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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ADVANCED MOBILE PHONE SERVICE, INC. and the LOS ANGELES SMSA LIMITED PARTNERSHIP for a certificate of public convenience and necessity under Section 1001 of the Public Utilities Code of the State of California for authority to provide a new Domestic Public Cellular Radio Telecommunications System to the public in the greater Los Angeles Metropolitan area.	Application 83-01-12 (Filed January 7, 1983)

(Appearances are listed in Appendix A.)

INTERIM OPINION

Advanced Mobile Phone Service, Inc. (AMPS or applicant), on behalf of itself and its Pacific area successors, and the Los Angeles SMSA Limited Partnership (Partnership), seeks a certificate of public convenience and necessity (CPC&N) under Public Utilities (PU) Code § 1001 for authority to provide a new domestic public cellular radio telecommunications system to the public in the greater Los Angeles Metropolitan area.

After due notice seven days of public hearing were held on this matter in Los Angeles before Administrative Law Judge (ALJ) N. R. Johnson during the period March 1, 1983 through March 22, 1983, and the matter was adjourned to a date to be set. Concurrent briefs, due April 13, 1983, were requested on whether or not this Commission should issue an interim order authorizing the construction and

installation of facilities contingent upon the appropriate disposition of environmental impact considerations but specifically withholding authorization to operate the system in service to the public pending further hearings. Such construction and related work and expense would be entirely at applicant's risk with no guarantee of the ultimate issuance of operating authority. Briefs were received from applicant, the Commission staff (staff), ICS Communications Corporation and MCI Communications Corporation (ICS/MCI), and Allied Telephone Companies Association (Allied). On May 3, 1983 ICS/MCI requested oral argument on the issues raised in this proceeding. Because the issues were developed fully in hearing and in briefs, we declined to grant this request.

Testimony was presented on behalf of AMPS by its president and chief executive officer, William M. Newport, by one of its project planning engineers, Gerald P. Baker, by its director of marketing, Susan J. Wolff, by its director of business planning, Robert C. Martin, by its director of pricing, Robert A. Steuernagel, by its vice president and chief financial officer, William E. O'Connell, and by the chief executive officer designate of the Pacific Regional Cellular Corporation (PRCC), Philip J. Quigley; on behalf of the Commission staff by one of its public utility financial examiners II, Mark Bumgardner, and by one of its senior utilities engineers, Willard A. Dodge, Jr.; on behalf of ICS/MCI by a vice president, planning and business development of MCI Airsignal, Inc., David M. Ackerman, and by the president and chief executive officer of ICS, Robert Russell Harris; and on behalf of Allied by the president of Intrastate Radio Telephone of San Francisco, Inc., Tom L. Cook.

I - BACKGROUND

With the object of amending its rules to provide for the licensing and commercial operation of cellular radio systems, the Federal Communications Commission (FCC), on January 18, 1980, released its Notice of Inquiry and Notice of Proposed Rulemaking in CC Docket No. 79-318, Cellular Communications Systems (1980) 78 FCC

2d 984 45 Fed Reg 2859. This inquiry culminated in a "Report and Order" adopted on April 9, 1981 and a "Memorandum Opinion and Order on Reconsideration" adopted on February 25, 1982, in the matter of "An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems", Docket No. 79-318. These orders designated 30 top cellular markets in the United States based upon standard metropolitan statistical areas (SMSA). In each SMSA the FCC allocated 20 MHz for local wireline telephone cellular systems and 20 MHz for one nonwireline system. All nonwireline entities are eligible to apply and compete for a license to operate a cellular system. The FCC will evaluate the competing nonwireline applications expected for each SMSA in accordance with procedures established by the above-referenced orders.

In accordance with the above orders American Telephone & Telegraph Company (AT&T), on May 5, 1980, formed AMPS as a separate wholly owned subsidiary to offer cellular service. On June 7, 1982 AMPS filed an application with the FCC for a construction permit to build a cellular system in the Los Angeles SMSA. Such a permit was issued on March 31, 1983. According to the record, AT&T will form a new company, AT&T Cellular Company, into which AMPS will be merged after FCC approves the AT&T capitalization plan. The Modified Final Judgment (MFJ) entered into between AT&T and the Department of Justice requires, among other things, the divestiture of the cellular company. In compliance with the MFJ, AT&T or AT&T Cellular Company will form seven new corporate units, one for each regional holding company. These seven regional cellular companies will jointly own an eighth corporation, the Cellular Central Staff Organization (CCS). At the time of divestiture, on January 1, 1984, the AT&T Cellular Company will be dissolved and the stock of the regional cellular

companies will be divested to the regional holding companies. The Pacific Regional Holding Company (PRHC), not yet in existence, will own 100% of the assets of the PRCC. PRCC, when it is formed, proposes to form the Los Angeles CGSA, Inc. (LACGSA).

The FCC, in the above-referenced cellular service orders, strongly urged wireline carriers eligible and desiring to provide cellular service in any SMSA to reach mutually acceptable arrangements to provide such service. Consequently, on October 26, 1982, AMPS, GTE Mobilnet, Inc. (GTE Mobilnet), Continental Mobilcom, Inc. (Continental), and United States Cellular Corporation (United States Cellular) entered into an agreement establishing the Partnership, one of the applicants in this proceeding. In accordance with the agreement, AMPS is both a general partner and a limited partner and GTE Mobilnet, Continental, and United States Cellular are limited partners. The limited partners are merely investors and have no decision-making authority. AMPS proposes that the LACGSA be the successor in interest to AMPS in the above-limited partnerships. FCC approval of the limited partnership was granted on March 31, 1983.

The instant application was filed January 7, 1983 for a CPC&N to provide cellular radiotelephone service in portions of Los Angeles, Orange, San Bernardino, and Riverside Counties.

On February 4, 1983 Cellular Mobile Systems of California, Inc. (Cellular Mobile Systems) filed a protest to granting in whole, or in part, the authority sought in this application and a request for a public hearing on the matter. In its filing Cellular Mobile Systems alleged that:

1. Granting the application prior to the time similar authority is granted to the prevailing nonwireline applicant will have serious anticompetitive impact upon the radiotelephone market, including existing radiotelephone utilities in the Los Angeles area;

2. A grant of a CPC&N to a wireline company at this time would provide it with up to two years' time to capture the market before the nonwireline companies will commence operations;

3. The lack of competition thus caused would result in unnecessarily high rates; and

4. Public interest requires that any grant be expressly conditioned upon the wireline companies' ongoing and nondiscriminatory provision to the nonwireline cellular carriers of facilities and services comparable to those provided AMPS.

On February 7, 1983 ICS/MCI filed a similar protest objecting to the granting in whole or in part of the application. This protest questions the identity and qualifications of applicant, alleges the application is blatantly defective in its failure to show the financial ability of applicant to render the proposed service, together with information regarding the manner in which applicant proposes to finance the proposed construction; notes that there is insufficient evidence to evaluate whether or not there is cross-subsidization of the proposed cellular service by The Pacific Telephone and Telegraph Company (PT&T) or PRHC; notes that both PT&T and PRCC will be wholly owned subsidiaries of PRHC and the opportunity for PT&T to continue its alleged anticompetitive practices is therefore continued into the cellular operations; and alleges that applicant should not be granted a head start over nonwireline carriers.

II - THE ISSUES

The issues to be addressed in the resolution of this matter are set forth in the record of this proceeding as follows:

1. Should the Commission issue an interim order authorizing the construction and installation of cellular facilities but specifically withholding authorization to operate the system in service to the public?

2. Corporate identity and accounting responsibility of the various involved corporations.
3. The head start issue.
4. The adequacy of applicant's capital structure and financing plan.
5. The proper level of rates and charges for the proposed service.
6. The adequacy of the services to be offered, including the resale plan.
7. Cross-subsidization.
8. Interconnection practices and facilities.
9. Provision for directory assistance and listings.
10. The reasonableness of equipment procurement practices and pricing.
11. Compliance with the provisions of the California Environmental Quality Act (CEQA).

III - PHASING THE PROCEEDING

The Staff Recommendation

The testimony of senior utilities engineer Willard A. Dodge, Jr. of the Communications Division (CD) of the staff included the following recommendation:

> "The major recommendation at this time is, then, that the commission issue an interim order authorizing the construction (and installation) of facilities, contingent upon the appropriate disposition of EI (Environmental Impact) considerations, but specifically witholding (sic) authorization to operate the system in service to the public. (It is assumed the applicant will also comply with the FCC rule regarding construction permits and licenses.) Construction and related work and expense would be entirely at the applicant's risk as no ultimate issuance of operating authority is guaranteed in advance." (Exhibit 11, pp. 6-7.)

