ALJ/K.W/fs

Decision 90 10 011 OCT 12 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of RANDOLPH CELLULAR LIMITED PARTNERSHIP, a Virginia limited partnership and CALIFORNIA 1 CELLULAR CORPORATION, a Delaware corporation, for a Certificate of Public Convenience and Necessity to construct and operate a domestic public land cellular radio-telecommunications system in Humboldt, Del Norte, Siskiyou, and Trinity Counties; for authority under Section 816-30 and 851 to issue secured evidences of indebtedness; and for authority under Section 854 CALIFORNIA 1 CELLULAR CORPORATION to control the system.

Application 90-07-032
(Filed July 13, 1990)

OPINION

This decision grants a conditional certificate of public convenience and necessity, authorizes the transfer of the proposed service and authorizes the issuance of evidences of indebtedness for the provision of cellular radiotelephone service in Rural Service Area (RSA) 336 (California #1).

This RSA consists of Del Norte, Siskiyou, Humbolt and Trinity Counties, occupying the northwest portion of the state. The applicants are Randolph Limited Partnership (Randolph), a Virginia based firm, and California 1 Cellular Corporation (Cal 1), a California company located in San Francisco.[1] Randolph holds

1 A separate application, A.90-07-039 was filed by California One Cellular Limited Partnership on July 11, 1990 seeking authority to provide "B Block", or wireline, cellular service in this RSA. The applicant in A.90-07-039 is a separate entity entirely unrelated to California 1 Cellular Corporation. Cal 1 is qualified to do business in California and will use the business name California Del Norte Cellular.

Federal Communications Commission authority to construct the "A Block", or nonwireline cellular service. Randolph and Cal 1 have entered into an agreement whereby Randolph will transfer its interests in the proposed service to Cal 1.

The matter of this application appeared in the Commission's Daily Calendar on July 18, 1990. Copies of the application were served on the cities and counties in the proposed service area and on 15 firms engaged in telecommunications. No protests have been received. A public hearing is not necessary.

The Proposed Service

Applicants propose to provide cellular telephone service in two portions of the RSA. The coastal area from Crescent City to Eureka would be served by a Mobile Telephone Switching Office (MTSO) in Eureka and three cell sites. One site is proposed for Crescent City situated on the county fairgrounds at latitude (lat.) N 41° 41' 35" and longitude (long.) W 124° 11' 28". Eureka will be served by two cells, one seven miles to the south at lat. N 40° 42' 58" and long. W 124° 12' 11" and another 11 miles to the southwest at lat. N 40° 43' 37" and long. W 123° 58' 25".

A separate service subarea is proposed for the vicinity of Yreka, some 65 miles inland. The Yreka area will be served by one cell located at lat. W 41° 43' 28" and long. 122° 37' 46". An MTSO will be collocated with this cell. Both MTSOs will interconnect with Pacific Bell land line service and will provide roamer service along the two major north-south highway corridors in the region.

Applicants provided sufficient engineering information to show that the proposed service is technologically feasible. Applicants anticipate expansion into other portions of the RSA at some future time at cell site locations which are not yet determined.

Applicants expect to have an average of 19 units in service in its first year of operation and forecast revenues and expenses of $3,728 and $76,611, respectively. In the fifth year, applicants expect to serve 4,087 customers with revenues of $4,529,068 and operating expenses of $1,557,696. Forecast revenues exceed expenses after the second year of operation. Total capital expenditure over the first five years is $3.7 million.

Applicants propose to charge retail rates of $25 per number activation, a $35 monthly access fee and $0.45 per minute for peak usage and $0.20 per minute for off peak usage. For bulk and wholesale customers, applicants propose to charge $15 per activation. A $30.50 per number monthly access charge is proposed for 50 or fewer numbers and $21.20 for more than 50 numbers. Bulk and wholesale usage rates would be $0.33 peak and $0.16 off peak. Roamer service will be established by agreement with other cellular service providers.

The application contains a copy of General Cellular Corporation (GCC's) 1989 Form 10-K annual report and a consolidated balance sheet for 1989. The balance sheet shows total assets of $71,874,141 and total liabilities of approximately $51.6 million excluding total shareholder equity. GCC's principal liabilities consist of $9.4 million in long-term debt, $13.1 million in deferred income tax and $22.1 million in redeemable preferred stocks.

