

Decision 83 12 088 DEC 19 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 Cagal Cellular Communications
 Corporation (U-4047-C), a Delaware
 corporation, 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 telecom-
 munications service in Sonoma
 County, and for authority under
 Sections 816 through 830 and 851
 of the Public Utilities Code to
 issue evidences of indebtedness in
 a principal amount of up to \$3.6
 million and to encumber public
 utility property. (U-3021-C)

ORIGINAL

Application 88-07-041
 (Filed July 22, 1988)

INTERIM OPINION**Summary**

This interim decision grants applicant Cagal Cellular Communications Corporation (Cagal), a certificate of public convenience and necessity (CPC&N), to construct and operate an initial five-cell cellular system; to provide roamer service in the Santa Rosa CGSA, and to provide wholesale, retail, and roamer services pursuant to a settlement agreement between Cagal, McCaw Cellular Communications, Inc. (MCCI), and the Cellular Resellers Association, Inc. (CRA); and to file the rates contained in the application modified to reflect the settlement agreement. (Exhibit B attached to this decision.) In addition, we will require Cagal to modify the settlement agreement to provide the concessions offered to CRA members to all resellers. Similarly, we will authorize any of Cagal's competitors to temporarily waive their

access charges to match Cagal's proposed access charge waiver.

With respect to debt financing, Cagal is authorized to enter into a loan agreement for the \$3,600,000 requested. Long-term debt will not be authorized to fund operating losses. Further evidence will be required of Cagal on the amount of equity in its capital structure and of the reasonableness of its capitalization.

A negative declaration including an addendum describing construction changes at one cell site is adopted.

Background

The FCC market structure allocates two blocks of frequencies within each Cellular Geographical Service Area (CGSA) or Metropolitan Statistical Area (MSA): "A Block" frequencies and "B Block" frequencies. An FCC permit for the A Block frequencies within a CGSA is designated to a non-wireline entity or individual. An FCC permit for the B Block frequencies within a CGSA is designated to a wireline telephone company located within the CGSA.

Application

Cagal is a Delaware corporation authorized to do business in California. It seeks a CPC&N to construct and operate a new domestic public cellular radiotelephone service to the public within the Santa Rosa CGSA in Sonoma County. Applicant holds an FCC construction permit to construct an "A" block cellular system in the Santa Rosa-Petaluma, California MSA which includes the Santa Rosa CGSA.

The system proposed by Cagal would provide cellular signal coverage to 54.5% of the land area of Sonoma County (the MSA) and to 80.4% of the area of the CGSA. Cagal may construct cells on supplemental sites if actual operating coverage varies from the predictions of its Carey Report Standards study. The variations in signal coverage would be related to terrain features in the CGSA.

Cagal proposes to work out arrangements with neighboring carriers to coordinate handoff patterns and frequency distribution to ensure continuous service free of interference, between adjacent service areas (roamer service), Cagal's cellular signal coverage contours overlap portions of Napa and Marin counties.

Cagal has a tentative agreement with the Bay Area Cellular Telephone Company (BACTC) to use BACTC's Mobile Telephone Switching Office (MTSO) in Oakland to operate its five-cell system. Cagal proposes to link the BACTC MTSO to Pacific Bell's (Pacific) Santa Rosa tandem office using existing DS-1 high capacity digital spans. Similar DS-1 spans would carry traffic to and from Cagal's cell sites.¹ Cagal is negotiating terms with Pacific for delivering mobile calls to customers within Pacific's service area or, as appropriate, to inter-exchange carrier(s) for termination outside of the Local Access Transport Area (LATA) presently served by Pacific in the San Francisco Bay area. In addition, Pacific's customers within that LATA would have access to Cagal's system at Pacific's Santa Rosa tandem office.

The application was filed on July 22, 1988 and was deemed filed 30 days later, on August 22, 1988, under Government Code Section 65943. (The 30th day after filing fell on a Sunday.) The application contains a proposed environmental assessment. Cagal seeks adoption of a Negative Declaration by the Commission.

Exhibit C attached to this decision is a portion of Exhibit E and of Exhibit H attached to the application. It shows Cagal's (identified as Santa Rosa) projection of its overall income and expenses for five years and an allocation to retail operations for that period. The projection shows a first-year loss of

¹ Cagal is likely to use a microwave linkage to serve one cell because Pacific will not be able to start construction of a DS-1 link to that cell before March 1989.

\$214,294, exclusive of depreciation, interest, and taxes; an overall second-year profit of \$1,218,842, excluding depreciation, interest, and taxes; and increasing profits in the third to fifth years of operations and similar results for its retail operations.

Paul Rosenthal holds 50.01% of Cagal's stock. The remaining 49.99% of Cagal's shares are held by various individuals and entities which participated, or are successors of participants, in the lottery procedures used by the FCC to choose operators in cellular markets, including Cagal's proposed operators. Rosenthal has agreed to transfer his stock to MCCI, a Delaware corporation. MCCI and/or its affiliates have already been certificated as A Block carriers in California cellular markets. When appropriate shareholder approvals have been obtained, Rosenthal and MCCI will seek approval from this Commission to transfer control of Cagal to MCCI.

A \$100,000 unsecured advance from MCCI and more than \$125,000 advanced by Rosenthal have been provided to Cagal for its organizational expenses. After certification, the Provident National Bank proposes, in concept, to lend up to \$3,600,000 to Cagal in the form of a three-year revolving credit with the balance outstanding being converted into a four-year term loan at a floating interest rate of 1-1/2% over the prime rate. The loan would be secured by a first lien on 100% of the existing and any future assets of Cagal including both tangible and intangible assets.² The facility would be 100% guaranteed by MCCI.

Cagal's planning estimates would require: (1) loan funds of \$2,037,000 for initial equipment, including development of four

² The agreement will require Provident to obtain Commission approval before taking control of Cagal or of its operating assets.

cell sites³ with 77 channels; (2) loan funds for additional channels to be added in the second to fourth years of operation at estimated costs of \$400,000, \$490,000, and \$400,000; and (3) loan funds for first year pretax operating losses plus interest expense of \$329,264.

Cagal proposes to make use of Ericsson cell site equipment which will be fully compatible with the Ericsson equipment utilized in neighboring CGSA's by other A Block carriers. This in turn would permit integration of an extensive area permitting roamer service across CGSA boundaries.

Protests

Protests in this proceeding were filed by the CRA and by GTE Mobilenet of San Francisco Limited Partnership, Inc. (GTEM).

CRA is a non-profit mutual benefit corporation representing a number of cellular radiotelephone service resellers certificated by this Commission. CRA members are not wholesale cellular carriers or affiliates of wholesale carriers in California. Its members resell cellular service in most of the CGSA's where the Commission issued CPC&Ns to provide wholesale service. CRA requested a hearing. It contends that:

1. Rates charged by one certificated entity to another certificated entity should be cost-based.
2. Cagal has not provided adequate cost data but its wholesale charges are apparently excessive.
3. Cagal's proposed rates are virtually identical to BACTC's rates.

³ A relatively small amount of construction would be needed at a fifth cell site located on the roof of an existing building.

4. Both Cagal and the resellers could earn fair and reasonable rates of return if alternate wholesale and retail rate structures were adopted.
5. The Commission should consider Cagal's interconnection and intercarrier agreements and the reasonableness of proposed commissions to be paid to agents and dealers by Cagal in evaluating the reasonableness of Cagal's proposed wholesale and retail rates.
6. The procedure followed in Decision (D.) 84-04-014 (re Los Angeles Cellular) and in D.84-11-029 (re San Francisco/ San Jose Cellular) considered proposed commission payments. Cagal did not include a line item in its estimates for commission payments or for residual payments.
7. Cagal's maximum aggregate commission should be limited to \$50 [per customer], pending the decision in Case 86-12-023.
8. Cagal's proposed wholesale bulk sales to customers requiring 50 or more numbers would preclude resellers from marketing to larger customers. Resellers would subsidize wholesale bulk service under Cagal's proposal.
9. Resellers should have equal computer access to all carriers' facilities and trunk space at the carriers' switch to permit resellers to set up their own long distance arrangements.
10. Resellers are entitled to a share of roamer service revenues.

4. Cagal's planning assumptions, Exhibit E attached to the application, states marketing and sales per new subscriber "- \$550 per customer in the first year of operation; \$450 the second; and \$350 thereafter as the average cost to add one new customer."

GTEM is the authorized wireline provider of cellular telephone service in the San Francisco Bay area. Its service area includes the CGSA in which Cagal proposes to operate. GTEM's protest is limited to Cagal's proposal to waive its service activation fee for 90 days after initiating service. GTEM argues that Cagal must support its proposal if it is needed to facilitate the growth of Cagal's customer base; the waivers can not be justified if it is intended to affect GTEM's customer base.

GTEM believes these issues can be resolved on policy grounds without hearing. If the Commission should determine that a waiver of application fees by Cagal is justified, GTEM requests the Commission to also find that a competitor can waive its activation fee to match Cagal's offer.

Rates

Table 1 shows the rates requested in the application and authorized rates. We will authorize Cagal's proposed retail rates and charges. The authorized wholesale rates and charges reflect Cagal's settlement agreement with CRA modified to apply to all resellers to avoid unreasonable discrimination in rates and charges between Cagal and all of the resellers providing resale service in the Santa Rosa CGSA. A prior agreement, Exhibit A, attached to the application, waived CRA's objection to permit construction of the system and provides for wholesale roamer rates. Those rates were superseded by the settlement agreement.

The settlement agreement provides for a one-year term from the date the tariffs summarized below are filed or for termination 30 days after written notice of a breach in terms has been received and has not been cured within the 30-day period. We will require Cagal to provide written notification to the Director of Commission Advisory and Compliance Division (CACD) of its intent to renew (or modify) its wholesale tariffs within 270 days after the effective date of this decision unless the tariff provisions are modified by the decision in an investigation on the

Commission's own motion into the regulation of cellular radiotelephone utilities, I.88-11-040. A similar notification will be required 90 days before the expiration of the wholesale roamer tariff.

Cagal would provide roamer service in accordance with Sections II.A.2. and VI.J. of the settlement agreement designed to preserve existing differentials between wholesale and retail rates and charges for the benefit of resellers where reciprocal arrangement have been negotiated with other carriers.

With the approval of BACTC, resellers would have direct computer access to BACTC's computer terminal for number activation and deactivation. If expansion of equipment or of software is necessary to handle future growth an apportionment of costs would be made between retail and reseller operations. Cagal and MCCI will use their best efforts to obtain BACTC's approval for their arrangements (Section II.D. of the settlement agreement).

Table 1

CAGAL CELLULAR COMMUNICATIONS CORPORATION

Proposed and Authorized Retail Rates and Charges

	<u>Plan 1</u>	<u>Plan 2</u>
Service Establishment per number	\$25.00 a/	\$25.00 a/
Change	25.00	25.00
Access Charge, per number per month		
1- 9 units	45.00	25.00
10-24 units	39.00	25.00
25 or more units	36.00	25.00
Usage Rates		
Peak, per month	0.45	0.90
Off-peak, per month	0.20	0.20

a/ Waived for initial 90 days service is offered to public.

