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Decision No. 84400

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application of Joseph A. Smiley, dba Central Radio Telephone to sell, and Central Radio Telephone, Inc., to purchase, the public utility plant and certain other assets, including the utility operating rights, of Joseph A. Smiley dba Central Radio Telephone; and for Central Radio Telephone, Inc. to issue stock to Joseph A. Smiley as its consideration in the transaction.

Application No. 54581
(Filed January 17, 1974)

O P I N I O N

By this application Joseph A. Smiley, dba Central Radio Telephone, requests authority to sell his public utility radio-telephone business to Central Radio Telephone, Inc., a newly organized California corporation, which in turn requests authorization to issue stock to Joseph A. Smiley as its consideration in the transaction.

According to the application, Mr. Smiley wishes to sell in order to separate his business from his personal assets, to more clearly dedicate his business assets to business purposes, and to protect his nonbusiness assets from commercial involvement. Mr. Smiley claims it is in the public interest that such a separation occur, because it will create a capital dedication to the utility business which will not be dependent upon the financial condition, the health, or the existence of either him or Mrs. Smiley as individuals.

Central Radio Telephone, Inc. states that it wishes to purchase the business assets of Mr. Smiley because it is a corporation organized for that purpose, and it is in the public interest that the Smiley radiotelephone business be operated by a corporation for the reasons stated above. If this application is approved, Central Radio Telephone, Inc. states that it will adopt the present tariffs of Mr. Smiley and proposes to continue the public utility business with the same personnel, principles, and practices which have successfully guided the business in the past.

The successful financial history of the public utility operations can be ascertained, according to Mr. Smiley, by reference to Form L Reports which have been filed with this Commission annually by him. Estimated 1974 income and expense for the business activities subject to transfer are shown on Exhibit No. 3, attached to the application, under the heading "Central Radio Telephone, Inc. Estimated 1974 Income and Expense". These estimates apply to the subject business whether operated by Joseph A. Smiley or by Central Radio Telephone, Inc., and should be prorated between operations of the seller and the buyer, depending upon the date transfer actually is accomplished. According to applicants, it is apparent from an examination of the Form Ls on file with this Commission and the data on Exhibits Nos. 2 and 3, attached to the application, that Central Radio Telephone, Inc. will have the financial ability to continue to operate the public utility business successfully.

In addition to the approval of this Commission to transfer the utility assets and operating authority to the corporation, Joseph A. Smiley requires Federal Communications Commission (FCC) approval for assignment of control of his radio station licenses. Applicants state that application will be made to the FCC for such authority promptly upon receipt of a favorable decision from this Commission.

Joseph A. Smiley requests authority to sell assets and liabilities with a net value of \$15,000 in exchange for 150 shares of the common stock of Central Radio Telephone, Inc. A special meeting of the Board of Directors of Central Radio Telephone, Inc., duly called and attended on January 11, 1974, adopted Resolution 74-1 authorizing the purchase herein proposed.

Central Radio Telephone, Inc. requests authority to issue 150 shares of its common stock to Joseph A. Smiley in payment for the property shown on Exhibit No. 2; said stock issuance if authorized would occur only after receipt by Joseph A. Smiley of FCC consent to assign his common carrier radio station licenses to Central Radio Telephone, Inc.

On February 19, 1974 the Commission received the following letter from the Law Offices of Carl B. Hilliard, Jr., Inc.

"Gentlemen:

"This firm represents Mobile Radio System of San Jose, Inc., (Mobile) a radiotelephone utility certified to provide two-way mobile and one-way paging service to the public in the area south of San Francisco, pursuant to the authority granted in Decision No. 62156.

"Mobile wishes to be designated as an interested party in these proceedings. Mobile seeks no affirmative relief herein, but desires only that the Commission consider the following factors relating to this Application:

Exhibit No. 2 attached to Central's Application is a pro forma balance sheet intended to reflect the new corporation's financial status if this sale and transfer should be approved. It is there stated that the business's principal liability is a \$35,915.16 debt to Cook Communications Corp (Cook) for 'contracts 4 through 24', which are not otherwise identified. Because Paragraph VII of the Application states that current accounts payable are excluded from Exhibit No. 2, the contracts there referenced must necessarily be long-term debt.

Section 818 of the Public Utilities Code prohibits the issuance by a public utility of any long-term debt without Commission approval. (Section 825 of the Code declares such unauthorized debt to be void, Section 826 establishes monetary penalties on the utility for violation of this restriction, and Section 827 makes it a felony for any person to participate in the issuance of such illegal debt.)

