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Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GTE MOBILNET OF SAN)
FRANCISCO LIMITED PARTNERSHIP, and)
GTE MOBILNET OF SAN JOSE LIMITED)
PARTNERSHIP for certificates of)
public convenience and necessity)
to construct and operate a)
domestic cellular mobile radio)
system in the San Francisco-)
Oakland and San Jose Metropolitan)
areas.)
_____)

Application 83-07-04
(Tendered for filing June 1, 1983;
amended October 17, 1983
and January 26, 1984)
(Accepted for filing
March 1, 1984)

(Appearances are listed in Appendix A.)

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O P I N I O N

I. INTRODUCTION

Summary

This decision awards a certificate of public convenience and necessity to applicant¹ for authority to provide a domestic cellular mobile radio system in the San Francisco-Oakland and San Jose metropolitan areas.

The decision establishes wholesale tariffs only, for use by resellers, and applicant is authorized to file an application for certification of a fully separated business entity as a retail provider (i.e. as a reseller).

Background

This is our second decision awarding a certificate for a cellular radio telecommunications system, the first being Advanced Mobile Phone Service (Decision (D.) 84-04-014 dated April 4, 1984; Application (A.) 83-01-12; referred to hereafter as AMPS decision). That decision covered an application for the Los Angeles standard metropolitan statistical area (SMSA).

Description of Applicant

The opening brief of applicant describes the history of the steps leading to its present structure and position as follows:

¹ At the beginning of this proceeding applicant consisted of two partnerships (one for San Francisco-Oakland and one for San Jose) which, in turn, were composed of GTE Mobilnet subsidiaries and certain minority interests. The GTE Mobilnet subsidiaries are being merged into the parent corporation and the parent corporation will be the managing partner of each partnership. For simplicity "Applicant" or "GTEM" refers to these partnerships collectively. See further discussion under the heading "Description of Applicant."

"GTE Mobilnet Incorporated, a wholly-owned subsidiary of GTE Corporation, was formed in December 1981 to engage in the domestic cellular mobile radio telephone business. It formed two subsidiaries to apply for the frequency block B (wireline) licenses for the San Francisco-Oakland and San Jose markets. Advanced Mobile Phone Service, Inc. also applied for these FCC licenses. At the same time, Cellular Mobile Systems of California, Inc., Cellular Network, Inc., Intrastate Radio Telephone, Inc. of San Francisco, and subsidiaries of McCaw Cellular Communications, Inc., applied for the frequency block A [non-wireline] licenses for San Francisco-Oakland and San Jose. In addition, California Celcom Communications Corporation applied for the San Jose frequency block A license. In Memorandum Opinion and Orders released May 6, 1983, and July 8, 1983, the FCC approved limited partnership agreements between the GTE Mobilnet Incorporated subsidiaries and Advanced Mobile Phone Service, Inc., and awarded the partnerships, who are the applicants in this proceeding, construction permits for the San Francisco-Oakland and San Jose areas. The remaining applications for the frequency block A licenses were set for comparative hearings. Subsequently, on June 2, 1983, the FCC issued a construction permit to GTE Mobilnet of San Jose Limited Partnership, and on August 26, 1983, issued a construction permit to GTE Mobilnet of San Francisco Limited Partnership. Revised radio station authorizations for San Francisco and San Jose were issued by the FCC on March 23, 1984 and March 29, 1984 respectively. . . ."

"On July 1, 1983, the partnerships filed a joint application with this Commission requesting, pursuant to California Public Utilities Code Section 1001, issuance of Certificates of Public Convenience and Necessity allowing construction and operation of a domestic cellular mobile radio system in the metropolitan areas of San Francisco-Oakland and San Jose. The application was amended three times, and a supplemental

environmental assessment was submitted on October 14, 1983. On March 1, 1984, the application was accepted for filing by the Commission."

* * *

"The partnerships which are the applicants in this case are now comprised of GTE Mobilnet of San Francisco Incorporated and Advanced Mobile Phone Service, Inc., and GTE Mobilnet of San Jose Incorporated and Advanced Mobile Phone Service, Inc., respectively. The GTE Mobilnet subsidiaries now have a 97 percent interest in each partnership and are the general partners, while Advanced Mobile Phone Service, Inc. (which has been succeeded by Pac Tel Mobile Access) has a 3 percent interest in each partnership and is a limited partner. As a result of D.84-04-014, issued by this Commission on April 4, 1984, [AMPS decision] GTE Mobilnet determined that it would not make the entity structure an issue in this proceeding, and accordingly Mr. Blair testified that GTE Mobilnet Incorporated will succeed each of its two subsidiaries as the general partner in the partnership, and operate the system directly." (Emphasis added.)

On August 17, 1984 GTEM wrote to the administrative law judge and the parties stating that it had made the necessary filings merging the two wholly owned subsidiaries into itself, and had also filed for approval of change of ownership with the Federal Communications Commission (FCC). Any structure or capitalization issue is thus obviated.

The System

Extensive staff review of the system and its environmental factors was undertaken before this application was accepted for filing. As a result of this review any issues relating to the design and environmental impact were eliminated.

According to GTEM's witness Robert Rizzari, approximately \$16 million of investment is required to start operations, and about \$8.4 million had been expended at the time of the hearings.

Physically, the system consists of buildings, towers, and communications equipment. GTEM has secured all necessary local (zoning and building) permits. After review and negotiation on certain features, this Commission as lead agency under the California Environmental Quality Act filed a Notice of Proposed Determination with the Secretary of Resources on June 2, 1984 that we had determined the project would not have a significant effect on the environment and that a negative declaration would issue. The 30-day protest period to the Notice expired without any protests being filed. On August 1, 1984, the Commission issued Resolution T-10855 approving the negative declaration. That resolution completed environmental review, and no further discussion or action is necessary here.

To place the system into operation, an interconnection agreement between the cellular carrier and the local telephone company is essential. At the start of this proceeding, issues were outstanding concerning a proposed agreement. By the conclusion of the hearings, GTEM and Pacific Bell had resolved their differences. A modified proposed agreement (Exh. 30, amended by Exh. 37) has been submitted for our approval.

There has been no objection to this revised agreement by any party. Upon review, we find the terms and conditions under which Pacific Bell is to provide facilities and arrangements to connect GTEM to the Pacific Bell system, and the quantities and charges for interoffice trunks and for local distribution channels between each cell site and the mobile telephone switching office to be reasonable. It is in the public interest to approve this agreement without delay to allow service to commence.

The nine Pacific Bell offices chosen for interconnection were selected on the basis of availability of numbers and trunk facilities. According to Grant Saroka, GTEM's engineering witness, the nine number-group configuration which resulted from GTEM's studies will permit landline subscribers in a particular exchange to call a mobile number in that exchange without a toll charge. He expects users of the system to select a prefix from the area in which the user has a community of interest.

The system is so equipped that a failure of any single circuit element within a cell site cannot cause a loss of function of the cell, although its capacity could be reduced in certain types of failures.

The system will initially consist of 25 cells providing for 6,278 users, and by adding channels and equipment, it can eventually be expanded to provide for over 150,000 users. The system meets the standards of the FCC and of the American Telephone and Telegraph Company technical advisory group, Saroka testified.

Philip L. Forbes, GTEM's chief tariff witness, further explained the user capability of the system in his prepared testimony as follows:

"We propose to provide cellular mobile radio telephone service in the San Francisco and San Jose areas by offering access to our cellular mobile radio telephone system which will be interconnected to the public switched telephone network. In addition, we will offer four enhanced services: call forwarding, call diversion, call waiting, and three-way calling. We will also offer call restriction options, directory listings, roamer service,² and detailed call billing."

* * *

² A roamer is an authorized user of another cellular telephone service who enters the local service area. A roamer must arrange for service with the local provider.

"The service involves the furnishing of a number on the cellular mobile radio telecommunications system and the use of facilities, not including the cellular mobile telephone, by which messages may be transmitted and received over the system. . . . Because the San Francisco and San Jose system is interconnected to the public switched telephone network...it will be possible for a mobile user of the system to place a local call anywhere throughout the area indicated by the map. In addition, a mobile user of the system can place message toll telephone service calls to anywhere in the world on a sent-paid or receive basis, collect or by using a telephone company credit card number. A mobile user anywhere within range of the system may also receive local calls placed from any selected telephone exchange interconnected to the system...and may further receive toll calls from anywhere in the world, except that received-collect calls and third number billing to a mobile number are not permitted."

There are no outstanding issues regarding capability or design of the system, and we should approve its operation. (The "number assignability" question, which basically concerns Pacific Bell's capabilities and needs, is discussed subsequently.

The Protestant

Intrastate Radio Telephone, Inc. of San Francisco, McCaw Communications of San Francisco, Inc., and McCaw Communications of San Jose, Inc. (protestant or IRT/McCaw) are now jointly pursuing frequency block A (nonwireline) applications before the FCC for San Francisco-Oakland and San Jose. This combine is the protestant. IRT standing alone is a certificated radiotelephone utility (RTU) in California. As an RTU, IRT may become a reseller of cellular mobile service without seeking additional certificated authority, by filing appropriate tariffs in any area where cellular service becomes available. (AMPS decision, mimeo. p. 58a.)

The Headstart Period and the
Adverse Position of the Parties

The FCC has awarded frequency blocks for the wireline carriers, but is still processing applications for the nonwireline frequencies. This means that when we award a certificate to a wireline cellular carrier, that carrier has a monopoly until the nonwireline carrier for the same area starts operating. This temporary monopoly period is called the "headstart" period. Estimates of its length vary. During this proceeding IRT/McCaw settled its differences with the only competing nonwire applicant before the FCC for the San Francisco-Oakland and San Jose areas. Even with this settlement the consensus seems to be that nonwireline operations will not begin until late 1986 or early 1987.

During the headstart period, GTEM proposes to offer wholesale service to resellers and retail service to the public. IRT/McCaw wishes service to commence so it can become a reseller. GTEM thus will become the monopoly supplier of cellular mobile service³ to resellers which are its customers, while simultaneously being a competitor to them as a retailer.

Assuming that the IRT/McCaw partnership becomes the non-wireline carrier it can (and it has stated on this record that it intends to) seek transfer of its end-user (i.e. its own retail) customers to its own cellular system. There is nothing improper in such a posture; FCC decisions specifically contemplate that applicants for nonwireline authority may become resellers during the

³ The headstart monopoly is not absolute because standard RTU service is available. IRT/McCaw's witness Trout testified that IRT has constructed a new automatic dial access system which can accommodate up to 1,400 units. Other conventional RTUs exist, and may have limited spare capacity from time to time.

headstart period and place themselves in this position, to minimize the headstart effect.

The result, however, is that (as is emphatically demonstrated by this record) GTEM and IRT/McCaw view each other as all-out competitors, if not as natural enemies. While IRT/McCaw does not oppose the application because it wishes to function as a reseller, it proposes stiff regulation for GTEM's operation (including GTEM's retail side, which would compete directly with the resellers) while advocating a more-or-less laissez faire approach to regulatory resellers. GTEM, in turn, proposes (among other things) tariffs with favorable features for those who resell exclusively the wireline (GTEM) service, provisions which IRT/McCaw regard as penalties for switching to nonwireline service, and a reseller contract which IRT/McCaw and the Commission staff regard as a "Big Brother" scheme to dominate the resellers. Most particularly, protestant views GTEM's proposed rates, and the data supporting them, as an attempt by GTEM to cross-subsidize its retail operation by its wholesale service.

Only in this light can the record here be understood.

Previous Decisions

Decisions of the FCC in this area require the development of a resale plan, which necessitates wholesale tariffs available to resellers. D.83-06-080 (June 29, 1983), the interim decision in the same application leading to the final AMPS decision, states:

"A resale plan that constitutes a viable business opportunity and thereby permits the non-wireline 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 non-wireline carrier."

Thus, we are committed to requiring wholesale rates which provide resellers with a reasonable business opportunity during the headstart period. Implicitly, if the cellular provider is to be permitted a retail (direct-to-end-user) side of its own business, some system must be placed into operation which prevents competition of a type which would permit resellers to drive the cellular carrier from the retail market, or which would allow the carrier to use its retail business to drive out the other resellers.

II. THE EVIDENCE

GTEM's Retail Proposal

Philip L. Forbes, GTEM's director of regulatory affairs, testified that the company's plan is, to a large degree, traffic sensitive and usage charges would be imposed on the heavy users. The monthly access charge is proposed that \$39 with usage during peak period charge at 45¢ a minute and an off-peak period 20¢. The access charge recognizes the availability of the system regardless of the usage, to make a contribution to overhead costs.

Four enhanced services would be offered: call forwarding, call diverting, call waiting, and three-way calling. Any combination or all of these services would be offered as an optional package at a flat \$10 per month charge, plus usage charges. There is also a call restriction option available, for a one-time charge of \$35.⁴

A roamer (see footnote 2) must arrange for service before being able to place or receive calls. The charge for such services is \$5 per day plus 50¢ for each minute of usage.

Cellular radio telephone numbers are almost all nonpublished, the witness said. This is because there is a charge

⁴ The enhanced services are also offered at wholesale through resellers.

for incoming calls. However, if a customer wants the cellular mobile number listed in a directory, this will be arranged for a flat annual charge of \$36 while GTEM absorbs any charges which the local telephone company may make.

Customers will receive a monthly bill showing their access charge, the total minutes of usage, and usage charge for that month. Customers may elect to receive a detailed bill on a continuing monthly basis for \$2.25 a month. Toll calls made on a sent-paid basis will be itemized on the bill.

There is no charge to deactivate the service but changes of service or restoring service carry a \$25 flat charge for each request. There will be a late-payment charge as allowed by Commission rules.

GTEM's tariff provides for a service deposit of \$300. Interest at a rate of 6% per year will be paid on each deposit held by the company for more than 30 days.

GTEM's Proposed Wholesale Tariffs

The witness also described the tariffs for wholesale cellular service, that is, service to the public via resellers. It is the wholesale tariffs that caused most of the controversy.

Under the wholesale tariff a reseller purchases blocks of numbers from GTEM under either an "exclusive" or "nonexclusive" basis. A reseller must order an initial block of 50 numbers and thereafter may purchase numbers in blocks of 10. A reseller ordering on an exclusive basis agrees to contract and deal with only GTEM for cellular network services. The reseller dealing with GTEM exclusively receives a slight discount in the access and usage charges. The access charge decreases when the reseller obtains more than 500 numbers and there are further decreases at a 1500 and 4500 levels. Usage charges decrease when a reseller's usage is in excess of 250,000 minutes per month.

The witness stated that the tariff is designed as an incentive to resellers to promote the use of the service. The minimum of 50 numbers and sales thereafter in blocks of 10 follows the structure determined appropriate in the AMPS decision. The actual rate structure is similar to that in the retail tariff. An exclusive reseller who has ordered from 50 to 500 numbers would incur an access charge of \$31.25 per number per month with a peak usage charge of 38¢ per minute and an off-peak usage charge of 16¢ per minute. Rates for nonexclusive resellers are slightly higher. The same optional services are available under the wholesale tariff but the rate is slightly lower.

Regarding service, Forbes testified that GTEM will respond to trouble reports from resellers, but if trouble is found in the mobile telephone unit rather than in the cellular network, a charge of \$25 per occurrence will be assessed. On cross-examination he testified that this is to discourage excessive service calls by the resellers and keep costs down. He believes that this type of tariff provision will cause resellers to check carefully before requesting GTEM to investigate trouble.

GTEM will also furnish billing tapes to resellers so that they may bill the end-user customers. There is a charge of \$75 for each billing tape which the reseller fails to return, because the tapes can be reused.

There is also a call restriction feature available for a \$30 nonrecurring charge, to prevent misuse of lines.

Robert Rizzari, GTEM's controller, testified generally as to GTEM financing. That portion of his testimony devoted to profitability under proposed rates was the subject of controversy.

He testified that GTE Corporation, the parent of GTEM, is a \$13 billion company which has committed approximately \$200 million to the development of cellular mobile radio telephone system. GTEM's expenses are being financed by its partners in a manner similar to the financing of the initial investment to establish GTEM.

Rizzari's duties include financial planning. His analysis of the market leads him to the conclusion that the proposed system should break even on an annual basis in its second full year of operation and on a cumulative cash flow basis following the fifth year of operation. The pro forma income statement he and his staff developed for the first five years appears on the following page.

PRO FORMA INCOME STATEMENT
(Thousands of Dollars)

<u>Year</u>	<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Net Revenues	-	3,613	9,575	15,812	27,452	48,953
Direct Costs						
Field Operations	676	1,501	1,664	1,925	2,406	3,179
Commissions	-	77	53	73	157	255
Billing	-	65	174	280	474	821
Leases	331	467	539	539	539	737
Facilities & Telco Charges	-	2,007	2,258	3,094	4,587	6,531
Depreciation	-	1,401	1,574	2,098	2,711	4,207
Warranty	-	48	48	54	45	97
State & Local Taxes	87	397	796	1,242	2,053	3,612
Total Direct Costs	1,094	5,963	7,106	9,305	12,972	19,439
Gross Margin	(1,094)	(2,350)	2,469	6,507	14,480	29,514
Indirect Costs						
Marketing	214	358	351	382	432	629
Gen. & Admin.	744	531	521	567	641	934
Engineering	1,386	416	409	444	502	732
Advertising	117	369	362	395	446	649
Interest Expense	16	445	363	419	570	676
Total Indirect Costs	2,477	2,119	2,006	2,207	2,591	3,620
Operating Income	(3,572)	(4,469)	463	4,300	11,889	25,895
Other Income (Deduction)	-	(2)	(10)	(22)	(38)	(68)
Income Before Taxes	(3,572)	(4,471)	453	4,278	11,851	25,827
Federal & State Taxes	1,829	2,288	(231)	(2,190)	(6,066)	(13,220)
Investment Tax Credit	-	1,235	173	486	577	1,425
NET INCOME	(1,743)	(948)	395	2,574	6,362	14,032

The third area of considerable dispute was the testimony of Kevin B. Blair, GTEM's director of business planning, concerning the development of rates. Blair testified that the applicant's objective is to provide cellular service to the broadest possible market but that GTEM sees the service at present as primarily business oriented.

In Blair's opinion, the studies support his conclusion that the wholesale side and the retail side of GTEM's business can stand on their own, and that the financial performance of the wholesale and retail businesses will be approximately the same, as measured by return on sales. In his opinion the wholesale business will be slightly less profitable than the retail business and protestant fears that the retail business will be cross-subsidized by the wholesale side are unfounded.

He said that all of the costs of operating as a wholesale business are with minor exception also required for retail and this allowed the studies to portray the costs of each business on a stand-alone basis.

Blair said that certain incremental costs associated solely with retailing were directly assigned to that end of the business (such as costs associated with sales offices) but that a fully separated costing approach was unjustified in view of the fact that many costs are common. A fully allocated cost analysis for each business was developed solely for Commission information in processing this application. Since he believes that most of the major costs are common, he does not recommend adoption for regulatory purposes of stand-alone accounting for the wholesale and retail sides of the business.

GTEM's position is that its wholesale tariffs should be evaluated in the context of what it considers to be most likely and best qualified resellers, which GTEM believes to be radio equipment

dealers and radio common carriers. GTEM's brief notes that Arthur Trout, IRT/McCaw's witness on resale tariffs, and Dr. Lee Selwyn, an independent communications expert appearing as a witness for the protestant, admitted as much on cross-examination. GTEM notes that in the AMPS decision this Commission established retail and wholesale rates that would enable a hypothetical reseller with 60% of the market to achieve a pre-tax profit margin for the first year's operation of 8.30%. Since that decision, 19 resellers have been certificated (in addition to certificated RTUs) and the Commission has determined that resellers can lower prices on 15 days' notice. A review of these resale applications (of which notice was taken) shows a variety of estimating first year results, with widely varying projections from substantial profits to losses for first year operations. In view of this, GTEM's position is that the Commission must evaluate proposed wholesale rates with reference to the best qualified resellers.

