

Decision 88 01 017 JAN 13 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Bakersfield Cellular Telephone Company, a Virginia General Partnership, for a Certificate of Public Convenience and Necessity to resell cellular radiotelephone service in California.

Application 87-09-024 (Filed September 16, 1987; amended November 3, 1987)

OPINION

Bakersfield Cellular Telephone Company (BCTC), a Virginia partnership, seeks a certificate of public convenience and necessity (CPC&N) pursuant to Public Utilities (PU) Code Section 1001 to resell cellular telecommunication services within the Bakersfield, Fresno, and Visalia Metropolitan Service Areas (MSA) in Fresno, Kern, and Tulare counties in California. By letter dated October 28, 1987 (Exhibit 1), BCTC states it will file fictitious name statements with the counties in which it does business and a statement of partnership in which the partnership holds a recordable interest in real property. When its operations commence BCTC proposes to register any proprietary trademarks with the Secretary of State.

BCTC proposes to resell cellular radio telecommunication services furnished at wholesale rates by the Fresno MSA Limited Partnership (FMSA), the cellular system wireline resale carrier in the three MSAs. BCTC's proposed Schedule L-3 incorrectly states that FMSA would furnish service to it at retail rates.

BCTC estimates it will provide cellular retail service to 550 customers at the end of its first year of operations and 5,000 customers at the end of five years of operations. Its pro forma income statement projects a profit in the third year of its operations.

The amendment to the application describes past and contemplated changes in the composition of the partnership owning BCTC; discrepancies between the partnership agreement and the body of the application. Applicant, a Virginia General Partnership, was originally named Metrocall of Nevada General Partnership (MN). It is now named Bakersfield Cellular Telephone Company.

Harry L. Brock, Jr. originally held a 90% interest in MN. John F. Larison held a 10% interest in MN. At the time of the filing of the subject application, Brock held a 50.1% interest and American Cellular Communications Properties (ACCP) held a 49.1% interest in the partnership.

ACCP is in the process of acquiring the remaining interest in BCTC. The later transfer is being delayed for about another 90 days pending approval of the transfer by the Federal Communications Commission (FCC). The FCC approval is necessary to implement BCTC's plan to seek authority to construct and operate a cellular system in the Bakersfield MSA. BCTC plans to file a separate application with the Commission to obtain that authority.

ACCP is a Delaware partnership with two equal partners, namely: (a) MCCA Cellular Holdings, Inc., a Delaware corporation, which is a wholly owned subsidiary of Mobile Communications Corporation of America (MCCA), a Delaware corporation; (b) Bell South Enterprises, Inc., a Georgia corporation, which is wholly owned by BellSouth Corporation (BellSouth), a Georgia corporation.

BCTC avers that:

1. MCCA is the parent of several California radiotelephone utilities.
2. MCCA and BellSouth own a substantial interest in the Los Angeles Cellular Telephone Company, a certificated cellular service provider in the LA SMSA.
3. It is in the public interest to have two financially healthy, competing providers of cellular service in the Bakersfield marketplace; for it to resell cellular

service on the wireline cellular system until it can construct its own system.

4. BCTC would then be better able to compete with its wireline competitor as a cellular service provider following commencement of operations on its own system.

Brock, MCC, and BellSouth individually and collectively have the ability to fund the projected operating losses of \$174,747 and \$39,700 the first two years of BCTC's operations.

BCTC proposes to conform its tariff rates to the retail rates which are now being charged by FMSA as follows:

"RATES-RETAIL

"(1) Service connect charge

To process an order for activation of one to five access numbers per customer.	\$30.00
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To process an order for activation of six or over access numbers per customer.	\$25.00
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This charge is incurred when service is initiated, or restored.

"(2) Monthly Access Charge

1-5 Numbers per customer	\$31.00
6 + Numbers per customer	28.00

"(3) Per Minute Plan - Airtime Rates

Peak Minutes	\$0.35
Off-Peak Minutes	.20

BCTC requests authority to have its initial rates made effective within five days of filing, and to have subsequent tariff modifications made effective on 15 days' notice consistent with Commission practice for cellular resellers.

