

ORIGINAL

Decision No. 82689

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of RADIO RELAY CORP.,
for authorization to control
RADIO PAGE COMMUNICATION, INC.

Application No. 54369
(Filed October 4, 1973)

Carl Hilliard, Attorney at Law, for Radio
Relay Corp., applicant.
Robert B. Lisker, Attorney at Law, for
Mobilfone, Inc., protestant.
Homer Harris, for Industrial Communications,
Inc., interested party.
R. Roger Johnson, for the Commission staff.

O P I N I O N

On October 4, 1973, applicant Radio Relay Corporation (Radio Relay), a New York corporation, filed this application pursuant to Section 854 of the Public Utilities Code for authorization to control Radio Page Communication, Inc. (Radio Page), a California corporation providing radiotelephone utility paging service in the Los Angeles/Orange County metropolitan area, by acquisition of all of the stock of Radio Page from Carl M. Tierney and George W. Smith. The application was protested by Mobilfone, Inc. (Mobilfone), a radiotelephone utility providing paging and two-way mobile service in the same general area as Radio Page.

Public hearing on the application was held before Examiner Cline in San Francisco on December 11, 1973. The matter was taken under submission on the filing of the last concurrent brief on January 18, 1974.

Description of Past, Present, and Proposed
Operations of Radio Page

Radio Page's predecessor in interest, George W. Smith, was among the radiotelephone utilities found to be subject to this Commission's jurisdiction in Decision No. 62156. On July 26, 1965, Mr. Smith sought Commission approval to expand his operations in the Los Angeles metropolitan area by filing Application No. 47772. This application was opposed by Mobilfone, protestant herein, but was granted by this Commission in Decision No. 72165 issued March 21, 1967. Thereafter, on January 8, 1968, Mr. Smith applied for permission to transfer his radiotelephone utility certificate and assets to Radio Page, a California corporation owned equally by Mr. Smith and Mr. Tierney. This Commission approved the transfer in Decision No. 74370 issued July 9, 1968 in Application No. 49926.

Radio Page operates over 16 transmitters and provides tone-only paging service covering an area of 2,700 square miles. The subscriber carries a small pocket receiver which emits a "beep" tone when its individual signal is received from a radio transmitter thus alerting the subscriber to call a prearranged telephone number for a message. Since Radio Page started its business the cost of paging receivers has increased from \$38 to \$225. The transmitting and encoding equipment has now become so sophisticated that it requires specialized maintenance which is not readily available. As a result, Radio Page is faced with the problem of obtaining specialized testing equipment costing up to \$25,000 and a technician capable of maintaining the operating plant and pagers.

Radio Relay is a New York corporation which owns and operates radiotelephone utilities in New York, Newark, Buffalo, Cincinnati, St. Louis, Chicago, and Detroit. Radio Relay has pioneered the development of several paging systems which have permitted broader and more effective use of the frequency spectrum.

In accordance with a stock purchase agreement dated May 21, 1973, Radio Relay proposes to purchase from Carl Tierney and George W. Smith all of the issued and outstanding shares of capital stock of Radio Page for the sum of \$841,000. Said sum is to be paid partly in cash and partly in the form of notes payable monthly over ten years (Schedule K of Exhibit 4). The notes are expressly subject to the provisions of the stock purchase agreement. The parties contemplate a pledgeholder agreement to secure performance by Radio Relay (not supplied). The stock purchase agreement (Exhibit 3) at paragraph 4.4, page 15 provides that the Radio Page selling shareholders may, after forty months, cause the notes to be converted into a series of negotiable notes.

The proponents of the application point out that Radio Relay's financial ability has been established by the record and is not in dispute in this proceeding.

The witness for Radio Relay testified that Radio Page's transmission is very adequate but that Radio Relay would seek to improve Radio Page's control point and encoding point. Radio Relay would like to have Radio Page install terminal equipment of the caliber made by Acme Devices Inc. which is capable of encoding all types of paging that are available on the market today, including the Martin Marietta digital type capacity, Motorola Metro-Page five-tone high speed capacity, Motorola two-tone, and Bell and Howell two-tone.

Radio Relay's technical staff in New York City consists of its vice president who is in charge of all engineering, the shop foreman, and eight technicians, all of whom do the pager maintenance and repair and some of whom are qualified with FCC licenses to do transmitter work. In operating cities other than the New York area, Radio Relay has emergency contracts with local transmitter repair and

maintenance people. If for some reason the local repair person has a problem, telephone contact is made and if that is not sufficient, the personnel of Radio Relay are sent by plane to help solve the problem. Such service would be available to Radio Page if it becomes a subsidiary of Radio Relay. Radio Relay intends to establish another shop staffed by transmitter and encodermen as well as a technician to do repair work on pagers as well as transmitters, possibly in the Chicago market which would be even closer to the Los Angeles market.

