

Mailed  
NOV 26 1990

Decision 90-11-064 November 21, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Cellular Pacific 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 11 (El )  
Dorado) encompassing El Dorado )  
County. )

**ORIGINAL**

Application 90-08-021  
(Filed August 10, 1990)

O P I N I O N

In this decision we grant a certificate of public convenience and necessity to Cellular Pacific (applicant or CelPac) to construct and provide initial cellular radiotelephone service in California Rural Service Area 11, encompassing El Dorado County.

This application was filed August 10, 1990 and appeared in the Commission's Daily Calendar on August 16, 1990. Applicant served copies of the application on El Dorado and Sacramento Counties and on the City of Placerville as well as five telephone carriers in the area. No protests have been received. A public hearing is not necessary.

On September 26, 1990 applicant supplemented its application with a request for authority to issue evidences of indebtedness and to encumber utility assets under Public Utilities (PU) Code § 851. A motion to limit the period in which to file a protest to the supplemented application to a period of 10 days was included. In view of the fact that no protest was made to the initial filing of the application, the motion for a shortened protest period is granted.

CelPac is a Hawaii general partnership consisting of 25 partners and a manager designated by the partners. A copy of

CelPac's partnership agreement is included in the application. CelPac received authority to construct the A Block (non-wireline) cellular system from the Federal Communications Commission on July 19, 1989. That authority will expire on January 19, 1991 unless service has commenced before that date.

Applicant will involve McCaw Cellular Communications, Inc. in the funding, construction and operation of the proposed system. McCaw currently provides cellular service in 18 states and through its affiliates is a certificate holder for cellular service in the Sacramento, Yuba City, Stockton, Modesto, Napa, Oxnard, Salinas, Visalia, and Fresno service areas.

Applicant proposes to construct one cell site near Placerville, California at latitude N 38° 43' 07" and longitude W 120° 47' 40". Applicant will share an existing Mobile Telephone Switching Office (MTSO) operated by Sacramento Cellular Telephone Company. Sacramento Cellular is an operating subsidiary of McCaw Communications, Inc. CelPac will also utilize an existing antennae tower owned by Sacramento Cellular Telephone Company to provide service coverage along U.S. Highway 50. CelPac will use equipment manufactured by Ericsson, a Swedish company. At the time of filing applicant was negotiating with Pacific Bell toward an interconnection agreement. An initial block of 100 numbers has been reserved for CelPac. Applicant included sufficient engineering information to demonstrate that the proposed system is technologically feasible.

Applicant proposes to finance the system through the cash contributions of the partners and a loan of up to \$900,000 from McCaw Cellular Communications, secured by the assets of CelPac. Applicant proposes to use the proceeds of the financing obtained from McCaw Cellular Communications for the start up construction of the service. The request for authority to encumber utility assets is in order and should be approved. The partnership's financial statement shows assets of \$79,000. Applicant's five year

projections show initial construction costs of \$900,000 with an additional \$750,000 required for expansion. Applicant anticipates operating revenues and expenses of \$520,493 and \$689,558 respectively in its first year of operations. Revenues are forecast to exceed expenses in the third year. Applicant expects to serve 704 customers in its first year with 2,235 accounts by the end of the fifth year.

CelPac proposes retail rates of \$50 per number activation and a \$24 monthly service fee, plus \$.29 per minute of use on peak and \$.15 for off peak usage. Applicant will also offer large user activation and monthly service rates which decline as the number of activations increases. A discount of 14-16 percent is available for 36 or more numbers. Applicant will offer wholesale rates of \$15 per activation, \$18.37 monthly service fee up to 100 numbers. Wholesale usage rates will vary downward with increasing use from \$.239 peak use and \$.123 off peak. Applicant's proposed tariff rules include specific charges for roamer service switched through the Sacramento Cellular MTSO.

Applicant included a "request for expedited ex parte authority" in its application and urged the Commission to issue a CPCN by October 10, 1990. Applicant cited the expiration of its FCC permit on January 19, 1990 and the fact that its wireline competitor, Atlantic Cellular was granted a CPCN on July 18, 1990. Applicant believes that Atlantic Cellular is enjoying "an undue headstart."

The Commission's Rule 8.3 allows a period of thirty days in which any interested parties may protest an application. The mere fact that an applicant has delayed until the expiration of its federal permit is near at hand is not grounds for depriving the public and any interested parties their opportunity to protest. Even where it is unlikely that a protest may arise, the applicant chooses the day to file, and its choice will not be allowed to result in a curtailed protest period.

