

Decision 90 08 026

AUG 8 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)
 and operate a new domestic public)
 cellular radio telecommunication)
 service to the public in the)
 California RSA No. 6 encompassing)
 Mono and Inyo Counties.)

Application 90-03-040
(Filed March 28, 1990)

O P I N I O N

Contel Cellular of California, Inc. (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. 6, encompassing Mono and Inyo Counties.

Copies of the application have been served on entities with which the 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 have been received.

Applicant is a corporation duly 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.

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% 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, including applicant, which are general partners/managing partners and in some instances 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.

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

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.

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. 6.

On June 5, 1989, the FCC granted applicant authority to construct seven base radio stations (cell sites) in RSA No. 6. A pro forma transfer of the license to applicant will be made in the near future. The construction permit will expire on December 5, 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. Applicant intends to provide its initial cellular service with one cell site.

This application covers applicant's initial system consisting of one cell site located in Inyo County (Little Lake), and a co-located NovaTel 800CM mobile telephone switching office (MTSO). 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.

According to applicant, no outstanding franchises or health and safety related permits are required by public authorities for the proposed system, other than construction permits obtained from the FCC, approvals from the Federal Aviation Authority, the certificate requested herein, and local permits to construct and operate antennas or facilities as may be required.

Regarding public convenience and necessity, applicant states that this Commission has also consistently found that there is a public need for cellular telephone services throughout the State of California. Additionally, applicant has examined the market for cellular service in the RSA No. 6 area and has concluded that the public would benefit from the construction of the proposed cellular system. The facts supporting such a conclusion are attached as Exhibit G to the application.

Applicant intends to purchase its cellular mobile telephone system from NovaTel Corporation. The estimated capital cost of equipment, construction, and installation for the initial service offering is \$615,000. An additional capital expenditure of \$55,000 is expected by the end of the fifth year of operation.

Applicant states that it has the financial ability to undertake the proposed project. This ability is demonstrated by Exhibits G, H and I attached to the application. Applicant previously has been found by this Commission to possess sufficient financial resources to operate Fresno's cellular system. (Decision (D.) 85-11-055.)

Applicant is proposing a wholesale pricing plan that would permit resellers. However, 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 D.84-04-014.

Applicant's proposed base rate for wholesale and retail operations are summarized in the application.

Regarding environmental considerations, the Proponent's Environmental Assessment is set forth in Exhibit K attached to application. Applicant plans to serve RSA No. 6 initially through one cell site, using the Little Lake Cell Site and co-located MTSO.

The proposed cellular facility is to be located at an established communications site approximately three miles from the nearest residential development. The proposed cell site would use an existing 60-foot stub tower, a 12' x 28' prefabricated shelter, radio transmitting/receiving equipment, antennas, batteries, security fence and an emergency generator. The five omni-directional antennas would be mounted at the 60' level of the tower. One 8' microwave dish will be mounted at approximately the 25' level. Applicant is in the process of obtaining the requisite permit from the Bureau of Land Management. No other permits will be required.

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).

Discussion

The Commission Advisory and Compliance Division (CACD) staff has reviewed the environmental aspects of the proposed initial construction and concluded that the project is categorically exempt from CEQA.

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.

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 located in Inyo County, and a co-located MTSO. The cell site will be installed on an existing tower at an established communications site.
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. Applicant did file copies of its proposed rates with its application.
4. Notice of the application appeared on the Commission's Daily Calendar of March 30, 1990.
5. No protests to the application have been received.
6. Applicant possess the requisite FCC permit to serve California RSA No. 6.
7. The Commission is the lead agency under CEQA for determination of environmental effects of the project under consideration.
8. The CACD staff has reviewed applicant's construction proposal and concluded that the proposed project is categorically exempt from CEQA.

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

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

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

12. No public hearing is necessary in this matter.

13. 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. Applicants should be granted a CPC&N to provide public cellular radio telecommunications service in the California RSA No. 6.

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

3. 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. (CPUC Rule § 17.1(h)(A)2.)

4. Applicant should be authorized to construct and operate its initial system which will consist of one cell site at Inyo County, and a co-located MTSO.

5. 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 one site identified in the application.

6. 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, Contel Cellular of California, Inc. (applicant) is granted a certificate of public convenience and necessity to provide cellular telephone service throughout California Rural Service Area No. 6 encompassing Mono and Inyo Counties.

2. The Commission having assumed the Lead Agency role in this matter finds that the proposed construction of one cell site in Inyo County and co-located mobile telephone switching office 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 will be subject to the Commission's General Order 159, adopted March 28, 1990, pursuant to Decision (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-3030-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. 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.

9. Applicant shall file an annual report, in compliance with General Order 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.

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 applicant has not filed tariffs and commenced operations by that date.

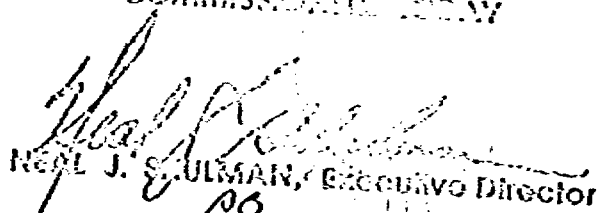
11. Applicant shall provide a copy of this decision to all local permitting agencies not later than 30 days from today.

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. OHANIAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SULMAN, Executive Director