On occasion Radio Relay has designed equipment which it has used. It has designed and built an encoder for its AM System which has a capacity to store 80 paging numbers at a time with a punch tape that can be read out. Under the Motorola Encoding System the normal range or the maximum number of pagers that Motorola will sell on a given system is 3,000 to 3,500. Radio Relay serves 6,000 because of the manner in which it does the encoding and combination of tones. Such systems and designs would be available to Radio Page in the event this application is approved.

Radio Relay has an inventory of \$3½ to \$4 million of pagers. To keep track of these pagers it has an inventory control system which ties into the billing of each customer and eliminates mistakes in billing. Such inventory control system will be made available to Radio Page if the application is approved.

Radio Relay has a guaranteed 24-hour turnaround on the maintenance of a pager which can also be made applicable to the benefit of Radio Page's subscribers. Radio Relay's inventory of parts for the repair of terminals will also be made available to Radio Page if the application is approved. Also, advantages accrue to Radio Relay through the purchase of equipment in large quantities which can be passed on to Radio Page. Radio Page would also have the capacity of the dual address pager developed by Radio Relay. Radio Relay's marketing aids, systems, and procedures would be available to Radio Page.

Issue

The issue to be determined by this Commission is whether the transfer of the control of Radio Page from Carl Tierney and George W. Smith to Radio Relay will be adverse to the public interest.

Position of Protestant Mobilfone

1. In its brief, Mobilfone points out that by Decision No. 81447 issued May 30, 1973 in Application No. 53986 this Commission ordered that Barry Yampol, Graphic Scanning Corporation, and Digital Paging Systems, Inc. (Digital Paging) may control Electropage, Inc. The opinion states that Digital Paging, which is a 68 percent owned subsidiary of Graphic Scanning Corp., proposes to purchase all of the capital stock of Electropage, Inc. in accordance with a Stock Purchase Agreement. The opinion also states that Digital Paging has recently executed an agreement to purchase 47 percent of the common stock of Radio Relay. An application was made to the New York Public Service Commission for consent to transfer the 47 percent of the common stock of Radio Relay to Digital Paging and such application has been denied. However, this decision of the New York Public Service Commission is not final because a petition for rehearing has been filed. Mobilfone contends that the combination of Digital Paging owning Electropage in Sacramento together with the possibility that Digital Paging might acquire a 47 percent interest in Radio Relay which in turn is seeking in this application to acquire ownership of Radio Page could, as a result of further acquisitions, create a north/south monopoly by Digital Paging which would tend to lessen radio common carrier competition in California.

2. Mobilfone contends that control in New York City by the parent Radio Relay over Radio Page may lessen Radio Page's ability to control its activities locally and respond to local needs, including the payment of its bills and the control of its agents,

particularly Answer Page, Inc., which now or in the near future will own, control, or be responsible for most if not all of the paging receivers on the Radio Page service (Schedule D of Exhibit 4, page 2).

3. Mobilfone points out that certain of Radio Page's equipment purportedly is secured by a \$25,000 promissory note payable to the Bank of America in 36 monthly payments of \$789.19, the first monthly payment being due May 15, 1973, and that Radio Page is purchasing paging receivers under 36 months conditional sales agreements with Industrial Leasing. Mobilfone contends that such secured note and conditional sales agreements are void because they have not been approved by the Commission and that some action must be taken to remove them as secured obligations of Radio Page.

4. Mobilfone points out that Radio Relay has failed to submit a proposed pledgeholder agreement and that counsel for applicant has stated that the drafting of such agreement awaits the Commission's decision on this application. Mobilfone also points out that the sellers of the stock may after 40 months convert the notes into negotiable notes on the same terms and conditions as the original notes.

5. Mobilfone contends that the sellers under the pledgeholder agreement may repossess all of the stock of Radio Page or at some time in the future they may convert the notes into negotiable notes and thereby enable any subsequent holder in the event of default to effect a change in ownership of Radio Page. Mobilfone asserts that the possibility of a reverter of rights, equipment, and facilities without Commission approval exists in the structuring of the proposed transaction and that such is not in the public interest and is contrary to public policy.

Position of Applicant Radio Relay

1. Existing Carriers are Providing the Service Required.

Applicant points out that questions relating to public convenience and necessity are not relevant to a transfer proceeding because they were determined in the proceeding in which the certificate was granted. (In re Application of Marion Lee, doing business as Radio Paging Company, Decision No. 70829 issued June 8, 1966 in Application No. 47821, and C. J. Morrissey (1963) 61 CPUC 567.)

2. Stock Ownership by a Foreign Corporation. Radio Relay points out that foreign corporations hold the stock of California public utility corporations without adverse effect on their operations. It contends that the additional technical and financial support which would be provided to Radio Page by Radio Relay would not be a disadvantage just because the source of such supplemental assistance would be located in New York City.

