

Decision 88 09 008 SEP 14 1988 SEP 14 1988

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
CONTINENTAL CELLULAR, INC. for a )  
Certificate of Public Convenience )  
and Necessity to Operate as a )  
Reseller of Cellular Radio )  
Telecommunications Within California )  
and for Exemption from the )  
Requirements of Sections 816-830 and )  
851-855 of the Public Utilities Code.)  
(U-4066-C) )  
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Application 88-06-009  
(Filed June 8, 1988)

OPINION

Applicant Continental Cellular, Inc., a California corporation, seeks a certificate of public convenience and necessity (CPC&N) pursuant to Public Utilities (PU) Code § 1001 to resell cellular telecommunication services within the greater Los Angeles standard metropolitan statistical area (LAMSA) which includes most of Los Angeles and Orange Counties and portions of Riverside, San Bernardino, and Ventura Counties. At a later time, applicant proposes to seek authority to provide service in other areas throughout California. Initially, applicant proposes to resell cellular radio telecommunication services furnished at wholesale rates by the Los Angeles SMSA Limited Partnership (Partnership), the cellular wireline resale carrier in the greater LAMSA.

Applicant estimates it will provide cellular retail service to 100 customers at the end of 1988 and 500 customers at the end of 1992. Its pro forma income statements project profits beginning in the first quarter of its operations.

Rates

Applicant proposes to resell cellular service at rates substantially equivalent to Partnership's retail rates, namely:

Connection charge	\$50.00
Monthly access charge	45.00
Peak per minute usage	0.45
Off-peak per minute usage	0.27

Applicant indicates that it would charge the retail rates of the underlying carriers in other locations in which it seeks to provide retail service.

Applicant claims that certification of Partnership demonstrates a need for cellular service in the LAMSA; that its entry into the cellular resale business will enhance competition in the cellular retail market; that such competition will bring lower priced services, increase the ability of customers to choose between service providers, increase the variety of service packages, and provide a wide variety of choices of mobile customer-provided equipment; and that applicant's certification will increase utilization of existing facilities of the underlying carrier, which in turn will result in the underlying carrier using its system more efficiently. Service is being presently marketed by Partnership, its agents, and affiliates. Applicant claims that denial of this application will cause it to suffer irreversible harm since it will lose the immediate opportunity to satisfy present demand and effectively compete with Partnership and other resellers.

Applicant further states that it and other resale companies have minimal market power and that competitive market pressures will prohibit resellers from charging unreasonably high rates to their customers. Applicant states that resellers must buy from a dominant carrier and their rates must reflect the regulated wholesale prices of the services they purchase. In short, applicant asserts that the public is protected by competitive forces and by regulation of the wholesale rates of the underlying carriers. Based on those factors, applicant requests the Commission to exempt it and other nondominant cellular resellers

from Sections IV, V, and VI of GO 96-A and allow tariff revisions to become effective on one day's notice. It proposes that cellular resale rates be subject to challenge only upon a complainant demonstrating that a proposed rate structure constitutes predatory pricing.

Applicant also requests an exemption from the provisions of PU Code §§ 816-830 and 851-855 which require Commission approval prior to issuance of debt, equity, or encumbrances of property by a public utility. In support of its exemption request applicant states that it will not need facilities and equipment but will sell service utilizing the facilities and equipment of an underlying carrier. It avers that compliance with those code sections for resellers will not serve the purpose of protecting investment in facilities against improvident financial manipulation by utility management. Should applicant fail because of other competitive market forces, either the underlying carrier or other competitive carriers will be able to continue to offer service to applicant's customers. Therefore, strict enforcement of such requirements would increase costs and impede competition, but would not further the policy of consumer protection which those sections of the code were designed to provide.

Applicant states that it is ready, willing, and able to offer its services immediately upon Commission authorization and commencement of commercial service to it by Partnership or any other utility authorized to furnish wholesale cellular service in the greater Los Angeles area.

Applicant requests that its application be granted ex parte emergency consideration and that the decision granting it authority be made effective on its date of issuance.

Applicant states that granting of this application will not have an adverse impact on the environment.

Applicant states that this application does not constitute a waiver of applicant's right to challenge the authority

of the Commission to regulate resellers of cellular radiotelephone service.

In an updated July 26, 1988 balance sheet<sup>1</sup> applicant states its current assets include \$7,000 in cash in bank and \$23,000 on deposit to secure letters of credit or a total of \$30,000 of assets. Its current liabilities were \$7,000 and its capital was \$23,000. The funds on deposit to secure letters of credit are funds held by applicant's owners, Larry Williams, president and chief financial officer, and Sharon Williams, applicant's vice president and secretary. Both of those officers are presently in the cellular business in the greater Los Angeles area.

Sections IV, V, and VI of GO 96-A relate to filed and effective dates, procedures and the filing of tariff sheets which do not increase rates or charges, as well as procedures and filing to increase rates, respectively. In general, these provisions require a showing before this Commission justifying any increase and provide in the case of cellular resellers that rates will become effective 30 days after filing tariff sheets which do not increase rates or 30 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.

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<sup>1</sup> Applicant's original balance sheet understated its capital.

Applicant's request for an exemption from the provisions of Sections IV, V, and VI of GO 96-A predated this Commission's recent modification of those sections. In D.88-05-067 the Commission specified that the Sections IV and V timeframe applicable to cellular resellers is 30 days. Applicant's exemption request is inconsistent with the Commission's determination in D.88-05-067 and is therefore denied. Applicant is also subject to the Commission's determination in D.88-05-067 exempting cellular resellers from the revenue limitation provisions of Section VI of GO 96-A.

Customer complaints may be based on a variety of causes. We see no basis for limiting complaints against cellular resellers to demonstrations of predatory pricing. Applicant has not demonstrated any further need for deregulation of cellular resellers.

Applicant is subject to the fee system set forth in PU Code § 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.

Since there will be no physical construction associated with applicant's resale proposal, there would be no impact on the environment from its resale operations.

There are no protests to granting the requested authority.

#### 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. Applicant should file a set of tariffs similar in scope to the retail tariffs set forth in Decision (D.) 84-04-014.
4. The time constraints of Sections IV, V, and VI of GO 96-A are unduly restrictive at this time.
5. At this time, it appears that the cellular market will be highly competitive.

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

7. Customer complaints may be based on a variety of causes.

8. Applicant has not demonstrated any future need for deregulation of cellular resellers.

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

10. Applicant should keep its records as described in the body of this decision.

11. A public hearing is not necessary.

12. As a telephone corporation operating as a cellular radio telecommunications reseller, applicant should also be subject to the one-half percent (1/2%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf. This surcharge becomes effective on October 1, 1988 as set forth in Resolution T-13005 dated July 22, 1988 and issued pursuant to PU Code § 2881.

#### Conclusions of Law

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

2. Applicant should be subject to the provisions of this Commission's GO 96-A including Sections IV, V, and VI which have been modified by D.88-05-067.

3. Complaints against cellular resellers should not be limited to demonstrations of predatory pricing.

4. Any proposal for deregulation of cellular resellers should not be considered absent an adequate showing in a generic proceeding.

5. Applicant is subject to the fee system set forth in PU Code § 401 et seq.

6. The appropriate surcharge pursuant to Conclusion of Law 5 is 0.1% for the fiscal year 1988-1989.

7. 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 Continental Cellular, Inc. to 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 requested above for the resale of cellular mobile radiotelephone service in the Los Angeles MSA service area purchased from the Los Angeles SMSA Limited Partnership. Service may not be offered until tariffs are on file. This filing shall comply with General Order (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 its election. The initial filing shall contain at least the Preliminary Statement, Table of Contents, and Rate Schedules, the rates and charges requested by applicant in its application, together with the remaining retail tariff provisions authorized for the Los Angeles SMSA Limited Partnership by D.84-04-014. 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. The tariff shall provide for a user fee surcharge of 0.10%. Effective on and after October 1, 1988, applicant is subject to a one-half percent (1/2%) monthly surcharge to fund Telecommunications Devices for the Deaf as outlined in Resolution T-13005 dated July 22, 1988 pursuant to PU Code § 2881. 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. The certificate of public convenience and necessity is granted as set forth above. Applicant is subject to the provisions of GO 96-A including Sections IV, V, and VI, as revised in D.88-05-067. 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. Complaints against cellular resellers shall not be limited to demonstrations of predatory pricing.

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-4066-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.

8. The application is granted as set forth above.  
This order is effective today.  
Dated September 14, 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.

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Victor Weisser, Executive Director

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