

Decision 90 07 061

JUL 18 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Atlantic Cellular)
 Company, Ltd., a Delaware limited)
 partnership, doing business as)
 Mountain Cellular, for a)
 certificate of public convenience)
 and necessity to construct and)
 operate a domestic public land)
 cellular radiotelephone system in)
 El Dorado County, California.)

Application 89-05-060
 (Filed May 26, 1989;
 amended December 21, 1989)

INTERIM OPINION

On May 26, 1989, El Dorado Cellular Communications Company filed Application (A.) 89-05-060 seeking authorization to construct a cellular radiotelephone system in California Rural Service Area 11, which comprises El Dorado County. On June 23, 1989, the Commission Advisory and Compliance Division (CACD) asked for additional information relating to applicant's environmental assessment of the proposed project. Then, on November 1, 1989, El Dorado Cellular Communications Company sold its right, title, and interest in the Federal Communications Commission's (FCC) cellular authorization for El Dorado County to Atlantic Cellular Company, Ltd., a Delaware limited partnership, which filed this amended application to provide the additional information sought by CACD, to describe the new applicant, and to provide new information relating to the financial feasibility of the project.

Atlantic Cellular Company, Ltd. is a Delaware limited partnership which does business in California as Mountain Cellular (applicant or Mountain).¹ Applicant has its principal place of business in Rhode Island. The partnership has assets in excess of \$42 million. A copy of the Partnership Agreement establishing applicant and a copy of applicant's certificate of Registration with the California Secretary of State were submitted with the application. Mountain seeks a certificate of public convenience and necessity to construct a domestic public cellular radiotelephone system in El Dorado County, and to provide service thereon to the public.

On April 27, 1989, the FCC issued a construction permit to El Dorado and subsequently authorized the transfer of the permit to applicant. Construction of the initial cell site described in this application and connection of that site to Mountain's Mobile Telephone Switching Office (MTSO), and to the Public Switched Telephone Network (PSTN) must be completed within eighteen months from the date of the construction permit (by October 27, 1990).

The system will utilize a Motorola EMX-100 MTSO co-located with a cell site near Clarksville, California. The MTSO will be linked by wireline facilities with the MTSO maintained by PacTel Cellular in Sacramento, California. Since the PacTel Cellular MTSO is also manufactured by Motorola, additional software will permit the customers of either company to travel between the Sacramento Metropolitan Statistical Area (MSA) and the El Dorado RSA without an interruption in ongoing conversations. This factor will be of special importance, as it is Sierra's intention, in cooperation with PacTel Cellular, ultimately to provide continuous

¹ Atlantic Cellular Company originally called itself Sierra Cellular Communications but changed its name in June 1990 to Mountain Cellular.

cellular communications services from the California/Nevada border along Highway 50 to Sacramento, and from Sacramento in all directions on adjacent "B" Block cellular systems.

Applicant proposes a modified "Type II" interconnect scheme pursuant to which:

- a. Applicant's MTSO will be linked to Pacific Bell's Sacramento Class 4, or tandem office by DS-1 spans leased at tariffed rates from Pacific Bell;
- b. A full NXX, or block of 10,000 numbers, will be reserved for applicant, and will reside in the Sacramento tandem, thus permitting Mountain to subscribe to Pacific Bell's LM-2 service;
- c. Applicant may add "Type 1" DS-1 links between its MTSO and Pacific Bell end offices in Shingle Springs, and the Lake Tahoe Basin. There will also be such a link between the MTSO and Pacific Bell's Placerville end office.

