

ALJ/MJG/PC

Decision 88 09 029 SEP 14 1988**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Santa Cruz Cellular Telephone Company)
 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 domestic public cellular)
 radio telecommunications service in)
 the Santa Cruz Cellular Service Area;)
 and for authority under Sections 816)
 thorough 830 and 851 of the Public)
 Utilities Code to issue evidence of)
 indebtedness in a principal amount)
 of up to \$3,100,000 and to encumber)
 public utility property.)

Application 88-03-030
 (Filed March 14, 1988)

(U-3019-C)

INTERIM OPINION

Santa Cruz Cellular Telephone Company (SCTC) has been authorized a certificate of public convenience and necessity (CPC&N) to construct a new domestic public cellular radio telecommunication service within the Santa Cruz Metropolitan Statistical Area (MSA) located in Santa Cruz County, by Decision (D.) 88-07-065.

D.88-07-065 was issued as an interim decision to allow SCTC to construct its cellular system because SCTC was able to substantiate its proposed construction, mitigate environmental impacts, and demonstrated its financial ability to construct the cellular system. The decision did not give SCTC authority to file tariffs or to offer cellular service to the public because SCTC did not possess the requisite FCC permit, and protests to SCTC's rates and service were filed by Cellular Resellers Association, Inc. (CRA) and GTE Mobilnet of San Francisco Limited Partnership (GTEM). Subsequent to D.88-07-065, SCTC provided a copy of a Federal

Communications Commission (FCC) consent to assignment of the Santa Cruz MSA permit from Natubhai Patel to SCTC. This notice of assignment was dated July 26, 1988.

On August 15, 1988, a prehearing conference was held to discuss SCTC's proposed rates and service and CRA's and GTEM's protests. An evidentiary hearing on the reasonableness of SCTC's rates and service is set for October 17, 1988 through October 21, 1988, in San Francisco.

At the prehearing conference, SCTC raised the issue of whether the limited authority to construct its cellular system will satisfy the FCC requirement that a cellular system must be constructed and ready to initiate service within 18 months from the date a FCC permit is issued [47 C.F.R. 22.43(c)(2)]. SCTC raised this issue because the FCC's 18 month period for the Santa Cruz MSA permit will expire on September 18, 1988.

SCTC believes that tariffs must be filed and that SCTC must offer service to the public to meet the FCC's "ready to serve the public" requirement. SCTC's interpretation is consistent with arguments presented by Salinas Cellular Telephone Company in Application 88-02-035. However, SCTC acknowledges that the FCC rules and regulations are open to interpretation and that an exception to the FCC's rules and procedures may be applicable.

CRA disputes SCTC's interpretation of the FCC rules and regulations. GTEM withheld comment on any interpretation.

SCTC does not want to jeopardize its FCC permit. Therefore, SCTC requests that we find SCTC's proposed rates to be prima facie reasonable and that we entertain a complaint for the suspension of SCTC's rates from CRA.

Subsequent to the prehearing conference, SCTC and CRA entered into an agreement whereby SCTC will negotiate "Intercarrier

Roamer Service Agreements"¹ with other cellular facilities based carriers and will share SCTC's roamer revenue with resellers. In those agreements whereby SCTC is billed for such service on a wholesale or discount basis, and, in turn, SCTC's roamer service end user customer pays retail charges, resellers on SCTC will be billed on a wholesale or discount basis, and, in turn, resellers end user customers will be billed at resellers retail rates. The difference between the wholesale and retail rate will be the resellers share of roamer revenues. A copy of this agreement and proposed roamer tariffs is shown in Appendix A.

SCTC's need to satisfy FCC construction requirements is valid. However, SCTC, or any other cellular company, which proposes to operate within California is required to meet our CPC&N requirements. A cellular company that is not able to meet the FCC construction requirements should not seek remedies from us. The cellular company should petition the FCC for any relief that it believes is necessary.

