

Decision 96-02-051 February 23, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CAL-ONE CELLULAR L.P. (U-3036-C) for a Certificate of Public Convenience and Necessity under Section 1001 of the Public Utilities Code to Provide InterLATA and IntraLATA Telecommunications Services Within the State of California as a Non-Dominant Interexchange Carrier.

ORIGINAL

OPINION

Cal-One Cellular L.P. (applicant), a California limited partnership, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code's 1001 to permit it to resell interLocal Access and Transport Area (LATA) telephone services and intraLATA telephone service in California.

Applicant seeks to offer long distance services both by means of its existing cellular network and by means of facilities leased from other certificated long distance carriers.

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and later decisions, we authorized interLATA entry generally. However, we limited the authority conferred to interLATA service; and we subjected the applicants to the condition that they not hold themselves out to the public to provide intraLATA service.

Applicant's balance sheet indicates it has in excess of \$1,000,000 in cash, no long-term liabilities, and only \$400,000 in current liabilities. This indicates that applicant has more than \$100,000 consisting of cash. It satisfies our criteria for being

California is divided into ten LATAs of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

D.94-093065) We authorized competitive intralATA services effective January 1, 1995, for carriers meeting specified criteria.

The Commission has established two major criteria for determining whether a CPCN should be granted. The applicant must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent (as described in D.91-10-041, Appendix A, Paragraph 5.1 (41 CPUC2d 505 at 519)), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by local exchange companies or interexchange carriers and demonstrate that they have additional resources to cover all such deposits. Any applicant who can demonstrate that \$100,000 of cash is not needed for its first year of operation may be granted a CPCN with a lesser amount, based on the sufficiency requirements set forth in Ordering Paragraph 1.a of D.91-10-041. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. (D.90-08-032, 37 CPUC2d 130, at 147-48, 156, 158.)

As part of its application, applicant provided an unaudited balance sheet as of December 31, 1994. Applicant is already a certificated facilities-based cellular carrier, serving California Rural Service Area No. 1 (RSA 1) in Humboldt, Del Norte, Siskiyou, and Trinity counties. Its general partner is Cal-One Cellular, a California corporation (Cal-One), which is affiliated with The Siskiyou Telephone Company. Applicant's limited partners include AirTouch, Contel Cellular, Centennial Cellular, and Cal-One. Applicant's balance sheet indicates it has in excess of \$1,000,000 in cash, no long-term liabilities, and only \$483,000 in current liabilities. This indicates that applicant has more than \$100,000 consisting of cash. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs. Applicant has provided information on its key managers, indicating their education, technical training, and experience. It can be summarized as follows:

James G. Hendricks, applicant's founder, is also the president and founder of applicant's general partner. Mr. Hendricks started his career in 1965 with Motorola and became responsible for all customer service in southern Orange County. He completed extensive training courses and electrical engineering classes. In 1970, he commenced employment with The Siskiyou Telephone Company, rising steadily through the ranks until he joined its board and became its chief executive officer. During this time he also obtained an A.A. degree in business from College of the Siskiyous. In 1981 he founded Siskiyou Cablevision. In 1988, he formed applicant and developed it from a single cell site in 1990 to a comprehensive network of 19 cell sites and 21 MTSOs. He serves currently on the board of the Cellular Carriers' Association of California and the California Telephone Association, and is a former member of the board of the Cellular Telephone Industry Association.

James T. Lowers obtained a B.S. in business administration from Oregon State University (OSU) in 1981 and an M.B.A. from OSU in 1984. From 1980 to 1985, he served as controller of Socio Mutual Telephone Association. From 1985 to 1989, he was senior staff accountant for The Siskiyou Telephone Company. He is presently chief financial officer and a member of the board of applicant and vice president and a member of the board of The Siskiyou Telephone Company.

Applicant must maintain rates for its customers that are at or below regular measured time service (MTS) rates filed by AT&T of California, Inc. (AT&TC). To alleviate any possible concern regarding long distance rates for applicant's RSA customers, we will require applicant to charge applicant's RSA customers on applicant's system no more than the then prevailing comparable AT&TC rates to its interLATA resale customers. By comparable AT&TC rates, we mean that AT&TC's rates are floating and if AT&TC's rates in the future are lower than those in effect on the date of

this order, applicant cannot charge more than the then prevailing future rate.

We will authorize the interLATA and intralATA services that applicant seeks to provide Findings of Fact

1. Applicant served a copy of the application upon 298 telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on November 29, 1995.

3. No protests have been filed.

4. A hearing is not required.  
5. By prior Commission decisions, we authorized competition in providing interLATA telecommunications service but generally barred those offering such service from holding out to the public the provision of intralATA service.

6. By D.94-09-065, we authorized competitive intralATA services effective January 1, 1995, for carriers meeting specified criteria.

7. Applicant is already certificated by this Commission as a cellular radiotelephone service provider. Since applicant also wishes to resell telecommunications services statewide, it must set up separate accounting for such business, file separate tariffs for such business, and operate its resale business under a corporate identification number different from its cellular carrier corporate identification number (U-3036-C).

8. Applicant has demonstrated that it has a minimum of \$100,000 of cash, reasonably liquid and readily available to meet its start-up expenses.

9. Applicant has also represented that no deposits will be required by local exchange companies and interexchange carriers to extend its services inside California.

10. Applicant's technical experience consists of 2 employees with a combined experience of over 40 years in telecommunications.

Applicant is already operating as a facilities-based certificated cellular carrier in RSA 111.