Decision (D.) 84-04-014 dated April 4, 1984 in Application (A.) 83-01-12 for a CPC&N to provide a cellular radio communications system in the Los Angeles area provided tariffs

including rates for both wholesale and retail sale of cellular service. These tariff provisions were reviewed in detail before being authorized. It is our intent that such tariff provisions be used as a model for resellers in California. Consequently, we will require the filing of retail tariffs generally similar to the retail provisions authorized by D.84-04-014 for all reseller applications.

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 Series 96 (GO 96). 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 Advisory and Compliance Division by advice letter for review and filing per GO 96. We will authorize BCTC to deviate from the page numbering system prescribed by GO 96, 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).

Sections IV, V, and VI of GO 96 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 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.

At this time, the considerations repeated in several recent decisions on applications of cellular radiotelephone service-

resellers still hold. It appears that the cellular market will be a highly competitive one. The basic scheme established by the Federal Communications Commission (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.

BCTC, which will eventually be the second facilities-based provider of cellular service in the Bakersfield MSA, should be provided an NXX access number block of its own on the FMSA Mobile Telephone Office Switch (MTSO) so that it can switch over its initial resale customers to its own MTSO when it is certificated and operates as a facilities-based carrier.

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.

BCTC is subject to the fee system set forth in PU Code Section 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. BCTC will 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, e.g.:

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.

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

BCTC states there will be no physical construction associated with its resale proposal. Thus, there would be no impact on the environment from its resale operations.

There are no protests.

Findings of Fact

1. BCTC has the ability, experience, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by BCTC.

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

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

5. At this time, it appears that the cellular market will be highly competitive.

6. BCTC's proposed operations will provide competition in the cellular radio service market which will benefit the public at large. BCTC, as the future non-wireline facilities-based carrier, should resell from its own NXX number block provided on the FMSA MTSO. After BCTC is certificated and commences operation as the second facilities-based carrier, it will transfer its NXX block to its own MTSO.

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

8. BCTC should keep its records as described in the body of this decision.

9. A public hearing is not necessary.

Conclusions of Law

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

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

3. Brock, ACCP, and its owners, MCCA of BellSouth, individually and collectively have the necessary fitness, the ability to fund the losses projected in BCTC's first two years of operations, and to provide the requested services. Another application to transfer control of BCTC as described above would be unnecessary.

4. BCTC is subject to the fee system set forth in Sections 401, et seq.

5. The appropriate surcharge pursuant to Conclusion of Law 4 is 0.1% for the fiscal year 1987-1988.

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

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

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Bakersfield Cellular Telephone Company (BCTC) to operate as a reseller of cellular radio telecommunication services within California.

2. On or after the effective date of this order, BCTC is authorized to file tariff schedules at the proposed rates as shown in Exhibit E to its application for the resale of cellular mobile radiotelephone service in the Bakersfield, Fresno, and Visalia metropolitan service areas purchased from the Fresno MSA Limited Partnership. Service may not be offered until tariffs are on file. This filing shall comply with General Order Series 96 (GO 96), except that BCTC 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 BCTC in its application, together with the remaining retail tariff provisions authorized for the Los Angeles SMSA Limited Partnership by Decision 84-04-014. The filing is to be effective on not less than 5 days' notice.

BCTC shall file the remaining tariff schedules, to include rules and forms as prescribed by GO 96, 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. BCTC is authorized to file rates and charges for resale of services purchased from authorized underlying cellular telecommunication carriers in other areas of California, in accordance with the provisions of Section III of GO 96.

3. BCTC shall keep its records as detailed in the body of this order.

4. The certificate of public convenience and necessity is granted as set forth above. BCTC is exempted, in part, from the provisions of Sections IV, V, and VI of GO 96. The certificate granted and the authority to render service under the rates, rules, and charges authorized will expire if not exercised within 12 months after the effective date of this order.

5. Within 20 days after this order is effective BCTC shall file a written acceptance of the certificate granted in this proceeding.

6. The corporate identification number assigned to BCTC is U-4056-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.

7. An application to transfer control of BCTC as described above is unnecessary.

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

Dated JAN 13 1988, at San Francisco, California.

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

Commissioner Stanley W. Hulett
being necessarily absent, did
not participate.

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


Victor Weiszor, Executive Director

including rates for both wholesale and retail sale of cellular service. These tariff provisions were reviewed in detail before being authorized. It is our intent that such tariff provisions be used as a model for resellers in California. Consequently, we will require the filing of retail tariffs generally similar to the retail provisions authorized by D.84-04-014 for all reseller applications.

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