

Decision No. 8Z644

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of THOMAS R. POOR, d/b/a KERN
RADIO DISPATCH, for authority to
transfer assets, and AIRSIGNAL OF
CALIFORNIA, INC., a California
corporation, for authority to
acquire assets.

Application No. 53907
(Filed March 20, 1973)

Carl Hilliard, Attorney at Law, for Airsignal of
California, Inc.; and Warren A. Palmer, Attorney
at Law, for Kern Radio Dispatch; applicants.
Philips B. Patton, Attorney at Law, for Kidd's
Communications, Inc., protestant.
R. Roger Johnson, for the Commission staff.

O P I N I O N

Thomas R. Poor (Poor), doing business as Kern Radio Dispatch, requests authority to transfer certain assets, and Airsignal of California, Inc. (Airsignal), a California corporation, requests authority to acquire those assets in accordance with an agreement entered into on June 28, 1972. A copy of the agreement is attached to the application as Exhibit A.

On April 10, 1973 Kidd's Communications, Inc. (Kidd), a radiotelephone utility, filed a "Protest of Application."

Protestant provides radiotelephone utility service in and around Bakersfield and is a party to an agency contract for the furnishing of one-way paging utility service in the southern San Joaquin Valley area, to which Poor is the other party. This agency contract was executed on the second day of August 1971, submitted to the Commission for approval in Application No. 52843 on September 2, 1971, and was approved by the Commission in Decision No. 79190 issued September 28, 1971. The agency contract is presently filed with the Commission as an effective part of the tariff of both Kidd and Poor.

Protestant Kidd alleges that in the subject application applicants have indicated, at paragraph 8.18 on page 12, that the seller has no commitments, contracts, or agreements material to the business other than those set forth in Exhibit 8.18 to the application. Exhibit 8.18 to the application indicates that there are no such commitments, contracts, or agreements material to the business existing; that Kidd has in the past rendered transient mobile service to subscribers of Airsignal and has forwarded its statements to Airsignal in the usual fashion, but has not been compensated as agreed by Airsignal for services rendered to Airsignal's subscribers. The delinquencies in Airsignal's account are of many months standing, causing Kidd to be apprehensive concerning contractual relationships whereby Kidd gives significant amounts of service to subscribers of Airsignal and depends on Airsignal for ultimate payment; and that, in view of the omission of the listing of the existing agency agreement in the subject application, in view of the fact that Airsignal in another Commission proceeding refused to give assurances that it will abide

by the agency contract, and in view of the financial problems which protestant has already encountered with applicant Airsignal, protestant asks the Commission to withhold grant of the subject application until and unless proper assurances are given in the record that the existing agency contract for the furnishing of one-way paging utility service in the southern San Joaquin Valley area is recognized and will be adhered to by applicant Airsignal, including prompt payment of charges for service.

Protestant requested that this matter be set for public hearing unless by amendment or by stipulation the record was corrected to clearly show that applicant Airsignal recognizes and intends to comply with the terms of the agency contract, including prompt payment of charges. Protestant requested that the Commission's anticipated decision approving the transfer clearly requires Airsignal to abide by the terms of the agency contract.

On December 10, 1973 protestant amended its protest asking the Commission to withhold grant of the subject application, or alternatively, to provide in the order of approval that (1) Poor's tariff, including the existing agency contract for the furnishing of one-way paging utility service in the southern San Joaquin Valley area, shall be adopted by applicant Airsignal and (2) that Airsignal shall pay bills from Kidd under the agency contract strictly in accordance with the terms of that contract and shall return to Kidd with each payment made a copy of the invoice being paid, with notations thereon as to the reasons for any differences between the amount billed and the amount paid.

In the interval between March 20, 1973 and the end of September 1973, applicants and protestant attempted to resolve their differences. These attempts having failed, public hearing was held on December 20, 1973 at San Francisco before Examiner Gillanders. The matter was submitted on January 2, 1974 upon receipt of written closing statements.

Findings

1. Poor has been operating for many years as a radiotelephone public utility providing two-way mobile radio communications services on three channels in portions of Kern County and adjacent areas. Poor has over 155 mobile units and over 30 paging units currently in service.

2. Poor's base station facilities are located on Paleta Peak south of Taft and are operated by radio links from control centers in Bakersfield and Taft.

3. Poor also provides one-way paging services to his subscribers under an agency contract with Kidd, a competing radio-telephone utility, which agency contract was approved by the Commission in Application No. 52843, Decision No. 79190 dated September 28, 1971.

