

ALJ/K.W/jac

Decision 91 02 005 FEB 06 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CELLULAR 2000, a Michigan general)
partnership, for a certificate of)
public convenience and necessity)
under Section 1001 of the Public)
Utilities Code granting authority)
to conduct and operate a domestic)
public land cellular radiotelecommu-)
nications system in Merced, Madera,)
and San Benito Counties; and for)
authority under Sections 816-30 and)
851 to issue secured evidences of)
indebtedness.)

ORIGINAL

Application 90-08-070
(Filed August 30, 1990)

INTERIM OPINION

In this decision we grant interim authority and authorize the issuance of evidences of indebtedness for the provision of cellular radiotelecommunications service in California Rural Service Area (RSA) 4.

Notice of this application appeared in the Commission's Daily Calendar on September 18, 1990. Copies of the application were served on 29 potentially interested parties and on the cities and counties in the service area. Applicant amended its application on October 30, 1990 to include additional environmental information concerning the proposed service. On November 13, 1990 applicant filed a motion requesting immediate authority to construct a single 320-foot cellular tower in the City of Atwater. On December 4, 1990 applicant withdrew its motion and amended its application to include a request for immediate authority to install a temporary cellular facility at Atwater and for authority to issue evidences of encumbrance. No protests have been received. A public hearing is not necessary.

Applicant is Cellular 2000, a Michigan general partnership presently consisting of Cellular 2000 Company (a Delaware corporation), Financial Corporation of Michigan (a Michigan corporation), and Owen O. Stone (a resident of Virginia). Cellular 2000 Company owns 94.286 percent of Cellular 2000.

The Federal Communications Commission (FCC) granted authority to construct the cellular system in RSA 4 to Cellular 2000 Partnership on September 21, 1989. On January 12, 1990 the FCC consented to the transfer of control of the licensee partnership to Cellular 2000 Company. In that transaction 19 individual partners exchanged their interest in the partnership for shares of Cellular 2000 Company stock. Applicant's federal authority will expire on March 21, 1991 unless service is commenced on or before that date.

Applicant states that it "has no significant prior cellular presence" and has contracted with DanCell, Inc. a Connecticut corporation, for the design and construction of the system. DanCell, Inc. has substantial cellular experience with systems in Michigan, New York, Pennsylvania, and other states. The application contains technical detail sufficient to show that the proposed cellular service is feasible.

Applicant submitted a detailed five-year plan showing that it anticipates 199 customers after its first year and 5,750 subscribers after its fifth year of service. Applicant will incur initial capital costs of \$5.6 million and \$9.4 million in total capital costs over five years. Applicant expects that expenses and costs will exceed revenues until its fourth year of operation.

Applicant submitted proforma rates and charges as follows:

Retail Rates

Service activation fee	\$ 30.00
Monthly access fee	\$ 31.00
Per minute on peak	\$.35
Per minute off peak	\$.20

Wholesale/Bulk Rates

Service activation fee	\$ 20.00
Monthly access charge	\$ 24.00
Per minute peak	\$.287
Per minute off peak	\$.165

Applicant has secured a commitment from its equipment vendor Ericsson Radio Systems, Inc. to lend up to \$10 million secured by the assets of the system. Applicant's most recent financial statement shows assets and liabilities of \$658,586. The loan commitment from Ericsson will provide sufficient funding and will be used solely for the purposes specified in this application. Applicant states that there are no matters required to be reported under General Order (GO) 104-A (corporate officer disclosure of transactions).

RSA 4 consists of Madera, Merced, and San Benito Counties. In this application, applicant proposes to construct four cell sites in two phases as shown:

Phase I Cell Site 1 Merced, at Atwater California, at N. 37° 16' 44" and W. 120° 37' 35"; One new 320-foot tower and Mobile Telephone Switching Office (MTSO) collocated.

Phase II Cell Site 2 Madera at N. 36° 57' 43" and W. 120° 2' 39"; one new 220-foot and 12' x 37' equipment structure.

Cell Site 3 Los Banos at Volta, N. 37° 01' 10" N. and W. 120° 59' 8"; one new 170-foot tower and 12' x 37' equipment structure.

Cell Site 4 Chwchilla near Le Grand at N. 37° 11' 43" and W. 120° 14' 28"; one new 233-foot tower and 11' x 26' equipment structure.

A fifth site serving the Holister vicinity in San Benito County may be proposed pending identification of a suitable cell site.

Applicant proposes to interconnect its MTSO with Pacific Bell's Stockton tandem office via Type 2B facilities. Applicant will seek agreements with other cellular carriers for "roamer" service.

Environmental Analysis

This application involves new construction and new telecommunications towers at each of the four proposed cell sites. The Commission has assumed the role of lead agency for the purpose of compliance with the California Environmental Quality Act (CEQA). An initial study is being prepared and a negative declaration or environmental impact report will develop.

Applicant's December 4, 1990 amendment requests immediate authorization to construct a single temporary cell site and colocated MTSO at the proposed Atwater site pending completion of the environmental review for all four sites. Applicant seeks permission to install a small removable equipment shelter and two or three cellular radio antennas not extending more than 12 feet above the topmost height of the shelter. The Atwater site is a former landfill owned by the City of Atwater. The City

granted Cellular 2000 a use permit for the construction of a cell site and a 320' tower on August 15, 1990.¹

Applicant's temporary use of the Atwater site in this manner is exempt from the environmental impact reporting requirements of CEQA under Public Resources Code § 21083 and 21087 and §§ 15303 and 15307(e) of the CEQA Guidelines.