According to the record, there appears to be a prospective need for cellular service in support of the XXIII Olympiad commencing in Los Angeles in July 1984. It is estimated that the construction and testing of the proposed cellular system will take 17 months necessitating AMPS to begin the construction of the mobile telephone switching office (MTSO) in January 1983 in order to provide cellular service in time for the games. This construction was undertaken at the sole risk of AT&T and its shareholders.

Staff witness Dodge testified that in his judgment applicant's showing at this point does not suffice for the issuance of an unconditional CPC&N but that public interest will be best served by the granting of partial authority which would be exercised at applicant's risk and would provide substantially greater assurance of meeting the service date objective.

Witness Dodge further testified that the technical feasibility of the proposed system has been demonstrated to a sufficient level of confidence, that the basic engineering has been performed to conform with the technical standards prescribed by the FCC, and that there appear to be no problems with the basic radio engineering aspects of the system. Consequently, the proven technical feasibility of the contemplated cellular facilities forms the basis for staff's recommendation that the construction at applicant's risk be authorized at this time so that cellular service can be provided on a timely basis.

According to staff, bifurcation of the proceeding is permitted by PU Code § 1005 which provides explicitly that:

> "The commission may, ...issue the certificate...or issue it for the construction of a portion only...or for the partial exercise only of the right or privilege, and may attach to the exercise of the rights granted by the certificate such terms and conditions, ...as in its judgment the public convenience and necessity require..."

Position of Applicant

Applicant supports the staff recommendation that these proceedings be divided into two phases. Applicant notes that the California Constitution, Article XII, §§ 2 and 6, and PU Code § 701 give the Commission the broad power to "do all things...which are necessary and convenient to supervise and regulate public utilities. According to applicant, these authorities empower the Commission to divide the proceedings into two phases. Applicant further notes that PU Code § 1005 provides:

> "1005. The commission may, with or without hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated street railroad line, plant, or system, or extension thereof, or for the partial exercise only of the right or privilege, and may attach to the exercise of the rights granted by the certificate such terms and conditions, including provisions for the acquisition by the public of the franchise or permit and all rights acquired thereunder and all works constructed or maintained by authority thereof, as in its judgment the public convenience and necessity require; provided, however, upon timely application for a hearing by any person entitled to be heard thereat, the commission, before issuing or refusing to issue the certificate, shall hold a hearing thereon."

Applicant has interpreted this PU Code section as a grant by the Legislature providing the Commission with a flexible power to provide for the public convenience and necessity by partially, fully, or conditionally granting a certificate limited only by the requirement that it acts "as in its judgment the public convenience and necessity require."

In further support of its position, applicant states that the circumstances of the application are unique with some aspects more properly addressed after the AT&T divestiture of assets to the PRHC on January 4, 1984. To wait until then before granting authority to commence construction and installation of cellular

facilities, however, would preclude the use of these facilities during the Olympic games. Consequently, according to applicant, an interim and immediate order permitting construction and installation of the cellular facility is in the public interest.

Position of ICS/MCI

In support of its position that the request for interim authority to commence construction of applicant's proposed Los Angeles cellular system and the recommendation to bifurcate the proceeding must be denied, ICS/MCI argues that:

1. Applicant's request to be permitted to provide cellular service in time for the Olympic games is invalid because it has not developed plans for meeting such needs, and its marketing studies for cellular service focused only on the needs for vehicular service as opposed to portable service when the Olympic games' need relates to portable service;
2. PU Code § 1001 prohibits construction prior to receipt of a CPC&N and such a CPC&N cannot be issued without a complete evaluation of the Commission's adopted standards for applications proposing to implement new radio communication services;
3. The merits of the proposal cannot be measured by a lesser standard than is applied in other application proceedings;
4. There is no legal justification for granting interim authority prior to issuance of a certificate particularly when, as in this case, the application is deficient and inadequate in material respects. Such inadequacies include lack of interconnection arrangements, lack of meaningful controls or safeguards to prevent the possible cross-subsidization of the competitive cellular service by the monopoly exchange operations of PT&T, and the inadequacy of the proposed resale plan permitting the wireline cellular operators a head start over the nonwireline operators. Furthermore, according to

ICS/MCI, it would be improper to permit the investment of millions of dollars where there are serious questions about the sufficiency of the plans and proposals for implementing the new service; and

5. ICS/MCI has been selected by the Olympic Committee to provide it with cellular service: ICS/MCI would be designated the "official supplier" of such services and its system will be operational by July 1984 if all regulatory approvals are obtained in time.

Position of Allied

Allied opposes the bifurcation of the proceedings and argues that:

1. PU Code § 1001 provides that no construction may commence without a CPC&N and PU Code § 1006 provides that when a complaint has been filed with the Commission alleging a public utility is or is about to be engaged in construction work without a CPC&N, the Commission may issue a cease and desist order from such construction.

2. No CPC&N may issue without a finding of financial feasibility and there are serious, unresolved financial questions raised by this application.

3. Bifurcation of the proceedings would have anticompetitive effects by providing applicant with a head start over nonwireline operators.

Discussion

Under PU Code § 1005 this Commission may attach to the exercise of the rights granted by the certificate such terms and conditions as in its judgment the public convenience and necessity require. It is axiomatic that the limitations to the exercise of the rights of the certificate can include withholding authorization to operate the system in service to the public. The withholding of the

right to operate the system in service to the public with no guarantee that such an operating right will ever be granted will place AMPS on notice that it may proceed with the construction and installation of the cellular system, but it would do so at its own risk. A grant of such a limited certificate would be somewhat analogous to an FCC proceeding whereby a permit to construct is first issued and subsequently followed by a license to operate. As previously stated, the FCC has already granted AMPS a permit to construct the proposed wireline cellular system for the Los Angeles SMSA.

The undisputed evidence of record indicates that there is a need for cellular service in the Los Angeles SMSA. The general need for cellular service was recognized by the FCC as a basic finding in its cellular proceedings. Furthermore, the need for cellular service for use during the Olympic games has been established in this record. To permit construction of the contemplated cellular facilities in time for use during the Olympic games necessitated the construction by AMPS of certain facilities in January 1983. Such construction was commenced with the knowledge of this Commission but without assurances that Commission approval would be forthcoming. In order not to foreclose meeting the time schedule imposed by the Olympic games, the order that follows will authorize the construction and installation of the proposed cellular facilities but will withhold authority to operate the facilities in public service with no assurance or guarantee that the operating authority will be forthcoming. Applicant proceeds at its own risk under the partial authority granted.

We recognize ICS/MCI's claim to its selection by the Olympic Committee to provide it with cellular service as its "Official Supplier of Cellular Telephone Services to the 1984 Summer Olympic Games". Such designation is, however, contingent on ICS/MCI

being both operational in time for the games and being used by the Los Angeles Organizing Committee. There is no evidence that both these conditions can and will be met. Consequently, in our opinion, the possibility that ICS/MCI will be so designated is not sufficient reason to withhold authority for AMPS to proceed at its risk to construct and install the contemplated cellular facilities. In any event it is noted that even should someone other than AMPS provide cellular service to the Olympic games, the demand for the proposed service in the Los Angeles SMSA is so great that the facilities will be fully used.

As subsequently discussed, the record at this point contains many deficiencies and shortcomings. Consequently, we are unable at this time to issue an unconditional CPC&N. To adequately protect the public, including competing cellular mobile telephone companies, and yet permit applicant to proceed with the project at its own risk should it so desire, we will grant a limited CPC&N to proceed with the construction and installation of the contemplated cellular facilities but will withhold the right to operate the facilities in public service with no guarantee that such a restriction will be removed at a future date.

IV. CORPORATE IDENTITY AND ACCOUNTING RESPONSIBILITY

General

The record in this proceeding to date is extremely clouded with respect to the relationship of the LACGSA to the PRCC, to the PREC, to the CCS, to AMPS, and to the operation of the proposed Los Angeles SMSA cellular system.

Exhibit G

Exhibit G to the application is a copy of the agreement establishing the Partnership. This agreement provides that the purpose of the Partnership shall be to fund, establish, and provide

cellular service within the cellular geographic service area which is generally contained within the boundaries of the Los Angeles SMSA.

The initial capital contributions provide for the following partnership interests:

1. 40% for AMPS as the General Partner.
2. 25% for AMPS as a Limited Partner.
3. 20% for GTE Mobilnet as a Limited Partner.
4. 10% for Continental as a Limited Partner.
5. 5% for United States Cellular as a Limited Partner.

The General Partner on behalf of the Partnership shall be responsible for obtaining interconnection with the landline network, for operating and maintaining the cellular service system, and for marketing cellular service. The General Partner shall provide management and accounting services to the Partnership; shall perform all activities and/or functions it deems necessary or appropriate to market, sell, establish, operate, maintain, and manage the cellular system; shall, on behalf of the Partnership, cause to be transferred to Partnership's name, all licenses, permits, or other regulatory approvals to provide cellular service; shall apply for all other local, state, or federal licenses, permits, certificates of convenience, franchises, or other approvals or authorities necessary to provide cellular service; and can negotiate to obtain the right to use hardware and software technology associated with cellular service.

The agreement also provides that the Limited Partners consent to an assignment or other transfer by the General Partner upon approval by the FCC of the plan of capitalization of certain affiliates of the General Partner for the provision of cellular radio service currently pending before the FCC, or as amended, of its General Partner's interest to an affiliate of the General Partner

which shall thereupon acquire all rights and obligations of, and shall in all ways be deemed to be, the General Partner. There is evidence in the record, as subsequently discussed, that both PRCC and LACGSA will replace AMPS as the General Partner in the Partnership. Obviously this is a matter that requires clarification.

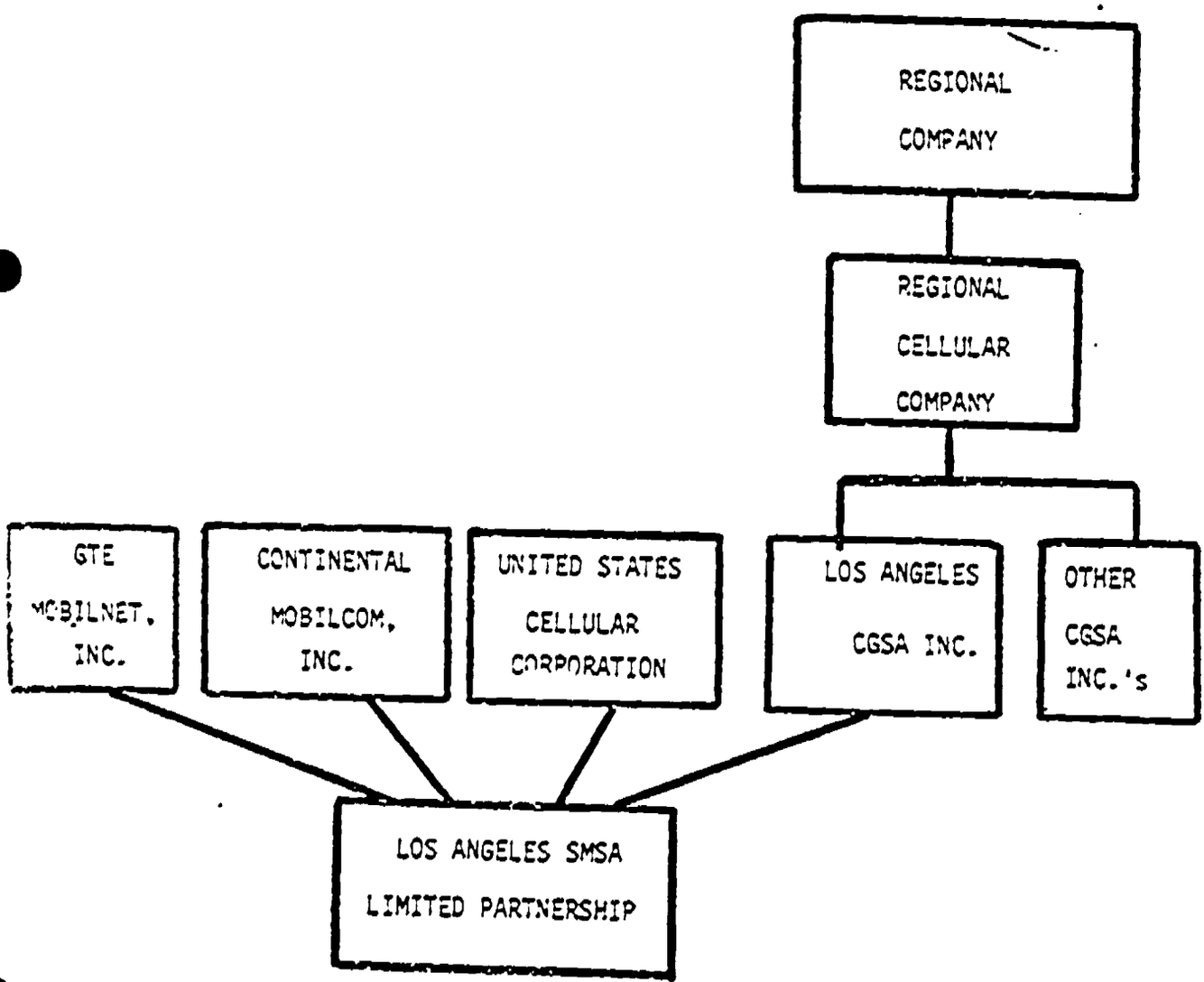
Exhibit H

Exhibit H to the application sets forth the proposed post-divestiture Pacific Area Regional Cellular Organization as shown on the following page. In accordance with this exhibit, the LACGSA will replace AMPS as a General and Limited Partner in the Partnership.

EXHIBIT H

PROPOSED POST DIVESTITURE PACIFIC AREA

REGIONAL CELLULAR ORGANIZATION



Testimony of William N. Newport

Newport was, at the time of his testimony in this proceeding, the president and chief executive officer of AMPS. According to his testimony, AMPS' Pacific region successor will be PRCC which will replace AMPS as the General Partner in the Partnership and will have complete authority to make all decisions relating to the planning, construction, operation, marketing, and maintenance of the Los Angeles cellular system.

This witness also testified that AMPS will be merged into the AT&T Cellular Company, a wholly owned subsidiary of AT&T. Subsequently, seven regional cellular service subsidiaries will be formed, each of which will correspond to the geographic territory of the new regional Bell operating companies and each of which will own a one-seventh interest in a to-be-formed central staff company. In neither his prepared testimony nor in his response to cross-examination questions did witness Newport describe or mention the LACGSA.

Testimony of William E. O'Connell

O'Connell is a vice president and chief financial officer of AMPS. He testified in contrast to Newport's testimony that the LACGSA will be formed as a wholly owned subsidiary of the PRCC and will supersede AMPS as the General Partner in the Partnership. He further testified that the CCS was a wholly owned subsidiary of the seven regional cellular corporations and has three primary functions consisting of the operation of the AMPS control center, research and engineering, and a billing function. However, witness O'Connell's testimony provided no information relating the operation of CCS with the Partnership in general and/or with LACGSA specifically.

Testimony of Philip J. Quigley

Quigley is presently a vice president and general manager of AMPS and is the designated chief executive officer of the PRCC. In his prepared testimony, he stated that the PRCC would be the

General Partner in the Partnership and would, therefore, be solely responsible for the construction, operation, marketing, and maintenance of the Los Angeles cellular system. Further, in his direct testimony, he stated that the PRCC will be assigned all of those AMPS facilities, rights to technical information, and assets relating to the provision of cellular service in the Pacific region as well as access to the CCS.

However, in response to cross-examination questions, this witness testified that between the limited partnership grouping and the cellular company will be the LACGSA which will be created as an expedient as a way of allocating costs appropriately to each of the markets as well as creating a vehicle for the management of the market, i.e. in this case the Los Angeles SMSA. In further response to cross-examination questions he indicated that the LACGSA will be the General Partner in the Partnership and the Partnership will be the holder of the FCC license. However, in apparent contradiction to this statement, the following is noted:

> "Q For example, then, if there were some facet of cellular service that the Commission wished to investigate or wished to issue an order upon, is it your understanding that the Commission could call in the Pacific Regional Cellular Company itself and issue orders to that company?
>
> "A I believe that is the case. I'm not completely sure of the relationship with respect to that accountability issue that you are speaking to, but certainly as the CEO designate of the Pacific Region Cellular Company and associated with the various corporations beneath it, myself and the officers of my staff would be accountable ultimately for the operation of the markets in question." (RT 495.)

Another possible ambiguity included in this witness' testimony is his statement that the LACGSA will manage the Los Angeles cellular system, but the customer service organization of the Los Angeles SMSA will probably reside within the regional cellular company.

Position of ICS/MCI

In its brief ICS/MCI noted that the LACGSA has not yet been organized, has no officers, and its staffing plans are undefined. ICS/MCI argues that although this wholly owned subsidiary of PRCC will supposedly be responsible for managing the technical operations of the Los Angeles cellular system and handle accounting functions, applicant was unable to explain clearly the division of responsibilities between the PRCC and the LACGSA, or the functions each entity will perform. Further, ICS/MCI notes that the record clearly establishes that no plans have been formalized relating to the functions of LACGSA to either the PRCC or the CCS.

Position of Staff

The staff argues that, according to the record, the PRCC will be the general partner in the Partnership and will be solely responsible for the operation, marketing, and maintenance of the Los Angeles cellular system. Staff notes that the PRCC expects to provide or participate in the provision of cellular service in San Diego, Sacramento, San Francisco, and San Jose and that it will be assigned all of those AMPS facilities, rights to technical information, and assets relating to the provision of cellular service in the Pacific region. According to staff, witness Quigley testified that the PRCC, as the successor to AMPS, will assume the FCC license to operate the Los Angeles cellular system and would be accountable for the operation of the Los Angeles market. Staff argues that the record is quite clear that the PRCC has complete responsibility for the Los Angeles cellular service and that the limited partners are merely investors who have the opportunity to invest in the Partnership, but are not required to do so. Under these circumstances, staff takes the position that any CPC&N issued in this application should be granted to AMPS and its succcessor, the PRCC. Staff also believes that PRCC should be found to be a telephone corporation under California law and that there is no need to issue a

CPC&N to the Partnership as all that is necessary is for this Commission to approve of the PRCC forming a limited partnership for its Los Angeles cellular operations.

With respect to the relationship between the PRCC and its affiliated companies, staff takes the position that the PRCC must be a fully separated subsidiary with separate facilities, books of accounts, personnel, and all other normal business functions and that any sharing agreements between the PRCC and the local exchange operations must be on a fully compensatory basis. Staff recommends that any such sharing agreement be filed with the Commission 30 days prior to its effective date, that the PRHC be required to comply with Commission reporting requirements, and that the PRCC not be allowed to charge its losses to any other PRHC affiliate.

Discussion

It is indisputable that it is presently contemplated that AMPS will be merged into the AT&T Cellular Company which will be wholly owned by AT&T and that, further, subsequent to the merger, seven regional cellular service subsidiaries will be formed, one for each of the geographic territories of the new regional Bell operating companies. It is equally clear that each of these seven regional cellular service subsidiaries will own one-seventh of a to-be-created nationwide cellular central staff and that after divestiture each of the seven regional cellular subsidiaries will be wholly owned subsidiary of a regional holding company, as will be the surviving Bell operating companies located in each region.

These regional cellular companies will have the responsibility of providing cellular service in the region encompassed by the regional holding company. However, only one wireline company will be permitted to serve each SMSA. To eliminate the necessity of holding comparative hearings to determine which wireline carrier would serve each SMSA, AMPS negotiated agreements, as urged by the FCC, with the various wireline carriers whereby it

could become involved in the provision of cellular service to various SMSAs as a general and/or limited partner. With respect to the Los Angeles SMSA, AMPS participated in the formation of the Partnership. After divestiture the successor to AMPS in the Pacific region will be the PRCC.

The PRCC will be assigned all of the AMPS facilities, rights to technical information, and assets relating to the provision of cellular service in the Pacific region. In California PRCC expects to provide or participate in the provision of cellular service as an operating company, or as a general and/or limited partner. In those SMSAs where partnerships are involved, the partnership itself is the entity responsible for the provision of cellular service in the SMSA albeit the general partner is in complete control of the complex operations of the cellular service. Consequently, it is the entire partnership and not simply the general partner that should be certificated. In this case such a posture is consistent with the Partnership agreement provisions requiring all licenses, certificates, etc. relating to cellular service to be in the name of the Partnership. Under these circumstances, the Partnership is a telephone corporation under California law.

Having established the Partnership as the public utilities telephone corporation providing cellular service in the Los Angeles SMSA, we must now address the matter of the composition of the Partnership. As of now the Partnership consists of AMPS as a general and limited partner and GTE Mobilnet, Continental, and United States Cellular as limited partners. After divestiture, AMPS will be superseded as a general and limited partner in the Partnership by its Pacific region successor. As previously discussed, the AMPS successor in the Partnership could be either the PRCC or the LACGSA. It would appear that the LACGSA would be formed as an expedient as a way of allocating costs appropriately to each of the markets as well as creating a vehicle for the management of the local market. The

record to this point does not persuade us that either reason justifies the formation of the LACGSA. Because of the relationship of CCS to the PRCC, it will be necessary for the PRCC to allocate costs to the Los Angeles SMSA via the General Partner. It would appear that the existence of the LACGSA would necessitate additional allocations of costs that would not be required if the PRCC were the General Partner in the Partnership. Furthermore, there appears to be a distinct possibility, even probability, that were it formed, the LACGSA would duplicate some of the operations of the PRCC, thus creating unnecessary duplicative costs. Furthermore, it appears to us that a precise delineation of duties and responsibilities of the parent PRCC and the subsidiary LACGSA would be difficult if not impossible. Under these circumstances, we place AMPS and the PRCC on notice that lacking a strong and compelling showing of the necessity of the LACGSA, we will not grant a CPC&N to the Partnership with the LACGSA as the actual or prospective general and/or limited partner in the Partnership.

This Commission's General Order 65-A requires each public utility having annual gross operating revenues of $200,000 or more to file with this Commission a copy of each financial statement prepared in the normal course of business and a copy of its annual report and other financial statements issued to its stockholders. General Order 104-A requires a public utility to file with the Commission an annual report of its operations in such form and content and in such number of copies as the Commission may prescribe. The requirements of these two general orders apply to the Partnership. In addition, should the PRCC receive a CPC&N to operate a cellular system in a specific SMSA, it will be required to comply with the provisions of the above two general orders. Furthermore, the California utility subsidiaries of PRHC must also file such financial reports in compliance with these two general orders. The total of these mandatory financial filings

should provide an audit trail sufficiently comprehensive to permit the staff to detect any form of cross-subsidization that may exist.

V. OTHER ISSUES

The Head Start Issue

The FCC addressed the head start issue in its order of April 7, 1981 in CC Docket No. 79-318 as follows:

> "Because a wireline carrier is unlikely to be encumbered by a competing applicant for the same facility, a problem may arise as a result of the wireline company's ability to get an early start in constructing and operating in its market. In our view, because of the great unsatisfied existing and potential demand for cellular service, it is unlikely that many markets will be unable to support two cellular systems. We also consider it unlikely that the advantage from an early entry into the market would be sufficiently significant to outweigh the need to grant immediate relief in markets, particularly in light of the requirement that no restrictions be placed on resale and shared use of cellular services. . . . If, however, a non-wireline applicant can demonstrate that permitting an early entry into the market would not be in the public interest, we would consider a request for a brief moratorium on wireline service. We should emphasize, however, that general unsupported allegations of harm will not be sufficient to delay service to the public. (citation omitted.)" (Report and Order of April 7, 1981 in CC Docket No. 79-318, footnote 57, page 24.)

Testimony presented by AMPS' witness Newport indicated AMPS' position that this Commission should not consider delaying the issuance of a CPC&N to ensure that AMPS receives no head start over competing nonwireline carriers for the following reasons:

1. The FCC is monitoring the issue as above-described and to litigate this issue here would be a needless waste of private and public resources;

2. A delay of the cellular service would deprive the public of a service in one of the most congested mobile radio markets in the country;

3. Adopting a policy against head starts would eliminate any incentive for wireline and nonwireline carriers to settle differences and thereby avoid time-consuming hearings; and

4. The competitive advantages AMPS would receive by early entry are slight or nonexistent because of the huge size of the potential market and the opportunity for the nonwireline carriers to act as resellers and thereby capture a portion of the market.

ICS/MCI's witnesses Harris and Ackerman presented testimony indicating that a delay in entering the marketplace could place the nonwireline carriers at a permanent disadvantage. In response to AMPS' allegation that any disadvantages to the nonwireline companies could be mitigated by their acting as resellers, both ICS/MCI and Allied's witnesses testified that the resale plan proposed by applicant does not constitute a viable business opportunity because of the wholly inadequate net revenue, before overhead marketing, salary, and sale commission expenses, that would be realized under the rates proposed by applicant.

Staff's position on the head start issue is that the position of ICS/MCI was considered and rejected by the FCC and should not be allowed for reconsideration in this proceeding. Further, according to staff, there is no evidence in the record to support the proposition that a nonwireline applicant could not compete in the Los Angeles cellular market because it began service some months subsequent to the wireline applicant.

The FCC has found that the Los Angeles SMSA market is sufficiently large to adequately support two cellular systems. To minimize any possible adverse effect of such a head start on a nonwireline cellular operator we will process expeditiously the

pending applications of nonwireline carriers to compete in the Los Angeles SMSA market. Further, we intend to ensure the availability to such operators of a resale plan that does constitute a viable business opportunity and thereby permit the nonwireline carrier to enter the marketplace as a bona fide competitor. Finally, we will address the head start issue as it relates to operating authority when we consider the application for such authority.

Capital Structure and Financing Plan

Testimony intended to demonstrate to this Commission that the Partnership will be a financially sound and viable entity capable of serving the public need for cellular service was presented by AMPS' vice president and chief financial officer, William E. O'Connell. His testimony indicated that AMPS receives all of its funding from its parent company, AT&T, through quarterly equity contributions and periodic advances. Initially, funds needed for construction will be obtained by AMPS from AT&T. Subsequent to the approval of the Partnership agreement on March 31, 1983, the initial capital contribution will be made to Partnership by the limited and general partners. Any additional equipment required will be provided by the partners in accordance with the Partnership agreement.

This witness further testified that the PRCC will be created as a wholly owned subsidiary of AMPS' successor prior to the divestiture, and the LACGSA will also be formed as a wholly owned subsidiary of PRCC. During 1983 AT&T will fund AMPS which will provide the capital required by PRCC which will, in turn, fund the LACGSA. After the divestiture, capital contributions will be made by the Limited Partners and the LACGSA in accordance with the Partnership agreement. Funding for the LACGSA will be obtained from the PRCC which will obtain its equity capital from the PRHC.

According to the record, neither Newport, chief executive officer of AMPS, nor Quigley, designated chief executive officer of PRCC, knew the source of PRHC's funds to be used for the PRCC. As staff notes in its brief, the only evidence of record on funding for

PRCC is a letter to the FCC from D. E. Guinn, designated chief executive officer of PRHC, indicating that: "Barring any unforeseen changes, it's the intent of the Pacific RHC, after divestiture, to fund and support this project and aggressively pursue the cellular service business." According to staff witness Bumgardner, AMPS' application and prepared testimony were silent on where PRHC would get the funds to finance its operation and construction; it is uncertain what the additional cost requirements will be for AMPS' participation in the provision for cellular service in other areas in California; and the Limited Partnership agreement does not require any money to be invested into the venture by partners; there is no support for the estimates of construction and plant, revenues, expenses, and number of customers; and some numbers provided staff were used for planning purposes but do not reflect the actual position which AMPS is pursuing. For the above reasons staff accountants were unable to determine the financial viability of the Los Angeles cellular project. In addition, according to this witness' testimony, staff accountants are concerned with the potential adverse financial consequences of the PRCC's operations on PT&T's local operations once AMPS is divested, including the potential cash drain on PT&T, PT&T's financial effect should the project prove to be not viable, and PT&T's capital requirement if AMPS requires greater than anticipated capital. Because of the above-described deficiencies in the record, staff is of the opinion that prior to obtaining authority to operate a cellular service, the PRCC or PRHC must present specific evidence of the capitalization of the PRCC to this Commission. We agree.

Rates and Charges

Included as a portion of Exhibit L to the application and as an attachment to the prepared testimony of witness R. A. Steuernagel were the proposed rates and charges shown on the following page.

Proposed Rates and Charges
Rate Structure for Los Angeles

Plan 1:

Service Establishment Charge		$40.00
Monthly Access Charge		
Access number, each		$45.00
Air Time Usage Rates		
	Peak (Weekdays 7 a.m.-7 p.m.)	Off-Peak
Per minute, each	$ .35	$ .21

Plan 2:

Monthly Access Charge		
	100 - 1000	Over 1000
Access number, each	$ 38.25	$ 36.00
Air Time Usage Rates		
Peak (Weekdays 7 a.m.-7 p.m.)		
	(000) 10 - 200	(000) Over 200
Per thousand minutes, each	$343.00	$339.50
Off-Peak		
	(000) 1 - 20	(000) Over 20
Per thousand minutes, each	$205.80	$203.70

According to the testimony of this witness, the rates were designed with the objective of developing a price structure that gives the customer as much flexibility in using the service and control over his ultimate charges as possible while ensuring that applicant would meet its financial objectives of being a viable business and a successful competitor. Under cross-examination by staff counsel, this witness further testified that he would not characterize the above-proposed rates as a proposed tariff because it does not contain all the terms and conditions which would go into a tariff and that the rates and charges themselves were not a firm proposal. Obviously, before a final CPC&N can issue, a definitive proposed tariff must be presented for our consideration, evaluation, and possible modification. According to the record, a service cost study on a proposed tariff has commenced but no firm completion date has been indicated.

Applicant also stated that the unusual circumstances surrounding the origination and installation of a cellular system necessitate an innovative approach to rates and charges and require tariff flexibility in order to meet the needs of the proffered service. It is essential that the details of the desired innovative and flexible tariff be clearly and unequivocally set forth on the record before we will be able to reach a final decision. Additionally, before final certification, an evaluation of the effect of the proposed cellular rates on PT&T's Improved Mobile Telephone Service (IMTS) investments and on the investments of the competing radiotelephone utilities in the Los Angeles SMSA should be submitted into evidence.

The Resale Plan

The concept of using resellers to market cellular service was ordered by the FCC in its cellular docket in order to foster

competition and alleviate concerns over the head start issue. According to AMPS' witness R. C. Martin, the advantages associated with the resale plan include:

1. Increased competition with variable pricing plans and service packages;
2. Unconstrained market entry and exit;
3. A means for nonwireline carriers to establish a market presence in cellular service prior to constructing a competing cellular network; and
4. Satisfaction of the FCC's cellular order requiring no restriction on resale of service.

This witness further testified that, in his opinion, the proffered resale plan is a financially viable program for both the reseller and AMPS.

Both ICS/MCI and Allied presented testimony indicating that the proposed resale plan does not constitute a viable business opportunity. The testimony of ICS/MCI's witness Harris demonstrated that without inclusion of such basic expense as overhead, salaries, marketing, and sales commissions, the net revenues to a reseller are too low to justify operations as a reseller. Allied's witness Cook presented testimony indicating that the average reseller could expect net revenues of between 5.25% and 6.1% of total revenues. He further testified that when cost responsibility for bad debts and billing and marketing expenses are subtracted from the above net revenues, the reseller cannot hope to make a profit.

The staff finds the testimony of witnesses Harris and Cook to be persuasive and notes that a viable resale program is a requirement of the FCC's orders authorizing cellular service and that the proposed resale program does not meet this requirement. Consequently, staff takes the position that applicant should be

required to submit to this Commission a new resale proposal which offers a more realistic competitive business opportunity prior to the final certification of the project. Staff's position is well-taken and will be adopted.

Cross-Subsidization

Staff notes that according to the testimony of AMPS' chief financial officer, witness O'Connell, the only access to the equity markets by the PRCC will be at the regional holding company level. The principal operation of the PREC, however, will be the local exchange telephone service to be provided by PT&T. Staff witness Bumgardner testified that he was concerned with ensuring that the PRCC not have a financial effect on PT&T. According to this witness's testimony, there should be no potential for cross-subsidization of the PRCC from PT&T either directly or indirectly through an unjustified pricing of services or sharing of facilities, personnel, or equipment. This witness further testified that the only means of avoiding the financial problems of concern to the staff is to require the PRCC to be a separate entity and to require the PREC to comply with Commission financial requirements, which basically is the filing of a consolidated financial statement in accordance with Commission General Orders 65 and 104.

ICS/MCI also addressed the potential for cross-subsidization of the new cellular service with revenues generated from PT&T's ratepayers. ICS/MCI notes that in an attempt to deny that PREC might continue to fund any operating deficits of the Los Angeles cellular system, witness O'Connell stated that because of the PREC's fiduciary responsibility to the shareholders, PREC would not continue to invest money where there was not a reasonable prospect for an adequate return. However, according to the testimony of witnesses Harris and Cook, this was precisely the manner in which PT&T managed the funding of its mobile telephone services in the State of California.

It is obvious from the record to date that cross-subsidization is potentially possible and that this Commission must positively ensure against its occurrence to the detriment of PT&T in its final decision in this matter.

Interconnections

The proposed cellular system will interconnect with the public switched telecommunications network (network) via interconnecting facilities called central office connecting circuits. The connections between the MTSO and the cell sites are via four-wire voice grade channels, called radio landlines, provided by the telephone company. One such radio landline is required for each cell site channel. In addition, two full duplex voice grade data channels are required between the MTSO and each cell site to carry cell site status and control information. The Los Angeles cellular system will be interconnected with the network via six electronic switching offices located at Sherman Oaks, South Pasadena, Los Angeles-Madison, Los Angeles-Plymouth, Riverside-Arlington, and Orange. The interconnection facilities to these offices will be leased from PT&T. It is contemplated that such facilities will be furnished under an intercarrier arrangement at rates which include an element referenced to tariffs for similar facilities plus an element for special requirements.

Staff notes that the implementation of the interconnection of the cellular system with the network affects several critical elements, including cost, quality of service, reliability of the system, availability of service features, and access to toll carriers. According to staff, the information provided in the instant application is sufficient to indicate the feasibility of the proposed interconnection method, but is lacking in necessary details with respect to the interconnection agreement and the associated costs and cost justification. Under these circumstances it is the

staff position that a detailed showing on the interconnection arrangements is necessary before a CPC&N issues. Staff believes such a showing should include: evidence of complete costs of obtaining facilities from the wireline companies, with cost justification; an explanation as to why any cost is not a tariff offering; a complete description of the facilities in terms of type, technical characteristics, and routing; and participation before the Commission by a representative of PT&T.

The witness for ICS/MCI expressed great concern that the interconnection standards which were prepared by AT&T, and which are being finalized through private negotiations of AMPS and PT&T, not serve as the model which a nonwireline carrier will be forced to accept in establishing its own cellular system. ICS/MCI's witness Harris testified that a nonwireline cellular system operator should be able to interconnect its cellular system in the most technically and economically efficient manner. He further testified that the ability of a nonwireline carrier to obtain the arrangements it requires will directly impact its ability to offer a truly competitive cellular service. ICS/MCI notes that applicant intends to interconnect its cellular system to a Class 5 office even though the No. 1A-ESS switch is currently employed as a Class 5 central office. ICS/MCI's witness Ackerman testified that cellular systems can be connected as Class 5 end offices and that such a method of connection might be technically and economically superior to the method proposed by applicant.

It is obvious that the record to the proceeding is, at this point, very deficient in information with respect to proposed interconnection arrangements and costs. At the further hearings on this matter, we will expect applicant to provide the extensive showing envisioned by staff as well as address the subject of the connection of the MTSO as or to a Class 5 office.

Directory Assistance

According to the record, AMPS has made no determination as to whether directory assistance or listings would be available to mobile radiotelephone subscribers. Staff is of the view that cellular subscribers should have access to the same operator services and directory listings as the customers of the local exchange company. According to staff, absent some concrete justification, the lack of such services would be discriminatory and unacceptable. Consequently, it believes that applicant should be required to present a plan, concurred in by the local exchange company, to provide directory assistance and directory listings to all cellular mobile radiotelephone subscribers. We agree and will expect applicant to present such a showing at the further hearings on this matter.

Equipment Procurement

The equipment to be used for the proposed Los Angeles cellular system is to be supplied by Western Electric. According to the staff, it is essential that any uncertainties concerning the price or terms of purchase of the equipment be explained before operating authority is granted to applicant. According to the record, AMPS had not sought out nor performed any evaluations of systems of other manufacturers. Further, the costs and conditions of purchase of the Western Electric equipment are still being negotiated in spite of the fact that the equipment was ordered in April 1982. Further, as noted by ICS/MCI and the staff, the prices are being negotiated with Western Electric by persons not associated with witness Quigley or the PRCC. Under these circumstances staff believes that applicant should be required to present the actual costs, terms and conditions, and timing of the cellular equipment purchases and, further, should show that the equipment procurement has been handled on an expeditious basis to best use the advantages of predivestiture funding. Staff's position is well-taken. Consequently, we shall expect applicant to include the above-

described equipment procurement showing during the ensuing hearings on this matter.

Environmental Impact

CEQA and Rule 17.1 of this Commission's Rules of Practice and Procedure require an environmental review of all developmental projects before the issue of a CPC&N. The contemplated Los Angeles cellular system, requiring the construction of an MTSO building and 24 cells, impacts upon 18 local jurisdictions. On January 7, 1983 applicant filed a motion to (a) have this Commission declare itself to be the lead agency for certain portions of the project for purposes of complying with CEQA and (b) reduce the amount of the second deposit required by Rule 17.1(j) of this Commission's Rules of Practice and Procedure to an amount that is reasonably related to the Commission's actual costs of preparing the environmental documents required for this project. On March 24, 1983 the presiding ALJ issued a ruling finding that this Commission is the proper lead agency for the project as a whole and denying the request for a reduction in the amount of the second deposit required by Rule 17.1(j).

On March 7, 1983 AMPS' environmental counsel met with the Commission's Environmental Impact Section and it was agreed that the initial study required by § 15080 of CEQA would consist of written statements to staff establishing requirements of each local jurisdiction prior to local approval of each cell in the cellular system.

The overall project is composed of a set of widely dispersed relatively small structures whose only interconnection is through radio and telephone lines. Each of the individual structures would be the sole responsibility of its local permitting agency, if they were not linked into a single system requiring a single

operating permit. Since the individual systems operate at a low power in frequency bands well separated from television and ordinary broadcasting frequencies and since good frequency control is essential to the operation of the system, no significant interference with radio or television reception is to be anticipated. The function of the system is to provide communication and it does not present any overall adverse impacts than reasonably can be considered significant. Accordingly, the only potential adverse impacts are those associated with the individual structures. Such impacts are ordinarily mitigated by the conditions set by the local permitting agencies. For this type of project it would be inappropriate for this Commission to attempt to duplicate or replace the functions of the existing local agencies or to override the conditions set by local agencies to mitigate potential adverse environmental impacts. Hence, a negative declaration can be issued if the permit conditions imposed by the local agencies for each site are incorporated as conditions of the Commission's certificate.

Written statements to the Negative Declaration were received from the local jurisdictions involved with the project. In all but a few cases the local jurisdictions specified special conditions of project approval. These requirements were summarized and included in the initial study/Mitigated Negative Declaration.

The remaining jurisdictions indicated that they were still evaluating the proposed project. Therefore, all conditions of project development and operation necessary to mitigate potential local environmental impacts had yet to be developed. However, applicant is required to obtain all necessary permits and approvals from these jurisdictions, and all associated conditions of project approval are incorporated in the Negative Declaration.

Based on staff evaluation of the project, on correspondence and discussions with each and every responsible agency on the project, and on the adoption of all local agency conditions of project approval, a finding that the project could not have a significant effect on the environment was issued in a Mitigated Negative Declaration on May 16, 1983.

This Mitigated Negative Declaration was available for public comment more than 30 days prior to the issuance of this interim decision, as is required by State EIR Guidelines § 15083(e). No protests were received.

Findings of Fact

1. In order to provide cellular service in time for use during the XXIII Olympiad commencing in Los Angeles in July 1984, it was necessary for AMPS to commence construction of the MTSO in January 1983. Such construction was undertaken at the sole risk of AT&T and its shareholders with no assurance this Commission would grant the requested CPC&N.

2. There is a significant demand for cellular mobile radiotelephone service in the Los Angeles area.

3. The FCC has determined that one competitor in each cellular service area will be a wireline company affiliate and one competitor will be a partnership of one or more nonwireline companies and/or affiliates.

4. On March 31, 1983 the FCC issued a construction permit to AMPS for the construction of a cellular system in the Los Angeles area.

5. AMPS, GTE Mobilnet, Continental, and United States Cellular entered into an agreement establishing the Los Angeles SMSA Limited Partnership. The FCC approved the partnership agreement on March 31, 1983.

6. During 1983 the funds to be required by AMPS for the construction of the Los Angeles SMSA cellular system will be provided by its parent, AT&T, through quarterly equity contributions and periodic advances.

7. After divestiture, funding required by AMPS' successor will be provided by PREC.

8. The source of monies by which PREC will fund PRCC for construction of the Los Angeles SMSA cellular system is not set forth on the record in this proceeding.

9. Because of the deficiency of information set forth in Finding 8, the PRCC or the PREC should present specific evidence of the capitalization of the PRCC to this Commission.

10. The relationship of the proposed LACGSA to the PRCC, to the PREC, to the CCS, to AMPS, and to the operation of the proposed Los Angeles SMSA cellular service system is not clearly set forth in the record of this proceeding to date.

11. The initial capital contributions provide for the following partnership interests in the Partnership:

a. 40% for AMPS as the General Partner.

b. 25% for AMPS as a Limited Partner.

c. 20% for GTE Mobilnet as a Limited Partner.

d. 10% for Continental as a Limited Partner.

e. 5% for United States Cellular as a Limited Partner.

12. The General Partner on behalf of the Partnership will be responsible for obtaining interconnection with the landline network, for operating and maintaining the cellular service system, and for marketing cellular services.

13. The General Partner will provide management and accounting services to the Partnership; will perform all activities and/or functions it deems necessary or appropriate to market, sell, establish, operate, maintain, and manage the cellular system; will, on behalf of the Partnership, cause to be transferred to Partnership's name, all licenses, permits, or other regulatory approvals to provide cellular service; will apply for all other local, state, or federal licenses, permits, certificates of convenience, franchises, or other approvals or authorities necessary to provide cellular service; and negotiate to obtain the right to use hardware and software technology associated with cellular service.

14. The Limited Partners consent to an assignment or other transfer by the General Partner upon approval by the FCC of the plan of capitalization of certain affiliates of the General Partner for the provision of cellular radio service currently pending before the FCC, or as amended, of its General Partner's interest to an affiliate of the General Partner which shall thereupon acquire all rights and obligations of, and shall in all ways be deemed to be the General Partner.

15. AMPS will be merged into the AT&T Cellular Company, a wholly owned subsidiary of AT&T.

16. After the merger, seven regional cellular companies will be formed, one for each of the geographical territorites of the new regional Bell operating companies.