As to applicant's concern that Atlantic Cellular may be enjoying a headstart, we point out that Atlantic filed its application on May 26, 1989. Once again, CelPac chose the day to file its application and might itself be enjoying the fruits of a more timely application had it simply moved faster to the docket office. Atlantic's advantage is certainly not undue, nor does it appear that CelPac has anyone but itself to blame for its late start. We will not grant CelPac's plea for haste to remedy its own delay.

Environmental Analysis

Applicant included its Proponent's Environmental Assessment (PEA) with its application. The PEA sufficiently demonstrates that the proposed project consists of minor additions to existing radiotelephone and other communications facilities. The Placerville cell site will consist of the addition of three antennas to an existing 150 foot FM radio broadcast tower. The cellular equipment required at the site will be housed in an existing structure and an auxiliary power engine and pad will be added. To the Sacramento Cellular site which CelPac will share, applicant will add only three directional antennas.

These improvements are categorically exempt from the reporting requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301 and 15303 for Class 1 and Class 3 exemptions.

Findings of Fact

1. Cellular Pacific Partnership seeks a certificate of public convenience and necessity for the establishment of A Block (non-wireline) cellular telephone service in the El Dorado RSA consisting of a single cell site located near Placerville, California at latitude N 38° 43' 07" and longitude W 120° 47' 40". Applicant will share an existing cell cite and MTSO operated by Sacramento Cellular Telephone Company.

2. The matter appeared in the Commission's Daily Calendar on August 16, 1990 and copies of the application were served on the cities of Placerville and South Lake Tahoe and the Counties of El Dorado and Sacramento and on 5 potentially interested parties. No protests have been received. A public hearing is not necessary.

3. Cellular Pacific Partnership consists of a managing general partner and 25 other partners, each of whom is a resident of the State of Hawaii.

4. Applicant will involve McCaw Cellular Communications, Inc. in its construction, finance, and operation of the El Dorado system.

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

6. Applicant has satisfied the disclosure requirements of Rule 18(i).

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

8. Through its arrangements with McCaw Cellular Communications applicant possesses the technical and financial means to provide the proposed service.

9. Applicant requested immediate ex parte authority to allow the immediate installation of equipment.

10. The proposed cellular telephone facilities will be established within or upon existing telecommunications facilities and no new construction is proposed.

11. 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 immediate ex parte approval should be denied.

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

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

5. Applicant is 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.

6. Applicant should be subject to the user fee established pursuant to PU Code §§ 431-435.

7. Applicant's request for authority to encumber utility assets in connection with its loan agreement with McCaw Cellular Communications should be granted.

8. Applicant's motion for a shortened protest period to the supplement to its application filed September 10, 1990 should be granted.

9. 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 Cellular Pacific Partnership for the provision of cellular telephone utility service as proposed in A.90-08-021 and for the establishment of a cell site at N 38° 43' 07" latitude and W 120° 47' 40" longitude. Applicant is also authorized to utilize

the tower facility owned by Sacramento Cellular as set forth in its application.

2. The request for immediate ex parte approval is denied.

3. Applicant's motion for a 10-day period for filing a protest to its supplemented application is granted.

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. Applicant is authorized to encumber its utility assets up to an amount of \$900,000 through its loan agreement with McCaw Cellular Communications. The proceeds of the loan shall be used solely for the purposes specified in Exhibit H of A.90-08-021.

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

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

8. Applicant 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.

9. Applicant shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 6, an engineered service area map drawn in conformity with Federal Communications Commission Rule 22.504(b)(2), and consistent with Exhibit E to A.90-08-021.

10. Applicant 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.

11. The corporate identification number U-3034-C assigned to Cellular Pacific Partnership should be included in the caption of all original filings with this Commission and in the titles of other pleadings filed in existing cases.

12. 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.

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

14. 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.

15. 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 Telecommunications Branch of the CACD of compliance.

16. Applicant 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.



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

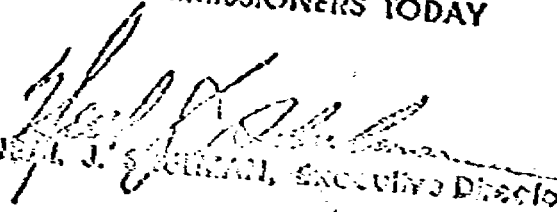
This order is effective today.

Dated November 21, 1990, at San Francisco, California.

G. MITCHELL WILK  
President  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

Commissioner Frederick R. Duda,  
being necessarily absent, did not  
participate.

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

  
NEIL J. S. [unclear], Executive Director

13