

Decision 90 07 064 JUL 18 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of CONTEL CELLULAR OF CALIFORNIA, )  
INC. for a Certificate of Public )  
Convenience and Necessity under )  
Section 1001 of the Public Utilities )  
Code of the State of California for )  
authority to construct and operate )  
a new domestic public cellular )  
radio telecommunication service to )  
the public in the California RSA )  
No. 10 encompassing Sierra and )  
Nevada Counties. )

Application 90-05-032  
(Filed May 17, 1990)

O P I N I O N

Contel Cellular of California, Inc. (applicant) requests a certificate of public convenience and necessity (CPCN) under § 1001 of the California Public Utilities (PU) Code to construct and operate a new domestic public cellular radiotelephone service within the California Rural Service Area (RSA) No. 10, encompassing Sierra and Nevada Counties. Applicant has been selected as the wireline (Frequency Block B) cellular carrier by the Federal Communications Commission (FCC) to provide domestic public cellular radio telecommunications service in RSA No. 10.

Applicant is a corporation duly organized under the laws of the State of California for the purpose of providing cellular radiotelephone service to the public. Applicant is a wholly owned subsidiary of Contel Cellular, Inc. (Contel), a Delaware corporation headquartered in Atlanta, Georgia. Contel is a subsidiary of Contel Corporation which owns 90% of Contel's 100 million outstanding common shares. The remaining 10% is publicly traded. Contel was established to operate Contel Corporation's cellular interests nationwide. Contel currently has limited partnership interests in 31 metropolitan statistical area (MSA)

markets and has subsidiaries, including applicant, which are general partners/managing partners and, in some cases, sole owners responsible for operating 36 cellular systems throughout the country. In addition, Contel or its subsidiaries have been designated the general/managing partner for 42 RSAs, including five other California RSAs.

Fresno MSA Limited Partnership (Fresno), of which applicant is the general partner and 92% owner, currently has Commission authority to provide cellular service in the Fresno, Visalia, and Bakersfield MSAs and the Kings County RSA. (Decision (D.) 85-11-055 and Fresno's Advice Letters 3, 6, and 16.)

Applicant is seeking a CPCN under § 1001 of the PU Code for authority to construct and operate a new domestic public cellular radio telephone service in RSA No. 10. When construction is completed and the system is operational, applicant will provide both wholesale and retail service.

Applicant requests that the Commission issue the CPCN requested in this application on an ex parte, expedited basis for the following reasons. First, applicant's FCC construction permit will expire on October 27, 1990, unless applicant has commenced service to the public by that date. Applicant will require at least three months to complete construction of the system because of harsh terrain. Because of this, because of possible adverse winter weather conditions, and because of the need to coordinate switching with PacTel Cellular, applicant has planned to complete construction in October 1990. Applicant notes that the cell site will be installed on an existing tower and should require no extensive review.

Cellular radio is an evolving technology that is and will continue to expand consumer's communications opportunities throughout the United States. The FCC has allocated two blocks of frequencies for cellular radio services in each MSA and RSA. Applicant is one of the two carriers selected by the FCC for RSA

No. 10. All of the MSAs in California have been operational for several years. Applicant, as well as other FCC licensees, is beginning the process of constructing and bringing into service cellular systems in the 12 RSAs in California. These systems not only will bring this technologically advanced telecommunications service to the citizens of the rural areas of California, but also will offer important expanded service adjacent to and among MSAs and other RSAs. An essential feature of RSA service is its integration with MSA service, which in turn will enhance the value of cellular service throughout the State of California.

Applicant proposes to provide mobile-to-land, land-to-mobile, and mobile-to-mobile cellular service.

This application covers applicant's initial system consisting of one cell site located in Nevada County. Applicant plans to utilize the mobile telephone switching office of PacTel Cellular at Sacramento, California. A detailed description of the design and operation of the proposed cellular system, including a discussion of its technical adequacy, is attached to the application as Exhibit D.

Applicant submits that the proposed system is categorically exempt and requests that the Commission so find, pursuant to Rule 17.1(h).