17. The seven regional cellular companies will each own one-seventh of a nationwide cellular central staff.

18. The PRCC will be assigned all of the AMPS facilities, rights to technical information, and assets relating to the provision of cellular service in the Pacific region.

19. The Partnership is responsible for the provision of cellular service in the Los Angeles SMSA.

20. After divestiture the PRCC should replace AMPS as the General Partner in the Partnership.

21. Lacking a strong and compelling showing to the contrary, LACGSA should not replace the PRCC as the General Partner in the Partnership.

22. The Partnership and the California subsidiary utilities of the PRHC must file financial reports as required by General Orders 65-A and 104-A.

23.a. The combined financial filings set forth in Finding 22 should provide an audit trail sufficiently comprehensive to permit the staff to detect any form of cross-subsidization that may exist.

b. Applicant should demonstrate to the satisfaction of this Commission that neither its organization, its operations, nor its capitalization program will be detrimental to PT&T.

24. The FCC found that the Los Angeles SMSA market is sufficiently large to adequately support wireline and nonwireline cellular systems.

25. A resale plan that constitutes a viable business opportunity and thereby permits the nonwireline carrier to enter the marketplace as a bona fide competitor is necessary to mitigate any adverse effects of the early entry into the cellular marketplace of a wireline carrier in advance of a nonwireline carrier.

26. Before a final or unrestricted CPC&N can be issued on this matter, a definite proposed tariff should be presented for our consideration.

27. Included with the definite proposed tariff set forth in Finding 26 should be an evaluation of the effect of the proposed cellular rates on PT&T's IMTS investments and on the investments of the competing radiotelephone utilities in the Los Angeles SMSA.

28. Applicant should make a detailed showing on the interconnection arrangements including evidence of complete costs of obtaining facilities from the wireline companies with cost justification, an explanation as to why any cost is not a tariff offering, and a complete description of the facilities in terms of type, technical characteristics, and routing.

29. Applicant should present a plan, concurred in by the local exchange company, to provide directory assistance and directory listings to all cellular mobile radiotelephone subscribers.

30. Applicant should be required to present the actual costs, terms and conditions, and timing of the cellular equipment purchases and, further, should show the equipment procurement has been handled on an expeditious basis to best use the advantages of predivestiture funding.

31. The overall project is composed of widely dispersed relatively small structures interconnected through radio and telephone lines.

32. Each of the individual structures would be the sole responsibility of the local permitting agency were they not linked into a single system requiring a single operating permit.

33. For this type of project, it would be inappropriate for this Commission to attempt to duplicate or replace the functions of the existing local agencies or to override the conditions set by local agencies to mitigate potential adverse environmental impacts.

34. The permit conditions imposed by the local agencies for each site should be considered as mitigation measures and incorporated as conditions precedent to Commission grant of a CPC&N.

35. On May 16, 1983 a Negative Declaration finding that the project could not have a significant effect on the environment if the

mitigation measures required by local agencies for each site was issued.

36. The Negative Declaration is adopted by the Commission and its contents have been considered in making a decision on the project.

Conclusions of Law

1. PU Code § 1001 prohibits the construction of utility plant prior to the receipt from this Commission of a certificate that the present or future public convenience and necessity require, or will require, such construction.

2. PU Code § 1005 provides that this Commission may attach to the exercise of the rights granted by the certificate such terms and conditions as in its judgment the public convenience and necessity require.

3. The granting of a limited CPC&N authorizing the construction of the proposed initial cellular telecommunications system but withholding authority to operate such system to provide such service to the public is within the authority of this Commission under PU Code § 1005.

4. The Los Angeles SMSA Limited Partnership is a telephone corporation under California law.

5. A CPC&N should be issued to the Partnership rather than to the General Partner.

6. In accordance with the provisions of the CEQA this Commission is the lead agency for the Los Angeles SMSA wireline cellular project.

7. A restricted CPC&N should be issued to the Los Angeles SMSA Limited Partnership permitting it to construct and install a cellular system at its sole risk. Such a CPC&N should specifically withhold authorization to operate the system in service to the public.

8. A Notice of Determination should be filed with the Secretary of Resources.

INTERIM ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to the Los Angeles SMSA Limited Partnership to construct but not operate in public service a cellular radio telecommunications system to serve the Los Angeles Cellular Geographic Service Area consisting of a mobile telephone switching office, 24 cell sites, and appurtenant facilities.

2. The Los Angeles SMSA Limited Partnership shall not operate this system in service to the public without further authorization from this Commission. There is absolutely no guarantee that such operating authority will be forthcoming.

3. Within 60 days from the effective date of this order, applicant shall file evidence as contemplated by Findings 9, 25, 26, 27, 28, 29, and 30. Hearings will be scheduled shortly thereafter.

The Executive Director of the Commission is directed to file a Notice of Determination for the project with contents as set forth in Appendix B to the decision with the Secretary for Resources.

This order is effective today.

Dated JUN 29 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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

Joseph E. Bodovitz, Executive Director

APPENDIX A

LIST OF APPEARANCES

Applicant: Latham & Watkins, by Thomas A. May, Attorney at Law; and Roger P. Downes, Stephen R. Rosen, and Margaret deB. Brown, Attorneys at Law.

Protestants: Farrand, Malti & Cooper, by Wayne B. Cooper, Attorney at Law, for Cellular Mobile Systems of California, Inc.; and Palmer & Willoughby, by Richard B. Severy and Warren A. Palmer, Attorneys at Law, for ICS Communications and MCI Communications Corporation.

Interested Parties: Orrick, Herrington & Sutcliffe, by David R. Pigott, Attorney at Law, for GTE Mobilnet, Inc.; McCuthchen, Doyle, Brown & Enersen, by Craig McAtee, Attorney at Law, for LIN Cellular Communications Corp.; Dinkelspiel, Donovan & Reder, by David Wilson, Attorney at Law, for Allied Telephone Companies; James F. Murray and Michael C. Mount, for Los Angeles Olympic Organizing Committee; Robert B. Stephens, for Law Enforcement Communications Subcommittee for Law Enforcement Coordination; and Ted Lewis, for Law Enforcement Coordination.

Commission Staff: Randolph Deutsch, Attorney at Law, Willard A. Dodge, Jr., Teresa Burns, and Mike Galvin.

APPENDIX D

NOTICE OF DETERMINATION

TO: Secretary for Resources
1416 Ninth Street, Room 1312
Sacramento, CA 95814

FROM: California Public Utilities Commission
350 McAllister Street
San Francisco, CA 94102

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code

Project Title

Advanced Mobile Phone Service Cellular Radio Telephone Service

State Clearinghouse Number (If submitted to State Clearinghouse)

SCH # 83060901

Contact Person	Telephone Number
Teresa Burns	(415) 557-2374

Project Location

Greater Los Angeles Metropolitan Area

Project Description

Public Cellular Radio Telephone Communications System

This is to advise that the California Public Utilities Commission (Lead Agency or Responsible Agency) has approved the above described project and has made the following determinations regarding the above described project:

1. The project ☐ will ☒ will not have a significant effect on the environment

2. ☐ An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.

   ☒ A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

   The EIR or Negative Declaration and record of project approval may be examined at 350 McAllister St., San Francisco, CA

3. Mitigation measures ☒ were ☐ were not made a condition of the approval of the project.

4. A statement of Overriding Considerations ☐ was ☐ was not adopted for this project.

Date Received for Filing _____

_____
Executive Director

Date _____

installation of facilities contingent upon the appropriate disposition of environmental impact considerations but specifically withholding authorization to operate the system in service to the public pending further hearings. Such construction and related work and expense would be entirely at applicant's risk with no guarantee of the ultimate issuance of operating authority. Briefs were received from applicant, the Commission staff (staff), ICS Communications Corporation and MCI Communications Corporation (ICS/MCI), and Allied Telephone Companies Association (Allied).

Testimony was presented on behalf of AMPS by its president and chief executive officer, William M. Newport, by one of its project planning engineers, Gerald P. Baker, by its director of marketing, Susan J. Wolff, by its director of business planning, Robert C. Martin, by its director of pricing, Robert A. Steuernagel, by its vice president and chief financial officer, William E. O'Connell, and by the chief executive officer designate of the Pacific Regional Cellular Corporation (PRCC), Philip J. Quigley; on behalf of the Commission staff by one of its public utility financial examiners II, Mark Bumgardner, and by one of its senior utilities engineers, Willard A. Dodge, Jr.; on behalf of ICS/MCI by a vice president, planning and business development of MCI Airsignal, Inc., David M. Ackerman, and by the president and chief executive officer of ICS, Robert Russell Harris; and on behalf of Allied by the president of Intrastate Radio Telephone of San Francisco, Inc., Tom L. Cook.

I - BACKGROUND

With the object of amending its rules to provide for the licensing and commercial operation of cellular radio systems, the Federal Communications Commission (FCC), on January 18, 1980, released its Notice of Inquiry and Notice of Proposed Rulemaking in CC Docket No. 79-318, Cellular Communications Systems (1980) 78 FCC

ICS/MCI, it would be improper to permit the investment of millions of dollars where there are serious questions about the sufficiency of the plans and proposals for implementing the new service; and

5. ICS/MCI has been selected by the Olympic Committee to provide it with cellular service; ICS/MCI would be designated the "official supplier" of such services and its system will be operational by July 1984 if all regulatory approvals are obtained in time.

Position of Allied

Allied opposes the bifurcation of the proceedings and argues that:

1. PU Code § 1001 provides that no construction may commence without a CPC&N and PU Code § 1006 provides that when a complaint has been filed with the Commission alleging a public utility is or is about to be engaged in construction work without a CPC&N, the Commission may issue a cease and desist order from such construction.
2. No CPC&N may issue without a finding of financial feasibility and there are serious, unresolved financial questions raised by this application.
3. Bifurcation of the proceedings would have anticompetitive effects by providing applicant with a head start over nonwireline operators.

Discussion

It is quite true, as argued by both ICS/MCI and Allied, that PU Code § 1001 prohibits the construction of utility plant prior to the receipt from this Commission of a certificate that the present or future public convenience and necessity require, or will require, such construction. However, PU Code § 1005 provides that this Commission may attach to the exercise of the rights granted by the certificate such terms and conditions as in its judgment the public

convenience and necessity require. It is axiomatic that the limitations to the exercise of the rights of the certificate can include withholding authorization to operate the system in service to the public. The withholding of the right to operate the system in service to the public with no guarantee that such an operating right will ever be granted will place AMPS on notice that it may proceed with the construction and installation of the cellular system, but it would do so at its own risk. A grant of such a limited certificate would be somewhat analogous to an FCC proceeding whereby a permit to construct is first issued and subsequently followed by a license to operate. As previously stated, the FCC has already granted AMPS a permit to construct the proposed wireline cellular system for the Los Angeles SMSA.

The undisputed evidence of record indicates that there is a need for cellular service in the Los Angeles SMSA. The general need for cellular service was recognized by the FCC as a basic finding in its cellular proceedings. Furthermore, the need for cellular service for use during the Olympic games has been established in this record. To permit construction of the contemplated cellular facilities in time for use during the Olympic games necessitated the construction by AMPS of certain facilities in January 1983. Such construction was commenced with the knowledge of this Commission but without assurances that Commission approval would be forthcoming. In order not to foreclose meeting the time schedule imposed by the Olympic games, the order that follows will authorize the construction and installation of the proposed cellular facilities but will withhold authority to operate the facilities in public service with no assurance or guarantee that the operating authority will be forthcoming. Applicant proceeds at its own risk under the partial authority granted.

We recognize ICS/MCI's claim to its selection by the Olympic Committee to provide it with cellular service as its "Official Supplier of Cellular Telephone Services to the 1984 Summer Olympic Games". Such designation is, however, contingent on ICS/MCI

2. A delay of the cellular service would deprive the public of a service in one of the most congested mobile radio markets in the country;

3. Adopting a policy against head starts would eliminate any incentive for wireline and nonwireline carriers to settle differences and thereby avoid time-consuming hearings; and

4. The competitive advantages AMPS would receive by early entry are slight or nonexistent because of the huge size of the potential market and the opportunity for the nonwireline carriers to act as resellers and thereby capture a portion of the market.

ICS/MCI's witnesses Harris and Ackerman presented testimony indicating that a delay in entering the marketplace could place the nonwireline carriers at a permanent disadvantage. In response to AMPS' allegation that any disadvantages to the nonwireline companies could be mitigated by their acting as resellers, both ICS/MCI and Allied's witnesses testified that the resale plan proposed by applicant does not constitute a viable business opportunity because of the wholly inadequate net revenue, before overhead marketing, salary, and sale commission expenses, that would be realized under the rates proposed by applicant.

Staff's position on the head start issue is that the position of ICS/MCI was considered and rejected by the FCC and should not be allowed for reconsideration in this proceeding. Further, according to staff, there is no evidence in the record to support the proposition that a nonwireline applicant could not compete in the Los Angeles cellular market because it began service some months subsequent to the wireline applicant.

We agree with the FCC that the Los Angeles SMSA market is sufficiently large to adequately support two cellular systems and that any advantage from an early entry into the market would not be

sufficiently significant to outweigh the need to grant immediate relief to satisfy such demands. To further minimize any possible adverse affect of such a head start on a nonwireline cellular operator, we intend to ensure the availability to such operators of a resale plan that does constitute a viable business opportunity and thereby permit the nonwireline carrier to enter the marketplace as a bona fide competitor.

Capital Structure and Financing Plan

Testimony intended to demonstrate to this Commission that the Partnership will be a financially sound and viable entity capable of serving the public need for cellular service was presented by AMPS' vice president and chief financial officer, William E. O'Connell. His testimony indicated that AMPS receives all of its funding from its parent company, AT&T, through quarterly equity contributions and periodic advances. Initially, funds needed for construction will be obtained by AMPS from AT&T. Subsequent to the approval of the Partnership agreement on March 31, 1983, the initial capital contribution will be made to Partnership by the limited and general partners. Any additional equipment required will be provided by the partners in accordance with the Partnership agreement.

This witness further testified that the PRCC will be created as a wholly owned subsidiary of AMPS' successor prior to the divestiture, and the LACGSA will also be formed as a wholly owned subsidiary of PRCC. During 1983 AT&T will fund AMPS which will provide the capital required by PRCC which will, in turn, fund the LACGSA. After the divestiture, capital contributions will be made by the Limited Partners and the LACGSA in accordance with the Partnership agreement. Funding for the LACGSA will be obtained from the PRCC which will obtain its equity capital from the PRHC.

According to the record, neither Newport, chief executive officer of AMPS, nor Quigley, designated chief executive officer of PRCC, knew the source of PREC's funds to be used for the PRCC. As staff notes in its brief, the only evidence of record on funding for

Based on staff evaluation of the project, on correspondence and discussions with each and every responsible agency on the project, and on the adoption of all local agency conditions of project approval, a finding that the project could not have a significant effect on the environment was issued in a Mitigated Negative Declaration on May 16, 1983.

This Mitigated Negative Declaration was available for public comment more than 30 days prior to the issuance of this interim decision, as is required by State EIR Guidelines § 15083(e). No protests were received.

Findings of Fact

1. In order to provide cellular service in time for use during the XXIII Olympiad commencing in Los Angeles in July 1984, it was necessary for AMPS to commence construction of the MTSO in January 1983. Such construction was undertaken at the sole risk of AT&T and its shareholders with no assurance this Commission would grant the requested CPC&N.

2. There is a significant demand for cellular mobile radiotelephone service in the Los Angeles area.

3. The FCC has determined that one competitor in each cellular service area will be a wireline company affiliate and one competitor will be one or more nonwireline companies and/or affiliates.

4. On March 31, 1983 the FCC issued a construction permit to AMPS for the construction of a cellular system in the Los Angeles area.

5. AMPS, GTE Mobilnet, Continental, and United States Cellular entered into an agreement establishing the Los Angeles SMSA Limited Partnership. The FCC approved the partnership agreement on March 31, 1983.

19. The Partnership is responsible for the provision of cellular service in the Los Angeles SMSA.

20. After divestiture the PRCC should replace AMPS as the General Partner in the Partnership.

21. Lacking a strong and compelling showing to the contrary, LACGSA should not replace the PRCC as the General Partner in the Partnership.

22. The Partnership and the California subsidiary utilities of the PRHC must file financial reports as required by General Orders 65-A and 104-A.

23. The combined financial filings set forth in Finding 22 should provide an audit trail sufficiently comprehensive to permit the staff to detect any form of cross-subsidization that may exist.

24. The Los Angeles SMSA market is sufficiently large to adequately support two cellular systems and any competitive advantage from an early entry into the market would not be sufficiently significant to outweigh the need to grant immediate relief to satisfy such demands.

25. A resale plan that constitutes a viable business opportunity and thereby permits the nonwireline carrier to enter the marketplace as a bona fide competitor is necessary to mitigate any adverse effects of the early entry into the cellular marketplace of a wireline carrier in advance of a nonwireline carrier.

26. Before a final or unrestricted CPC&N can be issued on this matter, a definite proposed tariff should be presented for our consideration.

27. Included with the definite proposed tariff set forth in Finding 26 should be an evaluation of the effect of the proposed cellular rates on PT&T's IMTS investments and on the investments of the competing radiotelephone utilities in the Los Angeles SMSA.

23a. Applicant should demonstrate to the Ke satisfaction of this Commission that pertains its organizational, its operations, nor its capitalizati program will be detrimental to PT+T.