11. Applicant has submitted, with its application, a complete draft of applicant's initial tariff which complies with the requirements established by the Commission, including prohibitions on unreasonable deposit requirements. Applicant's tariff states that it will not initially require deposits, but that it may in the future require a deposit in the future based upon the terms and conditions of its Cellular Radio Telecommunications Service Tariff. Should applicant require deposits, prior thereto it must file replacement pages for its tariff in which it states fully the terms and conditions of deposits which must comply with our decisions on reasonable deposit requirements and payment of interest.

12. Applicant charge rates no higher than those charged by AT&TC. To alleviate any possible concerns regarding long distance rates for applicant's cellular customers, it is appropriate to require that applicant's rates for its RSA 1 customers on applicant's system be no higher than those rates being charged at the time by AT&TC, as these rates may fluctuate up or down in the future, for its interLATA service.

13. Applicant has represented that no one associated with or employed by applicant was previously associated with an NDIEC that filed for bankruptcy or went out of business.

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

15. The Commission has routinely granted NDIECs, such as applicant, an exemption from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area.

16. Exemption from the provisions of PU Code SS 816-830 has been granted to other resellers. (See, e.g., D.86-10-007 and D.88-12-076.)

**Conclusions of Law**

1. Applicant has the financial ability to provide the proposed services.

2. Applicant has made a reasonable showing of technical expertise in telecommunications.

3. Public convenience and necessity requires that interLATA and intraLATA services to be offered by applicant.

4. Applicant is subject to the following conditions:  
a. The current 3.2% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (PU Code § 879, Resolution T-15799);

b. The current 0.36% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (PU Code § 12881, Resolution T-15801);

c. The user fee provided in PU Code §§ 431, 435, which is 0.1% of gross intrastate revenue for the 1995-96 fiscal year (Resolution M-4778); and,

d. The current 0.27% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund (PU Code § 739.30, Resolution T-15826).

5. Applicant should be exempted from Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area.

6. The application should be granted to the extent set forth below.

7. Because of the public interest in competitive interLATA and intraLATA services, the following order should be effective immediately.

ORDER

1. A certificate of public convenience and necessity is granted to CalOne Cellular L.P. (applicant) to operate as a reseller of the InterLocal Access and Transport Area (LATA) and, to the extent authorized by Decision (D.) 94-09-065, intraLATA telecommunication services offered by communication common carriers in California.
2. Applicant shall file a written acceptance of the certificate granted in this proceeding.
3. a. Applicant is authorized to file with this Commission tariff schedules for the provision of interLATA and intraLATA service. Such tariffs will be filed separately from its cellular service tariffs, and shall contain measured time service (MTS) rates applicable to applicant's RSA 1 customers on applicant's system which are no higher than the rates then being charged by AT&T-Communications of California, Inc. (AT&TC) for similar services, as these rates may fluctuate up or down in the future. Therefore, AT&TC's rates shall be a floating cap upon applicant's rates for its RSA 1 cellular customers. Applicant may not offer interLATA and/or intraLATA service until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than 1 day after filing. Should applicant decide to require customer deposits, it must first file replacement pages for its tariff, setting forth fully the terms and conditions thereof, which must comply with the Commission's requirements on reasonable deposits and the payment of interest thereon.
- b. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032, as modified by D.91-12-013 and D.92-06-034.

"5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

"a. Inclusion of PCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.

"b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.

"c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of pending increased rates.

"d. Uniform minor rate increases, as defined in D.90-11-029 for existing services shall become effective on not less than 5 working days' notice. Customer notification is not required for such minor rate increases.

"e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.

"f. Advice letter filings merely revising the text or location of text material which does not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice.

Applicant may deviate from the following provisions of (a) paragraph II.C: (i) (b), which requires consecutive



sheet numbering and prohibits the reuse of sheet numbers) and (b) paragraph II(C)(4) which requires that a separate sheet or a series of sheets should be used for each rule. Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division (ACD) of the Telecommunications Branch. Tariff filings shall reflect all fees and surcharges to which applicant is subject as reflected in the Conclusion of Law 4.

5. Applicant shall file as part of its initial tariff after the effective date of this order and consistent with Order No. 88-38 Paragraph 3; a service area map of the service area.

6. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within 15 days after service begins and again within 5 days of when intralATA service begins.

7. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

8. Applicant will establish accounting methods to separate its interLATA services from its cellular services.

9. Applicant shall file an annual report in compliance with GO 104-A, on a calendar year basis using the information request form developed by the ACD Auditing and Compliance Branch and contained in Attachment A.

10. This report shall be separate from the annual report filed for its cellular services.

11. Applicant shall ensure that its employees comply with the provisions of PU Code § 2889.5 regarding solicitation of customers.

12. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

13. The corporate identification number assigned to applicant is U-5581-C, which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

14. Within 60 days of the effective date of this order, the applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

15. Applicant is exempted from the provisions of PU Code §§ 816-830.

16. In response to the applicant's request for waiver, paragraph 18(b) of the Commission's Rules of Practice and Procedure to the extent that the rule requires the applicant to serve a copy of its application on the cities and counties in which it proposes to operate.

17. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, CACD shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicant has received the written permission of CACD to file or remit late.

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

19. Application 95-11-039 is closed.

This order is effective today.

Dated February 23, 1996 at San Francisco, California.

DANIEL W. FESSLER  
President  
GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH H. NEEPER  
Commissioners

A.95-11-039 ALJ/ANW/jft

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission  
Auditing and Compliance Branch, Room 3251  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

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

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).  
If incorporated, specify:
  - a. Date of filing articles of incorporation with the Secretary of State.
  - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
  - a. Regulated public utility.
  - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)