Applicant is one of two cellular radio service carriers selected by the FCC for RSA No. 10. A map of RSA No. 10, the FCC-approved cellular geographic service area and 39dBu contours, is attached to the application as Exhibit E.

On April 27, 1989, the FCC granted Contel authority to construct one base radio station (cell site) in RSA No. 10. A pro forma transfer of the license to applicant was made on September 14, 1989. The FCC construction permit will expire on October 27, 1990, unless applicant can complete construction of at least one cell and notify the FCC that the system is ready to commence service to the public pursuant to 47 C.F.R. Section

22.43(c)(2). The FCC interprets this to require that applicant actually be serving the public by that date. Applicant intends to provide its initial cellular service with one cell site pursuant to said construction permit.

Regarding public convenience and necessity, applicant states that the FCC has determined that there is a need for cellular service throughout the nation and that cellular service should be made available to the public as expeditiously as possible in accordance with the market structure established by the FCC. (See Memorandum Opinion and Order on Reconsideration, 47 Fed. Reg. 10018, 10033-34; 89 FCC 2d 58 (1982).) This Commission has also consistently found that there is a public need for cellular telephone services throughout the State of California.

Applicant has examined the market for cellular service in the RSA No. 10 area and has concluded that the public would benefit from the construction of the proposed cellular system.

Applicant intends to purchase its cellular mobile telephone system from Motorola. The estimated capital cost of equipment, construction, and installation for the initial service offering is \$572,000. An additional capital expenditure of \$200,000 is expected by the end of the fifth year of operation. A description of applicant's construction costs and annual fixed and operating costs is attached to the application as Exhibit H and Exhibit I.

Applicant and its parent corporation, Contel, have been operating cellular systems in MSAs in California and elsewhere in the country since 1985.

Applicant states that it has the financial ability to undertake the proposed project. This ability is demonstrated by Exhibit H, which contains Contel's most recent quarterly report to stockholders, which includes consolidated income statements, balance sheets, and statements of cash flows, and Exhibit I, which contains the pro forma financial statements for the proposed

cellular system. The source of the capital requirements of the proposed system is contained in Exhibit H.

The projected revenue and expenses for applicant's consolidated operations for the first five years of service are shown in Exhibit I. Applicant is confident that it will be able to secure the traffic volumes upon which its revenue projections are based. This confidence is based upon the public response to cellular service and is supported by applicant's market study, as indicated in Exhibit G.

Applicant previously has been found by this Commission to possess sufficient financial resources to operate Fresno's cellular system. (D.85-11-055.)

Applicant is proposing a wholesale pricing plan that would permit resellers, although, given the size of the RSA, applicant does not believe that there would be interest in resale other than from the nonwireline licensee. This plan conforms with the FCC's Cellular Report and Order of May 4, 1981 (FCC Docket No. 79318) and this Commission's rulings in D.84-04-014.

While applicant has not attached sample tariffs to this application, it will prepare draft tariffs and submit them to the Commission Advisory and Compliance division (CACD) prior to the commencement of service, allowing sufficient time for review by the staff. The tariffs will follow the format which has been used previously by applicant for Fresno's cellular telephone system. Applicant's proposed base rates for wholesale and retail operations are summarized in its application.

#### Discussion

The Commission is the lead agency under the California Environmental Quality Act (CEQA), with respect to the determination of environmental considerations in connection with this project. The Proponent's Environmental Assessment (PEA) is set forth in Exhibit K of its application. Applicant plans to serve RSA No. 10 initially through one cell site located in Nevada County.

The proposed installation is at an existing communications site. The proposed cell site would consist of an existing 100' self-supporting tower currently owned and used by Pacific Bell as a microwave relay station, and existing equipment shelter, radio transmitting/receiving equipment, antennas, batteries, security fence, and an emergency generator. The new installation would consist of three omni-directional antennas mounted at the 100' level of the tower, and three 8' microwave dishes mounted at approximately the 25', 35', and 60' levels.