The proposed service will be funded in part through a vendor financing arrangement between Novatel Finance, Incorporated of Alberta, Canada and Cal 1's parent, GCC. GCC has pledged to loan up to $3 million to Cal 1 for capital and operating expenses incurred in the first two years of operation.

Approval of this application will, along with the wireline cellular service proposed in A.90-07-039 bring a choice of service providers to the RSA and will offer an alternative to land line telephone service to the residents of this sparsely populated area. We find that the public convenience and necessity requires the proposed service.

Environmental Analysis

Both proposed MTSOs and each of the four proposed cell sites are to be located in or on existing structures, towers and other communications facilities. Two of the sites, however, would require the construction of small buildings to house equipment. The Kneeland Mountain site, southwest of Eureka would require a 160 square foot structure and the Yreka site requires an 8' x 27' building. Neither require additional permits from local government. A third site, on Humbolt Hill, will utilize leased space within a building to be constructed and for which permits will be obtained by public television station KEET.

Each of the sites would occupy areas that are already devoted to uses similar to the uses proposed. Three of the sites are to be integrated with local radio or television stations and the Yreka site is to be added to a radio facility operated by the California Highway Patrol. For those reasons, we conclude that the proposed MTSOs and cell sites are categorically exempt from the environmental impact report requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 and 15303.

Applicants' Request for Transfer of Authority and for Authority to Issue Evidence of Indebtedness

Exhibit D of the application describes an agreement whereby Cal 1 will purchase Randolph's entire interest in the proposed cellular service. The agreed purchase price is $26,950,000 payable partly in cash at closing and with $18,100,000 in debentures secured by the shares held by GCC in Cal 1. The application recites that while Randolph holds the necessary FCC permit, it does not have "a presence" in California, and, therefore, wishes to convey its interests to Cal 1. Randolph has engaged Cal 1 to manage and operate the service pending completion of the sale.

While Cal 1 is adequately qualified, nothing in the application shows that Randolph is prepared to or qualified offer the proposed cellular service. Therefore, in light of the pending buy-out of Randolph's interest, we will grant tho CPCN to Randolph for the limited purpose of transferring it to Cal 1. We will also approve the transfer to Cal 1, and we will requiro that the transaction be perfected within one year from tho offective date of this decision. In the event that service is initiated within the year but prior to completion of the transfer, Cal 1 may operate the service under the terms of the management agreement described in Appendix D to A.90-07-032.

Applicants propose to encumber substantially all of the assets of the system under a three-tiered arrangement. First GCC has obtained a loan for $3 million from Novatel and pledged these funds to the use of Cal 1 secured by the assets of Cal 1. Second, GCC will issue debentures secured by its shares of Cal 1 as part of the purchase price of the interests held by Randolph. Third, as a part of the purchase and sale agreement between Randolph and Cal 1, GCC has agreed to lend Randolph (or Cal 1) funds needed in excess of operating income for construction and management costs incurred prior to consumation of the purchase by Cal 1.

Our consideration of such a proposal and our approval under PU Code §§ 816-31 and 854 should take into account the unique circumstances of cellular telephone service. The industry is still in a formative stage and is rapidly evolving. The licensing program and the allocation of the useable radio frequency spectrum adopted by the FCC has called forth investor/lender/owner arrangements that are novel in comparison with the more traditional capital arrangements of the established utilities. Even in the land line telecommunications sector, traditional rate regulation has been compelled to adapt to federal regulatory and technological change. Furthermore, with D.90-06-025 this Commission has declined to apply the traditional ratemaking approach to cellular telecommunications.

This proposal as well as several others recently approved or now pending involve utility services in rural areas which are subject to the additional risk of unknown markets and unproven customer acceptance. In such a climate, we are inclined to tolerate adventuresome financial arrangements even where they may involve high debt to equity ratios. Our main concern in authorizing debt financing secured by the assets of cellular utilities should be to ensure that the financing be used for the purpose of building and operating the systems. If lenders and entrepreneurs are willing to shoulder the risks and if customers are willing to invest in personal telephone equipment, we should join in the experiment by allowing cellular, rural cellular in particular, the opportunity to prove its worth. In that spirit, we will approve the financing of the system as described in the application.

