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Decision 84 06 110

JUN 6 1984

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of The Los Angeles
Cellular Telephone Company for a
Certificate of Public Con-
venience and Necessity to Resell
Cellular Radiotelephone Service
in the Los Angeles Cellular
Geographic Service Area.

Application 84-05-043
(Filed May 11, 1984)

O P I N I O N

The Los Angeles Cellular Telephone Company (LACTC), a general partnership consisting of Los Angeles Cellular Corporation and LIN Cellular Communications 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.

LACTC represents two of the four nonwireline applicants before the Federal Communications Commission (FCC) for cellular authorization in the Los Angeles Cellular Geographic Service Area (LACGSA). By Application (A.) 83-04-21 as amended on August 3, 1983, LACTC seeks a CPC&N from this Commission to construct a cellular system in the LACGSA. However, according to LACTC, authorization and construction of such a system have been deferred due to the continuing pendency of adversarial proceedings at the FCC between LACTC and the remaining nonwireline applicants. Consequently, to mitigate the potentially anticompetitive impact of a wireline carrier entering the marketplace before this non-wireline carrier, LACTC is requesting certification as a reseller

as envisioned in Decision (D.) 84-04-014 dated April 4, 1984 on Los Angeles SMSA Limited Partnership's (Partnership) A.83-01-12.

LACTC included with the application a forecast of its revenues and operating expenses for the first and fifth full years of operation as a reseller. According to these forecasts, LACTC will have 1,920 telephones in service at the end of the first year with a pretax operating loss of \$1,069,926, and will have 9,600 telephones in service at the end of the fifth year with a pretax operating profit of \$1,297,020.

LACTC also attached to the application its proposed rates and conditions of service for the resale of cellular service. The proposed rates and conditions of service were in a large part the same as those proposed by Pac Tel Mobile Access in its application for a CPC&N as a reseller filed on or about March 16, 1984. The rates paralleled those established for the Partnership by D.84-04-014. These tariffs 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 reviewed by staff preparatory to an advice letter filing per GO 96-A. We will authorize LACTC 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 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.)

LACTC'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.

Once certificated, LACTC will be subject to reporting requirements deemed appropriate by this Commission. One of these requirements is the manner in which records are kept.

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

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.

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 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.

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

LACTC is not a radiotelephone utility as defined in 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 LACTC will be ordered to provide in its tariff rules for the imposition of this surcharge.

Findings of Fact

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

² In D.84-04-014 in A.83-01-12, 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.

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

7. Other resellers of cellular service are being exempted from Sections IV, V, and VI of GO 96-A and authorized to make tariff revisions on 15 days' notice.

8. LACTC should keep its records in such detail as described on page 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. LACTC is not a radiotelephone utility as defined in PU Code Section 4902.

3. LACTC 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 Los Angeles Cellular Telephone Company (LACTC) to operate as a reseller of cellular radio telecommunications services within California.

2. On or after the effective date of this order LACTC 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 96-A, except that LACTC 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 Los Angeles SMSA Limited Partnership by Decision 84-04-014, the filing to be effective on not less than five days' notice. LACTC shall file the remaining tariff schedules, to include rules and forms as prescribed by General Order 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. LACTC is to keep its records as detailed on page 5 of this decision.

4. LACTC is exempted from the provisions of Sections IV, V, and VI of General Order 96-A and is authorized to make tariff revisions effective 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

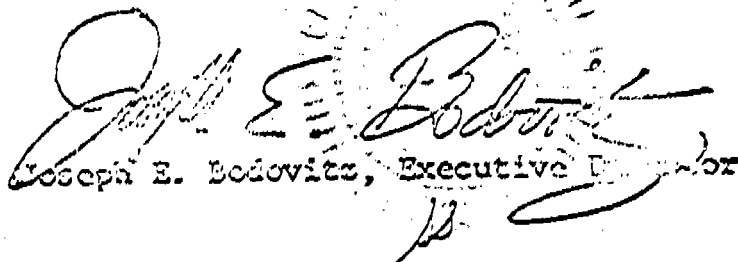
DONALD VIAL

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 TODAY.


Joseph E. Bodovitz, Executive Director

material will be reviewed by staff preparatory to an advice letter filing per GO 96-A. We will authorize LACTC 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 Application 83-01-12, we stated in Finding 25:

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LACTC 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.^{2/} LACTC will be ordered to provide in its tariff rules for the imposition of this surcharge.

Findings of Fact

1. LACTC has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by LACTC.
3. LACTC should file a set of tariffs similar in scope to the retail tariffs set forth in D.84-04-014 for the Partnership.
4. LACTC'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. LACTC should keep its records in such detail as described on pages 3 and 4 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. LACTC is not a radiotelephone utility as defined in PU Code Section 4902.
3. LACTC 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.

^{2/} 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.

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. LACTAC is to keep its records as detailed on pages 3 and 4 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 Priscilla C. Crow,
being necessarily absent, did
not participate