the viable resale plan required by the FCC and this Commission.

At this point we will address the specific tariffs to be authorized by this order. The format of the wholesale rate proffered for Commission consideration by applicant on the last day of hearing appears to be generally acceptable to the parties to the proceeding and to conform to standard tariff construction for this type of service. Consequently the format, if not the level, of the wholesale tariff set forth in Exhibit 39 will be adopted. Similarly the format of the retail rate set forth in Exhibit 39 will be adopted.[6] Furthermore, the record supports the proffered retail level of rates on the basis of market survey data indicating such a level will be acceptable to prospective customers. Consequently we will adopt such a rate on an interim basis.

6/ We will authorize the applicant to file tariffs consistent with Appendix A, attached, on or after the effective date of this order. The remaining tariff sheets, dealing with rules, forms, maps, and the like should be prepared by the applicant in accordance with General Order Series 96 (GO 96), and transmitted promptly by Advice Letter to the Commission staff for review and filing as prescribed by GO 96.

Having established the retail rate, it is necessary to provide a wholesale rate at a low enough level to provide sufficient margin to constitute a viable business opportunity and high enough to provide an adequate return for the Partnership.

According to the record, a hypothetical reseller with 60% of the market who did not sign a three-year contract and receive a 4% discount would have a first year pretax profit margin of a negative 4.56%. Modification of the original wholesale tariff as set forth by applicant on the last day of hearing would increase the pretax profit margin for the first year's operation to a positive 4.65%. This is still less than the 8% pretax profit margin computed by applicant and espoused by it as sufficient to constitute a viable business opportunity for a reseller. A further decrease of 4.42% in the wholesale rate would raise the pretax profit margin for this hypothetical reseller to 8.30%. We will accept this as an adequate margin to constitute a viable business opportunity for a reseller. Table I sets forth an income statement for the first year's operation for the hypothetical reseller with 60% of the market at the original proposal, the modified proposal, and the adopted rates.

Table I

YEAR 1 INCOME STATEMENT
Hypothetical Reseller with 60% of Market

	Original M-$	Modified M-$	Adopted M-$
Retail Revenue:			
Access	$2,106	$2,106	$2,106
Usage - Peak	6,044	6,044	6,044
Usage - Off Peak	885	885	885
Total	$9,035	$9,035	$9,035
Cost of Goods Sold:			
Access a/	$1,711	$1,582	$1,512
Usage - Peak b/	5,753	5,139	4,912
Usage - Off Peak c/	841	752	719
Total	$8,305	$7,473	$7,143
Operating Expenses:			
Billing	$ 193	$ 193	$ 193
Bad Debt	45	45	45
Marketing Support	76	76	76
Total	$ 314	$ 314	$ 314
Incremental Nonrecurring Investment Per Customer:			
Advertising Costs	$ 720	$ 720	$ 720
Sales Commission Costs	360	360	360
Service Estab. Costs	108	108	108
Less: Service Estab. Rev.	(360)	(360)	(360)
Total	$ 828	$ 828	$ 828
Net Income	$ (412)	$ 420	$ 750
Pretax Profit Margin	(4.56)%	4.65%	8.30%

(Red Figure)

a/ For original access, it was for under 1,000 and over 1,000 numbers. For modified and adopted, it was for over and under 100 numbers.

b/ Original minimum 200,000 minutes; others, 20,000 minutes.

c/ Original minimum 20,000 minutes; others, 2,000 minutes.

The following tabulation sets forth the return on equity for the Partnership for the first three years of operation at the original wholesale tariff, the modified wholesale tariff, and the adopted wholesale tariff:

	Year 1	Year 2	Year 3
Equity Capital	$21,735,000	$32,415,000	$52,497,000
Return on Equity:			
Original Tariff	(0.37)%	26.62%	26.94%
Modified Tariff	(2.03)	20.94	21.53
Adopted Tariff	(3.31)	18.44	19.19
	(Red Figure)		

The adopted tariff returns on equity computations are set forth in Table II. It will be noted that by Year 2 the return on equity will be 18.44% for the wholesale operations. This return should be enhanced by the retail operations of the Partnership. Such returns are somewhat higher than we normally allow for a utility operation but are justified in this instance by the preoperative and Year 1 negative returns. We will monitor the operations of the Partnership by requiring the submittal for Commission review of a comprehensive results of operation report, covering the first 12 months of operation, to be submitted within 120 days from the completion of the first 12 months of operation.

Table II

Los Angeles SMSA Limited Partnership
Cellular Service

PRO FORMA INCOME SHEET

	Pre-operative	Year 1	Year 2	Year 3
		(Thousand of Dollars)		
Total Revenue	$ 0	$12,055	$37,928	$58,674
Expenses:				
Administrative	5,228	5,625	6,141	6,677
Billing Expense	0	493	1,338	2,156
Depreciation and Amortization	0	1,474	3,942	6,815
Marketing	250	1,206	1,296	1,319
Operations	511	1,789	5,912	10,311
Facilities	1,834	2,925	7,256	10,858
State & Local Taxes	0	245	1,542	2,567
Total Expenses	7,823	13,757	27,427	40,703
Income before Taxes & Interest	(7,823)	(1,702)	10,501	17,971
Taxes on Income	(4,021)	(1,087)	4,266	6,981
Income before Interest	(3,802)	(615)	6,235	10,990
Interest during Construction	2,430	0	0	0
Less Interest Exp.	913	104	257	918
Net Income	(2,285)	(719)	5,978	10,072
Equity Capital	18,771	21,735	32,415	52,497
Return on Equity	(12.17)	(3.31)	18.44	19.19

