

APR 24 1991

Decision 91-04-058 April 24, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
CALIFORNIA 2 CELLULAR CORPORATION, )  
a Delaware corporation, for a )  
Certificate of Public Convenience )  
and Necessity Under Section 1001 )  
of the Public Utilities Code )  
Granting Authority to Construct )  
and Operate a Domestic Cellular )  
Radiotelecommunications System in )  
the California 2 RSA; and for )  
Authority Under Section 851 to )  
Issue Secured Evidences of )  
Indebtedness. )

**ORIGINAL**

Application 91-02-074  
(Filed February 22, 1991)

OPINION

California 2 Cellular Corporation (applicant) seeks a certificate of public convenience and necessity (CPC&N), pursuant to Public Utilities (PU) Code § 1001, to construct and operate a domestic cellular radiotelecommunications system in California. It also seeks authority under PU Code § 851 to issue secured evidences of indebtedness. Applicant is a Delaware corporation with offices in Wilmington, Delaware, and Wayzata, Minnesota, its principal place of business. A copy of applicant's articles of incorporation is attached to the application. Applicant is qualified to do business in the State of California, and its certificate is attached as Exhibit B to the application.

Applicant is the successor-in-interest of Personal Communications Company, which on February 16, 1990, was granted authority by the Federal Communications Commission (FCC) to construct a cellular system (system) on the nonwireline or "A" block frequencies in the "California 2" rural service area (RSA) comprising Modoc, Lassen, and Plumas Counties (Market No. 0337) to provide a Domestic Public Cellular Radiotelecommunications Service.

A copy of the FCC's authorization is attached to the application with a copy of the FCC's consent to assignment of the authorization to California 2. Applicant has also obtained the financing commitments necessary to construct and operate the cellular system within the California 2 RSA. Since this financing will be secured by, among other things, the assets of the system, applicant seeks authority; first, under PU Code § 1001 to construct and operate the system; and second, under PU Code § 851, to enter into certain secured financing commitments and arrangements as described below.

It requests that this application be processed on an expedited basis to assure the earliest possible delivery of cellular service to the Modoc rural service area as authorized in, and consistent with, the conclusions of law in Decision (D.) 90-06-025 in I.88-11-040 (cellular OII), and the "streamlined" processing referred to therein for such applications.

The FCC has authorized two cellular systems in each market including the California 2 RSA. One such system, operating on the so-called "B" block frequencies, has been reserved for an existing wireline company, in the case of this RSA, PacTel Cellular. The other, operating on "A" block frequencies, has been reserved for nonwireline applicants, with comparative hearings and/or lotteries being used in situations involving multiple candidates. Nearby markets include Siskiyou, Placer, Shasta, and Tehama Counties, where cellular systems are up and running. Wireline exchange carriers providing services in these counties include Pacific Bell and various independent telephone companies, including Citizens Utilities Company (Citizens), Tuolumne Telephone Company, California-Oregon Telephone Company, and Happy Valley Telephone Company.

Applicant is the FCC "A" block permittee for the RSA. Applicant has no interest in other cellular systems in the United States. While applicant has no significant prior cellular presence, it has entered into a contract with Global Cellular,

Inc., a management consulting firm, the principals of which have had eight years of extensive experience with development, management, and operations of cellular systems in California, Minnesota, and Wisconsin, including the GTE Mobilnet system for the San Francisco California Metropolitan Statistical Area. Applicant has also entered into an agreement for engineering services with TLK & Associates, a Commstruct International Co., located in Yorba Linda, California. Principals of TLK & Associates have had extensive cellular system design and engineering experience, and have been engaged by two of California's largest cellular service providers. TLK president Tom Klos and vice-president Paul Ashworth were also responsible for systems development and operation of all cellular systems connected and operated by Crowley Development Corporation.

