

Decision 88 05 061 MAY 25 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of DOWNER COMMUNICATIONS,)
INC., a Massachusetts Corporation, for)
a Certificate of Public Convenience)
and Necessity to Resell Cellular)
Radio-Telephone Service in)
California.)

Application 87-10-007
(Filed October 9, 1987)

OPINION

This is an application in which Downer Communications, Inc. (Downer) seeks authority to operate as a reseller of cellular telecommunications services in California. It also seeks exemptions from Public Utilities Code (PU Code) Sections 816-830 and 851-854.

Notice of the filing of the application appeared in the Commission's Daily Calendar on October 16, 1987. There are no protests.

The Commission makes the following findings and conclusions.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Downer is a Massachusetts corporation which is qualified to do business in California. It is a wholly owned subsidiary of Downer and Company, a Massachusetts general partnership (partnership). It now operates as a certificated reseller of cellular radio telecommunications service in the Commonwealth of Massachusetts where it subscribes to service from underlying cellular carriers. Downer purchases, installs and maintains cellular credit card telephones in taxis, limousines, boats, railcars and other locations, both fixed and mobile. Service from these cellular credit card telephones is available to any person,

firm, corporation or legal entity which utilizes the telephone through the use of the user's credit card.

3. Downer proposes to operate as a reseller of cellular service in California. Initially, it will offer cellular credit card telephone service in taxis, limousines, boats, railcars, and other locations, both fixed and mobile, similar to service it offers in Massachusetts. The terms for this service are set forth in proposed tariffs attached to the application as Exhibit B. Downer seeks authority to provide service throughout California. It intends to commence operating in the San Jose area.

4. Partnership had assets of \$154,130 as of March 31, 1987. It had operating revenues of \$263,975 for the first quarter of 1987. The partners have executed a declaration, which is attached to the application, indicating partnership will advance sufficient revenue to Downer to permit it to conduct the proposed operations.

5. The proposed service will enhance competition in the cellular retail market. Enhanced competition will bring long-term benefits to California cellular subscribers such as lower priced service, increased ability of customers to choose between service providers and a wide variety of service packages, and provide increased utilization of the existing facilities of the underlying carriers, which will enable the underlying carriers to use the system more efficiently.

6. Downer has the ability, including financial ability, to conduct the proposed operations.

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. Public convenience and necessity require that the application be granted.

9. Downer should be subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435. The fee is currently 0.1% for the 1987-88 fiscal year.

10. It is reasonable to require that upon certification, Downer should be subject to reporting requirements deemed appropriate by the Commission. One of these requirements is the manner in which its 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:

- a. Revenue and expenses of utility operations should be segregated from nonutility operations.
- b. Charges from affiliates should be broken down so that each kind of charge can be identified.
- c. Revenue accounts should be appropriately subdivided (access, peak, off-peak, service order charges, custom calling, directory listing, etc.).
- d. 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.
- e. General and administrative expenses should be subdivided to identify rent and lease expense, building expense, salaries, insurance, and other appropriate subdivisions.
- f. Other significant costs, such as unsold numbers inventory, should be separately identified.

11. It is reasonable to require Downer to file annual reports with this Commission, in a form prescribed by the Commission. Although Downer 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.

12. The Commission takes official notice that resellers of cellular telecommunications service have been granted an exemption from GO 96-A and have been permitted to make tariff filings on 15 days' notice. ✓

13. Because of the public interest in effective competition, this order should be effective on the date of issuance.

Conclusions of Law

1. The application should be granted as provided herein.

2. Downer 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. D.86-08-057 established a procedure for the transfer of assets or control of nondominant telecommunications carriers. For an application to come under the ambit of D.86-07-057, it is necessary to make four factual findings: (1) The applicants are nondominant telecommunications carriers; (2) No protests were filed to the application or if filed were withdrawn; (3) The application is noncontroversial; and (4) The staff recommends the application be granted by ex parte order of the Executive Director. In addition to these requirements, there are the general requirements that the application meets the requirements of law and the Rules of the Commission.

