

**ORIGINAL**

Decision 88 12 070 DEC 19 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Philippe Hartley & Theodore Hartley )  
d/b/a CONNECTOR for a certificate of )  
Public Convenience and Necessity to )  
Operate as a Reseller of Cellular )  
Radio Telecommunications Services )  
Within California. )

Application 88-08-041  
(Filed August 19, 1988)

OPINION

Applicants Philippe Hartley and Theodore Hartley doing business as Connector, seek a certificate of public convenience and necessity (CPC&N) pursuant to Public Utilities (PU) Code § 1001 to resell cellular telecommunication services throughout California. Applicants initially propose to provide service within the greater Los Angeles cellular geographic service area (LACGSA) which includes most of Los Angeles and Orange counties and portions of Riverside, San Bernardino, and Ventura counties. Initially, applicants propose to resell cellular radio telecommunication services furnished at wholesale rates by PTC (PacTel Cellular is the general and operating partner of the Los Angeles SMSA Limited Partnership (Partnership)), the cellular wireline resale carrier in the greater LACGSA and by Los Angeles Cellular Telephone Company (LACTC) the nonwireline resale carrier in the same area.

Applicants estimate they will provide cellular retail service to 1,173 customers at the end of the first year of their operations and to 4,474 customers at the end of the third year of their statewide operations. Exhibit 1 is applicants' pro forma income statements for resale service and for resale service combined with equipment sales service.

Applicants estimate their cellular resale service would show a profit beginning in the 17th month of their operations. But their estimated cumulative operating losses for the first 16 months of operations are \$429,501. However, they project equipment sales profits would partially offset their operating losses. On a combined resale and equipment sale basis, applicants would incur cumulative losses of \$99,237 in the first 10 months of their operations. Subsequently, they project operating profitably.

Applicants propose an initial funding of \$110,000 in bank funds and money market accounts and no liabilities. The \$110,000 would exceed their estimated combined operations losses.

Applicants propose to resell cellular services at rates substantially equivalent to the retail rates of Partnership and LACTC, namely:

<u>Description</u>	<u>Rates and Charges</u>
Connection Charge	\$ 50
Monthly Access Charge	45
Peak per minute usage	0.45
Off-peak per minute usage	0.27

The rates shown above are contained in Exhibit 2, correcting page 3 of the application.

Applicants claim that public convenience and necessity require Commission approval of this application for the following reasons:

1. The certification of Partnership and LACTC in the LACGSA and the certification of wholesale and retail providers in all of the major markets in California demonstrate the need for cellular service in the LACGSA and throughout the State of California.
2. Applicants' proposed resale of cellular service will enhance competition in the cellular retail market.
3. 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, with a wide variety of service packages, a wide variety of choices of mobile consumer provided equipment, and increased utilization of the existing facilities of the underlying carriers, which would enable those carriers to use their systems more efficiently.

Applicants claim that denial of their application would cause them to suffer irreversible harm since they would lose the immediate opportunity to satisfy present demand and effectively compete with Partnership, LACTC, and with other retail providers. Therefore, applicants request an ex parte Commission order granting them a CPC&N effective on the date of this decision and authorization to file their tariffs five days after the effective date of the order with the tariffs being made effective not less than one day after filing.

The application states that Philippe Hartley has four years of business experience in the cellular industry in the Los Angeles area as a sales manager for a PTC agent. Theodore Hartley is Philippe Hartley's father.

The application states that a reseller of a cellular radio service does not construct, own, or operate any fixed cellular radio equipment or facilities; it sells the services provided by wholesale cellular carriers which do operate fixed facilities necessary to transmit cellular telephone traffic to end users; and its operations would not have an adverse effect on the environment. Applicants served a copy of their application on all existing resale cellular carriers. No protest has been received.

#### Discussion

As we have noted in several recent decisions on applications for cellular radio telephone service, it appears that the cellular market will continue to 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 these services deem, is designed to promote vigorous competition in cellular markets.