Applicant initially plans to establish a Mobile Telephone Switching Office (MTSO), the system's central coordinating mechanism which controls the cellular system and interfaces with the landline phone network, and cell site at a location 5.2 miles northeast of Susanville, California. The site is at latitude 40-27-14 and longitude 120-34-13, approximately 5,820 feet above sea level, and is commonly known as Antelope Mountain. The site shall be sub-licensed from Citizens, a telephone and cellular service provider and utility which has leased the parcel from its owner, the Bureau of Land Management (BLM). The MTSO will be linked to the public-switched network via DS-1 links between the Antelope Mountain MTSO and Citizens' central office at Susanville. Applicant shall thereby supply service in the RSA, from Susanville north to the base of Round Valley Reservoir, east to the town of Litchfield, south to the Antelope Valley Reservoir, and west to Hamilton Mountain. In subsequent construction phases, applicant will provide coverage from as yet undetermined locations in more remote parts of the RSA.

The switching equipment (the MTSO) will be collocated with existing equipment, facilities, and towers of Citizens and other communications companies. The MTSO shall be housed in a small, unmanned, modular, and transportable cinder-block structure, 12' by 24', set up on blocks, at the Antelope Mountain site. The MTSO will be linked to the public-switched network by DS-1 spans leased from Citizens. Applicant will use an existing 150' free-standing, self-supporting tower in its initial system configuration. The tower has already received Federal Aviation Administration approval. Applicant's vertically polarized, directional, and environmentally unobtrusive, 13' omni-monopole type VHF antenna will be collocated with an existing antenna owned and used by Radio Station WHA 577. The configuration proposed by applicant will be capable of providing coverage to a substantial part of the populated areas of the RSA. Pursuant to agreements with Citizens, applicant will interconnect with the local telephone network owned by Citizens. Attached to the application is a copy of Proponent's Environmental Assessment. But for Rule 17.1 of the Rules of Practice and Procedure, applicant asserts, no environmental review of its cellular site would be required because the lands upon which applicant proposes to construct and operate its MTSO and cell site are owned by the federal government, namely the BLM, which has granted environmental approvals for the site, including approvals for multiple on-site commercial structures and communications systems on the parcel which is zoned for unclassified (U) land-use.

In addition, applicant alleges that its MTSO and cell site equipment are categorically exempt as a Class 3 project under § 15303 of the Guidelines issued pursuant to the California Environmental Quality Act (CEQA). (Public Resources Code §§ 21083.4 and 21087.) Applicant's initial configuration involves placing an antenna on existing towers, already approved and permitted by the BLM for use by Citizens as a communications

facility, plus construction of a small transportable building. Applicant is currently applying to BLM for secondary user authorization. Such structures come within § 15303 exemptions for "small commercial structures not involving the use of significant amounts of hazardous substances...designed for an occupant load of 30 persons or less [and] not constructed in conjunction with the building of two or more such structures." (CEQA Guidelines, § 15303(c).) Finally, applicant alleges that the FCC in § 1.1305 of its rules and regulations (47 CFR § 1.1305) has stated that after its own review of construction and operation of cellular sites and systems, such as the one applicant proposes, and in consideration of its own actions in authorizing such sites and systems, no environmental impact statement should be warranted under national environmental laws.

Applicant believes that an environmental impact report is not required. Nevertheless, it states that if this Commission should find that it must perform an environmental review of this site, applicant requests that it issue a mitigated negative declaration under CEQA, Article 6. Not only are most of applicant's structures and equipment going to be placed on existing and established communications facilities where no adverse visual or air navigation effects will be produced, the impact of the system on the environment will, in fact, be positive. Use of the system can reduce the number of trips made by autos and trucks, and thus reduce the consumption of scarce petroleum fuels and the release of pollutants into the atmosphere.