(Continued)

Table 1 (Continued)

Proposed and Authorized Wholesale Rates and Charges

	<u>Proposed</u> <u>Plan 1/Plan 2</u>		<u>Authorized</u> <u>Plan 1/Plan 2</u>	
Service Establishment per number a/	\$15.00		\$15.00	
Change	15.00		15.00	
Access Charge, per number per month				
For each access number up to 100 numbers	30.50	\$17.00	30.50	\$17.00
Minimum initial order block size	50#	50#	up to 25# b/	up to 25# b/
Subsequent order blocks	10#	10#	10#	10#
Payable when numbers are:	allocated		activated or at billing following 60 days after # allocation to resellers	
For each access number over 100 numbers in blocks of 10 numbers	\$28.75	\$17.00	\$28.75	\$17.00
Usage Rates c/d/				
Peak, per minute up to 300,000 minutes per month	0.38	0.76	0.38	0.72
Peak, per minute over 300,000 minutes per month	0.36	0.72	0.36	0.12
Off-Peak	0.16	0.16	0.16	0.16

a/ Waived for initial 90 days service is offered to the public.

b/ For resellers. Cagal will notice resellers on its system of its intent to provide wholesale service to bulk user(s).

c/ After MCCI or any of its subsidiaries acquires control of Cagal, resellers may aggregate their monthly local usage volumes on the facilities of A block carriers in the San Francisco-San Jose, Napa-Fairfield-Vallejo, Salinas-Seaside-Monterey and Santa Cruz CGSAs.

d/ For Plan 1, 160 minutes of peak usage and 40 minutes of off-peak usage billed in advance per number per month. For Plan 2, 64 minutes of peak usage and 16 minutes of off-peak usage billed in advance per number per month. In addition, toll, ZUM and other charges by landline carriers for calls terminated outside of the LATA will be passed through to the subscriber.

Environmental Review

Cagal filed a Proposed Environmental Assessment (PEA) with its application pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure, Exhibit I to the application. Applicant requests that the Commission assume a Lead Agency role, pursuant to the CEQA and that the Commission issue a Mitigated Negative Declaration at the end of a 20-day comment period.

The Commission staff has reviewed the environmental aspects of the proposed initial construction project for the five cell sites and prepared a Negative Declaration. The Negative Declaration was prepared on September 9, 1988. A Notice of Publication was distributed to local property owners and public agencies for review and comments for a 30-day period through October 11, 1988. This Negative Declaration concludes that the project will not have any substantial adverse effects on the environment based on the following findings and conditions:

- "1. The proposed telephone system will not have a significant effect on the geology, geomorphology, soils, climate, hydrology, aesthetics, vegetation, or wildlife of the antenna sites.
- "2. The proposed telephone system will not have a significant effect on municipal or social services, utility services, or community structure.
- "3. The proposed telephone system will not have a significant adverse effect on air or water quality, the existing circulation system, ambient noise levels, or public health.
- "4. Because individual telephone systems operate at a low power level in frequency bands well separated from television and ordinary broadcasting frequencies, no significant interference with radio or television reception is anticipated.

"5. The new construction will include:

- "(a) At Site 1, a 100 foot monopole/antenna combination, with the transmitter to be housed in a 250 square foot space within a larger building being constructed by the landlord for other purposes.
- "(b) At Site 2, Applicant's facilities will be incorporated into an existing communications facility, with new construction, if any, being confined to an addition to an existing communications building.
- "(c) At Site 3, Applicant's antenna will be mounted on the roof of an existing structure, with the transmitter being housed in a 250 square foot addition to the structure.
- "(d) At each of Sites 4 and 5, Applicant will construct a 100 foot monopole/antenna combination and a one-story, cinder block building.

"To assure that significant adverse effects do not occur as a result of this project, the following conditions are incorporated into this Negative Declaration:

- "1. The Applicant will consult with the appropriate local public agencies on project details such as the design, color, and type of materials used in the antenna towers, the specific configuration of equipment on each facility site, and any other relevant community building codes, provided such conditions or requirements do not render the project sites infeasible. While it is the CPUC's intent that local concerns be incorporated into the design, construction, and operation of this system, no additional permits from local authorities are required as a condition of this certificate.
- "2. The Applicant will consult with the Federal Aviation Administration, local county

department of airports, or other appropriate aviation agencies concerning the need for tower lighting, height, or placement prior to construction of each cell antenna.

- "3. For future expansion antenna sites which would allow the system to serve a larger area, the Applicant shall submit environmental information to the CPUC prior to construction of such antennas. The CPUC will review this material and determine at that time whether any supplemental environmental documentation is required in accordance with the provisions of the California Environmental Quality Act."

In a November 23, 1988 letter, incorporated as an addendum to the Negative Declaration, Cagal states its construction plans at the Downtown Santa Rosa cell site have been modified to mount three 13-foot whip antennas on the roof and penthouse of the existing Salvation Army residence home instead of the single roof antennae described in its application (and in the negative declaration). Cagal had anticipated that control of its Sonoma Mountain cell would be handled by DS-1 telephone cables, but Pacific advised it that there would be a delay of at least four months before the cable would be constructed. Consequently, Cagal proposes to construct a six-foot microwave dish atop that building or on an adjacent building to timely activate the Sonoma Mountain cell. Cagal states that these changes would not have a significant environmental impact.

We adopt the Negative Declaration prepared by the CACD staff. In addition, Cagal's November 23, 1988 letter to the Commission describing construction modifications at Cell Site 3 is adopted as an addendum to the Negative Declaration. These changes described in the November 23 letter will not have a significant environmental impact. Therefore, no further mitigation measures would be necessary due to the changes. There is no necessity to

circulate that letter for further comment. No Environmental Impact Report is warranted.

Cagal represents that it consulted with appropriate local agencies on project details prior to filing this application, without objection from those agencies. But Cagal did not timely serve a copy of its application on Sonoma County (County). However, County had constructive notice of the application by virtue of Cagal's simultaneous application to County for conditional use permits authorizing the construction in unincorporated areas. The County Board of Zoning Adjustment (BZA) approved Cagal's application for the conditional use permits applied for. But the BZA decision has been appealed to the County Board of Supervisors which will hear the appeal early in 1989. The PEA shows that the Chief of County Current Planning was the contact person for cell sites 1, 2, 4, and 5. Those locations are in unincorporated areas. No comment was received on the proposed mitigated negative declaration. The Commission is the lead agency for this project. No other state or local agency has discretionary approval over cellular telephone systems.

Cagal will be required to file additional environmental information with the CACD Director for staff evaluation prior to construction of additions to its system. Based on the CACD evaluation the Commission will determine whether any supplemental environmental documentation is required in accordance with the provisions of the California Environmental Quality Act (CEQA).

Discussion

There is a need for expeditious action to place the system in operation. By letter dated August 23, 1988, (Exhibit 2), Cagal advised the Commission that the 18-month FCC deadline for placing its initial system in service is January 15, 1989.

We will grant Cagal a CPC&N to construct and operate an initial five-cell cellular system and to provide wholesale, retail, and roamer services in the Santa Rosa CGSA pursuant to the

modifications discussed above. The remaining issues raised in the CRA protest are within the ambit of I.88-11-040.

Debt financing of up to \$3,600,000 described in the application will be authorized solely for construction of the system. We will authorize the full amount committed to provide for possible inflation in construction costs. But we will not authorize issuance of long-term debt to finance operating losses. Public Utilities (PU) Code § 818⁵ generally prohibits charging of indebtedness to operating expenses. By letter dated November 16, 1988 (Exhibit 1), Rosenthal advised the Commission that he would utilize the proceeds of his unencumbered \$500,000 certificate of deposit or an equivalent amount of money to cover Cagal's operating losses. We are troubled by the applicant's lack of specificity in identifying the source of equity to cover operating losses, and by the uncertainty regarding the equity Rosenthal may pledge if control of Cagal is transferred to MCCI. We note that Cagal projects first year operating losses of approximately \$214,000 excluding depreciation, interest, and taxes. Assuming use of a ten-year straight line depreciation, interest on the initial draw of \$2,037,000 for plant construction at 12% (prime plus 1-1/2%) and

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5. "818. No public utility may issue stocks and stock certificates, or other evidence of interest or ownership, or bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months after the date thereof unless, in addition to the other requirements of law it shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order, and that, except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income."

property taxes at 1%, those items would increase Cagal's losses by about \$468,000. In addition, Cagal's wholesale peak time revenues would decrease by about \$6,000 due to the settlement agreement. Thus, the total first year loss would be about \$688,000. But, if Cagal's estimates were initially valid it would be in the black in the second year of operations.

In other certificate proceedings cellular carriers have projected profits following initial losses. But in spite of exceeding their growth goals, some of them filed (and then found it necessary to withdraw) rate increase filings. There is a need for reviewing the adequacy of the equity component in Cagal's capital structure to meet unforeseen losses or increases in construction costs.

We will require Cagal to file evidence, with the Commission and with the Director of CACD, on how it would create a balanced capital structure. If an application is filed to transfer control of Cagal, the application should contain a similar showing by the buyer.

Findings of Fact

1. Cagal requests a CPC&N to construct and operate a new domestic public cellular radio telephone service within the Santa Rosa CGSA. It holds an FCC construction permit.

2. Cagal requests authority to issue up to \$3,600,000 in long-term debt to construct plant, expand construction, and for operating losses. Working capital includes working cash and materials and supplies. Working cash is the amount provided by investors to provide funds to timely pay expenses before receipt of billed revenues. Working cash may be a negative amount if sufficient revenues are received before expenses are paid. A condition of the long-term credit line requires Cagal to grant Provident a lien on all existing and future assets owned by it, including tangible and intangible assets.

3. Notice of the application appeared in the Commission's Daily Calendar of July 26, 1988.

4. CRA and GTEM filed protests to the application.

5. Paul Rosenthal is Cagal's majority shareholder. After appropriate shareholder approvals have been obtained, Rosenthal and MCCI will seek Commission authorization to transfer control of Cagal to MCCI.

6. Rosenthal advanced \$125,000 and MCCI advanced \$100,000 to fund Cagal's pre-operating expenses. Rosenthal has pledged an additional \$500,000 to fund Cagal's operating losses.

7. The FCC rules and regulations require a cellular system to be constructed to be ready to initiate service within 18 months from the date a permit was issued.

8. Immediate Commission authorization to construct the cell sites is needed to enable applicant to meet the FCC deadline.

9. Cagal and CRA entered into an agreement to permit Cagal to proceed with its system construction and to provide roamer service pending resolution of appropriate wholesale and retail rates and conditions. Subsequently, Cagal, MCCI, and CRA entered into a settlement agreement.

10. The proposed operation is technically feasible.

11. The Commission is the lead agency under CEQA for determination of environmental effects of the project under consideration.

12. The Commission has prepared a properly noticed and reviewed Negative Declaration for the proposed MTSO and five cell sites. Cagal proposes to use BACTC's MTSO. The Negative Declaration was prepared on September 9, 1988. The 30-day environmental review period ended on October 11, 1988.

Construction changes at the proposed Downtown Santa Rosa cell site would not have a significant environmental impact. No further mitigation measures would be necessary due to those changes.

13. There was no response to the Negative Declaration.

14. The environmental impacts of the proposed action, as mitigated by the conditions listed in the Negative Declaration, are not significant.

15. Cagal did not timely serve County with a copy of its application. County received constructive notice of Cagal's proposal.

16. The rates and charges proposed in the application, modified to reflect the terms of Cagal's and MCCI's settlement agreement with CRA applied on a nondiscriminatory basis are reasonable.

17. Cagal proposes a temporary waiver of access charges. GTEM requests the Commission to authorize a similar waiver for other cellular companies.

18. Public convenience and necessity require the grant of a CPC&N.

19. Cagal should be subject to a user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435. The fee is currently 0.1% for the 1988-89 fiscal year.

20. Cagal should be subject to a one-half percent (1/2%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf pursuant to PU Code § 2881 as set forth in Resolution T-13005.

21. Cagal is operating as a cellular reseller (U-4047-C).

22. This decision will not determine whether Cagal's construction program is necessary or reasonable for rate fixing purposes. Those issues are normally tested in general rate proceedings.

Conclusions of Law

1. Cagal should be granted a CPC&N to construct public cellular radio telecommunications facilities at five cell sites, as identified in the application and in Cagal's November 23, 1988 letter to the Commission.

2. Cagal should be authorized to provide wholesale, retail, and roamer services modified to reflect the terms of Cagal's settlement agreement with CRA and MCCI applied on a nondiscriminatory basis. Cagal should provide notice to the Commission of intended renewal or modification of its settlement agreement.

3. The Commission should approve the Negative Declaration and attached addendum as Appendix B, including the mitigating measures identified therein. There is no need to circulate the addendum for further comment.

