

ORIGINAL

JUN 6 1984

Decision 84 06 027

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PacTel Mobile Access)
for a Certificate to Resell Cellular)
Service, or in the Alternative,)
Dismissal of the Application Should)
No Certificate Be Required By the)
Commission.)

Application 84-03-68
(Filed March 21, 1984)

O P I N I O N

PacTel Mobile Access (PMA) seeks a certificate of public convenience and necessity (CPC&N) to operate as a resale carrier providing cellular radio service within the State of California.

This application was filed prior to the issuance of Decision (D.) 84-04-014 dated April 4, 1984 on the Los Angeles SMSA Limited Partnership's (Partnership) Application (A.) 83-01-12 for a CPC&N to provide a new domestic public cellular radio telecommunications system to the public in the greater Los Angeles metropolitan area. At that time Los Angeles CGSA, Inc. (LACGSA), a wholly owned subsidiary of PMA, was the general partner in the Partnership. It was contemplated by applicant that the Partnership would provide only wholesale service to resellers who would then resell to the ultimate consumer. The proposed LACGSA table of organization consisted of three PMA employees acting as the corporate officers with no specifically assigned personnel and all of LACGSA's operations were to be performed by PMA under contract.

In D.84-04-014 we stated:

"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. . . ." (Mimeo. pp. 26-27.)

and:

". . . 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 wire-line cellular system for LA SMSA."
(Mimeo. p. 27.)

The applicant elected to have PMA replace LACGSA as the general partner in the Partnership.

D.84-04-014 also ordered the Partnership to provide retail as well as wholesale service and stated that:

"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. . . ."
(Mimeo. p. 59.)

The retail tariffs established for the Partnership are essentially the same as those proposed by PMA in this proceeding. Consequently PMA as the general partner in the Partnership is already presently certificated to indirectly provide retail cellular service. A grant of a CPC&N to PMA as a reseller would result in PMA as the general partner operating the Partnership competing with PMA as an individual corporation for the retail cellular market. Such operations would provide no perceptible benefit to the general public and could conceivably result in the very same anticompetitive and cross-subsidization practices which formed the bases for our mandate that either PMA replace LACGSA as the general partner in the Partnership or LACGSA be fully staffed so as to be a completely self-sustaining entity. Under these circumstances it appears that we must deny PMA's request for a CPC&N as a cellular service reseller for failure to establish public convenience and necessity.

Findings of Fact

1. When this application was filed LACGSA, a wholly owned subsidiary of PMA, was the general partner in the Partnership.

2. D.84-04-014 granted a CPC&N for a cellular system in the greater Los Angeles metropolitan area to the Los Angeles SMSA Limited Partnership conditioned on applicant either replacing LACGSA with PMA as the general partner of the Partnership or fully staffing LACGSA. Applicant elected to replace LACGSA with PMA as the general partner.

3. D.84-04-014 required the Partnership to provide retail as well as wholesale cellular service.

4. A grant of a CPC&N to PMA as a reseller would result in PMA as the general partner operating the Partnership competing with PMA as an individual corporation for the retail cellular market.

5. PMA competing with the Partnership for the retail cellular market would provide no perceptible benefit to the general public and could result in anticompetitive practices.

Conclusions of Law

1. Granting the requested CPC&N could have an adverse effect on the general public.
2. Public convenience and necessity have not been demonstrated.
3. The application should be denied.

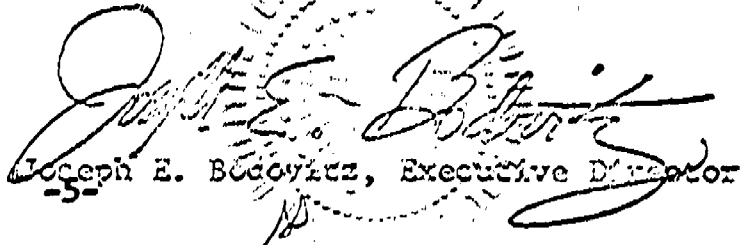
O R D E R

IT IS ORDERED that Application 84-03-68 is denied.
This order becomes effective 30 days from today.
Dated JUN 6 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

Commissioner Priscilla C. Grew,
being necessarily absent, did
not participate

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


Joseph E. Bucoykuz, Executive Director