

ORIGINAL

Decision 84 06 101

JUN 6 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SOUTHWESTERN BELL MOBILE SYSTEMS,)
INC. for a certificate of public)
convenience and necessity to)
operate as a reseller of cellular)
radio telecommunications services)
within California.)
_____)

Application 84-04-019
(Filed April 3, 1984)

O P I N I O N

Southwestern Bell Mobile Systems, Inc. (Southwestern) 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.

Southwestern is involved in constructing and operating cellular radio systems in the States of Texas, Missouri, Illinois, and Kansas and intends to operate as a resale carrier in California. Southwestern proposes initially to resell cellular radio service in Los Angeles by purchasing cellular radiotelephone numbers and air time from PacTel Mobile Access^{1/} in bulk at the wholesale rate and then to resell those to its customers. Southwestern will be responsible for paying all charges it incurs to the Partnership and will collect from its customers charges incurred by the customers and owed to Southwestern.

^{1/} Decision (D.) 84-04-014 dated April 4, 1984 granted the Los Angeles SMSA Limited Partnership (Partnership) a CPC&N to provide cellular service in the greater Los Angeles metropolitan area. The Partnership will therefore be the wholesale supplier in Los Angeles at this time.

Southwestern proposes to resell cellular service in Los Angeles at the following rates:

Monthly Access Charge	\$45.00
Peak Minute Usage	0.45
Off-Peak Minute Usage	0.27

D.84-04-014 provided tariffs including rates for both wholesale and retail sale of cellular service. The retail monthly access charge, peak minute usage charge, and off-peak minute usage charge are as proposed by Southwestern. However, the retail tariff provisions also included charges for many optional features. These retail tariff provisions were reviewed in detail by this Commission and its staff before being authorized by D.84-04-014. It is our intent that such tariff provisions be used as a model for other resellers in the Los Angeles area. Consequently, we will require the filing of retail tariffs generally similar to the retail provisions authorized by D.84-04-014 and filed by the Partnership. We recognize that the tariffs as a whole may be somewhat abbreviated from those of the primary carrier; however, they must include the usual Table of Contents, Preliminary Statement, Rate Schedules, List of Contracts and Deviations, Rules, and Sample Forms, as prescribed in Section II of General Order (GO) 96-A. We will permit the initial filing to contain only the Preliminary Statement, Table of Contents, and Rate Schedules, to be effective on five days' notice; the remaining material shall be prepared promptly and transmitted to the Commission staff by Advice Letter for review and filing per GO 96-A. We shall authorize the applicant to deviate from the page numbering system prescribed by GO 96-A, II.C.(1)(b) and to substitute the system generally employed by the major wireline exchange carriers, at its election.²

² The alternate system is described in Commission Resolution U-275, March 25, 1947, and T-4886, February 26, 1962.

Southwestern filed its application for a CPC&N in terms of the traditional CPC&N granted to monopoly public utilities, but requests that in granting such a certificate this Commission recognize the significant differences among the potential providers of cellular radio services in California. Such differences include consideration of the relative market power, consideration of granting exemption from certain provisions of this Commission's GO 96-A, and consideration of granting exemption from provisions of Public Utilities (PU) Code Sections 816-830 and 851-855.

Southwestern alleges in its application that resale cellular radio service competitors have minimal market power and correspondingly little ability to influence prices and, therefore, we should adopt a regulatory scheme that will allow the development of competition. Precisely for this reason we have specifically set the wholesale and retail tariff levels to provide an adequate margin to enable resellers to enter the competitive marketplace as bona fide competitors.

Sections IV, V, and VI of GO 96-A relate to filed and effective dates, procedures in filing tariff sheets which do not increase rates or charges, and procedures in filing increased rates, respectively. In general these provisions require a showing before this Commission justifying any increase and provide that rates will become effective 30 days after filing tariff sheets which do not increase rates, or 30 days after filing an authorized increase unless Commission authorization for a shorter period is obtained. Southwestern suggests that the Commission exempt resellers from the above GO 96-A provisions and allow tariff revisions to become effective on one day's notice. Other resellers have made similar requests.

There is merit to the arguments presented by resellers that the Commission consider some modifications of GO 96-A. The basic purpose of Sections IV, V, and VI of GO 96-A is to provide

an orderly procedure to control the rates and services of a monopoly utility. These rules are subject to revision where the Commission deems necessary.