Radio Relay also points out that Mobilfone did not object to the acquisition of Industrial Communications Systems, Inc. (Los Angeles) and Redwood Radiotelephone Corporation (Marin and San Francisco) by a Philadelphia corporation (Decision No. 77377 issued June 23, 1970 in Case No. 9034); or by Airsignal International, Inc., a subsidiary of Western Union International, Inc., in New York, of a system ranging from Sacramento to Porterville (Decision No. 78806 issued June 22, 1971 in Application No. 52474); or of Bell and Howell's purchase of Imperial Communications Corporation; or of ADT's acquisition of Intrastate Fresno.

3. Answer Page Agency Agreement. Radio Relay introduced evidence to show that Radio Page's agency agreement with Answer Page has been submitted to the Commission and is referenced in its tariffs. By this agreement, Radio Page has been able to provide convenient locations throughout its area for customers to pick up

and exchange paging receivers and batteries. Radio Relay points out that the agency agreement will be unaffected by the proposed transfer and contends that this proceeding is not the proper place to contest the appropriateness and practicality of such agreement.

4. Radio Page Equipment. Mr. Tierney of Radio Page testified that Radio Page had sought and received a legal opinion that it was unnecessary to obtain Commission approval of the conditional sale and encumbrance agreements which were brought into question by Mobilfone. If approval of such agreements by the Commission is required by Section 851 of the Public Utilities Code, the consequence of failure to obtain such approval is to render such agreements void. The evidence shows that Radio Relay has the ability and willingness to discharge the debts represented by such agreements.

5. Stockholder's Pledge Agreement. Radio Relay admits that an agreement to convey or reconvey the stock involved in this proceeding is necessarily conditional on obtaining permission for the transfer from this Commission. There is no such application before the Commission at this time.

6. Competition. The evidence shows there are eight radio-telephone utilities in the Los Angeles metropolitan area including Radio Page and Mobilfone. In the event Radio Page is controlled by Radio Relay there will still be eight carriers. This Commission has previously held that in a transfer proceeding the Commission is primarily concerned with determining whether the proposed transfer would be adverse to the public interest and not in determining whether a more competent carrier would unbalance the competitive status among the existing carriers. (Henry Stovall (1962) 59 CPUC 373; Frank Noland Drayage Co. (1963) 61 CPUC 160.)

Radio Relay points out that there is nothing in the record to support the future takeover of radiotelephone utilities in California by a future ownership of Electropage and Radio Page through Digital Paging Systems, Inc. When and if such consolidations are proposed, the Commission will have to consider and rule on each acquisition. ✓

Discussion

The Commission agrees with the position taken by the applicant Radio Relay with respect to the issues raised in this proceeding. The application will be granted.

Findings of Fact

1. Radio Relay is in a position to provide Radio Page with technical and financial assistance which can improve the operations of Radio Page and its service to the public.
2. The evidence will not support a finding that control of Radio Page by Radio Relay will lead to a future takeover of radiotelephone utilities in California by Digital Paging Systems, Inc. When and if transfers to effect such takeover are proposed, such transfers will have to be submitted to this Commission for its approval or disapproval.
3. Control of Radio Page by Radio Relay will not lessen Radio Page's ability to respond to local needs.
4. Radio Relay has the willingness and ability to discharge the debts represented by the conditional sales and security agreements brought in question by Mobilfone. Section 851 of the Public Utilities Code provides that sales and encumbrances within the scope of Section 851 are void if made other than in accordance with an order of this Commission first having been secured. It is unnecessary in this proceeding to make a determination as to whether the conditional sales and security agreements are void or not.

5. By Radio Page's agency agreement with Answer Page, Radio Page has been able to provide convenient locations throughout its service area for customers to pick up and exchange paging receivers and batteries. This agency agreement will be unaffected by the transfer proposed in this application.

6. A stockholder's pledge agreement to convey or reconvey the stock involved in this proceeding is necessarily conditional on obtaining authorization for the transfer from this Commission. There is no such application before the Commission at this time.

7. In a transfer proceeding the Commission is primarily concerned with determining whether the proposed transfer would be adverse to the public interest and not in determining whether a more competent carrier would unbalance the competitive status among the existing carriers.

8. Questions relating to public convenience and necessity are not relevant to a transfer proceeding because they were determined in the proceeding in which the certificate was granted.

9. The application shows with reasonable certainty that the proposed transfer involved in this proceeding will not have a significant effect on the environment.

10. Control of Radio Page by Radio Relay would not be adverse to the public interest.

Conclusions of Law

The Commission concludes that the application should be granted and that Radio Relay should be authorized to control Radio Page.

The action taken herein shall not be construed as a finding of value of capital stock of Radio Page.

O R D E R

IT IS ORDERED that Radio Relay Corp. may control Radio
Page Communication, Inc.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 2nd
day of APRIL, 1974.

Lawrence L. Stevenson
President
William J. Symons, Jr.
William J. Symons, Jr.
William J. Symons, Jr.
William J. Symons, Jr.
Commissioners