

ORIGINAL

Decision 84 G7 118

JUL 18 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of CELLULAR DATA, a California)
corporation, for a certificate of)
Public Convenience and Necessity)
to Resell Cellular Radio Telephone)
Service in California, and to Issue)
and Sell Stock.)

Application 84-05-059
(Filed May 15, 1984)

O P I N I O N

Cellular Data (CD), 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.

CD initially intends to resell cellular radiotelephone service in the greater Los Angeles metropolitan area by purchasing cellular numbers from the Los Angeles SMSA Limited Partnership (Partnership) at the latter's wholesale rates and reselling these cellular numbers at its tariffed rates to the end users. CD 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, CD will be able to offer its customers a choice of which Los Angeles cellular radiotelephone service they prefer to use. CD also proposes to offer specialized services to its customers, especially independent mobile equipment

dealers. These services include cellular numbers on a nonthreatening basis; namely, no sale or lease of equipment, complete handling of all billing and customer services, complete confidentiality with respect to customers of such dealers, computerized security, maintenance of customer accounts at no charge to originating dealers, and processing fee paid for each access number activated.

CD was recently incorporated as a California corporation 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. CD's principal organizer and president, Richard D. Ridley, is currently engaged in the computer and electronics industry and has over 15 years' experience in sales, sales support marketing, and administrative and technical backup.

The balance sheet and income statement of Richard D. Ridley attached to the application indicated total assets of \$202,425, total liabilities of \$73,444, and a net worth of \$128,981.

CD proposes to issue and sell 10,000 shares of its capital stock for cash, \$1 per share, to Richard D. Ridley and Laura J. Ridley, husband and wife, as their community property. CD will obtain any required additional funding through capital contributions and open account advances.

CD proposes to initially resell cellular radiotelephone service in the Los Angeles basin at the following basic service rates:

| | |
|-----------------------------------|---------|
| Service Establishment | \$50.00 |
| Monthly Access Charge | 45.00 |
| Peak Period Minute Usage Rate | 0.45 |
| Off-peak Period Minute Usage Rate | 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 service establishment, monthly access charge, peak minute usage charge, and off-peak minute usage charge are as proposed by CD. 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 CD 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/}

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

Inasmuch as CD 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 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. CD 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 sellers 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.)

CD'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, CD alleges that Commission approval of the application will bring the following long-term benefits to California cellular radiotelephone service subscribers:

1. Innovative cellular radiotelephone service to cellular subscribers at large;
2. Increased subscriber choice of service;
3. Efficient use of existing and proposed telecommunications resources; and
4. Availability of state-of-the-art telecommunications services, and utilization of modern methods of telecommunication.

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.

CD estimates that by the end of its first year of operation, it will have approximately 1,360 subscribers in California with a net profit of \$138,650 before taxes and that by the end of its fifth year of operation, it will have approximately 5,440 subscribers in California with a net profit of \$1,125,657 before taxes.

Upon certification by this Commission, CD 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 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.

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

CD 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 Section 401, et seq. 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 CD will be ordered to provide in its tariff rules for the imposition of this surcharge.

Findings of Fact

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

² In D.84-04-014 in A.83-01-02, 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. 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. CD'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. CD should keep its records as detailed on page 6 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. CD should be exempt from the provisions of Sections IV, V, and VI of this Commission's GO 96-A and tariff revisions may be filed to become effective on 15 days' notice.

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

4. CD is subject to the fee system set forth in PU Code Section 401, et seq.

5. The appropriate surcharge pursuant to Conclusion of Law 4 is 0.1% for the fiscal year 1984-1985.

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

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 Cellular Data (CD) to operate as a reseller of cellular radio telecommunications services within California.

2. On or after the effective date of this order CD 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 CD 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 CD 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. CD 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 0.1% for the fiscal year 1984-85.

3. CD is to keep its records as detailed on page 6 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, CD may issue up to 10,000 shares of common stock with par (stated) value of \$1 per share.

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

7. The application is granted in part and denied in part 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 JUL 18 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

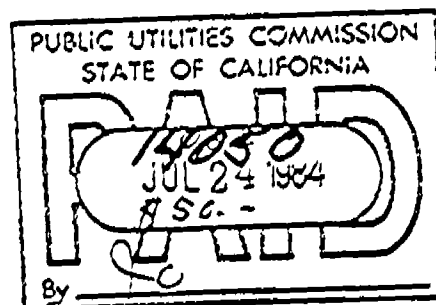
VICTOR CALVO

PRISCILLA C. GREW

DONALD VIAL

WILLIAM T. BAGLEY

Commissioners



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

Joseph E. Bodovitz
Joseph E. Bodovitz, Executive Director

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.

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

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