

Decision 91-05-037 May 22, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Alpine CA-3, L.P. 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)
Telecommunications System in the)
Alpine Rural Service Area (Alpine,)
Calaveras, Amador, Tuolumne, and)
Mariposa Counties).)

ORIGINAL

Application 91-02-073
(Filed February 14, 1991)

OPINION

Alpine CA-3, L.P. (applicant) is a California limited partnership. It seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 authorizing it to construct and operate a new domestic public cellular radio telephone system to serve the Alpine Rural Service Area (Alpine RSA). The Alpine RSA, also known as California 3 RSA, encompasses all portions of Alpine, Calaveras, Amador, Tuolumne, and Mariposa counties. Applicant also seeks authority under PU Code §§ 816-830 and § 851 to enter into certain financing arrangements.

Applicant is a limited partnership, duly organized under the laws of California, with its principal place of business at Fairfield. A current copy of applicant's Certificate of Limited Partnership is recorded with the Secretary of State.

Applicant is the assignee of the authority granted to Constitution Cellular, a general partnership, by the Federal Communications Commission (FCC) in accordance with the FCC's selection of Constitution Cellular as the non-wireline (Frequency Block A) carrier to provide Domestic Public Cellular Radio Telecommunications Service in the Alpine RSA. The transfer of that

authority to applicant, with the approval of the FCC, occurred on February 19, 1991.

Cellular radiotelephone service will be provided within the Alpine RSA cellular geographic service area (CGSA) using a combination of fixed and mobile radio and telephone facilities. The CGSA will initially be subdivided into three cells. Communications to or from subscribers' mobile radio equipment in each cell will be carried over frequencies assigned to the cell from or to a base station transmitter/receiver in the cell. Each base station or "cell site" will connect via microwave or landline telephone facilities with applicant's mobile telephone switching office (MTSO), which, in turn, will connect with the public switched telephone network (PSTN) as well as all other cells in the CGSA. These interconnections will enable applicant to handle land-to-mobile, mobile-to-land, and mobile-to-mobile calls.

Applicant's use of relatively low-power transmitting equipment in each cell will permit simultaneous use of the assigned frequencies in other, non-adjacent cells in the CGSA without co-channel interference. This will provide applicant's cellular system with far greater capacity than is attainable with traditional mobile telephone technology, such as IMTS. Moreover, by subdividing existing cells (cell splitting) and use of directionalization and other sophisticated radio propagation techniques, applicant will be able to increase simultaneous use of assigned frequencies in the CGSA in order to meet demand growth.

The cellular radio technology to be employed by applicant permits communications to or from a subscriber's radio unit to be carried over any of the frequency channels assigned to a cell and to be imperceptibly switched among those channels during transmission. Use of this technology allows communications to or from a particular subscriber to be automatically assigned to any channel in the cell that is free at a particular time. Moreover, by automatically monitoring signal strength, communications can be

"handed off" to a new cell as the subscriber moves away from a weakening signal in one cell toward a stronger signal in the new cell. When a call is handed off, the communication is automatically switched to a frequency assigned to the new cell and communications are thereafter handled by the base station facilities in the new cell. Handing off allows the channel previously being used in the first cell to immediately be reused to carry another subscriber's calls.

As the foregoing description suggests, applicant's proposed cellular system will have four major components:

1. A mobile telephone switching office (MTSO);
2. Cell sites (base station radio equipment);
3. Interconnecting facilities, some of which may be:
 - a. landline telephone facilities leased from Pacific Bell or other local exchange carriers; and
 - b. microwave facilities leased or owned by applicant; and
4. Mobile or Portable Subscriber units.

The MTSO is the central coordinating point for the proposed cellular system. It controls the cellular system and interconnects with the landline telephone network and the cell sites. Applicant's MTSO will be installed by applicant in an existing building located in Sonora.

