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Decision 84 06 106

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of A CELLULAR COMPANY for a)
certificate of public convenience)
and necessity to resell cellular)
radio telecommunications services.)
)

Application 84-05-012
(Filed May 1, 1984)

O P I N I O N

A Cellular Company (ACC) 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. ACC is an operating division of A Beeper Company Associates (ABCA), a general partnership under a formal partnership agreement governed by the laws of Colorado.

ACC proposes to offer and provide cellular radio telecommunications services on a resale basis as available to subscribers of all sizes, both commercial and residential. ACC also intends to provide mobile telephone equipment, as well as installation and repair service for such equipment. The locations where ACC will offer cellular radio telecommunications will initially include the greater metropolitan area of Los Angeles, including the Counties of Los Angeles, Ventura, San Bernardino, Riverside, and Orange, and later be expanded to include other areas in California as basic cellular telecommunications become available.

ACC estimates that it will have approximately 1,100 Los Angeles area subscribers by the end of 1984 and 12,000 Los Angeles area subscribers by the end of 1989.

According to financial statements attached to the application, ABCA had total assets of \$10,041,343 as of October 31, 1983.

In its application, ACC states its intention to charge its customers rates which are competitive with others in the marketplace. Decision (D.) 84-04-014 dated April 4, 1984 on the Los Angeles SMSA Partnership's (Partnership) Application (A.) 83-01-12 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 follows:

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

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 will be prepared promptly and transmitted to the Commission staff by advice letter for review and filing per GO 96-A. We will authorize ACC to deviate from the page numbering system prescribed by GO 96-A, Section II.C.(1)(b), and to substitute the system generally employed by the major wireline exchange carriers at its election.^{1/}

In Interim D.83-06-080 on the Partnership's A.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.)

ACC'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, ACC alleges that:

1. Its proposed services will meet the cellular radio telecommunications needs of all size subscribers including commercial, small business, and residential subscribers.
2. Its proposed services will make efficient use of proposed cellular radio telecommunications services and existing basic telephone services.
3. Long-term benefits will accrue to existing and future California cellular subscribers by the enhanced competition it will provide such as:
 - a. Lower-priced services;
 - b. More innovative equipment and services;
 - c. Expanded service;

^{1/} The alternate system is described in Commission Resolutions U-275 (March 25, 1947) and T-4886 (February 26, 1962).

- d. Better customer service (such as installation and repair of equipment); and
- e. Increased customer choice of service and/or equipment.

We agree in general with the allegations and note the reasons set forth generally form the bases for a viable resale plan for resellers. It should be noted that once certificated, ACC will 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 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.

ACC will be directed to file an annual report with the Commission, in a form prescribed by the Commission. Although ACC 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.

Other resellers of cellular services have asked that the Commission exempt them from the requirements of GO 96-A. Sections IV, V, and VI.

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 all resellers to make the requested tariff changes on 15 days' notice.

ACC is not a radiotelephone utility as defined in Public Utilities (PU) Code Section 4902.² 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.³ ACC will be ordered to provide in its tariff rules for the imposition of this surcharge.

Findings of Fact

1. ACC has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by ACC.
3. ACC should file a set of tariffs similar in scope to the retail tariffs set forth in D.84-04-014 for the Partnership.

² 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."

³ 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.

4. ACC's proposed operations will provide competition in the cellular radio service market which will benefit the public at large.

5. At the present time it appears that the cellular market is highly competitive.

6. Other cellular resellers are being exempted from the provisions of GO 96-A, Sections IV, V, and VI and may file tariff revisions on 15 days' notice.

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. ACC should keep its records in such detail as described on pages 4 and 5 of this decision.

9. A public hearing is not necessary.

Conclusions of Law

1. The application should be granted as provided in the order which follows.

2. ACC is not a radiotelephone utility as defined in PU Code Section 4902.

3. ACC is subject to the fee system set forth in PU Code Chapter 2.5, Article 3.

4. The appropriate surcharge pursuant to Conclusion of Law 3 is 0.07% for the fiscal year 1983-1984, and 0.1% for the fiscal year 1984-1985.

5. 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 A Cellular Company (ACC) to operate as a reseller of cellular radio telecommunications services within California.

2. On or after the effective date of this order ACC 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 (Partnership). This filing shall comply with General Order (GO) 96-A, except that ACC 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 retail rates and charges authorized to the Partnership by Decision 84-04-014, the filing to be effective on not less than five days' notice. ACC shall file the remaining tariff schedules, to include rules and forms as prescribed by GO 96-A, no later than 10 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 1984-85.

3. ACC is to keep its records as detailed on pages 4 and 5 of this decision.

4. ACC is exempted from the requirements of GO 96-A, Sections IV, V, and VI and is authorized to file tariff revisions on 15 days' notice.

5. The application is granted as set forth above.
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

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.

ACC will be directed to file an annual report with the Commission, in a form prescribed by the Commission. Although ACC 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.

ACC is not a radiotelephone utility as defined in Public Utilities (PU) Code Section 4902. Therefore, it is not subject to the fee system prescribed by PU Code Section 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. ACC will be ordered to provide in its tariff rules for the imposition of this surcharge.

Findings of Fact

1. ACC has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by ACC.
3. ACC should file a set of tariffs similar in scope to the retail tariffs set forth in D.84-04-014 for the Partnership.
4. ACC's proposed operations will provide competition in the cellular radio service market which will benefit the public at large.

5. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

6. ACC should keep its records in such detail as described on pages 4 and 5 of this decision.

7. A public hearing is not necessary.

Conclusions of Law

1. The application should be granted as provided in the order which follows.

2. ACC is not a radiotelephone utility as defined in PU Code Section 4902.

3. ACC is subject to the fee system set forth in PU Code Chapter 2.5, Article 3.

4. The appropriate surcharge pursuant to Conclusion of Law 3 is 0.07%.

5. 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.

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3. ACC is to keep its records as detailed on pages 4 and 5 of this decision.

4. The application is granted as set forth above.
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 Friscilla C. Crow,
being necessarily absent, did
not participate