

Decision 89-03 038 MAR 22 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHWEST CELLULAR TELEPHONE CO.,)
INC., a California corporation, for)
a certificate of public convenience)
and necessity to operate as a re-)
seller of cellular radio telephone)
services within the State of)
California.)

ORIGINAL

Application 88-08-042
(Filed August 22, 1988)

(U 4068-C)

O P I N I O N

Applicant Southwest Cellular Telephone Co., Inc., a California corporation, seeks a certificate of public convenience and necessity (CPC&N) pursuant to Public Utilities (PU) Code § 1001 to resell cellular telecommunications services within California. Initially, applicant proposes to offer its services within the San Diego and Los Angeles metropolitan areas.

Applicant would purchase cellular services from the applicable carrier at each carrier's published wholesale rates and would resell service to the public at the retail rates and charges tabulated below, subject to modifications to meet competition:

Connection charge	\$50.00
Monthly access charge	45.00
Peak per minute usage	0.45
Off-Peak per minute usage	0.27

Exhibit C attached to the application states:

1. Dorothy Fasack, applicant's president, has 25 years of experience managing and directing corporations related to the electronic field, including 4 years of employment as vice president and chief financial officer of Allstate Cellular (AC).

2. She has directed the wholesale and retail operation of AC's Santa Ana and San Diego offices.
3. She has an extensive background in promotionals sales, advertising, marketing, and computer management of AC's cellular business data.
4. Stanley Fasack, applicant's vice president and chief financial officer, has 30 years of experience in engineering, owning and operating electronic plants in the communications industry, and in the manufacturing of electronic equipment.
5. He has acted as a business consultant for other electronic plants.
6. He developed AC as one of the leading retail and wholesale cellular operations in the United States.
7. He can provide financial resources and proper management to make applicant successful.

The application states:

1. Applicant is now marketing cellular telephone equipment as an agent of the Los Angeles Cellular Telephone Company (a cellular carrier) in Los Angeles and San Diego Counties and has been engaged in this field for approximately three and a half years.
2. Applicant is qualified to act as a reseller doing the same type of work it is now engaged in.
3. The application contains "[a]pplicant's most recently available financial statements..." "which demonstrate that [applicant] has ample financial strength...to establish the contemplated resale business...meet any applicable carrier's deposit requirements, and also to sustain the losses necessary to occur during the start-up period."

However, the above described financial statements are those of AC. As of May 31, 1988, AC's assets of \$1,364,798 included current assets of \$1,337,702. The current assets include in part \$460,469 in cash and \$424,871 in accounts receivable. AC's current liabilities were \$768,387 and its net worth was \$596,412. Its net income for five months was \$291,633.

The application states applicant will provide cellular retail services to approximately 500 customers at the end of its first year of operations and to approximately 2,500 customers at the end of the fifth year of its operations.

Applicant's Exhibit 1 contains:

1. A December 1987 financial statement of the Fasacks.
2. A statement that the Fasacks own all of AC's common stock. The AC stock has a book value of \$600,000.
3. AC's financial statements as of October 31, 1988.
4. Applicant can obtain funds from AC, doing business as Allstate Intrastate Investments, Inc., from the personal resources of Stanley and Dorothy Fasack.
5. A letter from Dorothy Fasack in which she states that she was prepared to immediately commit \$50,000 to applicant along with additional funds needed to sustain any losses applicant may incur over its (superseded) projection of losses for a year and a half.

A letter from Pioneer Bank to the Commission (Exhibit 3) states that the bank will provide a \$50,000 letter of credit to applicant for a period of 18 months after certification.

Applicant's updated projection of customers (Exhibit 2) shows 280 customers after the first year of operations and 1,586 customers after the fifth year of operations; a profit of \$16,350 in the first year of operations.

Applicant states that the basic need for cellular radiotelephone service has already been determined in proceedings before the Commission and the Federal Communications Commission (FCC); applicant's service will be responsive to the public interest as discussed in Decision (D.) 84-04-014. Applicant further states its proposed services will enhance competition in the retail market for cellular services, ultimately benefiting the public through lower prices, greater diversity in services and rates, and increased utilization of system capacity enabling the underlying carrier to maintain lower rates.

Since the proposed service relates to the resale of services provided by carriers and does not involve construction of any kind, applicant states it can be seen with certainty that there is no possibility that the project may have a significant adverse effect on the environment.

Applicant also seeks exemption from compliance with Sections IV, V, and VI of General Order (GO) 96-A to permit its initial tariffs to be made effective on the date of their filing and to allow tariff revisions to become effective on five days' notice.

The financial resources of applicant's officials, committed to applicant, are sufficient to meet applicant's initial operating losses. Applicant has the ability, experience, and financial resources to perform the proposed service. The application should be granted subject to the conditions discussed below.

Sections IV, V, and VI of GO 96-A relate to filed and effective dates, procedures for filing of tariff sheets which do not increase rates or charges, as well as procedures for filing tariff sheets 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.