(Red Figure)

We appreciate Allied's concerns relating to the impact of the proposed cellular operations on either Pac Bell's IMTS or on existing RCCs. We do not believe, however, that many existing mobile radio customers will immediately abandon their present systems and switch to cellular service. We say this not only because of the high cost of switching systems and relatively greater coverage of the existing units, but because there really is no great incentive for existing customers to shift their service. The primary objection to the present mobile radio operations is the overcrowding of the facilities. This condition should be substantially mitigated by the new "TV" frequencies authorized by the FCC. As a result of these new frequency allocations, the number of mobile radio units should be more in keeping with the capacity of the equipment of existing RCCs and the service should improve possibly to the point where existing customers will have no incentive to switch to cellular service at least for some time. Furthermore, many of the existing RCCs will expand their current mobile radio operations to include cellular service and thereby maintain their economic viability.

In addition, by mandating the Partnership to provide retail as well as wholesale service, we have largely mitigated Allied's concerns about the antitrust aspects of a dual distribution system.

Under existing FCC regulations the carrier furnishing cellular service cannot furnish the terminal equipment. Under the assumption that the retail division of PMA would act in the capacity of reseller, PMA has apparently signed agency contracts with various corporations who would sell, install, and maintain the terminal cellular equipment. As previously stated, we will certificate the Partnership with either LACGSA with a full and adequate staff or PMA as the general partner. In neither case will the general partner of the Partnership be able to provide the terminal cellular equipment. Consequently the existing agency contracts can remain in effect if PMA is the general partner or can be transferred to LACGSA should it remain as the general partner. In either case the status quo will be maintained and neither Executive nor Dynatel will be injured by our action in this matter.

VII - INTERCONNECTION ARRANGEMENTS

General

The proposed cellular system will interconnect with the public switched telecommunications network (network) via interconnecting facilities called central office connecting circuits. The connections between the Mobile Telephone Switching Office (MTSO) and the cell sites are via four-wire voice grade channels, called radio landlines, provided by the telephone company. One such radio landline is required for each cell site channel. In addition, two full duplex voice grade data channels are required between the MTSO and each cell site to carry cell site status and control information. It is proposed that the Los Angeles wireline cellular system will be interconnected with the network via six electronic switching (zone) offices located at Sherman Oaks, South Pasadena, Los Angeles-Angelus, Los Angeles-Plymouth, Riverside-Arlington, and Orange. These six zone offices have telephone numbers associated with the three numbering plan areas (NPA) in the Los Angeles area, i.e. 213, 714, and 818. Under the above arrangement the MTSO will be connected to a Class 5 office.

Position of Applicant

Testimony was presented on behalf of applicant by the director of engineering for PMA and the chief executive officer of LACGSA, Gloria Everett. According to her testimony, the above-described interconnection arrangement permits least cost routing by routing the call to the zone office that is closest to the terminating number. If all circuits are busy high usage routing is available and if these facilities are loaded the call is automatically overflowed and routed to the second zone office in that NPA so that there is another opportunity to complete the call.

This witness further testified that another advantage of the proposed system is that a customer can select telephone numbers in any one of the three NPAs and thereby minimize the cost for that customer from the landline to his mobile unit. Another advantage of the proposed interconnection system testified to by this witness was minimizing the multimessage unit charges to PMA by causing the call to go to the zone office closest to the terminating user.

Applicant notes in its brief that there is nothing in its request for its interconnections that is in any way binding on any other carrier. Such interconnections are, according to applicant, a subject of negotiation between the involved cellular service carriers and wireline carriers.

During the hearing on this matter, according to the record, there was a connection and traffic interchange agreement in effect between The Pacific Telephone and Telegraph Company and AMPS. This contract was entered into as an expedience so that facilities for the cellular system could be immediately installed. It was contemplated that the contract would generally be superseded by a tariff. The contract was patterned after agreements generally used with radio common carriers. The connection and traffic interchange agreement between General Telephone Company of California (General) and AMPS, however, related specifically to cellular service.

Position of Pac Bell

Pac Bell asserts that the evidence submitted shows it will provide interconnection facilities under tariff for applicant and for any other authorized cellular carrier. According to Pac Bell, the evidence presented established that Pac Bell is providing interconnecting facilities to applicant under a connection and traffic interchange agreement, but that the majority of items covered in that agreement are tariffed items provided at tariffed rates. A few of the items are not under tariff but are provided under the same terms and conditions that they are provided to other RTUs in California.

Pac Bell notes that among the items covered in Attachment II to the connection and traffic interchange agreement are new 2000 series channels, recently approved by this Commission when submitted under Advice Letter 14652, which were designed by Pac Bell to meet applicant's requirements. The type 2021 channel is for use between the MTSO and a cell site and the type 2025 channel is for use between the MTSO and the utility central office.

Pac Bell notes that its witness Normington testified that Pac Bell has not precluded any method of servicing other cellular carriers and would discuss with radio carriers the possible connection arrangements to be included in its new comprehensive tariff to be filed in early 1984.

