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Decision 84 11 113 NOV 21 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of U.S. Communications Inc. for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Cellular Radio Telecommunications Within California and for Exemption from the Requirements of Sections 816-830 and 851-855 of the Public Utilities Code.	Application 84-10-047 (Filed October 17, 1984)

O P I N I O N

U.S. Communications, Inc. (USC), a California corporation, seeks (a) a certificate of public convenience and necessity (CPC&N) to operate as a resale carrier providing cellular radio service within the State of California under Public Utilities (PU) Code Section 1001; (b) exemption from the provisions of PU Code Sections 816-830 and 851-855; and (c) exemption from the requirements of Sections IV, V, and VI of this Commission's General Order (GO) No. 96-A.

USC initially intends to resell cellular radiotelephone service in the greater Los Angeles metropolitan area by purchasing cellular service from the Los Angeles SMSA Limited Partnership (Partnership) at the wholesale rates and then reselling the service at its tariffed rates. Eventually USC intends to resell cellular radio services in some or all of the California cities where cellular radio systems may be authorized to operate.

USC was recently incorporated and authorized to issue 10,000 shares of common stock. USC proposes to sell 1,000 shares of its common stock to Jonathan Brooks, USC's president and chief financial officer, for an aggregate cash consideration of $10,000 as approved by USC's board of directors. Additional funds that may be required by USC from time to time will be advanced by Brooks or through a bank line of credit.

Brooks is presently in the business of marketing mobile phone equipment and services in the greater Los Angeles area and has eight years' experience in this field.

A balance sheet, attached to the application, dated October 1, 1982 showed assets of $75,000 and liabilities and capital totaling $54,200.

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

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

Decision (D.) 84-04-014 dated April 4, 1984 on the Partnership's Application (A.) 83-01-12 for a CPC&N to provide a cellular radio communications system in the greater Los Angeles metropolitan area provided tariffs including rates for both wholesale and retail sale of cellular service. The retail service establishment charge, monthly access charge, peak minute usage charge, and off-peak minute usage charge are as proposed by USC. However, the retail tariff provisions also included charges for many optional features. These retail tariff provisions were reviewed in detail by this Commission and its staff before being authorized by D.84-04-014. It is our intent that such tariff provisions be used as a model for other resellers in the Los Angeles area. Consequently, we will require the filing of retail tariffs generally similar to the retail provisions authorized by D.84-04-014 and filed by the Partnership. We recognize that the tariffs as a whole may be somewhat abbreviated from those of the primary carrier; however, they must include the usual Table of Contents, Preliminary Statement, Rate Schedules, List of Contracts and Deviations, Rules, and Sample Forms, as prescribed in Section II of GO 96-A. We will permit the initial filing to contain only the Preliminary Statement, Table of Contents, and Rate Schedules, to be effective on five days' notice; the remaining material will be prepared promptly and transmitted to the Commission staff by advice letter for review and filing per GO 96-A. We will authorize USC to deviate from the page numbering system prescribed by GO 96-A, Section II.C.(1)(b), and to substitute the system generally employed by the major wireline exchange carriers at its election.[1/]

USC filed its application for a CPC&N in terms of the traditional CPC&N granted to monopoly public utilities, but requests that in granting such a certificate this Commission recognize the significant differences among the potential providers of cellular radio services in California. Such differences include consideration of the relative market power, consideration of granting exemption from certain provisions of this Commission's GO 96-A, and consideration of granting exemption from the provisions of PU Code Sections 816-830 and 851-855.

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

USC alleges in its application that resale cellular radio service competitors have minimal market power and correspondingly little ability to influence prices and, therefore, we should adopt a regulatory scheme that will allow the development of competition. Precisely for this reason we have specifically set the wholesale and retail tariff levels to provide an adequate margin to enable resellers to enter the competitive marketplace as bona fide competitors.

Sections IV, V, and VI of GO 96-A relate to filed and effective dates, procedures in filing tariff sheets which do not increase rates or charges, and procedures in filing increased rates, respectively. In general, these provisions require a showing before this Commission justifying any increase and provide that rates will become effective 30 days after filing tariff sheets which do not increase rates, or 30 days after filing an authorized increase unless Commission authorization for a shorter period is obtained. USC suggests that the Commission exempt resellers from the above GO 96-A provisions and allow tariff revisions to become effective on one day's notice. Other resellers have made similar requests.

