

Decision 90 10 061

OCT 24 1990

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Data Cellular Systems for a)
Certificate of Public Convenience)
and Necessity for authority to)
construct and operate a new)
domestic public cellular radio)
telecommunication service in)
California RSA 10 (Sierra))
encompassing Sierra and Nevada)
Counties.)

Application 90-08-050
(Filed August 23, 1990)

O P I N I O N

Data Cellular Systems (DCS or applicant) requests a certificate of public convenience and necessity (CPCN) under California Public Utilities (PU) Code § 1001 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 non-wireline (Frequency Block A) cellular carrier by the Federal Communications Commission (FCC) to provide domestic public cellular radio telecommunication service in RSA No. 10.

Applicant is a general partnership under the laws of the State of California, constituted for the purpose of providing cellular radiotelephone service. A partnership agreement dated June 27, 1988 lists the following partners and their share of ownership:

Robert E. Baker	Tarzana, California	30%
Scott M. Bryant	Atlanta, Georgia	20%
Susan C. Cade	Dallas, Texas	15%
Rita Jane Rowland	Dallas, Texas	10%
Karina Black	Sebastopol, California	10%
Mayford Chin	Oakland, California	5%
Jack Thompson	Oxnard, California	10%

A copy of the partnership agreement is attached to the application as Exhibit A.

Applicant is seeking a CPCN under PU Code § 1001 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 roaming service. Fresno Cellular Telephone Company (FCTC), an affiliate of McCaw Cellular Communications, Inc. (McCaw), plans to purchase cellular service at wholesale rates from DCS and resell it to the public pursuant to tariffs filed with the Commission. McCaw, a diversified communications holding company, will assist DCS with funding, technical management, and operation of DCS's system in RSA 10.

Applicant requests that the Commission issue the CPCN on an ex parte, expedited basis for the following reasons. First, applicant's FCC construction permit will expire on January 3, 1991, unless it has commenced service by that date. No extension of that deadline is available to DCS. Second, by Decision (D.) 90-07-064 dated July 18, 1990, the Commission authorized Contel Cellular, Inc. (Contel), DCS's wireline competitor, to offer service in RSA 10. DCS states that Contel will enjoy an undue head start unless the Commission authorizes it to commence service on an expedited basis. According to DCS, in the event of such a head start, the public will be denied the benefits that flow from meaningful facilities-based competition between the two cellular providers which have been authorized by the FCC to construct and operate systems in RSA 10. DCS requests that the certificate be issued by October 24, 1990.

DCS proposes to provide mobile-to-land, land-to-mobile, and mobile-to-mobile cellular service. The cellular system will have four major components:

1. A mobile telephone switching office. This office is the central coordinating point for the proposed cellular system.

2. Cell sites with fixed radio equipment.
3. Cell site connections (some of which may be landline telephone facilities leased from Pacific Bell and some of which may be microwave facilities leased or owned by DCS).
4. Mobile or portable subscriber units.

DCS states that its system will initially consist of one new cell site on an existing tower at Banner Mt. (located outside of Nevada City in Nevada County). It plans to share a mobile telephone switching office with Sacramento Cellular Telephone Company (SCTC), a McCaw affiliate. DCS also plans to provide coverage in RSA 10 from SCTC's Mt. Pluto cell site (located near Truckee in Placer County). 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.

On June 23, 1989, the FCC granted DCS authority to construct one base radio station (cell site) in RSA No. 10. The FCC construction permit will expire on January 3, 1991 unless DCS can complete construction of the system 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). DCS is also applying to the FCC for authority to cover additional areas inside RSA 10 from the existing SCTC cell site.

Regarding public convenience and necessity, DCS 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. DCS notes that the Commission has recently indicated its desire to promote the provision of cellular service in California RSAs (D.90-06-025).

DCS states that it has examined the market demand for cellular service in the RSA No. 10 area and has concluded that the public would benefit from the addition of another facilities-based carrier. Robert E. Baker, DCS's managing general partner, forecasted demand on the basis of market research and actual sales results in comparable markets. He estimates that the number of resident subscribers (not including subscribers who roam in the RSA) served through resellers will be 170 by the end of the first year, increasing to 1,417 after the fifth year of operation. DCS has identified concentrations of population and traffic in the Nevada City/Grass Valley area and in the Truckee area in seeking to define its cellular service area. DCS will initially market local cellular service through resellers, including FCTC and any other interested Commission-approved resellers.

