

Decision 90 08 024 AUG 8 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
MLP Limited Partnership and  
California 9 Cellular Corporation  
a Delaware corporation, for a  
certificate of public convenience  
and necessity under Section 1001  
of the Public Utilities Code  
granting authority to construct  
and operate a domestic public  
cellular radio-telecommunications  
system in the Mendocino/Lake Rural  
Service Area; for authority under  
Sections 816-30 and 851 to issue  
secured evidences of indebtedness,  
and Section 854 of the Public  
Utilities Code for California 9  
Cellular Corporation to acquire  
control of such system.

Application 90-03-021  
(Filed March 19, 1990)

O P I N I O N

MLP Limited Partnership (MLP) and California 9 Cellular Corporation (California 9), jointly referred to as applicants seek, first, pursuant to Public Utilities Code (PU Code) §§ 1001, et seq. a certificate of public convenience and necessity (CPC&N) to construct and operate a proposed cellular system (System) in Mendocino and Lake Counties; second under PU Code § 854 to transfer control of the System to California 9 in the event that the transfer has not been consummated prior to the granting of the CPC&N; and third, to enter into certain secured financing arrangements described below.

MLP is a limited partnership, formed pursuant to a Limited Partnership Agreement among Gardner Enterprises, Inc., a Michigan corporation as General Partner (Gardner), and Robert J.

Gardner and Patricia A. Gardner, as limited partners. MLP has its principal place of business at 642 Tumblewood Circle, Incline Village, Nevada 89450.

California 9 is a Delaware corporation with its principal place of business at 44 Montgomery Street, 40th Floor, San Francisco, California 94104. California 9 is qualified to do business in this state and is a wholly-owned subsidiary of General Cellular Corporation (GCC), a Delaware corporation.

MLP is the successor in interest of Gardner, which on July 20, 1989, was granted an authorization by the Federal Communications Commission (FCC) to construct a cellular system on the non-wireline or "A" Block frequencies in the Rural Service Area (RSA) comprising Mendocino and Lake Counties. The FCC has consented to the assignment of this authorization from Gardner to Mendocino Limited Partnership (another name for MLP).

GCC and MLP have entered into an Agreement of Purchase and Sale, pursuant to which GCC has agreed to construct and manage the system pending transfer of full control and ownership to California 9 as a wholly-owned subsidiary of GCC.

GCC and California 9 have also obtained the financing commitments necessary to carry out their responsibilities. It is not yet known with certainty whether such financing will be provided, and/or whether such a transfer of control will take place before or after the grant of the CPC&N sought herein.

GCC owns and operates the A Block system in Butte County, California, and has controlling interests in 16 other cellular systems elsewhere in the United States, all of which are in operation or under construction. California 9 and GCC thus have substantial experience in design, construction and operation of cellular systems.

In the case of the Mendocino/Lake RSA, applicants propose to establish a mobile telephone switching office (MTSO) at 311 South Main Street in Ukiah, California, and initially to construct

two cell sites which will be controlled from this location. One of these sites (Cow Mountain) will provide coverage in and around the City of Ukiah and parts of Lake County, while also affording roamer service to travelers on Highway 101 in southern Mendocino County.

A second site (Ridgewood) will be located in the vicinity of Willets, which will provide service to the City of Willets and roamer service to travelers on Highway 101 in central Mendocino County. In subsequent construction phases, applicants will construct cell sites which will provide coverage from as yet undetermined locations in more remote parts of the RSA, including eastern Lake County and Fort Bragg.

Attached to the application are the proposed service area maps, additional information on specific site locations, technical feasibility, and proposed tariff sheets.

Also attached to the application is a five-year projection of the financial results of the proposed operation which shows net losses for the first three years of operation.

Applicants propose to make use of Novatel equipment at its MTSO and site locations. Capital requirements will be met through vendor financing obtained from Novatel to GCC. GCC is committed in turn to loan California 9 the funds necessary for the capital expenditures. GCC through California 9 has also agreed to furnish all funds necessary to cover operating expenses insofar as they exceed revenue. Since the financing from Novatel to GCC, and by GCC to California 9 will be secured by the assets of California 9, applicants seek Commission authorization to issue evidences of secured indebtedness in an amount not to exceed \$2.1 million. A copy of the most recent financial statements available for GCC is attached to the application.

