

Decision 87 10 032

ORIGINAL OCT 16 1987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Natubhai Patel, dba Santa Cruz)
Cellular, for a certificate of public)
convenience and necessity to operate)
as a reseller of cellular radio tele-)
communications services within)
California.)

Application 87-05-039
(Filed May 22, 1987)

O P I N I O N

Natubhai Patel (applicant), dba Santa Cruz Cellular, requests a certificate of public convenience and necessity (CPC&N) to operate as a reseller providing cellular radio service within California pursuant to Public Utilities (PU) Code § 1001 at initial tariff rates and charges similar to those which are now prevalent in the San Francisco/San Jose markets.

Copies of the application were served on entities with which applicant's proposed service is likely to compete, as listed in Exhibit E to the application. Notice of this application appeared in the Commission's Daily Calendar of May 28, 1987. No protests to the application were received; therefore, a public hearing is not necessary.

Applicant, who maintains its principal offices at 1819 Montecito Way, Burlingame, California 94010, requests general authority to act as a reseller of cellular radio service throughout California where a cellular radiotelephone system may be licensed to operate.

Applicant states that he has received a Federal Communications Commission (FCC) construction permit for construction of a cellular telephone system in the Santa Cruz Metropolitan Statistical Area. Applicant proposes that in the future he plans to form a California corporation in which he will

hold 50.01% of the ownership shares for the purposes of exercising the rights and responsibilities available to him under the FCC construction permit.

Applicant states that he will seek a separate certificate for the future operation of his own system when it is constructed.

Accordingly, since no new facilities are being constructed under the authority requested in this instant application, it can be seen that there is reasonable certainty that the grant of this application will not result in significant adverse effect upon the environment.

Applicant proposes to advance from his own assets the sums necessary to establish himself as a cellular reseller in California. A personal financial statement attached as Exhibit B to the application indicates that applicant possesses \$246,000 in cash, \$15,000 in notes payable to him, \$4,254,000 in real estate, \$90,000 in personal property, and \$1,642,700 in total liabilities, leaving him with a net worth of \$2,962,300.

A first-year pro forma income statement indicates that a very minor net loss of \$1,740 will likely result at the end of the first year of operation. This is based on an assumption that an average of 300 units will be in service for the year.

Applicant's personal financial resources as set forth in Exhibit B to the application appear to be adequate to undertake this business obligation and establish applicant as a cellular reseller in California. Initially, applicant proposes to resell cellular radio services in the greater San Francisco Bay Area, including Santa Cruz using the systems and wholesale services of the GTE Mobilnet of San Francisco (GTE Mobilnet) and San Jose Limited Partnership. All charges incurred from GTE Mobilnet are to be paid for by applicant, and in turn, all charges incurred by the end user are to be paid to applicant by the end user.

End users are to be charged a monthly access charge of \$45, a per peak minute usage rate of \$0.45, and a per off-peak

minute usage rate of \$0.20 for the requested service. These proposed rates are derived from, and subject to, the wholesale rates and tariffs approved for the underlying cellular carrier from whom applicant will purchase its cellular service. Further, applicant appended a sample tariff that it is prepared to file as a condition of authority to operate.

Decision (D.) 84-04-014, which granted the Los Angeles SMSA Limited Partnership (Partnership) a CPC&N to provide a cellular radio communications system in the greater Los Angeles metropolitan area, authorized tariffs including rates for both wholesale and retail sale of cellular service. These retail tariff provisions were reviewed in detail by this Commission and its staff before being authorized. In authorizing such retail tariff provisions, it was our intent that these retail tariffs be used as a model for other resellers in California. Therefore, applicant should be required to file retail tariffs with Rate Schedules similar to the sample tariffs appended to its application which are consistent with the retail provisions authorized by D.84-04-014.

We recognize that the tariffs actually filed may be somewhat abbreviated from those of the primary carrier; however, they must include the usual Table of Contents, Preliminary Statement, Rate Schedules, List of Contracts and Deviations, Rules, and Sample Forms, as prescribed in Section II of General Order (GO) 96-A. We will permit the initial filing to contain only the Preliminary Statement, Table of Contents, and Rate Schedules, to be effective on five days' notice; the remaining material should be prepared promptly and transmitted to the Commission's Evaluation and Compliance Division by advice letter for review and filing per GO 96-A. We will authorize applicant to deviate from the page numbering system prescribed by GO 96-A, Section II.C.(1)(b), and to substitute at its election the system generally employed by the major wireline carriers, as described in Commission Resolutions U-275 (March 25, 1947) and T-4886 (February 26, 1962).

Applicant seeks exemption from PU Code §§ 816-830 and 851-855. The Commission has already considered the issues raised by applicant in the matter of these proposed exemptions and has provided specific relief (D.85-07-081, as modified by D.85-11-044, Application (A.) 84-03-92). We ordered:

"1. The stocks and securities transactions of nondominant interexchange telecommunications carriers are exempted from the requirements of Public Utilities Code Sections 816 to 830. Also, the transfer or encumbrance of property of nondominant carriers is exempt from the requirements of Public Utilities Code Section 851, whenever such transfer or encumbrance serves to secure debt." (D.85-11-044.)

"Applications filed with the Commission under PU Code [Sections] 851-854 shall fully comply with applicable Commission rules when their subject matter is acquiring a controlling interest of a reseller, or the acquisition by a reseller of another public utility. In other applications required under PU Code [Sections] 851-854 (except those exempted under ordering paragraph 1):

- "a. The notification provided by the Commission's daily calendar shall be deemed sufficient notice to any party wishing to protest the application. Protest shall be filed within the time and in the manner required by our Rules.
- "b. Compliance shall be required with Rules 2 through 8, the applicable subsections of Rule 15, and Rule 35." (D.85-07-081.)

D.86-08-057 further modifies this series of decisions to direct the Executive Director to sign orders granting noncontroversial applications by nondominant telecommunications carriers for authority to transfer assets or control, providing that no protests to the application have been filed or that any filed protest has been withdrawn or compromised by the parties. In

all other respects, D.86-08-057 retains D.85-01-008, D.85-07-081, and D.85-11-044 in full force and effect.

Applicant is subject to the preexisting decision language quoted above, which grants most of applicant's requests.

Sections IV, V, and VI of GO 96-A relate to filing and effective dates, procedures in filing tariff sheets which do not increase rates or charges, and procedures in filing increased rates, respectively. In general, these provisions require a showing before this Commission justifying any increase and provide that rates will become effective 40 days after filing tariff sheets which do not increase rates, or 40 days after filing an authorized increase unless Commission authorization for a shorter period is obtained.

There is merit to the arguments presented by several recent cellular reseller applicants 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 may deem necessary.

In this case, we are not dealing with a monopoly situation. It appears that the cellular market is becoming highly competitive. The basic plan established by the FCC allowing two major carriers, one wireline and one nonwireline, to operate in the same territory, coupled with the provisions for the wholesale marketing of this service, is designed to promote vigorous competition in cellular markets.

Our traditional tariff filing requirement of a 40-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.

Upon commencement of cellular business operations, applicant will be subject to the fee system set forth in PU Code §§ 401 et seq. and will be ordered to provide in its tariff rules for the imposition of the billing surcharge prescribed for the required fee by Resolution M-4743. Applicant will also be required to keep its records as described here.

Until a uniform accounting system for cellular resellers 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. In anticipation of that information requirement:

1. Revenue and expenses of utility operations should be segregated from nonutility operations.
2. Charges from affiliates should be broken down so that each kind of charge can be identified.
3. Revenue accounts should be appropriately subdivided (access, peak, off-peak, service order charges, custom calling, directory listing, etc.).
4. Expense accounts should be grouped to provide a total for sales and marketing expense. This would include, in subaccounts, advertising, promotion and incentives, sales salaries and commissions, sales vehicle expense, etc.
5. General and administrative expenses should be subdivided to identify rent and lease expense, billing expense, salaries, insurance, and other appropriate subdivisions.
6. Other significant costs, such as unsold numbers should be listed.

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

Findings of Fact

1. Applicant has the ability, experience, and financial resources to perform the proposed service.
2. Applicant should file a set of tariffs similar in scope to the retail tariffs set forth in D.84-04-014 for the Partnership and as set forth in Exhibit D to this application.
3. D.85-01-008 dated January 3, 1985 in A.84-03-92 exempts applicant from the provisions of PU Code §§ 816-830.
4. D.85-07-081 dated July 24, 1985, as modified by D.85-11-044 dated November 6, 1985, exempts applicant from the requirements of § 851 when the transfer or encumbrance of property serves to secure debt and, when the acquisition of a controlling interest of a reseller is not involved, provides modified requirements for compliance with §§ 851-854.
5. D.86-08-057 dated August 18, 1986 modifies D.85-01-008, D.85-07-081, and D.85-11-044 to direct the Executive Director to sign orders granting noncontroversial applications by nondominant telecommunications carriers for authority to transfer assets or control under §§ 851-855 of the PU Code, providing that no protests to the application have been filed or that any filed protest has been withdrawn or compromised by the parties. In all other respects, D.86-08-057 retains D.85-01-008, D.85-07-081, and D.85-11-044 in full force and effect.
6. The time constraints of Sections IV, V, and VI of GO 96-A are unduly restrictive at this time.
7. At this time it appears that the cellular market will be highly competitive.

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

9. It can be seen with certainty that there is no possibility that the activity planned to be carried out under the instant application may have a significant effect on the environment.

10. Applicant is subject to the fee system set forth in PU Code §§ 401 et seq.

11. Applicant should maintain its records as described in the body of this decision.

12. Public convenience and necessity require the grant of this application.

13. A public hearing is not necessary.

Conclusions of Law

1. The application should be granted to the extent provided in the following order.

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

3. Applicant should be exempt from PU Code §§ 816-830, and, when the acquisition of controlling interest of a reseller or another public utility is not involved, should be subject to modified procedures for complying with PU Code §§ 851-854.

4. Applicant is exempt from the provisions of PU Code §§ 851-855 to the extent specified and subject to the conditions in D.86-08-057 as listed in Finding of Fact 5 above.

5. Applicant is subject to the fee system set forth in PU Code §§ 401 et seq.

6. The fee (surcharge) which applicant is subject to for the 1987-1988 fiscal year should be 0.1%.

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

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

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Natubhai Patel (applicant) to operate as a reseller of cellular radio telecommunications services within California.
2. On or after the effective date of this order, applicant is authorized to file tariff schedules at the proposed rates as shown on Exhibit D of A.87-05-039 for the resale of cellular radiotelephone service in the greater San Francisco Bay Area, including Santa Cruz, purchased from GTE Mobilnet of San Francisco and San Jose Limited Partnership. Service shall not be offered until tariffs are on file. This filing shall comply with GO 96-A, except that applicant is authorized to employ the alternate method of page numbering described in Resolutions U-275 and T-4886 at its election.
3. The initial tariff filing authorized in Ordering Paragraph 2 shall contain at least the Preliminary Statement, Table of Contents, and Rate Schedules, the rates and charges to be those requested by applicant in its application, together with the remaining retail tariff provisions authorized to Los Angeles SMSA Limited Partnership by D.84-04-014, the filing to be effective on not less than 5 days' notice. Applicant 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 5 days' notice. The tariff

shall provide for a user fee surcharge of 0.10%. Failure to file the tariff may result in revocation of the authority granted here.

4. Applicant is authorized to file rates and charges for resale of services purchased from authorized underlying cellular telecommunications carriers in other areas of California, in accordance with the provisions of Section III of GO 96-A.

5. Applicant is exempted, in part, from the provisions of Sections IV, V, and VI of GO 96-A and is authorized to make future tariff revisions effective on 15 days' notice.

6. Applicant is exempted from the provisions of PU Code §§ 816-830.

7. Applicant is exempted from the provisions of PU Code § 851 when the transfer or encumbrance of property serves to secure debt, and when the acquisition of a controlling interest of a reseller is not involved, is subject to modified procedures for complying with PU Code §§ 851-854. However, in noncontroversial applications for authority to transfer assets or control under PU Code §§ 851-854, such authority may be granted by the Commission's Executive Director, as specified in D.86-08-057.

8. Applicant shall maintain its books of account as detailed on pages 6 and 7 of this decision.

9. Applicant shall file an annual report with the Annual Reports Section, Evaluation and Compliance Division of this Commission, in a form prescribed by this Commission.

10. Applicant is subject to the user fee as a percentage of gross intrastate revenue under PU Code §§ 451 et seq.

11. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

12. Within 20 days after this order is effective applicant shall file a written acceptance of the certificate granted in this

proceeding with the Chief of the Telecommunications Branch,
Evaluation and Compliance Division of this Commission.

13. The corporate identification number assigned to applicant
is U-4054-C, which should be included in the caption of all
original filings with this Commission, and in the titles of other
pleadings filed in existing cases.

14. The application is granted as set forth above.
This order is effective today.

Dated OCT 16 1987, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
Commissioners

Commissioner John B. Ohanian, being
necessarily absent, did not
participate.

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


Victor Weiss, Executive Director