Central's long-term debt represents 65% of the total value of its utility property and 54% of all assets. In these circumstances, we think it appropriate that the Commission investigate the propriety of this substantial long-term debt, the existence and extent of any Commission approval therefor, the nature of any pledges or liens given or promised to secure the debt, and other details that would reflect upon the independence and vitality of the Applicant.

Attached to this letter are photostatic copies of two pages from the current edition of the San Jose Classified Telephone Directory. One page has a display ad for Central, while the next has a display ad for Intrastate Radio Telephone, Inc. (Intrastate), of which Cook is a principal owner. Both ads list the same telephone number -- which is Central's number -- and the Intrastate ad offers service in Palo Alto, which is the location of Central and is not included within Intrastate's service area approved by this Commission.

Section 851 of the Public Utilities Code forbids the transfer of any public utility's property, franchise, permits or any part thereof without Commission authorization. The Applicant's pro forma balance sheet and the attached ads show a de facto, if not de jure, control of Central by Intrastate. Close Commission scrutiny of Application No. 54581 therefore seems appropriate.

"In summary, these questions must be answered: Is Central financially viable and independent? Has it complied with Code requirements regarding long-term debt? What unauthorized agreement exists between Central and Intrastate? Does this - together with Intrastate's 65% equitable interest in Central - reflect an illegal control of one public utility by another? Will this sale and purchase of Central's assets be accompanied by, or result in, control of Central by Intrastate and/or Cook? Can the public be assured that Central will remain independent and free of any potentially monopolistic and anticompetitive alliance with any other utility?"

On March 7, 1974, applicants filed "Reply to Opposition and Protest of Mobile Radio Systems of San Jose, Inc."

The reply and the attachments thereto total 71 pages.

The gist of the reply in applicants' words is:

"The Protest is the latest in a series of actions by San Jose to misuse regulatory processes to harass competitor Radiotelephone Utilities (RTUs) in the San Francisco area. San Jose and Central have overlapping authorized service areas and are in direct competition for subscriber business in Santa Clara County. San Jose clearly has no real interest in the organizational structure of Central, except possibly an interest in causing difficulties and expense to Central as a competitor, or an interest in indirectly influencing Central with respect to other unrelated matters. San Jose itself is incorporated, no doubt for good business reasons. San Jose would deny the same organizational form to Central."

Since the date of the reply we have had no communication from Mobile, applicants, or our staff. It appears, therefore, that the matter is ready for decision.

Findings

1. A public hearing is not necessary.
2. The transfer of the certificate of public convenience and necessity held by Joseph A. Smiley, dba Central Radio Telephone, to Central Radio Telephone, Inc. would not be adverse to the public interest.
3. 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.
4. Applicant should be authorized to issue 150 shares of its no par value common stock at a stated value of \$100 per share.
5. Applicant should be required to keep books and records in the manner prescribed for radiotelephone utilities.

We conclude that Application No. 54581 should be granted to the extent set forth in the order which follows.

O R D E R

IT IS ORDERED that:

1. Joseph A. Smiley is authorized to transfer his certificate of public convenience and necessity and the utility property dedicated to the service authorized therein to Central Radio Telephone, Inc.
2. On or after the effective date of this order and on or before May 1, 1976, for the purposes specified in this proceeding, transferee may issue not exceeding 150 shares of its common stock without par value at a stated value of \$100 per share.

3. Within ten days after the date of actual transfer, Joseph A. Smiley shall file written notification to this Commission of the date of transfer and the date upon which Central Radio Telephone, 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.

4. Central Radio Telephone, Inc. shall either file a statement adopting the tariffs of Joseph A. Smiley now on file with this Commission or refile under its own name those tariffs in accordance with the procedures prescribed by General Order No. 96-A. No increase in rates shall be made unless authorized by this Commission.

5. Upon compliance with the conditions of this order, Joseph A. Smiley 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 Central Radio Telephone, Inc.

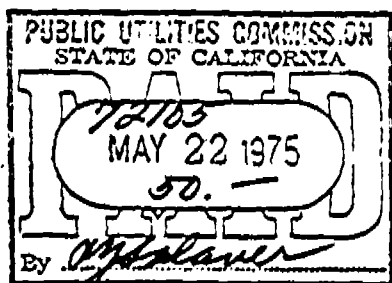
6. The issuer of the securities authorized by this order shall file with the Commission a report, or reports, as required by General Order No. 24-Series.

7. The authority granted in Ordering Paragraph 1 shall expire unless exercised by May 1, 1976.

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The authority granted by this order to issue stock will become effective when the issuer has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$50. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at Los Angeles, California, this 6th day of MAY, 1975.



Vermon L. Stevenson
President
William J. Smith
Leonard R. ...
Robert ...
Commissioners