It would be inappropriate to make a finding in this proceeding as to whether any future filing by Downer would meet the requirements of D.86-07-057.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly features of these rights at any time.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity to operate as a telephone corporation as defined in PU Code § 234 for the purpose of operating as a reseller of cellular telecommunications services within California is granted to Downer Communications, Inc. (Downer) in accordance with the terms of the application.
2. Downer is authorized to file the tariff schedules and rates proposed in the application. Service may not be offered until tariffs are on file. This filing shall comply with General Order (GO) Series 96, except that, applicant is authorized to employ the alternative method of page numbering described in Commission Resolutions U-275 and T-4886, at its election.
3. Downer is authorized to file with this Commission, after the effective date of this order, on not less than 5 days' notice to the public and Commission, the tariff schedules for its proposed service as shown in the application. 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. Downer is exempted, in part, from the provisions of Sections IV, V, and VI of GO Series 96 and is authorized to make tariff revisions effective on 15 days' notice.
5. Downer is subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435.
6. The corporate identification number assigned to Downer is U-4065-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.

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7. The certificate of public convenience and necessity granted by this order shall expire within 12 months after the effective date of this order if Downer has not filed tariffs and commenced operations by that date.

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

This order is effective today.

Dated MAY 25 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

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

12. The Commission takes official notice that resellers of cellular telecommunications service have been granted an exemption from Go 96-A and have been permitted to make tariff filings on 15 days' notice.

13. Because of the public interest in effective competition, this order should be effective on the date of issuance.

Conclusions of Law

1. The application should be granted as provided herein.

2. Downer 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. D.86-08-057 established a procedure for the transfer of assets or control of nondominant telecommunications carriers. For an application to come under the ambit of D.86-07-057, it is necessary to make four factual findings: (1) The applicants are nondominant telecommunications carriers; (2) No protests were filed to the application or if filed were withdrawn; (3) The application is noncontroversial; and (4) The staff recommends the application be granted by ex parte order of the Executive Director. In addition to these requirements, there are the general requirements that the application meets the requirements of law and the Rules of the Commission.

It would be inappropriate to make a finding in this proceeding as to whether any future filing by Downer would meet the requirements of D.86-07-057.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly features of these rights at any time.

intraLATA communications services should be placed over the facilities of the local exchange company.

The application seeks authority to originate and terminate interLATA calls throughout the State of California, although applicant indicates that initially it will provide service in the Los Angeles, San Francisco, and Sacramento areas. Applicant indicates that it will provide service over facilities leased from other carriers. In Exhibit V to its application, the applicant indicates its intention to mirror those rates currently being charged by Pacific Bell for intrastate service. Thus, applicant's rates for interLATA intrastate calls will range between 32 and 59 cents per minute.

On April 20, 1988, Pacific Bell filed its Protest to the application. Pacific Bell notes that although the applicant seeks authorization to operate as an interexchange carrier, it also contemplates provision of alternate operator services (AOS) as evidenced by Exhibit IV to the application. Pacific Bell believes that the applicant must amend its filing to delineate the specific AOS services it intends to provide, and to otherwise demonstrate its compliance with directives contained in the April 13, 1988 letter of the Director of the Commission's Advisory and Compliance Division (CACD). (The Davis letter).¹

On April 25, 1988, applicant sent a letter to the assigned administrative law judge (ALJ) addressing the issues

¹ In that letter, the Director of CACD directed all alternate operator service companies which provide intrastate services in California to file applications for certificates of public convenience and necessity (CPC&N) and proposed tariffs for their intrastate services, within 60 days. The letter informed AOS companies that they must comply with the Commission's General Order (GO) 96-A, must file Tariff Schedules and GO-104 Annual Reports, and must adhere to the Commission's prohibition on intraLATA competition.

raised in Pacific Bell's protest. Applicant argued its compliance with the requisites of the Davis letter, and noted that although its application was filed prior to April 13th, it now has prepared tariff schedules for submission to CACD. Further, applicant's counsel represented applicant's intention to refrain from engaging in intraLATA competition.

