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Decision 91-06-012 June 5, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Ronald Finnerman,
 dba ROCK BOTTOM CELLULAR, for a
 Certificate of Public Convenience
 and Necessity to resell cellular
 radiotelephone service in
 California.

ORIGINAL
 Application 91-04-020
 (Filed April 19, 1991)

OPINION

Ronald Finnerman, dba Rock Bottom Cellular (applicant) seeks a certificate of public convenience and necessity (CPC&N) to resell cellular radio telecommunications service within California. He proposes to offer service initially in the Los Angeles Cellular Geographic Service Area (CGSA).

Upon beginning resale service, applicant will purchase services from facilities-based, certificated carriers operating in the Los Angeles CGSA, including Los Angeles SMSA Limited Partnership and the Los Angeles Cellular Telephone Company, at their tariffed, wholesale rates; and he will resell these services to the general public at initial rates, as follows:

Connection Charge.....	\$.00
Monthly Charge.....	45.00
Peak Minute Usage.....	0.42
Off-Peak Minute Usage.....	0.25

Applicant's rates are derived from, and subject to, the discount rates set by the underlying cellular carrier from which he purchases cellular services. These discount rates are contained in the formal tariffs filed by the underlying cellular carrier. Applicant believes that, since he merely resells tariffed cellular service, and since the Federal Communications Commission does not require him to file a tariff, he should be excused from filing a tariff with the Commission. He argues that "the public interest

would be seen to support greater streamlined regulation of the cellular resale carriers, and would contraindicate the need for a formal tariff filing by applicant." This would be an appropriate area of inquiry in a generic proceeding affecting the entire cellular resale industry. It would not be appropriate, however, to consider the question of applicant's exemption from the tariff filing requirement in an application seeking ex parte relief. Evenhanded treatment of the entire industry would require at least a rulemaking proceeding, if not public, evidentiary hearings. We will deny applicant's request for exemption from our tariff filing requirement.

Applicant alleges that he has extensive background in the electronics industry, specifically in the radio communications carrier area.

Applicant's balance sheet shows that his net worth is approximately \$1,000,000. He expects a first quarter net loss of \$17,048, but he believes that his operations will produce net revenues before taxes in later quarters.

Applicant seeks expedited approval of his application in order that he may begin service as soon as possible. We have sought to process this application in a timely fashion in order to promote a competitive market in the Los Angeles CGSA.

Applicant has provided adequate information for a grant of authority to provide cellular telecommunications services. Cellular resale markets in California are, by their nature, generally competitive. That competition will restrain applicant from charging unreasonably high prices to customers. Applicant has adequate financial resources to withstand short-term losses.

As a telephone corporation, applicant is subject to:

1. The fee used to fund the costs of regulating public utilities. (Public Utilities (PU) Code §§ 401-410, 431-435.) Resolution M-4754 (May 4, 1990) set the fee for fiscal year 1989-90 for telephone

corporations at one-tenth of 1% (0.10%) of revenue subject to the fee.

2. The surcharge of three-tenths of 1% (0.3%) on gross intrastate revenues used to fund Telecommunications Devices for the Deaf. (PU Code § 2881.) This surcharge became effective July 1, 1989 (Resolution T-13061, April 26, 1989).

Applicant should include in his tariff appropriate rules for imposing these fees and surcharges.

Findings of Fact

1. Notice of the filing of the application appeared in the Daily Calendar on April 23, 1991. Applicant served a copy of his application on 78 cellular resellers and facilities-based carriers with whom he may compete. No protests have been filed. A hearing is not necessary.

2. Applicant seeks a CPC&N to operate as a reseller of cellular telecommunications services in the Los Angeles CGSA and throughout California.

3. The proposed operation is technically and financially feasible.

4. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect on the environment.

5. Public convenience and necessity require the granting of this application.

Conclusions of Law

1. Applicant should be granted a waiver of PU Code §§ 816-830 and 851-855, consistent with Decision (D.) 85-07-081 and D.85-11-044.

2. Applicant is subject to the user fee system, as set forth in PU Code § 401, et seq. The user fee for the 1990-91 fiscal year is 0.10%. (Resolution M-4754, May 4, 1990.)

3. Applicant is subject to a three-tenths of 1% (0.3%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf. (PU Code § 2881; Resolution T-13061, April 26, 1989).

4. Applicant should include in his tariff appropriate rules for imposing fees and surcharges.

5. Applicant is subject to the provisions of General Order 96-A, as modified by D.88-05-067 and D.90-06-025.

6. The application should be granted.

7. Applicant's request for exemption from the tariff filing requirement should be denied.

8. Because the public convenience and necessity require applicant's service, 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 Ronald Finnerman, dba Rock Bottom Cellular (applicant) to operate as a reseller of cellular telecommunications services in California.

2. Within 20 days of the effective date of this order, applicant shall file a written acceptance of the certificate.

3. Applicant is authorized to file, after the effective date of this order and in compliance with General Order (GO) 96-A, tariffs applicable to its cellular resale services. The tariffs shall become effective on not less than 5 days' notice. The rates and charges shall be as proposed in this application.

4. Applicant shall notify the Director of the Commission Advisory and Compliance Division (CACD) in writing of the date service is first rendered to the public as authorized herein, within 5 days after service begins.

5. Applicant shall comply with GO 96-A, as revised in D.88-05-067 and D.90-06-025. Applicant shall also comply with the Electronic Serial Number (ESN) blocking tariff rules specified in D.90-06-025.

6. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the format specified by the Chief of the Auditing and Compliance Branch of CACD. (Appendix A.)

7. Applicant shall comply with PU Code § 401, et seq., and Resolution M-4754, as they pertain to the collection of user fees to fund the costs of regulating public utilities.

8. Applicant shall comply with PU Code § 2881 and Resolution T-13061 as they pertain to a surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf.

9. Applicant shall include in its tariff appropriate rules for imposing and collecting the user fees and surcharges in Ordering Paragraphs 7 and 8.

10. The corporate identification number assigned to applicant is U-4103-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.

11. 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.

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 the Telecommunications Branch of CACD.

13. Applicant's request for exemption from the tariff filing requirement is denied.

14. The application is granted.

This order is effective today.

Dated June 5, 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. SCHULMAN, Executive Director

APPENDIX A

Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
- b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF APPENDIX A)