

Decision 89 09 033 SEP 7 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Cellular Dynamics Telephone Company )  
of San Francisco, Inc., a )  
California corporation, for a )  
Certificate of Public Convenience )  
and Necessity to Operate as a )  
Reseller of Cellular Radio )  
Telecommunications Within )  
California and for Exemption )  
from the Requirements of )  
Sections 816-830 and 851-855 )  
of the Public Utilities Code. )

Application 89-04-031  
(Filed April 14, 1989)

ORIGINAL

OPINION

This is an application in which Cellular Dynamics Telephone Company of San Francisco, Inc. (applicant) seeks a certificate of public convenience and necessity to operate as a reseller of cellular radio telecommunications services.

Notice of the filing of the application appeared in the Commission's Daily Calendar of April 20, 1989. There are no protests.

The Commission makes the following findings and conclusion.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Applicant is a newly organized California corporation with offices in Inglewood, California. Applicant's parent is Cellcom Corp. (Cellcom) which also owns Cellcom Telephone Company which has operated as a reseller of cellular radiotelephone services in the greater New York City CGSA and Cellular Dynamics Telephone Company of Los Angeles Inc. (Dynamic Telephone) which operates as a reseller in the greater Los Angeles CGSA.

3. The president of Cellcom, Jay Brown, is also president of Dynamic Telephone and applicant and the business of applicant will be operated by the current management staffs of the other companies who have significant experience in the cellular radiotelephone business.

4. Applicant proposes to operate as a resale carrier of cellular radiotelephone service within the State of California, initially in the San Francisco/San Jose CGSAs, reselling services which are provided by either or both Bay Area Cellular Telephone Co. and GTE Mobilnet of San Francisco/San Jose Limited Partnership, the wholesale cellular providers in the area, and from other facilities-based licensed certificated cellular radiotelephone carriers operating in the area.

5. As a reseller, applicant will not construct, own, or operate any fixed cellular radio equipment or facilities but will sell to end users the services provided by carriers which do operate the fixed facilities necessary to transmit cellular telephone traffic. Applicant will purchase services from these carriers at their tariffed wholesale rates and will resell these services initially at the following rates:

	<u>Basic Plan</u>	<u>Personal Plan</u>
Connection Charge	\$25.00	\$25.00
Monthly Access Charge	45.00	45.00
Peak Minute Usage	.45	.90
Off-Peak Minute Usage	.20	.20

6. Applicant has provided a balance sheet which indicates assets of \$20,000 as of April 1, 1989. Cellcom will provide additional working capital to applicant to fund its needs as such advances are required, and commits to cover the operational losses of applicant's utility operations. A pro forma income statement projects a net loss of \$6,780 for the first year's operation and a profit of \$13,365 at the end of the second year of operation.

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

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

9. Applicant also requests an exemption from the provisions of Public Utilities Code §§ 816-830 and 851-855 which require Commission approval prior to issuance of debt, equity, or encumbrances of property by a public utility. Since applicant will not construct or own any facilities or equipment, observance of these sections will not serve to protect investment in facilities against improvident financial manipulation by utility management. If applicant fails because of competitive market forces, other competitive resellers will be able to continue to offer service to applicant's customers. Compliance with these provisions may increase applicant's costs and impede competition.

10. Exemption from the provisions of Public Utilities Code §§ 816-830 has been granted to other resellers (e.g., D.86-10-007 and D.88-12-076). With respect to § 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. §§ 851-854 should be modified to reflect that exemption. § 855 involves receiverships for water and sewer corporations which are not germane to applicant's proposed operations.

11. Applicant's proposed resale of cellular service will enhance competition in the cellular retail market and may result in providing lower priced service, increased ability of customers to choose among service providers and a wide variety of service packages, and increase use of the existing facilities of the underlying carriers resulting in greater efficiency.

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

13. Applicant requests that it be authorized to file tariffs five days after the effective date of this order to be effective on not less than five days' notice. Applicant also asks to be exempted from Parts IV, V, and VI of General Order 96-A for subsequent tariff filings.

14. Applicant did not file proposed tariff pages with its application. It is reasonable to require that the initial tariffs filed by applicant be filed on not less than 15 days' notice before they become effective to allow time for appropriate review by the Commission Advisory and Compliance Division and other interested parties. This is consistent with our treatment of other resellers (e.g., D.89-05-006).

15. Sections IV, V, and VI of General Order 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 filings to increase rates. 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.

16. Applicant should be subject to the user fee as a percentage of gross intrastate revenue pursuant to Public Utilities Code §§ 431-435. The fee is currently 0.1% for the 1989-90 fiscal year.

17. As a telephone corporation operating as a telecommunications service supplier, applicant should be subject to the three-tenths of one percent (0.3%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf. This surcharge became effective July 1, 1989 as set forth in Resolution T-13061 dated April 26, 1989 and issued pursuant to Public Utilities Code § 2881.

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

Conclusion of Law

The application should be granted.

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 feature 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 Cellular Dynamics Telephone Company of San Francisco, 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 15 days' notice to the public and the Commission the tariff schedules and rates for the proposed service. Service may not be offered until tariffs are on file. This filing shall comply with General Order 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 General Order 96-A including Section IV, V, and VI as revised in D.88-05-067.

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

5. Applicant is exempted from the provisions of §§ 816-830. Applicant is also exempted from § 851 if the transaction involves the transfer or encumbrances of property to secure debt when the acquisition of a controlling interest of a reseller is not involved. § 855 does not pertain to cellular resellers.

6. The corporate identification number assigned to applicant is U-4076-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.

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

8. 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. ✓

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

This order is effective today.

Dated SEP 7 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUOA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

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

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*Wesley Franklin*  
WESLEY FRANKLIN, Acting Executive Director  
DB

5. Applicant is exempted from the provisions of §§ 816-830. Applicant is also exempted from § 851 if the transaction involves the transfer or encumbrances of property to secure debt when the acquisition of a controlling interest of a reseller is not involved. § 855 does not pertain to cellular resellers.

6. The corporate identification number assigned to applicant is U-4076-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.

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

8. The certificate of public convenience and necessity granted by this order shall expire with 123 months after the effective date of this order if applicant has not filed tariffs and commenced operations by that date.

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

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.