On May 2, 1988, Pacific Bell sent its own letter response, arguing again that applicant failed to seek explicit authority as an AOS operator and should be required to amend its application to do so. In addition, Pacific Bell specified four conditions designed to clarify that applicant would engage in no intraLATA bypass or overcharging in its AOS operations. Pacific Bell offered to drop its opposition to the application if the applicant amends its application to adopt these conditions as part of its California operating authority.²

Subsequently, on May 20, 1988, a telephone conference call was arranged by the ALJ Division to attempt to resolve the outstanding issues raised by Pacific Bell's protest.³ During the conference call Pacific Bell and the applicant discussed the four conditions relating to intraLATA calling and overcharging issues, and the applicant agreed to abide by those conditions in connection with the grant of this CPC&N. Thus, the issues raised by the protest have been resolved satisfactorily, and the conditions are contained in the ordering paragraphs which follow. These conditions are adopted for resolve the limited factual issues raised by this application and Pacific Bell's protest.

2 By letter of May 6, 1988, applicant's counsel responded to the May 2, 1988 Pacific Bell letter, but did not address these four conditions.

3 Participating in this conference call were ALJs Carew and Kiernan-Harrington; David A. Simpson, representing the applicant; and Bonnie B. Packer and Marlin Ard representing Pacific Bell.

During the May 20, 1988 conference call, the ALJs also raised the issue of applicant's AOS-related tariffs. These tariffs, which were not included as part of the application, have now been provided to the CACD for review. CACD should continue its review, since this order provides that applicant's tariff schedules for the provision of AOS operator services are subject to pre-filing review and approval of the Chief of the CACD's Telecommunications Branch. Upon receipt of a letter from the Chief of the Telecommunications Branch indicating CACD's approval of the AOS-related tariff schedules, applicant is authorized to file with this Commission its tariff schedules for the provision of such services. Applicant may not offer AOS-related service until these tariffs are on file.

On the other hand, applicant is authorized to file with this Commission, 5 days after the effective date of this order, tariff schedules for the provision of other interLATA service, unconnected with its proposed AOS-related service. However, applicant may not offer such service until tariffs are on file.

Applicant is placed on notice that this Commission may review issues affecting the AOS industry in more general terms in I.88-04-029 or another appropriate proceeding. Nothing in today's decision should be construed as a prejudgment on our part of issues already identified in I.88-04-029 or other generic issues, as such issues may ultimately impact applicant.

This application is granted to authorize interLATA service, including interLATA AOS operator services, under the conditions specified, and to the extent the application may be construed as a request for authorization to provide intraLATA service, it will be denied.

Findings of Fact

1. By D.84-01-037 the Commission authorized interLATA entry generally.

2. D.84-06-113 the Commission denied applications to provide competitive intraLATA telecommunications service and required persons not authorized to provide intraLATA telecommunications service to refrain from holding out the availability of such services and to advise their subscribers that intraLATA communications should be placed over the facilities of the local exchange company.

3. There is no basis for treating this applicant differently than those which filed earlier, except to the extent addressed in the AOS-related conditions specified in this order.

4. Because of the public interest in effective interLATA competition, this order should be effective today.

5. AOS Continental is subject to the 4% surcharge applicable to the gross revenues of intrastate interLATA services outlined in D.87-07-090 in Order Instituting Investigation (OII) 83-11-05 dated July 29, 1987, and D.87-10-088 dated October 28, 1987.

6. Applicant should be subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435. The fee is currently .1% for the 1987-88 fiscal year.

Conclusion of Law

This application should be granted in part to the extent set forth below.

ORDER

IT IS ORDERED that:

1. The application of AOS Continental of California, Inc. is granted to the limited extent of providing the requested service on an interLATA basis, subject to the condition that applicant refrain from holding out to the public the provision of intraLATA service and subject to the requirement that it advise its subscribers that intraLATA communications should be placed over the facilities of the local exchange company.

2. To the extent that the application requested authorization to provide intraLATA telecommunications services, the application is denied.

3. In connection with its provision of AOS services, applicant shall adhere to the following four conditions:

1. All intraLATA calling shall be directed by AOS to the local exchange company for completion by the local exchange company as intraLATA calling. As used herein "intraLATA calling" shall mean all calls that originate and terminate within the same LATA. The routing of intraLATA calls to the local exchange carrier requires that (a) all such calls, as dialed by the end user customer, be routed as dialed to the local exchange carrier and may not be routed to any other person or entity for call processing, billing, transmission or completion, and (b) all such routing be accomplished in a manner that permits application of the local exchange carrier's charges for intraLATA calling by the local exchange carrier from the central office where the call originates to the central office or wire center serving the device where the call terminates. In addition, the routing of intraLATA calls to the local exchange carrier shall be done in a manner which permits the performance by the local exchange carrier of functions for which a local exchange carrier charge applies (including, without limitation, all intraLATA operator and operator surcharge functions). By way of example, and without limitation, AOS shall not, by itself or in conjunction with any other entity or person, permit, allow, or hold out the availability of any routing arrangement that directs intraLATA calls as dialed by an end user customer to any person or entity other than the local exchange carrier.
2. AOS shall not offer, hold out, provide or otherwise make available intraLATA operator-handled calls. As used herein intraLATA operator-handled calls (also