4. PU Code § 818 generally precludes issuance of long-term debt for operating losses.

5. Cagal should have a reasonable balance between debt and equity in its capital structure. The Commission requires a proposal from Cagal on achieving that balance.

6. Cagal should be granted authority to issue long-term debt of up to \$3,600,000 for construction of plant and to encumber its public utility property. A copy of Cagal's agreement with Provident should be filed with the Commission.

7. Cagal should file evidence with the Commission and with the Director of CACD on its proposal to create a balanced capital structure. CACD should review the filing and evaluate its adequacy for the consideration of the Commission. An application to transfer control of Cagal should contain a similar filing by the proposed buyer.

8. Cagal should phase out any of its resale operations which provide service of the same class as the services authorized in this proceeding within the Santa Rosa CGSA within 90 days after such services are provided to the public using Cagal's facilities.

9. Other cellular carriers serving within the Santa Rosa CGSA should be authorized to waive their access charges during the period Cagal waives its access charges.

10. The following order should be effective on the date the order is signed because public convenience and necessity requires prompt construction of applicant's five cell sites and for provision of wholesale, retail, and roamer services.

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. A certificate of public convenience and necessity (CPC&N) is granted to Cagal Cellular Communications Corporation (Cagal) to construct public cellular radio telecommunications facilities at five cell sites described above and to provide wholesale, retail, and roamer services at the rates contained in its application, modified to incorporate its agreement with the Cellular Resellers Association, Inc. (CRA) and with McCaw Cellular Communications, Inc., Exhibit B attached to this interim decision, applied on a nondiscriminatory basis.

2. Cagal is authorized to file, after the effective date of this order and in compliance with General Order Series 96-A, tariffs applicable to wholesale, retail, and roamer services. The tariffs shall become effective on not less than 5 days' notice to the public and the Commission.

3. Within 30 days after the effective date of this order, Cagal shall file a written acceptance of the CPC&N with the Commission Advisory and Compliance Division (CACD) Director.

4. Within 45 days after the effective date of this decision, Cagal shall file evidence with the Commission and with the Director of CACD on its proposal to create a balanced capital structure. CACD shall review the filing and evaluate its adequacy for the

consideration of the Commission. Any application to transfer control of Cagal shall contain a similar filing by the proposed buyer.

5. The Negative Declaration and addendum set forth in Appendix B to this decision is approved including the mitigation measures set forth therein.

6. In constructing its system, Cagal shall undertake the environmental mitigation measures identified in the Negative Declaration as lawfully required by local authority.

7. Cagal will consult with appropriate local public agencies on project details such as the design, color, and type of materials used in the antenna towers, the specific configuration of equipment on each facility site, and any other relevant community building codes, providing such conditions or requirements do not render the project infeasible. While it is the Commission's intent that local concerns be incorporated into the design, construction, and operation of this system, no additional permits from local authorities are required as a condition of this certificate. In the event that any certified facilities do not conform with any applicable local codes, ordinances, etc. (other than those codes requiring local permits), Cagal shall inform the Commission in writing of such noncompliance prior to construction of the affected component.

8. For future expansion antenna sites to serve other portions of this market area, Cagal shall submit environmental information on additions to their system to the CACD Director prior to their construction for CACD evaluation. Based on the CACD evaluation the Commission will determine whether any supplemental environmental documentation is required in accordance with the provisions of the California Environmental Quality Act.

9. The Executive Director, as required by Public Resources Code § 21108, shall file with the Office of Planning and Research a Notice of Determination as set forth in Appendix A to this decision.

10. Cagal may issue an indebtedness in principal not to exceed \$3,600,000 and to encumber its public utility property. The terms and conditions of the debt shall be substantially the same as Exhibit F to this application, except that long-term debt shall not be issued to cover operating losses. Cagal shall file an executed copy of this agreement within 30 days after the effective date of this order.

11. The Commission does not, by this order, determine that Cagal's construction program is necessary or reasonable for ratemaking purposes. These issues are normally tested in general ratemaking proceedings.

12. The corporate identification number assigned to Cagal is changed to U-3021-C. This number should be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing proceedings.

13. Cagal's filed tariffs shall provide for a user fee surcharge of 0.10% pursuant to Public Utilities (PU) Code §§ 431-435. Failure to file the tariffs may result in revocation of the authority granted here.

14. Cagal is subject to a one-half percent (1/2%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf pursuant to PU Code § 2881 as set forth in Resolution T-13005.

15. Other cellular companies operating in the Santa Rosa Cellular Geographical Service Area (CGSA) shall be authorized to waive their access charges during the period Cagal waives its charges, by advice letter filings.

16. Cagal shall phase out any of its resale operations which provides service of the same class as the services authorized in this proceeding within the Santa Rosa CGSA within 90 days after such services are provided to the public using Cagal's facilities.

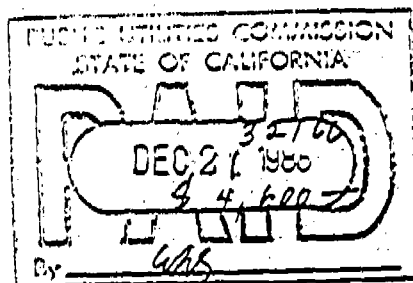
17. Cagal shall make the filings described above with respect to its intent to extend or modify the settlement agreement.

18. Cagal shall keep its books as directed by the uniform system of accounts for cellular communications licensees as prescribed by Decision 86-01-043.

19. Cagal shall notify the CACD Director in writing of the date service is first rendered to the public as authorized herein, within 5 days after service begins.

The authority granted by this order to issue an evidence of indebtedness will become effective when Cagal pays \$4,600, the fee set by PU Code § 1904(b), to the Commission. In all other respects, 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. O'HANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Victor Weiss
Victor Weiss, Executive Director

NOTICE OF DETERMINATION

TO: Office of Planning and Research
1400 - 10th Street, Room 121
Sacramento, CA 95814

FROM: CA Public Utilities Commission
505 Van Ness
San Francisco, CA 94102

SUBJECT: Filing of Notice of Determination in compliance with Section 21108
or 21152 of the Public Resources Code.

Project Title

Cagal Cellular Communications Corp. Cellular Telephone System, Sonoma County
(Also known as, "Santa Rosa Cellular Telephone System Project")

State Clearinghouse Number
88091303

Contact Person
Elaine Russell

Telephone Number
(916) 324-6195

Project Location:

Antenna sites in various locations in Sonoma County including near Healdsburg,
on Mount Barham, in Santa Rosa, on Sonoma Mountain, and east of Petaluma.
Also a switching office site at an existing building in Oakland.

Project Description:

Project consists of the approval of a Certificate of Public Convenience and
Necessity by the Public Utilities Commission for the installation and
operation of a cellular telephone system to serve Sonoma County. System will
have five antenna sites and use an existing switching office in Oakland.

This is to advise that the California Public Utilities Commission has approved
the above described project and has made the following determinations
regarding the above described project:

1. The project ___ will, X will not, have a significant effect on
the environment.
2. ___ An Environmental Impact Report was prepared for this project
pursuant to the provisions of CEQA.
X A Negative Declaration was prepared for this project
pursuant to the provisions of CEQA.

The EIR or Negative Declaration and record of project
approval may be examined at:

California Public Utilities Commission
1107 9th Street, Suite 710
Sacramento, California

3. Mitigation measures X were, ___ were not, made a condition of
the approval of the project.
4. A statement of Overriding Considerations ___ was, X was not,
adopted for this project.

Date Received for Filing

Victor Weisser
Executive Officer

(End of Appendix A)

NEGATIVE DECLARATION

PURSUANT TO DIVISION 13
CALIFORNIA PUBLIC RESOURCES CODE

Project Description. The California Public Utilities Commission (CPUC) proposes to grant a Certificate of Public Convenience and Necessity to Cagal Cellular Communications Corporation ("Applicant") for the installation and operation of a mobile telephone system to serve the Santa Rosa Metropolitan Statistical Area ("MSA"). The proposed project consists of the installation of antennas and supporting structures, and/or one-story, 250 square foot equipment buildings (or additions to existing buildings) at five sites in Sonoma County. Two of these locations, along with the mobile telephone switching office ("MTSO") are existing communications facilities.

Findings: An Initial Environmental Study (attached) was prepared to assess the project's effects on the environment and the significance of those effects. Based upon the initial study, the project will not have any substantial adverse effects on the environment. This conclusion is supported by the following findings:

1. The proposed telephone system will not have a significant effect on the geology, geomorphology, soils, climate, hydrology, aesthetics, vegetation, or wildlife of the antenna sites.
2. The proposed telephone system will not have a significant effect on municipal or social services, utility services, or community structure.
3. The proposed telephone system will not have a significant adverse effect on air or water quality, the existing circulation system, ambient noise levels, or public health.
4. Because individual transmitters operate at a low power level in frequency bands well separated from television and ordinary broadcasting frequencies, no significant interference with radio or television reception is anticipated.
5. The new construction will include:
 - (a) At Site 1, a 100 foot monopole/antenna combination, with the transmitter to be housed in a 250 square foot space within a larger building being constructed by the landlord for other purposes.
 - (b) At Site 2, Applicant's facilities will be incorporated into an existing communications facility, with new construction, if any, being confined to an addition to an existing communications building.
 - (c) At Site 3, Applicant's antenna will be mounted on the roof of an existing structure, with the transmitter being housed in a 250 square foot addition to the structure.

**Public Utilities Commission**

STATE OF CALIFORNIA

FILE NO.

NOTICE**PUBLICATION OF A NEGATIVE DECLARATION
CALIFORNIA PUBLIC UTILITIES COMMISSION**

Description Of Proposed Action: The Cagal Cellular Communications Corporation has applied to the California Public Utilities Commission (PUC) for a Certificate of Public Convenience and Necessity for the installation and operation of a mobile telephone system to serve the Sonoma County area. A Negative Declaration has been prepared for the proposed system in compliance with the provisions of the California Environmental Quality Act. This document and the accompanying Initial Study are now available for public review.

The proposed project consists of the installation of five cellular telephone transmitting/receiving facilities in the Sonoma County area. Two of the antenna sites and the mobile telephone switching office are existing communications facilities. The general locations of the five cell sites are as follows: (1) McDonough Heights Road east of Healdsburg; (2) Mount Barham north of Santa Rosa; (3) 1050 Third Street in downtown Santa Rosa; (4) Sonoma Mountain near Glen Ellen; and (5) 4191 Old Adobe Road east of Petaluma.

Document Available For Review: The PUC has prepared an Initial Study and Negative Declaration describing the proposed project, its environmental impacts, and the conditions that will be imposed to ensure the project will not cause any significant environmental impacts.

Where Document Can Be Reviewed: The subject Negative Declaration may be reviewed at the offices of the California Public Utilities Commission, 1107 - 9th Street, Suite 710, Sacramento, CA, or at 805 Van Ness, PUC Information Center, San Francisco, CA. Copies can be obtained by calling the PUC at (415) 557-2400.

Review Period: The subject Negative Declaration is available for a 30-day public review period from September 12, 1988 to October 11, 1988. Comments must be received in writing by the close of business on October 11, 1988. Written comments should be addressed to:

Mr. Mike Burke
California Public Utilities Commission
1107 - 9th Street, Suite 710
Sacramento, CA 95814

- (d) At each of Sites 4 and 5, Applicant will construct a 100 foot monopole/antenna combination and a one-story, cinder block building.

To assure that significant adverse effects do not occur as a result of this project, the following conditions are incorporated into this Negative Declaration:

1. The Applicant will consult with the appropriate local public agencies on project details such as the design, color, and type of materials used in the antenna towers, the specific configuration of equipment on each facility site, and any other relevant community building codes, provided such conditions or requirements do not render the project sites infeasible. While it is the CPUC's intent that local concerns be incorporated into the design, construction, and operation of this system, no additional permits from local authorities are required as a condition of this certificate.
2. The Applicant will consult with the Federal Aviation Administration, local county department of airports, or other appropriate aviation agencies concerning the need for tower lighting, height, or placement prior to construction of each cell antenna.
3. For future expansion antenna sites which would allow the system to serve a larger area, the Applicant shall submit environmental information to the CPUC prior to construction of such antennas. The CPUC will review this material and determine at that time whether any supplemental environmental documentation is required in accordance with the provisions of the California Environmental Quality Act.