Each cell site in a cellular system consists of fixed radio equipment. The radio equipment at the cell site interfaces with mobile and a portable unit operating within the cell site's geographic area. Applicant will install its base station facilities at each of the three locations described in Exhibit C to the application: Jackson Butte, Amador County; Fowler Peak, Calaveras County; Sonora Peak, Tuolumne County. The proposed cell

site construction involves the installation of antennas at each of the three cell site locations, each of which is an existing antenna farm. In two cases, the antennas will be placed on existing towers. In the third case, the antennas will be placed on a tower that the operator of the antenna farm is constructing for other purposes. Applicant has been informed that such tower construction has already been fully approved. In addition, applicant will install a small shelter at each of those locations to house associated radio equipment. These shelters will be pre-constructed in Jackson, and then transported to the sites for installation on concrete pads.

There are essentially two types of interconnection facilities that are required for an operational cellular system: (1) The interfacing between the cellular system and the PSTN is undertaken through central office connecting circuits, known as PSTN interconnections; (2) To link the cell sites to the MTSO and the MTSO to the PSTN central offices, dedicated private-line facilities and/or microwave (both voice and data) will be used.

Applicant will enter into interconnection agreements with Pacific Bell and other local exchange carriers to obtain the facilities initially required to provide the proposed service.

Public Convenience and Necessity

The FCC has determined that a need for a cellular service has been established throughout the nation and that cellular service should be made available to the public in accordance with the market structure established by the FCC. In addition, this Commission has issued a number of decisions wherein it has found public need for cellular telephone services in numerous areas in California, and has subscribed to the FCC's market allocation policy. These decisions support the conclusion that there is public demand and a need for these services throughout California, including the Alpine RSA. (See, e.g., Decision (D.) 83-60-080, D.84-04-014, D.84-11-029, D.85-04-023, and D.85-11-055.)

Applicant has conducted marketing and other studies to determine need and projected demand in the Alpine RSA. Based on its studies, applicant believes its proposed system will fully meet the need and demand for cellular service in the Alpine RSA, now and into the foreseeable future. The system has been designed entirely in compliance with FCC coverage requirements and is both readily expandable and sufficiently flexible to meet growth and other changes in demand that may be experienced in the Alpine RSA. Moreover, the proposed system consists of state-of-the-art facilities and will provide service of the highest quality, whether provided on a mobile-to-mobile basis or over interconnections with the PSTN. Customers on applicant's system will be afforded the full range of roamer, long distance, and other telecommunications services that cellular subscribers enjoy throughout California.

In order to ensure that the system is operating fully in accordance with the public interest, applicant has engaged Rural Cellular Management (RCM), a national engineering and management consulting firm, to assist it both in day-to-day and long-term operation and management of the system. Applicant's operating and management personnel plans, including its arrangements with RCM, are described in Exhibit D to the application.

Costs of Construction

Applicant intends to purchase its cellular mobile telephone system from Ericsson Radio Systems, Inc. (Ericsson), an established, well-respected manufacturer and distributor of such systems. The estimated capital cost of equipment, construction, and installation for the initial service offering is \$1.96 million. An additional capital expenditure of \$0.9 million is expected during the second through the fifth year of operation. A detailed description of the construction costs for the system is contained in Exhibit F to the application.

Applicant's Financial Ability and
Proposed Financing

Applicant has prepared a pro forma financial statement showing estimated results of operations for its proposed system. Applicant's revenue and cost projections are based on expert analysis of the proposed system requirements and the experience of other cellular carriers in other areas, are consistent with the levels of existing and projected demand for services in the Alpine RSA, and have been approved by applicant's lender as providing the basis for its loan to applicant of the funds necessary to construct and operate the system. Therefore, applicant alleges that its revenue and cost projections are reasonably reliable.

