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Decision 90-12-090 December 19, 1990

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 operate a new  
 domestic public cellular radio  
 telecommunication service to the public  
 in the California RSA No. 9  
 encompassing Mendocino and Lake  
 Counties.

ORIGINAL

Application 90-08-025  
(Filed August 15, 1990)

O P I N I O N

In this decision, we grant a certificate of public convenience and necessity to Contel Cellular of California, Inc. for the development of new wireline (B Block) cellular radiotelephone service in California Rural Service Area (RSA) 9, encompassing Mendocino and Lake Counties.

This application was filed on August 15, 1990 and served on the cities and counties in the RSA and on the other telecommunications carriers that might be affected by the proposed service. The matter appeared in the Commission's Daily Calendar on August 17, 1990. No protests have been received and a public hearing is not necessary.

Contel of California (herein applicant or Contel-Cal) is a California corporation, wholly owned by Contel Cellular, Inc. which is in turn controlled by Contel Corporation. Contel-Cal has been granted CPCNs for cellular telephone service in three California RSAs and participates in the management of two other systems. Contel-Cal's parent participates in 31 Metropolitan Service Areas and 35 RSAs in California and other states. The Federal Communications Commission (FCC) granted a permit to

construct the proposed service to Contel on July 19, 1989. The permit will expire unless service is initiated by January 19, 1991. Applicant requests that "immediate ex parte authority" be granted on November 9, 1990 in order to meet the FCC permit deadline.

The proposed system, in its initial stage would consist of one cell site with a co-located Mobile Telephone Switching Office (MTSO). The cell site would be located near Lakeport on the west side of Clearlake at latitude N 39° 3' 21" and longitude W 122° 56' 14". It would require the erection of one 125-foot monopole tower and the construction of a 12-foot by 28-foot equipment building. The site was selected to provide coverage over a 320 square mile area. Applicant provided detailed technical and engineering information sufficient to demonstrate the technological feasibility of the proposed service.

Contel-Cal estimates its capital costs for equipment and construction to be \$797,000 for the initial service with an additional \$880,000 to be spent by the end of the fifth year. Applicant projects a total of 110 customers in its first year of operation and over 1,000 by the end of its fifth year. Applicant's projected revenues and expenses are \$36,304 and \$147,448, respectively, in its first year and \$1,338,517 and \$982,870 in its fifth year of operations. Applicant predicts it will earn net profits during and after its fourth year. Applicant will be financed by its parent Contel Cellular, Inc. Applicant included a copy of Contel Cellular, Inc.'s consolidated balance sheet in its application, showing total assets and liabilities as of March 31, 1990 of \$1.5 billion. A copy of Contel Cellular, Inc.'s most recent proxy statement was also included pursuant to Rule 18(i).

Regarding applicant's request for immediate ex parte relief, our Rule 8.3 provides a 30-day period in which any interested person may protest to an application. To the extent that applicant's request for immediate ex parte relief can be construed as a request for waiver of the 30-day period and

opportunity for a protestant to request a hearing under Rule 8.1, it is denied. We do not view the impending expiration of Contel-Cal's FCC authority as grounds for eliminating the rights of potential protestants. Contel-Cal chose the day it would apply for a CPCN from this Commission. Contel-Cal could have avoided even the most remote possibility of lapse of its FCC authority by the simple expedient of having filed its application with us sooner.

Environmental Analysis

Contel-Cal included its Proponent's Environmental Assessment as Exhibit K in its application. From the description of the project and applicant's environmental checklist, we conclude that the construction of the Lakeport cell site is a project subject to the California Environmental Quality Act and is not statutorily or categorically exempt from the reporting requirements of that Act. We accept the role of lead agency for the purposes of the Act. We find that the nature, scope, and design of the project is such that it will not have any significant adverse effects on the environment. The Negative Declaration prepared for this application should be adopted.

Findings of Fact

1. Applicant seeks a certificate of public convenience and necessity for the establishment of B Block (wireline) cellular telephone service in the California RSA 9 consisting of a single cell site located near Lakeport, California at latitude N 39° 3' 21" and longitude W 122° 56' 14".

2. The matter appeared in the Commission's Daily Calendar on August 17, 1990 and copies of the application were served on the eight cities and counties and on six potentially interested parties. No protests have been received. A public hearing is not necessary.

3. Contel-Cal is a wholly owned subsidiary of Contel Cellular, Inc. and a corporation under the laws of the State of California.

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

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

6. Applicant has obtained FCC authority to construct the proposed service.

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

8. Applicant requested immediate ex parte relief to allow the immediate installation of equipment.

9. The proposed cellular telephone facilities will require the construction of one 125-foot monopole tower and co-located MTSO and is, therefore, subject to the requirements of the California Environmental Quality Act (CEQA).

10. This Commission, assuming the role of lead agency in this matter, has prepared and caused to be made available for review a negative declaration pursuant to CEQA.

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 relief should be denied.

3. The Negative Declaration prepared during the review of A.90-08-025 should be adopted.

4. Construction of any future additional cell sites in yet undetermined locations will be subject to the Commission's 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. 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 Contel Cellular of California, Inc. for the provision of cellular telephone utility service as proposed in A.90-08-025 and for the establishment of a cell site at N 39° 3' 21" latitude and W 122° 56' 14" longitude.

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

3. The Commission having assumed the Lead Agency role in this matter finds that the proposed project will not have a significant impact on the environment. The Negative Declaration prepared pursuant to the California Environmental Quality Act is adopted.

4. 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.

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

6. 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.

7. 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.90-08-025.

8. 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.

9. The corporate identification number assigned to Contel-Cal is U-3035 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.

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

11. 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.

12. 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.

13. 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.

14. 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.

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

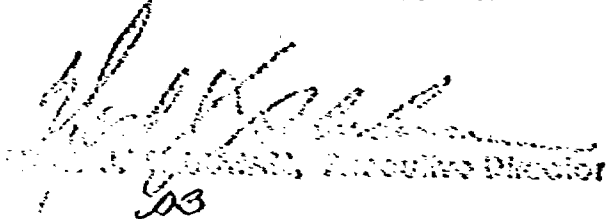
16. Applicant shall comply with all local building permit requirements.

This order is effective today.

Dated December 19, 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

  
G. MITCHELL WILK, President