

ORIGINAL

Decision No. 76012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of Edna F. McClure, an individual,
and Pacific Radiotelephone, Inc.,
a California corporation, for
authority to transfer Radiotele-
phone Common Carrier System KMD-
998, Lodi, California, together
with operative rights thereto
from Edna F. McClure to Pacific
Radiotelephone, Inc., and for the
latter to issue 200 shares of its
\$10 par value capital stock.

Application No. 51010
(Filed April 17, 1969)

O P I N I O N

Applicant Edna F. McClure holds a license from the Federal Communications Commission for Station KMD-998 located in Lodi, California. Her operations were recognized in Decision No. 62156, in Case No. 6945, as those of a radiotelephone utility.

Authority is sought to incorporate the applicant's radio-telephone utility business, by transferring applicant McClure's radiotelephone facilities and operative rights to a newly organized corporation, Pacific Radiotelephone, Inc. (hereinafter referred to as Radiotelephone). Radiotelephone will issue stock in the amount of \$2,000 in exchange for the property and operating rights, together with cash to supply working capital for the corporation.

This Commission is still concerned to prevent possible trafficking in radiotelephone operating authority (Cf. D75278 in A50563, App. of Mohr dba Advanced Electronics and Radiocall, Inc.). The problem arises because an assigned operating channel has a potential value apart from its value as a necessary asset of an operating utility. This raises the possibility that a prospective

purchaser of an RTU may be primarily interested in investing in a channel rather than in the prospective service and earnings of the utility. Such a situation might operate to the detriment of present and potential customers.

Since this Commission under §§ 351, 352 and 816-830 Public Utilities Code would ordinarily have no power to prevent trafficking via secondary purchases of stock once an issue has been authorized, we conclude that it is reasonable and necessary to condition the authorization herein granted. Accordingly, the authority for transfer and stock issue will be conditioned so that Commission authority will be required before applicant McClure may transfer any of the stock originally issued to her.

The Commission finds that the money, property or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purposes specified herein, and such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. The Commission further finds that the proposed transfer, as authorized herein, will not be adverse to the public interest and concludes that the application should be granted.

In issuing our order herein, we place applicant corporation and its shareholders on notice that we do not regard the number of shares outstanding, the total par value of the shares nor the dividends paid as measuring the return it should be allowed to earn on its investment in plant and that the authorization herein given is not to be construed as a finding of value of the stock or properties nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

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

The Commission shall have no power to authorize the capitalization of the franchise involved herein or these certificates of public convenience and necessity, or the right to own, operate or enjoy such franchise or certificates of public convenience and necessity 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 issuance of such franchise, certificates of public convenience and necessity or right.

A public hearing does not appear necessary.

O R D E R

IT IS ORDERED that:

1. Within one hundred eighty days after the effective date hereof, applicant Edna F. McClure is hereby authorized to sell and transfer her operating authority and the property necessary and useful in the performance of her duties to the public to applicant Pacific Radiotelephone, Inc., which is authorized to acquire said authority and property.
2. Within one hundred eighty days after the effective date hereof, applicant Pacific Radiotelephone, Inc. is authorized to issue two hundred shares of its \$10 par value stock to Edna F. McClure in exchange for said operating rights and property and cash.
3. Applicant Pacific Radiotelephone, Inc. shall file with the 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.
4. Within five days of the consummation of the transfer herein authorized, Pacific Radiotelephone, Inc. shall file with this Commission a notice of adoption of the presently filed tariffs of Edna F. McClure. Within sixty days of the consummation of the

transfer, applicant Radiotelephone shall refile the tariffs of Edna F. McClure under its own name in accordance with the requirements of General Order No. 96-A, or file within thirty days after the date of actual transfer, by advice letter, a notice of adoption of said presently filed tariffs.

5. On or before the date of actual transfer, Edna F. McClure shall deliver to applicant Radiotelephone all records, memoranda and papers relating to the construction, purchase and operation of the properties herein authorized to be transferred.

6. Within five days of the consummation of the transfer herein authorized, applicant Radiotelephone shall file with the Commission written notification of the date of transfer, and of the date on which it shall have assumed the obligation for the operation of the radiotelephone system herein authorized to be transferred. A true copy of the instrument of transfer shall be attached to the written notification. Applicant McClure shall stand relieved of all public utility obligations as of the date such obligations are assumed by applicant Radiotelephone except as provided by paragraph 8, below.

7. On or before the end of the third month after the consummation of the transfer, Radiotelephone shall cause to be filed with the Commission, in such form as the Commission shall prescribe, an annual report covering the operations of Edna F. McClure for the period commencing with the first day of the current year to and including the effective date of the transfer.

8. The authority granted herein is subject to the condition that applicant Edna F. McClure shall not transfer, sell, or encumber any of the stock issued to her or any interest therein by applicant Radiotelephone without prior authorization from this Commission.

9. All certificates evidencing any of the securities authorized to be issued by ordering paragraph 2 hereof shall at all times bear upon their face and reverse sides a legend, clearly and prominently displayed thereon and in capital letters of not less than ten-point type, reading as follows:

"IT IS UNLAWFUL TO CONSUMMATE A SALE, TRANSFER, OR ENCUMBRANCE OF THIS SECURITY OR ANY INTEREST THEREIN WITHOUT THE PRIOR WRITTEN AUTHORIZATION OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA."

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

Dated at San Francisco, California, this 12th day of AUGUST, 1969.

William J. Sweeney, Jr.
President

August 12, 1969

John P. Monahan

J. P. Vukasin, Jr.
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.