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Decision 90-12-006 December 6, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 C.I.S. of Imperial, CA., Inc. for)
 a Certificate of Public Convenience)
 and Necessity to operate as a)
 reseller of Cellular Radio)
 Telecommunications Services within)
 California.)

ORIGINAL

Application 90-08-037
(Filed August 17, 1990)

O P I N I O N

In this application C.I.S. of Imperial, California, Inc. (CIS) seeks authority to operate as a reseller of cellular radiotelecommunications services, initially in Rural Service Area (RSA) 7 (Imperial County), and statewide.

CIS was granted a certificate of public convenience and necessity (CPC&N) to provide facilities based nonwireline cellular radiotelecommunications service in RSA 7 on September 12, 1990 (Decision (D.) 90-09-051). On August 8, 1990 we granted interim authority to Contel Cellular of California to provide cellular service in RSA 7, pending a subsequent decision of the Commission (D.90-08-027). Contel is the competing wireline facilities based carrier.

CIS seeks reseller authority in part for the purpose of establishing a business presence in RSA 7 while its facility is under construction.

In its application, CIS initially sought approval to engage in reselling in RSA 7 only until the Commission acted upon its application for authority as cellular carrier. The Commission's approval of that application came just 26 days after the instant application was filed. The Administrative Law Judge (ALJ) informally asked counsel for CIS whether CIS wished to proceed with its reseller application. Counsel informed the ALJ

that CIS wished to operate as a reseller in RSA 7 until it actually begins cellular carrier service. Under the terms of its Federal Communications Commission permit to construct, CIS must initiate service not later than March 1991.

In its past orders, the Commission has not allowed a facilities based carrier to compete as a reseller in the same market (see for example, D.84-06-027, D.85-04-014, and D.85-04-015). Inasmuch as applicant does not intend to operate as a reseller in RSA 7 after it actually commences its own cellular service, this application is not inconsistent with earlier decisions.

To ensure that the authority sought in this application does not come into conflict with present Commission policy, this decision shall limit the time during which the applicant may operate as a reseller in RSA 7. The Commission is currently reviewing its cellular reseller policies in Phase III of the Commission's cellular investigation OII 88-11-040. The applicant is advised to take notice of that proceeding.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Applicant is a California corporation with its headquarters in New York.
3. Applicant has sufficient experience and resources to operate as reseller of cellular radiotelecommunications service.
4. Applicant will cease operations as a reseller in RSA 7 upon commencing service as a cellular carrier under the authority granted in D.90-09-051.
5. Applicant initially proposes to charge the following rates for reseller service in RSA 7:

Service Establishment Charge

1-5 Access Numbers	\$30.00
6+ Access Numbers	\$25.00

Monthly Access Charge

1-5 Access Numbers	\$31.00
6+ Access Numbers	\$28.00

Usage Rates

Peak Minute Usage	\$0.35
Off-Peak Minute Usage	\$0.20

6. Applicant projects that its California customer base will be approximately 97 subscribers by the end of its first year of operation and approximately 2,649 customers at the end of its fifth year of operations.

7. Applicant has provided a consolidated balance sheet which indicates assets of \$82,000,173 as of December 31, 1989.

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

9. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

10. Applicant also requests an exemption from the provisions of Public Utilities (PU) Code §§ 816-830 which require Commission approval prior to issuance of debt, equity, or encumbrances of property by a public utility. Since applicant will not construct or own any facilities or equipment under authority to operate as a cellular reseller, observance of these sections will not serve to protect investment in facilities against improvident financial manipulation by utility management. If applicant fails because of competitive market forces, other competitive resellers will be able to continue to offer service to applicant's customers. Compliance with these provisions may increase applicant's costs and impede competition.

11. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers (e.g., D.86-10-007 and D.88-12-076).

12. Applicant's proposed resale of cellular service will enhance competition in the cellular retail market and may result in providing lower priced service, increased ability of customers to choose among service providers and a wide variety of service packages, and increase use of the existing facilities of the underlying carrier resulting in greater efficiency.