The CACD environmental staff have reviewed the PEA for the proposed cellular telephone facilities and have consulted with the appropriate local governmental staff. They conclude that an environmental document will not be required in compliance with the CEQA as the project is categorically exempt. We adopt CACD's conclusions.

Therefore, as the lead agency for this utility project, we conclude that since the proposed construction involves minor alteration of existing facilities, the proposed project should receive a categorical (Class 1) exemption from the Environmental Impact Report requirements of CEQA (Rule 17.1(h)(A)2). Accordingly, applicants should be authorized to proceed with construction and operation at the one specified site location in Nevada County.

Copies of the application were served on the cities and counties within which the proposed service area and on other entities with which applicant's proposed service is likely to compete.

Notice of the application appeared in the Commission's Daily Calendar of May 23, 1990. No protests to the application were received; therefore, a public hearing is not necessary.

Findings of Fact

1. Applicant requests a CPCN to construct and operate a new domestic public cellular radiotelephone service within RSA No. 10, encompassing Sierra and Nevada Counties.

2. Notice of the application appeared in the Commission's Daily Calendar of May 23, 1990.

3. No protests to the application were received.

4. Applicant possesses the requisite FCC permits.

5. Public convenience and necessity require the granting of this application.

6. The proposed operation is technically and economically feasible.

7. The proposed cell site will be installed on an existing tower.

8. A public hearing is not necessary.

Conclusions of Law

1. The Commission should approve the finding of its CACD staff that the proposed project is categorically exempt from CEQA.

2. Applicant should be authorized to construct and operate its initial system which will consist of one cell site located in Nevada County.

3. Construction of additional cell sites in yet undetermined locations will be subject to the Commission's General Order 159, adopted March 28, 1990, pursuant to D.90-03-080.

4. The application should be granted

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

6. Only the amount paid to the State for operating 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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Contel Cellular of California, Inc. (applicant) to construct and operate a new domestic public cellular radio telecommunication service to the public in the California Rural Service Area No. 10 encompassing Sierra and Nevada Counties.

2. The Commission having assumed the Lead Agency role in this matter finds that the proposed construction is categorically exempt from the requirements of the California Environmental Quality Act. No Negative Declaration or Environmental Impact Report is required (Rule 17.1(h)(A)2).

3. Construction of additional cell sites in yet undetermined locations shall be subject to the Commission's General Order 159, adopted March 28, 1990, pursuant to D.90-03-080.

4. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.

5. Applicant is authorized to file, after the effective date of this order in compliance with General Order 96-A, tariffs applicable to the service authorized containing rates, charges, and rules applicable to its radiotelephone services. The tariffs shall become effective on not less than 5 days' notice. The rates and charges shall be the same as for similar services that applicant has on file with the Commission.

6. Applicant shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 3, an engineered service area map drawn in conformity with Federal Communications Commission Rule 22.504(b)(2), and consistent with Exhibit E to Application 90-05-032.

7. Applicant shall notify the Commission Advisory and Compliance Division (CACD) Director in writing of the date service



is first rendered to the public as authorized herein, within 5 days after service begins.

8. The corporate identification number assigned to Contel Cellular of California, Inc. is U-3026-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 granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

10. Effective on and after October 1, 1988, applicant is subject to a one-third percent (0.3%) monthly surcharge to fund Telecommunications Devices for the Deaf as outlined in Resolution T-13061 dated April 26, 1989 pursuant to PU Code § 2881.

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

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

13. 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 CACD of compliance.

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

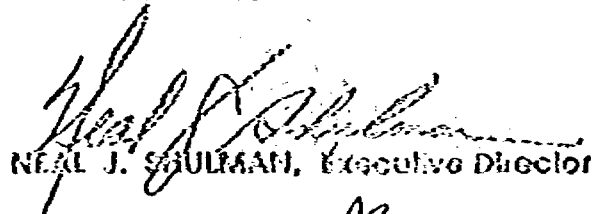
15. Applicants shall provide a copy of this decision to all local permitting agencies not later than 30 days from today.

This order is effective today.

Dated JUL 18 1996, at San Francisco, California.

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

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

  
NEAL J. SULLIVAN, Executive Director

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