

APR 27 1988

ORIGINAL

Decision 88-04-050 April 27, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Cellular Car Phones, Inc. dba L. A.)
 Pacific Telecom, a California)
 corporation, for a Certificate of)
 Public Convenience and Necessity to)
 operate as a reseller of Cellular)
 Radio Telephone Services within the)
 State of California. (U-4064-C))

Application 88-03-002
 (Filed March 1, 1988)

OPINION

Cellular Car Phones, Inc. (applicant), a California corporation, 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 Section 1001; exemption from the requirements of Sections IV, V, and VI of this Commission's General Order Series 96-A (GO 96-A); and, exemption from the provisions of PU Code Sections 816-830 and 851-855.

Copies of the application were served on entities with which applicant's proposed service is likely to compete, as listed in Exhibit D attached to the application. Notice of this application appeared in the Commission's Daily Calendar of March 7, 1988. No protests to the application were received, and a public hearing is not necessary.

Applicant presently markets cellular telephone equipment and services in the Los Angeles and Orange County areas as an agent of L. A. Cellular Telephone Company.

As a reseller of cellular radio service, applicant represents that it will not construct, own, or operate any cellular facilities. Accordingly, there is reasonable certainty that the grant of this application will not result in significant adverse effect upon the environment.

Applicant proposes to purchase cellular radio telephone services from the applicable cellular carrier at the carrier's published wholesale rates with the intent to resell such telephone numbers to customers (end users) in the greater Los Angeles metropolitan area. All charges incurred to 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.

Applicant proposes for end users, a connection charge of \$50.00, a monthly access charge of \$45.00, peak minute usage of \$0.45, and off-peak minute usage of \$0.27 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. Applicant acknowledges that it would file a formal tariff should it be a condition of authority to operate.

Decision (D.) 84-04-014, which granted the Los Angeles SMSA Limited Partnership (Partnership) a Certificate of Public Convenience and Necessity (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 similar to the retail provisions authorized by D.84-04-014 and filed by the Partnership.

We recognize that applicant's tariffs as a whole may be somewhat abbreviated from those of the primary carrier; however, they should 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 Advisory 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 the system generally employed by the major wireline carriers at its election.¹

Applicant asserts that public convenience and necessity require Commission approval of this application.

Applicant states the basic need for cellular radio telephone service has already been established and that its services will be responsive to the public interest as discussed in D.84-04-014. In addition, applicant states its service will enhance competition in the retail cellular market ultimately benefitting the public through lower prices, greater diversity in services and rates, and increased utilization of system capacity enabling the underlying carrier to maintain lower rates.

We are in general agreement with the above-mentioned assertions.

Applicant has the financial resources to perform the proposed service. On December 31, 1987, applicant had \$124,163 of assets, \$24,256 of liabilities, and \$103,685 of net worth, as shown in Exhibit A to the application.

Applicant estimates that by the end of its first year of operation, it will have approximately 400 end users, and that by the end of the fifth year of operations, it will have approximately 2,000 end users in California.

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

As had occurred with other reseller applications, applicant requests an exemption from Sections IV, V, and VI of GO 96-A, and authorization to file tariff revisions to become effective on 5 days' notice.

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.

Applicant contends that as a competitive reseller of cellular radio telephone services, it will have minimum market power and little ability to influence price. Accordingly, it contends that it is a nondominant carrier and, as such, should be granted limited exemption from GO 96-A.

We have granted similar exemption requests in the past,² and accordingly we believe this request has merit. This reseller should not be treated differently from other resellers; therefore, we will grant the requested GO 96-A exemption and permit applicant to make requested tariff changes on 15 days' notice.

Applicant also seeks an exemption from Sections 816-830 and 851-855 of the PU Code. Sections 816-830 govern the power of the utility to issue stocks and stock certificates or other evidence of indebtedness and to create liens on their property situated within this State. Sections 851-855 provide, in part, that no public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its

² See Decisions 86-11-069, 84-11-113, and 84-09-023.

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.

Similar requests, received from other resellers of cellular radiotelephone services within California, were addressed in California Association of Long Distance Telephone Companies' Application (A.) 84-03-92. Applicant presents no new arguments; therefore, applicant should be subject to our decision on this matter in A.84-03-92. By D.85-07-081, and as modified by D.85-11-044 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 exempted from the requirements of Public Utilities Code Section 851, whenever such transfer or encumbrance serves to secure debt."
(D.85-11-044.)

and:

"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.)

Subsequently by D.86-08-057, the Commission delegated to the Executive Director conditional authority to grant noncontroversial applications by nondominant telecommunications carriers seeking authority to transfer assets or control under PU Code §§ 851-855.

Upon certification, applicant should be subject to reporting requirements deemed appropriate by this Commission. One of these requirements is the manner in which applicant's records are maintained. Until a uniform system of accounts for cellular resellers has been prescribed, the Commission will not issue detailed account instructions. However, each cellular communications company is expected to maintain its books of account 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 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, building expense, salaries,

insurance, and other appropriate subdivisions.

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

Applicant should be directed to file an annual report with the Commission, in a form prescribed by this 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.

Also, applicant should be subject to the fee system, as set forth in PU Code Sections 401, et seq., which is used to fund the cost of regulating common carriers and businesses related thereto and public utilities. By Resolution M-4743, we set the fee level for fiscal year 1986-87 for telephone corporations at 0.10 of 1¢ (0.0010) of revenue subject to the fee. Appropriate tariff rules should be incorporated in applicant's tariff rules for the imposition of this surcharge.

Applicant represents that it is prepared to offer its requested service immediately. Accordingly, applicant requests that this opinion become effective on the date of issuance, and that it be authorized to file tariffs 5 days after the effective date of this order, to be effective on not less than 1 day after filing.

Findings of Fact

1. Applicant requests a certificate of public convenience and necessity to operate as a resale carrier providing cellular radio service within California.
2. No protests to the application were received.
3. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

4. Applicant has the ability and financial resources to perform the proposed service.
5. Applicant is a nondominant carrier.
6. Resellers have been granted an exemption from GO 96-A and have been permitted to make requested tariff changes on 15 days' notice.
7. By D.85-07-081, and as modified by D.85-11-044 and D.86-08-057 nondominant carriers were granted specific exemptions from PU Code Sections 816-830 and 851-854.
8. Each cellular communications company is expected to maintain its books of account in such detail that financial data relating to its operations can be assembled upon request.
9. Applicant is subject to the fee system set forth in PU Code Sections 401, et seq.
10. Public convenience and necessity require the grant of this application.
11. 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 provisions of PU Code §§ 851-854 as set forth in D.86-08-057.
4. The fee (surcharge) which applicant is subject to for the 1986-87 fiscal year should be 0.1%.
5. Because of the immediate need for 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 Cellular Car Phones, Inc. (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 page 2 of the application for the resale of cellular mobile radiotelephone service in the greater Los Angeles area. Tariffs shall be filed as discussed in the body of this order. Service may not be offered until tariffs are on file. This filing shall comply with General Order Series 96-A (GO 96-A), except that, applicant is authorized to employ the alternative 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, the filing to be effective on not less than five 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 five 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 Section IV, V, and VI of GO 96-A and is authorized to make tariff revisions effective on 15 days' notice.

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

7. Applicant is exempted from the provisions of PU Code Section 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 requirements of PU Code Sections 851-854. However, in noncontroversial applications for authority to transfer assets or control under PU Code §§ 851-855, 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 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 Sections 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.

13. The corporate identification number assigned to applicant is U-4064-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 APR 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 Weiszer, Executive Director

AB

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insurance, and other appropriate subdivisions.

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

Applicant should be directed to file an annual report with the Commission, in a form prescribed by this 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.

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

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

11. 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 Series 96 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 provisions of PU Code §§ 851-854 as set forth in D.86-08-057.

4. The fee (surcharge) which applicant is subject to for the 1986-87 fiscal year should be 0.1%.

5. Because of the immediate need for 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.

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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 this Commission, in a form prescribed by this Commission.

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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.