

Decision 84 GS 016

AUG 1 1984

~~CONFIDENTIAL~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of Southland Communications, Inc.,
a California Corporation, DBA
Air Call of California, for a
Certificate of Public Convenience
to Operate as a Reseller of
Cellular Radio Telecommunications
Within California.

Application 84-06-056
(Filed June 18, 1984)

O P I N I O N

Southland Communications, Inc. (Southland), a California corporation, which conducts business under the name of Air Call of California, 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.

Southland 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. Since 1979 Southland has been engaged in the business of selling one-way paging and two-way mobile telephone service in the greater Los Angeles area as the marketing agent for various radiotelephone utilities. It also sells and services conventional and cellular mobile telephones and paging receivers.

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

Connection Charge	\$50.00
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 connection charge, monthly access charge, peak minute usage charge, and off-peak minute usage charge are as proposed by Southland. 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 Southland 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/}

Southland anticipates that a substantial number of resellers will compete in the retail marketing of cellular services in all areas served by cellular systems and that it and other resale companies will have minimal market power. Furthermore, according to Southland, competitive market pressures will prohibit resellers from charging unreasonably high prices to customers. Additionally, because resale competitors must buy from the dominant carrier, their price levels must reflect the regulated wholesale price of the service which they purchase. The public is therefore adequately protected by competitive forces and by regulation of the wholesale rates of the underlying carrier. Southland therefore requests that the Commission, at a minimum, exempt it from Sections IV, V, and VI of GO 96-A and allow tariff revisions to become effective on 15 days' notice. Other resellers have requested exemption from these provisions of 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.

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

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 Federal Communications Commission allowing two major carriers, one wireline and one nonwireline, 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.)

Southland'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, Southland alleges that:

1. Certification of the Partnership as the underlying carrier demonstrates the need for cellular service in the greater Los Angeles area, and certification of underlying carriers in other California markets where it may act as a reseller will likewise demonstrate the need for cellular service in these markets.
2. Southland's proposed resale of cellular service will enhance competition in the cellular retail market.
3. Enhanced competition will bring the following long-term benefits to California cellular subscribers:
 - a. Lower priced service;
 - b. Increased ability of customers to choose between service providers, a greater variety of service packages, greater choice of mobile customer-provided equipment and greater attendance to customer needs by all service providers; and
 - c. Greater utilization of the existing facilities of the underlying carrier, which will enable the underlying carrier to use the system more efficiently.

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

Southland estimates that by the end of its first full year of operation, it will have approximately 1,200 units in service and that by the end of its fifth full year of operation it will have approximately 6,000 units in service.

Southland's financial statements attached to the application indicated that as of April 30, 1984 its assets totaled \$958,373, its liabilities totaled \$686,768, and its stockholders' equity totaled \$271,605. The net income of Southland for the six-month period ended April 30, 1984 was shown to be \$94,443. Projected earnings indicated estimated net profits ranging from \$885,129 for the first full year of operation to \$713,579 for the second full year of operation to \$805,962 for the fifth full year of operation.

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

Upon certification by this Commission, Southland 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.

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

Southland 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

^{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."

instead subject to the fee system set forth in PU Code Sections 401, et seq. By Resolution M-4735, the Commission set the fee level for telephone corporations for the fiscal year 1984-1985 at 0.1 of 1% (0.001) of revenue subject to the fee, prescribed the method of remitting the fee, and directed the application of a billing surcharge of 0.1% to customer billings. Southland will be ordered to provide in its tariff rules for the imposition of this surcharge.

Findings of Fact

1. Southland has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by Southland.
3. Southland 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 time constraints of Sections IV, V, and VI of GO 96-A are unduly restrictive at this time.
5. At this time, it appears that the cellular market will be a highly competitive one.
6. Southland'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. Southland 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. Southland 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. Southland is not a radiotelephone utility as defined in PU Code Section 4902.
4. Southland is subject to the fee system set forth in PU Code Sections 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 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 Southland Communications, Inc. (Southland) to operate as a reseller of cellular radio telecommunications services within California.

2. On or after the effective date of this order Southland 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 Southland 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 Southland 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. Southland 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 1984-1985.

3. Southland 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. Southland shall file the reports required by GO Series 24.

6. The application is granted in part and denied in part as set forth above.

This order is effective today.

Dated AUG 1 1984, at San Francisco, California.

Commissioner Priscilla C. Grew,
being necessarily absent, did
not participate

Commissioner William T. Bagley
being necessarily absent, did
not participate.

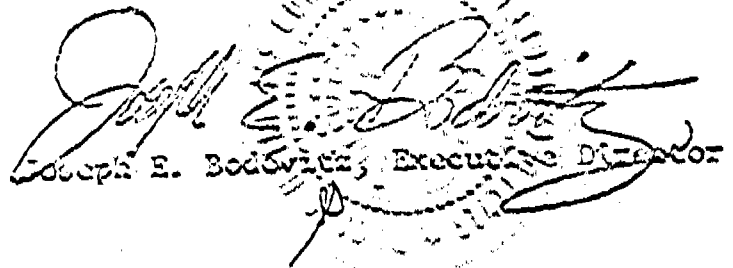
LEONARD M. GRIMES, JR.
President

VICTOR CALVO

DONALD VIAL

Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS


Joseph E. Bodovick, Executive Director