Position of Staff

Staff position on the interconnection of facilities was included in the testimony of its witness Dodge. He stated that the Pac Bell interconnection agreement needed revision to reflect operation of a cellular system rather than an interconnection with a noncellular RTU, and recommended that the agreement be redrafted in its entirety and resubmitted to staff for review. A new interconnection agreement was subsequently submitted and, upon review, staff has found it to be satisfactory.

With respect to the General agreement, this witness stated that some supplementary information is required to explain the basis of the rates and charges imposed by General. He further testified that interconnection agreements appear to him to be subject to PU Code Section 766[7/] when two California-certificated carriers are the parties, and no model agreements

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7/ PU Code Section 766 states:

"766. Whenever the commission, after a hearing finds that a physical connection can reasonably be made between the lines of two or more telephone corporations or two or more telegraph corporations whose lines can be made to form a continuous line of communication, by the construction and maintenance of suitable connections for the transfer of messages or conversations, and that public convenience and necessity will be served thereby, or finds that two or more telegraph or telephone corporations have failed to establish joint rates, tolls, or charges for service by or over their lines, and that joint rates, tolls, or charges ought to be established, the commission may, by its order, require that such connection be made on the payment of such compensation, if any, as it finds to be just and

(Continued)

proposed by other bodies are necessarily effective in the present regulatory environment. It is staff's view that the Commission's authority under PU Code Section 766 is the mechanism for assuring the required equivalence of interconnection provided to "wireline" and "nonwireline" cellular carriers in a given area.

This witness further noted that the Commission prefers tariffs as opposed to contracts for the great majority of applications and, consequently, the majority of the Uniform Service Order Code items in the Pacific interconnection agreement should be tariffed if it is at all reasonable to do so.

7/ (Continued)

> reasonable, except where the purpose of the connection is primarily to secure the transmission of local messages or conversations between points within the same city, or city and county. The commission may, by order, require that conversations be transmitted and messages transferred over such connection under such rules as it may establish, and may prescribe through lines and joint rates, tolls, and charges. If such telephone or telegraph corporations do not agree upon the division between them of the cost of such physical connection or connections or the division of such joint rates, tolls, or charges established by the commission over such through lines, the commission may after further hearing, establish such division by supplemental order."

Position of ICS/MCI

D. W. Ackerman, vice president-planning and business development for MCI Air, testifying on behalf of ICS/MCI, stated his belief that the MTSO should be interconnected with the landline network as a Class 5 or end office rather than to a Class 5 office. He noted that a cellular telephone service will be an exchange telephone service which may serve as many or more customers than do many local telephone exchanges and telephone companies. According to this witness's testimony, a cellular system can perform all of the necessary functions normally associated with a Class 5 office including billing, switching, connecting to subscribers, and routing of calls. By connecting a cellular MTSO into the network as a Class 5 office, it would interconnect to Class 4 (or higher) Toll Centers for access to the intercity network and connect with other Class 5 central offices, both landline and mobile, or local tandem offices.

Among the advantages of interconnecting a cellular MTSO as a Class 5 office, cited by this witness, are that a cellular carrier would be able to design its interconnection to the local network on the basis of actual traffic patterns; trunk requirements would be predicated on usage and networking arrangements through local-tandem or other end offices, and would be based on actual usage patterns. By contrast, according to the testimony, where a MTSO is connected to a Class 5 office routing of traffic is dependent upon the networking configurations determined solely by the local telephone company. As a result, all cellular traffic is routed first through the Class 5 office connected to the MTSO and routing and trunking efficiencies are not maximized. Furthermore, such an interconnection arrangement would require the Class 5 switch to perform a second and unnecessary switching function for each call. In addition, the loss of some interoffice circuits does not result in a total cellular system shutdown since alternative communication paths are available through connections to other Class 5 or tandem offices.

In addition, according to the record, by assigning Central Office Codes (known as NXX) to the MTSOs in the same manner as end offices a flexible numbering plan can be developed and implemented by cellular system operators which will provide for ease of operation, the proper routing of inward calls, advanced number assignments, improved administration of billing systems, improved roamer identification of the home MTSO, and ease of implementation of automatic station identification into the mobile equipment itself.

The deep concern of ICS/MCI is that a nonwireline carrier may be precluded or frustrated in its efforts to obtain the type of interconnection arrangements it requires to provide its own competing cellular service. The basis for this concern is that interconnection can only be obtained through the local telephone companies and Pac Bell is controlled by Pac Tel which also controls PMA, i.e. the nonwireline carrier must obtain interconnection from the same corporate family that both controls the competing cellular system and also exercises bottleneck control over the essential facilities required by the nonwireline carrier.

ICS/MCI argues that while Pac Bell has filed one advice letter and contemplates the filing of tariffs,that would encompass cellular interconnection, it has apparently not considered the nature of end office interconnection requirements and did not indicate that its tariff would include such arrangements. Pac Bell's apparent reluctance to fully address the issue affords the nonwireline carriers little assurance that its interests will be fully advanced.

Discussion

One of the basic parameters of utility operations is that it provides the specific type of service requested by its customers to the maximum extent possible. The record is quite clear that the interconnection service to be provided applicant by Pac Bell and/or General is precisely what applicant desires. Applicant's chief engineer testified at length on the advantages she perceived with the interconnection arrangements established for the Los Angeles cellular system. We are satisfied that the interconnection arrangements are well designed for the proposed cellular operations. Testimony presented by ICS/MCI indicates its preference for alternate arrangements whereby the MTSO will be connected as a Class 5 or end office rather than to a Class 5 office. Such an arrangement for ICS/MCI is a matter for consideration at the certification hearings for ICS/MCI when and if they come to fruition. ICS/MCI can rest assured that our acquiescence in applicant's proposed interconnection arrangements in this case will not in any way mandate similar arrangements for other cellular carriers.

VIII - DIRECTORY LISTINGS AND OPERATOR ASSISTANCE

Position of PMA

According to the testimony of PMA witness Everett, the availability of directory assistance will be the same for the mobile user as for the landline user. The mobile user will dial 411 for directory assistance in his home NPA and 1-NPA-555-1212 for directory assistance in his chosen NPA. When a mobile user originates an operator-assisted call, the operator will handle the call similarly to a call originated from a coinless public phone. The mobile user will need a telephone company credit card number, a third-party billing number, or a terminating party willing to accept a collect call in order to complete the call. Under the proposed arrangements it will not be possible for a mobile unit to accept an incoming collect call.

In addition, sent-paid operator-assisted calls, i.e. placing a call through an operator from a mobile unit and asking the operator to bill the mobile unit telephone number, are not permitted. According to the record, AMPS has made arrangements with the wireline companies to provide mobile directory listings. Directory listings will be provided in the wireline telephone company's directory for an additional charge to end users upon request. However, because the mobile end user is charged for air time on all calls, AMPS expects a low percentage of its end users to have their numbers listed.

Position of Staff

Staff believes applicant has made an adequate showing with respect to directory listings. It recommended that since it is possible for a subscriber with recycled numbers to receive wrong number calls resulting from outdated directory listings, a tariff provision be included providing for the reversal of such wrong number charges.

Discussion

The record is clear that the availability of directory assistance will be the same for the mobile user as for the landline user and, therefore, satisfactory. Furthermore, the contemplated procedures for operator-assisted calls appear to be entirely reasonable. Staff suggestion that a tariff provision providing for the cancellation of wrong number calls resulting from outdated directory listings appears reasonable and will be adopted.

IX - CELLULAR EQUIPMENT

Position of PMA

Finding 30 of D.83-06-080 states:

> "30. Applicant should be required to present the actual costs, terms and conditions, and timing of the cellular equipment purchases and, further, should show the equipment procurement has been handled on an expeditious basis to best use the advantages of predivestiture funding." (Mimeo. p. 39.)

In response to this finding, PMA witness Everett presented a copy of the general sales agreement between Western Electric and AMPS. Such agreement, together with accompanying testimony, detailed costs, terms and conditions, and timing of the cellular equipment purchases. The testimony also indicated that in the predivestiture period, AT&T will have paid approximately 82% of the Western Electric costs and 83% of the $19 million total cost for the Los Angeles Partnership system.

Position of Staff

Staff believes that applicant has made an adequate showing with respect to detailing the costs, terms and conditions, and timing of cellular equipment purchases and that it has taken adequate advantage of the predivestiture funding available from AT&T for purposes of acquiring equipment.

Discussion

It appears that applicant has adequately complied with the requirements set forth in the above-quoted Finding 30 of D.83-06-080.

X - ROAMER PHONES

General

A roamer is a user of a cellular mobile service in an area other than his home service area. The FCC generally encourages cellular operators to accommodate roamers.

Position of PMA

The details of serving roamers were entered into the record during cross-examination of PMA's witness Everett. According to this testimony, it would first be necessary to have an agreement between the Los Angeles system and the home system of the roamer. Under the proposed operations, when a roamer comes into the Los Angeles system he would be given a 10-digit telephone number. The landline users in the roamer's home system would call that 10-digit number to access the MTSO in the Los Angeles system. The Los Angeles MTSO would check to see if the NPA/NNX code is acceptable and, if so, the originating caller from the roamer's home system will get a second dial tone and will then dial the roamer's mobile home system number using a touch-tone telephone and the call will complete. For the roamer to place a call in the Los Angeles system it is only necessary for him to give his NPA/NNX number, assuming he is not a fraudulent user, to place a call.

Position of ICS/MCI

ICS/MCI's witness Ackerman touched on roamer service in his testimony stating that the automatic routing of calls involving roamers and the quality of service received by them will be of a higher quality if the MTSO operates as a Class 5 office in the networking hierarchy.

Discussion

The above-described provision of cellular service to roamers appears to be reasonable. As previously stated, agreements between the Los Angeles system and the home system of the roamers will be necessary. It appears reasonable to assume that such agreements will be forthcoming as the need arises.

XI - FINDINGS AND CONCLUSIONS

Findings of Fact

1. Since the issuance of interim D.83-06-080 on this matter the divestiture of AT&T and its subsidiaries has been completed as follows: the Pacific Region Holding Company is now known as Pacific Telesis; the Pacific Region Cellular Company, a wholly owned subsidiary of Pacific Telesis, is now known as Pac Tel Mobile Access; The Pacific Telephone and Telegraph Company is now Pacific Bell, a wholly owned subsidiary of Pacific Telesis; and AMPS, as the general and a limited partner of the Partnership, has been replaced by Los Angeles CGSA, a wholly owned subsidiary of Pac Tel Mobile Access.

