

Decision 89 01 035 ~~JAN 27 1989~~

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Portable Cellular Communications,)
Inc., a New York corporation, for a)
certificate of public convenience)
and necessity to operate as a)
reseller of cellular radio telephone)
services within the State of)
California; and Nationwide Cellular)
Services, Inc. (U-4049-C),)
a New York corporation, for)
authorization under Section 852 of)
the Public Utilities Code to hold)
stock of Portable Cellular)
Communications, Inc.)

Application 88-09-054
(Filed September 27, 1988)

OPINION

This is an application in which Portable Cellular Communications, Inc. (applicant) seeks authority to operate as a reseller of cellular telephone service and Nationwide Cellular Services, Inc. (Nationwide) seeks authority to hold applicant's stock.

Notice of the filing of the application appeared in the Commission's Daily Calendar on September 29, 1988. There are no protests.

The Commission makes the following findings and conclusions.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Applicant is a New York corporation which is qualified to do business in California. Nationwide owns 80% of applicant's capital stock. Applicant presently markets cellular telephone equipment and services on daily or short-term basis in a number of cellular service areas outside California, including New York City,

Portland, Seattle, Denver, and Miami. It has done so since it began operating in 1985.

3. Nationwide is a Delaware corporation which is qualified to do business in California. It holds a certificate of public convenience and necessity granted by the Commission authorizing it to operate as a telephone corporation for the purpose of acting as a reseller of cellular radio telephone services (U-4049-C).

4. Applicant proposes to purchase cellular services in bulk from cellular carriers and resell them to the public at retail rates under tariffs to be filed with the Commission. It intends to confine its marketing to daily and short-term users, primarily customers of car rental agencies. Customers of agencies which have entered into agreements with applicant will be able to obtain portable cellular phones, or cars already equipped with cellular units, which will be billed to their credit card accounts. Each such agency will have a computer terminal which will be able to track the customers' usage, so that upon return the correct usage charges can be assessed. Applicant also proposes to establish a rate band ranging from \$.75 per minute of usage of \$1.95 per minute of usage. Actual rates within that band will be periodically determined by market conditions and by the facilities utilized. Applicant contends that it needs a flexible tariff rather than being bound to a specific rate structure, which must be altered by Advice Letter whenever conditions require, because of the multi-faceted nature of its proposed short-term business. It states that promotional programs initiated by car rental companies, special rates for holidays and weekends, variances in rates between car rental locations, rental of a car and phone at one location but return elsewhere, etc., make adherence to a fixed rate structure virtually impossible. Addressing each of the myriad pricing eventualities in the tariff as and when they arose would be so costly and complicated that it would be prohibitively expensive as well as being unworkable. Under the proposal the rate charged a

customer obtaining service from applicant would be fixed at the time he contracts for service, and applicant would not alter such rate for the duration of the customer's usage. Applicant asserts that its proposed rate band will make it possible to provide service on an economical basis to travellers at a cost which is commensurate with the facilities and benefits afforded, and will not pose any threat to regular carriers or resellers because the proposed usage rates are substantially higher than those offered to long-term customers.

5. Applicant proposes to establish two categories of service: installed mobile and portable. Its intention is to initially charge \$1.45 per minute for its service in both categories. At some point, applicant expects to charge different rates for installed mobile units and portable units. Applicant's plan is to notify the Commission Advisory and Compliance Division (CACD) in writing whenever a rate is changed, or a new category of service is established, and confirm that the information in such notice shall remain in force until subsequently altered by a further written notice to CACD. If applicant proposed a rate either higher or lower than the \$.75-\$1.95 range, the usual advice letter procedures under General Order (GO) 96-A would be followed.

6. Since applicant is an 80% owned subsidiary of Nationwide, its financial statements are consolidated with those of Nationwide. As of March 31, 1988, Nationwide and its subsidiaries had total assets of \$16,940,994.

7. Nationwide presently provides full service cellular resale in the Los Angeles and San Diego Cellular Geographical Service Areas. Applicant's proposed service is qualitatively different from that offered by Nationwide, in that it intends to provide service primarily through car rental agencies, on a daily or short-term basis. The parties propose to offer this service through applicant as a separately certificated utility, rather than by simply adding it to Nationwide's tariffs, because applicant has

already independently developed this business, as well as the goodwill and other proprietary rights attributable thereto, in the other jurisdictions in which it operates.

8. Since Nationwide owns 80% of applicant's stock, if the requested operating authority is granted Public Utilities (PU) Code § 852 requires that the Commission authorize Nationwide to hold the stock.

9. Applicant has the ability, including financial ability, to conduct the proposed operations.

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

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

12. Applicant proposes to provide service at rates within a rate band. A statement of the proposed rate band is included in the application, but proposed tariff pages, which are not mandatory, were not provided. It is reasonable to require that the initial tariffs filed by applicant be filed on not less than 20 days' notice before they become effective to allow time for appropriate review by the CACD and other interested parties.

13. As a telephone corporation operating as a telecommunications service supplier, applicant should be subject to the 4% surcharge on gross intrastate interLATA revenues as established by Commission decisions and resolutions pursuant to PU Code § 879.

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

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

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

17. Applicant's request for an exemption from the provisions of Sections IV, V, and VI of GO 96-A is inconsistent with the Commission's determination in D.88-05-067. Applicant is also subject to the Commission's determination in D.88-05-067 exempting cellular resellers from the revenue limitation provisions of Section VI of GO 96-A.

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

Conclusions of Law

1. Applicant should be granted the requested operating authority.

2. Nationwide should be authorized to hold the stock of applicant.

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

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

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity to operate as a telephone corporation as defined in PU Code § 234 for the purpose of operating as a reseller of cellular radiotelephone services within California is granted to Portable Cellular Communications, Inc. (applicant) in accordance with the terms of the application.

2. Applicant is authorized to file with the Commission after the effective date of this order, on not less than 20 days' notice to the public and Commission the tariff schedules and rates for the proposed service.¹ Service may not be offered until tariffs are on file. This filing shall comply with General Order (GO) Series 96, except that, applicant is authorized to employ the alternative method of page numbering described in Commission Resolutions U-275 and T-4886, at its election. The tariff shall provide for a user fee surcharge of 0.10%. Failure to file the tariff may result in revocation of the authority granted here.

3. Applicant is subject to the provisions of GO 96-A including Sections IV, V, and VI, as revised in D.88-05-067.

1 Applicant may file tariffs with a rate band of \$.75-\$1.95 and an initial charge of \$1.45 per minute for installed mobile and portable service. Applicant shall fix the rate to a particular customer at the time service is provided and shall not alter the rate for the duration of the customer's usage. Applicant will notify CACD in writing whenever a rate is changed or a new category of service is established, and confirm that the information in such notice shall remain in force until subsequently altered by further written notice to CACD. If applicant proposes a rate either higher or lower than the \$.75-\$1.95 range, applicant will follow the usual Advice Letter procedures under General Order (GO) 96-A.

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

5. The corporate identification number assigned to applicant is U-4072-C which should be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

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

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

8. Nationwide Cellular Services, Inc. (U-4049-C) is authorized to hold the stock of applicant.

This order is effective today.

Dated January 27, 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHEANIAN
Commissioners

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

Victor Weissert
Victor Weissert, Executive Director
PS

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