There is merit to the arguments presented by resellers that the Commission consider some modifications of GO 96-A. The basic purpose of Sections IV, V, and VI of GO 96-A is to provide an orderly procedure to control the rates and services of a monopoly utility. These rules are subject to revision where the Commission deems necessary.

In this case, we are not dealing with a monopoly situation. At this time, it appears that the cellular market will be a highly competitive one. The basic scheme established by the Federal Communications Commission allowing two major carriers, one wireline and one nonwireline, to operate in the same territory, coupled with the provisions for the wholesale marketing of this service, is designed to promote vigorous competition in cellular markets.

Under these circumstances, our traditional tariff filing requirement of a 30-day review period should not be necessary. Indeed, in a new and dynamic market such as cellular telephone, this requirement could impede the provision of rates and services which are responsive to customer needs. We, of course, will monitor the cellular market and if we find abusive or unfair practices by resellers, we will take corrective action aimed at eliminating such practices. Therefore, we will permit resellers to make the requested tariff changes on 15 days' notice.

PU Code Sections 816-830 govern the power of the utility to issue stocks and stock certificates or other evidence of interest or ownership, and bonds, notes, and other evidence of indebtedness and to create liens on their property situated within this State. PU Code Sections 851-855 provide, in part, that no public utility other than a common carrier by railroad subject to Part 1 of the Interstate Commerce Act shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its property useful in the performance of its duties to the public without first having secured from this Commission an order authorizing it to do so. USC seeks exemption from PU Code Sections 816-830 under PU Code Section 829 and from PU Code Sections 851-855 under PU Code Section 853. PU Code Sections 829 and 853 provide that the Commission may, by order or rule and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from the above PU Code provisions if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest. USC, in support of its request, alleges that strict enforcement of PU Code Sections 816-830 and 851-855 would only impede competition while it would provide no attendant protection to consumers. This issue is before us in A.84-03-92 of the California Association of Long Distance Telephone Companies and provides a larger forum in which to address these considerations. Accordingly we will deny USC's request in this application.

In Interim D.83-06-080 on the Partnership's A.83-01-12, we stated in Finding 25:

> "25. A resale plan that constitutes a viable business opportunity and thereby permits the nonwireline carrier to enter the marketplace as a bona fide competitor is necessary to mitigate any adverse effects of the early entry into the cellular marketplace of a wireline carrier in advance of a nonwireline carrier." (Mimeo. page 38.)

USC's proposed operations, as well as the operations of other resellers in the area, dovetail with the resale concept envisioned in the above-quoted Finding 25. In its application, USC alleges that public convenience and necessity require Commission approval of this application because its proposed resale of service will enhance competition in the cellular retail market. According to USC, such enhanced competition will bring long-term benefits to California cellular subscribers such as:

1. Lower priced service;
2. Increased availability of customers to choose between service providers, a wide variety of service packages, and a wide variety of choice of mobile cellular phone equipment; and

3. Increased utilization of the existing facilities of the underlying carrier, which will enable the underlying carrier to use the system more efficiently.

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

USC estimates that by the end of 1984, it will have approximately 88 subscribers in California and that by the end of 1989, it will have approximately 800 subscribers in California. USC's projected cumulative net income after two years of operation is $70,199.

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

Upon certification by this Commission, USC will be subject to reporting requirements deemed appropriate by this Commission. One of these requirements is the manner in which records are kept.

The Commission is currently developing a Uniform System of Accounts for cellular communications companies. Until a uniform accounting system for cellular companies has been prescribed, the Commission will not issue detailed account instructions. Each cellular communications company will, however, be expected to maintain its books in such detail that financial data relating to its operations can be assembled upon request:

1. Revenue and expenses of utility operations should be segregated from nonutility operations.

2. Charges from affiliates should be broken down so that each kind of charge can be identified.

3. Revenue accounts should be appropriately subdivided (access, peak, off-peak, service order charges, custom calling, directory listing, etc.).