The above-described arrangement will permit Mountain to terminate its customers' mobile-originated calls to Pacific Bell land stations throughout LATA 3, without the customers incurring toll or ZUM message unit charges. It will also permit Pacific Bell's landline subscribers in LATA 3 to reach customer units without paying toll or Zone 2-3 message unit charges. Interexchange calls and calls to independent telephone company stations will be delivered to the relevant carriers through Pacific Bell's Placerville end office. Applicant's proposed operations in El Dorado County are expected to have 235 units in service at the end of the first full year of operations, and 2,567 units in service at the end of the fifth year of operations. Applicant anticipates operating profitability in the third year of operations. The estimated capital costs are \$3,749,000 in the first three years of operations, including \$1,700,000 as the estimated cost of the initial construction. The statements assume no debt financing, and

are based on the capital commitments of applicant's general partners, special limited partners, and limited partners. In the event additional funding is needed, applicant is the beneficiary of loan commitments totaling \$40,000,000, i.e., of a \$25,000,000 line of credit from Provident National Bank, and a \$15,000,000 loan agreement with Saugatuck II Cellular, Ltd., which is one of applicant's limited partners.

Proposed tariff sheets stating the rates and conditions of service proposed by Mountain for its initial operations in El Dorado County have been submitted and appear reasonable.

Applicant submitted a Proposed Environmental Assessment which shows the initial configuration of the system to include two sites, one at Clarksville, California and one at Placerville, California, both in El Dorado County. This Commission is the Lead Agency under the California Environmental Quality Act and is presently preparing its environmental analysis of the two sites. However, because applicant must be in operation by October 1990 to retain its FCC construction permit, applicant has filed an amendment to its application adding a site located on Pine Hill to its system. Applicant alleges that the Pine Hill site will not have a significant effect on the environment.

The Pine Hill site is located in the unincorporated area of El Dorado County approximately 4 miles north of Cameron Park. It is on a parcel of land containing several communications towers owned by the California Department of Forestry. The applicant will attach antennas and microwave dishes to an existing 90' tower, one of several towers located at the communications installation. It can be seen with certainty that there is no possibility that the proposed construction may have a significant adverse effect on the environment. ✓

Protests to the amendment to the application were filed by the Environmental Planning and Information Council, Inc. (EPIC) of Shingle Springs, California and by Debi Drake and Peter Maurer,

residents of Placerville. EPIC's protest states that the cumulative impacts of the project need to be addressed and that by considering only the Pine Hill site while setting aside consideration of the Clarksville and Placerville sites will compound the potential environmental impacts to El Dorado County from the cumulative impacts of the proposed system. EPIC asserts that we must also consider the cumulative impacts of applicant's sites and the sites of another cellular carrier (Sacramento Cellular) in El Dorado County, which collectively could result in as many as 14 towers. EPIC argues that before a certificate is issued to applicant for any site an EIR must be completed.

Drake and Maurer reiterate the position taken by EPIC and, in addition, assert that even considering Pine Hill alone an EIR is required. They allege that the operation of vehicles, equipment, and foot traffic necessary to add six antennae to an existing tower on the summit of Pine Hill could possibly diminish the populations of one or more rare plant species that exist at that site. For that reason they contend that an EIR is required before the Pine Hill site is approved. ✓

In our opinion the protestants have not set forth sufficient facts to warrant either an EIR for the Pine Hill site or a public hearing on the application for a CPC&N. No one has challenged the need for the service or the fitness of applicant. We understand protestants' concern that the cumulative effects of numerous sites in El Dorado county can have an adverse environmental impact. We are not permitting applicant to separate its application into small, insignificant, parts to avoid a potential significant impact. Environmental review is in progress for the sites that have a potential for adverse environmental consequences. And that environmental review will consider all of applicant's proposed sites including the Pine Hill site. The cumulative impact of the totality of applicant's sites will be addressed. The environmental review will of necessity consider

impacts in conjunction with facilities of others already in place. Our grant of authority in this application is not immutable; we certainly have the power to cause applicant to relocate the Pine Hill site or abandon it. (Public Utilities (PU) Code §§ 761, 762.)

Our responsibility to the public requires us to consider the interests and concerns of the applicant and the public utility needs of the inhabitants of the state as well as environmental impacts. Cellular telephones are an integral part of the telecommunications network of the state. To the extent that they may cause an environmental impact time must be taken to prepare an adequate comprehensive environmental review to mitigate or avoid adverse impacts. But to the extent that no adverse environmental impact will occur, they should not be delayed. It is not fair to hold the environmentally benign portion of the project hostage to the portion which requires environmental review, when the two can be bifurcated without harm.

