

Mailed

JUN 20 1991

Decision 91-06-056 June 19, 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 Radiotelecommun-)
 ications 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)

SUPPLEMENTAL ORDER

By petition for modification California 2 Cellular Corporation (applicant or C2CC) seeks an order correcting omissions in Decision (D.) 91-04-058. The effect of the proposed changes would be to grant authority under Public Utilities (PU) Code § 818 to issue a promissory note.

C2CC asks that an additional sentence be placed in the initial paragraph of D.91-04-058 describing its request for authority to issue secured evidences of indebtedness under Public Utilities (PU) Code § 851, as follows:

"In addition, applicant seeks authority under PU Code § 818 to issue a promissory note payable at a period of more than 12 months under PU Code § 818."¹

1 In its application C2CC did not cite § 818 (applications to issue securities), § 1904(b) (fees for issuance of notes), or Rule 33 (Applications to Issue...Evidences of Indebtedness...).

C2CC also asks that Conclusion of Law 5 be modified by deleting the last two sentences and substituting the following language:

"Applicant's proposed financing is secured by a promissory note repayable over seven years. Section 818, therefore, applies. Applicant's proposal to issue a note payable over seven years should be granted."

Finally, C2CC asks that D.91-04-058 be modified to add the following language to Ordering Paragraph 13:

"Pursuant to PU Code § 818, Applicant is authorized to issue a promissory note on substantially the terms described in Exhibit E."

Findings of Fact

1. C2CC described its financing by reference to a five-page exhibit to the application, rather than by explicitly stating the terms of the financial transactions in the body of the application.
2. C2CC cited § 851 as the basis of its application, but omitted citations to § 818, § 1904(b), and Rule 33.
3. The application, taken as a whole, contains all the factual allegations necessary to support the issuance of authority to issue evidences of indebtedness under § 818.
4. The Commission omitted in D.91-04-058 language authorizing the issuance of evidences of indebtedness under § 818.
5. The application is unprotested and noncontroversial.
6. C2CC must immediately complete its financial transactions in order to meet the mid-August "dialtone deadline" mandated by the Federal Communications Commission (FCC). If C2CC does not meet this deadline, it will lose its FCC license. To meet the deadline, C2CC must within the next month order necessary equipment, select and assign work crews, and construct its initial system configuration, as authorized in D.91-04-058. In turn, performing these tasks requires that C2CC use the long-term vendor financing described in Exhibit E.

Conclusions of Law

1. C2CC's petition for modification, seeking the correction of omissions in D.91-04-058, should be granted.

2. The proposed security issue is for lawful purposes and the money, property, or 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. Notice of this matter did not appear on the Commission's public agenda. However, the facts stated in the petition for modification and recited in Finding of Fact No. 6 constitute an unforeseen emergency condition, as defined by PU Code § 306(b) and Rule 81.5. In order to avoid the loss of applicant's FCC license, due to failure of the applicant to achieve actual operations by mid-August, the FCC's operational deadline, the Commission should consider this matter and issue a decision at its regular meeting on June 19, 1991.

4. Because delay might result in the loss of C2CC's FCC license, the following order should be effective immediately upon the payment of the fees required by § 1904(b).

IT IS ORDERED that:

1. Decision 91-04-058 is modified, as follows:

a. Insert the following sentence in paragraph one of the decision after the second sentence:

"In addition, applicant seeks authority under § 818 to issue a promissory note payable at a period of more than 12 months."

b. Delete the last two sentences of Conclusion of Law 5 and insert the following sentences in their place:

"Applicant's proposed financing is secured by a promissory note repayable over seven years. Section 818, therefore, applies. Applicant's proposal to issue a note payable over seven years should be approved."

c. Insert the following sentence at the beginning of Ordering Paragraph 13:

"Pursuant to PU Code § 818, applicant is authorized, on or after the effective date of this order, but before December 31, 1991, for the purposes specified in the application, to issue a promissory note in principal not exceeding \$1,000,000, on substantially the terms described in Exhibit E."

2. California 2 Cellular Corporation (applicant or C2CC) shall apply the net proceeds from the issue of the promissory note for the purposes set forth in the application.

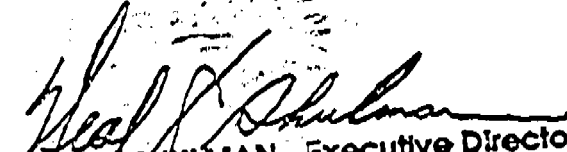
3. Applicant shall file the reports required by General Order Series 24.

4. The authority granted by this order to issue an evidence of indebtedness shall become effective when the issuer pays \$2,000, the fee set by Public Utilities Code § 1904(b).

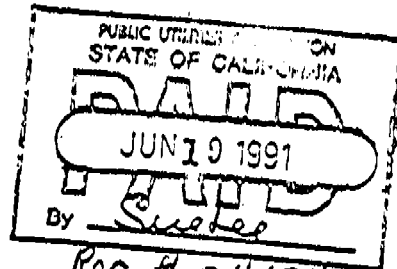
Dated June 19, 1991, at San Francisco, California.

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. SHULMAN, Executive Director

103



Rec.# 34694
\$2,000.00