

**ORIGINAL**Decision No. 70731

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 DELTA MOBILE RADIO TELEPHONE COMPANY, )  
 a corporation, (1) for a certificate )  
 of public convenience and necessity )  
 authorizing mobile radio communications )  
 service as a public utility in the )  
 Counties of Butte, Colusa, El Dorado, )  
 Nevada, Placer, Sacramento, San Joaquin, )  
 Solano, Stanislaus, Sutter, Yolo, Yuba, )  
 and a portion of Amador, in the State )  
 of California, and (2) for authority )  
 to sell and issue shares of its common )  
 stock. }

Application No. 42456  
 (Filed July 13, 1960)  
 (Amended January 4, 1965)

Berol, Loughran & Geernaert, by Bruce R. Geernaert,  
 for applicant.  
James E. Walley; L. T. Niethammer; Ernest H. Zebal, Jr.;  
Knox La Rue, by Alan Short; protestants.  
 The Pacific Telephone and Telegraph Company, by  
James J. Walsh; Allied Telephone Companies  
Association, by Joseph A. Smiley and Lester W. Spillane;  
Sierra Communications, Inc., by Lester W. Spillane;  
 interested parties.  
Hector Anninos, John D. Quinley, Sidney J. Webb and  
Russell J. Leonard, for the Commission staff.

O P I N I O N

By this application, filed July 13, 1960 and as amended on January 4, 1965, applicant seeks a certificate of public convenience and necessity, pursuant to Section 1001 of the Public Utilities Code, for the construction of plant and the operation of mobile radio communication services as a public utility in portions of Amador, Butte, Colusa, El Dorado, Nevada, Placer, Sacramento, San Joaquin, Solano, Stanislaus, Sutter, Yolo and Yuba Counties. Applicant is a California corporation, presently without assets, which seeks authority to issue shares of stock in order to provide funds for its proposed construction.

The application herein was the first of its kind filed with this Commission. Shortly after its filing, the Commission instituted a general inquiry into the operations of the Domestic Public Land Mobile Service <sup>1/</sup> within California, which inquiry was terminated in 1965. <sup>2/</sup> The application and the investigation were heard on a consolidated record. The matter of the application was submitted before Examiner Emerson, at the conclusion of oral argument, on December 22, 1965, the twenty-third day of hearing.

Applicant has petitioned for a presiding officer's proposed report, on the grounds that the hearings have been lengthy and that numerous witnesses have testified. We find nothing unusual in such situation. Further delay in bringing this matter to a conclusion is unwarranted. The petition for a proposed report is hereby denied. The matter is ready for decision.

Applicant proposes to provide wide-area communications coverage via radio-telephone base stations, control points and message centers at seven locations, as follows:

Site No. 1	Chico
Site No. 2	Yuba City
Site No. 3	Bijou (Lake Tahoe)
Site No. 4	Sacramento
Site No. 5	Stockton
Site No. 6	Vallejo
Site No. 7	Modesto

Applicant proposes to use the 450 mc band; to supply <sup>3/</sup> multi-channel as well as single-channel mobile units, thus making possible a continuing communications service from about 20 miles

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<sup>1/</sup> Once commonly known as Miscellaneous Common Carriers, later known as Radio Common Carriers (RCC) but today usually called Radio Telephone Utilities or RTU's.

<sup>2/</sup> Case No. 6945, instituted September 1, 1960; terminated by Decision No. 68951, issued April 27, 1965.

<sup>3/</sup> The evidence indicates that there are four channels in the 454 mc portion of the spectrum which are available for assignment and can be so assigned by the FCC without causing or receiving interference with other stations.

north of Chico to about 20 miles south of Modesto and for some 20 miles to the east and west of this general line, as well as from Vallejo to Lake Tahoe; and to provide three types of service, viz.: domestic public land mobile telephone service (Schedule L-1), one-way signaling radio service (Schedule L-2) and private mobile radio systems on a lease-maintenance basis <sup>4/</sup>(Schedule L-3). No other RTU now offers such a combination of integrated services to the general public in the areas which applicant proposes to serve.

Applicant demonstrated public need for its proposed service through the testimony of 20 witnesses, some of whom had been subscribers to service from The Pacific Telephone and Telegraph Company prior to withdrawal of lease-maintenance service by that company. Four witnesses indicated a preference for Schedule L-1 service, where the utility operates on radio channels licensed to it. Nine witnesses preferred private mobile Schedule L-3 service, where the radio channels would be licensed to them and the equipment would be obtained from the utility under a lease-maintenance agreement. Seven witnesses were interested in either or both of such schedules. These prospective users of applicant's service constitute what may be fairly termed a representative cross-section of the types of users who might normally be expected to use mobile radio communications. Each would use a number of radio units.