A cellular company seeking a CPC&N has the burden to demonstrate that its proposed rates are reasonable. Although SCTC alleges that its rates are reasonable, we have set evidentiary hearings to determine the reasonableness of SCTC's rates and service. We will not grant SCTC's request for a finding that its rates are prima facie reasonable until the conclusion of the scheduled evidentiary hearings and consideration of all the evidence.

Because SCTC and CRA negotiated roamer service rates and charges in good faith and the service is in the public interest, we should authorize SCTC to file roamer service tariffs which are consistent with the terms and conditions negotiated between SCTC

1 Roamer service is a service whereby a cellular customer can move from cellular system to cellular system without ongoing calls being interrupted.

and CRA. However, these tariffs should be interim tariffs and should be justified by SCTC in the scheduled evidentiary hearing.

Findings of Fact

1. SCTC's rates have been protested.
2. SCTC requests that we find its rates to be prima facie reasonable.
3. An evidentiary hearing on the reasonableness of SCTC's rates and service is set for October 17, 1988 through October 21, 1988.
4. SCTC and CRA negotiated an agreement for SCTC to provide roamer service and for SCTC to share its roamer revenue with resellers. ✓
5. As a telephone corporation operating as a cellular radio telecommunications carrier, a SCTC is also subject to the one-half percent (1/2%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf. This surcharge becomes effective October 1, 1988, as set forth in Resolution T-13005 dated July 22, 1988, and issued pursuant to Public Utilities (PU) Code § 2881.

Conclusions of Law

1. SCTC's rates should not be adopted as prima facie reasonable.
2. SCTC's and CRA's negotiated agreement for roamer service should be adopted.

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 any monopoly feature of these rights at any time.

INTERIM ORDER

IT IS ORDERED that:

1. Santa Cruz Cellular Telephone Company (SCTC) rates and service are not prima facie reasonable.

2. Subject to the limitation set forth in ordering paragraph 3, a certificate of public convenience and necessity (CPC&N) is granted to SCTC to operate a cellular mobile telecommunications system in the Santa Cruz Metropolitan Statistical Area.

3. SCTC is authorized to file, after the effective date of this order and in compliance with General Order Series 96, tariffs applicable to roamer service. The tariffs shall become effective on the date filed. The rates and charges shall be as proposed for service in Appendix A.

4. Within 30 days after this order is effective, SCTC shall file a written acceptance of the CPC&N with the Commission Advisory and Compliance Division Director. ✓

5. SCTC shall keep its books as directed by the Uniform System of Accounts for cellular communications licensees as prescribed by Decision 86-01-043.

6. SCTC shall notify the Commission Advisory and Compliance Division Director in writing of the date service is first rendered to the public as authorized herein, within 5 days after service begins. ✓

7. SCTC is subject to the user fee as a percentage of gross intrastate revenue under PU Code Section 401, et seq.

8. Effective on and after October 1, 1988, SCTC 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.

9. The corporate identification number assigned to SCTC is U-3019-C which shall 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 SEP 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.


Victor Weiss, Executive Director

APPENDIX A

ROAMING AGREEMENT

This ROAMING AGREEMENT is dated as of the _____ day of September, 1988 by and between Santa Cruz Cellular Telephone Company ("SCTC") and Cellular Resellers Association, Inc. ("CRA") (collectively, "the Parties").

WHEREAS, SCTC has applied for a Certificate of Public Convenience and Necessity to the California Public Utilities Commission ("Commission") to offer cellular radiotelephone service to the public in the Santa Cruz Cellular Geographic Service Area ("Santa Cruz CGSA");

WHEREAS, CRA has filed a Protest to SCTC's Application and a hearing has been ordered by the Commission to be held on October 17, 1988 to resolve certain issues raised in the Protest;

WHEREAS, the Commission proposes to grant interim authority to offer roamer service on September 14, 1988 on the condition that on or before September 9, 1988, SCTC agrees to share roamer revenue as defined herein with those CRA members which resell SCTC's cellular service ("Resellers") under the terms set forth herein;

WHEREAS, SCTC has negotiated or intends to negotiate and enter into "Intercarrier Roamer Service Agreements" ("Intercarrier Agreements") with a number of providers of cellular service in CGSAs other than the Santa Cruz CGSA ("Facilities-based Carriers"), and such agreements will facilitate roaming by SCTC and Reseller's customers in CGSAs in which Facilities-based Carriers operate cellular service ("Foreign CGSAs");

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

I.

SCTC agrees to share roamer revenue with Reseller as follows:

(a) In the event that SCTC enters into a roamer agreement with any Facilities-based Carrier in California whereby SCTC is billed for such service on a wholesale or discount basis and, in turn, SCTC's roamer service end user customer pays retail charges, resellers on SCTC will be billed on a wholesale or discount basis and, in turn, end user customers of Reseller's service will be billed at Reseller's retail rates. The difference between the wholesale and retail rate shall be Reseller's share of Roamer revenues.

(b) SCTC has entered into a roamer agreement with Bay Area Cellular Telephone Company ("BACTC") pursuant to which SCTC may provide roamer service to BACTC customers at the same air time rates SCTC charges to its own customers. SCTC agrees that the charges to end user units placed on the BACTC system by Resellers shall be \$.38/minute (prime time) and \$.16/minute (non-prime time) as more fully described on Exhibit A hereto.

(c) SCTC will propose, and will support at hearings, if any, a roamer tariff in substantially the form of Exhibit A whereby resellers whose customers roam in the Santa Cruz MSA will be charged at a wholesale rate, if the reciprocal arrangement is offered by the foreign carrier to SCTC's resellers. The reseller

APPENDIX A

customer, in turn, will be billed at the relevant reseller's tariffed retail rates.

(d) SCTC will provide each Reseller with the billing information which is necessary for the Reseller to bill its customers including information pertaining to each customer's local usage in the Santa Cruz CGSA as well as information regarding such customer's roamer charges pursuant to the Facilities-based Carrier's applicable tariffs for the Foreign CGSA.

(e) In all of the above cases, SCTC shall provide Peter A. Casciato, P.C., as counsel for the Cellular Resellers Association, Inc., a copy of each Roaming Agreement entered into by SCTC, subject only to the receipt of any third party waivers required under the terms of the relevant agreement.

(f) Each Reseller acknowledges that if an Inter-carrier Agreement provides that such Agreement may be cancelled without cause by either carrier on 30 to 60 days' notice or cancelled immediately "for cause" or "suspended" on due to technical impracticability or an unreasonable amount of unauthorized use, and if such a termination occurs, then each Reseller agrees that SCTC shall have no responsibility whatsoever for the continued availability to the Resellers' customers of the opportunity to roam, or the availability of Discounted Rates. However, if new or amended roaming agreements are executed by SCTC with other Facilities-based Carriers, replacing the terminated agreements, then this Agreement shall apply to said new roaming agreements.

II.

Subject to paragraph IX hereof, this Agreement shall be terminated on the second anniversary of the date hereof, and shall be renewed for an additional two year term unless either party shall have given notice of its desire to terminate at least ninety (days) prior to the expiration of the initial terms hereof.

III.

This Agreement may be terminated by either party effective thirty (30) days from the date written notice is provided to the other party if such other party breaches this Agreement and such breach is not cured prior to the end of the 30-day period. Termination of this Agreement shall in no way alter the Reseller's responsibility to reimburse customer charges billed SCTC by any Facilities-based Carrier in a Foreign CGSA and incurred prior to the effective date of such termination by a customer of the Reseller.

IV.

No partnership, agency or franchise relationship is created by this Agreement, and no other person or entity besides SCTC and each Reseller shall acquire any rights hereby or hereunder.

V.

All notices required by this Agreement may be sent to the Reseller's addresses as set out in Exhibit A to this Agreement and to SCTC's address as shown on the final page of this Agreement.

VI.

CRA warrants that it has the authority to enter into a binding Agreement with SCTC on behalf of each of the resellers listed in Exhibit B. Any reseller desiring the benefits of this Agreement must become an individual signatory hereof.

VII.

This Agreement shall be governed by and construed in accordance with the laws of the State of California and any action brought for breach of this Agreement shall be brought before a court or agency of competent jurisdiction within the State of California.

VIII.

In the event an action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its attorney's fees and costs of such action.

IX.

This Agreement shall be subject to such changes as either the Federal Communications Commission or the Commission may direct in the exercise of its jurisdiction. Should there be any conflict between the provisions of this Agreement and any regulatory action affecting the subject matter of this Agreement, the Parties shall amend this Agreement to conform to such regulatory action. Neither party by entering into this Agreement shall be deemed to have waived its position in the protest proceedings referred to above, except that CRA shall consent to the immediate

APPENDIX A

filing by SCTC of interim roamer tariffs which are not inconsistent with the terms of Exhibit A hereto.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date hereinabove indicated.

SANTA CRUZ CELLULAR TELEPHONE COMPANY

By

Title

CELLULAR RESELLERS ASSOCIATION, INC.

By

Title

CELLULAR RADIO TELECOMMUNICATIONS SERVICE*

APPLICABILITY

Applicable to Cellular Radio Telecommunications Service furnished by Santa Cruz Cellular Telephone Company ("Utility") in portions of Santa Cruz County, not to exceed a continuous period of 30 days, to a cellular access number assigned to a customer by a Block A cellular provider ("Home Carrier") outside Santa Cruz County, but within the State of California.

TERRITORY

Within Santa Cruz County as shown on the map filed as part of these Tariffs.

RATES - ROAMER

A. Rates Applicable Prior to Final Approval by Public Utilities Commission ("PUC") of Retail/Wholesale Tariffs for Utility.

- | | | |
|-----|---|--------|
| (1) | Access Charge, per number per day: | \$0.00 |
| (2) | Usage Rates for retail customers of the Bay Area Cellular Telephone Company: | |
| (a) | Peak Period, per minute: | \$.45 |
| (b) | Off-Peak Period, per minute: | \$.20 |
| (3) | Usage Rates for units placed in service with the Bay Area Cellular Telephone Company by a certificated Reseller | |
| (a) | Peak Period, per minute: | \$.38 |
| (b) | Off-Peak Period, per minute: | \$.16 |

B. Rates Applicable Following Final Approval by Public Utilities Commission of Wholesale/Retail Tariffs for Utility:

- | | | |
|-----|---|--------|
| (1) | Access Charge: | \$0.00 |
| (2) | Usage Rates for retail customers of a Home Carrier that has agreed to reciprocal treatment for the retail customers of Utility: | |
| (a) | Peak Period, per minute: | \$.45 |
| (b) | Off-Peak period, per minute: | \$.20 |

Issued by _____

Advice Letter No. _____

Date Filed _____

Decision No. _____

N. D. Patel

NAME

Effective _____

President

TITLE

Resolution No. _____

COMMENT A-J

SANTA CRUZ CELLULAR TELEPHONE COMPANY
P.O. Box 1250
Millbrae, CA 94030

Cal. P.U.C. Sheet No. _____
Cancelling _____ Cal. P.U.C. Sheet No. _____

(3) Usage Rates for units placed in service by a certificated reseller with a Home Carrier that has agreed to reciprocal treatment for reseller units on Utility's system:

- | | |
|----------------------------------|--------|
| (a) Peak Period, per minute: | \$.38 |
| (b) Off-Peak Period, per minute: | \$.16 |

* These rates cover all landline services necessary to complete and conduct calls from cellular mobile terminals to any station in LATA 7. Rates and procedures described herein are for individual roamers desiring to place intra-CGSA calls whose home carriers have reached an appropriate intercarrier arrangement with Utility. Roamers desiring to place calls outside the CGSA may be subject to additional credit requirements, or may be prevented from doing so depending on the terms of the agreements between their home carriers and the Utility.

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