2. The source of funds for the construction of the cellular system is 65% from AT&T prior to January 1, 1984 and from Pac Tel subsequent to January 1, 1984, 20% from GTE Mobilnet, 10% from Continental, and 5% from US Cellular. In the event that one or more of the limited partners declines to participate in the funding of the project, the remaining limited partners may elect to advance the required moneys in proportion to their relative limited partnership shares.

3. As of January 1, 1984 AT&T will have paid approximately 82% of Western Electric costs and 83% of the $19.1 million total cost of the system.

4. The relatively small amount of funding required from Pac Tel as compared to its assets of in excess of $16 billion assures the overall financial integrity of the proposed cellular system.

5. Since funding is advanced when or before the facilities are installed, the cellular system will be completely funded at the time it becomes operational.

6. When we issued D.83-06-080 we did not contemplate the proposed LACGSA table of organization consisting of three PMA employees acting as the corporate officers, no specifically assigned personnel, and all of LACGSA's operations being performed by PMA under contract.

7. PMA as the general partner in the Partnership would fully satisfy the FCC separation requirements.

8. LACGSA as a fully staffed, viable, and self-sustaining entity acting as the general partner in the Partnership would fully satisfy the FCC separation requirements.

9. With PMA operating the cellular system under contract with LACGSA as proposed by applicant, the objectives of the FCC separations requirements would not be fully met.

10. There is no evidence in the record indicating either the existence or magnitude of economies resulting from the centralization and the accumulation of relevant experience at a core location as asserted by applicant.

11. A good audit trail and documentation of the allocation procedures of the revenues, expenses, and costs assigned to the Partnership will permit the determination of the appropriateness of costs and expenses and ensure that cross-subsidization and/or misallocations do not occur.

12. The FCC has asserted federal primary jurisdiction with respect to technical standards, public need, and the competitive market and has reserved to the states' jurisdiction the charges, classifications, practices, services, facilities, and/or regulations for services by licensed carriers.

13. A viable resale plan is required to foster competition and mitigate any adverse effects of the early entry into the cellular marketplace of a wireline carrier in advance of a nonwireline carrier by providing a means of early entry into the cellular marketplace for the nonwireline carrier.

14. The resale plan/plans proposed by applicant do not provide a potential nonwireline reseller an opportunity to enter the cellular marketplace as a bona fide competitor.

15. Resellers should be certificated utilities subject to this Commission's jurisdiction.

16. At least until such time as nonwireline carriers commence operation as cellular utilities, the wireline carriers will dominate the retail market and effectively establish price ceilings for the resale of cellular service.

17. The Partnership should provide retail service as well as wholesale service.

18. The retail rates forming the basis for applicant's feasibility studies and set forth in Exhibit 39 are based on what market research information indicated would be an appropriate price to charge rather than on cost.

19. The retail rates set forth in applicant's Exhibit 39 should be adopted on an interim basis.

20. The year 1 pretax profit margin for a hypothetical reseller with 60% of the market would be a negative 4.56% under applicant's original proposal, 4.65% under applicant's modified tariff, and 8.30% under the adopted rates.

21. The adopted wholesale rates should provide the Partnership's year 2 wholesale operations a return on equity of approximately 18.44% which is reasonable in light of the pre-operative and year 1 negative returns.

22. Cellular service for the LA SMSA will not have an unreasonably adverse effect on the operations of existing RTUs on Pac Bell's IMTS operations.

23. The operations of the Partnership as certificated by this order should not have an adverse effect on agents engaged in the sale, leasing, and maintenance of CPE cellular equipment.

24. The interconnection arrangements for the proposed wireline cellular system are reasonable.

25. The interconnection arrangements to be used for the Partnership should not be considered as mandating similar arrangements for other cellular carriers.

26. The availability of directory assistance will be the same for the mobile user as for the landline user.

27. Applicant's contemplated procedures for operator-assisted calls appear reasonable.

28. There should be a tariff provision providing for the cancellation of wrong number calls resulting from outdated directory listings.

29. Applicant's proposed provision of cellular service to roamers is reasonable.

30. Applicant should submit a comprehensive results of operation report covering its first 12 complete months of operation within 120 days of the end of the period covered.

31. This decision should be issued on an interim basis to expedite the hearing process should the study discussed in Finding 30 indicate a need to revise the authorized wholesale and/or retail rates.

Conclusions of Law

1. Because the amount of funding required for the LA SMSA cellular system as proposed by applicant is small in relation to Pac Tel's total assets, it is unlikely the project will not be adequately funded.

2. This Commission has jurisdiction to require cellular operators to provide this service through a separate subsidiary subject to whatever reasonable restrictions we deem appropriate.

3. This State's Constitution and PU Code provide that this Commission has jurisdiction over the operations of cellular resellers.

4. This Commission should require the certificated cellular carrier to provide both wholesale and retail services so as to ensure proper allocation of costs between wholesale and retail operations, to prevent anticompetitive practices,

and to ensure a rate differential between retail and resale rates that will provide a reseller a bona fide opportunity to compete in the cellular marketplace.

5. The wholesale and retail tariffs set forth in Appendix A should be adopted on an interim basis.

6. It is the responsibility of a public utility to provide the specific type of service requested by its customers to the maximum extent possible.