GTEM's witness Blair regards businesses with existing sales outlets and having sales personnel familiar with the mobile communications markets as best situated to be cellular resellers. Such businesses would have costs common to supporting cellular and other business endeavors. Thus incremental costs of starting cellular resale operations would be low. This leads GTEM to the conclusion that the Commission should authorize a rate spread between wholesale and retail rate sufficient to attract these businesses, but no greater. In other words, the Commission is not required to set wholesale rates to accommodate resellers with high-cost structure. Such high-cost businesses would probably not survive in the competitive market anyway, and the result would be to harm their customers and the underlying carrier as well. GTEM notes on brief that IRT/McCaw's witness Stanton expressed a similar opinion and that he mentioned such businesses as car rental agencies, hotel chains,

IRT/McCaw itself, and other large businesses as being best suited to being cellular service resellers.

GTEM's witness Blair presented an analysis of the potential of the resale business under the proposed tariff which, in his opinion, demonstrates that for the San Francisco-Oakland-San Jose market, a small reseller with only 488 units and thus only 6.75% of the market would realize a pre-tax profit margin less than 8.30% (the margin found sufficient to constitute a viable business in the AMPS decision) but that larger resellers would definitely be above that figure and profit margins would increase with the size of the market. GTEM notes that Blair's exhibits actually contain errors in computing taxes and lease expenses when corrected, show greater profit margins for the resellers than in the original calculations. GTEM also points out that although its position is that those who can act as cellular resellers on an add-on basis are in the greatest position to make immediate profits, Blair's mathematical analysis (Exhibit 1, Schedule 9) does not represent such an incremental business but a start-up business, and that a truly incremental business will have incremental costs approaching zero.

GTEM summarizes the "exclusive reseller option" rates spread in its opening brief as follows:

GTEM Spread Between Proposed Wholesale and Retail Rates
Exclusive Reseller Option

<u>50-500 Access Numbers</u>	<u>Spread Per Access No.</u>
Access (\$39.00 - 31.25)	\$ 7.75
Peak Usage (.45 - .38 = .07 x 300)	21.00
Off-peak usage (.20 - .16 = .04 x 6)	<u>.24</u>
Spread for all reseller customers:	\$28.99 per month

<u>510-1500 Access Numbers</u>	
Access (\$39.00 - 30.50)	\$ 8.50
Peak Usage (.45 - .36 = .09 x 300)	27.00
(Assuming more than 834 users)	
Off-peak usage (.20 - .16 = .04 x 6)	<u>.24</u>
Spread for all reseller customers:	\$35.74 per month

<u>1510-4500 Access Numbers</u>	
Access (\$39.00 - 29.50)	\$ 9.50
Peak Usage (.45 - .36 = .09 x 300)	27.00
Off-peak usage (.20 - .16 = .04 x 6)	<u>.24</u>
Spread for all reseller customers	\$36.74 per month

<u>4510 and More Access Numbers</u>	
Access (\$39.00 - 28.25)	\$10.75
Peak Usage	27.00
Off-peak Usage	<u>.24</u>
Spread for all reseller customers:	\$37.99 per month

GTEM reminds us that the "nonexclusive reseller" option would not be used by any reseller during the headstart period since there is no other purveyor of the service available. It also points out that the exclusive reseller option will be available to resellers who are selling both cellular and improved mobile telephone service (IMTS). Thus the protestant would qualify for the exclusive reseller

rates even though one of its partners possesses RTU authority. Finally, GTEM points out that the wholesale and retail rate spreads for cellular service in cities outside California are substantially less than those proposed by GTEM, but the resellers have been operating in other cities and have found those rates to be adequate to conduct a successful business.

GTEM notes on brief that IRT's witness Trout testified both IRT and its affiliate or parent have existing agreements with resellers of one-way RTU service and the rate spread which IRT offers is less favorable than GTEM's proposed spread, and that for two-way mobile, reseller compensation is a fraction of that proposed here by GTEM.

GTEM finally points out that in the AMPS decision the Commission ordered the filing of wholesale and retail rates which, in the Commission's opinion, will result in a pre-tax profit margin of 8.30% for a hypothetical reseller with 60% of the market. GTEM maintains that the rate spread it proposes is almost identical to that in Los Angeles. The GTEM brief summarizes the differences as follows:

<u>Total Quantity GTEM Access Numbers Spread</u>	<u>Los Angeles Spread</u>	<u>Difference in Spread</u>
4,510 or more \$37.99	\$37.97	\$.02
1,510-4,500 36.74	37.97	-.26
510-1,500 35.74	37.97	-2.23
50-500 28.99	37.97	-8.98

GTEM's witness Blair testified that in his opinion the Los Angeles rate spread contains an artificially high margin which will attract more resellers into the business than the total market can support, leading to the failure of some. He conceded, therefore, that the GTEM proposal would be attractive to fewer resellers, that is, some small resellers which do not intend to develop the business and attain the higher volumes to increase their rate spread.

Protestant's Recommendations

Arthur Trout, district general manager for IRT, testified that IRT, together with TelPage, which are both subsidiaries of Gencom, an Arizona corporation, together serve more than 50,000 one-way paging units in the greater Bay Area and have provided various one-way and two-way radio telephone services for 25 years.

He explained that IRT's existing RTU customers are on manual, operator-assisted systems which are "clearly inferior" to cellular. To the extent that such customers cannot get cellular service from IRT, they will, in his opinion, migrate to GTEM unless IRT is in a position, during the headstart period, to resell GTEM service to them on reasonable terms. He further stated that for the same reason IRT is in danger of losing its own best qualified resellers to GTEM. He reviewed several factors in the GTEM proposal which, in his opinion, would discourage a reseller from taking advantage of better terms that might be offered by the nonwireline carrier after the headstart period is over.

The first of these is the provision that customer telephone numbers shall remain under control of GTEM. The Reseller Agreement which GTEM proposes be signed by all resellers provides that no end-user shall acquire interest in a number and that GTEM reserves the right to assign or change numbers when necessary. He testified that the telephone number assigned to a mobile unit becomes a part of that unit by being "burned" into a part of that unit called a "PROM" (programmable read-only memory). This is for the purpose of identifying the unit when it makes an outgoing call for billing and other purposes, and also enables the landline telephone company to identify and route incoming calls to the Mobile Telephone Switching Office (MTSO). He disagreed with GTEM that customers would not generally wish this number to be known and testified "the customer may include the number on business cards, stationery, and in the

telephone directory, and will certainly be provided to all persons from whom he expects calls." Thus, if an end-user or reseller decides to switch to the nonwireline system, he said, the cost of switching to the customer and the reseller must include reprogramming of the units, changing of directory listings, and informing customers. In his experience an average of one hour of time at a cost to the reseller of approximately \$30 is required for reprogramming of the mobile unit. He said there is no technical or engineering reason why the numbers must "belong" to GTEM; they actually belong to the landline company and can just as easily be assigned to the reseller.

There is also an involved difference of opinion between this witness and GTEM on how to configure lines to avoid message unit charges. The witness testified that IRT already has in place an existing network of trunks which would permit it to handle more than 97% of all incoming (i.e., direct inward dialing or DID) calls destined for mobile units by placing them on GTEM's system. With the appropriate arrangement with GTEM, IRT could undertake to carry all incoming calls directed to its cellular customers and to route them to GTEM's switch for further processing on the GTEM network. He stated the result would be the message units which would otherwise be charged to the calling party would largely be avoided, as would significant DID trunking charges, and finally, IRT would have the opportunity, once licensed by the FCC, to switch its customers without delay and with less danger of service outages. He testified that landline carriers have been less than reliable in bringing about such switchovers.

Secondly, he denied that the margins proposed by GTEM for resellers are sufficient and said that the GTEM spread is far less than what is already being paid to resellers and sales agents in the Bay Area. In his opinion the present margins are necessary to

attract the best resellers, and GTEM's proposal will discourage the best resellers from entering into the cellular marketplace.

He also objected to the charge for a trouble call, stating that the reseller would be obliged either to maintain a technical person on its own premises or to contract the work to an independent shop, at a rate of between \$40 to \$50 an hour.

John W. Stanton, vice president of McCaw Cellular Communications, Inc. and its wholly owned San Francisco and San Jose subsidiaries, testified that present users of conventional RTU are prime candidates for immediate cellular service and unless IRT and other companies can become resellers on a fair basis there will be substantial migration directly to GTEM, damaging existing carriers. The lengthy list of particulars to which protestant objects includes the following:

1. A strong difference of opinion on the actual usage for customers under both prime time and off-peak periods.
2. Costs for resellers shown in GTEM's estimates are based on GTEM's exclusive rates and not on nonexclusive schedule which would be applied to any reseller after the headstart period wishing to deal with the nonwireline carrier as well as GTEM.
3. A last-in-first-out (LIFO) provision which includes a six-month minimum commitment for access charges to be paid to GTEM for that line, even if the reseller wishes not to use the line. (Much time was spent examining certain witnesses on the exact effect of this, but it is clear that under certain conditions it can add substantially to a reseller's costs. GTEM states that the purpose of this provision is to prevent fluctuations in usage which lead to excess capacity and excess investment).

4. In the opinion of the witness GTEM's projections grossly understate staffing levels of resellers, salaries, commissions, and other expenses.
5. According to the witness, while GTEM's projections purport to show that the tariffs furnish an attractive business opportunity for potential resellers, they do not analyze total income and expenses over a significant period of time but only a single hypothetical month, and this analysis omits entirely the estimated costs incurred by the reseller in putting units into service. In particular, GTEM's analysis did not use an average number of revenue producing units during the first year but the units on line at the beginning of the year, thus drastically lowering expenses.

Most particularly the witness objected to GTEM's comparison of what he termed "minimal staffing and advertising budget" as being able to compete effectively with GTEM's own announced retail effort, which includes three retail outlets with a full staff at each and plans for an intensive advertising campaign. The witness attempted to develop a comparison which would include similar promotional efforts and staffing for resellers, using GTEM's own assumption that the resellers could capture 60% of the market with GTEM directly serving the other 40%. He also included certain other miscellaneous expenses which he felt GTEM had omitted from its calculations.

Based upon that development, he concluded that there is no way a third party reseller could profit, even over a relatively long run, on the basis of GTEM's proposed tariffs.⁵

⁵ The formats of the GTEM exhibit by witness Rizzari and that of this witness vary so widely that it is impossible to construct a comparison table showing where they differ, and, in any event the starting assumptions vary so widely that several dozen footnotes would be necessary to any such table to justify the figures. Neither witness, of course, has the benefit of any recorded information from which to make projections.

Finally, the witness objects to the GTEM's analysis proceeding from an incremental business rather than analyzing reselling as an independent startup business. According to Stanton, he agrees that some costs might be allocated between regulated and unregulated business but savings would be little or nonexistent if the present business's other activities did not involve mobile communications in San Francisco and San Jose.

Lee L. Selwyn, Ph.D., an independent consultant, testified on behalf of protestant. His presentation is in considerable detail, only the highlights of which can be reviewed.

Dr. Selwyn believes that during the monopoly or headstart period GTEM, as the supplier of the service, exercises a position of price leadership at the retail level because GTEM's retail price establishes an upper limit above which other resellers cannot sell their services. At the same time this is true, GTEM can, during this period, control wholesale prices. These two positions enable GTEM to regulate reseller entry into the field because it can control the profit margin of the resellers.

He is also critical of GTEM's establishing rates at "market driven"⁶ levels. He points out that no standard utility ratemaking concepts have been used to develop the wholesale rates, and GTEM is in a position to charge a relatively high wholesale price during the monopoly period, and using the high profits earned during that period to lower its prices after the nonwireline competitor begins operations. Selwyn's analysis demonstrates that GTEM will realize a 54% return on average net investment in the fifth year.

Dr. Selwyn points to the fact that GTEM's studies on profitability for resellers assumes that resellers are engaged in some other line of business and would regard the cellular resale business as incremental. Thus, according to Dr. Selwyn, to the extent that a small marginal reseller cannot earn much profit on the cellular business, it would be required to capture profit from other business lines. Assuming a reseller to be in the business of sales and lease of mobile telephone units, it would thus be forced to maintain relatively high prices on the equipment items because of the low margin available from resale of the cellular service. On the other hand, using GTEM's own calculations, Dr. Selwyn concludes that a stand-alone reselling business would probably not succeed.

⁶ The term "market driven" does not appear in the prepared testimony of the GTEM witnesses but in the cross-examination of Philip Forbes (Tr. 440). He testified that certain rate design cost studies were not performed and that rates were "market driven"; that is, that the tariffs resulted from marketing studies. He further testified that he was not sure whether the rates would drop when the nonwireline carrier comes on line but that this would be determined by many factors. (Tr. 441.)

Further, according to Dr. Selwyn, because of the demand for the product, if GTEM can set rates at "market driven" levels it can use its wholesale profit during the monopoly period to subsidize its own retail side of the business. GTEM presented cost studies which attempted to allocate common costs between retail and wholesale, and certain direct costs to retail. Dr. Selwyn's analysis concludes that too much of the costs are allocated to the wholesale side. According to the witness, GTEM assumes unreasonably that a retail operation includes zero additional capital investment. He also points to GTEM's allocating retail costs on its 50-50 basis between retail cellular service and the cellular mobile equipment sale-lease business. He states there is no factual basis for this. The analysis, he points out, assumes that every GTEM retail customer would rent a mobile telephone set from the company, but to the extent that at least some customers do not obtain their equipment from GTEM, there is an underallocation of retailing cost to the cellular service side of the retail activity.

He also points to certain errors in calculating sales commissions that, if corrected, substantially increase the costs of GTEM's retail cellular business. Further, the retail startup costs did not include marketing and advertising expenses.

Dr. Selwyn is further critical of the restrictions on the transferability of cellular telephone numbers contemplated in the GTEM tariff. If the reseller wishes to transfer subscribers to the nonwire licensee's system, it must modify the telephone number which is encoded in the PROM chip in the unit. An easier system using serial numbers is possible but was not adopted by the FCC. Selwyn testified that even under the present system, the Commission should take whatever action possible using the FCC-approved software to prevent GTEM from causing resellers undue expense in changing from one system to another.

Dr. Selwyn's first solution is to give the resellers the opportunity to control a block of telephone numbers which the reseller can assign to its own customer. This system could actually benefit the wholesaler because the reseller electing this mode of operation would absorb a number of costs which the underlying carrier will otherwise incur. The disadvantage is that the reseller must invest in its own switching equipment and trunking facilities, but if a reseller is willing to do this, it gains greater protection for its customer base. Dr. Selwyn also described the following approach:

"An alternative method would permit the reseller to arrange for an entirely separate block of DID telephone numbers, using a different central office prefix ('NXX') code, which would be used by the cellular carrier as long as the reseller continued to do business with that carrier. However, if the reseller changed to the other carrier, it could arrange to have Pacific Bell transfer the DID trunks from the wireline carrier, for example, to the non-wireline carrier, on a 'flash cut' basis. Customers would still have to change the position of the 'A/B Switch' on their units, but could retain their telephone numbers even after the transfer of their service from one carrier to the other."

Dr. Selwyn stated that this method would not interfere with the identification of roamers.

"Under this plan, the reseller would request a block of telephone numbers with a different NXX prefix than that which was assigned to the wireline carrier. Instead of associating these numbers with the underlying carrier, the clearing house(s) would be advised to associate the specific NXX prefix code with the reseller directly. Thus, when the reseller elected to change to another carrier, no additional notification to the clearing house would have to be made."

Dr. Selwyn is also critical of certain tariff features reviewed previously, which in his opinion, tend to lock in the reseller to GTEM.

Dr. Selwyn recommends that the Commission should "build a wall" around GTEM's wholesale service activity and should require a demonstration that, over a reasonable planning period which extends beyond the pre-monopoly headstart period, the wholesale rates would generate a fair rate of return. He recommends that no exemption be granted for GTEM from General Order (GO) 96 in connection with either its wholesale or retail tariffs and that all incremental retailing costs should be properly determined through proper allocation of joint personnel and other resources to preclude or at least minimize cross-subsidization of the retail side of the business with wholesale monopoly profits.

Staff's Presentation

Staff witness Mark Bumgardner made several accounting recommendations the most significant of which is that applicant should separate costs by functions. Dr. Selwyn expressed agreement with this recommendation. Bumgardner recommends that costs directly assignable to wholesale be assigned to wholesale accounts, that retail be directly assigned to retail, and costs directly assignable to nonutility operations assigned to separate nonutility accounts. He further stated "costs not directly assignable to any of these areas shall be allocated to the three different areas based upon some logical allocation method" which would be reviewed in audits.

Bumgardner further testified that in his opinion the applicant's resale plan does not constitute a viable business opportunity for the nonwireline carrier (that is, the protestant in this case which will probably become a nonwireline carrier when a

license is issued). Bumgardner examined the applicant's revenue and expenses for providing retail service to the end-user. He noted that the wholesale portion of the applicant's operation shows profit in the second year but the resale portion, if analyzed under the same condition as for an independent reseller, does not become profitable until the third year.⁷ According to Bumgardner this means that any reseller who operates under the same conditions as the applicant's retail operation would lose money and would have to subsidize itself for the first two years from other sources.

Bumgardner also objects to the previously mentioned tariff provisions which require a six-month commitment and include a LIFO policy on numbers. His analysis shows that under certain conditions resellers could be forced to pay substantial access charges which are not used by the reseller's customers.

Willard A. Dodge also testified for the staff. He was most critical of a reseller agreement that applicant proposed in addition to the tariffs. He viewed the document as establishing a subordinate status for the resellers somewhat on the order of a subcontractor.

Responding to this criticism, GTEM furnished with its brief a revised "intercarrier agreement," intended to eliminate the controversy. However, the following still appear in the document to which objection in principle can be found in Dodge's testimony:

⁷ Bumgardner's analysis of overall profitability (from GTEM's pro formas, which do not separate wholesale and retail,) establishes that if GTEM's development is adjusted to conform with Commission rate base accounting practice, GTEM's return on rate base would start at a negative 18.46% for the first year of operation and advance to a positive 73.07% the fifth year.

1. The requirement that the resellers shall submit quarterly reports to GTEM including a six-month forecast of anticipated new end-users "and then the other information that Mobilnet may from time to time reasonably request with respect to each system expansion requirements and this performance of services hereunder."
2. Reseller is required to provide the form of end-user contract, if any, for GTEM's review and approval. This provision thus include the statement that the reseller may delete "proprietary information not relating to Mobilnet's interests" prior to submitting it for approval.
3. GTEM reserves the right to establish standards for advertising, promotional, and end-user training manuals, although such review is limited to "factual matters" pertaining to GTEM's services and the use of GTEM's service marks and trademarks.
4. The above restrictions specifically do not apply to any reseller owned or controlled by GTEM, or GTEM's parent company.
5. The agreement includes a provision that if there is a conflict between the agreement and the tariffs, the tariffs shall control.

Dodge stated that if any of the material in the agreement is necessary for GTEM's operation, it ought to propose tariff rules instead of requiring the signing of such a document.

Dodge regards the wholesale rate structure with "exclusive" and "nonexclusive" rates as anticompetitive and violative of PU Code § 453a. He stated he had no problem with a reasonable structure that has lower rates for larger quantities, and stated that the Commission has frequently approved such discounts in the past.

Generally, Dodge recommends applying the same conditions to GTEM as to PacTel Mobile Access in Los Angeles.⁸ Thus, according to the witness, the facilities-based carrier should have no exemption from making a showing in support of rate increase as required by GO 96. The witness stated he was aware that during the hearings in the AMPS proceeding the Commission did grant exemption to resale carriers (15 days' notice and no showing for increases) on the premise that competition among resellers would suffice. But since there is no competition at the wholesale level, Dodge said, that cannot be applied to the carrier.

Dodge recommended block rates which, in his opinion, would not be so unfavorable to the small reseller. A table follows illustrating the difference between the applicant's proposal and Dodge's recommendation.

⁸ PacTel Mobile Access is the successor to AMPS, the original applicant in Los Angeles. The AMPS decision to which reference has been made applies to the operations of PacTel Mobile Access in the Los Angeles area.

WHOLESALE RATES, CHARGES AND CONDITIONS

	GTE "Exclusive"	GTE "Non-Exclusive"	Staff Recommended
<u>ACCESS CHARGE - per mo.</u>			
50-500 total numbers	\$31.25 per mo.	\$32.25 per mo.	
510-1500 " "	30.50 " "	31.50 " "	50-100 total no's
1510-4500 " "	29.50 " "	30.50 " "	\$30.50 per mo.
4510 or more " "	28.25 " "	29.25 " "	110 or more no's \$28.25 per mo.
<u>AIR TIME USAGE - PEAK PERIOD (see note)</u>			
250,000 min/mo or less, total usage	\$0.38 per min.	\$0.39 per min.	30,000 min/mo or less, total usage \$0.38 per min
more than 250,000 min/mo total usage	0.36 per min.	0.37 per min.	more than 30,000 min/mo total usage \$0.36 per min
<u>AIR TIME USAGE - OFF PEAK PERIOD (see note)</u>			
total usage	\$0.16 per min.	\$0.17 per min.	\$0.16 per min.
<u>NUMBER ACTIVATION CHARGE</u>	\$15 each number	\$15 each number	\$15 each number
<u>ENHANCED SERVICES</u>			
Any or all of four svcs	\$7.50 per mo.	\$7.50 per mo.	1st service \$3.00 2nd service 2.25 3rd service 1.50 4th service 0.75 per month
<u>CALL RESTRICTION CHARGES</u>			
Any set of options	\$30 nonrecurring charge	\$30 nonrecurring charge	\$30 nonrecurring charge
<u>MAINTENANCE OF SERVICE CHARGE</u>			
Per occurrence	\$25	\$25	\$25
<u>BILLING TAPE CHARGE</u>			
Per non-returned tape	\$75	\$75	\$75
<u>MINIMUM CONTRACT FOR NUMBERS</u>			
	6 months, LIFO	6 months, LIFO	90 days' notice No LIFO
<u>"OVER-STOCKING" OF ACCESS NUMBERS</u>			
	Minimum 50% fill or at discretion of GTE before more numbers provided	(same)	no constraint of this nature is authorized

NOTE: Peak Period: 7 AM to 7PM, Monday thru Friday
 Off-Peak Period: 7PM to 7AM, Monday thru Friday and all day on
 Saturday, Sunday, and on New Year's Day, Washington's
 Birthday, Independence Day, Labor Day, Thanksgiving
 and Christmas

On brief, the staff essentially agrees with the protestant that GTEM's rates are not based upon any standard ratemaking principles. Staff agrees with Dr. Selwyn that GTEM established a retail margin to achieve a desired level of reseller entry and market penetration. It further agrees that at least during the headstart period GTEM should have no exemption from GO 96.

Staff's position on GTEM's proposal regarding the LIFO type provision in a six-month minimum commitment is the same as protestant's. Bumgardner sees a tie-in between these provisions and the fact that short-run profitability for resellers is questionable.

"In order for the resale plan to be financially viable for the non-wireline carrier it would need to be either profitable in a short period of time (because the non-wireline carrier would probably sell its own service when it came on line) or would have to have the ability to transfer customers to its own system when it came on line. [GTEM's] resale plan accomplished neither of these requirements." (Exh. 27, p. 11.)

Staff also does not favor GTEM's proposal to have the authority to deny issuing new numbers to a reseller if in GTEM's opinion the reseller is overstocked with numbers. Staff argues that the reseller is already obligated to pay the access charge for all numbers it has ordered whether or not those numbers have been sold to end-users and believes that this is enough incentive for the reseller to be prudent in the amount of numbers it orders.

Other tariff proposals made by the staff are mentioned in the Discussion section of this opinion.

Staff also takes a position the same as protestant regarding the assignment of specific telephone numbers to the reseller. Staff believes that the evidence presented, although in dispute, shows that Dr. Selwyn's proposal in this regard is feasible.

The foregoing review of the presentations of the three main parties to this case is of necessity abbreviated. The issues are

unusually varied and there is very little agreement between GTEM on one hand, and the protestant and the staff on the other hand, on principal issues and on the weight of the evidence presented.

III. DISCUSSION

Regulatory Framework Generally

Before discussing rates, tariffs, and other conditions of service we must respond to certain basic questions raised:⁹

1. How should initial rates be established for a start-up business?
2. Should standard rate base ratemaking and accounting be required?
3. Is there a danger that GTEM's proposed wholesale-retail structure would not allow reseller competition? Would IRT/McCaw's proposals solve the problem or would they cause the opposite problem of placing independent resellers in a position to drive GTEM from the retail market?

We are working here entirely with pro forma projections, both for expenses and revenues, although GTEM's rate base may be relatively easy to establish because the company has records of its investment to date and a reasonable understanding of its future needs. We have reviewed IRT/McCaw's evidence in detail. While it has succeeded in demonstrating some inaccuracies in GTEM's projections we cannot decide with certainty that IRT/McCaw's development is more accurate generally than GTEM's. However, we generally agree that GTEM's development includes the following major defects:

1. It is not reasonable to regard the business of reselling cellular service as strictly incremental, and to decide that cost estimates should assume zero or negligible

⁹ These questions, as such, were not principal issues in the Los Angeles proceeding.

capital investment. At this early stage of the industry, that is too categorical an assumption, even though many resellers may be part of another business.

2. Other unreasonable slanting of costs appears in GTEM's development, including inadequate allowance for advertising, sales, and promotion.
3. Total income and expenses for resellers over a reasonable period of time were not analyzed, and average numbers of revenue-producing units were not used in developing estimates. (See review of Stanton's testimony, supra, pp. 21-22.)

Finally, there is the problem of separation of wholesale-retail costs. We agree with protestant that GTEM's development inadequately attempts to allocate costs on a wholesale-retail basis, even though certain personnel or functions may be serving both.

Both staff and IRT/McCaw doubt whether on this record we can institute service as GTEM proposes. IRT/McCaw recommends that we either hold proceedings in abeyance until rates can be developed on a rate base model, or even consider denying a certificate during headstart. IRT/McCaw's regulatory model would include complete utility-type regulation for GTEM (both wholesale and retail) while other resellers would be allowed maximum flexibility.

This proposal by IRT/McCaw disadvantages the end-user by delaying the service and is not in the public interest. Even after its inception, it would be almost guaranteed to run GTEM out of the retail business, since even GTEM's retail operations would be subject to the full weight of regulation while other resellers would be given maximum flexibility. Certainly under such a system it might be easy for resellers to undercut GTEM long enough to attract its customers. This is especially true if any reseller is in a position to be financed by a well-established parent corporation. The Commission

could attempt to stop this but it would require full utility regulation for all resellers, a difficult task from a practical standpoint.

Another alternative, principally advanced by the staff but also mentioned by IRT/McCaw,¹⁰ is to deny GTEM retail authority, at least during headstart, to minimize the regulatory burden. Staff's opening brief states:

"Although it is theoretically possible to establish regulatory mechanisms which would create the equivalent of a competitive wholesale market and prevent cross-subsidization of Mobilnet's retail operations, the regulatory task of establishing and maintaining such a structure is excessively complex, difficult, and time-consuming for the benefit of only Mobilnet. The problem with the proffered regulatory fixes is that, unlike the free market, they are not self-correcting. To the extent that any of the current projections of sales, revenues, expenses, etc. are wrong, restoration of the quasi-free market will require speedy, frequent, contested hearings on a multiplicity of issues. If the Commission is seeking to have general rate cases for large utilities only once every three years, it makes no sense to set up a regulatory mechanism which will require Commission decisions on complex cellular rate matters every 3-4 months."

We adopt a variant of staff's suggestion as being most in the public interest: we will approve wholesale tariffs (as specifically discussed infra), disapprove GTEM's application for retail authority, and authorize GTEM to apply for a certificate to engage in resale of cellular mobile service in the name of a separate subsidiary (not simply a separated department of itself). This

¹⁰ IRT/McCaw's version of this apparently still includes rate-base ratemaking, while staff would prefer removing the most regressive features of the tariffs and commencing service swiftly.

structure will require GTEM to treat the separate entity the same as the other resellers, and eliminate any superior position which the GTEM retail organization might otherwise hold over the independent resellers. The disadvantage of this decision is some possible delay for GTEM in initiating retail business. However, our policy has been to process resale certificate applications expeditiously and to grant them unless a clear showing is made that a particular application is not in the public interest.¹¹

We believe this variation of the staff's proposal is better than a "wholesale only" certificate for GTEM because, while we do not believe any FCC decision bars us from such a restriction, we read those decisions (and our own AMPS decision) as contemplating a system which allows the cellular carrier direct access to the end-user whenever possible.

Our decision here is not identical to AMPS but the differences are justified by the record, and are in line with our thinking concerning cost allocations and attendant problems expressed recently in General Telephone Company (D.84-07-108 dated July 18, 1984; A.83-07-02 et al.). The record in that case presented the Commission with a plethora of cost allocation conundrums in connection with marketing customer premises equipment (CPE). We decided that the best solution would be a stand-alone subsidiary. We commented (mimeo. pp. 90-91):

¹¹ In D.84-06-027 we denied the application of PacTel Mobile Access for certification as a reseller of cellular service. In that instance, however, we had authorized the Los Angeles SMSA Limited Partnership to retail directly. The result would have been a situation wherein PacTel was competing with its own certificated partnership. Here we do not permit retailing by the facility-based carrier itself.

"A separate stand-alone CPE marketing subsidiary, whether a subsidiary of General or its parent, GTE, will make future rate proceedings far less complex, even if we allow some limited transitional resource sharing. Limited resource sharing between General and the new structurally separate subsidiary means there would be a cross-flow of billing between the two in some limited expense areas. This is far more preferable than General's proposal for quasi-separated operating divisions, for they would still entail detailed review of accounting and allocations over almost the entire spectrum of test year results of operations components. Given the evidentiary record before us we conclude it is in the public interest to act now, notwithstanding our recently issued OII 84-03-02, instituted to gather preliminary information from all telephone utilities so we could make some tentative recommendations to the Legislature (in response to Assembly Bill 2064 and amended PU Code § 7902.5). Ultimately the regulatory questions posed by either integrated regulated and unregulated operations or separate subsidiaries must be addressed on a case-by-case basis. We cannot say that ordering a separate corporate entity for marketing unregulated CPE will solve forevermore all regulated regulatory questions or issues, but we know that while they may be of a different nature there will be far fewer recurring in General rate proceedings. That is progress.

"We conclude structural separation of General's unregulated CPE sales, in contrast to further attempts at accounting or ratemaking separation, is in the best interests of ratepayers. Likewise, it is probably in the best interest of General from the standpoint of avoiding potential antitrust litigation."

We then offered General certain guidelines on separation, which allowed certain narrow exceptions to full separation. Essentially, sharing of resources was allowed for:

1. Corporate officers, directors, and headquarters and support staff.
2. Legal and accounting support for a period of two years.
3. Customer billing.

We are uncertain at this time whether such exceptions are equally appropriate for the stand-alone reseller business. We will make that decision when the reseller application is filed, but we wish full separation (physical and financial) for working level or operational activities, and if the applicant proposes any cost-sharing at the executive level or for specific support services, it will bear the task of showing that exemptions from full separation will not burden the Commission with exactly the kind of cost allocation and cross-subsidization issues which we are attempting to avoid.

The system we adopt recognizes the realities of the institutional hostility between IRT/McCaw and GTEM, which was summarized previously. The public does not benefit from adoption of any regulatory system which is likely to produce a duststorm of tariff filings, protests to the filings, complaints, cross-complaints, applications, counterapplications, etc. In addition to the public confusion emanating from such a situation, we are not staffed to oversee matters properly if such a scenario occurs. Our solution eliminates the likelihood of this by placing GTEM in a position in which it must treat all purveyors to the end-users equally.

Regarding institution of rates, we agree with the staff that service should commence as soon as possible because of the demand, and that the most appropriate way to do this is to remove

from the proposed tariffs the worst lock-in features, change the rate blocks to favor the small reseller more, and otherwise modify GTEM's proposed tariffs to make them acceptable for the present. We disagree with IRT/McCaw that even temporary use of "market driven" rates is unreasonable in a regulatory situation dealing with a startup industry. Dr. Selwyn's alternative of immediate imposition of traditional utility ratesetting might require higher initial rates to cover expenses and a reasonable return over the first few years while the customer base is developed. This would not benefit the consumer or the industry. Nor, as the staff points out, is there sufficient data or staff personnel to begin such regulation immediately.

We will allow wholesale rates based essentially on GTEM's market projections and cost estimates to go into effect.¹² We will, however, require rate-base, utility-type accounting to begin in 1985. This will allow us, once the cumulative break-even point is reached, to assure that the return for the business is reasonable and commensurate with risk.

Such surveillance is necessary for two reasons. The first is that projections by the staff (see discussion of Bumgardner's development) demonstrate the possibility of excessive rates of return after a few years. We have a clear duty to prevent this (PU Code § 451). After headstart, there may also be the need to prevent unreasonable price competition between the two cellular providers, which, in the long run, would benefit neither the carriers nor the public.

¹² Specific modifications are discussed under the heading "Rates and Tariffs."

While applicant and the resellers view cellular mobile service as business-oriented and not in the same category as basic telephone service, it should not be regarded permanently as a carriage trade item, and, in the long run, rates should be established so that while there is a fair return to wireline and nonwireline providers, the service is available as widely as possible. Considering the history of telecommunications generally, it can be seen that today's "luxury" has a way of becoming tomorrow's necessity.

We cannot decide now whether full applications for rate increases will be necessary in the future with a duopoly rather than a monopoly; we have no economic information at hand with which to make that decision. For the present we will require:

1. Advice letter filings for tariff changes, with copies served upon the resellers.
2. Annual reports using standard utility rate base accounting, commencing with the 1985 calendar year (that is, year-end reports based on recorded data).
3. Pro forma estimates for each current year based upon the first six months' recorded data.

We recognize that accounting systems for traditional landline telephone companies may not be suited for GTEM and other similar companies. The Evaluation and Compliance Division should develop appropriate accounting requirements after obtaining input from cellular providers.

It should be apparent from this discussion that we consider GTEM's request for exemption from GO 96 to be unmeritorious. Exemption would not permit proper regulatory surveillance, nor would it allow a proper opportunity to protest tariff filings.

In closing on this subject, we will add that it is our intention to treat the wireline and nonwireline carriers in this market equitably. When the headstart period concludes we will reexamine the "separate reseller entity" concept. We will also investigate what degree of rate flexibility should be in place when two carriers are operational. We will of course consider the interests of the independent resellers and the public in reaching that decision.

This decision does not establish a rule that in all future cellular applications, a separate reselling organization is necessary, but if problems similar to those in this application are encountered, we may follow this result. Nor does the foregoing discussion mean we have prejudged the merits of any application by a GTEM subsidiary for a cellular resale certificate.

The Reseller Contract

As discussed under the heading "Staff's Presentation," the staff (and protestant as well) object to the "intercarrier agreement" (a formal contract which GTEM wishes to require each reseller to sign).

GTEM regards the redrafted agreement as meeting objections raised by the parties and the ALJ. It states on brief that GO 96 contemplates such agreements and that they are customary. Further, GTEM argues that it must have the sales data and forecasts to meet demand without at the same time overexpanding plant.

While the forecasting problem is the best argument in favor of the agreement, there are compelling arguments against it. We do not wish to exclude GTEM (or at least its parent) entirely from the resale business. When a subsidiary is established, query whether the other resellers will furnish accurate information, or whether they will be suspicious of its use and resist disclosure, or seek to mislead GTEM. This would then become a policing problem putting a further drain on staff time and possibly resulting in threatened

cancellation of service and formal complaints. We believe GTEM is capable of performing its own market research, and do not deem quarterly reports, etc. from resellers necessary. (GTEM may, of course, seek information on a voluntary basis.)

The provision requiring the reseller to furnish the end-user contract to GTEM for approval, and that which reserves to GTEM the right to establish advertising and promotional standards for resellers, even though limited to "factual matters," are not appropriate. This Commission, not GTEM, regulates the resellers, who hold certificates as telephone utilities from us. GTEM may file tariffs which require the reseller to furnish a form end-user contract to it and to the Commission. If contracts contain matter objectionable to GTEM and negotiation does not solve the problem, PU Code § 1707¹³ is available. GTEM may also file proposed tariffs designed to protect the use of its trademarks and to prevent any misadvertising by resellers of the system's capabilities and uses.

Finally, the revised agreement still includes the provision that the tariffs control if there is a conflict between the contract and the tariffs. Since the contract does not also contain any provision under which GTEM agrees to forbear from filing conflicting tariff provisions, there appears to be a want of mutuality of obligation possibly rendering the contract illusory. In Mattei v Hopper (1958) 51 Cal 2d 119, 122 (330 P. 2d 625) it is stated as a general rule that when the parties attempt to make a contract

¹³ "Any public utility may complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard ex parte by the commission or may be served upon any parties designated by the commission."

"...where promises are exchanged as the consideration, the promises must be mutual in obligation. In other words, for the contract to bind either party, both must have assumed some legal obligations. Without this mutuality of obligation, the agreement lacks consideration and no enforceable contract has been created."¹⁴

The objectionable features of the contract lead us to the conclusion that it must be disapproved. It attempts to allow GTEM to take over some of the regulatory functions belonging to the Commission. It is a bad bargain even for GTEM because it may be unenforceable, at least if tariffs are filed which negate some of its provisions.

Staff witness Dodge testified that the carrier in Los Angeles had proposed no such contract but instead had compiled a user-friendly manual, the tone and content of which serve the purpose of enlisting the reseller's cooperation and explaining how the reseller can get the most benefit out of the system, operationally and financially. It is divided into topical sections, and is essentially a hands-on, how-to-do-it booklet clearly written and free from jargon. We will direct GTEM to produce a similar manual. It may include warnings about such matter as misuse of proprietary information or a reminder on how long overdue bills will be tolerated before service will be discontinued, but it is better practice, in our opinion, to summarize such matter in ordinary English with reference to tariff pages rather than to print tariff language in

¹⁴ This language was quoted with approval in Bleecher v Conte (1981) 29 Cal 3d 345, 175 Cal Rptr 278. See also Witkin, Summary of Cal. Law, 8th ed. Contracts, §§ 170, 174, and 175. This defense to validity is not favored and most cases, including Mattel v Hopper and Bleecher v Conte, result in findings that the contract in question was enforceable. The general rule is, however, very much alive.

full. If GTEM is not certain what is desired, assistance is available from personnel of the Evaluation and Compliance Division.

This Commission wants the cellular RTU system to work well and to attract customers so that it is reasonably profitable. We believe that for this to occur, GTEM must, while protecting its own legitimate interests, adopt as friendly an attitude toward resellers as possible and treat them as customers rather than as adversaries. Our choice of regulatory framework and our ruling on the contract issue are designed to accomplish this.

Rates and Tariffs

Since we are disapproving this application to the extent that it requests direct retail authority for GTEM, this discussion need concern wholesale rates only. If GTEM or its parent establishes a separate entity and if a reseller certificate is granted to it, the wholesale rates and tariffs established for GTEM will apply to that separate business to the same extent as they may apply to other resellers.

It should be noted that, while IRT/McCaw presented detailed evidence on costs underlying rates, it offered no exhibit containing a development of any alternate rate plan. While this application was placed on somewhat of an accelerated schedule, IRT/McCaw might have anticipated that, in view of demand, we would wish to avoid delaying institution of the service if any other alternative is available. We believe IRT/McCaw has sufficient experience in the business to prepare such alternate rates, had it chosen to do so, and is now in no position to complain that our approach is to make the best of the record at hand in order to allow operations to start.¹⁵

We turn now to specific tariff issues and what we believe to be the best solutions to them based on the record.

¹⁵ Applicant estimated during hearings that, assuming a prompt decision, service could start early in 1985.

Exclusive and nonexclusive rate bands. For reasons advanced by staff witnesses Dodge and Bumgardner we reject separate rate bands for resellers dealing exclusively with GTEM and for those not doing so. These were not found necessary in AMPS and we believe that volume discounts, if correctly set up, plus minimum contract periods, are adequate to control undue fluctuations in demand, and pressure on GTEM to make excess plant investment. GTEM should command loyalty of resellers by offering good service, not demand it by too many lock-in provisions.¹⁶ We recognize the adverse competitive position of IRT/McCaw and its desire to transfer its resale customers as rapidly as possible to its nonwireline business when it is instituted, but lock-in tariffs which are too strong punish the remaining resellers.

