

Decision 89 11 004 NOV 3 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Cellular Dynamics Telephone Company)
of San Diego, 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 851-854 of the Public Utilities)
Code.)

ORIGINAL

Application 89-08-041
(Filed August 28, 1989)

OPINION

This is an application in which Cellular Dynamics Telephone Company of San Diego, 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 September 5, 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 is a wholly owned subsidiary of Cellcom Corp. which also owns Cellcom Telephone Company operating as a reseller of cellular radiotelephone service in the greater New York City CGSA and Cellular Dynamics Telephone Company of Los Angeles, Inc. serving approximately 15,000 customers in the greater Los Angeles CGSA. Applicant's president, Jan Brown, is also the president of Cellcom Corp. and Cellular Dynamic Telephone Company of Los Angeles Inc. The current management

staffs of the other companies will operate the business of applicant.

3. Applicant proposes to operate as a resale carrier of cellular radiotelephone service at any location in California and initially in the San Diego SMSA. Initially it proposes to resell service purchased from either or both US West and PacTel Cellular. The wholesale cellular providers in the San Diego SMSA, and other facilities based licensed certificated cellular radiotelephone carriers operating in the greater San Diego Area.

4. 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	\$40.00	\$40.00
Monthly Access Charge	35.00	19.95
Peak Minute Usage	.40	.74
Off-Peak Minute Usage	.20	.19

5. Applicant has provided a pro forma balance sheet which indicates assets of \$20,000 as of August 1, 1989. A pro forma income statement projects a net loss of \$128,272 for the first year's operation and a profit of \$28,845 at the end of the second year of operation. Applicant furnished a letter from Cellcom Corp. agreeing to cover any operating losses that arise out of the utility operations of applicant.

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. Applicant also requests an exemption from the provisions of Public Utilities Code §§ 816-830 and 851-854 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.

9. Exemption from the provisions of Public Utilities Code §§ 816-830 has been granted to other resellers (e.g., Decision (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.

10. 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.

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

12. Applicant requests that it be authorized to file tariffs five days after the effective date of this order to be effective on five days' notice. Applicant also asks to be exempted from Parts IV, V, and VI of General Order 96-A for subsequent tariff filings.

13. 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 5 days' notice before they become effective to allow time for appropriate review by the Commission Advisory and Compliance Division and other interested parties. This shortened time period reflects the fact that this matter was on the agenda for the Commission's October 25, 1989 Meeting which was cancelled after the October 17, 1989 earthquake. Having been delayed two weeks by this emergency, we will shorten review of the tariffs for which we normally allow 15 days (D.89-05-006).

14. 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.

15. 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.

16. 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.

17. 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 Diego, 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 5 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-4080-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.

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 November 3, 1989, at San Francisco, California.

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

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

- 6 -

Wesley Franklin
WESLEY FRANKLIN, Acting Executive Director
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