

Decision 84 03 009

MAR 7 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Central Radio Telephone, Inc.,)
Bay Communications, Inc., and)
Mobile Communications Corporation)
of America pursuant to Public)
Utilities Code Sections 851 and 854.)

Application 83-12-33
(Filed December 20, 1983)

O P I N I O N

Applicants request approval for Mobile Communications Corporation of America (MCCA) to acquire control of Central Radio Telephone, Inc. (Central) through the acquisition of all of the outstanding stock of Central and for the merging of Central into Bay Communications, Inc. (Bay), a subsidiary of MCCA. Copies of the application were served on Pacific Bell, General Telephone Company of California, Intrastate Radiotelephone of San Francisco, Inc., Tel-Page, Inc., Beepercall, and Mobile Radio Systems of San Jose. Notice of the filing of the application appeared in the Commission's Daily Calendar of December 22, 1983. No protests to the application have been filed.

Central currently conducts a public utility one-way and two-way radiotelephone service in and around the San Francisco Peninsula under a certificate issued by the Commission. The application shows that as of March 31, 1983 Central had assets of \$700,762, liabilities of \$324,459 and a net worth of \$376,302. Central's issued and outstanding stock totals 150 shares all of which are owned by Joseph A. Smiley and Rosemary Smiley.

MCCA through its wholly owned subsidiaries conducts public utility radiotelephone service in various areas, including the Los Angeles Basin, where its operating subsidiaries are Mobilecomm, American Mobile Radio, Intrastate Radio Telephone of San Bernardino, and Mobile Radio Systems of Ventura, Inc. These existing services include tone-only, tone-and-voice, digital display, and alphanumeric paging service, as well as conventional two-way mobile radiotelephone service. MCCA and its subsidiaries are primary participants in the Los Angeles Cellular Corporation which has applications on file to construct and operate a non-wireline cellular radio system in the Los Angeles Area. The consolidated balance sheets of MCCA attached to the application show that as of December 31, 1983 MCCA had assets of \$46 million and a net worth of \$16 million.

Bay, a subsidiary of MCC, conducts no public utility business at present. As of December 31, 1983 Bay had assets of \$1,000 and a net worth of \$1,000 and had 1,000 shares of issued and outstanding stock, par value \$1.00 per share. Bay is a California corporation.

The application states that the reason for the proposed transaction is that Central is a family-owned corporation with limited resources and technical expertise. Central's chief operating officer and shareholder, Joseph A. Smiley, is no longer able to devote his full time to the enterprise. For these reasons Central is unable to undertake the substantial capital improvements and aggressive marketing programs that are necessary if Central is to compete effectively in a market which includes, or will shortly include, several large publicly held corporations. MCCA, in contrast, is a nationally known, publicly held entity which has

successfully constructed and managed radiotelephone systems in many different environments and through Bay has the resources and expertise necessary for Central to become a viable competitor. Continuity of service and management of Central will in part be assured through a 2-year Consulting Agreement between Mr. Smiley and Bay.

The proposed transaction is set out in agreements contained in Exhibit F attached to the application. The transaction provides for the merger of Central into Bay, with Bay being the surviving corporation, and the concurrent conversion of the Smiley's Central stock holdings into MCCA Class B common stock, the exact number of MCCA shares to be determined on a formula based on the fair market value of MCCA shares at the effective time of the merger. In no event, however, are the Smileys to receive less than 477,612 shares of MCCA stock nor more than 627,451 shares for their Central Stock. The transaction is to be closed no later than April 25, 1984.

Upon completion of the merger, Bay will possess all of the assets and liabilities of Central and Central will cease to exist. The Pro Forma Balance Sheet of Bay, upon completion of the merger, based on Central's March 31, 1983 Balance Sheet adjusted to reflect the \$1,000 in assets and net worth of Bay on December 31, 1983 shows that Bay would have assets of \$701,762, liabilities of \$324,459, and a net worth of \$377,303. Joseph A. Smiley, in one of the agreements, has agreed not to engage in any enterprise competitive with that engaged in by MCCA or any of MCCA's subsidiaries in a nine county area embracing the greater San Francisco Bay and Monterey areas. Also, one of the agreements provide for the hiring of Joseph A. Smiley as an independent contractor consultant by Bay for a yearly fee for two years.

Findings of Fact

1. Central, MCCA, and Bay request approval for MCCA to control Central through the acquisition of Central's stock and for the merger of Central into Bay in accordance with agreements set out in Exhibit F attached to the application.

2. Central currently conducts a public utility one-way and two-way radiotelephone service in and around the San Francisco Peninsula under a certificate issued by this Commission.

3. All issued and outstanding stock of Central is owned by Joseph A. and Rosemary Smiley.

4. As of March 31, 1983 Central had a net worth of \$376,302.

5. Bay is a California corporation and currently conducts no public utility business.

6. MCCA through its wholly owned subsidiaries conducts public utility radiotelephone service in various areas of Southern California, and as of December 31, 1983 had a net worth of \$16 million.

7. Joseph A. Smiley, who is Central's chief operating officer, is no longer able to devote his full time to the business or to undertake the substantial capital improvements and aggressive marketing programs necessary if Central is to compete effectively in the market.

8. MCCA, through Bay, has the resources and expertise to make the Central system a viable competitor.

9. The transaction provides for the merger of Central into Bay, with Bay being the surviving corporation, and the concurrent conversion of the Smiley's Central stock holdings into MCCA Class B common stock, the exact number of MCCA shares to be determined on a formula based on the fair market value of MCCA shares at the effective time of the merger, with the Smileys being guaranteed no less than 477,612 shares of MCCA stock as the result of the transaction.

10. Upon completion of the merger Bay will possess all of the assets and liabilities of Central, Central will cease to exist, and Bay will have a net worth of approximately \$377,703.

11. In order to provide continuity of Central's business Joseph A. Smiley will be given a 2-year consulting contract.

12. The proposed transaction is not adverse to public interest.

Conclusion of Law

The application should be granted.

O R D E R

IT IS ORDERED that:

1. Mobile Communications Corporation of America (MCCA) is authorized to acquire control of Central Radio Telephone, Inc. (Central) as provided in the agreements set out in Exhibit 7 attached to A. 83-12-33.

2. Central and Bay Communications, Inc. (Bay) are authorized to merge Central into Bay, leaving Bay as the surviving corporation, as provided in the agreements set out in Exhibit 7 attached to A.83-12-33.

3. Concurrent with the merger of Central into Bay as approved in Ordering Paragraphs 1 and 2, MCCA is authorized to control Bay.

4. Concurrent with the merger of Central into Bay, as authorized in Ordering Paragraphs 1 and 2, Bay shall file an adoption notice with the Commission adopting the tariffs of Central as of the merger date.

5. Applicant shall notify this Commission, in writing, of the date when the merger authorized in Ordering Paragraph 1 and 2 was effected within five days of the effective date of the merger.

6. After completing the merger authorized in Ordering Paragraphs 1 and 2, Bay shall:

- a. Keep its books and records in accordance with the Uniform System of Accounts for Radiotelephone Utilities prescribed by this Commission; and
- b. File an annual report, in compliance with General Order 104-A, on a calendar-year basis using California PUC Annual Report Form L and prepared in accordance with the instructions included in that form.

7. The authority to control and merge as authorized here will expire if not exercised within 9 months after the effective date of this order.

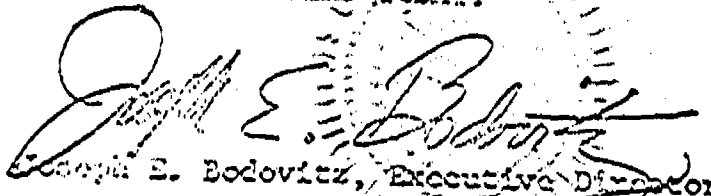
This order becomes effective 30 days from today.

Dated MAR 7 1984, at San Francisco, California.

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

Commissioner Leonard M. Grimes, Jr.,
being necessarily absent, did not
participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director