In this case, we are not dealing with a monopoly situation. At this time, it appears that the cellular market will be a highly competitive one. The basic scheme established by the FCC, allowing two major carriers, one wireline and one non-wireline to operate in the same territory, coupled with the provisions for the wholesale marketing of this service, is designed to promote vigorous competition in cellular markets.

Under these circumstances, our traditional tariff filing requirement of a 30-day review period should not be necessary. Indeed, in a new and dynamic market such as cellular telephone, this requirement could impede the provision of rates and services which are responsive to customer needs. We, of course, will monitor the cellular market and if we find abusive or unfair practices by resellers we will take corrective action aimed at eliminating such practices. Therefore, we will permit resellers to make the requested tariff changes on 15 days' notice.

Article 5 of the PU Code entitled "Stocks and Security Transactions" regulates in PU Code Sections 816-830 the power of the utility to issue stocks and stock certificates or other evidence of interest or ownership, and bonds, notes, and other evidence of indebtedness and to create liens on their property situated within this State. Article 6 of the PU Code entitled "Transfer or Encumbrance of Utility Property" provides, in part, in PU Code Sections 851-855 that no public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its property useful in the performance of its duties to the public without first having secured from this Commission an order authorizing it to do so. Southwestern seeks exemption from PU Code Sections 816-830 under PU Code Section 829 and from PU Code Sections 851-855 under PU Code Section 853. PU Code Sections 829 and 853 provide that the Commission may, by order or rule and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from the above PU Code provisions if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest. Southwestern, in support of its request, alleges that strict enforcement of PU Code Sections 816-830 and 851-855 would only impede competition while it would provide no attendant protection to consumers. This issue is before us in A.84-03-92 which is a larger forum in which to address these considerations. Accordingly we will deny Southwestern's request in this application.

In Interim D.83-06-080 on the Partnership's Application 83-01-12, we stated in Finding 25:

"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. page 38.)

Southwestern's proposed operations, as well as the operations of other resellers in the area, dovetail with the resale concept envisioned in the above-quoted Finding 25. In its application, Southwestern alleges that:

"Commission approval of the instant application and the principle of competition within the cellular radio service market will bring the following long-term benefits to California cellular subscribers:

- "(i) lower-priced services;
- "(ii) innovative telecommunications services and equipment offerings as well as increased consumer choice;
- "(iii) efficient use of existing communications resources as well as increased diversification and reliability of supply of communications services; and
- "(iv) development of an expanded telecommunications supply industry in California with attendant employment opportunities for California residents." (Application page 5.)

We agree in general with the allegations and note the reasons set forth generally form the bases for the necessity of the availability of a viable resale plan for resellers.

Southwestern estimates that by the end of 1984, it will have approximately 2,000 subscribers in California and that by the end of 1984, it will have approximately 25,000 subscribers in California. ✓

Copies of the application were served on potential competitors within California and no protests were received.

Southwestern included copies of its financial statements for the month ending February 29, 1984. Its assets are shown as totaling \$22,823,855, increasing to \$54,018,000 for the estimated period ending December 31, 1984. The net income is estimated to vary from a negative \$220,000 for the year 1984 up to \$2,698,000 for the year 1989, with a positive net income every year but 1984.

In its application, Southwestern notes that it would be subject to reporting requirements deemed appropriate by this Commission. One of these requirements is the manner in which records are kept. The Commission is currently developing a Uniform System of Accounts (USOA) for cellular communications companies.

Until a uniform accounting system for cellular companies has been prescribed, the Commission will not issue detailed account instructions. Each cellular communications company will, however, be expected to maintain its books in such detail that financial data relating to its operations can be assembled upon request.

1. Revenue and expenses of utility operations should be segregated from nonutility operations.
2. Charges from affiliates should be broken down so that each kind of charge can be identified.

3. Revenue accounts should be appropriately subdivided (access, peak, off peak, service order charges, custom calling, directory listing, etc.).
4. Expense accounts should be grouped so as to provide a total for sales and marketing expense. This would include, in subaccounts, advertising, promotion and incentives, sales salaries and commissions, sales vehicle expense, etc.
5. General and administrative expenses should be subdivided to identify rent and lease expense, billing expense, salaries, insurance, and other appropriate subdivisions.
6. Other significant costs such as unsold numbers inventory should be separately identified.