Applicant's request for an exemption from the provisions of Sections IV, V, and VI of GO 96-A did not reflect this Commission's recent modification of those sections. In D.88-05-067, a rulemaking proceeding, 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 and is therefore denied. 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.

At this time, the considerations repeated in several recent decisions on applications of cellular radiotelephone service resellers are still applicable. It appears that the cellular market will be a highly competitive one. The basic scheme established by the FCC allowing two major carriers, one wireline and one nonwireline, to operate in the same territory, is coupled with provisions for the wholesale marketing of this service, which is designed to promote vigorous competition in cellular markets.

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).

Applicant's operations would subject it to the fee system set forth in PU Code §§ 401 et seq. and § 2881. Applicant will be ordered to provide for the collection of billing surcharges in its tariff rules as required by Resolutions M-4743 and T-13005.

Applicant will be required to keep its records as described here.

Until a uniform accounting system for cellular resellers has been prescribed, the Commission will not issue detailed account instructions. Each cellular communications company will, however, be expected to maintain its books in such detail that financial

data relating to its operations can be assembled upon request, e.g.:

1. Revenue and expenses of utility operations should be segregated from nonutility operations.
2. Charges from affiliates should be broken down so that each kind of charge can be identified.
3. Revenue accounts should be appropriately subdivided (access, peak, off-peak, service order charges, custom calling, directory listing, etc.).
4. Expense accounts should be grouped to provide a total for sales and marketing expense. This would include, in subaccounts, advertising, promotion and incentives, sales salaries and commissions, sales vehicle expense, etc.
5. General and administrative expenses should be subdivided to identify rent and lease expense, billing expense, salaries, insurance, and other appropriate subdivisions.
6. Other significant costs, such as unsold numbers, should be listed.

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

Since there will be no physical construction associated with applicant's resale proposal, there would be no impact on the environment from its resale operations.

There are no protests to granting the requested authority.

Findings of Fact

1. Applicant has the ability, experience, and financial resources to perform the proposed service.
2. Public convenience and necessity require the service proposed by applicant.

3. Applicant should file a set of tariffs similar in scope to the retail tariffs set forth in D.84-04-014.

4. Constraints of Sections IV, V, and VI of GO 96-A have been modified by D.88-05-067 for cellular resellers.

5. At this time, it appears that the cellular market will be highly competitive.

6. Applicant's proposed operations will provide competition in the cellular radio service market which will benefit the public at large.

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

9. A public hearing is not necessary.

Conclusions of Law

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

2. 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 fee systems set forth in PU Code §§ 401 et seq. and § 2881.

4. The appropriate surcharge pursuant to §§ 401 et seq. would be 0.10% for the fiscal year 1988-1989. Applicant is subject to the one-half percent (1/2%) surcharge on gross intrastate revenues 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.)

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

The certificate hereinafter granted is subject to the provision of law that the Commission shall have no power to

authorize the capitalization of this CPC&N or the right to own, operate, or enjoy such CPC&N in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such CPC&N or right.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to applicant Southwest Cellular Telephone Co., Inc. to operate as a reseller of cellular radio telecommunication services within California.

2. On or after the effective date of this order, applicant is authorized to file tariff schedules at the proposed rates requested above for the resale of cellular mobile radiotelephone service in the Los Angeles standard metropolitan statistical area (SMSA) and the San Diego SMSA service area. Service may not be offered until tariffs are on file. This filing shall comply with General Order (GO) 96-A, except that applicant is authorized to employ the alternate method of page numbering described in Resolutions U-275 and T-4886 at its election. The initial filing shall contain at least the Preliminary Statement, Table of Contents, and Rate Schedules, the rates and charges requested by applicant in its application, together with the remaining retail tariff provisions authorized for the Los Angeles SMSA Limited Partnership by D.84-04-014. The filing is to be effective on not less than 5 days' notice. Applicant shall file the remaining tariff schedules, to include rules and forms as prescribed by GO 96-A, no later than 10 days following the effective date of this order, to be effective on not less than 5 days' notice. 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. Applicant is authorized to file rates and charges for resale of

services purchased from authorized underlying cellular telecommunication carriers in other areas of California, in accordance with the provisions of Section III of GO 96-A.

3. Applicant shall keep its records as detailed in the body of this order.

4. The certificate of public convenience and necessity is granted as set forth above. Applicant is subject to the provisions of GO 96-A including Sections IV, V, and VI, as revised in D.88-05-067. The certificate granted and the authority to render service under the rates, rules, and charges authorized will expire if not exercised within 12 months after the effective date of this order.

5. Applicant is exempted from the provisions of PU Code §§ 816-830.

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

7. The corporate identification number assigned to applicant is U-4068-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

8. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify, in writing, the Chief of the Telecommunications Branch of the Commission Advisory and Compliance Division of compliance.

9. The application is granted as set forth above.

This order is effective today.

Dated MAR 22 1989, at San Francisco, California.

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

Commissioner Patricia Eckert,
present but not participating

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



Victor Weissor, Executive Director

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