Copies of this Negative Declaration and Initial Study may be obtained by addressing a request to the preparer:

California Public Utilities Commission
1107 - 9th Street, Suite 710
Sacramento, CA 95814
(916) 324-6195
ATTENTION: Elaine Russell
(916) 324-6195


Mike Burke, Regulatory and Environmental Coordinator
California Public Utilities Commission

CALIFORNIA PUBLIC UTILITIES COMMISSION
INITIAL ENVIRONMENTAL STUDY

Project Title: Santa Rosa Cellular Telephone System
Cagal Cellular Communications Corporation
Study Date: September 2, 1988

I. BACKGROUND INFORMATION

A. Name of Project:

Santa Rosa Cellular Telephone System, Cagal Cellular Communications Corporation

B. Project Description:

The Cagal Cellular Communications Corporation has applied to the California Public Utility Commission (CPUC) for a Certificate of Public Convenience and Necessity for the installation and operation of a mobile telephone system to serve the Santa Rosa Metropolitan Statistical Area in Sonoma County. The proposed project consists of the installation of five cellular telephone antennas and associated radio transmitting/receiving equipment. The Sonoma County antennas will be served by an existing mobile telephone switching office (MTSO) located in Oakland, California.

The proposed cellular system is intended to provide a wide variety of local and long distance communication between fixed (office/home) and mobile (motor vehicles/portable units) stations or between two mobile units. Cellular telephones can be used for regular business and personal telephone conversations, as well as for emergency services such as police, medical, and fire agencies. This system will function as an extension of the existing conventional telephone network in Sonoma County. The Cagal Corporation system in the Sonoma County area will expand the existing non-wireline company cellular telephone system that serves other parts of the Bay Area. In accordance with the Federal Communications Commission (FCC) requirements, there is only one other company licensed to provide cellular telephone service in the Sonoma County area.

Mobile telephone systems operate by using low power radio transmitter/receivers situated near the center of small (2.5 to 10 mile diameter) geographical units called cells. Each mobile phone communicates using radio signals to or from the cell's antenna. The cell antennas are connected to a central switching office by wire lines or microwave units. The central switching office automatically passes a telephone conversation from cell to cell as the mobile unit moves through the service area. Agreements between cellular telephone providers allow users to have continuous service when they are outside their respective local service areas.

On April 9, 1981, the FCC adopted rules for the installation and operation of cellular telephone systems. The provisions include:

1. There will be two cellular systems per market area. Each defined market area is based upon standard metropolitan statistical areas.

2. Twenty (20) MHz is held in reserve for all land mobile services.
3. There are no limits on the number of markets that can be served by a single cellular mobile radio service (CMRS) operator.
4. Licenses and affiliates of licenses are allowed to manufacture radio equipment, except that affiliates of Bell Operating Companies may be subject to the restrictions of the Modified Fund Judgment in United States v. A.T.&T., 552 F.Supp. 131.
5. Telephone companies will be required to establish a fully separate subsidiary to provide CMRS.
6. Wire line companies must provide equal interconnection to all cellular systems.
7. The FCC will preempt the State jurisdictions with regard to licensing but will not regulate rates.
8. The FCC has found that point-to-point microwave and other regular cellular telephone radio transmissions do not pose a human health hazard if properly designed, constructed, and operated.

The California Public Utilities Commission's Rule 17.1 of Practice and Procedure entitled, "Special Procedure for Implementation of the California Environmental Quality Act of 1970" and the California Environmental Quality Act (CEQA) require an environmental review of all developmental projects before the CPUC can issue a Certificate of Public Convenience and Necessity for a project, such as the proposed Santa Rosa cellular telephone system.

Depending upon demand, the Company may also consider expanding this system to provide cellular telephone service to other portions of the project area in the future. The installation of antennas not covered in this document would require additional environmental review by the CPUC.

C. Project Setting:

As noted above, the proposed cellular telephone system will initially consist of five cellular telephone antennas and associated radio equipment and a MTSO. The cell sites will require varying amounts of new construction associated with the installation of the radio equipment, however, no new construction will be required for the switching office since this system will use an existing facility in Oakland. All five antenna sites are located in Sonoma County. The following is a description of these five project sites and the equipment that will be installed at each:

1. Mobile Telephone Switching Office - 505 14th Street, Oakland, CA. The proposed telephone system will utilize an existing MTSO in Oakland to connect telephone calls to mobile units within the service cells in Sonoma County. This is a previously approved MTSO. No new construction will be required to provide service to the Sonoma County area.
2. Cell 1 - Healdsburg Site. The antenna in this cell will be situated on a private parcel at 14944 McDonough Heights Road on a hill directly east of Healdsburg. The parcel is zoned for residential and agricultural reserve uses. Access to the site is by a private drive from paved public roads. The project site contains one residence, which is occupied by the present landowner. Land use adjacent to this parcel consists of open space, agricultural, and limited rural residential development. See Figure 1 for the location of this antenna.

The site will have a self-supporting monopole antenna approximately 100 feet above ground level. Related transmitting and receiving equipment will be mounted near the top of the antenna. All other electronic equipment associated with this antenna will be housed in a 250 square foot space situated within a larger building that is being constructed by the landowner on this property.

3. Cell 2 - Mount Barham Site. The Mount Barham antenna site is located at 2179 Calistoga Road, which is at the summit of a small hill north of Santa Rosa. Access to the site is by a private drive from Calistoga Road. The present zoning of the property is Agricultural Reserve and the surrounding land use is livestock grazing and open space. See Figure 2 for the location of this antenna.

The applicant would utilize an existing 207 foot high radio tower on the project site. The applicant would add transmitting and receiving equipment onto this antenna. The applicant will also construct a small, 250 square foot building near the base of the tower to house other associated electronic equipment.

4. Cell 3 - Downtown Santa Rosa. A third antenna site is located in downtown Santa Rosa at 1050 Third Street on the roof of the Silvercrest Residence Home, which is owned and operated by the Salvation Army. The present zoning is R5-PD. The home is situated in a urban/commercial land use setting. See Figure 3 for the location of this antenna.

The applicant plans to install a 13-foot high antenna on the roof of the home. Associated electronic equipment will be housed in an approximately 250 square foot addition that will be placed somewhere within the Home's property. This addition will be designed so that it is architecturally

compatible with the Home. There is adequate electrical service to the Home to power the cellular telephone equipment.

5. Cell 4 - Sonoma Mountain. The Sonoma Mountain site is located on the Stevenson Ranch at the end of Sonoma Mountain Road. The community of Glen Ellen and the grounds of the Sonoma State Hospital are situated approximately 1.5 miles east of the site. The project area is zoned as a Agricultural Preserve and the surrounding uses are mainly agricultural. There is an existing radio transmitter facility at the project site. The project site is presently served by an adequate electrical power supply. See Figure 4 for the location of this antenna.

The applicant plans to install a self-supporting monopole antenna approximately 100 feet above ground level. Related transmitting and receiving equipment will be mounted near the top of the antenna. The applicant will also construct a 250 square foot, one-story building near the base of the antenna to house other associate electronic equipment.

6. Cell 5 - Petaluma Site. The cell site that will serve the southern portion of Sonoma County is located on a small hill off of 4191 Old Adobe Road in a rural area east of Petaluma. The present zoning in this area is Agricultural Preserve. The land use in this area is generally agricultural. Access to the site is by a private road from Old Adobe Road. There is existing electrical power at the site. See Figure 5 for the location of this antenna.

The applicant plans to install a self-supporting monopole antenna approximately 100 feet above ground level. Related transmitting and receiving equipment will be mounted near the top of the antenna. The applicant will also construct a 250 square foot, one-story building near the base of the antenna to house other associate electronic equipment.

E. Lead Agency Contact Person:

Ms. Elaine Russell
Energy Resources Branch
California Public Utilities Commission
1107 - 9th Street, Suite 710
Sacramento, CA 95814
(916) 324-6195

F. Lead Agency:

California Public Utilities Commission
505 Van Ness
San Francisco, CA 94102

G. Responsible Agencies:

Except for the California Public Utilities Commission, no other State or local agencies have discretionary approval over cellular telephone systems.

DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

6



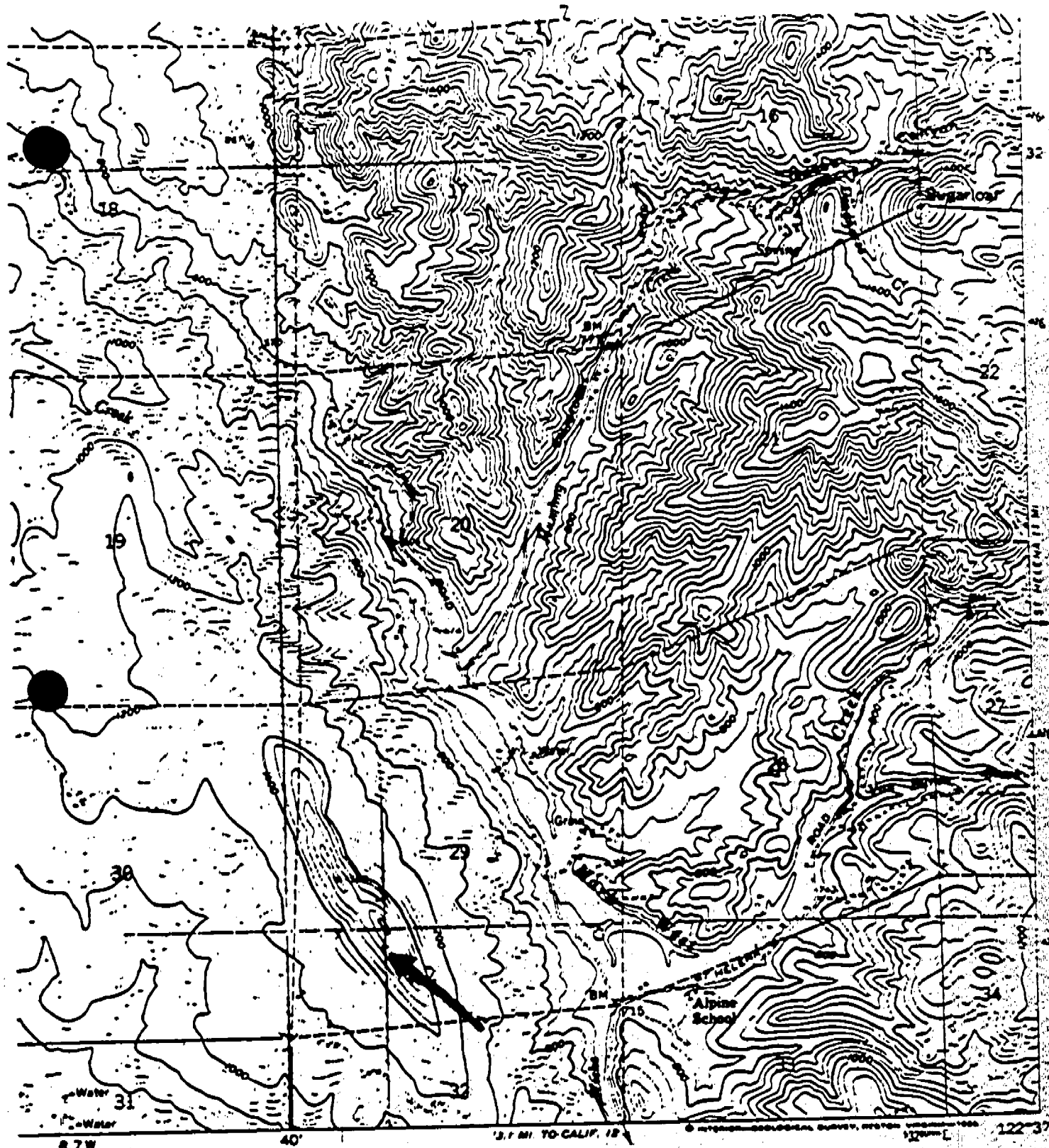


FIGURE 2

MOUNT BARHAM SITE
 A.88-07-041
 APPENDIX B



Site 2

ROAD CLASSIFICATION
 Heavy-duty ——— Light-duty ———
 Medium-duty ——— Unimproved dirt ———
 U.S. Route (rectangle symbol) State Route (circle symbol)

