

Decision SS 04 041 APR 27 1988

APR 27 1988

ORIGINAL

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of REDWOOD CELLULAR  
COMMUNICATIONS, INC., a California  
Corporation for a Certificate of  
Public Convenience and Necessity  
to Resell Cellular Radio Telephone  
Service in California. (U-4062)

Application 88-02-023  
(Filed February 16, 1988)

OPINION

Applicant Redwood Cellular Communications, Inc., a California corporation, seeks a certificate of public convenience and necessity (CPC&N) pursuant to Public Utilities (PU) Code Section 1001<sup>1</sup> to operate as a reseller of cellular telecommunications services in California.

Applicant requests that (a) the application be granted on an ex parte basis and that applicant be authorized to provide its service on a statewide basis; (b) the effective date of this decision be the date of issuance; and (c) applicant be authorized to file its tariffs five days after the effective date of this order with tariffs becoming effective not less than one day after the filing.

Applicant states it is presently operated as an agent for Santa Rosa Cellular and in that capacity has placed approximately 200 cellular radiotelephone units in service.

Applicant was formed to resell cellular radiotelephone service on systems operated by various cellular carriers, including Cagal Cellular Communications Corporation (Santa Rosa Cellular), Bay Area Cellular Telephone Company (BACTC), GTE Mobilnet of San Francisco and San Jose Limited Partnership (GTE Mobilnet).

<sup>1</sup> Unless otherwise indicated, sections referred to in this decision are in the PU Code.

Applicant proposes to serve within the service area boundaries established by the Commission for those carriers. Initially applicant proposes to market its services within the San Francisco-San Jose Cellular Geographical Service Area (CGSA), the Santa Rosa-Petaluma CGSA, the Napa-Vallejo CGSA, and the Monterey-Salinas CGSA.

Applicant states it will not be a facilities-based provider of cellular service; the technical feasibility of the services it would market will necessarily have been decided by the Commission in connection with the proceedings relating to the relevant facilities-based carriers.

Applicant further asserts that it has served its potential competitors and the interested parties listed in Exhibit F attached to the application. But it requests a waiver of the service requirements of Rule 18(b) of the Commission's Rules of Practice and Procedure (Rules), requiring service on the cities and counties within or encompassing the above-enumerated CGSAs because the affected public entities have received notice of the intent to provide cellular service within their boundaries by having been served with the applications of the facilities-based carriers. That rationale is reasonable and the waiver will be granted.

In Exhibit D attached to the application, applicant prepared a five-year pro forma income statement for its operations. Its statement indicates that applicant will sustain operating losses of \$69,900 in the first year of its operations and \$55,500 in the second year of its operations. The pro forma also indicates that it would have a net income of \$56,200 in the third year of its operations, \$141,300 in the fourth year of its operations, and \$197,700 net income in the fifth year of its operations. Applicant estimates that it would serve over 500 customers at the end of its first year of operations and more than 1,300 customers by the end of its fourth year of operations.

Applicant is a newly formed corporation and has not yet commenced operations; therefore, it does not have a current balance sheet or operating statement. However, applicant provided a copy of the personal financial statement of William H. Colclough, who will own more than 60% of applicant's shares. Colclough, as an individual and through corporations in which he is a sole shareholder, has advanced and will continue to advance the sums necessary to establish applicant as a cellular reseller in California. Furthermore, he obtained a \$100,000 one-year loan due on February 5, 1989 from the Exchange Bank. The loan note requires applicant to make monthly interest payments at a variable rate of 2-1/2% over the bank's prime rate.

Applicant's proposed retail tariffs reflect the retail rates charged by the facilities-based carriers in the San Francisco-San Jose, Santa Rosa-Petaluma, and Monterey-Salinas GSAs. When applicant begins reselling service in the Sonoma and Napa counties on the Santa Rosa Cellular and BACTC systems it proposes to amend its proposed tariffs to reflect any differences between those now proposed and in those of the facilities-based carriers in those areas. Applicant proposes to follow that tariff procedure in the event that it enters other markets as reseller. Its initially proposed tariff rates set forth in Exhibit E attached to the application will be authorized with the modifications described below.