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<sup>4/</sup> The so-called "lease-maintenance" service, in some respects, may be likened to the "private line" service of land-line telephone utilities.

Applicant's proposed rates for Schedule L-1 service are basically as follows:

Installation	\$35.00
Removal	10.00
Monthly Charges:	
Single-channel unit	25.50
Two-channel unit	27.00
Three-channel unit	30.00
Four-channel unit	33.00
Message Service:	
Monthly minimum (45 calls per month per unit)	18.00
For each call over minimum	.20

Because of the present-day unavailability of suitable receivers for one-way signaling service in the 450 mc region, applicant has proposed no tariff schedule for such a service. It may file a tariff later, under the Commission's "advice letter" procedures.

Applicant's proposed rates for Schedule L-3 service consist of charges for land and mobile station equipment in numerous combinations. For mobile equipment leased to the subscriber and maintained at a location away from applicant's maintenance centers, the lease charges are \$5 higher (in each instance) than those shown above for Schedule L-1. For leased mobile equipment maintained at applicant's centers, the charges would be identical to those under Schedule L-1. With respect to land station equipment, rental charges would range from \$32 to \$85 per month depending upon the station power desired by the subscriber. Charges for control consoles, various types of antennas, supplementary equipment and other appurtenances would be additional thereto.

Applicant intends to utilize a telephone answering service in each community served with a message center. In this way 24-hour operator service would be afforded at each location. The telephone answering service would operate under contract to applicant and its employees would be under the direct supervision of applicant's employees. Applicant's operations, initially, would be under the

direction of a general manager and two district supervisors. Installation and servicing of radio equipment would be handled on a contract basis. Business office facilities would be maintained at each message center, with record keeping, billing and accounting functions being maintained at the office of the primary financial officer of the corporation.

Applicant surveyed the proposed service area and has estimated that it will serve 345 mobile units under Schedule L-1 and that revenues from such operations will be approximately \$15,475 monthly. Its estimated operating expenses, excluding ad valorem and income taxes, total \$14,443 per month. A net revenue of \$1,032 monthly, or \$12,384 annually before taxes, is thus indicated from L-1 operations. For a typical medium-power base station with ten mobile units under Schedule L-3, applicant estimates a net revenue of about \$1,300 annually and anticipates that it will serve about 200 units under this schedule.

With respect to plant items, applicant estimates that its base station equipment, for the seven locations, will have a total cost of \$30,150. Applicant proposes to lease, from the manufacturers, all of the mobile units which it will supply to its subscribers. A cash deposit of \$10,600 is to be paid for the lease of the 345 units to be used for service under Schedule L-1. No definitive costs have been furnished for plant items to be used for Schedule L-3 operations, but applicant has estimated that an amount of \$31,250 should be held in the form of cash for working capital and for the construction and acquisition of such plant as may be necessary to provide Schedule L-3 service.

Applicant requests authority to issue and sell 90,000 shares of capital stock at their par value of \$1 each. The above-mentioned items of plant, deposit and cash, total \$72,000. Applicant proposes

that the balance of \$18,000 of stock proceeds be used to cancel indebtedness incurred in connection with corporate organization.<sup>5/</sup>

Protestants<sup>6/</sup> in this matter are James E. Walley, who operates two channels in the 150 mc band and serves portions of the Sacramento Valley around Chico and Yuba City; L. T. Niethammer who operates one channel in the 450 mc band and serves an area around Rio Vista and Fairfield; and Knox La Rue, who allegedly has a number of operations on the 150 mc band and one on the 450 mc band but who offered no testimony or other evidence as to the extent thereof.<sup>7/</sup> In essence, the contention of these protestants as well as that of Allied Telephone Companies Association, as an interested party, is that the entrance of applicant into the radiotelephone utility field might dilute their markets and should not, therefore, be permitted. The known operations of these parties, however, are of limited extent. They are in essence local operations, neither interrelated nor interconnected. They may be likened to isolated local exchange land-line telephone operations and while they may meet strictly local communications needs, they offer no wide-area, integrated service like that proposed by applicant. They provide only L-1 type service. The evidence clearly establishes that applicant, because of the integrated nature of its proposed operations, offers to provide a service different from and superior to any now available to the public and, we believe, one which will better serve the future and growing radiotelephone needs of the public.

