

Decision 89 02 005 FEB 8 1989

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of LACTC Sales, Inc. )  
a California corporation, for a )  
Certificate of Public Convenience )  
and Necessity to resell cellular )  
radiotelephone service in the )  
Los Angeles Geographic Service )  
Area. )

FEB 8 1989

Application 87-04-046  
(Filed April 24, 1987)

Dinkelspiel, Donovan & Reder, by David M. Wilson, Attorney at Law, for LACTC Sales, Inc., applicant.  
Peter A. Casciato, Attorney at Law, for Cellular Resellers Association, Inc., and Roger P. Downes, Attorney at Law, for Los Angeles SMSA Limited Partnership, protestants.

O P I N I O N

LACTC Sales, Inc., (applicant) is a California corporation with its principal place of business in the City of Commerce. Applicant is a wholly owned subsidiary of Los Angeles Cellular Telephone Company (LACTC). Applicant seeks a certificate of public convenience and necessity authorizing it to resell cellular radiotelephone service in a service area that would extend throughout the State where facilities-based cellular carriers have established operations. However, applicant states that it has no intention of reselling cellular services on the LACTC system.

Prehearing Conference

On November 30, 1987, a prehearing conference was held to consider the issues raised by the application and by the protests filed by Los Angeles SMSA Limited Partnership (LASLP) on May 22, 1987, and by Cellular Resellers Association, Inc. (Resellers). At the prehearing conference, LASLP through its counsel withdrew its protest on the record. Resellers also withdrew its protest on the

understanding that it could litigate issues raised by its protest in a related complaint case. (C.87-04-059, Cellular Resellers Association, Inc. v. LACTC.) Both LACTC and Resellers agreed to this procedure and stipulated that Application 87-04-046 could be disposed of as an ex parte matter.

After the prehearing conference, counsel for applicant and the Administrative Law Judge (ALJ) agreed that applicant would amend paragraphs 5(a) and 7 (second sentence) of the application to clarify the extent of the certificate sought.<sup>1</sup> The Division of Ratepayer Advocates had expressed concern that applicant's certificate should be conditional to prevent applicant from offering to resell the services of LACTC.

On December 9, 1987, the ALJ wrote to applicant's counsel requesting that he file the amendment agreed upon. No response was received.

On April 11, 1988, the ALJ wrote to applicant's counsel, reminding him of the amendment that was to be filed. No response was received.

On November 14, 1988, the ALJ wrote again to applicant's counsel, alluding to the earlier letters and counsel's agreement to amend the application. The ALJ stated that he would propose an order to the Commission dismissing the application for lack of prosecution, unless the amendment was filed on or before November 30, 1988. No response was received, and no amendment has been filed as of December 13, 1988.

Despite repeated reminders, applicant has failed to file the amendment to the application agreed upon between the ALJ and

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<sup>1</sup> The caption reads: "Los Angeles Geographic Service Area"; and the service area map (Exhibit C) is of the Los Angeles Cellular Geographic Service Area; but the body of the application alleges that: "Applicant's service area would extend throughout the state where facilities-based cellular carriers have established operations."

applicant's counsel. Accordingly, applicant has failed to prosecute its application. We will dismiss the application for lack of prosecution.

Findings of Fact

1. Applicant, through its counsel, agreed to amend its application so that it could be disposed of by ex parte order.
2. Applicant has failed to file the expected amendment, despite repeated reminders.

Conclusions of Law


1. Applicant has failed to prosecute its application.
2. The application should be dismissed for lack of prosecution.

ORDER

IT IS ORDERED that the application is dismissed.  
This order becomes effective 30 days from today.  
Dated FEB 8 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HOLETT  
JOHN B. O'BANIAN  
Commissioners

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

  
Victor Weisser, Executive Director