

Decision 84 06 122

JUN 20 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
 of Pacific Paging, Inc., a)
 California corporation, dba)
 Cal-Page, for a certificate)
 of public convenience and)
 necessity to construct a)
 radiotelephone utility system.)

Application 82-10-66
 (Filed November 26, 1982;
 amended April 6, 1984)

O P I N I O N

Applicant Pacific Paging, Inc., dba Cal-Page, a California corporation requests a certificate of public convenience and necessity to construct and operate facilities for the purpose of rendering public utility one-way radiotelephone service in the Sacramento area. The application shows that a copy of the application was served on the County of Sacramento, the City of Sacramento, the City of Folsom, Airsignal of California, Inc., Action Area Paging, Atlaspage, Electropage, HQ-The Headquarters Companies, High Sierra Business Radio, Delta Mobile Radio Service, and Tadlocks Radio Dispatch. The application was protested by Electropage, Inc. A motion was filed by Allied Telephone Companies Association (ATCS) requesting that the application be held in abeyance until the outcome of a pending investigation into the certification procedure to be used for newly filed radiotelephone applications.

Applicant possesses the requisite FCC authorization to commence operations using frequency 43.54 megahertz (MHz). However, the FCC authorization was issued on a for-hire interim developmental basis for a period of up to one year from the date of commencement of service. The authorization recites that it was issued on an interim basis because the FCC has received a large number of complaints from the public across the country due to interference to television

reception from stations operating on 43.22 and 43.58 MHz. If during the interim authorization period this interference from applicant's operation is brought to the FCC's attention the authorization may be immediately cancelled without a hearing. The authorization requires applicant to make quarterly surveys and reports to the FCC respecting interference and noninterference. Provisions are made in the authorization for applicant to apply for a permanent permit after the developmental period is over in the event interference is not found to exist. If no such application is filed before the developmental period is over, the interim FCC authorization will automatically expire.

The principal shareholders, directors, and officers of applicant and its parent Oregon corporation, which has the same name as applicant, are Harry and Polly Tarbell (the Tarbells) who have been operating two-way and one-way radiotelephone systems in Oregon for 20 years. The parent Oregon corporation had a net worth of approximately \$702,202 as of June 30, 1983 and for the twelve months ending on that date had income from paging services amounting to approximately \$1,079,772 and a net income of \$123,921. The parent Oregon corporation intends to fund by loan the depreciable costs of the proposed system which are estimated to be as follows:

Estimate of Initial System Cost

Central Switch - Zetron	\$10,000.00
Paging Transmitter	5,000.00
Antenna and Transmission Line Installation	1,000.00
Office Equipment	<u>4,000.00</u>
Fixed Station - First Year Capital Expenditure	20,000.00
250 Pagers at \$300.00 ea.	<u>30,000.00</u>
	\$50,000.00

The site of the proposed base station will be the Northgate broadcasting tower of radio station KROY which, according to a copy of a letter attached to the application, has consented to lease applicant space on and around the tower for its equipment. The base station will be connected by transmission line to the message center located at 451 Windgate Avenue in Sacramento. The 43 dBu signal strength contour, as shown in the application, will cover all of metropolitan Sacramento and most of the adjacent communities. Binary transmission will be used to obtain the greatest accuracy and speed in transmission.

Applicant's subscribers will be offered a tone and/or voice paging service, and for those customers who possess a Motorola OPTRX numeric display readout pager applicant will also offer a liquid crystal display (LCD) paging service where written messages can be transmitted to and read on a viewing screen on the OPTRX pager. Subscribers may either lease pagers from applicant or purchase their own pagers. Applicant's message center will be open 24-hours a day to encode word messages for a single subscriber. Any touch telephone can be used to send numeric messages to the OPTRX pager, and multiple users, such as state, county, city and Sacramento Municipal Utility District can encode their word messages direct from their own ASCII terminal.

Applicant will provide maintenance and repair on a regular and emergency basis through contract with Frontier Radio, Inc., located in Sacramento, which employs seven full time technicians who will be available to provide service on a 24-hour basis. Applicant will maintain a reserve supply of equipment so that equipment temporarily out of service may be promptly replaced to insure continuous service to all customers.

Applicant's proposed rates and charges are as follows:

	<u>Per Month</u>
Beep Only	\$19.00
Customer Owned	9.00
Beep and Display Numbers	29.00
Customer Owned	16.00
Display Numbers and Words	39.00
Customer Owned	23.00
Display Numbers, Words or Store Voice	49.00
Customer Owned	30.00

Total charges would be reduced 1% for every two (2) units with one customer between 2 and 100. Thus a single account with 48 pagers could enjoy a 24% discount.