referred to as "non-sent paid calls"), whether handled mechanically or manually, includes all intraLATA credit card, bill third number, collect, Station to Station, Person to Person, conference calls, or any combination thereof. The routing of intraLATA operator-handled calls (non-sent paid calls) by the local exchange company requires that (a) all such calls as dialed by the end user customer be routed to the local exchange company and to no other person or entity, including AOS, (b) routing shall be accomplished in a manner that permits application of the local exchange company's operator charges, and (c) such non-sent paid calls shall be billed by the local exchange company to the number or account designated by the calling person and acceptable by the local exchange company. InterLATA operator-handled calls may be provided by AOS.

3. AOS shall inform all customers who inquire that intraLATA calls and intraLATA operator-handled calls are to be provided by the local exchange company. In addition, AOS shall take all necessary action to ensure that such calls are returned to the local exchange company central office serving the calling party for completion and billing by the local exchange company as an intraLATA call.
4. AOS will charge customers no more for interLATA - intrastate calling than the tariffed rates of AT&T-Communications, Inc., plus any additional amounts permitted by the Commission for completion of calls from non-utility pay phones.

4. Applicant shall provide tariff schedules for the provision of interLATA alternate operator services (AOS), to CACD for its review. Upon review of these tariff schedules and the written approval of them by the Chief of CACD's Telecommunications Branch, applicant is authorized to file with this Commission tariff

schedules for the provision of interLATA AOS. Applicant may not offer such services until these tariffs are on file.

5. In connection with non-AOS-related interLATA telecommunications services, applicant is authorized to file its tariff schedules with this Commission 5 days after the effective date of this order. Applicant may not offer service until tariffs are on file. If applicant has an effective FCC-approved tariff, it may file a notice adopting such FCC tariff with a copy of the FCC tariff included in the filing. Such adoption notice shall specifically exclude the provision of intraLATA service. If applicant has no effective FCC tariffs, or wishes to file tariffs applicable only to California intrastate interLATA service, it is authorized to do so, including rates, rules, regulations, and other provisions necessary to offer service to the public. Such filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than 1 day after filing.

6. Applicant is authorized to deviate on an ongoing basis from the requirements of GO 96-A in the following manner: (a) to deviate from the pagination requirements set forth in paragraph II.C.(1)(b) which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) to deviate from the requirements set forth in paragraph II.C.(4) that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's Telecommunications Branch. Tariff filings shall reflect the 4% interim surcharge noted in Ordering Paragraph 7.

7. If applicant fails to file tariffs within 60 days of the effective date of this order, applicant's certificate may be suspended or revoked.

8. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived in order that changes in FCC

tariffs may become effective on the same date for California interLATA service for those companies that adopt the FCC tariffs.

9. Applicant is subject to the 4% surcharge applicable to the gross revenues of intrastate interLATA services outlined in D.87-07-090 and OII 83-11-05, dated July 29, 1987, and D.87-10-088 dated, October 28, 1987.

10. Applicant is subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435.

11. The corporate identification number assigned to AOS Continental of California, Inc. is U-5150-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.

12. The protest of Pacific Bell is granted to the extent consistent with the conditions imposed in this order.


13. The application is granted in part and denied in part as set forth above.

This order is effective today.

Dated MAY 25 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 Wuisser, Executive Director
PB

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of AOS Continental of California,)
Inc. for a Certificate of Public)
Convenience and Necessity to)
Operate as a Reseller of)
Telecommunications Services)
Within California. (U-5150-C))

Application 88-03-034
(Filed March 15, 1988)

OPINION

AOS Continental of California, Inc. (applicant) has filed an application requesting that the Commission issue a certificate of public convenience and necessity under Public Utilities (PU) Code § 1001 to permit applicant to operate as a reseller of telephone services offered by communications common carriers providing telecommunications services in California.