Access charges and air time usage. We adopt Dodge's rate blocks for access charges and his air time usage charges because we believe the small reseller should receive more favorable treatment than under GTEM's proposal. (See table of wholesale rates, above, which compares GTEM's and the staff's suggested rates.)

Enhanced services. GTEM proposed a flat charge for any or all of the four services (call forwarding, call diverting, call waiting, and three-way calling). Dodge's proposal which establishes a scale of charges based on how many are ordered is, he said, fairer to the consumer and more customary.

In response to Dodge's recommendation GTEM argues that it wishes to package the services for marketing reasons, and points out, in its closing brief:

¹⁶ At one point in his testimony, GTEM's witness Blair stated that GTEM "recognizes the substantial value in having the undivided loyalty of its resellers." He stated, "This value inures as well to the benefit of the reseller." (Exh. 1, p. 20.)

"The pricing of such services by GTE Mobilnet should not be compared with the pricing of such services by a landline telephone company, however. The pricing of such services by a landline company involves only a flat rate price. On the other hand, such services when offered by GTE Mobilnet have two rate elements: The flat monthly rate of \$10.00, and the usage charge which is incurred whenever the service is activated. The call forwarding service, for example, would involve two usage charges. The user could program his cellular telephone so that calls to his cellular number were redirected, for example, to his business office. Usage charges would be incurred on the call to the cellular telephone, and on the redirected call from the cellular telephone to the user's business office. Because there are in fact two rate elements (flat rate and usage sensitive) involved in a customer's use of the enhanced services, and because of the marketing reasons discussed at pages 48-50 of Applicants' Main Brief, applicants' proposed flat rate charge of \$10.00 for any or all enhanced services should be authorized."

With this explanation, we will allow GTEM to price the services as proposed. If they do not "sell" well, we assume applicant will consider revising its thinking on offering a "package."

Maintenance charge. We agree with GTEM that such a charge is justified to prevent excessive or frivolous maintenance demands by inexperienced resellers, and will authorize it at the level (\$25) and under the conditions proposed by applicant.

Minimum contract period for numbers. These proposed features produced heated debate. Applicant and protestant each offered evidence which stressed worst-case scenarios adverse to themselves. Certainly GTEM may legitimately claim concern over how it can serve its customers on an economical basis if demand

fluctuates rapidly, and can also recommend that we allow it to adopt tariffs designed to alleviate pressures which might cause excess plant investment. The issue is how we balance those interests against those of the resellers, who should be free from excessive lock-in provisions after the headstart period. We choose Dodge's and Bumgardner's recommendation that we adopt the same 90-day notice provisions (with no "LIFO") that are in place in Los Angeles.

"Overstocking" provision. We agree with staff witness Dodge that this is superfluous to the minimum contract provision and will not authorize it. Even with a separate reseller entity, it could have anticompetitive effects and lead to disputes.

Other staff suggestions. On brief, staff recommends that tariff provisions be added which cover notice to subscribers, options for customers in handling disputed bills, and that the holiday tariff exclude Memorial Day which has not been considered a holiday for rate purposes. These additions and changes are reasonable. There are also minor changes to GTEM's service deposit tariff which include cross-references. These are also reasonable.

Accounting Recommendations

Recommendations by staff witness Bumgardner which are not previously discussed and which do not relate to the wholesale-retail cost separation problem or to other issues which are disposed of¹⁷ are as follows:

¹⁷ The summary here does not include his major recommendation that applicant must be fully staffed and economically self-sufficient, since GTEM has eliminated the issue by substituting itself for the original subsidiary applicants.

1. GTEM should be required to maintain a subsystem of accounting records in such a form as to show separately the results of operations (plant investment, depreciation reserve, operating revenues, operating expenses, etc.) for the San Francisco/San Jose cellular geographical service area. This subsystem of accounting records should:
 - a. normalize investment tax credit (ITC);
 - b. normalize accelerated cost recovery system (ACRS);
 - c. flow through all other tax deductions;
 - d. separate out dues, donations, and contributions in a separate account;
 - e. separate out fees or costs paid to affiliated companies;
 - f. separate plant under construction from plant in service, except for projects that cost less than \$25,000 or take less than two months to construct which should remain in plant-in-service.
 - g. accrue IDC on plant under construction using the IDC rate developed using the IDC fixed formula calculation;
 - h. separate out interest expenses into a separate account; and
 - i. Follow all other accounting requirements of this Commission which are prescribed for telephone corporations.
2. GTEM should be required to review its IDC rate on a quarterly basis to ensure that the rate is still applicable; should there be a change of 25 basis points or more a new rate should be set. The rate should be limited to a ceiling of one-half of 1% less than the rate of return authorized by this Commission.
3. GTEM should conform to all of this Commission's reporting requirements; including GO 65, GO 77, and GO 104.

GTEM's only objection to accounting requirements concerns the issue, previously discussed, of saddling its retail "side" with accounting requirements which do not apply to other resellers. If an application by GTEM or its parent to resell in this area through a separate entity is approved, that entity will be treated equally with the other resellers. The above listed accounting requirements are not objected to, appear reasonable, and are adopted. If item 11 causes any problem because our accounting requirements have been basically conceived for landline telephone companies, applicant and the Evaluation and Compliance Division (and other cellular carriers) should work together to develop a different and more suitable format for cellular operations. (Cf. previous discussion on this point under the heading "Regulatory Framework Generally.")

The Problem of Assigning
Numbers to Resellers

The principal parties apparently did not realize the seriousness of the dispute on this issue prior to hearings. The result is a wide divergence of opinion between technical witnesses on the capability of Pacific Bell's system, in this regard. At the same time no party offered a witness or evidence from Pacific Bell, which is certainly in the best position to know who is correct. Pacific Bell itself participated only as an interested party and was apparently surprised by the issue. While it presented no evidence, it filed a short brief on the subject stating that adoption of Dr. Selwyn's "alternate" recommendation is feasible (separate NXX codes for resellers affiliated with the nonwireline cellular applicants).

Pacific Bell cites heavy demand on the finite number of NXX prefixes as a major reason it opposes assignment of telephone numbers directly to IRT/McCaw or other resellers. The brief states:

- "1. Pacific Bell believes that further evidence is needed to prove that IRT has the ability to switch calls in this manner; Mr. Trout's unsupported statement is insufficient.
- "2. The Federal Communications Commission and the California Public Utilities Commission ("Commission") both expected that cellular systems would be interconnected directly to the landline telephone network. Interconnection via a third entity seems unnecessarily cumbersome and presents additional problems to the regulatory agencies. For example, Mr. Trout suggests that GTE Mobilnet should charge different rates for customers interconnected in this way; also, the regulatory agencies would have to ensure that any third entity that proposes to provide interconnection is in fact capable of doing so.
- "3. Pacific Bell would prefer eventually to interconnect all large cellular systems by means of tandem interconnection. For large volumes of calls, this is a more efficient and less costly method of interconnection, which ultimately provides better NXX code utilization. Tandem interconnection, however, requires discrete NXX codes; this is one reason why Pacific Bell has agreed to the initial assignment of several NXX codes to the Los Angeles and San Francisco/San Jose systems. These initial assignments will minimize later number changes when tandem interconnection is achieved. The IRT proposal, in contrast, would mean that all customers interconnected by IRT would later need to have their numbers changed to accommodate tandem interconnection.
- "4. The IRT proposal is, in essence, a partial bypass of Pacific Bell's local network. See Ex. 20, pp. 11-12. The Commission has, in Decision 84-06-113, forbidden intraLATA

competition in voice message transmission. IRT's proposal is nothing more than a modified form of intraLATA competition, and should not be permitted.

"Mr. Trout recommended direct interconnection to IRT in order to avoid alleged problems in transferring numbers (Ex. 20, pp. 12-13). Pacific Bell did not receive a copy of Ex. 20 until August 10, 1984 and thus did not have an opportunity to respond to it during hearings; Pacific Bell regrets any difficulties IRT may have had in transferring numbers on this one occasion. For the purposes of this Reply Brief, it is sufficient to note that either of Dr. Selwyn's proposals will require a number transfer and/or a customer number change. If numbers are assigned to IRT out of different end offices, they will have to be transferred by IRT when the McCaw system begins operation. Later, when tandem interconnection is achieved, the customers' numbers will have to be changed. If NXX codes are assigned to GTE Mobilnet for use by the resellers affiliated with the non-wireline cellular applicant, the numbers involved will have to be transferred later to the McCaw system but the customers' numbers will not have to be changed."

The brief concludes by stating that for the reasons enumerated, Pacific Bell has agreed to assign one NXX per NPA (area code) for use by GTEM in serving resellers affiliated with the nonwireline cellular applicant (IRT/McCaw) during headstart.

The record is not sufficiently developed for us to decide that Pacific Bell is wrong about its own system's future needs or its capabilities. If Pacific Bell's method of handling the problem proves inadequate in GTEM's or IRT/McCaw's opinion (or in the opinion of any other reseller) the dissatisfied party should file a separate application or complaint on this subject alone, and should serve it

upon Pacific Bell, any other affected landline or cellular carrier, and any reseller in the same cellular mobile service area. Any such application or complaint must show that attempts were made to negotiate a solution prior to filing.

Findings of Fact

1. Restructuring of GTEM to incorporate the two subsidiaries into the parent corporation and to make the parent the managing partner meets the requirements of the AMPS decision.

2. Commission Resolution T-10855 (August 1, 1984) completed environmental review of the proposed cellular mobile radiotelephone system, and no further action is necessary.

3. The interconnection agreement between GTEM and Pacific Bell is reasonable and in the public interest.

4. Design and capability of the system are satisfactory.

5. Since GTEM's proposed operations constitute a startup business, and since revenue and expense projections are entirely pro forma, it is reasonable for the present to employ marketing projections to set rates, and rate-base ratemaking should not be instituted immediately. However, rate-base accounting should be required beginning in 1985.

6. GTEM's wholesale-retail rate proposal is based upon a cost development which views its own proposed retail business as incremental and as requiring zero or negligible fixed investment.

7. GTEM's estimates view competing resale businesses as add-on or incremental, requiring little or no fixed investment, and the estimates do not include adequate allowance for sales, promotion, and advertising.