Applicant will be directed to file an annual report with the Commission, in a form prescribed by the Commission. Although applicant will be expected to have detailed operating information available in its records, for competitive reasons it may not be required to disclose such detail in its filed annual reports.

Southwestern is not a radiotelephone utility as defined in Section 4902 of the PU Code.^{3/} Therefore, it is not subject to the fee system prescribed by PU Code Sections 4905, et seq., but

^{3/} In D.84-04-014 in A.83-01-012, we determined that resellers of cellular service are telephone corporations under PU Code Sections 216(b), 233, and 234, and are subject to our jurisdiction. However, they are not radiotelephone utilities as defined in Section 4902, because they do not furnish "domestic public land mobile radio service" as described in 47 CFR 22, but instead furnish "domestic public cellular radio telecommunications service".

is instead subject to the fee system set forth in PU Code Chapter 2.5, Article 3. By Resolution M-4727, the Commission set the fee level for telephone corporations at 0.07 of 1% (0.0007) of revenue subject to the fee, prescribed the method of remitting the fee, and directed the application of a billing surcharge of 0.07% to customer billings. ^{4/} Southwestern will be ordered to provide in its tariff rules for the imposition of this surcharge.

^{4/} By Resolution M-4735, the Commission on May 2, 1984, adjusted this percentage to 0.1% (0.001), effective for the fiscal year 1984-1985.

Findings of Fact

1. Southwestern has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by Southwestern.
3. Southwestern should file a set of tariffs similar in scope to the retail tariffs set forth in D.84-04-014 for the Partnership.
4. The issue of exemption from the provisions of PU Code Sections 816-830 and 851-855 is before us in a broader proceeding than this application.
5. At this time, it appears that the cellular market will be a highly competitive one.
6. The time constraints of Sections IV, V, and VI of GO 96-A are unduly restrictive at this time.
7. Southwestern's proposed operations will provide competition in the cellular radio service market which will benefit the public at large.
8. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
9. Southwestern should keep its records in accordance with the Uniform System of Accounts prescribed by this Commission for radiotelephone utilities.
10. A public hearing is not necessary.

Conclusions of Law

1. The application should be granted as provided in the order which follows.
2. The Commission should exempt resale carriers from the provisions of Sections IV, V, and VI of this Commission's GO 96-A and order tariff revisions to become effective on 15 days' notice.
3. Southwestern should not be exempt from the provisions of PU Code Sections 816-830 and 851-855.
4. Southwestern is not a radiotelephone utility as defined in PU Code Section 4902.
5. Southwestern is subject to the fee system set forth in PU Code Chapter 2.5, Article 3.

6. The appropriate surcharge pursuant to Conclusion of Law 5 is 0.07% for the fiscal year 1983-1984, and 0.1% for the fiscal year 1984-1985. ✓

7. Because of the immediate need for the service, the order should become effective today.

The certificate hereinafter granted is subject to the provision of law that the Commission shall have no power to authorize the capitalization of this CPC&N or the right to own, operate, or enjoy such CPC&N 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 CPC&N or right.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Southwestern Bell Mobile Systems, Inc. (Southwestern) to operate as a reseller of cellular radio telecommunications services within California.

2. On or after the effective date of this order, Southwestern is authorized to file tariff schedules for the resale of cellular mobile radiotelephone service in the Los Angeles area purchased from the Los Angeles SMSA Limited Partnership. This filing shall comply with General Order No. 96-A except that Southwestern is authorized to employ the alternate method of page numbering described in Resolutions U-275 and T-4886 at its election. The initial filing shall contain at least the Preliminary Statement, Table of Contents, and Rate Schedules, the rates and charges to be those requested by Southwestern in its application together with the remaining retail rates and charges authorized to the Los Angeles SMSA Limited Partnership by D.84-04-014, the filing to be effective on not less than five days' notice. Southwestern shall file the remaining tariff schedules, to include rules and forms as prescribed by GO 96-A, no later than ten days following the effective date of this order, to be effective on not less than five days' notice. The tariff shall provide for a user fee surcharge of 0.07% for the fiscal year 1983-1984, and 0.1% for the fiscal year 1984-1985.

3. Southwestern is to keep its records in accordance with the provisions of the Uniform System of Accounts prescribed by this Commission for radiotelephone utilities.

4. The certificate of public convenience and necessity is granted as set forth above; the application to be exempted from provisions of Sections IV, V, and VI of GO 96-A is granted in part; the request for an exemption from the provisions of PU Code Sections 816-830 and 851-855 is denied. ✓

This order is effective today.

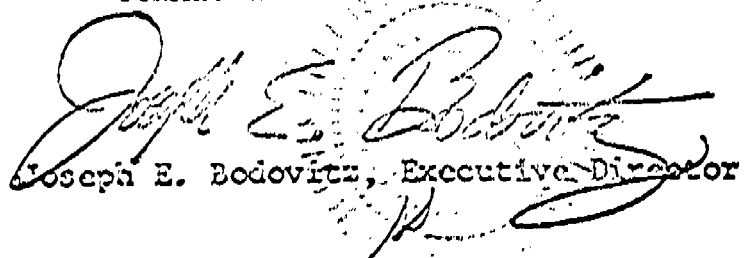
Dated June 6, 1984, at San Francisco, California.

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.


Joseph E. Bodovitz, Executive Director

an orderly procedure to control the rates and services of a monopoly utility. These rules are subject to revision where the Commission deems necessary.

In this case, we are not dealing with a monopoly situation. At this time, it appears that the cellular market will be a highly competitive one. The basic scheme established by the FCC, allowing two major carriers, one wireline and one non-wireline to operate in the same territory, coupled with the provisions for the wholesale marketing of this service, is designed to promote vigorous competition in cellular markets.

Under these circumstances, our traditional tariff filing requirement of a 30-day review period should not be necessary. Indeed, in a new and dynamic market such as cellular telephone, this requirement could impede the provision of rates and services which are responsive to customer needs. We, of course, will monitor the cellular market and if we find abusive or unfair practices by resellers we will take corrective action aimed at eliminating such practices. Therefore, we will permit resellers to make the requested tariff changes on one day's notice.

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Until a uniform accounting system for cellular companies has been prescribed, the Commission will not issue detailed account instructions. Each cellular communications company will, however, be expected to maintain its books in such detail that financial data relating to its operations can be assembled upon request.

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5. General and administrative expenses should be subdivided to identify rent and lease expense, billing expense, salaries, insurance, and other appropriate subdivisions.
6. Other significant costs such as unsold lines inventory should be separately identified.

Applicant will be directed to file an annual report with the Commission, in a form prescribed by the Commission. Although applicant will be expected to have detailed operating information available in its records, for competitive reasons it may not be required to disclose such detail in its filed annual reports.

Southwestern is not a radiotelephone utility as defined in Section 4902 of the PU Code. Therefore, it is not subject to the fee system prescribed by PU Code Sections 4905, et seq., but is instead subject to the fee system set forth in PU Code Chapter 2.5, Article 3. By Resolution M-4727, the Commission set the fee level for telephone corporations at 0.07 of 1% (0.0007) of revenue subject to the fee, prescribed the method of remitting the fee, and directed the application of a billing surcharge of 0.07% to customer billings. Southwestern will be ordered to provide in its tariff rules for the imposition of this surcharge.

Findings of Fact

1. Southwestern has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by Southwestern.
3. Southwestern should file a set of tariffs similar in scope to the retail tariffs set forth in D.84-04-014 for the Partnership.
4. The issue of exemption from the provisions of PU Code Sections 816-830 and 851-855 is before us in a broader proceeding than this application.
5. At this time, it appears that the cellular market will be a highly competitive one.
6. The time constraints of Sections IV, V, and VI of GO 96-A are unnecessary at this time.
7. Southwestern's proposed operations will provide competition in the cellular radio service market which will benefit the public at large.
8. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
9. Southwestern should keep its records in accordance with the Uniform System of Accounts prescribed by this Commission for radiotelephone utilities.
10. A public hearing is not necessary.

Conclusions of Law

1. The application should be granted as provided in the order which follows.
2. The Commission should exempt resale carriers from the provisions of Sections IV, V, and VI of this Commission's GO 96-A and order tariff revisions to become effective on one day's notice.
3. Southwestern should not be exempt from the provisions of PU Code Sections 816-830 and 851-855.
4. Southwestern is not a radiotelephone utility as defined in PU Code Section 4902.
5. Southwestern is subject to the fee system set forth in PU Code Chapter 2.5, Article 3.

6. The appropriate surcharge pursuant to Conclusion of Law 5 is 0.07%.

7. Because of the immediate need for the service, the order should become effective today.

The certificate hereinafter granted is subject to the provision of law that the Commission shall have no power to authorize the capitalization of this CPC&N or the right to own, operate, or enjoy such CPC&N 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 CPC&N or right.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Southwestern Bell Mobile Systems, Inc. (Southwestern) to operate as a reseller of cellular radio telecommunications services within California.

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3. Southwestern is to keep its records in accordance with the provisions of the Uniform System of Accounts prescribed by this Commission for radiotelephone utilities.

4. The certificate of public convenience and necessity is granted as set forth above; the application to be exempted from provisions of Sections IV, V, and VI of GO 96-A is granted; the request for an exemption from the provisions of PU Code Sections 816-830 and 851-855 is denied.

This order is effective 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. GROW,
being necessarily absent, did
not participate

Southwestern filed its application for a CPC&N in terms of the traditional CPC&N granted to monopoly public utilities, but requests that in granting such a certificate this Commission recognize the significant differences among the potential providers of cellular radio services in California. Such differences include consideration of the relative market power, consideration of granting exemption from certain provisions of this Commission's GO 96-A, and consideration of granting exemption from provisions of Public Utilities (PU) Code Sections 816-830 and 851-855.

Southwestern alleges in its application that resale cellular radio service competitors have minimal market power and correspondingly little ability to influence prices and, therefore, we should adopt a regulatory scheme that will allow the development of competition. Precisely for this reason we have specifically set the wholesale and retail tariff levels to provide an adequate margin to enable resellers to enter the competitive marketplace as bona fide competitors.

Sections IV, V, and VI of GO 96-A relate to filed and effective dates, procedures in filing tariff sheets which do not increase rates or charges, and procedures in filing increased rates, respectively. In general these provisions require a showing before this Commission justifying any increase and provide that rates will become effective 30 days after filing tariff sheets which do not increase rates, or 30 days after filing an authorized increase unless Commission authorization for a shorter period is obtained. Southwestern suggests that the Commission exempt resellers from the above GO 96-A provisions and allow tariff revisions to become effective on one day's notice. It is essential considering the newness of this market that we maintain time limitations set forth in Sections IV, V, and VI of GO 96-A to provide sufficient time for Commission staff review and competitor participation in any rate revision proposal made by a cellular reseller.

Findings of Fact

1. Southwestern has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by Southwestern.
3. Southwestern should file a set of tariffs similar in scope to the retail tariffs set forth in D.84-04-014 for the Partnership.
4. The issue of exemption from the provisions of PU Code Sections 816-830 and 851-855 is before us in a broader proceeding than this application.
5. The time constraints of Sections IV, V, and VI of GO 96-A provide an opportunity for staff analysis of and competitor participation in rate revisions.
6. Southwestern's proposed operations will provide competition in the cellular radio service market which will benefit the public at large.
7. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
8. Southwestern should keep its records in accordance with the Uniform System of Accounts prescribed by this Commission for radiotelephone utilities.
9. A public hearing is not necessary.

Conclusions of Law

1. The application should be granted as provided in the order which follows.
2. Southwestern should not be exempt from the provisions of Sections IV, V, and VI of this Commission's GO 96-A.
3. Southwestern should not be exempt from the provisions of PU Code Sections 816-830 and 851-855.
4. Southwestern is not a radiotelephone utility as defined in PU Code Section 4902.
5. Southwestern is subject to the fee system set forth in PU Code Chapter 2.5, Article 3.

3. Southwestern is to keep its records in accordance with the provisions of the Uniform System of Accounts prescribed by this Commission for radiotelephone utilities.

4. The certificate of public convenience and necessity is granted as set forth above; the application to be exempted from provisions of Sections IV, V, and VI of GO 96-A and from the provisions of PU Code Sections 816-830 and 851-855 is denied.

This order is effective today.

Dated _____, at San Francisco, California.