13. Public convenience and necessity require that the application be granted.

14. Applicant requests that it be authorized to file its initial tariffs five days after the effective date of this order to be effective on five days' notice. Applicant also asks to be exempted from Sections IV, V, and VI of General Order (GO) 96-A for subsequent tariff filings.

15. Applicant did not file proposed tariff pages with its application. It is reasonable to require that the initial tariffs filed by applicant be filed on not less than 15 days' notice before they become effective to allow time for appropriate review by the Commission Advisory and Compliance Division and other interested parties. This is consistent with our treatment other resellers (e.g., D.89-05-006).

16. Sections IV, V, and VI of GO 96-A relate to filed and effective dates, procedures and the filing of tariff sheets which do not increase rates or charges, as well as procedures and filings to increase rates. In general, these provisions require a showing before this Commission justifying any increase and provide in the case of cellular resellers that rates will become effective 30 days after filing tariff sheets which do not increase rates or 30 days after filing an authorized increase unless Commission authorization for a shorter period is obtained.

17. Applicant should be subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435. The fee is currently 0.1% for the 1990-91 fiscal year.

18. As a telephone corporation operating as a telecommunications service supplier, applicant should be subject to the three-tenths of one percent (0.3%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf. This surcharge became effective July 1, 1989 as set forth in Resolution T-13061 dated April 26, 1989 and issued pursuant to PU Code § 2881.

19. Because of the public interest in effective competition, this order should be effective on the date issued.

Conclusions of Law

1. The application should be granted. CIS should be authorized to provide cellular radiotelecommunications service as a reseller in all areas of the State.

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.

2. Applicant should be required to cease operations as reseller of cellular service when it begins operation of its facilities based cellular service in RSA 7.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity to operate as a telephone corporation as defined in Public Utilities (PU) Code § 234 for the purpose of operating as a reseller of cellular radiotelephone services within California is granted to CIS of Imperial of California, Inc. (applicant), in accordance with the terms of the application.

2. Applicant is authorized to file with the Commission after the effective date of this order, on not less than 15 days' notice to the public and the Commission the tariff schedules and rates for the proposed service. Service may not be offered until tariffs are on file. This filing shall comply with General Order Series 96, except that, applicant is authorized to employ the alternative method of page numbering described in Commission Resolutions U-275 and T-4886 at its election. The tariff shall provide for a user fee surcharge of 0.10%. Failure to file the tariff may result in revocation of the authority granted here.

3. Applicant is subject to the provisions of General Order 96-A including Sections IV, V, and VI as revised in D.88-05-067.

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

5. Applicant is exempted from the provisions of §§ 816-830.

6. Applicant shall cease to operate as a reseller of cellular radiotelecommunications service in Rural Service Area 7 on the date it commences the service authorized in D.90-07-051 and shall notify the Director of the Commission Advisory and Compliance Division in writing that it has ceased to provide the service in RSA 7 and shall surrender its certificate to provide such service for cancellation at that time .

7. The corporate identification number U-4099-C assigned to CIS of Imperial, California, Inc. shall be included in the caption of all original filings with this Commission and in the titles of other pleadings in existing cases.

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.

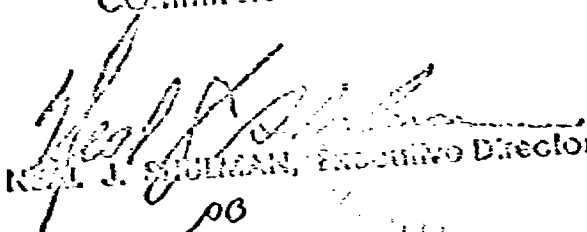
9. Within 20 days after this order is effective, applicant shall file a written acceptance of the certificate granted in the proceeding.

This order is effective today.

Dated December 6, 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. SULLIVAN, Executive Director
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