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Decision 84 08 032

AUG 1 1984

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ICS/MCI-CMS for a)
 Certificate of Public Convenience)
 and Necessity to Resell Cellular)
 Radiotelephone Utility Service in)
 the Los Angeles Cellular Geographic)
 Service Area.)

Application 84-06-063
 (Filed June 21, 1984)

O P I N I O N

ICS/MCI-CMS is a California partnership, whose two partners are ICS/MCI, a partnership of wholly owned subsidiaries of ICS Communications (ICS) and MCI Communications Corporation (MCI), and Cellular Mobile Systems of Los Angeles, Inc. (CMS). The ICS/MCI venturer consists of MCI LA Cellular, Inc., a subsidiary of MCI, and Sirrah, Inc., a subsidiary of ICS, which, in turn, is a wholly owned subsidiary of Metromedia, Inc. MCI holds an 80% interest in the ICS/MCI venturer while ICS, through Sirrah, Inc., holds a 20% interest in the ICS/MCI venturer. CMS is wholly owned by Cellular Mobile Systems of California, Inc. The ultimate parent of Cellular Mobile Systems of California is Graphic Scanning Corporation. ICS/MCI-CMS is owned 75% by ICS/MCI and 25% by CMS. These two partners are two of the original four nonwireline applicants before the Federal Communications Commission (FCC) for a construction permit and license to construct and operate the nonwireline cellular radiotelephone utility service in the greater Los Angeles Standard Metropolitan Statistical Area (LASMSA). In an initial decision issued February 10, 1984, an

FCC administrative law judge awarded the nonwireline cellular construction permit for the LA SMSA to ICS/MCI-CMS. The matter is on appeal before the FCC so ICS/MCI-CMS has temporarily delayed prosecuting its Application (A.) 83-03-31 before this Commission for a certificate of public convenience and necessity (CPC&N) as a nonwireline primary carrier.

By this application, ICS/MCI-CMS seeks a CPC&N to operate as a resale carrier providing cellular radio service within the LA SMSA to establish its presence as a reseller to develop a customer base prior to the implementation of its own service. It intends to meet the cellular radiotelephone needs of all subscribers, including, without limitations, those of commercial, industrial, and residential subscribers.

ICS/MCI-CMS 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, ICS/MCI-CMS will have a pretax operating loss of \$2,998,488 at the end of the first year and will have a pretax operating profit of \$1,372,319 at the end of the fifth year.

ICS/MCI-CMS proposes to resell cellular radio 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 Los Angeles SMSA Limited Partnership (Partnership) A.83-01-12 for a CPC&N for a cellular system provided tariffs including rates for both wholesale and retail sales of cellular service. The retail monthly access charge, peak minute usage charge, and off-peak minute usage charge are as proposed by ICS/MCI-CMS. However,

the retail tariff provisions also included charges for many optional features. 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 ICS/MCI-GMS 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 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. p.28.)

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

ICS/MCI-CMS'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. By this order, ICS/MCI-CMS should only be authorized to provide services consistent with that finding and the services currently being provided by other resellers. Its resale offerings will therefore be restricted to the resale of services purchased from the Partnership under the Partnership's wholesale tariffs. We intend to address ICS/MCI-CMS' retail cellular operations provided under its FCC nonwireline cellular permit, should the appeals of the FCC administrative law judge's decision fail, in the context of A.83-03-31.

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 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

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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.

Once certificated, ICS/MCI-CMS 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 accounting 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.

ICS/MCI-CMS will be directed to file an annual report with the Commission, in a form prescribed by the Commission. Although ICS/MCI-CMS 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.

ICS/MCI-CMS is not a radiotelephone utility as defined in Public Utilities (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 1984-1985 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. ICS/MCI-CMS will be ordered to provide in its tariff rules for the imposition of this surcharge.

Findings of Fact

1. ICS/MCI-CMS has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by ICS/MCI-CMS.

^{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."

3. ICS/MCI-CMS should file a set of tariffs similar in scope to the retail tariffs set forth in D.84-04-014 for the Partnership.

4. ICS/MCI-CMS'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. 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. ICS/MCI-CMS 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. ICS/MCI-CMS is not a radiotelephone utility as defined in PU Code Section 4902.

3. ICS/MCI-CMS is subject to the fee system set forth in PU Code Sections 401, et seq.

4. The appropriate surcharge pursuant to Conclusion of Law 3 is 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 the partnership of wholly owned subsidiaries of ICS Communications and MCI Communications Corporation and Cellular Mobile Systems of Los Angeles, Inc. (ICS/MCI-CMS) to operate as a reseller of cellular radio telecommunications services within California.

2. On or after the effective date of this order ICS/MCI-CMS 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 ICS/MCI-CMS 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 Partnership by Decision 84-04-014, the filing to be effective on not less than five days' notice. ICS/MCI-CMS 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. The authority granted by this certificate does not extend to the resale of cellular mobile radiotelephone service by the applicant if the facility providing the underlying service is the applicant's.

4. ICS/MCI-CMS is to keep its records as detailed on page 5 of this decision.

5. ICS/MCI-CMS is exempted from the provisions of Sections IV, V and VI of GO 96-A and is authorized to make tariff revisions effective on 15 days' notice.

6. The application is granted as set forth above.

This order is effective today.

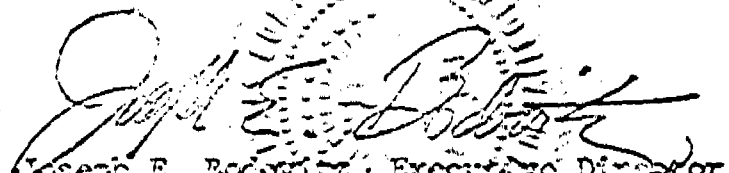
Dated AUG 1 1984 , at San Francisco, California.

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 MADE AND IS IN THE ABOVE
COMMISSIONERS' PRESENCE


Joseph E. Bodovitz, Executive Director

ICS/MCI-CMS'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.

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