

ORIGINAL

Decision 88-02-043 February 24, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 FRESNO CELLULAR TELEPHONE COMPANY)
 (U-4040-C) for a Certificate of)
 Public Convenience and Necessity)
 under Section 1001 of the Public)
 Utilities Code of the State of)
 California for authority to construct)
 and operate a new domestic public)
 cellular radio telecommunication)
 service to the public in Fresno)
 encompassing Fresno County.)

Application 87-03-051
 (Filed March 27, 1987;
 amended April 20, 1987)

OPINION MODIFYING DECISION 87-10-036

This decision (D.) grants Fresno Cellular Telephone Company's (Fresno) petition for modification of D.87-10-036.

Background

Fresno was authorized to operate as a reseller of cellular radio service under a certificate granted by the Commission in D.86-10-007 dated October 1, 1986. Pursuant to D.87-06-063, Fresno filed its Advice Letter No. 4, effective August 15, 1987, to expand its service territory to provide resale service in the Stockton and Sacramento metropolitan statistical areas (MSAs).

In D.87-10-036 dated October 16, 1987 in A.87-03-051, we granted Fresno a certificate of public convenience and necessity to construct and operate a cellular mobile telecommunications system in the Fresno MSA and to file wholesale and retail tariff schedules in the Fresno MSA. Fresno was ordered to surrender its reseller certificate for the Fresno MSA after the transfer of its existing resale customers to its own system. The decision states in part:

"In Decision 85-04-015, we stated 'PacTel Mobile Services should not be authorized to function as a reseller of services which would compete with similar services offered, directly or

indirectly, by its affiliate, PacTel Mobile Access'. Since this has been our stated policy, it should apply to Fresno as well as PacTel Mobile Services. Therefore, at the time its affiliate Sacramento Cellular Telephone Company (and Stockton Cellular Telephone Company, if authorized) surrenders its reseller certificate for the Sacramento area, Fresno shall also surrender its reseller certificate for the Sacramento (and later, Stockton) area. In the alternative, Fresno may petition to modify this decision by making a showing that surrender of its resale certificate for the Sacramento area should not be required."

Fresno is wholly owned by ACC/McCaw Cellular of Fresno, a joint venture composed of McCaw Communications of Fresno, Inc. (50%) and Affiliated Cellular of Fresno, Inc. (50%). McCaw Communications of Fresno, Inc.'s corporate parent, McCaw Communications Companies, Inc. (McCaw), is a diversified, rapidly growing, communications holding company engaged in providing paging, traditional mobile telephone and cellular telephone and cellular telecommunications services. McCaw and its affiliates are currently providing facilities-based cellular radio telephone service in over 30 MSAs in 20 states. McCaw and its affiliates are also reselling cellular radio telecommunications service in an additional 15 MSAs.

Affiliated Cellular of Fresno, Inc.'s corporate parent, Affiliated Publishing, Inc. (API), is a minority shareholder in McCaw. API is also owner of The Boston Globe, one of the oldest daily newspapers in the country.

In its petition, Fresno does not seek permanent retention of its resale authority for the Stockton area. Instead it seeks a delay to permit the orderly transfer of its customers to the system of its affiliate, Stockton Cellular Telephone Company (Stockton). Fresno asserts that delay is consistent with Ordering Paragraph 9 of D.87-10-036 where Fresno was ordered to surrender its reseller certificate for the Fresno MSA after transfer of its existing

resale customers to its own system. Ordering Paragraph 10 of that decision states:

"10. When applicant's affiliate, Sacramento Cellular Telephone Company, surrenders its cellular reseller certificate for the Sacramento area, applicant shall concurrently either surrender its own cellular reseller certificate for the Sacramento area or petition to modify this decision showing why it should not be required to do so. Applicant shall perform the same action for the Stockton area if and when Stockton Cellular Telephone Company is certificated."

As a reseller in the Stockton area (doing business as Cellular One), Fresno purchases wholesale service from Sacramento Valley Limited Partnership (Sacramento Valley), the cellular radio wireline carrier operating on Frequency Block "B" in the Stockton MSA. Fresno then resells cellular service to the public pursuant to its tariffs. In providing that resale service, Fresno's customers were required to obtain telephone numbers from Sacramento Valley, which which operate only on Frequency Block "B". Stockton will soon begin operations as a facilities-based wholesaler and retailer of cellular services for the Stockton MSA under authority granted by the Commission in D.87-11-061. Once Stockton begins operations Fresno will seek to have all of its existing Stockton resale customers transfer to Stockton's facilities-based operations on Frequency Block "A". In order to carry out those customer transfers to Frequency Block "A", Fresno's Stockton resale customers must obtain new telephone numbers programmed to operate on Frequency Block "A", Fresno seeks a reasonable period of time to accomplish the service changes.

Fresno does not contest the Commission's rationale for not allowing resellers to compete with affiliated facilities-based carriers to prevent any anticompetitiveness and cross-subsidation practices. However, Fresno contends that if it is required to surrender its reseller's certificate immediately upon commencement

of Stockton's service, it would create opportunities for unfair competition in contravention of the Commission's long-established policy (see D.84-06-027, mimeo. p. 4). If it must relinquish its resale license before all of its customers can be transferred to Stockton, Sacramento Valley could seek to have Fresno's customers transfer to its system rather than to Stockton's system due to the delay customers would encounter in obtaining new telephone numbers. If this occurred, Sacramento Valley would be able to stifle competition between the two facilities-based providers in the Stockton MSA. That would be in direct conflict with the Commission's stated policy of allowing nonwireline cellular providers, certificated after wireline providers, to first obtain resale authority to develop a client base in competition with the wireline provider and ameliorate the wireline headstart (e.g. D.86-05-10, mimeo. p.15; D.85-04-014, mimeo. p.1).