Background

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-A (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, for the initial filing rather than the one-day notice requested by applicant. To comply with Commission Resolution T-12060 (dated January 13, 1988), applicant's initial rate schedule should include a special condition indicating at least a 50% reduction in chargeable time for cellular-initiated telephone calls which are not completed. 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-A. The second filing should include a sample customer billing statement which clearly distinguishes charges for cellular-initiated telephone calls which are not completed from any other service charge on the billing invoice. 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 (dated March 25, 1947) and T-4886 (dated February 26, 1962).

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 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.

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.

Applicant 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. Applicant 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.

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, it may not be required to disclose such detail in its filed annual reports.

Applicant states there would be no impact on the environment from its resale operations. No external construction is necessary to implement applicant's resale proposal.

There are no protests.

#### Findings of Fact

1. Applicant has the ability, experience, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by applicant.
3. The time constraints of Sections IV, V, and VI of GO 96-A are unduly restrictive at this time.

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

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

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

7. Applicant seeks a waiver for providing copies of its application to the cities and counties in the GCSAs it proposes to serve.

8. A public hearing is not necessary.

Conclusions of Law

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

2. Applicant 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. Applicant is subject to the fee system set forth in Sections 401, et seq.

4. The appropriate surcharge pursuant to Conclusion of Law 3 is 0.1% for the fiscal year 1987-1988.

5. Applicant's request for waiver of the service requirement in Rule 18(b) of the Rules of Practice and Procedure to the cities and counties is reasonable and should be granted.

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 applicant Redwood Cellular Communications, Inc. operate as a reseller of cellular radio telecommunication 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 in Exhibit E to its application for the resale of cellular mobile radiotelephone service modified to comply with Resolution T-12060 as discussed above. Service may not be offered until tariffs are on file. This filing shall comply with General Order 96-A (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 his 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 applicant in its application, together with the remaining retail tariff provisions authorized for the Los Angeles SMSA Limited Partnership by Decision 84-04-014 modified to conform with Resolution T-12060. The filing is 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. This filing shall contain the sample customer billing form conforming to Resolution T-12060. 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. Applicant 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-A.



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

4. Applicant is exempted, in part, from the provisions of Sections IV, V, and VI of GO 96-A. 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. Applicant is exempted from the requirement of Rule 18(b) of our Rules of Practice and Procedure with respect to serving copies of its application on the cities and counties within the cellular geographic service areas it will serve.

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

7. The corporate identification number assigned to applicant is U-4062-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.

This order is effective today.

Dated April 27, 1988, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

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

  
Victor Weisser, Executive Director

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 carriers; 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, for the initial filing rather than the one-day notice requested by applicant. To comply with Commission Resolution T-12068 (dated January 13, 1988), applicant's initial rate schedule should include a special condition indicating at least a 50% reduction in chargeable time for cellular-initiated telephone calls which are not completed. 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. The second filing should include a sample customer billing statement which clearly distinguishes charges for cellular-initiated telephone calls which are not completed from any other service charge on the billing invoice. We will authorize applicant 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 (dated March 25, 1947) and T-4886 (dated 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

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, it may not be required to disclose such detail in its filed annual reports.

Applicant states there would be no impact on the environment from its resale operations. No external construction is necessary to implement applicant's resale proposal.

There are no protests.

Findings of Fact

1. Applicant has the ability, experience, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by applicant.
3. The time constraints of Sections IV, V, and VI of GO 96 are unduly restrictive at this time.

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

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

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

7. Applicant seeks a waiver for providing copies of its application to the cities and counties in the GCSAs it proposes to serve.

8. A public hearing is not necessary.

Conclusions of Law

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

2. Applicant 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. Applicant is subject to the fee system set forth in Sections 401, et seq.

4. The appropriate surcharge pursuant to Conclusion of Law 3 is 0.1% for the fiscal year 1987-1988.

5. Applicant's request for waiver of the service requirement in Rule 18(b) of the Rules of Practice and Procedure to the cities and counties is reasonable and should be granted.

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.

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

4. Applicant 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. Applicant is exempted from the requirement of Rule 18(b) of our Rules of Practice and Procedure with respect to serving copies of its application on the cities and counties within the cellular geographic service areas it will serve.

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

7. The corporate identification number assigned to applicant is U-4062-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.

This order is effective today.

Dated APR 27 1988, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners