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Decision 92-07-009 July 1, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of ATLANTIC CELLULAR COMPANY,)
 L.P., dba MOUNTAIN CELLULAR)
 (U-3024-C), for authority under)
 Section 851 of the Public)
 Utilities Code to encumber)
 Public utility property.)

ORIGINAL

Application 92-03-039
(Filed March 17, 1992)

O P I N I O N

Atlantic Cellular Company, L.P., doing business as Mountain Cellular (applicant), is a Delaware limited partnership and maintains its principal place of business in Providence, Rhode Island. Applicant provides cellular radiotelephone service as a licensed carrier in California and Vermont, and holds a majority interest in the New Hampshire Rural Service Area (RSA) 1, a nonwireline system. In addition, applicant holds a non-controlling majority interest in the wireline carrier serving the Hagerstown, Maryland Metropolitan Service Area (MSA). Applicant provides service in the El Dorado RSA (California RSA 11) pursuant to Decision (D.) 90-07-061.

By D.90-12-031, applicant was authorized to issue evidences of indebtedness up to a maximum principal amount of \$35 million and to encumber its property as security for its obligations under the loan agreement. Since D.90-12-031 was issued, the maximum principal amount available under the loan was reduced at applicant's initiative to \$25 million. Only \$1.5 million of the total loan amount was initially earmarked for operation and expansion of applicant's California cellular system. Accordingly, D.90-12-031 limited the encumbrances on applicant's California operating property to the principal amount of \$1.5

million. The purpose of this application is to request that the \$1.5 million limitation be stricken.

The terms of the encumbering document approved by D.90-12-031 provide the lender, Provident National Bank, with a first lien on all of applicant's California operating property, including after-acquired property, to secure any advances made under the loan agreement, as the same may be lawfully amended, irrespective of whether funds advanced by the lender are used to expand or improve applicant's system in California or are used for similar purposes in another state. Thus, applicant does not seek to modify the scope of property covered by those encumbering documents. Instead, applicant seeks authority to eliminate the current \$1.5 million limitation on the extent to which applicant's California operating property is actually available to secure applicant's obligations under the approved evidences of indebtedness.

The encumbering limitation imposed by D.90-12-031 was not requested in Application (A.) 90-10-041, which was the proceeding in which the decision was issued; nor did that decision specify any reason for imposing the limitation. Nevertheless, because the limitation was not expected by applicant to be problematic at the time D.90-10-041 was issued, no objection was raised to it at the time. However, following prolonged discussions with the lender, applicant is now of the opinion that the limitation is not acceptable. Indeed, the lender has indicated that it will not advance funds under the loan until the limitation is removed.

Accordingly, unless the limitation is eliminated, applicant's purposes in seeking the loan, which purposes were approved by D.90-12-031, cannot be carried out. Indeed, applicant's continued ability to meet its public utility obligations in its various service areas will be jeopardized. While the effects of financial constraints on operations outside the Commission's jurisdiction might seem to be beyond the

Commission's concern, applicant believes its success in those operations as well as in California is critical both to its overall financial well-being and to its ability to bring to its California subscribers economies and efficiencies that can only be derived through operation of several cellular systems.

In making this application, applicant observes that the encumbering limitation appears to be unique among the Commission's decisions approving encumbrances on the property of multi-state public utilities. For example, the Commission's published decisions show that the Commission has regularly approved, without such restrictions, liens on California utility property owned by CP National Corporation, Southwest Gas Corporation, Sierra Pacific Power Company, PacifiCorp, and other large and small multi-state utilities in order to secure loans issued for purposes not specifically associated with their California operations.

Applicant submits that eliminating the encumbering limitation would clearly be in both the short-term and long-term interests of the applicant and would be consistent with Commission policy.

A draft copy of the loan agreement under which applicant issued the evidences of indebtedness and encumbering documents approved by D.90-12-031 was attached as an exhibit to A.90-10-041. After that decision was issued, applicant and the lender executed a loan agreement substantially identical to that exhibit. Because the loan agreement is voluminous, applicant has not attached a copy of the executed agreement to this application, but will provide a copy upon request.

Specimens of each of the various types of encumbering documents, which are the same as and for the same purposes described in the draft loan agreement attached to A.90-10-041, are attached to this application as Exhibit B. Under the terms of the encumbering documents, all of applicant's property, including all of its existing and after-acquired California operating property,

is subject to a first lien in favor of the lender. Although the limitation adopted in D.90-12-031 is not described in the encumbering documents, the practical effect of Public Utilities (PU) Code § 851 and the severability clauses in each encumbering document is to render the encumbrances valid as to the California property only up to the limit authorized by the decision.

Until the current limitation on encumbrances is removed, the lender will not advance funds as contemplated by the loan agreement. Although applicant has been able to construct a six-cell system providing coverage throughout El Dorado County and, to date, has funded operations with equity contributions, it may not be able to continue to meet its capital requirements without funding under the loan agreement. The applicant alleges that the application clearly demonstrates that the proposed elimination of the encumbering limitation is consistent with the public interest and that there can be no valid opposition thereto. Applicant therefore requests that the Commission act on the application on an expedited, ex parte basis.

Protest by the Division of Ratepayer Advocates (DRA)

On April 20, 1992, DRA filed a protest to the application, asking that it be denied. After exchanges of correspondence and meetings between DRA and applicant, DRA's concerns regarding the applicant's request were assuaged. On May 11, 1992, DRA tendered to the Commission's Docket Office its pleading entitled Withdrawal of Protest by which it indicated that the applicant's supplemental information, which DRA attaches to its withdrawal pleading, provides the Commission with the basis to render an ex parte decision on the application. In withdrawing the protest, DRA points out that if the Commission grants applicant's request to eliminate the \$1.5 million limitation on encumbrance of California operating properties, applicant may need to pay an additional \$21,000 fee under the provisions of PU code § 1904(b). DRA's calculation of the \$21,000 fee is based on the available line of

credit of \$35 million. It also takes into account the \$2,500 fee already assessed and paid pursuant to D.90-12-031. Since applicant has reduced its line of credit from \$35 million to \$25 million, the fee owing under § 1904(b) must be recalculated as follows:

Financing Fee (PU Code § 1904(b))

<u>Amount Financed</u>	<u>Method</u>		<u>Fee</u>
\$ 0.00 to \$1,000,000	\$2 times	1,000	\$ 2,000
<u>\$1,000,001 to \$1,500,000</u>	1 times	500	<u>500</u>
Total \$1,500,000			\$ 2,500
\$ 0.00 to \$ 1,000,000	2 times	1,000	2,000
\$ 1,000,001 to \$10,000,000	1 times	9,000	9,000
<u>\$10,000,001 to \$25,000,000</u>	0.50 times	15,000	<u>7,500</u>
Total \$25,000,000			\$18,500
		Less	<u>2,500*</u>
		Fee owned	\$16,000

*D.90-12-031 assessed fee

According to the calculation above, the fee payable under PU Code § 1904(b) is \$16,000.

Findings of Fact

1. Notice of the filing of this application appeared in the Daily Calendar. DRA filed a protest, but it has since withdrawn its protest.
2. Applicant provides cellular radio telecommunications service in RSA 11 (El Dorado County) under a certificate of public convenience and necessity granted in D.90-07-061.
3. In D.90-12-031 in A.90-10-041, the Commission approved a loan agreement between applicant and Provident National Bank in the amount of \$35 million, \$1.5 million of which was allocated to the operation and expansion of applicant's California cellular service.

4. Applicant's cellular public utility assets located in California and in other states were pledged to secure its loans from Provident National Bank.

5. In D.90-12-031, the Commission authorized the applicant to issue evidences of indebtedness and to encumber its California public utility property in principal not to exceed \$1.5 million.

6. Applicant paid \$2,500, the fee required by PU Code § 1904(b) as a condition to the effectiveness of D.90-12-031.

7. The \$1.5 million limitation imposed by D.90-12-031 has become an impediment to the funding of applicant's cellular operations through its lender, Provident National Bank.

8. The elimination of the \$1.5 million limitation would not be adverse to the public interest.

Conclusions of Law

1. The request to eliminate the \$1.5 million limitation on financing and encumbering California public utility property set forth in Ordering Paragraph 1 of D.90-12-031 should be granted.

2. Applicant should be required to pay the fee established by PU Code § 1904(b). The fee should be calculated based on financing authority totaling \$25 million, and a credit should be allowed of \$2,500 to account for the fee paid pursuant to D.90-12-031.

ORDER

IT IS ORDERED that:

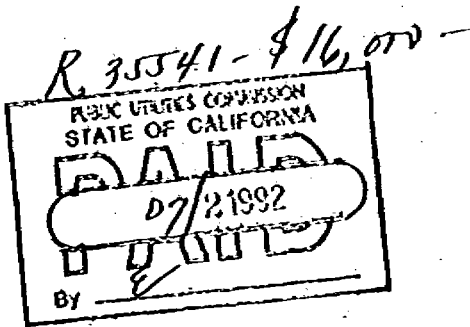
1. Atlantic Cellular Company, L.P., doing business as Mountain Cellular (applicant), is authorized to issue evidences of indebtedness and to encumber its California public utility property in principal not to exceed \$25 million and may execute and deliver encumbering documents. Such encumbering documents shall be substantially the same as and for the purposes described in Exhibit A to Application 90-10-041.

2. The authority granted in this order shall become effective on the date applicant pays the fee required by Public Utilities Code § 1904(b). The fee is in the amount of \$16,000, based on financing authority of \$25 million and a credit of \$2,500 paid pursuant to Decision 90-12-031.

3. The application is granted, as set forth above.

In all other respects, this order is effective today.

Dated July 1, 1992, at San Francisco, California.



DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director
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