Attached to the application as Exhibit L is a copy of the Proponents Environmental Assessment (PEA), which is filed pursuant to the provisions of the Commission's Rules of Practice and Procedure § 17.1 (Rules). Applicants request that this Commission

assume a Lead Agency role under the provisions of the California Environmental Quality Act (CEQA), and to make the necessary findings regarding compliance with CEQA.

Applicants believe that it may be seen with certainty that their proposal will have no adverse impact on the environment. This is because applicants have chosen existing buildings and antenna sites for all of the facilities which comprise their initial configuration. Existing access facilities are adequate. No new buildings are required for sheltering applicants' equipment, and the sole visible changes entailed by applicants' proposal are (a) the addition of a microwave dish to the roof of the existing MTSO building, and (b) the placing of whip antennae on existing radio towers. All necessary permits have been obtained for the two radio sites, and only a building permit is necessary for the microwave dish at the MTSO. Applicants are now in the process of obtaining such a building permit, and have been informed that no variance or conditional use permit will be required.

Regarding the question of public convenience and necessity, applicants submit that cellular service has become an integral part of the business life of the State. It has also proven invaluable to police, fire and rescue services; government agencies; and for a variety of other emergency applications. The Rural Service Areas represent the next critical step toward an integrated, statewide network on both A Block and B Block frequencies. The addition of Mendocino and Lake Counties to existing systems will permit continuous cellular service from Monterey and Salinas Counties on the south to Willets in the north, which represents a 200-mile long band of territory along Highway 101. Applicants believe that the public convenience and necessity will be served in granting their request.

Attached to the application is a copy of applicants' proposed tariff sheets which describe the conditions under which applicants will provide cellular service at both the wholesale and

retail level. By letter dated June 29, 1990, applicants notified the Commission of a typographical error that needed correction. According to applicants, the "spread" between the proposed retail and wholesale rates corresponds to that found adequate in previous proceedings before this Commission.

Copies of the application were served on entities with which applicants' proposed service is likely to compete, as listed in Exhibit M to the application. Notice of this application appeared in the Commission's Daily Calendar of March 23, 1990. No timely protests to the application were received, therefore, no hearing is necessary.

Discussion

Essentially, the applicant proposes to add a 6' microwave dish to the roof of an existing MTSO building in downtown Ukiah, and to place whip antennas on existing guyed radio towers at the Cow Mountain and Ridgewood sites. All of the above cell sites are located at existing communications facilities.

The Commission Advisory and Compliance Division (CACD) staff has visited the sites and spoken with the officials responsible for processing local permits for the proposed facilities. According to CACD, there are no conflicts regarding the issuance of local permits. Based on its field investigation and review of applicants' PEA, CACD finds that the project is categorically exempt from CEQA requirements. We adopt CACD's recommendation.

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 requirements of CEQA (Rule § 17.1(h)(A)2). Accordingly, applicants should be authorized to proceed with construction and operation at the three specified site locations: (1) Ukiah; (2) Cow Mountain; and, (3) Ridgewood. 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.

Further, applicants have provided sufficient information to demonstrate that they have the ability, including financial ability to conduct the proposed operations. Also, since applicants proposed system will provide a step toward an integrated statewide network by the addition of Mendocino and Lake Counties, we conclude that the public convenience and necessity will be served by granting applicants' request.

Lastly, since capital requirements will be met through vendor financing and such financing will be secured by the assets of California 9, applicants should be granted authority to issue up to \$2.1 million of long-term debt and to encumber applicants' public utility property.

Findings of Fact

1. Applicants request a CPC&N to construct and operate a proposed cellular system in Mendocino and Lake Counties.
2. Copies of the application have been served on the cities and counties within the proposed service territory and on other entities with which the proposed service is likely to compete.
3. Applicants did file copies of its proposed rates with its application.
4. Notice of the application appeared on the Commission's Daily Calendar of March 23, 1990.
5. No protests to the application have been received.
6. Applicants possess the requisite FCC permit to serve the RSA's of Mendocino and Lake Counties.
7. The proposed operation is technically feasible.
8. The proposed operation is economically feasible.
9. Applicant proposes to add a 6' microwave dish to the roof of an existing MTSO building in downtown Ukiah, and to place whip antennas on existing guyed radio towers at the Cow Mountain and Ridgewood sites.

10. All of the above sites are located at existing communications facilities.

11. It can be seen with certainty that there is not any possibility that the proposed construction may have a significant adverse effect on the environment.

12. The Commission is the lead agency under CEQA for determination of environmental effects of the project under consideration.

13. The Commission's CACD staff made the determination that the project is categorically exempt from CEQA requirements.

14. Public convenience and necessity require the grant of a limited CPC&N to construct applicants' proposed facilities.

15. No public hearing is necessary in this matter.

16. Applicants are subject to:

(a) The current 0.3% surcharge on gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf (PU Code § 2881; Resolution T-13061), and

(b) the user fee provided in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1990-91 fiscal year.

#### Conclusions of Law

1. Since the proposed construction involves minor alteration of existing utility facilities, the proposed project should receive a categorical exemption from the EIR requirements of CEQA. No Negative Declaration or Environmental Impact Report is required. (Rule § 17.1(h)(A)2.)

2. Applicant should be granted authority to issue long-term debt up to \$2.1 million and to encumber public utility property.

3. The following order should be effective on the date the order is signed because public convenience and necessity requires prompt construction of applicants' system at the three sites identified in the application.

4. PU Code § 709 states:

"709. The Legislature hereby finds and declares that the policies for telecommunications in California are both of the following:  
(a) To assure the continued affordability and widespread availability of high quality basic telephone service for all Californians.  
(b) To encourage the development and deployment of new technologies and the equitable provision of services in a way which efficiently meets consumer need and encourages the availability of a wide choice of state-of-the-art services.  
(Added Stats. 1987, ch. 849.)"

The granting of a CPC&N for this system by this Commission is in accordance with the Legislature's intent that a wide choice of state-of-the-art services be made available for all Californians.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, MLP Limited Partnership (MLP) and California 9 Cellular Corporation (California 9), jointly referred to as applicants, are granted a certificate of public convenience and necessity to construct and operate their proposed cellular system in the Mendocino/Lake Rural Service Area (RSA).

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 (Rules of Practice and Procedure § 17.1(h)(A)2.). No Negative Declaration or Environmental Impact Report is required for applicants to proceed with construction and operation at the three specified site locations described in the application: (1) Ukiah; (2) Cow Mountain; and, (3) Ridgewood. 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.

3. In the event such transfer has not occurred prior to the issuance of this order, MLP is authorized to transfer control of Mendocino/Lake Cellular System to California 9.

4. Applicants are authorized to file tariffs and service area maps for the Mendocino/Lake RSA in substantially the form described in the application, as corrected by applicants' letter dated June 29, 1990, on 5 days' notice.

5. The Commission does not, by this order, determine that applicants' construction program is necessary or reasonable for ratemaking purposes. These issues are normally tested in general ratemaking proceedings.

6. The corporate identification number assigned to California 9 Cellular Corporation is U-3023-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. California 9 is authorized to issue evidences of indebtedness on substantially the terms described in Exhibit I, such indebtedness to be secured by substantially all of the assets of California 9.

8. The authority granted by this order to issue an evidence of indebtedness will become effective when applicant pays \$2,100, the fee set by PU Code § 1904(b), to the Commission. In all other respects, this order is effective today.

9. Within 60 days of the effective date of this order, applicants 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.

10. The certificate of public convenience and necessity granted by this order shall expire within 12 months after the

effective date of this order if applicants have not filed tariffs and commenced operations by that date.

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

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. Applicants shall file an annual report, in compliance with General Order 104-A, on a calendar-year basis using CPUC Annual Report Form for Cellular Communications Licensees (wholesalers) and prepared according to the instructions included with that form.

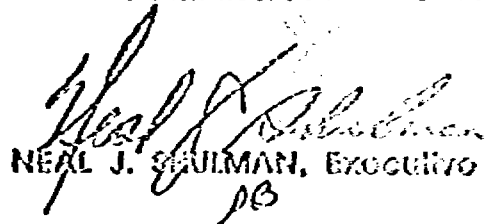
14. Within 30 days after this order is effective, applicants shall file a written acceptance of the certificate granted in the proceeding.

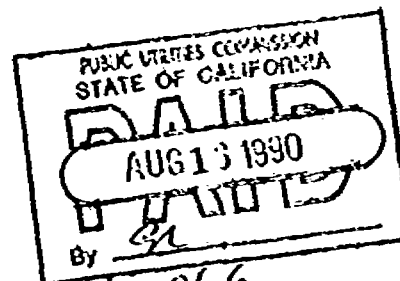
This order is effective today.

Dated AUG 8 1990, 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. SHULMAN, Executive Director



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