Fresno further argues that allowing it to temporarily retain its reseller certificate would be consistent with prior Commission decisions where similarly situated retailers were allowed to retain their reseller certificates for a period of time after an affiliate has begun to offer facilities-based service in the same MSA. In fact, D.87-10-036, granting it authority to operate facilities-based cellular service in the Fresno MSA, did not require surrender of its reseller certificate for the Fresno MSA until it had transferred its current resale customers to its own system and it had notified them of the transfer. Fresno seeks the same treatment with regard to surrender of its resale authority in the Stockton MSA as it has in the Fresno MSA. Fresno cites other decisions allowing other resellers to retain their reseller certificates for a period of up to 120 days to allow for transfer of customers from resellers to a facilities-based system (e.g. Ordering Paragraph 11 of D.86-05-101 and Ordering Paragraph 13 of D.86-06-058).

Fresno seeks authority to retain its reseller certificate for the Stockton MSA either until the time as its existing retail customers within the Stockton MSA are conveyed, by transfer or otherwise, to facilities-based service with its affiliate Stockton, or for 90 days from the date Stockton begins operations as a certificated wholesaler and retailer of cellular services in the Stockton MSA, whichever is earlier. Furthermore, Fresno agrees not to offer any new resale service in the Stockton MSA during the transition period.

Discussion

Fresno's reasons for temporarily delaying the surrender of its Stockton retail certificate to provide for an orderly transfer of customers are reasonable and the relief sought will be granted. However, absent evidence, we do not accept as fact that Sacramento Valley would engage in anticompetitive practices in this situation.

Findings of Fact

1. Fresno was ordered to surrender its cellular reseller's certificate for the Fresno MSA after transfer of its existing resale customers to its own system in D.87-10-036.
2. Fresno was ordered to surrender its cellular reseller's certificate for the Sacramento MSA concurrently with the surrender of the resale certificate of its affiliate, Sacramento Cellular Telephone Company, or to petition the Commission for modification of D.87-10-036 to show why it should not be required to do so. Fresno was also ordered to perform the same action for the Stockton area if and when Stockton was certificated.
3. D.87-10-036 did not provide for transition periods to arrange for transfer of Fresno's resale customers to the facilities-based services of its affiliates.
4. Fresno's resale customers in the Stockton area would have to obtain new telephone numbers to be served from Stockton's system.

5. The Commission has allowed up to 120 days for customer transfers similar to those described in the petition.

6. No protests were received related to this petition.

Conclusions of Law

1. D.87-10-036 should be modified to provide for an orderly transfer of customers from Fresno to the facilities-based system of its affiliate, Stockton.

2. Fresno's proposal for modification of D.87-10-036 is reasonable.

3. There is no need for a temporary order permitting Fresno to retain its reseller certificate for the Stockton MSA.

4. There is no need for a public hearing.

ORDER

IT IS ORDERED that Ordering Paragraph 10 of D.87-10-036 is modified to allow Fresno Cellular Telephone Company to retain its reseller certificate for the Stockton MSA until its existing resale customers within the Stockton MSA are conveyed, by transfer or otherwise, to the facilities-based service of its affiliate, Stockton Cellular Telephone Company (Stockton), or 90 days from the date Stockton begins operations under the authority granted by

D.87-11-061, whichever is earlier. During this transition period Fresno shall not offer resale service to any new customers in the Stockton MSA.

This order is effective today.

Dated February 24, 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
JOHN B. OHANIAN
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

Commissioner G. Mitchell Wilk,
being necessarily absent, did
not participate.

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

Victor Wolcott
Victor Wolcott, Executive Director
AS

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Application 87-03-051
 (Filed March 27, 1987;
 amended April 20, 1987)

OPINION MODIFYING DECISION 87-11-061

This decision (D.) grants Fresno Cellular Telephone Company's (Fresno) petition for modification of D.87-11-061.

Background

Fresno was authorized to operate as a reseller of cellular radio service under a certificate granted by the Commission in D.86-10-007 dated October 1, 1986. Pursuant to D.87-06-063, Fresno filed its Advice Letter No. 4, effective August 15, 1987, to expand its service territory to provide resale service in the Stockton and Sacramento metropolitan statistical areas (MSAs).

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6. No protests were received related to this petition.

Conclusions of Law

1. D.87-10-036 should be modified to provide for an orderly transfer of customers from Fresno to the facilities-based system of its affiliate, Stockton.

2. Fresno's proposal for modification of D.87-10-036 is reasonable.

3. There is no need for a temporary order permitting Fresno to retain its reseller certificate for the Stockton MSA.

4. There is no need for a public hearing.

ORDER

IT IS ORDERED that Ordering Paragraph 10 of D.87-10-36 is modified to allow Fresno Cellular Telephone Company to retain its reseller certificate for the Stockton MSA until its existing resale customers within the Stockton MSA are conveyed, by transfer or otherwise, to the facilities-based service of its affiliate, Stockton Cellular Telephone Company (Stockton), or 90 days from the date Stockton begins operations under the authority granted by

D.87-11-061, whichever is earlier. During this transition period Fresno shall not offer resale service to any new customers in the Stockton MSA.

This order is effective today.

Dated FEB 24 1988, at San Francisco, California.

STANLEY W. HOLETT
President
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Commissioners

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