MARK WEST SPRINGS, CALIF.
 SW/4 CALISTOGA 15' QUADRANGLE



1
 OF 182



FIGURE 3

DOWNTOWN SANTA ROSA SITE

A-88-07-041

APPENDIX B

GLEN ELLEN QUA
CALIFORNIA—SON
7.5 MINUTE SERIES (K)

SE 1/4 SANTA ROSA 13' QU

SANTA ROSA 13' QU
KENWOOD 13' QU

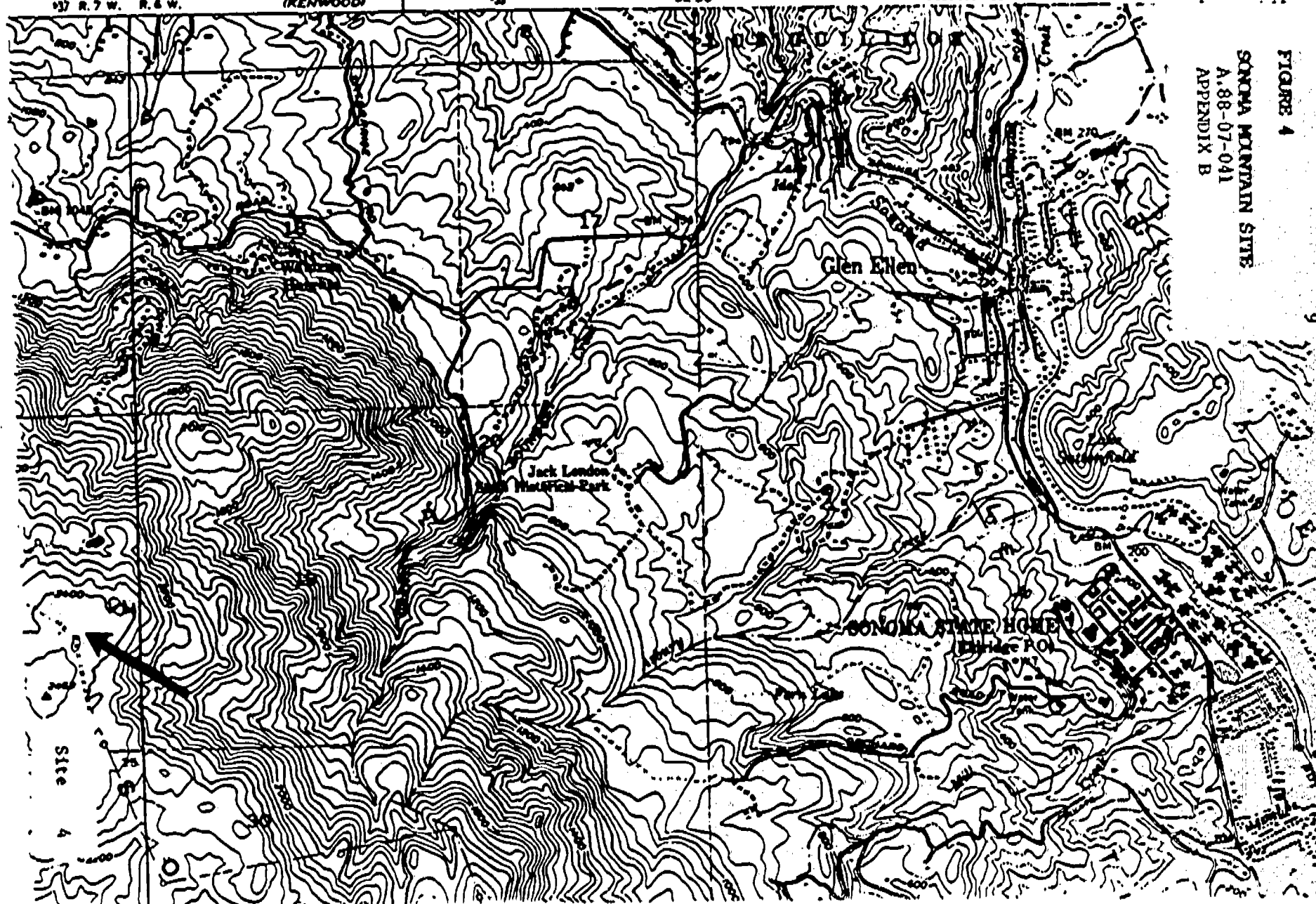
937 R. 7 W. R. & W.

1480 F NE
(KENWOOD)

32°30'

MI 1:850,000 FEET

FIGURE 4
SONOMA MOUNTAIN SITE
A.88-07-041
APPENDIX B



II. ENVIRONMENTAL IMPACTS

	Yes	Maybe	No
A. <u>Geology/Geomorphology</u> . Will the proposal result in:			
1. Unstable earth conditions or changes in geologic substructures?	—	—	X
2. Changes in topography or any unique geologic or physical features of the site?	—	—	X
3. Exposure of people or property to major geologic hazards (earthquakes, slides, subsidence, liquefaction, volcanism)?	—	—	X

The foundations for the accessory buildings and monopoles at cell sites that do not have existing buildings or antennas will require some minor grading. However, this grading will not result in any significant modification of the existing topography of the respective cell sites.

B. <u>Soils</u> . Will the proposal result in:			
1. Disruptions, displacements, compaction or overcovering of the soil?	—	—	X
2. Increased erosion from wind or water?	—	—	X
3. Changes in deposition or erosion of beach sands, or changes in siltation, deposition or erosion which may modify the channel of a river or stream or the bed of the ocean or any bay, inlet or lake?	—	—	X
C. <u>Air Quality/Climate</u> . Will the proposal result in:			
1. Substantial air emissions or deterioration of ambient air quality?	—	—	X
2. Creation of objectionable odors?	—	—	X
3. Alteration of air movement, moisture, temperature, or any change in climate, either locally or regionally?	—	—	X

	Yes	Maybe	No
D. <u>Water</u> . Will the proposal result in:			
1. Degradation of water quality?	—	—	X
2. Degradation or depletion of ground water resources, or interference with ground water recharge?	—	—	X
3. Depletion or contamination of public water supply?	—	—	X
4. Erosion, siltation, or flooding?	—	—	X
5. A change in the amount of surface water in any water body?	—	—	X
6. Alterations to the course or flow of flood waters?	—	—	X
E. <u>Vegetation</u> . Will the proposal result in:			
1. A change in the diversity of species, or numbers of any species of plants (including trees, shrubs, grass, crops, microflora and aquatic plants)?	—	—	X
2. A reduction of the numbers of any unique, rare or endangered species of plants?	—	—	X
3. The introduction of new species of plants into an area, or in a barrier to the normal replenishment of existing species?	—	—	X
4. A reduction in acreage of any agricultural crop?	—	—	X
F. <u>Wildlife</u> . Will the proposal result in:			
1. A change in the diversity of species, or numbers of any species of animals (birds and animals, including reptiles, fish and shellfish, benthic organisms, insects or microfauna)?	—	—	X
2. A reduction of the numbers of any unique, rare or endangered species of animals?	—	—	X

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
3. Introduction of new species of animals into an area?	—	—	X
4. Deterioration to existing fish or wildlife habitat, or interference with the movement of resident or migratory fish or wildlife?	—	—	X

The natural vegetation of Sites 1, 2, 3, and 4 have been disturbed by the presence of existing structures. None of the sites are reported by the California Natural Diversity Data Base to contain any threatened or endangered species, nor were any sensitive plant or animal species observed during on-site visits of the study areas. There are no wetlands, such as stream, bog, spring environments, in or immediately adjacent to any of the cell sites.

G. Land Use. Will the proposal result in:

1. A substantial alteration of the present or planned land use in the area? — — X

Construction of the proposed improvements at each site is not expected to have a significant effect on present or planned land use. The project components will be installed at existing communication facilities for Sites 2 and 4. Site 3 is also fully developed. Sites 1 and 5 will involve new development, but they are in relatively isolated areas associated with agricultural uses and, accordingly, are not considered incompatible with the adjacent land uses.

2. A conflict with Local, State or Federal land use plans or elements to those plans? — — X

The project components are allowable uses at all of the respective cell sites.

H. Visual Quality. Will the proposal result in:

1. Obstruction of any scenic vista or view now observed from public areas? — — X
2. Creation of an aesthetically offensive site open to public view? — — X

The proposed project consists of the use of five cell (antenna) sites and a mobile telephone switching office. The switching office has already been constructed and is in use by other cellular systems in the Bay Area. There will be no outward changes to this office, which is in Oakland, California. The aesthetic impact of the construction at each of the cell sites is as follows:

1. **Healdsburg Site.** The subject site is located on heavily wooded property in an area with scattered residential dwellings. There are no residences (other than the owner of the property) within 300 feet of the antenna location. Because of the terrain and vegetation in the project area, it is not anticipated that most residences will have direct views of the monopole or that the new antenna will have significant negative aesthetic impacts.
2. **Mount Barham Site.** The subject site is already used as a communications facility, so no new monopole or tower will be required at this location. There will be a small addition to an existing structure, but surrounding woodlands, together with the fact that there is no one living within at least 300 feet of the location, will make minimal the visual impact, if any, of the addition.
3. **Downtown Santa Rosa Site.** Surrounding uses are for multi-unit apartments and commercial activity. No monopole will be required. Instead, 13 foot antennas will be mounted on top of an existing building. The 250 square foot addition to the existing building will be one-story high, and will be architecturally compatible.
4. **Sonoma Mountain Site.** There are existing communications towers at the location, along with two buildings used for transmission equipment. Surrounding uses are woodland and pasture, and there are no residents within 300 feet. The impact of proposed new construction should be less than that of the facilities which are already at the location. There are no residences within an approximate 2,000 foot radius. Visual impact should be minimal.
5. **Petaluma Site.** The site is farmed and is used for grazing. Zoned as an agricultural preserve, the site has no residences within 300 feet and it is in a rural area.

	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
3. New light or glare substantially impacting other properties?	—	—	<u>X</u>
I. <u>Human Population.</u> Will the proposal result in:			
1. Growth inducement or concentration of population?	—	—	<u>X</u>
2. Relocation of people (involving either housing or employment)?	—	—	<u>X</u>
J. <u>Housing.</u> Will the proposal affect existing housing, or create a demand for additional housing?	—	—	<u>X</u>

	Yes	Maybe	No
K. <u>Transportation/Circulation.</u> Will the proposal result in:			
1. An increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system?	—	—	X
2. Effects on existing parking facilities, or demand for new parking?	—	—	X
3. A substantial increase in transit demand which cannot be accommodated by current transit capacity?	—	—	X
4. An increase in traffic hazards to motor vehicles, bicyclists or pedestrians?	—	—	X
5. Alterations to present patterns of circulation or movement of people and/or goods?	—	—	X
6. Alterations to waterborne, rail or air traffic?	—	—	X

The cell sites will generate infrequent traffic. Approximately once a month maintenance crews will visit each site for testing purposes.

The MTSO will generate no more traffic than at present. Few visitors are anticipated as most of the customers will be signed up at off-site cellular telephone hardware businesses. Installation of phone hardware will also take place at these off-site businesses. While there will be provision for on-site sale and installation at a downtown Santa Rosa location yet to be selected, Applicant anticipates most sales activity will take place off-site. Applicant will comply with City requirements for parking spaces.