The allegations regarding harm to rare flora on Pine Hill do not persuade us that an environmental hearing is necessary. Not only are the allegations nonspecific, but admittedly Pine Hill has towers and facilities in place which require maintenance, replacement, repair, etc. Preventing applicant from using the site, which is open to all others, will not affect the environment. The restrictive nature of our order granting a CPC&N when coupled with the environmental review now in progress is adequate to protect the public.

In order to provide service to the public in an expeditious manner, we will grant a certificate for the operation of the Pine Hill site only, and will retain jurisdiction to issue a certificate for the other two sites, Clarksville and Placerville, upon completion of an environmental analysis. Applicant, having been granted authority to construct by this decision, may commence construction of the facilities at the Pine Hill site only.

(General Order (GO) 159, III B.)

Findings of Fact

1. Applicant requests a certificate of public convenience and necessity to construct and operate a domestic public land cellular radiotelephone system in El Dorado County, California.

2. Copies of the application and amendment to application were served in accordance with the Commission's rules.

3. The protests to the application do not raise environmental concerns regarding the Pine Hill site which would require either an environmental review of the site or a public hearing.

4. Applicant has the requisite FCC construction permit.

5. Public convenience and necessity require the granting of this application, to the extent set forth in the following order.

6. The proposed operation is technically feasible.

7. The proposed operation is economically feasible.

8. The proposed transmitters and antennas will be located on existing towers, the heights of which will not be increased.

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

10. Applicant is subject to the user fee system, as set forth in Public Utilities Code § 401, et seq.

11. A public hearing is not necessary.

Conclusions of Law

1. The application should be granted as set forth in the following order.

2. The user fee for the 1990-91 fiscal year should be 0.10%.

3. 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.

INTERIM ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Atlantic Cellular Company, Ltd. (applicant) to construct and operate a public utility domestic public land cellular radiotelephone system in El Dorado County, restricted to the use of its Pine Hill site for placement of its antennas and microwave dishes.

2. Applicant shall not use any other site in El Dorado County for placement of its antennas and microwave dishes until completion of an environmental review and further order of this Commission.

3. Within 30 days of the effective date of this order, applicant shall file a written acceptance of the certificate granted in this proceeding with the Commission Advisory and Compliance Branch (CACD) Director.

4. Applicant is authorized to file, after the effective date of this order and in compliance with GO 96-A, tariffs applicable to the service authorized containing rates, charges, and rules applicable to its radiotelephone service as proposed in its application. The tariffs shall become effective on not less than 5 days' notice.

5. Applicant shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 4, engineer service area maps drawn in conformity with the provision of FCC Rule 22.504, commonly known as the "Carey Report", and consistent with its application.

6. Applicant shall notify the CACD Director in writing of the date service is first rendered to the public as authorized herein, within 5 days after service begins.

7. Applicant shall keep its books and records in accordance with the Uniform System of Accounts for cellular communications licensees as prescribed by D.86-01-043.

8. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using CPUC Annual Report Form L and prepared according to the instructions included with that form.

9. Applicant is subject to the user fee as a percentage of gross intrastate revenue under PU Code §§ 401, et seq.

10. Applicant is subject to the surcharges on gross intrastate revenues to fund Telecommunications Devices for the Deaf, pursuant to PU Code § 2881 and Resolution T-13061.

11. The corporate identification number assigned to Atlantic Cellular Company, Ltd. is U-3024-C which shall be included in the caption of all original filings with this Commission, and in the title of other pleadings filed in existing cases.

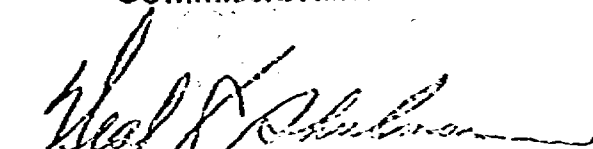
12. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify, in writing, the Chief of the Telecommunications Branch of CACD of compliance.

13. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the effective date of this order.

This order is effective today.

Dated JUL 18 1990, at San Francisco, California.

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


NEAL J. SCHULMAN, Executive Director

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