Applicant expects that the proposed system will become profitable within three years. The following table¹ demonstrates the projected income and expenses for applicant's operations for the first five years of operation of the proposed system:

(000's)

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Income	\$ 895	\$1,661	\$2,488	\$3,345	\$4,218
Expenses	1,122	1,333	1,490	1,669	1,945
Operating Profit (Loss)	(681)	(218)	409	834	999

Construction and initial operation of the system is proposed to be financed entirely with funds provided by the primary equipment vendor, Ericsson. Applicant evaluated a number of alternatives for financing its proposed system and has determined

¹ The table is abstracted from Exhibit G, p. 2, of the application. The numbers do not subtract, because the effects of interest and depreciation expenses and income taxes have been omitted.

that the proposed financing is well integrated with applicant's program for equipment procurement. Applicant believes that the resulting package, which is described in Exhibit H to the application, represents the most favorable arrangement available.

Applicant states that altogether, the projected results of operations and the proposed financing arrangements clearly establish financial ability to render the proposed service.

Proposed Rates

Upon certification, applicant will file wholesale and retail rates competitive with those now effective for service provided by the Block B (wireline) carrier in the Alpine RSA. The application contains a statement of applicant's proposed rates. Applicant's proposed wholesale pricing plan will allow for the development of a competitive resale market. This plan conforms with the FCC's Cellular Report and Order of May 4, 1981 (FCC Docket No. 79318) and this Commission's holdings in D.84-04-014 and D.90-06-025.

Applicant will follow the Commission's requirements for accounting separation between its wholesale and retail operations. Each of the operations will be self-sustaining and will be able to operate on a financially viable basis.

Environmental Protection

The proposed construction involves installing antennas at existing antenna farms, installing small associated buildings at the three cell site locations, and installing the MTSO in an existing structure at Sonora. Applicant is not required to construct any towers. Instead, antennas at two of the site locations will be placed on existing towers. The antennas at the third location will be placed on a tower that is being constructed by the owner of the antenna farm for other purposes. Applicant is informed that all required permits for such construction have been obtained. In all cases, the cell site antennas and buildings will be located in remote areas where no adverse visual or air

navigation effects will be produced. The cell site facilities will be assembled in Jackson and installed in pre-fabricated structures. The structures will then be transported to the sites and fixed to concrete pads. With the installation of interconnection circuits, the system will be operational.

Applicant alleges that not only can it be concluded with certainty that there is no possibility that construction and operation of the proposed cellular system might have an adverse effect on the environment, the proposed construction is, according to applicant, categorically exempt from the environmental review requirements of CEQA. Accordingly, applicant concludes that no environmental impact report is required.

Applicant asserts that the Commission is the lead agency under the California Environmental Quality Act (CEQA) and urges that, with regard to the construction and installation of all facilities, the Commission find that the proposed project is categorically exempt from the environmental review process, or, in the alternative, issue a negative declaration finding that the project will not have a significant effect on the environment.

The Commission Advisory and Compliance Division (CACD) has reviewed the application; and it recommends that the proposed project be found categorically exempt pursuant to § 15301 of the Guidelines implementing CEQA (14 California Code of Regulations § 15000 et seq.). That section exempts certain classes of projects which have been determined not to have a significant effect on the environment and are therefore exempt from the provisions of CEQA. § 15301 of the Guidelines specifically states that minor alteration of existing private structures involving negligible or no expansion of use beyond that previously existing is exempt from CEQA environmental review. We agree with the recommendation of CACD; and we conclude that the proposed project is categorically exempt.

Proposed Financing Arrangement

Applicant will finance the purchase of all cellular equipment and facilities, the construction and installation of those facilities, and its initial working capital requirements by borrowing funds from the equipment vendor, Ericsson. The terms of the financing and a complete, pro forma loan agreement are set forth in Exhibit H to the application. The capital expenditures to be funded through applicant's arrangements with Ericsson are expected to be approximately \$1.96 million in the first year and \$0.9 million during the second through fifth years of operation.

There is no objection to the terms of the financing proposed. Accordingly, we will approve the loans proposed, including the proposal to secure those loans by encumbering virtually all of the assets of the cellular system.