DCS intends to offer its roaming service and local service in conjunction with cellular systems operated by McCaw affiliates. Coordinated operation of clusters of systems serving Sacramento, Yuba City, Redding, and Stockton permits McCaw and its affiliates to utilize switching facilities more efficiently.

DCS intends to purchase its cellular mobile telephone system from Ericsson, Inc. The estimated capital cost of equipment, construction, and installation for the initial service offering is \$900,000. Descriptions of applicant's financing plans are attached to the application as Exhibit H and Exhibit I. Construction funding will be provided principally by a loan from

McCaw.¹ According to DCS, McCaw has sufficient financial resources to permit it to fund the loan to DCS for system construction. Additionally, DCS states that many of the general functions required to operate the cellular system will be provided by SCTC, and that DCS's main function will be to monitor and ensure that SCTC discharges its obligations to DCS.

On September 27, 1990 DCS filed an amendment to the application, requesting authority to issue evidence of indebtedness and for the grant of a security interest in DCS's assets to McCaw. The filing includes a motion to shorten the time period for protests to the amendment because DCS's intention to issue evidence of indebtedness and grant McCaw a security interest in its assets was made clear in the application.

DCS states that it has the financial ability to undertake the proposed project. This is demonstrated by Exhibit H, which includes descriptions of the managing general partner's professional background, the methodology used to prepare the five-year projection of revenues and expenses set forth in Exhibit I, and the source of the capital requirements of the proposed system. DCS states that the projections show that it will become profitable in the first year of operation, and that it is confident that it will be able to secure the traffic volumes upon which its revenue projections are based. This confidence is based in large part upon

1 By letter dated August 17, 1990, McCaw Cellular Communications, Inc. confirmed its commitment to provide funding to DCS to finance the construction and activation of a cellular system in RSA 10, up to a principal amount of \$900,000. McCaw also committed to providing financing of up to \$5,000 per month for the first six months of operation. The commitment letter provides that advances will bear interest at Provident National Bank's prime rate plus 1.5%, that payments of principal and interest are due no sooner than one year after the date of the commitment, and that loan advances shall be secured by security interests in the assets of DCS.

the public response to cellular service in the Northern California market.

DCS is proposing a wholesale pricing plan that will allow for the development of a competitive resale market. 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. Attached as Exhibit J to the application are copies of DCS's proposed tariff schedules describing conditions and rates for wholesale cellular service and roaming service. DCS states that the rates mirror the existing rate structure of SCTC which operates in the adjacent Sacramento cellular geographic service area.

Applicant submits that 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. The proposed installation at Mt. Pluto is at SCTC's existing cell site. Three directional antennas, two receiving and one transmitting, will be mounted at the 100 foot level on the existing tower. The PEA notes that the changes will have no discernible environmental effects at the Mt. Pluto site. The proposed installation at Banner Mt. will also use an existing tower. Four omni-directional antennas, two receiving and two transmitting, will be mounted at the 30 foot level, and a microwave dish will be required at the 40 foot level. It may be necessary to place an additional equipment shelter at the Banner Mt. site if the existing shelter proves inadequate. DCS has noted no environmental impact resulting from installation of the Banner Mt. cell site. Accordingly, DCS submits that the proposed system is categorically exempt under CEQA, and requests that the Commission find that installation of the proposed cell site is subject to a categorical exemption under CEQA pursuant to Rule 17.1(h).

The environmental staff of the Commission Advisory and Compliance Division (CACD) reviewed the PEA for the proposed cellular telephone facilities and consulted with the appropriate local governmental staff. CACD concludes that an environmental document will not be required in compliance with the CEQA as the project is categorically exempt.

Discussion

Applicant has provided sufficient information to demonstrate that with the technical and financial assistance of McCaw and its affiliate which is described in the application, it has the ability to conduct the proposed operation. Public convenience and necessity will be served by granting a CPCN to applicant.

As noted in the amendment to the application, DCS's intention to issue evidence of indebtedness and grant McCaw a security interest in its assets was made clear in the application. The motion to shorten the time period for protests to the amendment will be granted. As the money, property, and labor to be procured by the issue are reasonably required for the purposes specified in the application, we will grant the request. The amendment to the application identifies the amount of the issue as the amount described in the McCaw commitment letter dated August 17, 1990: \$900,000 for construction and activation of the system and \$5,000 per month for the first six months of operation, or a total of \$930,000.