Findings of Fact

1. Applicants seek a certificate of public convenience and necessity for the establishment of A Block (non-wireline) cellular telephone service in the Del Norte RSA consisting of the facilities described in Appendix A to this decision.

2. Applicants request approval for the transfer of the certificate to California 1 Cellular Corporation and for authority to issue evidences of indebtedness and to encumber the public utility assets of the corporation.

3. The matter appeared in the Commission's Daily Calendar on July 18, 1990 and copies of the application were served on the cities and counties in the RSA and on 15 potentially interested parties. No protests have been received. A public hearing is not necessary.

4. The proposed cellular telephone service is economically and technologically feasible.

5. Applicant Cal 1 has satisfied the disclosure requirements of Rule 18(i).

6. Applicant Randolph has obtained Federal Communications Commission authority to construct the proposed service.

7. Applicant Cal 1 possesses the technical and financial means to provide the proposed service.

8. The proposed cellular telephone facilities will be established within or upon existing telecommunications facilities and only minor new construction is proposed.

9. The public convenience and necessity require approval of this application.

Conclusions of Law

1. The certificate of public convenience and necessity should be granted.

2. The request for approval of the transfer of the assets of Randolph to Cal 1 should be approved subject to the performance of the proposed purchase and sale agreement by the parties within one year.

3. The request for authority to issue evidences of indebtedness and to encumber utility property should be granted.

4. The proposed cellular telephone facilities are categorically exempt from the environmental impact report requirements of the California Environmental Quality Act.

5. Construction of any future 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.

6. Applicants should be 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.

7. Applicants should be subject to the user fee established by this Commission pursuant to Public Utilities Code Sections 431-435.

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

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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Randolph Limited Partnership for the provision of cellular telephone utility service as proposed in A.90-07-032 and as described in Appendix A to this decision.

2. The certificate granted in ordering paragraph 1 is made subject to the condition that Randolph Limited Partnership sell its interests in RSA 1 to California 1 Corporation within one year from the effective date of this decision.

3. Applicant California 1 Corporation is authorized to issue evidences of encumbrance and encumber utility property in the amount of up $21,000,000 provided that the proceeds from such encumbrance may be used only for the purposes described in A.90-07-032.

4. The Commission having assumed the Lead Agency role in this matter finds that the proposed project 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).

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

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

7. Applicant Randolph Limited Partnership or California/Cellular Corporation as its successor is authorized to file, after the effective date of this order in compliance with GO 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.

8. Applicant Randolph Limited Partnership or its successor shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 7, an engineered service area map drawn in conformity with Federal Communications Commission Rule 22.504(b)(2), and consistent with Exhibit E to A.90-05-032.

9. Applicant Randolph Limited Partnership or its successor 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.

10. The corporate identification number assigned to Randolph Limited Partnership is U-3031-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.

11. 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.

12. Applicant Randolph Limited Partnership or its successor is subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435.

APPENDIX A

A certificate of Public Convenience and Necessity is granted by this decision for the installation of the following cell sites and Mobile Telephone Switching Offices (MTSO):

1. Eureka MTSO; 1615 Highland Avenue; latitude N 40° 46' 30", longitude W 124° 11' 19".
2. Humbolt Hill cell site; latitude N 40° 48' 58", longitude W 124° 12' 11".
3. Kneeland Mountain cell site; latitude N 40° 43' 37", longitude W 123° 58' 25".
4. Crescent City cell site; latitude 41° 45' 35", longitude W 124° 11' 28".
5. Butcher Hill cell site and MTSO; latitude 41° 43' 28", longitude W 122° 37' 46".

(END OF APPENDIX A)

13. Applicant Randolph Limited Partnership or its successor 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.

14. Within 60 days of the effective date of this order, applicant Randolph Limited Partnership or its successor shall comply with PU Code § 708, Employee Identification Cards, and notify, in writing, the Chief of Telecommunications Branch of the CACD of compliance.

15. Applicant Randolph Limited Partnership or its successor 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.

16. Applicant Randolph Limited Partnership or its successor shall provide a copy of this decision to all local permitting agencies not later than 30 days from today.

17. Applicants, within 7 days of the completion of the transfer of Randolph's assets, shall notify the CACD director that the transfer has occurred.

This order is effective today.

Dated OCT 12 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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