4. Paragraphs 10 and 13 of the contract state:

"10. This contract and all additions or supplements thereto shall be filed by Kidd's and, if required, by Poor as a part of California Public Utilities Commission tariffs, and this contract shall not become effective until approval or authorization of the California Public Utilities Commission is first obtained. This contract shall at all times be subject

to such changes or modifications by the Public Utilities Commission and/or the Federal Communications Commission as said Commission may from time to time direct in the exercise of their respective jurisdictions. Kidd's and Poor each covenant and agree that any proposed changes in this contract (including applicable tariff rates) shall be subject to California Public Utilities Commission prior approval and that Poor is a party in interest in any future request by Kidd's to the California Public Utilities Commission and/or the Federal Communications Commission for modification of this contract (including applicable tariff rates).

* * *

"13. Subject to the provisions of paragraph 10 hereof, the term of this contract shall be for ten years, but it shall continue in effect thereafter until 90 days written notice is given by either party as to its intended termination; provided, however, such term shall expire automatically if for any period of six consecutive months after this agreement has been in effect for one year, Poor has fewer than ten paging subscribers on Kidd's one-way paging systems, or if for any period of 30 days, invoices from Kidd's to Poor for service under this contract are more than 45 days old and remain unpaid."

5. Poor has been operating as a radiotelephone utility since 1961 pursuant to authority granted by the "grandfather" decision of this Commission (Decision No. 62156 dated June 20, 1961, 58 CPUC 756).

6. Airsignal is a radiotelephone utility operating in and about Lake Tahoe, Sacramento, Vallejo, Stockton, Modesto, Fresno, Visalia, and Porterville, and its radiotelephone utility operations are contiguous to the area served by Poor.

7. Airsignal currently has about 60 employees with its headquarters at Sacramento and has approximately 1,000 mobile units and 2,500 paging units in service.

8. A major portion of the radiotelephone public utility operations of Airsignal has been acquired through acquisitions and mergers previously approved by this Commission, including Decision No. 78806 dated June 22, 1971 and Decision No. 80520 dated September 19, 1972, which authorized Airsignal to acquire the radiotelephone utility operations of Jack Loperena in the central San Joaquin Valley and the radiotelephone utility operations of National Communications Systems, Inc.

9. Airsignal is in the process of rehabilitating those systems and bringing them into compliance with the requirements of the Federal Communications Commission.

10. Airsignal is a wholly owned subsidiary of Airsignal International, Inc., a Delaware corporation, which is a wholly owned subsidiary of Western Union International, Inc. Airsignal International, Inc. operates in 35 cities in 17 states in the United States.

11. Poor is interested in selling and transferring his properties and public utility radiotelephone operating rights to Airsignal because of difficulties he has encountered in obtaining adequate and reasonable financing for the continued improvement and expansion of his system.

12. The primary question in transfer proceedings is whether the proposed transfer would be adverse to the public interest. (Sale v Railroad Commission (1940) 15 Cal 2d 612, M. Lee (Radio Paging Co.) (1966) 65 CPUC 635.)

13. The record in this proceeding clearly establishes that the transfer of the properties and public utility radiotelephone operating rights of Poor to Airsignal would not be adverse to the public interest and that Airsignal has the capability, including financial ability, to continue the operations of such properties and operating rights.

14. Airsignal initially intends to continue the existing Poor utility operations substantially unchanged, including dispatching and maintenance arrangements.

15. The record also shows that Airsignal intends to improve its existing network by a program of replacement and upgrading of existing equipment.

16. Concern has been voiced by protestant Kidd relative to Airsignal abiding by the agency contract for paging services between Poor and Kidd and the purported failure of Airsignal to properly identify and remit payment for charges for intercompany services, including charges for mobile transient service furnished to the customers of Airsignal.

17. The record indicates that protestant is alarmed and its fears are real, even though Airsignal has given assurances that it considers itself bound by the agency contract in question.

18. It is settled that the purchaser of property devoted to public uses takes the property subject to all of its public utility obligations including an agency contract such as that which exists between Poor and Kidd. The duties of a public utility are not terminated, lightened, or otherwise changed by the transfer.

(Citizens Suburban Co. v Rosemont Dev. Co. (1966) 244 CA 2d 666,
Lakewood Civic Group, Inc. v Homestead Land & Water Co. (1957) 56 CPUC
31, Re Santa Clara Valley Land Co. (1930) 34 CRC 831.)

19. Airsignal has indicated a willingness to resolve billing disputes or billing problems with other radiotelephone utilities for intercompany services in a more expeditious manner. Moreover, while vexatious, the amounts involved appear somewhat de minimus. The parties have agreed that they could work out the disputed transient billings.

20. Airsignal International, Inc. has agreed to assume payment, if ordered, of the promissory note which Airsignal requests permission to issue as evidence of its indebtedness for a portion of the purchase price. It is not necessary, at this time, to involve Airsignal's parent.

21. The proposed security issue is for proper purposes and the money, property, or labor to be procured or paid for by the issue of the security authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

22. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

23. The sale and transfer of the property as proposed in this proceeding would not be adverse to the public interest.

Conclusion

The application should be granted.

The action taken herein shall not be construed as a finding of the value of the property authorized to be transferred. In order to assuage protestant's fears, we will incorporate in the order following the suggestions contained in its closing statement.

O R D E R

IT IS ORDERED that:

1. Thomas R. Poor may sell and transfer to Airsignal of California, Inc. the property referred to in this proceeding in accordance with the agreement attached to the application as Exhibit A.

2. As a condition precedent to the transfer approved in this decision, Airsignal of California, Inc. shall notify the Secretary of this Commission and Kidd's Communications, Inc., in writing, that it will, after actual transfer, be bound by the August 2, 1971 agency contract for the furnishing of one-way paging utility service in the southern San Joaquin Valley area as if it had been a contract made directly between Kidd's Communications, Inc. and Airsignal of California, Inc.

3. As a further condition of the transfer herein approved, and in accordance with paragraph 10 of the agency contract for the furnishing of one-way paging utility service in the southern San Joaquin Valley area approved by this Commission in Decision No. 79190, paragraph 13 of said agency contract shall be, and as of the date of actual transfer is, hereby amended to read as follows:

13. Subject to the provisions of paragraph 10 hereof, the term of this contract shall be for ten years, but it shall continue in effect thereafter until 90 days' written notice is given by either party as to its intended termination; provided, however, such term shall expire automatically if for any period of six consecutive months after this agreement has been in effect for one year, the successor to Poor's public utility business has fewer than ten paging subscribers on Kidd's one-way paging systems. If for any period of 15 days, invoices from Kidd to Poor's successor for services under this contract are more than 30 days old and remain unpaid, Kidd shall notify the Secretary of this Commission of that fact and serve a copy of said notice on Poor's successor. If, within 30 days of the service of said notice, all arrearages claimed by Kidd have not been paid,

or if disputed, funds equal to the disputed amounts have not been deposited with the Commission together with a petition to adjudicate the dispute, Kidd shall directly notify the paging subscribers receiving service through the agency, giving not less than 30 days' notice, that the agency is to be terminated, and shall offer to serve such subscribers directly at then effective tariff rates. In such event Kidd shall thereafter file a complete report of the circumstances and the actions taken with the Secretary of the Commission.

4. Within ten days after the date of actual transfer, Thomas R. Poor shall file written notification to this Commission of the date of transfer and the date upon which Airsignal of California, Inc. shall have assumed operation of the RTU system authorized herein to be transferred. A true copy of the instrument of transfer shall be attached to the written notification.

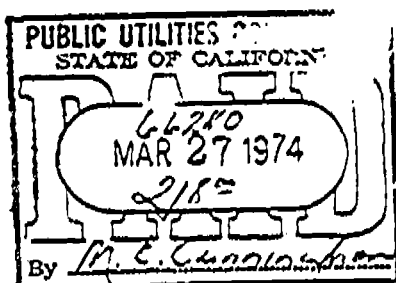
5. Upon compliance with the conditions of this order, Thomas R. Poor shall stand relieved of all public utility obligations in the areas served by the transferred system and may discontinue service concurrently with the commencement of service by Airsignal of California, Inc.

6. On or after the effective date of this order and on or before December 31, 1974, for the purposes specified in this proceeding, transferee may issue an evidence of indebtedness in the principal amount of not exceeding \$108,750, which document shall be in substantially the same form as that attached to its closing statement.

7. The issuer of the securities authorized by this order shall file with the Commission a report, or reports, as required by General Order No. 24-Series.

8. The authority granted by this order to issue an evidence of indebtedness will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$218. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 26th
day of MARCH, 1974.



Vernon L. Sturgeon
President
William Synovis, Jr.

[Signature]
[Signature]
Commissioners

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