8. GTEM's methodology of cost assignment is unreasonable in that it makes an inadequate attempt to assign costs directly to the wholesale or proposed retail sides of its business.

9. At this stage of development of the industry, we cannot make the categorical assumption that the cellular mobile retail business, whether or not it is the carrier's retail side or the business of an independent reseller, should be seen as purely incremental, or that a company having such business as its principal (or sole) function cannot compete efficiently.

10. GTEM's cost and rate development does not afford us the basis for establishing a retail side for GTEM's cellular mobile service with assurance that independent resellers could adopt a similar rate structure and remain in business, because if GTEM's retail return is inadequate, it can remain operational through subsidization, while this may not be true for competing resellers, unless they are also subsidized by well-financed sources, or by other profitable business lines.

11. The solution to the problem in the preceding finding proposed by IRT/McCaw of imposing relatively rigid regulation for GTEM's retail operation while allowing independent resellers flexibility, is unreasonable in that GTEM's ability to respond to competitive challenges would be inadequate, and this could result in driving GTEM from the retail market.

12. The costing methodology and regulatory proposals of the applicant, and the counterproposals of IRT/McCaw, demonstrate that the parties regard each other solely as competitors, and that GTEM views independent resellers generally as competitors rather than as customers. This is undesirable for the end-users and for the Commission in that it may lead to a tariff war and numerous other actions and reactions by various companies serving the public, which will make the system confusing for the public and impossible to regulate efficiently.

13. Based on this record, the only reasonable method available to us to eliminate the problems mentioned in the preceding findings which will also allow service to begin promptly is to disapprove GTEM's retail tariffs and to restrict its direct operations to the wholesale business, but to authorize it to file an application, through a separate subsidiary, as a reseller.

14. GTEM's wholesale tariffs and rates, although developed from marketing data and not from utility-type rate-base methodologies, are reasonable for a startup business but contain the following unreasonable provisions:

- a. Exclusive and nonexclusive rate bands.
- b. Access and air time charges which unduly disfavor the small reseller.
- c. An unreasonably long minimum contract period and a "LIFO" provision.
- d. An "overstocking of numbers" provision which is unduly anticompetitive.

Staff's recommendation on elimination or modification of those provisions, and the additional staff recommendations on notice to subscribers, options for customers in handling disputed bills, and a revision to the holiday tariff, are reasonable and should be adopted.

15. GTEM's charge for service calls and its proposed tariff for enhanced services are reasonable and should be adopted.

16. The proposed (revised) intercarrier agreement which GTEM would require resellers other than its own reselling side to sign is unreasonable.

17. Staff's recommendation that GTEM be required to develop a user-friendly manual for resellers is reasonable.

18. Staff's accounting recommendations are reasonable and should be adopted. It is also reasonable to require rate-base, telephone utility accounting to begin in 1985, with requirements and reports as set forth in the Order.

19. Telephone numbers should be made available to resellers in accordance with the recommendation of Pacific Bell. If, after attempted negotiation, any party is dissatisfied with this arrangement, it should file an appropriate application or complaint as set forth in the Order.

20. The interconnection agreement between Pacific Bell and GTEM is reasonable, and should be approved.

21. Applicant should be subject to the user fee as a percentage of gross intrastate revenues under Public Utilities Code §§ 431-435. The fee for the fiscal year 1984-1985 is .1%.

Conclusions of Law

1. Public convenience and necessity require granting this application to the extent and under conditions set forth in the Order.

2. Because of public demand for the service, this decision should be effective immediately to obviate any further delay in constructing and operating a cellular mobile radiotelephone service in the San Francisco-Oakland and San Jose areas.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to GTE Mobilnet, Inc., and the remaining partnership interests (GTEM) to construct and operate cellular mobile telecommunications systems in the San Francisco-Oakland area and in the San Jose area.

2. On or after the effective date of this order, GTEM is authorized to file wholesale tariff schedules in accordance with Exhibit 19, modified in accordance with staff recommendations (Finding 14). The filing shall comply with GO 96 and shall be effective not earlier than 5 days after filing.

3. GTEM shall notify the Commission in writing of the day it commences service.

4. Prior to commencing operations, GTEM shall develop and have ready for distribution a manual for resellers in accordance with the discussion on this subject in the Opinion.

5. The interconnection agreement between Pacific Bell and GTEM is approved.

6. Numbers for resellers shall be provided in accordance with the recommendation of Pacific Bell. Any party dissatisfied with that arrangement may, after negotiation, file an application or complaint on that separate subject, serving copies of it on all resellers in the area and all affected telephone (landline) utilities and cellular carriers.

7. Beginning January 1, 1985, rate-base, utility-type accounting shall be required for GTEM. It shall:

- a. File annual reports as required for telephone utilities.
- b. File annual pro forma results of operation reports employing 6 months of recorded data, due date for such reports being October 1 of each year.
- c. Follow staff's accounting recommendations as set forth in the Opinion.

8. On or after the effective date of this decision, GTEM is authorized to apply for authority to conduct business as a reseller of cellular mobile radiotelephone service through a separate subsidiary.

9. Applicant is subject to the user fee as a percentage of gross intrastate revenues pursuant to Public Utilities Code §§ 431-435.

10. Except as granted, this application is denied.

This order is effective today.

Dated November 7, 1984, at San Francisco, California.

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. Socovitz, Executive Director

APPENDIX A

List of Appearances

Applicant: Andrew T. Jones and Theodore L. Lindgren, Attorneys at Law, for GTE Mobilnet of San Francisco Limited Partnership and GTE Mobilnet of San Jose Limited Partnership (see footnote 1 of Opinion).

Protestant: Dinkelspiel, Donovan & Reder, by David M. Wilson, for Intrastate Radio Telephone of San Francisco and McCaw/Intrastate Cellular Systems.

Interested Parties: Margaret deB. Brown, Attorney at Law, for Pacific Bell; Roger P. Downes and Steven N. Wilson, Attorneys at Law, for PacTel Mobile Access; and Graham & James, by James Squeri, Attorney at Law, for Southwestern Bell Mobile Systems, Inc.

Commission Staff: James E. Scarff, Attorney at Law, and Willard A. Dodge, Jr.

(END OF APPENDIX A)

The witness stated that the tariff is designed as an incentive to resellers to promote the use of the service. The minimum of 50 numbers and sales thereafter in blocks of 10 follows the structure determined appropriate in the AMPS decision. The actual rate structure is similar to that in the retail tariff. An exclusive reseller who has ordered from 50 to 500 numbers would incur an access charge of \$31.25 per number per month with a peak usage charge of 38¢ per minute and an off-peak usage charge of 16¢ per minute. Rates for nonexclusive resellers are slightly higher. The same optional services are available under the wholesale tariff but the rate is slightly lower.

Regarding service, Forbes testified that GTEM will respond to trouble reports from resellers, but if trouble is found in the mobile telephone unit rather than in the cellular network, a charge of \$25 per occurrence will be assessed. On cross-examination he testified that this is to discourage excessive service calls by the resellers and keep costs down. He believes that this type of tariff provision will cause resellers to check carefully before requesting GTEM to investigate trouble.

GTEM will also furnish billing tapes to resellers so that they may bill the end-user customers. There is a charge of \$75 for each billing tape which the reseller fails to return, because the tapes can be reused.

There is also a call restriction feature available for a \$30 monthly charge, to prevent misuse of lines.

Robert Rizzari, GTEM's controller, testified generally as to GTEM financing. That portion of his testimony devoted to profitability under proposed rates was the subject of controversy.

4. In the opinion of the witness GTEM's projections grossly understate staffing levels of resellers, salaries, commissions, and other expenses.
5. According to the witness, while GTEM's projections purport to show that the tariffs furnish an attractive business opportunity for potential resellers, they do not analyze total income and expenses over a significant period of time but only a single hypothetical month, and this analysis omits entirely the estimated costs incurred by the reseller in putting units into service. In particular, GTEM's analysis did not use an average number of revenue producing units during the first year but the units on line at the beginning of the year, thus drastically lowering expenses.

Most particularly the witness objected to GTEM's comparison of what he termed "minimal staffing and advertising budget" as being able to compete effectively with GTEM's own announced retail effort, which includes three retail outlets with a full staff at each and plans for an intensive advertising campaign. The witness attempted to develop a comparison which would include similar promotional efforts and staffing for resellers, using GTEM's own assumption that the resellers could capture 67% of the market with GTEM directly serving the other 40%. He also included certain other miscellaneous expenses which he felt GTEM had omitted from its calculations.

Based upon that development, he concluded that there is no way a third party reseller could profit, even over a relatively long run, on the basis of GTEM's proposed tariffs.⁵

⁵ The formats of the GTEM exhibit by witness Rizzari and that of this witness vary so widely that it is impossible to construct a comparison table showing where they differ, and, in any event the starting assumptions vary so widely that several dozen footnotes would be necessary to any such table to justify the figures. Neither witness, of course, has the benefit of any recorded information from which to make projections.

19. Telephone numbers should be made available to resellers in accordance with the recommendation of Pacific Bell. If, after attempted negotiation, any party is dissatisfied with this arrangement, it should file an appropriate application or complaint as set forth in the Order.

20. The interconnection agreement between Pacific Bell and GTEM is reasonable, and should be approved.

Conclusions of Law

1. Public convenience and necessity require granting this application to the extent and under conditions set forth in the Order.

2. Because of public demand for the service, this decision should be effective immediately to obviate any further delay in constructing and operating a cellular mobile radiotelephone service in the San Francisco-Oakland and San Jose areas.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to GTE Mobilnet, Inc., and the remaining partnership interests (GTEM) to construct and operate cellular mobile telecommunications systems in the San Francisco-Oakland area and in the San Jose area.

2. On or after the effective date of this order, GTEM is authorized to file wholesale tariff schedules in accordance with Exhibit 19, modified in accordance with staff recommendations (Finding 14). The filing shall comply with GO 96 and shall be effective not earlier than 5 days after filing.

3. GTEM shall notify the Commission in writing of the day it commences service.

9. Except as granted, this application is denied.

This order is effective today.

Dated NOV 7 1984, at San Francisco, California.

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners