

Decision 92 07 039 JUL 15 1992

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Nationwide Cellular Service, Inc.)
 (U-4049-C); and Cellular Dynamics)
 Telephone Company of Los Angeles,)
 Inc. (U-4046-C), Cellular Dynamics)
 Telephone Company of San Diego, Inc.)
 (U-4080-C), and Cellular Dynamics)
 Telephone Company of San Francisco,)
 Inc. (U-4076-C); (a) for authority)
 to sell and assign certain assets)
 of the foregoing Cellular Dynamics)
 entities to Nationwide Cellular)
 Service, Inc., pursuant to Section)
 851 of the California Public)
 Utilities Code; (b) for authority)
 for such Cellular Dynamics entities)
 to withdraw all service offerings;)
 and (c) for emergency expedited)
 approval.)

Application 92-05-008
(Filed May 1, 1992)

O P I N I O N

By this application, authorization is requested for the sale and assignment by Cellular Dynamics Telephone Company of Los Angeles, Inc. (U-4046-C) (Cellcom-LA), Cellular Dynamics Telephone Company of San Diego, Inc. (U-4080-C) (Cellcom-SD), and Cellular Dynamics Telephone Company of San Francisco, Inc. (U-4076-C) (Cellcom-SF), collectively "the Cellcom companies," to Nationwide Cellular Service, Inc. (U-4049-C) (Nationwide) of all of the Cellcom companies' customer accounts for the resale of cellular telecommunications services to customers within the State of California. The application further requests that upon completion of the foregoing sale and assignment of accounts, the Cellcom companies be authorized to withdraw their service offerings, and that their respective Certificates of Public Convenience and Necessity (CPC&Ns) be thereupon deemed canceled.

Notice of filing of the application was published in the Commission's Daily Calendar on May 15, 1992. No protests to the application have been filed though the time for such filing has expired, and no hearing is necessary.

The Parties

Nationwide is a Delaware corporation qualified to do business in California and has been certificated by this Commission as a reseller of cellular telecommunications services throughout the State of California, pursuant to Decision (D.) 87-04-060. Nationwide's principal place of business is located at 20 East Sunrise Highway, Valley Stream, New York, 11582.

Nationwide is the largest independent reseller of cellular telecommunications services in the United States with approximately 87,000 subscribers across the country, of which approximately 16,000 are in the Los Angeles and San Diego Cellular Geographical Service Area (CGSA). Nationwide is also authorized to offer service in the San Francisco CGSA, but has, to date, not commenced such service.

The Cellcom companies are each California corporations which are also certificated by this Commission as resellers of cellular telecommunications services, and each is a wholly owned subsidiary of Cellcom Corp. (Cellcom), a publicly traded Delaware corporation. Cellcom and its subsidiaries are insolvent and are in bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York (Case Nos. 92-B-42136 through 42145, Hon. Prudence Beatty Abram) pursuant to petitions filed on April 16, 1992, on behalf of the Cellcom companies and their affiliated corporations.

Cellcom-LA was certificated by this Commission pursuant to D.87-03-054 and provides reseller cellular telecommunications services within the Los Angeles CGSA.

Cellcom-SD was certificated by this Commission pursuant to D.89-11-004 and provides reseller cellular telecommunications services within the San Diego CGSA.

Cellcom-SF was certificated by this Commission pursuant to D.89-09-033 and provides reseller cellular telecommunications services within the San Francisco CGSA.

The principal place of business of the Cellcom companies is located at 15 Gardner Road, Fairfield, New Jersey 07004. Approximately 26,000 California subscribers are dependent upon the Cellcom companies for their cellular service in the Los Angeles, San Diego, and San Francisco CGSAs.

The Transaction

As of April 15, 1992, an "Asset Purchase Agreement" (Agreement) was entered into between Cellcom, the ultimate parent corporation of Cellcom-LA, Cellcom-SD, and Cellcom-SF, and Cellcom Acquisition Corp. (CAC), which is a wholly owned subsidiary of Nationwide created for the purpose of effectuating the transaction. The Agreement, which is annexed to the application herein as Exhibit A, provides, inter alia, for the purchase by CAC of all of Cellcom's and its subsidiaries' customer accounts in five jurisdictions in the United States. In addition to the California accounts which are the subject of this application, the Agreement also includes customer accounts and related assets held by Cellcom and its affiliates in New York, New Jersey, Connecticut, and Massachusetts, accounts receivable, and nominal personal property.

For business planning reasons, and to facilitate the submission of the Agreement to the United States Bankruptcy Court for approval prior to receipt of this Commission's approval, the entity executing the Agreement on behalf of Nationwide was a separate subsidiary, hence the involvement in the process of CAC. Upon receipt of this Commission's approval and prior to the completion of the transaction, all rights and obligations respecting the California assets which are the subject of this

application will be assigned to and assumed by Nationwide, which will thereafter service the accounts being acquired as it does its other accounts in California.

The total purchase price of all of the Cellcom assets being purchased by CAC is dependent upon the characterization of certain of Cellcom's liabilities. If, for the purchase price, one uses the actual consideration paid by Nationwide, including the amounts which Nationwide will be required to pay certain of Cellcom's secured lenders under liabilities assumed on a compromised basis, then the total is approximately \$34,400,000. If, on the other hand, one uses not the amount being paid by Nationwide, but rather the book value of both the assets being conveyed and the liabilities of which Cellcom is being relieved, without adjustment for any compromise reached between Cellcom's secured creditors and Nationwide, then the total price is approximately \$42,750,000. Irrespective of which accounting method is used, the amount of cash to be paid by Nationwide is, as noted below, \$2,300,000, with the balance to be the assumption by Nationwide of the liabilities of Cellcom to its secured creditors, as noted above, plus the liabilities of Cellcom-LA, Cellcom-SD, and Cellcom-SF to their cellular carriers, Cellcom's obligations to its customers respecting deposits and prepayments, and certain other specified liabilities. Of the total purchase price, and again irrespective of which valuation is accepted for determining that total, approximately \$7,800,000 is allocable to the California accounts which are the subject of this application.

On May 29, 1992, The United States Bankruptcy Court for the Southern District of New York entered an Order approving the sale of assets for which Commission consent has been requested in this application. For the record, a copy of that Order, which was entered subsequent to the filing of the application, is accepted as an amendment to the application and is admitted into the record as Exhibit E to the application. Pursuant to the terms of the Order

of the Bankruptcy Court, Section 1(c) of the Agreement is amended to indicate that in addition to assumption of Cellcom's liabilities, the purchase price to be paid by CAC [Nationwide] to Cellcom is \$2,300,000 rather than \$2,250,000 as originally expressed in the Agreement.

Discussion

According to the petitions filed in the aforementioned bankruptcy proceedings, copies of which are annexed as Exhibits B-LA, B-SD, and B-SF to the application, the dollar amount of the assets and liabilities of Cellcom-LA, Cellcom-SD, and Cellcom-SF are:

<u>Company</u>	<u>Assets</u>	<u>Liabilities</u>
Cellcom-LA	\$9,510,730	\$16,965,286
Cellcom-SD	379,476	1,067,952
Cellcom-SF	<u>732,391</u>	<u>2,572,126</u>
Total	\$10,622,597	\$20,605,364

From the foregoing figures, it is evident that none of the individual companies whose assets are sought to be acquired by Nationwide in this proceeding continues to be a viable enterprise, and that without prompt acquisition by a financially healthier entity, the assets of Cellcom-LA, Cellcom-SD, and Cellcom-SF will within a short period of time become virtually worthless.

The proposed transaction will protect Cellcom's customers from discontinuance of their cellular telephone service by transferring their accounts to Nationwide, which would then assume responsibility to provide such service on an uninterrupted basis and would honor prepayments on such customers' accounts and any long-term agreements with the Cellcom companies. Owing to Cellcom's extensive creditor obligations, only a company of Nationwide's size and financial strength could effectively assume those obligations. Nationwide's experience in the industry, and its ability to integrate Cellcom's customer base within its own operations, make the acquisition of Cellcom's customers' service

accounts by Nationwide the best available and most expedient means to protect the customers, and at the same time insure that Cellcom's facilities-based carriers would not be left with unpaid wholesale charges amounting to \$4,937,000.

From Nationwide's perspective, the transaction offers the opportunity to acquire approximately 53,000 additional customers, of which approximately 26,000 are located in California. Since Nationwide already has in place essentially all facilities, processes, and personnel necessary to service these customers, their acquisition from the Cellcom companies represents a clear opportunity to substantially expand Nationwide's own customer base principally by the assumption of long-term liabilities which are well within its ability to pay. At the same time, by taking over these accounts, Nationwide is protecting both the affected customers and the reputation of the cellular resale industry generally from the negative impact which would otherwise result from Cellcom's unfortunate financial plight.

Of the approximately 26,000 California customers, all but 869 (approximately 3%) will experience either no rate change or a rate reduction when their accounts are converted to the equivalent Nationwide tariffs. For the remaining 869, their situation is the result of highly specialized plans for which Nationwide has no equivalent. In order to protect these customers, Nationwide has agreed to adopt tariffs identical to those under which they presently subscribe, and will continue such tariffs in effect for those subscribers for as long as the applicable units remain in service.

Nationwide's Financial Condition

Nationwide's most recently available balance sheet and income statement (as of December 31, 1991--unaudited) is attached as Exhibit C to Nationwide's application herein. From these documents it appears Nationwide has the financial ability to undertake this acquisition.

From a review of the application and the supporting documentation presented, we are of the opinion that the acquisition for which this Commission's approval is sought is in the public interest and should be approved.

Findings of Fact

1. Cellcom-LA, a California corporation, was certificated by this Commission pursuant to D.87-03-054, and provides reseller cellular telecommunications services within the Los Angeles CGSA.

2. Cellcom-SD, a California corporation, was certificated by this Commission pursuant to D.89-11-004, and provides reseller cellular telecommunications services in the San Diego CGSA.

3. Cellcom-SF, a California corporation, was certificated by this Commission pursuant to D.89-09-033, and provides reseller cellular telecommunications services in the San Francisco CGSA.

4. Cellular-LA, Cellular-SD, and Cellular-SF are each wholly owned subsidiaries of Cellcom, a Delaware corporation.

5. Cellcom and its wholly owned subsidiaries, Cellcom-La, Cellcom-SD, and Cellcom-SF, are insolvent and are in bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York (Case Nos. 92-B-42136 through 42145).

6. Nationwide is a Delaware corporation authorized to do business in California, and has been certificated by this Commission as a reseller of cellular telecommunications services throughout the State of California pursuant to D.87-04-060.

7. CAC is a wholly owned subsidiary of Nationwide and was formed for the purpose of effectuating the purchase of all of Cellcom's and its subsidiaries' customer accounts in five jurisdictions in the United States, including California, and transferring the same to Nationwide.

8. As of April 15, 1992, an Agreement was entered into between Cellcom and CAC for the purchase of all of Cellcom's and its subsidiaries' customer accounts in five jurisdictions in the United States, including California.

9. Upon receipt of approval of this Commission and prior to completion of the transfer of customer accounts in accordance with the Agreement, all rights and obligations of the California assets which are the subject of this application will be assigned to and assumed by Nationwide, which will thereafter service the accounts being acquired as it does its other accounts in California.

10. With the exception of 869 customers, all of the customers acquired by Nationwide will experience either no rate change or a rate reduction when their accounts are converted to the equivalent Nationwide tariffs.

11. For the remaining 869 customers, Nationwide has no tariffs equivalent to their highly specialized plans, but Nationwide has agreed to adopt identical tariffs and to continue them for as long as the applicable units remain in service.

12. Upon transfer of the assets of Cellcom-LA, Cellcom-SD, and Cellcom-SF, the CPCNs held by those companies, and the Commission's identification number assigned each of those companies should be canceled.

13. Without approval of the transfer of assets, the customers of Cellcom-LA, Cellcom-SD, and Cellcom-SF will be adversely affected by the loss of service now provided by those companies.

14. Nationwide has the ability and financial resources to perform the services required by the acquisition.

15. Approval of the acquisition of assets would be in the public interest.

Conclusions of Law

1. Cellcom-LA, Cellcom-SD, and Cellcom-SF are insolvent and in bankruptcy under the jurisdiction of the United States Bankruptcy Court for the Southern District of New York under Case Nos. 92-B-42136 through 42145.

2. By Order entered May 29, 1992, the United States Bankruptcy Court having jurisdiction approved the sale of assets

for which Commission approval has been requested in the instant application.

3. The acquisition of the assets of Cellcom-LA, Cellcom-SD, and Cellcom-SF by Nationwide is in the public interest and should be approved.

O R D E R

1. The acquisition of the assets of Cellular Dynamics Telephone Company of Los Angeles (Cellcom-LA), Cellular Dynamics Telephone Company of San Diego, Inc. (Cellcom-SD), and Cellular Dynamics Telephone Company of San Francisco, Inc. (Cellcom-SF) by Nationwide Cellular Service, Inc. (Nationwide) as requested in the application herein is hereby approved.

2. The certificate of public convenience and necessity (CPC&N) granted to Cellcom-LA by the Commission in Decision (D.) 87-03-054 is hereby canceled.

3. Identification No. U-4046-C, assigned by the Commission to Cellcom-LA, is hereby canceled.

4. The CPC&N granted to Cellcom-SD by the Commission in D.89-11-004, is hereby canceled.

5. Identification No. U-4080-C, assigned by the Commission to Cellcom-SD, is hereby canceled.

6. The CPC&N granted to Cellcom-SF by the Commission in D.89-09-033, is hereby canceled.

7. Identification No. U-4076-C, assigned by the Commission to Cellcom-SF, is hereby canceled.

8. With the exception of the 869 accounts for which Nationwide does not have a tariff identical to those of Cellcom-LA, Cellcom-SD, and Cellcom-SF, service to all accounts acquired by Nationwide may be made under Nationwide's tariffs for like service now on file with this Commission.

9. With respect to the 869 accounts to be acquired by Nationwide for which Nationwide does not have a tariff identical to those of Cellcom-LA, Cellcom-SD, and Cellcom-SF, Nationwide may utilize Cellcom Corp.'s filed tariffs until such time as Nationwide files tariffs for such service as provided below and the same are approved by this Commission.

10. Within 90 days from the effective date of this decision and order, Nationwide shall file tariffs concerning the 869 accounts for which it does not have a tariff currently on file with this Commission.

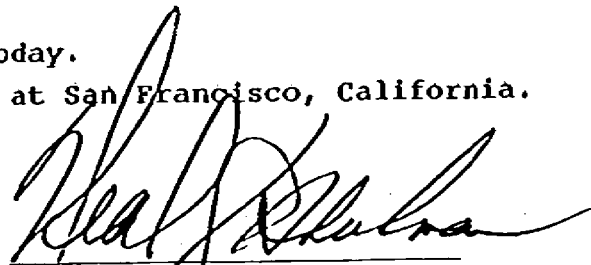
11. Nationwide shall provide notice to all affected customers, notifying them of the change in ownership. Those customers who will be charged higher rates by Nationwide shall be given a minimum of 45 days' notice prior to the date when the higher rates are implemented to allow them an opportunity to find another cellular service provider.

12. Within 10 days following completion of the acquisition of the assets herein approved, Nationwide shall advise the Commission of the date such acquisition was completed, and the name and address of the official custodian of all records and documents by which such acquisition was effectuated.

This order is issued pursuant to the authority delegated by the Commission to the Executive Director in D.86-08-057, 21 CPUC2d 549 (1986).

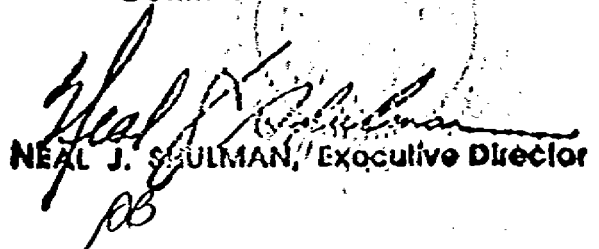
This order is effective today.

Dated JUL 15 1992, at San Francisco, California.



Neal J. Shulman
Executive Director

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



NEAL J. SHULMAN, Executive Director