L. <u>Noise.</u> Will the proposal result in:			
1. An increase in ambient noise levels?	—	—	X
2. An effect on noise sensitive receptors near or on project site?	—	—	X
M. <u>History/Archaeology.</u> Will the proposal result in:			
1. Alteration or destruction of a prehistoric or historic archaeological site?	—	—	X

	Yes	Maybe	No
2. Adverse physical or aesthetic effects to a prehistoric or historic building, structure or object?	—	—	X
3. A physical change which would affect unique ethnic cultural values?	—	—	X
4. Restriction of existing religious or sacred uses within the potential impact area?	—	—	X
N. <u>Public Services.</u> Will the proposal result in:			
1. Increased demand for fire or police protection?	—	—	X
2. Increased demand for schools, recreation or other public facilities?	—	—	X
3. Increased maintenance of public facilities, including roads?	—	—	X
O. <u>Utilities.</u> Will the proposal result in:			
1. Expansion or alteration of water, sewer, power, storm water drainage or communication facilities?	—	—	X
2. A breach of published national State or local standards relating to solid waste or litter control?	—	—	X
P. <u>Energy/Natural Resources.</u> Will the proposal result in:			
1. Use of substantial amounts of fuel or energy?	—	—	X
2. Substantial increase in demand on existing sources of energy?	—	—	X
3. Substantial depletion of any nonrenewable natural resource?	—	—	X
Q. <u>Hazards.</u> Will the proposal result in:			
1. Creation of a potential health hazard or exposure of people to potential health hazards?	—	—	X

The Federal Communications Commission has determined that the microwave and other radio transmissions associated with cellular telephone systems do not pose a significant risk to humans. The proposed cellular telephone system will be operated at a very low wattage (one eighth watt) using appropriately designed and installed equipment.

The CPUC acknowledges that technicians working on microwave installations must use due caution on equipment that is operating at certain power levels. The CPUC also acknowledges that improperly aimed microwave signals could pose a health threat in certain circumstances. However, the CPUC believes that the Applicant's equipment will be properly designed, installed and operated so that the public is not at risk from this system.

The monopoles necessary for the sites will be designed and constructed so that it is not subject to failure from anticipated natural forces such as high winds and rain.

Yes Maybe No

2. Interference with emergency
response plans or emergency
evacuation plans?

— — X

The proposed cellular telephone system will improve the emergency communications system in the Santa Rosa metropolitan area by providing individuals with mobile telephones the ability to contact police, fire, and emergency medical services from their vehicles or mobile units.

III. MANDATORY FINDINGS OF SIGNIFICANCE

A. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of a major period of California history or prehistory?

Yes Maybe No

— — X

B. Does the project have the potential to achieve short-term, to the disadvantage of long-term environmental goals?

— — X

C. Does the project have impacts which are individually limited, but cumulatively considerable?

— — X

D. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

— — X

IV. REFERENCES

1. Proponent's Environmental Assessment, Cagal Cellular Communications, Inc., before the Public Utilities Commission of the State of California, Application No. 8807041 and supplemental information provided by the Applicant.
2. Federal Communications Commission, FCC File No. 12573-CL-P-123-A-86.

V. PERSONS AND/OR AGENCIES CONSULTED


1. Elaine Russell
California Public Utilities Commission
1107 - 9th Street, Suite 710
Sacramento, CA 95814
2. Daniel Whalen
Whalen & Co.
3620 Mt. Diablo Blvd., Suite 200
Lafayette, CA 94549

VI. DETERMINATION

On the basis of this initial evaluation:

- ☒ I find the proposed project COULD NOT have a significant effect on the environment. A NEGATIVE DECLARATION will be prepared.
- ☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described in this Initial Study have been added to the project. A NEGATIVE DECLARATION will be prepared.
- ☐ I find the proposed project MAY have significant effects on the environment and an ENVIRONMENTAL IMPACT REPORT is required.

Date 9-9-88



Mike Burke
Regulatory and Environmental
Coordinator

A.88-07-041

DINKELSPIEL, DONOVAN & REDER

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

ONE EMBARCADERO CENTER - 27TH FLOOR

SAN FRANCISCO 94111

(415) 788-1100

APPENDIX B

TELEGRAPHIC (415) 397-8888

TELEX: 172-043

THOMAS S. DONOVAN
DAVID M. WILSON
BARRY REDER
JOEL ZELDIN
PAUL ESCOBOSA
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BARRY W. LEE
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ANDREW L. DUONICK
THOMAS J. STIKKER
KAREN LEAF
HELEN M. BEOWICK
KATHERINE C. BAIREY
JONATHAN RIVIN
JOHN D. PETERSEN
REBECCA A. WETTERLIN
VICTORIA A. WOOSTER
JAMES A. BLAKE
KENNETH K. BROMBERG
CELA M. RUIZ
DAVID A. SIMPSON
ANN E. JOHNSTON

IS PROFESSIONAL CORPORATION
--ADMITTED ONLY IN MINNESOTA

OF COUNSEL
RICHARD C. DINKELSPIEL
STEPHEN S. MAYNES
RICHARD L. MARCUS

November 23, 1988

IN REPLY REFER TO:
1243-7933-1

Via Telefax

The Honorable Jerry J. Levander
California Public Utilities Commission
107 South Broadway
Los Angeles, California 90012

RE: Application No. 88-07-041
(Cagal Cellular Communications Corporation)

Dear Judge Levander:

Pursuant to my conversation yesterday with Ms. Elaine Russell, I am writing to explain and clarify a minor change in the technical details set forth in the above-referenced Application.

As you are aware, Cagal Cellular Communications Corporation ("Cagal"), in its original Application for a Certificate for Public Convenience and Necessity, furnished detailed descriptions of all of its proposed construction. As it turns out, Cagal's proposed construction plans at the "Downtown Santa Rosa" site have changed slightly. The original description can be found on page 6 of the Application. Instead of mounting a single 13 foot antenna unit on the roof of the existing structure as contemplated by the original description, Applicant instead proposes to place three 13-foot whip antennae atop the existing building, the Silvercrest Residence Home. Two antennae will be placed directly on the roof, while the third will be placed atop the roof of the building's penthouse. This separation of antennae is slightly different from the single unit described in the Applicant and was needed to obviate interference between the transmitting and receiving functions of the cell site.

In addition to the above, Applicant is seeking a Conditional Use Permit from the City of Santa Rosa for authority to place a

The Honorable Jerry J. Levander
November 23, 1988
Page 2

6-foot microwave dish atop the Silvercrest Residence Home or atop an adjacent building. The microwave dish is needed, not for the Downtown Santa Rosa site, but to "control" the Applicant's proposed Sonoma Mountain site. Applicant had originally anticipated that "control" of the Sonoma Mountain site would be handled by "DS-1" cables from the local telephone company. However, Pacific Bell has recently indicated that it will need at least four more months before it can begin construction of such a cable to the Sonoma Mountain site. Obviously, Applicant would strongly prefer not to wait an additional four months, or longer, before being able to use this critically important Sonoma Mountain site.

It is Applicant's contention, as well as that of CPUC Environmental Specialist Ms. Elaine Russell, that neither the proposed separation of the three whip antennae nor the addition of the proposed microwave dish represents a material addition to the environmental impact described in the Mitigated Negative Declaration. Further, it is Applicant's understanding, based upon conversations with the Planning Department of the City of Santa Rosa, that the City of Santa Rosa will approve the Conditional Use Permit for the microwave dish. Applicant is prepared, at this point, to accept the City of Santa Rosa's decision on this matter, including any mitigation measures the City might require (provided they do not render the site unusable). This is consistent with prior Commission practice with regard to subsequent changes or additions to cellular systems which are the subject of an existing Mitigated Negative Declaration.

Thank you very much for this opportunity to explain the anticipated construction modification for the Downtown Santa Rosa site. As I am sure you are aware, it is extremely difficult, if not impossible, to accurately predict the precise specifications of all construction at the outset of the application process.

As always, we very much appreciate your help in expediting this Application. If you have any questions about the above-referenced matter, please do not hesitate to call me or David M. Wilson.

Sincerely yours,

David A. Simpson
David A. Simpson

DAS:car

cc: Elaine Russell

(END OF APPENDIX B)

ROAMING AGREEMENT

This ROAMING AGREEMENT is dated as of the ____ day of _____, 1988 by and between Cagal Cellular Communications Corporation ("Cagal") and Cellular Resellers Association, Inc. ("CRA") (collectively, "the Parties").

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

WHEREAS, CRA has filed a Protest to Cagal's Application and a hearing has been ordered by the Commission to be held on November 21-23, 1988 to resolve issues raised in the Protest;

WHEREAS, CRA and Cagal have agreed to resolve certain of the issues named in the Protest in a way which will certificate Cagal to construct its system and to provide roamer services to the public on an expedited basis and without hearings pending final resolution of certain remaining issues regarding Cagal's proposed retail and wholesale tariffs; and

WHEREAS, Cagal 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 Santa Rosa ("Facilities-based Carriers"), and such agreements will facilitate roaming by Cagal

and its resellers' customers in CGSAs where 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.

Cagal agrees to share roamer revenues with certificated resellers as follows:

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

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

(c) Cagal will propose, and the parties hereto will support at hearings, if any, a roamer tariff in substantially the form of

Exhibit A

Exhibit A whereby resellers whose customers roam in the Santa Rosa MSA will be charged at a wholesale rate, if the reciprocal arrangement is offered by the foreign carrier to Cagal's resellers. The reseller customer, in turn, will be billed at the relevant reseller's tariffed retail rates.

(d) Cagal will provide each of its resellers with the billing information which is necessary for them to bill their customers including information pertaining to each customer's local usage in the Santa Rosa 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, Cagal shall provide Peter A. Casciato, P.C., as counsel for the Cellular Resellers Association, Inc., a copy of each Roaming Agreement entered into by Cagal, subject only to the receipt of any third party waivers required under the terms of the relevant agreement.

(f) As a condition to receiving the benefits of this Agreement, each Cagal reseller shall acknowledge that if an Intercarrier 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 Cagal shall have no responsibility whatsoever for the continued availability to the Resellers' customers of the opportunity to roam, or the availability of Discounted Rates. How-

Exhibit A

ever, if new or amended roaming agreements are executed by Cagal 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 term 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 certificated reseller's responsibility to reimburse customer charges billed Cagal 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 Cagal and each Reseller shall acquire any rights hereby or hereunder.

Exhibit A

V.

All notices required by this Agreement may be sent to the resellers' addresses as set out in Exhibit B to this Agreement and to Cagal'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 Cagal 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 insofar as the Protest raises other than those settled herein. However, CRA shall withdraw its opposition to Application 88-07-041 insofar as is necessary for the Commission, without hearings, to certificate Cagal to construct its system and offer roamer services to the public upon the filing of interim tariffs which are not inconsistent with Exhibit A hereto.

X.

In consideration for their mutual promises contained herein, the parties agree that hearings on the remaining issues herein

Exhibit A

may be continued from November 21-23 to the earliest available
(and mutually convenient) date in January 1989.

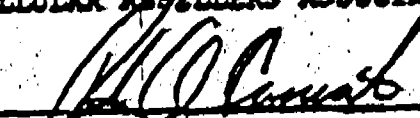
IN WITNESS WHEREOF, this Agreement has been duly executed
as of the date hereinabove indicated.

CAGAL CELLULAR COMMUNICATIONS
CORPORATION

By 

Title Ats A Horney

CELLULAR RESELLERS ASSOCIATION, INC.

By 

Title _____

124517953\402201.DMU

DRAFT - 11/3/88

Exhibit A

CELLULAR RADIO TELECOMMUNICATIONS SERVICE*APPLICABILITY

Applicable to Cellular Radio Telecommunications Service furnished by Cogal Cellular Communications Corporation ("Utility") in portions of Sonoma 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 Sonoma County, but within the State of California.

TERRITORY

Within Sonoma 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 ("FOC") 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 |

Exhibit A

(3) Monthly 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 (first 30,000 minutes from a single reseller): | \$.38 |
| (b) | Peak Period, per minute (additional roamer minutes beyond 30,000): | \$.36 |
| (c) | 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 IATA 7. Rates and procedures described herein are for individual roamers desiring to place or receive intra-OGSA calls whose home carriers have reached an appropriate inter-carrier arrangement with Utility. Roamers desiring to place calls outside the OGSA may be subject to additional credit requirements, or may be prevented from doing so depending on the terms of the arrangements between their home carriers and the Utility.