We will retain jurisdiction to issue a final decision in this proceeding upon the completion of our environmental review of the entire proposed cellular system. Pending completion of that analysis and our subsequent order Cellular 2000 may not construct any other cellular facilities at any other location in the RSA and shall not use the Atwater site in any manner nor establish or construct any improvements on the Atwater site beyond those specified in this decision.

At such time as the Commission has completed its environmental analysis of all four cell sites, the Commission will issue its final decision.

Findings of Fact

1. Cellular 2000 Partnership seeks a CPC&N for the establishment of B-Block non-wire line cellular radiotelecommunications service in California RSA 4 comprised of Merced, Madera, and San Benito Counties and for authority to issue evidences of indebtedness and to construct the facilities identified at pages 3 and 4 of this decision.

2. The application as amended on December 4, 1990 requests interim authority to install and operate temporary cellular

¹ In its November 13, 1990 motion, Cellular 2000 sought our approval for the 320' tower and requested that the Commission adopt the negative declaration prepared by the City of Atwater for the August 15, 1990 use permit. The Commission staff declined to recommend adoption of the negative declaration in part because the city had not circulated the negative declaration as required by CEQA Guidelines § 15205(b)(2).

equipment consisting of a removable shelter housing cellular transmission equipment and three antennas not exceeding 12' above the height of the shelter. The proposed temporary cell site is situated at latitude North 37° 16' 44" and longitude West 120° 37' 35", in the City of Atwater.

3. The matter appeared in the Commission's Daily Calendar on September 18, 1990 and copies of the application were served on the cities in the service area and the Counties of Merced, Madera, and San Benito and on 29 potentially interested parties. No protests have been received. A public hearing is not necessary.

4. Cellular 2000 Partnership consists of Cellular 2000 Company and two other partners, each of whom has a 2.857 percent share of the partnership.

5. Applicant will involve DanCell, Inc. in the design and construction of the system.

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

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

8. Applicant has obtained Federal Communications Commission (FCC) authority to construct the proposed service. The FCC permit will expire unless service is commenced by March 21, 1991.

9. Through its arrangements with DanCell, Inc. and Ericsson Radio Systems, Inc., applicant possesses the technical and financial means to provide the proposed service.

10. An evaluation of the environmental impacts of the four cell site system as proposed in A.90-08-070 will be prepared pursuant to CEQA prior to the issuance of a final order in this proceeding.

11. The interim authority granted herein involves the installation of small new equipment in a small structure and minor temporary use of land having negligible and non-permanent effects on the environment.

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

Conclusions of Law

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

2. Approval of the proposed temporary cell site granted in this decision is categorically exempt from the environmental impact report requirements of CEQA under §§ 15301, 15303, and 15304(e) of the State CEQA Guidelines.

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

4. 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 Public Utilities (PU) Code § 2881.

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

6. Applicant's request for authority to encumber utility assets in connection with its loan commitment from Ericsson Radio Systems, Inc. should be granted.

7. Because there is an immediate need for cellular radiotelecommunications service in RSA 4 this order should be made effective when signed.

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.

INTERIM ORDER

IT IS ORDERED that:

1. An interim certificate of public convenience and necessity is granted to Cellular 2000 Partnership for the provision of cellular radiotelecommunications service in RSA 4 and for the establishment of a temporary cell site as described in Finding of Fact 2 of this decision.

2. Applicant shall not construct or install additional cellular radiotelecommunications facilities in RSA 4 without further order of this Commission.

3. Applicant is authorized to encumber its utility assets up to an amount of \$10,000,000 through its loan agreement with Ericsson Radio Systems, Inc. The proceeds of the loan shall be used solely for the purposes specified in A.90-08-070.

4. Construction of additional cell sites in yet undetermined locations shall be subject to the Commission's General Order (GO) 159-B, 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 interim 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 applicant has proposed in its application 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 FCC Rule 22.504(b)(2), and consistent with Exhibit E to A.90-08-070.

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 U-3037-C assigned to Cellular 2000 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.

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 § 702, Employee Identification Cards, and notify, in writing, the Chief of Telecommunications Branch of the CACD of compliance.

13. The authority granted herein shall become operative on and after the date Cellular 2000 remits a fee in the amount of \$11,000 as required by PU Code § 1904(b).

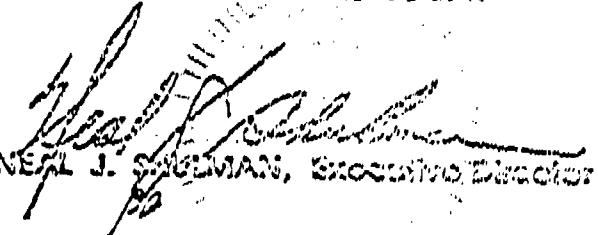
14. Applicant shall provide a copy of this decision to all local permitting agencies not later than 30 days from today.

15. Applicant shall comply with all applicable local building permit requirements.

This order is effective today.

Dated FEB 06 1991, at San Francisco, California.

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


NEAL J. SOGELMAN, Executive Director - 9 -

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

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PUBLIC UTILITIES COMMISSION STATE OF CALIFORNIA
PAID
MAR 5 1991
BY <i>SAS</i>