Applicants have the ability, experience, and financial resources to perform the proposed service. The application should be granted.

In D.88-05-067 the Commission modified the provisions of Sections IV, V, and VI of General Order (GO) 96-A including provisions for filed and effective dates. Applicants' proposal for making its tariffs effective on not less than one day after their filing is inconsistent with D.88-05-067; it does not provide a reasonable period for the processing of the tariffs. We will adopt the five-day period afforded to other resellers.

Applicants are subject to the fee system set forth in PU Code § 401, et. seq. and will be ordered to provide in their tariffs rule for the imposition of the billing surcharge prescribed for the required fee by Resolution M-4743. Applicants would also be subject to the one-half percent (1/2%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf. This surcharge is set forth in Resolution T-13005 dated July 22, 1988 issued pursuant to PU Code § 2881.

Applicants will also be required to keep their 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 non-utility 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 account should be grouped provided 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 expenses, billing expense, salaries, insurance, other appropriate subdivisions.
6. Other significant costs, such as unsold members should be listed.

Applicants will be directed to file an annual report with the Commission, in a form prescribed by the Commission.

Since there will be no physical construction associated with applicants' resale proposal, there will be no impact on the environment of its resale operations. There are no protests to granting their requested authority.

Applicants claim that they operate under properly filed fictitious name. However, copy of the fictitious names statement (Exhibit A to the application) shows a Mr. Philippe Hartley as the only registrant for the fictitious name Connector in Los Angeles county. Applicants' fictitious name statement should be revised to incorporate Theodore Hartley's name on that statement.

#### Findings of Fact

1. Applicants have the ability, experience, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by applicants.
3. Applicants should file a set of tariffs similar in scope in retail tariffs set forth in D.84-04-014.

4. It appears that the cellular market will continue to be highly competitive.

5. Applicants' 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. Sections IV, V, and VI of the Commission's GO 96-A have been modified for cellular resellers in D.88-05-067.

8. Applicants should keep its records as described in the body of this decision.

9. A public hearing is not necessary.

#### Conclusions of Law

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

2. Applicants are subject to the fee system set forth in PU Code § 401 et. seq. The appropriate surcharge under this section is 0.1% for fiscal year 1988-1989.

3. Applicants would be subject to the one-half percent (1/2%) surcharge to gross intrastate revenues to fund Telecommunications Devices for the Deaf. Pursuant to Resolution T-13005 issued to implement PU Code § 2881.

4. Applicants' tariffs authorized in this decision should be made effective five days after the date of filing consistent with D.88-05-067.

5. Because of the immediate need for the service, the order should become effective today.

6. 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 a consideration for the issuance of such CPC&N or right.

ORDER

IT IS ORDERED that:

1. A just certificate of public convenience and necessity is granted to applicants Philippe Hartley and Theodore Hartley to operate as a reseller of cellular radio telecommunication services within California.

2. On or after the effective date of this order, applicants are authorized to file tariff schedules at the proposed rates requested above for the resale of cellular mobile radio telephone service in the Los Angeles cellular geographic service (LACGSA) purchased from the Los Angeles SMSA Limited Partnership and from the Los Angeles Cellular Telephone. Service may not be offered until tariffs are on file. This filings shall comply with General Order (GO) 96-A, except that applicants are authorized to employ the alternate method of page numbering described in Resolution U-275 and T-4886 at its selection. The initial filing shall contain at least the Preliminary Statement, Table of Contents, and Rate Schedules, the rates and charges requested by applicants 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 five days' notice. Applicants 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 user fee surcharge of 0.10% and for a monthly surcharge of 0.50% to fund Telecommunication 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. Applicants are 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. Applicants 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. Applicants are 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. Within 20 days after this order is effective, applicants shall file a written acceptance of the certificate granted in this proceeding.

6. The corporate identification number assigned to applicants is U-4069-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.


7. The application is granted as set forth above.  
This order is effective today.

Dated DEC 19 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 Woisser, Executive Director