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

Copies of the application and the amendment were served on the cities and counties within 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 August 28, 1990. No protests to the application or the amendment 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. The Commission has granted a CPCN to construct and operate a new domestic public cellular radiotelephone service within RSA No. 10 to Contel.
3. Notice of the application appeared in the Commission's Daily Calendar of August 28, 1990.
4. On September 27, 1990 DCS filed an amendment to the application to request authority to issue evidence of indebtedness in the amount of \$930,000 and for the grant of a security interest in DCS's assets to McCaw.
5. The money, property, and labor to be procured by the \$930,000 debt issue are reasonably required for the purposes specified in the application.
6. DCS's intention to issue evidence of indebtedness and grant McCaw a security interest in its assets was made clear in the application.
7. No protests to the application or the amendment were received.
8. Applicant possesses the requisite FCC permits.
9. Public convenience and necessity require the granting of this application.
10. The proposed operation is technically and financially feasible.

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

12. The proposed cell site at Mt. Pluto will be installed on an existing tower at an existing SCTC cell site in Placer County.

13. The proposed cell site at Banner Mt. will be installed on an existing communications tower in Nevada County.

14. CACD concludes that an environmental document will not be required in compliance with the CEQA as the project is categorically exempt.

15. A public hearing is not necessary.

Conclusions of Law

1. The Commission should approve the finding of its CACD staff that the proposed system is a project which is categorically exempt under CEQA.

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

3. Applicant should be authorized to issue evidence of indebtedness in the amount of \$930,000 and to grant a security interest in its assets to McCaw.

4. 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.

5. The application should be granted.

6. The motion to shorten the time period for protests to the amendment should be granted.

7. Because of the immediate need for service, and Contel has already been granted authority to serve RSA 10, this order should become effective today.

8. 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 nonopoly 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 Robert E. Baker, Scott M. Bryant, Susan C. Cade, Rita Jane Rowland, Karina Black, Mayford Chin, and Jack Thompson, a partnership which is identified in the partnership agreement attached as Exhibit A to the application and which does business under the name of Data Cellular Systems (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 as proposed in the application.
2. The Commission having assumed the Lead Agency role in this matter finds that the proposed construction described in the application 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 and in compliance with General Order 96-A, the tariff schedules attached to the application as Exhibit J. The tariff schedules shall become effective on not less than 5 days' notice.
6. Applicant shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering

Paragraph 5, an engineered service area map drawn in conformity with Federal Communications Commission Rule 22.504(b)(2), and consistent with Exhibit E to the application.

7. Applicant shall notify the Commission Advisory and Compliance Division (Telecommunications Branch) 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 Robert E. Baker, Scott M. Bryant, Susan C. Cade, Rita Jane Rowland, Karina Black, Mayford Chin, and Jack Thompson, a partnership doing business as Data Cellular Systems, is U-3033-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. Applicant is subject to surcharges on gross intrastate revenues to fund Telecommunications Devices for the Deaf pursuant to PU Code § 2881 and Resolution T-13061.

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

12. 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.

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

16. On or after the effective date of this order, applicant may issue evidence of indebtedness in principal not exceeding \$930,000 (and may execute and deliver an encumbering document) for the purposes specified in the application. The authority granted by this ordering paragraph will become effective when issuer pays \$1,860, set by PU Code § 1904(b).

17. The motion to shorten the time period for protests to the amendment is granted.

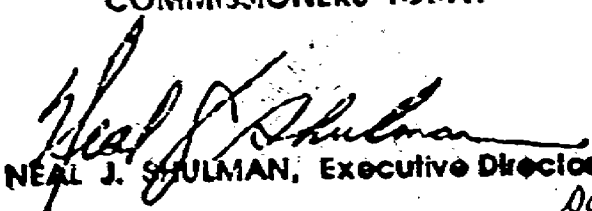
This order is effective today.

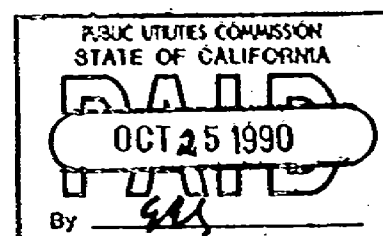
Dated OCT 24 1990, at San Francisco, California.

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

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director



34072 - \$ 1,860.-