

ORIGINAL

Decision No. 70804

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of)
HARRY F. FISHER, doing business)
as TULARE COUNTY RADIO DISPATCH)
COMPANY, (KMA261), for authority)
to sell and transfer and for)
JACK LOPERENA to purchase and)
acquire the certificate of)
public convenience and necessity)
authorizing radio-telephone)
common carrier public utilities)
service and related property.)

Application No. 48366
Filed April 1, 1966
and Amendment
Filed May 6, 1966

O P I N I O N

This is an application for an order of the Commission authorizing Harry F. Fisher to sell and transfer his radiotelephone utility business and related assets to Jack Loperena, and authorizing the latter to execute a Deed of Trust and a Security Agreement and to issue a note in the principal amount of \$53,250.

Harry F. Fisher, doing business as Tulare County Radio Dispatch Company, operates as a public utility primarily in portions of Fresno and Tulare Counties pursuant to authority granted by Decision No. 62156, dated June 20, 1961, in Case No. 6945, and by Decision No. 67034, dated April 7, 1964, in Application No. 46228. In the present proceeding he seeks authority to sell and transfer his public utility operations and related assets to Jack Loperena for an agreed purchase price of \$75,000.

The buyer operates a radiotelephone public utility system under the name of Radio Dispatch Fresno pursuant to authority granted in said Decision No. 62156. His principal place of business is located in the City of Fresno. In acquiring the seller's utility operations and related assets, Jack Loperena proposes to pay \$21,750 cash and to issue a note in the principal amount of \$53,250 for the balance of the purchase price. Said note will be repayable in quarterly installments of \$1,401.32 each on principal, plus interest at the rate of 6% per annum on unpaid principal, and will be secured by a Deed of Trust and a Security Agreement. As of December 31, 1965, the buyer's reported net worth was \$144,571 and the amendment to the application indicates that he is prepared to resort to his personal assets for funds, if necessary.

According to information contained in the application and in the amendment, adjustments for replacement cost as well as for fair market value are included in the \$75,000 purchase price. The buyer proposes to record the transaction by allocating said purchase price between intangible and tangible property in respective sums of \$10,000 and \$65,000, with no amount assigned to operative rights. Such accounting treatment will not preclude the Commission from considering the seller's original cost in connection with any future proceedings.

Applicants indicate that the proposed transactions will result in operating economies and in improved service to present and potential customers, many of whom do business in both Tulare and Fresno Counties.

The Commission has considered this matter and finds that: (1) the proposed sale, transfer, Deed of Trust and Security Agreement will not be adverse to the public interest; (2) the money, property or labor to be procured or paid for by the issue of the note herein authorized is reasonably required for the purpose specified herein; and (3) such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income. A public hearing is not necessary.

On the basis of the foregoing findings we conclude that the application, as amended, should be granted. The action taken herein shall not be construed as a finding of the value of the properties herein authorized to be transferred nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

The authority herein granted is subject to the following provision of law:

"The commission shall have no power to authorize the capitalization of the right to be a corporation, or the capitalization of any franchise or permit, or the right to own, operate, or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, permit, or right."

O R D E R

IT IS ORDERED that:

1. Harry F. Fisher, on or after the effective date hereof and on or before December 31, 1966, may sell and transfer, and Jack Loperena may purchase and acquire, the

radiotelephone public utility business and assets referred to in the application, as amended. Said transactions shall be in accordance with the terms and conditions contained in the Agreement executed March 24, 1966, a copy of which is attached to the application.

2. On or after the effective date hereof and on or before December 31, 1966, Jack Loperena, for the purpose specified in this proceeding, may issue a promissory note in the principal amount of not to exceed \$53,250 and may execute a Deed of Trust and a Security Agreement. Said documents shall be in the same form, or in substantially the same form, as those attached to the amendment to the application.

3. As a condition of the authority herein granted, Jack Loperena is hereby directed to continue the public utility responsibilities of Harry F. Fisher, with respect to the area served by the radiotelephone system being transferred.

4. The tariffs of Harry F. Fisher now on file with this Commission shall be refiled within thirty days after the date of actual transfer under the name of Jack Loperena, in accordance with the procedure prescribed in General Order No. 96-A or, in lieu of such refiling, Jack Loperena may file, by advice letter, a notice of adoption of said presently filed tariffs. No increase in the presently filed tariffs shall be made unless authorized by this Commission.

5. Harry F. Fisher, on or before the date of actual transfer, shall refund all customers' deposits and advances which are subject to refund. Any unrefunded deposits and

advances shall be transferred to and become the obligation for refund of Jack Loperena.

6. On or before the end of the third month after the consummation of the transfer as herein authorized, Jack Loperena shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

7. On or before the date of actual transfer of the specific properties herein authorized, Harry F. Fisher shall transfer and deliver to Jack Loperena, and the latter shall receive and preserve all records, memoranda and papers pertaining to the construction and operation of the radiotelephone utility authorized to be transferred.

8. If the authority herein granted is exercised, Jack Loperena shall, within thirty days thereafter, notify this Commission, in writing, of the date of such completion of the property transfer herein authorized and of his compliance with the conditions hereof.

9. Upon compliance with the above ordering paragraphs, Harry F. Fisher is hereby relieved of his public utility responsibilities with respect to the property being transferred coincident with the full assumption of such responsibilities by Jack Loperena.

10. Jack Loperena shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

11. This order shall become effective when Jack Loperena has paid the fee prescribed by Section 1904 (b) of the Public Utilities Code, which fee is \$54.

Dated at San Francisco, California,
this 8th day of JUNE, 1966.

Frederick B. Holmquist
President
Paul E. Mitchell
George H. Hoover
Augustus

Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

