

Decision 89 02 029 FEB 8 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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FEB 10 1989

In the Matter of the Application of)
Twentieth Century Cellular, Inc.,)
a California corporation, for a)
certificate of public convenience)
and necessity to operate as a)
reseller of cellular radio tele-)
communications within California)
and for exemption from the)
requirements of Sections 816-830)
and 851-855 of the Public Utilities)
Code and various General Orders.)

Application 88-09-002
(Filed September 1, 1988)

(U-4071-C)

OPINION

Twentieth Century Cellular, Inc. (applicant), a California corporation, seeks authority to operate as a reseller of radiotelephone service within California.

In response to inquiries of the Commission's Division of Ratepayers Advocates and of the assigned administrative law judge, applicant furnished additional information and modified its proposals requested in the application (Exhibit 1). Applicant deleted its request for exemption from the provision of the Commission's General Order (GO) 24-B, 65-A, 77-M, 104-A, and 133-A and Sections IV, V, and VI of GO 96-A.

Applicant's sole shareholder, James Jariv, has business experience including working in management and operations and as an agent of Century City Cellular, a cellular reseller. He proposes to initially pay cash for \$25,000 of applicant's stock and to furnish additional funds if needed to permit applicant to operate as a viable reseller.

Notice of the filing of the application appeared in the Commission's Daily Calendar on September 8, 1988. There were 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 newly formed California corporation, with Jariv as its sole shareholder.
3. Applicant proposes to operate as a resale carrier of radiotelephone service within California. Initially, it will provide service to the greater Los Angeles Cellular Geographical Service Area (CGSA), which includes most of Los Angeles and Orange County and portions of Riverside, San Bernardino, and Riverside counties.
4. Applicant proposes to resell service from systems operated by various cellular carriers, initially from the Los Angeles SMSA Limited Partnership (Partnership).
5. Applicant has provided a pro forma balance sheet which indicates initial assets of \$25,000 in cash issued for capital stock. A pro forma income statement projects a net loss of about \$9,100 for its initial three months of operations and profitable operations thereafter.
6. Applicant has the ability, including financial ability, to conduct the proposed operations.
7. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
8. The Federal Communications Commission has decided that only two cellular carriers will be allowed to operate in each CGSA, and that one of these two licenses should be awarded to a provider of conventional wireline telephone service and the other license to a nonwireline licensee, resulting in longstanding monopolies on the

wholesale level. The Commission has recognized the role of cellular resellers in creating competition, so that consumers will be offered the best cellular service at lowest prices.

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

10. Applicant's proposed basic rates and charges are the same as Partnership's retail rates; its proposed \$15 change order charge is below that of Partnership.

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

12. Sections IV, V, and VI of GO 96-A relate to filed 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.

13. Applicant's request for an exemption from the provisions of Sections IV, V, and VI of GO 96-A did not consider this Commission's recent modification of those sections in a rulemaking proceeding. In Decision (D.) 88-05-067 the Commission specified that the Sections IV and V timeframe applicable to cellular resellers is 30 days. Applicant's exemption request 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 86-A.

14. Applicant requests exemption from PU Code §§ 816 to 830 and 851 to 855.

Conclusions of Law

1. The application should be granted as provided herein.
2. 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.
3. Applicant is subject to the one-half percent (1/2%) surcharge on gross intrastate revenue to fund Telecommunications Devices for the Deaf. (Resolution T-13005, dated July 22, 1988; PU Code § 2881, as amended by SB 2268 signed June 30, 1988.)
4. Applicant's request for exemption from the provisions of PU Code §§ 816-830 should be granted consistent with our treatment of similar requests (e.g., D.86-10-007). With respect to PU Code § 851 there is an exemption when the transfer or encumbrance of property serves to secure debt, when the acquisition of a controlling interest of a reseller is not involved. PU Code §§ 851-854 should be modified to reflect that exemption. PU Code § 855 deals with water and sewer system receiverships which are not germane to this application.

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 Public Utilities Code § 234 for the purpose of operating as a reseller of cellular radiotelephone services within California is granted to Twentieth Century Cellular, Inc. (applicant).
2. Applicant is authorized to file the tariff schedules and rates proposed in the application. Service may not be offered

until tariffs are on file. This filing shall comply with General Order (GO) Series 96-A, 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.

3. Applicant is authorized to file with this Commission, after the effective date of this order, on not less than 5 days' notice to the public and Commission, the tariff schedules for its proposed service as shown in the application. Failure to file the tariff may result in revocation of the authority granted here.

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

5. Applicant is subject to the user fee as a percentage (0.10%) of gross intrastate revenue pursuant to PU Code §§ 431-435. The tariff shall provide for a user fee surcharge of 0.10%.

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

7. Applicant's request for exemption from the provisions of PU Code §§ 816-830 is granted consistent with our treatment of similar requests (e.g., D.86-10-007). With respect to PU Code § 851 there is an exemption when the transfer or encumbrance of property serves to secure debt, when the acquisition of a controlling interest of a reseller is not involved. PU Code §§ 851-854 is modified to reflect that exemption. PU Code § 855 is not germane to this application.

8. The corporation identification number assigned to applicant is U-4071-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.

9. 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.

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

This order is effective today.

Dated FEB 8 1989, at San Francisco, California.

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

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

[Handwritten Signature]
Victor Vucelja, Executive Director