124317933\ACR01.DWV

(END OF EXHIBIT A)

EXHIBIT B

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is dated as of the ____ day of November 1988 by and between McCaw Cellular Communications, Inc. for itself and on behalf of those of its wholly owned or controlled affiliates identified in Appendix A hereto (collectively, "McCaw"), Cagal Cellular Communications Corporation ("Cagal") and the Cellular Resellers Association, Inc. for itself and on behalf of each and all its members which are identified in Appendix B hereto (collectively, "CRA") (collectively, "the Parties").

WHEREAS, Salinas Cellular Telephone Company, Redding Cellular Partnership and Cagal (collectively, the "Applicant Systems") have filed Applications for Certificates of Public Convenience and Necessity ("Applications") to the California Public Utilities Commission ("Commission") to offer cellular radiotelephone service to the public in, respectively, the Salinas-Seaside-Monterey, the Redding, and the Santa Rosa-Petaluma Cellular Geographic Service Areas;

WHEREAS, Sacramento Cellular Telephone Company ("SACTC"), Fresno Cellular Telephone Company ("FCTC") and Stockton Cellular Telephone Company ("SCTC") filed the following Advice Letters with the Commission to increase retail and wholesale rates for cellular radiotelephone service in certain CGSAs served by those entities, which Advice Letters were subsequently withdrawn following their conversion to applications by the Commission: SACTC Advice Letters Nos. 4 and 5-B (superseding SACTC Advice Letter No. 5), SCTC Advice Letters Nos. 3 and 4-B (superseding SCTC Advice Letter No. 4), and FCTC Advice Letter No. 8;

WHEREAS, Napa Cellular Telephone Company ("NCTC") has filed Advice Letter No. 3-B with the Commission to extend certain provisions of its roamer tariff to customers of Salinas Cellular Telephone Company;

WHEREAS, CRA has filed Protests to each of the aforementioned Advice Letters and Applications of the Applicant Systems and by SACTC, NCTC, FCTC, and SCTC;

WHEREAS, SCTC has filed Advice Letter Nos. 9 and 10 with the Commission to extend its offering of retail and wholesale cellular radiotelephone service to the Modesto CGSA, and SCTC believes CRA may file a protest to Advice Letter Nos. 9 and 10; and,

EXHIBIT B

WHEREAS, it is the desire of the Parties to: (1) resolve the differences that exist between them; (2) avoid expending the resources of the Commission in lengthy hearings; and (3) enable McCaw and Cagal to initiate new or revised service offerings to potential or existing customers according to the terms sought in the Applications and Advice Letters described above.

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

I.
CRA PROTESTS

A. CRA agrees to withdraw its Protests to each of the Applications of Applicant Systems and to refrain from filing any further protests to these Applications so long as they comply with the terms of this Agreement and continue to contain terms and conditions as favorable to the CRA as those contained in the tariffs presently proposed by the Applicant Systems as amended by the terms of this Settlement Agreement. In addition, CRA also agrees not to protest (1) any pending Advice Letter described above; or (2) any Advice Letter that may be filed by Cagal or McCaw during the term of this Agreement so long as such Advice Letter offers terms and conditions of service to the CRA as favorable as those contained in any Advice Letters that are described above and were previously filed by same entity.

B. CRA agrees to withdraw its Protest to Advice Letter No. 3-B of NCTC.

II.
APPLICANT SYSTEMS' TARIFFS

The Applicant Systems agree to file tariffs with the Commission prior to commencing service in their respective service territories which provide the following:

A. Special roaming rates and roaming charge reimbursements set forth in subparagraphs 2 below, will be available to any reseller that is not controlled or owned by a facilities-based carrier or an affiliate of a facilities-based carrier ("Independent Reseller").

1. Subparagraph 2 shall apply to an Independent Reseller when:

EXHIBIT B

- ⊗
- a. The Independent Reseller provides service to a customer on the facilities of an Applicant System or a McCaw system identified in Appendix A ("Home System"); and,
 - b. The Independent Reseller's customer roams on the facilities of any other Applicant System or any other McCaw system identified in Appendix A ("Serving System").
2. With respect to the roaming activities of an Independent Reseller's customer on the facilities of a Serving System, the Independent Reseller shall either pay a special roaming rate or be entitled to a credit upon billing depending on whether the Home System and the Serving System operate on a common cellular Mobile Telephone Switching Office ("Switch") or operate on different Switches, respectively.
- a. If the Home System and the Serving System operate on a common cellular Switch, the Independent Reseller shall pay for roaming at the same rates as are set forth in the Serving System's wholesale tariffs.
 - b. If the Home System and the Serving System do not operate on a common cellular Switch, the Independent Reseller shall pay for roaming in accordance with the rates set forth in the Serving System's roamer tariffs applicable to the Home System's customers, less a credit equal to the following sum:
 - i. The product of the amount paid by the Independent Reseller for roaming usage charges under the Serving System's tariff by a percentage equal to the difference between the Serving System's retail and wholesale usage rates, expressed as a percentage of the retail usage rate; and
 - ii. The product of the amount to be paid by the Independent Reseller for any roaming access charges under the

Serving System's tariff multiplied by a percentage equal to the difference between the Serving System's retail and wholesale access charges, expressed as a percentage of the retail access charge.

B. For the purpose of qualifying for volume-sensitive wholesale rates, Independent Resellers will be permitted:

1. Under the wholesale tariffs of Salinas Cellular Telephone Company, to aggregate their monthly local usage volumes on the facilities of such entities with monthly local usage volumes on the facilities of the Block A cellular operators in the following CGSAs: San Francisco-San Jose, Napa-Fairfield-Vallejo, Santa Rosa and Santa Cruz;
2. Under the wholesale tariffs of Cagal, to aggregate their monthly local usage volumes on the facilities of such entities with monthly local usage volumes on the facilities of the Block A cellular operators in the following CGSAs: San Francisco-San Jose, Napa-Fairfield-Vallejo, Salinas-Seaside-Monterey and Santa Cruz; provided that the terms of this paragraph II.B.2. become effective only at the time that McCaw or any of its subsidiaries acquires a controlling interest in Cagal.
3. Under the wholesale tariff of Redding Cellular Partnership, to aggregate their monthly local usage volume on the facilities of Redding Cellular Partnership with their monthly local usage volume on the facilities of McCaw systems operating in California on the SACTC Switch.

C. With respect to any numbers allocated to an Independent Reseller, the Applicant Systems' tariffs will provide that the wholesale access fee should be paid at the time of activation and not at the time of the allocation of such numbers; provided, however, that the resellers will not maintain unreasonably high inactive inventories which would limit the furnishing of numbers by an Applicant System to other customers. For the purposes of this Agreement, a reseller's failure to activate all of the numbers in its minimum initial order of numbers within sixty (60) days or more after their allocation, shall be conclusively deemed to

EXHIBIT B

be the retention of an unreasonably high inventory and shall result in all access fees for such numbers being due at the next billing cycle applicable to such reseller. Applicant Systems will file tariffs providing that the initial order of numbers shall be no more than 25.

D. The Applicant Systems will allow resellers direct computer access for number activation and deactivation, provided that the costs of a computer terminal and modem on a reseller's premises and a business telephone line will be borne by such reseller and that a dial-up modem port and software necessary to accommodate direct number activation and deactivation by a reseller will be furnished by the Applicant Systems. If in the future, any Applicant System is unable to accommodate resellers' requests for direct computer access due to a lack of ports or a need to revise software, Applicant Systems would have the right to allocate expenditures necessary to accommodate such requests among its retail operations and all resellers requesting to use direct computer access on the Applicant Systems. Insofar as Cagal shares a Switch with Bay Area Cellular Telephone Company ("BACTC"), such direct computer access will be afforded only in the event that BACTC consents to such access for resellers. Cagal and McCaw agree to use their best efforts to obtain BACTC's consent.

E. The Applicant Systems' wholesale tariffs will be applicable only to certificated resellers, subject to the following exception: If an Applicant System identifies any potential customer in its service territory that would purchase a large enough quantity of cellular numbers to qualify for wholesale rates under the tariff of the Block B facilities-based carrier in that service territory, the Applicant System may, following reasonable advance notice to CRA, amend its wholesale tariff in order to provide wholesale service to that customer or other similarly situated customers, and CRA will not oppose such amendment.

III. STIPULATIONS

A. Salinas Cellular Telephone Company, NCTC, Cagal and CRA agree to stipulate as to the outcome of the Commission's final Decision in Cellular Resellers Association, Inc. v. GTE Mobilnet, C.86-12-023.

B. The Applicant Systems shall adhere to the accounting requirements relating to the Uniform System of Accounts for Cellular Carriers, including the segregation of wholesale and retail revenues and expenses.

EXHIBIT B

IV.
TERM

The term of this Agreement shall be for one (1) year from the date that tariffs or tariff amendments required under Article II of this Agreement are filed. This Agreement may be terminated by either Party effective thirty (30) days from the date written notice is received by the other party if such other party breaches this Agreement and such breach is not cured prior to the end of the thirty (30) day period. Termination of this Agreement shall in no way alter any reseller's responsibility to reimburse customer charges billed to a McCaw-affiliated cellular carrier and incurred prior to the effective date of such termination by a customer of the reseller.

V.
WAIVER OF RULE 51.10

The Parties agree to file a motion for waiver of Rule 51 of the Commission's Rules of Practice and Procedure, pursuant to Rule 51.10. The Parties agree to cooperate in obtaining such a waiver in good faith.

VI.
MISCELLANEOUS

A. No partnership, agency or franchise agreement is created by this Agreement and no other person or entity besides McCaw, Cagal, and CRA shall acquire any rights hereby or hereunder.

B. All notices required by this Agreement may be sent to the Parties' addresses as set out in Appendix C to this Agreement.

C. This Agreement shall be governed by and construed in accordance with the laws 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.

D. This Agreement shall be subject to such changes as either the Federal Communications Commission or the California Commission may direct in its exercise of 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.

E. This Agreement is intended as a compromise of disputed claims and shall not be deemed an admission by any party that the other party is entitled to the relief provided hereunder as a matter of law or regulatory policy.

F. CRA warrants that it has the authority to enter into a binding Settlement Agreement with McCaw and Cagal on behalf of each of its members. CRA agrees to furnish a copy of this Agreement to each of its present members and to require each new member during the term of this Agreement to agree in writing to be bound by its terms.

G. This Settlement Agreement shall be binding upon the Parties, their members, and the partners, shareholders, officers, successors or assigns and subsidiaries and affiliates of such Parties and their members.

H. The Parties agree to file such motions, stipulations, agreements or other pleadings with the Commission as are necessary and appropriate to effect the withdrawal of Protests by the CRA to the Applications described herein.

I. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

J. Cagal and CRA are parties to a Roaming Agreement, dated November 3, 1988, which provides for a Commission order allowing construction to commence and interim roamer tariffs to be filed by Cagal on specified terms. While CRA has agreed by this Agreement to withdraw its entire protest of the Cagal Application, thus permitting Cagal to file wholesale, retail and roamer tariffs at the same time, the parties recognize that a final Commission order to this effect may not be immediately forthcoming. In such an event, Cagal may elect to seek an Interim Order under the Roaming Agreement in which event its roamer services will be provided on the terms set forth in the Roaming Agreement. Upon approval of Cagal's final wholesale and retail tariffs, the Roaming Agreement shall be superseded by this Agreement, except that in addition to its other commitments herein, Cagal agrees to file roamer tariffs which will extend wholesale rates (calculated in the manner described in II.A.2.b. above) to Independent Reseller units activated on other cellular systems in California, provided only that reciprocal treatment is accorded by the operator of the relevant Home System to Independent Reseller units activated on Cagal's system. Such tariffs shall be effective for a period ending no earlier than the second

A.88-07-041

EXHIBIT B

anniversary of this Agreement.

