

Decision 84 C9 019

SEP 6 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of RECELL, INC. for a Certificate)
of Public Convenience and Necessity)
to Operate as a Reseller of Cellular)
Radio Telecommunications Within)
California and For Authority to)
Issue Promissory Notes.)

Application 84-06-044
(Filed June 14, 1984;
amended July 3, 1984)

O P I N I O N

Recell, Inc. (Recell) seeks: (a) 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(b), authority to issue notes not exceeding \$200,000 under PU Code Sections 816 to 830, and (c) an exemption from the requirements of Sections IV, V, and VI of this Commission's General Order (GO) 96-A.

Recell 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. Similarly Recell intends to initiate service at markups over the authorized wholesale rates for underlying cellular carriers serving any other California market where Recell may choose to provide resale service.

Recell was incorporated in the State of Texas on May 2, 1984 and has been authorized to transact intrastate business in California. Its president has managed and operated an experimental

cellular telephone system and has been involved in the organization of cellular systems throughout the United States.

Recell has forecasted that by the end of its first full year of operation it will have approximately 1,000 subscribers in California and a pretax operating loss of \$5,000, and that by the end of its second full year of operations it will have approximately 5,000 subscribers and a pretax operating profit of \$90,000. Recell estimates that it will require working capital of \$50,000 to cover all startup costs, salaries, and other expenses for the first two months of operations and that beginning in the third month of operations revenue should meet or exceed expenses and, therefore, be sufficient to meet all cash flow requirements.

Recell requests authority to issue unsecured promissory note or notes not exceeding \$200,000 to fund its initial operating expenses. To the extent that this request may not conform to the strict requirements of Article 5 of the PU Code regarding permissible applications of borrowed funds, Recell requests exemption from such requirements under PU Code Section 829.

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 charge, monthly access charge, peak minute usage charge, off-peak minute usage charge, and option feature charges are as proposed by Recell. The Partnership's 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. We recognize that Recell's tariffs, as a whole, may be somewhat abbreviated from those of the primary carrier; however, we will require that they 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 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 Recell 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/}

Recell filed its application for a CPC&N in terms of the traditional CPC&N granted to monopoly public utilities, but requests that in granting such a certificate this Commission recognize the significant differences among the potential providers of cellular radio services in California. Such differences include consideration of the relative market power and consideration of granting exemption from certain provisions of this Commission's GO 96-A.

Recell alleges in its application that resale cellular radio service competitors have minimal market power and correspondingly little ability to influence prices and, therefore, we should adopt a regulatory scheme that will allow the development of competition. Precisely for this reason we have specifically

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

set the wholesale and retail tariff levels to provide an adequate margin to enable resellers to enter the competitive marketplace as bona fide competitors.

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. Recell suggests that the Commission exempt resellers from the above GO 96-A provisions and allow tariff revisions to become effective on 15 days' notice. Other resellers 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 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.)

Recell'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, Recell alleges that Commission approval of this application will provide competition in the cellular radio service market which will benefit the public at large and could lead to lower rates to end-users and will bring the following long-term benefits to California cellular subscribers:

1. Lower priced services;
2. Innovative telecommunications services and equipment offerings as well as increased consumer choice;

3. Efficient use of existing communications resources as well as increased diversification and reliability of supply of communications services; and
4. Development of an expanded telecommunications supply industry in California with attendant employment opportunities for California residents.

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

Upon certification by this Commission, Recell 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 approximately 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.

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

Recell 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-4735, the Commission set the fee level for telephone corporations at 0.10 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. Recell 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. Recell has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by Recell.
3. Recell 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 issue of unsecured promissory note or notes is for lawful purposes and the money, property, or labor to be obtained by it are required for these purposes.
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. Recell'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. Recell should keep its records as detailed on pages 6 and 7 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. Recell 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. Recell is not a radiotelephone utility as defined in PU Code Section 4902.

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

5. The appropriate surcharge under 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 Recell, Inc. (Recell) to operate as a reseller of cellular radio telecommunications services within California.

2. On or after the effective date of this order Recell 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 Recell 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 Recell 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. Recell 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. Recell is to keep its records as detailed on pages 6 and 7 of this decision.

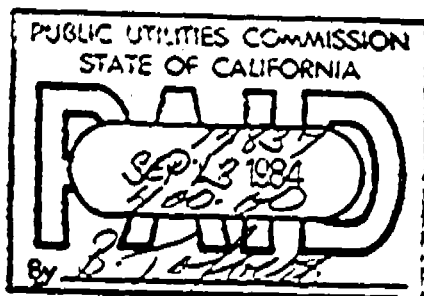
4. On or after the effective date of this order, but before October 31, 1984, for the purposes specified, Recell may issue up to \$200,000 in unsecured promissory note or notes.

5. Recell shall file the reports required by GO Series 24.

6. 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.

The authority granted by this order to issue unsecured promissory note or notes shall become effective when the issuer pays the fee in the amount of \$400 set by PU Code Section 1904. In all other respects, this order is effective today.

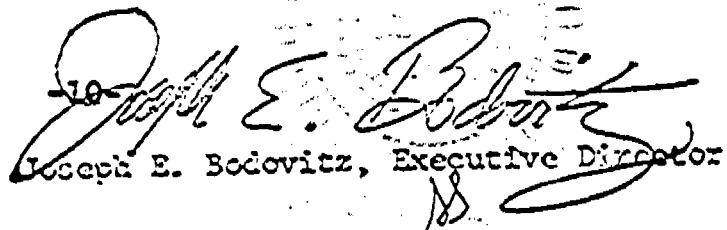
Dated September 6, 1984, at San Francisco, California.



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.

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Joseph E. Bodovitz, Executive Director

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 lines inventory, should be separately identified.

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

Recell 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-4735, the Commission set the fee level for telephone corporations at 0.10 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. Recell will be ordered to provide in its tariff rules for the imposition of this surcharge.

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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. Recell 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. Recell is to keep its records as detailed on pages 6 and 7 of this decision.

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The authority granted by this order to issue unsecured promissory note or notes shall become effective when the issuer pays the fee set by PU Code Section 1904. In all other respects, this order is effective today.

Dated SEP 6 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
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PRISCILLA C. CREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners