

Decision S4 06 107

JUN 6 1984

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )	
CALL AMERICA, INC., a California )	
corporation, for a certificate of )	Application 84-05-018
public convenience and necessity to )	(Filed May 3, 1984)
resell cellular radio telephone )	
service in California, and to issue )	
and sell stock. )	

O P I N I O N

Call America, Inc. (CAI), a California corporation, 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 under Public Utilities (PU) Code Section 1001 and to issue and sell stock under PU Code Sections 816 to 830.

CAI initially intends to resell cellular radiotelephone service in the greater Los Angeles metropolitan area by purchasing cellular service from the Los Angeles SMSA Limited Partnership (Partnership) at the wholesale rates and then reselling the service at its tariffed rates to the end users. CAI 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 it. Once a nonwireline cellular radio-telephone system commences operations, CAI will be able to offer its customers a choice of which Los Angeles cellular radiotelephone service they prefer to use. CAI also proposes to sell and/or rent cellular mobile radio equipment, as well as provide installation and repair service for such equipment.

CAI was incorporated as a California corporation on March 15, 1984 and was authorized to issue 100,000 shares of capital stock. It has no outstanding stock, has no assets, liabilities, or indebtedness, and has not transacted any business. CAI's principal organizer and chief executive officer is Khahl Abraham, dba Metro Page Systems (Metro), an agent of Radio Relay Corporation-California. According to the application, he has had long experience as a highly trained salesman and manager in the sale and marketing of telecommunications equipment.

The balance sheet and income statement for Metro attached to the application indicated that as of December 31, 1983, its assets totaled \$124,141 and the net income for the year ended December 31, 1983 was \$107,730. At a recent CAI board of directors meeting, Abraham verbally offered to sell and transfer to CAI his paging business and assets in exchange for the issuance, sale, and delivery to him of 10,000 shares of the capital stock of CAI, with a fair value of approximately \$114,000. CAI accepted the offer and authorized the filing of this application. The paging business and assets, as described in Exhibit "C" to the application, will be transferred to CAI by appropriate bill of sale and any other required documents in exchange for issuance and delivery of such shares of capital stock upon authorization from this Commission.

CAI 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

Decision (D.) 84-04-014 dated April 4, 1984 on the Partnership's Application (A.) 83-01-12 for a CPC&N to provide a cellular radio communications system in the greater Los Angeles metropolitan area 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 CAI. 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 will be prepared promptly and transmitted to the Commission staff by advice letter for review and filing per GO 96-A. We will authorize CAI 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.<sup>1/</sup>

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

Inasmuch as CAI will construct no plant but will merely resell tariffed cellular radiotelephone service, it is requesting exemption from Parts IV, V, and VI of this Commission's GO 96-A.

Sections IV, V, and VI of GO 96-A relate to filing 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. CAI 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.

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.)

CAI'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, CAI alleges that:

1. Its proposed cellular resale services are designed to meet the cellular radiotelephone needs of all subscribers: industrial, commercial, and residential.
2. Its proposed intrastate resale of cellular radiotelephone service will provide competition in the cellular service market which will benefit the public and may lead to lower rates.
3. Commission approval of this application will bring the following long-term benefits to California cellular radiotelephone service subscribers:
  - a. Innovative cellular radiotelephone service to cellular subscribers at large;
  - b. Increased subscriber choice of service;
  - c. Efficient use of existing and proposed telecommunications resources; and
  - d. Availability of state-of-the-art telecommunications services, and use of modern methods of telecommunication.

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

CAI estimates that by the end of 1984, it will have approximately 1,000 subscribers in California and that by the end of 1988, it will have approximately 10,000 subscribers in California.

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

Upon certification by this Commission, CAI 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 to provide a total for sales and marketing expense. This would include, in sub-accounts, 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.

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

CAI is not a radiotelephone utility as defined in PU Code Section 4902.<sup>2</sup> 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.<sup>3</sup> CAI will be ordered to provide in its tariff rules for the imposition of this surcharge.

#### Findings of Fact

1. CAI has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by CAI.

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<sup>2</sup> 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."

<sup>3</sup> 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.



3. CAI 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 proposed stock issue is for lawful purposes and the money, property, or labor to be obtained by it are required for these purposes. Proceeds from the security issue may not be charged to operating expenses or income.

5. The time constraints of Sections IV, V, and VI of GO 96-A are unduly restrictive at this time.

6. At this time, it appears that the cellular market will be a highly competitive one.

7. CAI'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. CAI should keep its records in the detail described on pages 6 and 7 of this decision.

10. A public hearing is not necessary.

#### Conclusions of Law

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

2. CAI should be exempt from the provisions of Sections IV, V, and VI of this Commission's GO 96-A and may file tariff revisions to become effective on 15 days' notice.

3. CAI is not a radiotelephone utility as defined in PU Code Section 4902.

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

5. 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.

6. 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.

The number of shares outstanding, the total par (stated) value of the shares, and the dividends paid do not determine allowable return on plant investment. This authorization is not a finding of the value of the utility's stock or property, nor does it indicate the amounts to be included in ratesetting proceedings.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Call America, Inc. (CAI) to operate as a reseller of cellular radio telecommunications services within California.
2. On or after the effective date of this order CAI 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 CAI 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 CAI in its application, together with the remaining 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. CAI 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. CAI is to keep its records as detailed on pages 6 and 7 of this decision.

4. The certificate of public convenience and necessity is granted as set forth above; the application to be exempted from the provisions of Sections IV, V, and VI of GO 96-A is granted in part.

5. On or after the effective date of this order, but before August 31, 1984, for the purposes specified, CAI may issue up to 10,000 shares of common stock with par (stated) value of \$11.40 per share.

6. CAI shall file the reports required by GO Series 24.

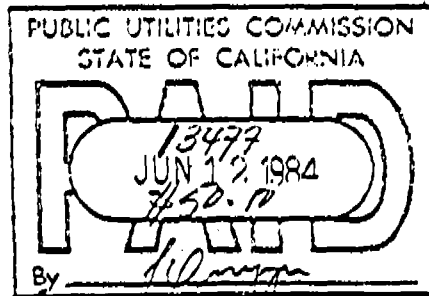
7. The application is granted and denied as set forth above. The authority granted by this order to issue stock shall become effective when the issuer pays \$50, set by PU Code Section 1904.1. In all other respects this order is effective today.

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 TODAY.

*Joseph E. Boucsein*  
Joseph E. Boucsein, Executive Director

Inasmuch as CAI will construct no plant but will merely resell tariffed cellular radiotelephone service, it is requesting exemption from Parts IV, V, and VI of this Commission's GO 96-A.

Sections IV, V, and VI of GO 96-A relate to filing 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. CAI 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.

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.)

6. Other significant costs, such as unsold lines inventory, should be separately identified.

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

CAI is not a radiotelephone utility as defined in PU Code Section 4902. 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. CAI will be ordered to provide in its tariff rules for the imposition of this surcharge.

#### Findings of Fact

1. CAI has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by CAI.
3. CAI 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 proposed stock issue is for lawful purposes and the money, property, or labor to be obtained by it are required for these purposes. Proceeds from the security issue may not be charged to operating expenses or income.
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. CAI'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. CAI should keep its records in the detail described on pages 6 and 7 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. CAI should not be exempt from the provisions of Sections IV, V, VI of this Commission's GO 96-A.

3. CAI is not a radiotelephone utility as defined in PU Code Section 4902.

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

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

6. 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. CAI is to keep its records as detailed on pages 6 and 7 of this decision.

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

5. On or after the effective date of this order, but before August 31, 1984, for the purposes specified, CAI may issue up to 10,000 shares of common stock with par (stated) value of \$11.40 per share.

6. CAI shall file the reports required by GO Series 24.

7. The application is granted as set forth above.

The authority granted by this order to issue stock shall become effective when the issuer pays \$50, set by PU Code Section 1904.1. In all other respects this order is effective today.

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