

Decision 90 08 025 AUG 8 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 California RSA No. 3 Limited)
 Partnership 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 telecommuni-)
 cation service to the public in the)
 California RSA No. 3 encompassing)
 Alpine, Amador, Calaveras, Mariposa)
 and Tuolumne Counties.)

Application 90-03-039
(Filed March 27, 1990)

O P I N I O N

California RSA No. 3 Limited Partnership (applicant), seeks a Certificate of Public Convenience and Necessity (CPC&N) under Public Utilities Code (PU Code) §§ 1001, et seq. to construct and operate a new domestic public cellular radiotelephone service within the California Rural Service Area (RSA) No. 3, encompassing Alpine, Amador, Calaveras, Mariposa and Tuolumne Counties.

Copies of the application were served on the cities and counties within the proposed service area and on entities with which applicant's proposed service is likely to compete. Notice of this application appeared in the Commission's Daily Calendar of March 30, 1990. No timely protests to the application were received.

On July 2, 1990, applicant amended its application to limit initial construction to one cell site located in Amador County.

Applicant is a limited partnership organized under the laws of the State of California for the purpose of providing

cellular radio telephone service to the public. Applicant maintains its principal place of business in California at 770 East Shaw, Suite 126, Fresno, California 93710.

Contel Cellular Inc. (Contel), a Delaware corporation headquartered in Atlanta, Georgia, is the general partner of applicant. Contel is a subsidiary of Contel Corporation which owns 90% of Contel's 100 million outstanding common shares. The remaining 10% are publicly traded. Contel was established to operate Contel Corporation's cellular interests nationwide. Contel currently has limited partnership interests in 31 MSA (Metropolitan Statistical Area) markets and has subsidiaries 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. Contel will transfer its general partnership interest in applicant to its wholly-owned subsidiary, Contel Cellular of California, Inc., a California corporation (CCC), which will operate applicant's system.

Fresno MSA Limited Partnership (Fresno), of which CCC 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.

Applicant is one of two carriers 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. 3.

On July 7, 1989, the FCC granted applicant authority to construct four base radio stations (cell sites) in RSA No. 3, as follows:

1. Amador County
2. Calaveras County
3. Tuolumne County
4. Mariposa County

(Exhibit F)

At this time, pursuant to the amendment to this application, applicant seeks authority to construct and operate one cell site in Amador County to provide its initial cellular service. Applicant plans to use the mobile telephone switching office (MTSO) of PacTel Cellular at Sacramento, California.

Regarding environmental considerations, the Proponent's Environmental Assessment is set forth as Exhibit K to the application.

The proposed cell site at Amador County (Jackson Butte) is located on an established communications site on top of a mountain and has no residences within one mile. The site presently has a 260' guyed tower and three equipment storage buildings.

The proposed facility will consist of a 12' x 28' prefabricated shelter, radio transmission/receiving equipment, antennas, batteries, air conditioning units and an emergency generator. Five omni-directional antennas, three transmitting and two receiving antennas, will be mounted at the 200' level of the existing 260' guyed tower. An eight-foot dish shall be mounted at the 60' level of the tower and another eight-foot dish will be mounted at the 65' level.

No environmental impact from the installation of the proposed cell site has been noted by the applicant or Amador County. Because of the pre-existing use at this site, the Amador County Planning Department does not anticipate difficulty in issuing a building permit for the proposed additions (letter dated March 7, 1990).

Applicant requests that the Commission declare that it is the lead agency under the California Environmental Quality Act

(CEQA), with respect to the determination of environmental considerations in connection with this project. Applicant submits that the project is categorically exempt from CEQA, and no Negative Declaration or Environmental Impact Report is required. Applicant requests that the Commission make this finding pursuant to Rule 17.1(h).

Regarding public convenience and necessity, applicant states that it, as well as other FCC licensees, are 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. The cellular system will have four major components: an MTSO; cell sites (radio equipment); cell site connections (some of which may be landline telephone facilities leased from the local exchange company and some of which may be microwave facilities leased or owned by applicant); and mobile or portable subscriber units.

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 \$1,045,000. An additional capital expenditure of \$805,000 is expected by the end of the fifth year of operation.

Applicant states that the capital requirements of the proposed system will be provided to applicant by capital contributions from its partners pursuant to capital calls. Although applicant is confident that each of its partners has sufficient resources to permit it to meet the entire amount of

estimated capital calls, Contel alone has sufficient resources to do so, if necessary.

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 non-wireline licensee. According to applicant, 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 Decision (D.) 84-04-014.

Applicant's proposed base rates for wholesale and retail operations are summarized and included in its application.

Discussion

The Commission Advisory and Compliance Division (CACD) staff has reviewed the environmental aspects of the proposed initial construction. Since the proposed cell site will use an existing tower, and is located at an existing communications site, CACD has concluded that the project is categorically exempt from CEQA. We will adopt CACD's recommendation.

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.

Since applicant's system will bring a technologically advanced telecommunications service to the citizens of the rural areas of California, we agree that the proposed service will enhance public convenience and necessity.

Attached to the application as Exhibit D is a description of the proposed RSA cellular system and its technical adequacy. Also, attached as Exhibit I are pro forma financial statements for a five-year period. Applicant has provided sufficient information to demonstrate that it has the ability, including financial ability to conduct the proposed operations. Therefore, we conclude that applicant's request for a CPC&N should be granted.

Findings of Fact

1. This application covers applicant's initial system consisting of one cell site. The cell site will be installed on an existing tower at Amador County (Jackson Butte).

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

3. The Commission CACD staff has reviewed applicant's construction proposal for Amador County and concluded that it is categorically exempt.

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

5. Public convenience and necessity will be served in granting applicant's request for a CPC&N.

6. Applicant's proposed rates and service area map are set forth in the application.

7. No public hearing is necessary in this matter.

8. Applicant is 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. Applicant should be granted a CPC&N to provide cellular telephone service throughout RSA No. 3.

2. The Commission should approve the finding of its CACD staff that the proposed project at the cell site located in Amador County is categorically exempt from CEQA. Construction of additional cell sites in yet undetermined locations should be

subject to the Commission's General Order 150, adopted March 28, 1990, pursuant to Decision (D.) 90-03-080.

3. The following order should be effective on the date the order is signed because public convenience and necessity requires prompt construction of applicant's system at the site 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.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order, California RSA No. 3 Limited Partnership (applicant) is granted a certificate of public convenience and necessity to provide cellular telephone service throughout RSA No. 3.

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 (CPUC Rule § 17.1(h)(A)2.). No Negative Declaration or Environmental Impact Report is required.

3. Construction of additional cell sites in locations other than Amador County (Jackson Butte) shall be subject to the Commission's General Order 159, adopted March 28, 1990, pursuant to D.90-03-080.

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

5. The corporate identification number assigned to applicant is U-3028-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.

6. Applicant is authorized to file tariffs in substantially the form described in the application on 5 days' notice.

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

10. 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.

11. Applicant 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.

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

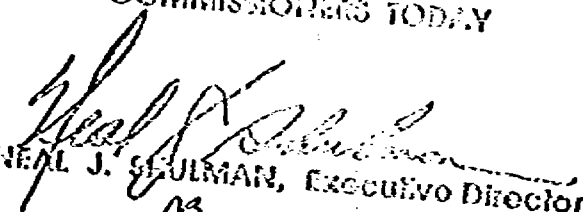
13. This proceeding is closed.

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. OGANIAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SELMAN, Executive Director
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