4. Expense accounts should be grouped to provide a total for sales and marketing expense. This would include, in sub-accounts, advertising, promotion and incentives, sales salaries and commissions, sales vehicle expense, etc.

5. General and administrative expenses should be subdivided to identify rent and lease expense, billing expense, salaries, insurance, and other appropriate subdivisions.

6. Other significant costs, such as unsold numbers inventory, should be separately identified.

USC will be directed to file an annual report with the Commission, in a form prescribed by the Commission. Although USC will be expected to have detailed operating information available in its records, for competitive reasons it may not be required to disclose such detail in its filed annual reports.

USC is not a radiotelephone utility as defined in PU Code Section 4902.[2/] Therefore, it is not subject to the fee system prescribed by PU Code Sections 4905, et seq., but is instead subject to the fee system set forth in PU Code Sections 401, et seq. By Resolution M-4735, the Commission set the fee

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2/ In D.84-04-014 in A.83-01-012, we determined that resellers of cellular service are telephone corporations under PU Code Sections 216(b), 233, and 234, and are subject to our jurisdiction. However, they are not radiotelephone utilities as defined in Section 4902, because they do not furnish "domestic public land mobile radio service" as described in 47 CFR 22, but instead furnish "domestic public cellular radio telecommunications service."

level for telephone corporations at 0.10 of 1% (0.0010) of revenue subject to the fee, prescribed the method of remitting the fee, and directed the application of a billing surcharge of 0.10% to customer billings. USC will be ordered to provide in its tariff rules for the imposition of this surcharge.

Findings of Fact

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

2. Public convenience and necessity require the service proposed by USC.

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

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

5. The time constraints of Sections IV, V, and VI of GO 96-A are unduly restrictive at this time.

6. At this time, it appears that the cellular market will be a highly competitive one.

7. USC's proposed operations will provide competition in the cellular radio service market which will benefit the public at large.

8. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

9. USC should keep its records in the detail described on pages 7 and 8 of this decision.

10. A public hearing is not necessary.

Conclusions of Law

1. The application should be granted as provided in the order which follows.

2. USC should be exempt from the provisions of Sections IV, V, and VI of this Commission's GO 96-A and may file tariff revisions to become effective on 15 days' notice.

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

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

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

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

7. Because of the immediate need for the service, the order should become effective today.

The certificate hereinafter granted is subject to the provision of law that the Commission shall have no power to authorize the capitalization of this CPC&N or the right to own, operate, or enjoy such CPC&N in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such CPC&N or right.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to U.S. Communications, Inc. (USC) to operate as a reseller of cellular radio telecommunications services within California.

2. On or after the effective date of this order, USC is authorized to file tariff schedules for the resale of cellular mobile radiotelephone service in the Los Angeles area purchased from the Los Angeles SMSA Limited Partnership (Partnership). This filing shall comply with General Order (GO) 96-A, except that USC is authorized to employ the alternate method of page numbering described in Resolutions U-275 and T-4886 at its election. The initial filing shall contain at least the Preliminary Statement, Table of Contents, and Rate Schedules, the rates and charges to be those requested by USC in its application, together with the remaining retail rates and charges authorized to the Partnership by Decision 84-04-014, the filing to be effective on not less than five days' notice. USC shall file the remaining tariff schedules, to include rules and forms as prescribed by GO 96-A, no later than 10 days following the effective date of this order, to be effective on not less than five days' notice. If applicant fails to file tariffs within 30 days after the effective date of this order, its certificate may be suspended or revoked. The tariff shall provide for a user fee

surcharge of 0.10% for the fiscal year 1984-1985.

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

4. The certificate of public convenience and necessity is granted as set forth above; the application to be exempted from the provisions of Sections IV, V, and VI of GO 96-A is granted in part and the application to be exempt from the provisions of PU Code Sections 816-830 and 851-855 is denied.

This order is effective today.

Dated NOV 21 1984, at San Francisco, California.

PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

Commissioner Victor Calvo, being necessarily absent, did not participate

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

Joseph E. Bodovitz, Executive Director

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