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Decision 84 08 029 AUG 1 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Cellular, Inc. for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Cellular Radio Telecommunication Services Within California.	Application 84-06-006 (Filed June 4, 1984)

OPINION

Pacific Cellular, Inc. (Pac Cel), 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. Pac Cel is presently in the business of retail sales of cellular radio telephones and equipment and each of its two shareholders has nine years of experience in the mobile radio communications field.

Initially Pac Cel will purchase and resell numbers provided by the Los Angeles SMSA Limited Partnership (Partnership) which was granted a CPC&N to provide cellular service in the greater Los Angeles metropolitan area by Decision (D.) 84-04-014 dated April 4, 1984. As other locations become licensed to operate in California for a cellular radio telecommunication system, Pac Cel will initiate service at the retail prices which this Commission will authorize for that area.

Pac Cel proposes to resell cellular service in the Los Angeles area at the following rates:

Connection Charge	$50.00
Monthly Access Charge	45.00
Peak Minute Usage	0.45
Off-peak Minute Usage	0.27

D.84-04-014 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 Pac Cel. 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 applicant 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/]

Pac Cel requests that in granting the requested authority this Commission recognize the significant difference between the resellers and the underlying carrier of cellular radio telecommunications service in California. Such difference includes consideration of the relative market power, consideration of granting exemption from certain provisions of this Commission's GO 96-A, and consideration of granting exemption from provisions of Public Utilities (PU) Code Sections 816-830 and 851-855.

Sections IV, V, and VI of GO 96-A relate to filed and effective dates of tariffs, 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.

Pac Cel alleges in its application that it will have minimal market power, but that the public will be protected from abuses by the competitive forces in the services and by the regulated wholesale rates which have been established for the underlying carrier. Consequently, Pac Cel suggests that it be exempt from Sections IV, V, and VI of GO 96-A and that this Commission allow tariff revisions to become effective on one day's notice. Other resellers have made similar requests.

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.

Article 5 of the PU Code entitled "Stocks and Security Transactions" regulates in PU Code Sections 816-830 the power of the utility to issue stocks and stock certificates or other evidence of indebtedness and to create liens on their property situated within this State. Article 6 of the PU Code entitled "Transfer or Encumbrance of Utility Property" provides, in part, in PU Code Sections 851-855 that no public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its property useful in the performance of its duties to the public without first having secured from this Commission an order authorizing it to do so. Pac Cel seeks exemption from PU Code Sections 816-830 under PU Code Section 829 and from PU Code Sections 851-855 under PU Code Section 853. PU Code Sections 829 and 853 provide that the Commission may, by order or rule and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from the above PU Code provisions if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest. Pac Cel alleges that such exemption should be granted because strict enforcement of the above PU Code provisions would serve only to impede competition while not providing any attendant protection.

This issue is before us in Application (A.) 84-03-92 of the California Association of Long Distance Telephone Companies and provides a larger forum in which to address these considerations. Accordingly, we will deny Pac Cel's request in this application.

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.)

Pac Cel's proposed operations, as well as the operations of the resellers in the area, dovetail with the resale concept envisioned in the above-quoted Finding 25. In its application, Pac Cel alleges that:

1. The certification of Partnership to provide cellular radio telecommunication service as the underlying carrier in the Los Angeles area demonstrates the need for cellular radio telecommunication services in the Los Angeles area.
2. Pac Cel's proposed resale of cellular radio telephone services will provide competition in the cellular radio service market which will benefit the public and ultimately lead to lower rates to the end user.
3. Competition within the cellular radio telecommunication service market will result in the following benefits to end users of the cellular radio service:
    a. Lower priced services;
    b. The availability to end users of cellular radio services of various packages and innovative marketing techniques for the service and equipment offered by the resellers; and,
    c. Increased utilization of the facilities established by the underlying carrier to allow for a more efficiently run system.

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

Pac Cel estimates that by the end of 1984 it will have approximately 260 subscribers in California and by the end of 1986 it will have approximately 1,460 subscribers in California.

Pac Cel included a copy of its balance sheet as of February 13, 1984, showing assets totaling $103,500 as of that date. The projected quarterly net income before income taxes varies from $13,255 for the quarter ending December 31, 1984 to $79,255 for the quarter ending June 30, 1986.

Upon certification, Pac Cel 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.

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

Pac Cel 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 Sections 401, et seq. By Resolution M-4735, the Commission set the fee level for telephone corporations for the fiscal year 1984-85 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. Pac Cel will be ordered to provide in its tariff rules for the imposition of this surcharge.

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."

Findings of Fact

1. Pac Cel has the ability, experience, equipment, and financial resources to perform the proposed service.

2. Public convenience and necessity require the service proposed by Pac Cel.

3. Pac Cel 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 issue of exemption from the provisions of PU Code Sections 816-830 and 851-855 is before us in a broader proceeding than this application.

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. Pac Cel'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. Pac Cel should keep its records as detailed on pages 7 and 8 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. Pac Cel should be exempt from the provisions of Sections IV, V, and VI of this Commission's GO 96-A and may file tariffs to become effective on 15 days' notice.

3. Pac Cel should not be exempt from the provisions of PU Code Sections 816-830 and 851-855.

4. Pac Cel is not a radiotelephone utility as defined in PU Code Section 4902.

5. Pac Cel is subject to the fee system set forth in PU Code Sections 401, et seq.

6. The appropriate surcharge under Conclusion of Law 5 is 0.1% for the fiscal year 1984-1985.

7. 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 Pacific Cellular, Inc. (Pac Cel) to operate as a reseller of cellular radio telecommunications services within California.

2. On or after the effective date of this order Pac Cel 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 Pac Cel 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 Pac Cel 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. Pac Cel 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. Pac Cel is to keep its records as detailed on pages 7 and 8 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 and the application to be exempt from the provisions of PU Code Sections 816-830 and 851-855 is denied.

This order is effective today.

Dated AUG 1 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
DONALD VIAL
Commissioners

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

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

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

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 numbers inventory, should be separately identified.

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

Pac Cel 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 Sections 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/] Pac Cel will be ordered to provide in its tariff rules for the imposition of this surcharge.

2/ In D.84-04-104 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.

3. Pac Cel should not be exempt from the provisions of PU Code Sections 816-830 and 851-855.

4. Pac Cel is not a radiotelephone utility as defined in PU Code Section 4902.

5. Pac Cel is subject to the fee system set forth in PU Code Sections 401, et seq.

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

7. 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.

ORDER

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3. Pac Cel is to keep its records as detailed on pages 7 and 8 of this decision.