7. Applicant has complied with the requirements set forth in Finding 30 of D.83-06-080.

8. A CPC&N should be granted to the Partnership to become operative when LACGSA becomes fully staffed and self-sufficient or is replaced as the general and a limited partner in the Partnership by PMA.

9. The tariffs set forth in Appendix A should be effective until such a time as review of the Partnership's operations indicate the necessity of changes.

10. Because of the immediate need for the service the order should become effective today and operative as soon as the conditions set forth in Conclusion of Law 8 are satisfied.

The certificate hereinafter granted is subject to the provision of law that the Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to the Los Angeles SMSA Limited Partnership (Partnership) to construct and operate in public service a cellular radio telecommunications system to serve the Los Angeles Cellular Geographic Service Area consisting of a mobile telephone switching office, 24 cell sites, and appurtenant facilities.

2. On or after the effective date of this order Partnership is authorized to file tariff schedules including the rates, charges and conditions set forth in Appendix A attached to this order. This filing shall comply with the General Order Series 96. The effective date of the revised schedules shall be five days after filing.

3. Partnership shall immediately notify the Commission in writing when either Los Angeles CGSA, Inc. (LACGSA) becomes fully staffed and entirely self-sufficient or when Pac Tel Mobile Access replaces LACGSA as the general and a limited partner of the Partnership.

4. Partnership shall immediately notify the Commission in writing of the date it commences providing cellular service to the general public.

5. Within 120 days after the first full 12 months of operation, Partnership shall submit to the Commission staff for consideration a comprehensive results of operation report covering the Partnership's first full 12 months of operations.

This order is effective today.

Dated APR 4 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

Commissioner William T. Bagley being necessarily absent, did not participate.

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

Joseph E. Bodovitz

Joseph E. Bodovitz, Executive Director

GLOSSARY

AMPS or applicant	Advanced Mobile Phone Service, Inc.
Partnership	Los Angeles SMSA Limited Partnership
CPC&N	Certificate of Public Convenience and Necessity
PU Code	Public Utilities Code
ALJ	Administrative Law Judge
D.	Decision
GTE Mobilnet	GTE Mobilnet, Incorporated
Staff	Commission staff
ICS/MCI	ICS Communications Corporation and MCI Communications Corporation
Allied	Allied Radiotelephone Utilities of California
Pac Bell	Pacific Bell (The Pacific Telephone and Telegraph Company)
Executive	Executive Cellular Telephone Company
Dynatel	Dynatel Communications Corporation
AT&T	American Telephone & Telegraph Company
LACGSA	Los Angeles CGSA, Inc.
PRHC	Pacific Region Holding Company
Pac Tel	Pacific Telesis
PMA	Pac Tel Mobile Access
MCI-Air	MCI Airsignal, Inc.
FCC	Federal Communications Commission
RTUs	Radiotelephone Utilities
Continental	Continental Mobilcom, Inc.
US Cellular	United States Cellular Corporation
LA SMSA	Los Angeles SMSA
Finding	Findings of Fact
IMTS	Improved Mobile Telephone Service
Western Electric	Western Electric Company, Inc.

G L O S S A R Y

CPE	(Mobile) Customer Premises Equipment
RCCs	Radio Common Carriers
network	public switched telecommunications network (PSTN)
MTSO	Mobile Telephone Switching Office
zone	electronic switching offices
NPA	numbering plan area
General	General Telephone Company of California

INTERIM RATES, CHARGES AND CONDITIONS FOR CELLULAR MOBILE TELEPHONE SERVICE

RATES AND CHARGES

Timing of Calls

A. Chargeable time for calls originated by a mobile radio unit begins when a connection is established to the Company facilities, and ends when the mobile radio unit disconnects, regardless of whether the call is completed.

B. Chargeable time for calls received by a mobile radio unit begins when the call is answered and ends when the mobile radio unit disconnects.

C. Usage on each call is rounded up to the next minute for billing purposes.

D. When a connection is established in one rate period and ends in another, the rate in effect for each period applies to the portion of the connection occurring within each rate period.

Rate Periods for Usage

Applicable rates are based on the time of day and day of week as follows:

A. Peak Period

(1) 7 a.m. to 7 p.m. - Monday through Friday.

(2) The peak period for the following holidays is charged at off-peak period rates:

New Year's Day (January 1)
Washington's Birthday (third Monday in (February)
Independence Day (July 4)
Labor Day (first Monday in September)
Thanksgiving (fourth Thursday in November)
Christmas (December 25)

B. Off-Peak Period

7 p.m. to 7 a.m. - Monday through Friday and all day on Saturday, Sunday and the holidays specified above.

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INTERIM RATES, CHARGES AND CONDITIONS FOR CELLULAR MOBILE TELEPHONE SERVICE

RATES AND CHARGES (cont'd)

Retail Service Plan

A. Service Charges

(1) Service Establishment

To process an order for activation of access number, per access number per order	$50.00

(2) Change

To add or remove optional features or temporarily suspend service per a customer's request, or change in access number affected per order	$15.00

B. Access Charge	Per Month
For each access number	$45.00
C. Usage Rates	Per Minute
(1) Peak Period	$ .45
(2) Off-Peak Period	$ .27

INTERIM RATES, CHARGES AND CONDITIONS FOR CELLULAR MOBILE TELEPHONE SERVICE

RATES AND CHARGES (cont'd)

Optional Features

A. Detailed Billing

A supplement to the monthly bill listing optional features, usage and toll for each access number.