K. Any reseller that seeks to benefit from the provisions of this Agreement must become an individual signatory hereof.

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

MCCAW CELLULAR COMMUNICATIONS, INC.
for itself and its affiliates
identified in Appendix B.

By James M. Dixon

Title: Senior Vice President of
McCaw Cellular
Communications, Inc.

CAGAL CELLULAR COMMUNICATIONS
CORPORATION

By _____

Title _____

CELLULAR RESELLERS ASSOCIATION, INC.
for itself and each of its members

By David S. Nelson

Title: President

CELLULAR SERVICE INC.

By David S. Nelson

Title: _____

A-88-07-041

EXHIBIT B

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for itself and its affiliates
identified in Appendix B.

By James R. Dixon

Title: Senior Vice President of
McCaw Cellular
Communications, Inc.

CAGAL CELLULAR COMMUNICATIONS
CORPORATION

By [Signature]
Title Vice President

CELLULAR RESELLERS ASSOCIATION, INC.
for itself and each of its members

By David B. Nelson

Title: President

CELLULAR SERVICE INC.

By David B. Nelson

Title: _____

EXHIBIT B

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MCCAW CELLULAR COMMUNICATIONS, INC.
for itself and its affiliates
identified in Appendix A.

By _____
James M. Dixon

Title: Senior Vice President of
McCaw Cellular
Communications, Inc.

CACAL CELLULAR COMMUNICATIONS
CORPORATION

By _____

Title: _____

CELLULAR RESELLERS ASSOCIATION, INC.
for itself and each of its members

By _____
David S. Nelson

Title: President

CELLULAR SERVICE INC.

By _____
David S. Nelson

Title: Vice President

EXHIBIT B

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for itself and its affiliates
identified in Appendix B.

By _____
James M. Dixon

Title: Senior Vice President of
McCaw Cellular
Communications, Inc.

CAGAL CELLULAR COMMUNICATIONS
CORPORATION

By _____

Title _____

CELLULAR RESELLERS ASSOCIATION, INC.
for itself and each of its members

By _____
David S. Nelson

Title: President

CELLULAR SERVICE INC.

By _____
David S. Nelson

Title: _____

EXHIBIT B

COMTECH MOBILE TELEPHONE COMPANY

By Steven Muir

Title: _____

CALIFORNIA CELLULAR

By _____

Title: _____

LA PACIFIC TELECOM

By _____

Title: _____

NOVA CELLULAR WEST, INC.

By _____

Title: _____

AMERICOMM

By _____

Title: _____

A.88-07-041

EXHIBIT B

CENTURY CITY CELLULAR

By _____

Title: _____

11/23/88

10.

EXHIBIT B

APPENDIX A

MCCAW-AFFILIATED OR -CONTROLLED CELLULAR SYSTEMS

Carrier

Salinas Cellular Telephone Company
Redding Cellular Partnership
Napa Cellular Telephone Company
Sacramento Cellular Telephone
Company
Stockton Cellular Telephone Company
Fresno Cellular Telephone Company

CGSA(s)

Salinas-Seaside-Monterey
Redding
Napa-Fairfield-Vallejo
Sacramento and
Yuba City
Stockton-Modesto^{1/}
Fresno-Visalia

^{1/} Upon initiation of service to Modesto.

EXHIBIT B

APPENDIX B

CELLULAR RESELLER ASSOCIATION, INC. MEMBERS

Cellular Service Inc.
Comtech Mobile Telephone Company
California Cellular
LA Pacific Telecom
Nova Cellular West, Inc.
Americomm
Century City Cellular

EXHIBIT B
APPENDIX C

NOTICES

Cellular Resellers Association, Inc.
c/o Peter A. Casciato, P.C.
750 Battery St., Suite 340
San Francisco, CA 94111

McCaw Cellular Communications, Inc.
1750 Howe Avenue, Suite 102
Sacramento, CA 95865
Attention: James M. Dixon, Regional President

With copy to:
McCaw Cellular Communications Legal Department
5808 Lake Washington Blvd. N.E.
Kirkland, Washington 98033
Attention: Scott K. Morris, Vice-President Law

Cagal Cellular Communications Corporation
2604 Twelfth Street, N.W.
Delray Beach, Florida 33445

With a copy to:
David M. Wilson
Dinkelspiel, Donovan & Reder
One Embarcadero Center
27th Floor
San Francisco, California 94111

3PUB/SALSET

(END OF EXHIBIT B)

11/23/88

EXHIBIT

Santa Rosa Cellular Financial Projections

	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
Population	330,000	335,000	340,000	345,000	350,000
Estimated Penetration	.4%	1%	1.6%	2.0%	2.5%
SUBSCRIBER ESTIMATES					
(Average Numbers)	660	1675	2720	3400	4375
Churn Rate	5%	10%	15%	20%	20%
REVENUE ESTIMATES --					
Retail Service Establishment	13,860	23,650	29,060	27,200	37,000
Retail Access	285,120	723,600	1,175,040	1,468,800	1,890,000
Retail Airtime Revenues					
Retail Peak Airtime	570,240	1,447,200	2,350,080	2,937,600	3,780,000
Retail Off Peak Airtime	15,840	40,200	65,280	81,600	105,000
Gross Retail Airtime	586,560	1,487,400	2,415,360	3,019,200	3,885,000
Wholesale Service Orders	2,079	3,547	4,359	4,080	5,550
Wholesale Access Charges	48,312	122,610	199,104	248,880	320,250
Wholesale Peak Airtime	120,384	305,520	496,128	620,160	798,000
Wholesale Off Peak Airtime	12,672	32,160	52,224	65,280	84,000
Peak Roamer Airtime	38,016	38,016	38,016	38,016	38,016
Off Peak Roamer Airtime	4,224	4,224	4,224	4,224	4,224
Total Gross Revenues	1,110,747	2,740,727	4,413,515	5,495,840	7,062,040
Bad Debt	55,537	137,036	220,676	274,792	353,102
TOTAL NET REVENUE	1,055,210	2,603,691	4,192,839	5,221,048	6,708,938

Income Statement
Yearly - (1)

A.88-07-041

EXHIBIT

Santa Rosa Cellular Financial Projections

	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
EXPENSES ESTIMATES --					
Interconnection and Switching Costs					
Cell Site Link Cost	48,000	48,000	60,000	84,000	96,000
Switching Expenses	83,424	205,224	330,624	412,224	529,224
Interconnect Expenses	70,660	173,825	280,039	349,154	448,253
Total Interconnection Costs	202,084	427,049	670,663	845,378	1,073,477
Marketing and Sales Expenses	381,150	532,350	508,550	476,000	647,500
G & A Expenses					
Salaries and Personnel Expenses (Ex Benefits)					
General Manager	75,000	75,000	75,000	75,000	75,000
Sales Manager	50,000	50,000	50,000	50,000	50,000
Receptionist	8,000	15,000	15,000	15,000	15,000
Customer Service	30,000	30,000	30,000	34,000	45,000
Total Salaries	163,000	170,000	170,000	174,000	185,000
Benefits	32,600	34,000	34,000	34,800	37,000
Total Salaries and Benefits	195,600	204,000	204,000	208,800	222,000
Billing	35,640	90,450	146,880	183,600	236,250
Pre Operating Expenses	225,000	0	0	0	0
Professional Expenses	115,000	52,000	52,000	52,000	52,000

Income Statement
Yearly - (2)

A.88-07-041

EXHIBIT

Santa Rosa Cellular Financial Projections

	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
Other Expenses					
Utilities	8,000	8,000	8,000	8,000	8,000
Space Rental	46,000	46,000	46,000	46,000	46,000
Office Supplies	2,000	3,000	3,000	3,000	3,000
Office Outfitting Charges	20,000	0	0	0	0
Furniture	17,000	0	0	2,000	0
Car Leasing	7,000	7,000	7,000	7,000	7,000
Insurance	10,000	10,000	10,000	10,000	10,000
Office Telephone Services	5,000	5,000	6,000	6,000	6,000
Total Other Expenses	115,000	81,000	80,000	82,000	82,000
EXPENSES BEFORE DEPRECIATION AND INTEREST	1,269,474	1,384,849	1,610,093	1,847,778	2,311,227
NET INCOME BEFORE DEPRECIATION, INTEREST, AND TAXES	(214,264)	1,218,842	2,582,746	3,373,270	4,397,711

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Income Statement
Yearly - (3)

A.88-07-041

EXHIBIT C

RETAIL PROFITABILITY ANALYSIS

	1	2	3	4	5
Retail and Roamer Revenues (% of Total Gross)	\$ 927,780 (83.5%)	\$2,276,890 (83%)	\$3,661,700 (82.9%)	\$4,530,240 (82.4%)	\$5,854,240 (82.8%)
[Less 100% of Marketing and Sales Costs]	[381,150]	[532,350]	[508,550]	[476,000]	[647,500]
[Less pro-rated share (83%) of other expenses]	[737,309]	[707,574]	[914,280]	[1,193,447]	[1,380,893]
Net Income Before Bad Debt, Taxes, Depreciation, Interest	[190,679]	1,036,966	2,238,870	2,860,960	3,825,847

(4)

(END OF EXHIBIT C)

Cagal proposes to work out arrangements with neighboring carriers to coordinate handoff patterns and frequency distribution to ensure continuous service free of interference, between adjacent service areas (roamer service), Cagal's cellular signal coverage contours overlap portions of Napa and Marin counties.

Cagal has a tentative agreement with the Bay Area Cellular Telephone Company (BACTC) to use BACTC's Mobile Telephone Switching Office (MTSO) in Oakland to operate its five-cell system. Cagal proposes to link the BACTC MTSO to Pacific Bell's (Pacific) Santa Rosa tandem office using existing DS-1 high capacity digital spans. Similar DS-1 spans would carry traffic to and from Cagal's cell sites.¹ Cagal is negotiating terms with Pacific for delivering mobile calls to customers within Pacific's service area or, as appropriate, to inter-exchange carrier(s) for termination outside of the Local Access Transport Area (LATA) presently served by Pacific in the San Francisco Bay area. In addition, Pacific's customers within that LATA would have access to Cagal's system at Pacific's Santa Rosa tandem office.

The application was filed on July 22, 1988 and was deemed filed 30 days later, on August 22, 1988, under Government Code Section 65943. (The 30th day after filing fell on a Sunday.) The application contains a proposed environmental assessment. Cagal seeks adoption of a Negative Declaration by the Commission.

Exhibit C attached to this decision is a portion of Exhibit B and of Exhibit H attached to the application. It shows Cagal's (identified as Santa Rosa) projection of its overall income and expenses for five years and an allocation to retail operations for that period. The projection shows a first-year loss of

¹ Cagal is likely to use a microwave linkage to serve one cell because Pacific will not be able to start construction of a DS-1 link to that cell before March 1989.

14. The environmental impacts of the proposed action, as mitigated by the conditions listed in the Negative Declaration, are not significant.

15. Cagal did not timely serve County with a copy of its application. County received constructive notice of Cagal's proposal.

16. The rates and charges proposed in the application, modified to reflect the terms of Cagal's and MCI's settlement agreement with CRA applied on a nondiscriminatory basis are reasonable.

17. Cagal proposes a temporary waiver of access charges. GTEM requests the Commission to authorize a similar waiver for other cellular companies.

18. Public convenience and necessity require the grant of a CPC&N.

19. Cagal should be subject to a user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435. The fee is currently 0.1% for the 1988-89 fiscal year.

20. Cagal should be subject to a one-half percent (1/2%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf pursuant to PU Code § 2881 as set forth in Resolution T-13005.

21. Cagal is operating as a cellular reseller (U-4047-C).

22. This decision will not determine whether Cagal's construction program is necessary or reasonable for rate fixing purposes. Those issues are normally tested in general rate proceedings.

Conclusions of Law

1. Cagal should be granted a CPC&N to construct public cellular radio telecommunications facilities at five cell sites, as identified in the application and in Cagal's November 23, 1988 letter to the Commission.