In support of its claim that the public convenience and necessity require the construction and operation of its proposed facilities, applicant alleges that customers need high quality, efficient mobile telephone service in Modoc, Lassen, and Plumas Counties. It notes that competing cellular systems have been constructed in all of the major populated parts of California. The demand in these areas has proven far greater than anticipated, and

cellular service has become an integral part of the business life of the state. It has also proven invaluable to police, fire, and rescue services; government agencies; and for a variety of other emergency applications. The Commission itself has found a "significant demand for cellular mobile radiotelephone service" to exist throughout the state. (D.83-06-080 and D.90-03-080.) The rural service areas represent the next critical step toward an integrated, statewide network on both "A" block and "B" block frequencies. The addition of Modoc, Lassen, and Plumas Counties to existing systems will permit continuous cellular service from adjacent Siskiyou, Shasta, Placer, and Tehama Counties up through the California/Oregon, and California/Nevada borders. Applicant alleges that the public convenience and necessity will be served by granting the relief sought in the application.

Applicant has a financial commitment from NovAtel Communications, Ltd., of Calgary, Alberta, Canada, to lend it \$1 million (US) to be used for the purpose of constructing and operating applicant's cellular radiotelephone system. Accordingly, applicant seeks authority to issue evidences of indebtedness in amounts not to exceed \$1 million on substantially the terms described in Exhibit E to the application, such indebtedness to be secured by substantially all of the assets of the system.

#### Findings of Fact

1. Notice of the filing of the application appeared in the Commission's Daily Calendar on February 28, 1991. Copies of the application were served on various cities, counties, and other potentially interested parties. No protests have been received. A public hearing is not necessary.
2. The proposed cellular telephone service is economically and technologically feasible.
3. Applicant has obtained FCC authority to construct the proposed facilities.

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

5. The proposed cellular telephone facilities will be established within or upon existing telecommunications facilities and no new structures, beyond a small portable building, are proposed.

6. Public convenience and necessity require approval of this application.

Conclusions of Law

1. The CPC&N should be granted.
2. The proposed cellular telephone facilities are categorically exempt from the environmental impact report requirements of the CEQA.
3. Construction of any future and additional cell sites in yet undetermined locations will be subject to General Order 159, 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 PU Code § 2881.
5. Under PU Code § 818 no public utility may issue bonds, notes, or other evidences of indebtedness payable at periods of more than 12 months after the date thereof unless it shall first have secured from the Commission an order authorizing the issue. Applicant's proposed financing is for one year. Accordingly, § 818 does not apply.
6. Under PU Code § 851 no public utility may encumber the whole or any part of its system without first having secured from the Commission an order authorizing it so to do. Applicant's financing proposal includes hypothecating substantially all of its system assets to secure loans from NovAtel. Applicant's proposal to encumber its utility property should be approved.

7. Because of the immediate need for service, this order should become effective today. The State may grant any number of operative rights and may cancel or modify the monopoly feature of those rights at any time.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to California 2 Cellular Corporation (applicant) for the provision of cellular telephone utility service as proposed in the application and for the establishment of a cell site at Antelope Mountain, as more particularly described in the application.
2. Construction of additional cell sites in yet undetermined locations shall be subject to the provisions of General Order (GO) 159, adopted March 28, 1990, pursuant to D.90-03-080.
3. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.
4. Applicant is authorized to file, after the effective date of this order and 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 those contained in the proposed tariff sheets attached to the application.
5. Applicant shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 4, an engineered service area map drawn in conformity with FCC Rule 22.504(b)(2), and consistent with the similar exhibit attached to the application.



6. 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.

7. The corporate identification number assigned to applicant is U-3039-C, which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

8. 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.

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

10. Applicant shall keep its books and records in accordance with the Uniform System of Accounts for cellular communications licensees, prescribed by D.86-01-043.

11. 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 its compliance.

12. 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.

13. Pursuant to PU Code § 851 applicant is authorized to encumber its system assets to secure loans to be received from NovAtel Communications, Ltd., in the maximum amount of \$1 million.

14. 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 April 24, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President

G. MITCHELL WILK

JOHN B. OHANIAN

DANIEL Wm. FESSLER

NORMAN D. SHUMWAY

Commissioners

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

*Neal J. S. ...*  
Neal J. S. ... Executive Director