Paper copy, per print line, per request	$ .02
Minimum charge per request	$ 5.00

B. Call Restrictions — Per Month

(1) Local NPA

No sent-paid calls may be completed to points outside the local NPA, per access number arranged	$ .80

(2) Hot Line

Originating service may be used only to call one predetermined telephone number, per access number arranged	$ 1.75

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INTERIM RATES, CHARGES AND CONDITIONS FOR CELLULAR MOBILE TELEPHONE SERVICE

RATES AND CHARGES (cont'd)

Optional Features (cont'd)

	Per Month
B. Call Restrictions (cont'd)	
(3) Incoming Only	
No outgoing calls may be completed, per access number arranged.	$ 1.75
(4) Outgoing Only	
No in-coming calls will be accepted, per access number arranged.	$ 1.75
C. Speed Calling	
Allows selection of up to eight numbers for completing calls to specified destination using shortened code numbers, per access number arranged.	$ 5.00
D. Directory Listing	
Each listing in a directory	$ 2.90

REGULATIONS

Minimum Contracts Period

The minimum contract period for each item provided is one month unless stated elsewhere in this tariff.

INTERIM RATES, CHARGES AND CONDITIONS FOR CELLULAR MOBILE TELEPHONE SERVICE

REGULATIONS (cont'd)

Rates for Fractional Periods

The charges for a fractional part of a month will be a proportionate part of the monthly recurring charges based on the actual number of days the service is provided. For the purpose of administering this regulation, every month is considered to have 30 days.

Payment of Charges

A. The customer is responsible for payment of charges for all services furnished including, but not limited to, all calls originated by or completed to the customer's mobile radio unit, as well as any other charges billed to the customer's access number. Charges are based on tariff rates and subject to regulations effective at the time service is furnished. Billing for access and optional features is monthly in advance of service. All other charges are billed at the end of the billing period.

Adjustments for Taxes, Fees, Etc.

A. The rate schedules set forth in this tariff do not include any amounts resulting from taxes, fees, or exactions imposed by or for any municipal corporation or other political subdivision or agency of government against the Company, its property or its operations, excepting only taxes imposed generally on corporations.

B. The amounts resulting from such taxes, fees, or exactions imposed against the Company, its property, or its operations, excepting only taxes imposed generally on corporations, shall be billed to its customers pro rata by the Company as appropriate.

Other Carrier Charges

The customer is responsible to pay the Company for all toll charges resulting from the origination of mobile calls to points outside the Cellular Geographic Service Area, and other charges or calls billed to the customer's access number. These charges are in addition to the charge for usage.

INTERIM RATES, CHARGES AND CONDITIONS FOR CELLULAR MOBILE TELEPHONE SERVICE

REGULATIONS (cont'd)

Telephone Numbers

At the sole discretion of the Carrier, telephone numbers of customers who discontinue service may be reassigned thirty days from date of discontinuance of service.

Directory Assistance and Operator Services

A Directory assistance and operator-assisted calls will be provided by the local wireline telephone company as part of the services it furnishes to the Company. The customer will be billed for air time or usage at the appropriate rate when a call is placed from a mobile radio unit to directory assistance or to an operator.

Directory Listing

Directory listings will be provided in the wireline telephone company's directory for an additional charge to customers upon request.

Bulk and Wholesale Service Plan

RATES AND CHARGES

Service Plan

A. General

(1) This service allows for the purchase of access numbers and usage on a monthly basis. A minimum of 50 access lines per customer in use at any given time is required. This service plan is available both for large individual users and also for resellers.

INTERIM RATES, CHARGES AND CONDITIONS FOR CELLULAR MOBILE TELEPHONE SERVICE

RATES AND CHARGES (Cont'd)

(2) Billing for access and usage is monthly in advance of service. 200 minutes of usage per access number will be billed in advance, with 80% billed at the peak rate and 20% at off-peak. If the customer's actual usage charges for a month differ from the amount billed in advance the customer will be billed or credited the difference, depending on whether actual usage charges are more or less than that billed in advance. The customer will not be credited for usage that is less than the minimums of 1,000 minutes peak period and 100 minutes off-peak for each block of 10 access lines.

(3) A magnetic tape, at specifications determined by the Company, can be provided monthly to each customer without charge. The tape identifies detailed usage and toll messages for each access number, and other charges or calls billed to the customer's access numbers. The customer is responsible for returning the magnetic tapes to the Company.

B. Service Charges

(1) Number Activation

To process an order for activation of an access number, per number, per order	$15.00

(2) Change

To add optional features or change an access number, per access number affected, per order	$10.00

C. Access Charge

	Per Month
(1) For each access number up to 100 numbers (minimum initial order of 50, and subsequent orders in blocks of 10 numbers)	$34.41
(2) For each access number over 100 numbers (in blocks of 10 numbers)	$32.26

INTERIM RATES, CHARGES AND CONDITIONS FOR CELLULAR MOBILE TELEPHONE SERVICE

RATES AND CHARGES (Cont'd)

D. Usage Rates

	Per Minute
(1) Peak Period	
For usage up to and including 20,000 minutes per month (minimum of 1,000 minutes per 10 number block per month is required)	$0.370
For usage over 20,000 minutes per month	$0.366
(2) Off-Peak Period	
For usage up to and including 2,000 minutes per month (minimum of 100 minutes per 10 number block per month is required)	$0.222
For usage over 2,000 minutes	$0.220