By order dated June 29, 1983, the Commission instituted an investigation to determine whether competition should be allowed in the provision of telecommunications transmission services within the state (OII 83-06-01). Numerous applications to provide competitive service were consolidated with that investigation and by Interim Decision (D.) 84-01-037 dated January 5, 1984 and subsequent decisions, these applications were granted, limited to the provision of interLATA service and subject to the condition that applicants not hold out to the public the provision of intraLATA service pending our decision in the Order Instituting Investigation (OII).

On June 13, 1984 we issued D.84-06-113 in OII 83-06-01 denying the applications to the extent not previously granted and directing persons not authorized to provide intraLATA telecommunications services to refrain from holding out the availability of such services and to advise their subscribers that

intraLATA communications services should be placed over the facilities of the local exchange company.

Pacific Bell filed a protest to the part of the application that requests intraLATA authority. It does not oppose the granting of interLATA authority. Since we are not authorizing intraLATA service, the protest is moot.

There is no basis for treating this applicant any differently than those which filed earlier. Therefore, this application will be granted to authorize interLATA service, and to the extent that it requests authorization for intraLATA service, it will be denied.

Findings of Fact

1. By D.84-01-037 the Commission authorized interLATA entry generally.

2. By D.84-06-113 the Commission denied applications to provide competitive intraLATA telecommunications service and required persons not authorized to provide intraLATA telecommunications service to refrain from holding out the availability of such services and to advise their subscribers that intraLATA communications should be placed over the facilities of the local exchange company.

3. There is no basis for treating this applicant differently than those which filed earlier.

4. Because of the public interest in effective interLATA competition, this order should be effective today.

5. As a telecommunications service supplier, applicant should be subject to the 4% interim surcharge on gross intrastate interLATA revenues and the conditions as set forth in D.87-07-090.

6. Applicant should be subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435. The fee is currently .1% for the 1987-88 fiscal year.

Conclusion of Law

This application should be granted in part to the extent set forth below.

ORDER

IT IS ORDERED that:

1. The application of AOS Continental of California, Inc. is granted to the limited extent of providing the requested service on an interLATA basis, subject to the condition that applicant refrain from holding out to the public the provision of intraLATA service and subject to the requirement that it advise its subscribers that intraLATA communications should be placed over the facilities of the local exchange company.

2. To the extent that the application requested authorization to provide intraLATA telecommunications services, the application is denied.

3. Applicant is authorized to file with this Commission, 5 days after the effective date of this order, tariff schedules for the provision of interLATA service. Applicant may not offer service until tariffs are on file. If applicant has an effective FCC-approved tariff, it may file a notice adopting such FCC tariff with a copy of the FCC tariff included in the filing. Such adoption notice shall specifically exclude the provision of intraLATA service. If applicant has no effective FCC tariffs, or wishes to file tariffs applicable only to California intrastate interLATA service, it is authorized to do so, including rates, rules, regulations, and other provisions necessary to offer service to the public. Such filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than 1 day after filing.

4. Applicant is authorized to deviate on an ongoing basis from the requirements of GO 96-A in the following manner: (a) to

deviate from the pagination requirements set forth in paragraph II.C.(1)(b) which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) to deviate from the requirements set forth in paragraph II.C.(4) that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's Telecommunications Branch. Tariff filings shall reflect the 4% interim surcharge noted in Ordering Paragraph 7.

5. If applicant fails to file tariffs within 30 days of the effective date of this order, applicant's certificate may be suspended or revoked.

6. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived in order that changes in FCC tariffs may become effective on the same date for California interLATA service for those companies that adopt the FCC tariffs.

7. Applicant is subject to the 4% interim surcharge applicable to the gross revenues of intrastate interLATA services as outlined in D.87-07-090 in Order Instituting Investigation 83-11-05 dated July 29, 1987. The 4% interim surcharge collected shall be retained in an interest bearing account pending further order of the Commission.

8. Applicant is subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435.

9. The corporate identification number assigned to AOS Continental of California, Inc. is U-5150-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.

A.88-03-034 ALJ/BEB/lrq

10. The application is granted in part and denied in part as set forth above.

This order is effective today.

Dated _____, at San Francisco, California.