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<sup>5/</sup> Organization expenses to December 1965 are reported to have entailed expenditures of more than \$22,600. Applicant did not amend its application to seek allowance of this larger amount, however.

<sup>6/</sup> The protest of Sierra Communications, Inc., a Nevada corporation whose base station is in the State of Nevada, was withdrawn in December 1965 (TR 2876)

<sup>7/</sup> La Rue allegedly does business under the fictitious names, among others, of Tracy Mobilphone, Stockton Mobilphone and Delta-Valley Radio Telephone Co.

The evidence fully supports the finding that public convenience and necessity require and will require the radiotelephone service which applicant seeks to provide. An appropriate certificate will be issued. Protestants' motions to dismiss the application are hereby denied.

With respect to issuance of stock, the evidence is convincing that applicant should be granted authority to issue and sell no more than \$69,000 aggregate par value of its capital stock. When capital requirements for plant related to the L-3 tariff service are known with greater certainty applicant may apply for authority to finance the same through a later stock issue. The purposes for which applicant may issue and sell stock at this time are (1) financing the estimated \$40,750 cost for plant and lease deposits related to the L-1 tariff service; (2) the provision of \$10,250 for working capital and (3) furnishing \$18,000 for organization expense. The Commission finds that the money, property or labor to be procured or paid for by the issue of such amount of stock is reasonably required for the aforesaid purposes and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The Commission concludes that the application herein should be granted to the extent set forth in the following order. Applicant is placed on notice that this Commission does not regard the shares outstanding, the total par value of the shares, the dividends paid, nor any amount of debt which may in the future be authorized, as measuring the rate of return which applicant should be allowed on its investment in plant nor indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

The certificate issued herein is subject to the following provision of law:

The Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

O R D E R

IT IS ORDERED as follows:

1. A certificate of public convenience and necessity is hereby granted to Delta Mobile Radio Telephone Company, a California corporation, to construct base station radio equipment in the communities of Modesto, Stockton, Vallejo, Sacramento, Yuba City, Chico and Lake Tahoe, California at the locations set forth in Paragraph II of its Amendment to Application and, with control points and message centers in each of said communities and at such other points as may be determined as necessary to provide adequate service to the public, to operate as a public utility in providing radio-telephone service therefrom.



2. In the exercise of the foregoing certificate, applicant shall not hold itself out as serving, nor shall it offer to serve, beyond the limits of a 37 dbu contour emanating from each of its base stations used for two-way radio communications nor beyond a 43 dbu contour from such base stations used for one-way signaling service, except upon the further authorization of this Commission.

3. Applicant is authorized to file with this Commission, on or after the effective date of this order and in conformity with the provisions of General Order No. 96-A, a complete set of tariffs (including rates, rules and maps), said tariffs setting forth in proper format the rates and charges contained within the 12 pages of Exhibit E-1 attached to the amendment to the application in this proceeding and, on not less than five days' notice to the public and to this Commission, to make said tariffs effective on the date on which public utility service thereunder is first established for public use.

4. Applicant, on or after the effective date of this order and on or before December 31, 1967, may issue and sell not to exceed 69,000 shares of its common stock at \$1 per share for the purposes stated in the foregoing opinion. Applicant shall file with this Commission a report or reports as required by General Order No. 24-B which order, insofar as applicable, is made a part of this order.

5. Applicant shall make accruals for depreciation by dividing the original cost of depreciable plant, less estimated salvage less depreciation reserve, by the estimated remaining life of the plant. Applicant shall review said accruals by accounts as of the first day of January of each year and shall report the results of said reviews to the Commission by not later than February 15th of each year, unless by further order of this Commission it may be relieved from so reporting.

6. Applicant shall so set up its records and books of account that revenues and operating expenses pertaining to each of its tariff offerings (i.e., L-1, L-2 and L-3) may readily be separately stated.

7. Applicant shall file with this Commission true copies of any authorizations it may receive from the Federal Communications Commission respecting the licensing or operating of the radio installations covered by the certificate of public convenience and necessity hereinabove issued, within fifteen days of their receipt by applicant.

8. The certificate hereinabove issued will lapse and be of no further effect unless exercised prior to December 31, 1967.

9. If the aforesaid certificate is exercised, applicant shall notify this Commission in writing of the date upon which public utility service is first rendered from each of its seven base stations, within five days thereafter.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 17<sup>th</sup> day of MAY, 1966.

Frederick B. Holbrook  
President

W. J. [unclear]

W. J. [unclear]

William L. [unclear]  
Commissioners

*I concur, except that I would not include the Yuba City-Chico area in the certificate.*  
*George P. Grover*