During the first year of operation applicant expects to have 120 subscribers and to gross approximately \$43,200. It estimates that it will have a loss in the first year of operations of approximately \$16,700. However, during its fifth year of operation it expects to gross \$576,000 and have a net profit before taxes of \$76,000.

Applicant states that the principal officer of the applicant, Harry Tarbell, conducted a survey of the Sacramento area in order to determine the need for this service. As a result, Tarbell is holding orders from six prospects for a total of 31 units. These prospects break down into the following categories:

<u>Category</u>	<u>Prospect</u>	<u>Units</u>
State Government	1	1
Real Estate Finance	1	2
Real Estate Sales	1	15
Investment Broker	1	2
Telephone Interconnect Distributor	1	10
Attorney	<u>1</u>	<u>1</u>
	<u>6</u>	<u>31</u>

These prospects were apprised of the nature, the cost and the service area of the proposal. The signed held orders are in the possession of Tarbell and are available for inspection and verification upon request.

Protestant Electropage, Inc. states that it currently owns and operates a certificated radiotelephone utility service providing one-way paging service throughout applicant's proposed service area as well as throughout a much wider area. Protestant contends that applicant has failed to even allege, let alone show, that any need for the proposed service is not capable of being met by protestant and other radiotelephone utilities serving the area. Protestant alleges that presently operating radiotelephone utilities are fully capable of meeting whatever need there is for paging service in the requested area. In addition, protestant claims that the application is defective in that it fails to show that the proposed operation will be technically feasible, adequate, and of good quality, particularly when contrasted with the multi-transmitter services offered to the public by present radiotelephone utilities. And, since the applicant proposes rates which equal or exceeded those being charged by the area's existing carriers for their far superior systems, the projected usage and economic viability of the applicant's proposal must come into serious question. Protestant contends that applicant's allegations of service orders already held

are entirely illusory because protestant and others can fulfill the needs of applicant's purported customers at any time.

Discussion

The motion of ATCS to hold the application in abeyance until a pending investigation is concluded is now moot. The pending investigation referred to by ATCS, OII 83-03-01, was concluded by D.83-08-059 dated August 17, 1983. ✓

That decision revised Rule 18(o) of the Commission's Rules of Practice and Procedure which addresses the necessary elements of a sufficient showing by an applicant or a protestant in radiotelephone certificate cases. As pertinent to the protest of Electropage, Inc., the revisions, among other things, eliminated the necessity for an applicant to show that existing service is unsatisfactory in order to maintain its application. Therefore, protestant's objection that the application does not show or allege that existing service is unsatisfactory is irrelevant.

Protestant questions the technical feasibility of the proposed system because of applicant's proposed use of only one antenna while other radiotelephone utilities in the area use several antennas. Applicant has already received its FCC permit based on its engineering studies. It has furnished a map of its proposed service area drawn in accordance with Part 22 of the FCC's Rules and Regulations. Applicant proposes to use standard equipment to operate the proposed system. We feel that applicant has made a prima facie showing that its operation will be technically feasible.

D.83-08-059 established the requirement (Rule 18(o)(3)) that in order for a protestant to maintain its protest the protest must show "that the application should not be granted by affirmatively establishing that granting the application will so damage existing service or the particular marketplace as to deprive the public of adequate service". Since the protest does not establish such a showing, the protest fails. In addition, since the protest contains ✓

no allegations dealing with these facts, there is no necessity for holding a hearing on the application.¹

Due to the interim nature of applicant's FCC authorization we will attach a condition subsequent to its certificate, namely, that in the event the FCC withdraws its authorization for applicant to transmit on radio frequency 42.54 MHz in the service area authorized here and the FCC has not issued applicant a construction permit authorizing applicant to transmit on a different one-way radio frequency throughout that service area prior to such withdrawal, this certificate shall terminate upon the date of such withdrawal and be of no further force or effect.

Findings of Fact

1. Applicant requests a certificate to construct and operate facilities for the purpose of rendering public utility one-way radiotelephone service in the Sacramento area.
2. The service to be offered will be tone-only, tone-and-voice, and, for customers having pagers capable of receiving and displaying written messages, a written message service.
3. Service will be rendered 24 hours a day and applicant's message center will be open 24 hours a day to encode word messages.
4. Proposed rates and charges are as set out in Exhibit G to the application.
5. The proposed system will cost approximately \$20,000 to install.
6. Applicant expects its operation to incur a first year loss of \$16,700 on gross paging income of \$43,200 but will turn a profit in its fifth year of operation of \$76,000 on gross paging income of \$576,000 from 120 subscribers.