Findings of Fact

1. Notice of the filing of the application appeared in the Daily Calendar. In addition, applicant served copies of the application by mail upon the city officials, county officials, local exchange carriers, and cellular carrier listed in the certificate of service. No protests have been filed.
2. A public hearing is not necessary.
3. Applicant's proposed cellular facilities will consist of antennas mounted on preexisting towers and small shelters for the electronic cell site equipment. The MTSO will be located in a preexisting building in Sonora.
4. Applicant has the technical and financial resources necessary to construct and operate the cellular facilities proposed.
5. The public convenience and necessity require the construction and operation of the proposed cellular facilities.

Conclusions of Law

1. The proposed cellular facilities are categorically exempt from the environmental impact report requirements, pursuant to the CEQA guidelines.

2. The proposed security issue, together with the encumbrance of system assets to secure that financing, is for lawful purposes, and the money, property, and labor to be obtained by it are required for these purposes. Proceeds from the security issue may not be charged to operating expenses or income.

3. A certificate of public convenience and necessity should be granted, limited to the facilities described in the application.

4. Construction of any additional cell sites in as yet undetermined locations is subject to GO 159, issued March 28, 1990, by D.90-03-080 in R.90-01-012.

5. Applicant is subject to a three-tenths of one percent (0.3%) monthly surcharge to fund telecommunications devices for the deaf, pursuant to PU Code § 2881 and Resolution T-13061 dated April 26, 1989.

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

7. Because there is an immediate need for cellular radio telecommunications service in California RSA 3, the following order should be effective immediately.

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 Alpine CA-3, L.P. (applicant) to provide cellular radio telecommunications service in RSA 3 and to establish three cell sites at the locations described in the application and to install its MTSO in a preexisting building in Sonora.
2. Applicant shall not construct or install additional cellular radio telephone facilities in RSA 3 without further order of the Commission.
3. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate.
4. 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 radio telephone service. Tariffs shall become effective on not less than five days' notice. The rates and charges shall be same as applicant has proposed in its 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 Exhibit C to the application.
6. Applicant shall notify the Commission Advisory and Compliance Division (CACD) director in writing of the date services are first rendered to the public as authorized herein, within five days after service begins.
7. Corporate identification number U-3040-C is assigned to applicant and shall be included in the caption of all original pleadings filed with this Commission and in the titles of other pleadings filed in existing cases.

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

9. Applicant is subject to a three-tenths of one percent (0.3%) monthly surcharge to fund telecommunications devices for the deaf, pursuant to PU Code § 2881 and Resolution T-13061, dated April 26, 1989.

10. 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.

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 the Telecommunications Branch of the CACD of its compliance.

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

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

14. Applicant shall use the net proceeds of its proposed financing for the purposes set forth in the application.

15. Applicant shall submit to CACD copies of all documents executed in relation to the proposed financing within 30 days after execution.

16. On or after the effective date of this order, but before December 31, 1991, for the purposes specified, transferee may issue an evidence of indebtedness in principal not exceeding \$2,860,000, and may execute and deliver an encumbering document. These documents shall be substantially the same as those attached to the application.

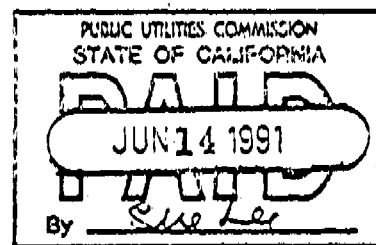
17. Applicant shall file the reports required by General Order Series 24.

18. The authority granted by this order to issue an evidence of indebtedness and to execute and deliver an encumbering document will become effective when the issuer pays \$3,860, set by PU Code § 1904(b). In all other respects this order becomes effective today.

Dated May 22, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.



Rec. # 34684
\$3,860⁰⁰

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

[Signature]
Executive Director
pg