Optional Features

A. Detailed Billing

A supplement to the monthly bill listing optional features, usage and toll for each access number.	Per Print Line
Paper copy, per request	$0.002
Microfiche, per request	$0.001

B. Call Restrictions

	Per Month
(1) Local NPA	
No sent-paid calls may be completed to points outside the local NPA, per access number arranged.	$0.70
(2) Hot Line	
Originating service may be used only to call one predetermined telephone number, per access number arranged.	$1.50

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INTERIM RATES, CHARGES AND CONDITIONS FOR CELLULAR MOBILE TELEPHONE SERVICE

RATES AND CHARGES (Cont'd)

(3) Incoming Only

No outgoing calls may be completed, per access number arranged. $1.50

(4) Outgoing Only

No in-coming calls will be accepted, per access number arranged. $1.50

C. Speed Calling

Allows selection of up to eight numbers for completing calls to specified destination using shortened code numbers, per access number arranged. $4.35

D. Directory Listing

Each listing in a directory $2.50

REGULATIONS

Undertaking of Resellers

By obtaining these services at the wholesale rates as set forth in this tariff, the customer who intends to resell these services to the public agrees to be subject to the jurisdiction of the California Public Utilities Commission over that resale. Service will be provided for resale only to resellers holding a certificate of public convenience and necessity from that Commission.

Availability of Service

Subject to the terms and conditions specified in this tariff, Cellular Radio Telecommunications Service will be provided to any person, firm or corporation who wants the service.

INTERIM RATES, CHARGES AND CONDITIONS FOR CELLULAR MOBILE TELEPHONE SERVICE

REGULATIONS (cont'd)

Minimum Contract Period

The minimum contract period for each item provided is one month unless stated elsewhere in this tariff.

Termination of Service

A customer will provide 90 days advance notice in writing to the Company prior to termination of service. The customer is responsible for payment of outstanding charges for the period during which service was rendered. If termination occurs prior to 90 days of notification to the Company, the customer will be responsible for the access charges for the remaining number of days.

Operator Assistance

Operator assistance is provided by the local wireline telephone company. Sent-paid operator-assisted calls are not permitted. Customer or authorized users can dial 0 or 0+ to place credit card, third number and collect calls.

Rates for Fractional Periods

The charges for a fractional part of a month will be a proportionate part of a monthly recurring charge based on the actual number of days the service is provided. For the purpose of administering this regulation, every month is considered to have 30 days.

Payment of Charges

The customer is responsible for payment of charges for all services furnished including, but not limited to, all calls originated by or completed to the customer's mobile radio unit, as well as any other charges billed to the customer's access number. Charges are based on tariff rates and subject to regulations effective at the time service is furnished. Billing for access, optional features, and usage is monthly in advance of service. All other charges are billed at the end of the billing period.

INTERIM RATES, CHARGES AND CONDITIONS FOR CELLULAR MOBILE TELEPHONE SERVICE

REGULATIONS (cont'd)

Adjustments for Taxes, Fees, Etc.

A. The rate schedules set forth in this tariff do not include any amounts resulting from taxes, fees, or exactions imposed by or for any municipal corporation or other political subdivision or agency of government against the Company, its property or its operations, excepting only taxes imposed generally on corporations.

B. The amounts resulting from such taxes, fees, or exactions imposed against the Company, its property, or its operations, excepting only taxes imposed generally on corporations, shall be billed to its customers pro rata by the Company as appropriate.

Other Carrier Charges

The customer is responsible to pay the Company for all toll charges resulting from the origination of mobile calls to points outside the Cellular Geographic Service Area and other charges or calls billed to the customer's access numbers. These charges are in addition to the charge for usage.

Telephone Numbers

Telephone numbers of customers who discontinue service may be reassigned thirty days from date of discontinuance of service.

Directory Assistance and Operator Services

Directory assistance and operator-assisted calls will be provided by the local wireline telephone company as part of the services it furnishes to the Company. The customer will be billed for air time or usage at the appropriate rate when a call is placed from a mobile radio unit to directory assistance or to an operator.

Directory Listing

Directory listings will be provided in the wireline telephone company's directory for an additional charge to customers upon request.

(END OF APPENDIX A)

ALJ/emk/jc H-3

ORIGINAL

Decision 84 04 014 APR 4 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ADVANCED MOBILE PHONE SERVICE, INC. and the LOS ANGELES SMSA LIMITED PARTNERSHIP for a certificate of public convenience and necessity under Section 1001 of the Public Utilities Code of the State of California for authority to provide a new Domestic Public Cellular Radio Telecommunications System to the public in the greater Los Angeles Metropolitan area.	Application 83-01-12 (Filed January 7, 1983)

(See Decision 83-06-080 for appearances.)

Additional Appearances

Dinkelspiel, Donovan & Reder, by Roni M. ~~Crinchton~~ Crichton, Attorney at Law, for Allied Telephone Companies, protestant.
Brobeck, Phleger & Harrison, by Robert N. Lowry and Jeanne L. McJoynt, Attorneys at Law, for Motorola Cellular Service, Inc., interested party.
Patrick L. Gileau, Attorney at Law, for the Commission staff.