¹ Rule 8.4(c) of the Commission's Rules of Practice and Procedure requires a protest to contain "facts the protestant would develop at a public hearing which could result in a denial of the application...in whole or in part".

7. Applicant's parent company will provide funds to applicant to defray installation costs.

8. Applicant's parent company had a net worth as of June 30, 1983 of \$702,202.

9. Engineering data concerning the proposed is contained in Exhibit C to the application.

10. The transmitter will be located on an existing broadcasting tower.

11. The principal officer of applicant conducted a survey in the Sacramento area which revealed a public need for the proposed service.

12. The proposed system is economically feasible.

13. The proposed system is technically feasible.

14. Applicant has available to it the financial resources to engage in the proposed operations.

15. Applicant has available to it persons who are technically qualified to construct and manager the proposed system.

16. Public convenience and necessity require the issuance of the requested certificate.

17. The protest does not affirmatively establish that granting the application will so damage existing service or the particular marketplace as to deprive the public of adequate service.

18. The protest contains no allegation of facts which would be developed at a public hearing which could lead to the establishment that granting the application will so damage existing service or the particular marketplace as to deprive the public of adequate service.

19. A public hearing is not necessary.

20. Paging receivers are Customer Premises Equipment and cannot be offered by applicant on a tariffed basis.

21. The FCC has granted applicant station authorization to establish the proposed facilities on an interim basis only, and the FCC may cancel such authorization and refuse to issue permanent

authorization to applicant in the event the FCC determines that applicant's transmissions unduly interfere with local television reception.

Conclusion of Law

The application should be granted as set out in the ensuing order.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Pacific Paging, Inc. (applicant) to construct and operate facilities for the purpose rendering public utility one-way radiotelephone service with a base station and service area located as follows:

Base station location:

731 North Market Boulevard
Sacramento

Lat. 38° 38' 54" N, Long. 121° 28' 40" W

Service area:

As shown the map on the fifth page of
Exhibit C to Application (A.) 82-10-66.

2. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding.

3. Applicant is authorized to file, after the effective date of this order and in compliance with General Order 96-A, tariffs applicable to the service authorized containing rates, charges, and rules applicable to its radiotelephone services. The tariffs shall

become effective on not less than five days' notice. The rates and charges shall be as proposed for service in Exhibit G to A.82-10-66.

4. Applicant shall file as part of its individual tariff, after the effective date of this order and, consistent with Ordering Paragraph 3, an engineered service area map drawn in conformity with the provisions of Federal Communications Commission Rule 22.504, commonly known as the "Carey Report", and consistent with fifth page of Exhibit C to A.82-10-66.

5. Applicant shall notify this Commission in writing of the date service is first rendered to the public as authorized here, within five days after service begins.

6. Applicant shall keep its books and records in accordance with the Uniform System of Accounts for Radiotelephone Utilities prescribed by this Commission.

7. Applicant shall file an annual report, in compliance with General Order 104-A, on a calendar year basis using CPUC Annual Report Form L and prepared according to the instructions included in that Form.

8. The certificate granted and the authority to render service under the rates, charges and rules authorized will expire if not exercised within 12 months after the effective date of this order.

9. Insofar as applicant seeks to offer paging receivers under tariff, the application is denied.

10. In the event the FCC withdraws its authorization for applicant to transmit on radio frequency 42.54 MHz in the service area authorized here and the FCC has not issued applicant a construction permit authorizing applicant to transmit on a different one-way radio frequency throughout that service area prior to such withdrawal, this certificate shall terminate upon the date of such withdrawal and be of no further force and effect.

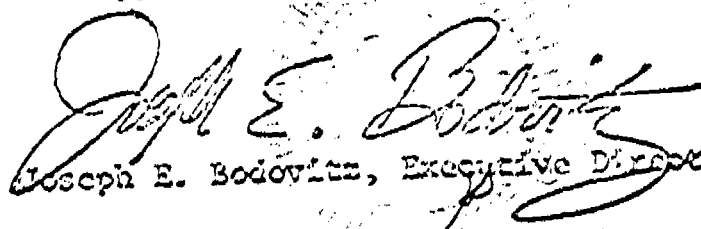
11. The application is granted as set forth above, except for the request to offer paging receivers under tariff which is denied.

This order becomes effective 30 days from today.

Dated JUN 20 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director

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Discussion

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