

Decision 87 10 068

OCT 28 1987

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Westel Holdings, Inc. (U-2069-C) for)
a certificate of public convenience)
to construct and operate a radio-)
telephone utility system in portions)
of Napa, Sacramento, Solano, and)
Yolo Counties.)

Application 87-05-050
(Filed May 27, 1987)

O P I N I O N

Westel Holdings, Inc. (applicant), a California corporation doing business as Valley Instant Page, requests a certificate of public convenience and necessity (CPC&N) to construct and operate radiotelephone utility (RTU) facilities to provide one-way RTU services in portions of Napa, Sacramento, Solano, and Yolo Counties, pursuant to Section 1001 of the Public Utilities (PU) Code. A map and engineering statements of the proposed service territories are attached to the application as Exhibit A and B, respectively.

Copies of the application were served on cities and counties within the proposed service area and on other entities with which applicant's proposed service is likely to compete, as listed in the certificate of service attached to the application.

Notice of this application appeared on the Commission's Daily Calendar of June 2, 1987. No protests to the application have been received; therefore, a public hearing is not necessary.

Applicant possesses the requisite Federal Communications Commission (FCC) permits for base station facilities at Mt. Vaca, Vacaville; 5331 Walnut Avenue, Sacramento; and 3899 Security Park Drive, Rancho Cordova, on a frequency of 43.56 megahertz (MHz). However, the construction permits are in the name of J & S Investments, Inc. doing business as Valley Instant Page.

Applicant's initial application (Application (A.) 85-6-007) before the Commission for a CPC&N to construct and operate a one-way RTU system indicated that applicant was a new corporation which has not previously performed any operations. It represented that applicant was wholly owned by Mr. and Mrs. Ryan who are also the sole owners of J & S Investments, Inc. doing business as Valley Instant Page. The five FCC permits whereby applicant obtained a CPC&N to construct and operate in that proceeding were also in the name of J & S Investments, Inc. doing business as Valley Instant Page. However, by A.85-06-007, applicant represented that the FCC permits would be transferred to applicant.

Since this application is requesting a CPC&N for applicant, any authority granted should be conditioned upon applicant demonstrating that the FCC permits, both those identified in A.85-06-007 and this application, have been transferred from J & S Investments, Inc. doing business as Valley Instant Page to applicant.

The facilities for which applicant requests a CPC&N in this proceeding have already been constructed, and without Commission authority. Applicant represents that it was under the misapprehension that authority granted by the Commission in Decision (D.) 85-09-008 "authorizing certain construction in named counties authorized all construction in those counties."

Subsequently, by clarification letter of August 12, 1987, applicant asserted that an additional motivation for proceeding with construction prior to Commission authority was the developmental nature of FCC grants for operating on the 43 MHz frequencies. Until quarterly television reception interference (TRI) surveys are conducted to determine whether TRI occurs during operation on the paging frequency, a grant of regular authority is delayed. Therefore, it is to the advantage of applicant, as well as its subscribers, to conduct those tests expeditiously. If

interference occurs and cannot be corrected, it must relocate the station.

Construction of such facilities without a CPC&N is in violation of Section 1001 of the Public Utilities (PU) Code and Rule 18 of the Commission's Rules of Practice and Procedure, which requires applicant to obtain a CPC&N from the Commission prior to beginning construction of proposed facilities.

Applicant is a RTU certified to provide one-way paging and signaling services in the San Francisco Bay and Sacramento areas, and as such is expected to operate subject to Commission regulation. Its president, John Ryan, "has considerable experience in the field of electronic communication, including several years' experience in design and marketing of UHF and UHF mobile radio systems." It is apparent from the requisite FCC permits, attached to this application that applicant is cognizant of FCC requirements.

Although applicant believed that the authority granted in D.85-09-008 for construction in named counties authorized any and all construction in those named counties, only two of the three sites presently sought by applicant are in a county where applicant previously obtained a CPC&N. Further, Ordering Paragraph 1 of D.85-09-008 granted applicant authority to construct and operate five specific base stations. Based on applicant's background, FCC filings and initial Commission filing, applicant should have known a CPC&N is needed prior to construction of additional stations.

Applicant's argument that it was motivated to begin construction in the absence of a CPC&N, in order to complete TRI surveys, is equally unpersuasive. The appropriate remedy in such a case is to invoke Rule 87 and request a deviation from the Commission's Rules based on a "good cause" showing. Applicant did not pursue this available remedy, choosing instead to ignore the Commission's Rules.

The Commission did not grant applicant blanket authority to construct and/or operate RTU facilities, nor does it routinely grant such requests. To do so would, among other things, deny due process to competitors and other interested parties, and ignore environmental impacts of future construction.

Nevertheless, the facilities have been constructed, and applicant is now seeking the required CPC&N. We will approve this belatedly filed application because applicant has demonstrated a public need for the service and there are no protests. We are disturbed, however, at the apparent unconcern of this and other applicants with the requirement that this Commission issue a CPC&N before they may begin construction or operation. This is a requirement that applies to all RTUs and in a heavily competitive arena, must be enforced uniformly if it is to be enforced at all.

We expect applicant and other RTUs to obtain and maintain necessary resources to ensure familiarity and compliance with the Public Utilities Code and with the Commission's Rules of Practice and Procedure. Failure to do so for the future will raise questions about whether the applicant has the requisite fitness to operate lawfully (a precondition to the grant of a CPC&N) and may subject the applicant to fines or penalties under Public Utilities Code Section 2107. Applicant is placed on notice that future violations will not be tolerated.

The proposed facilities were installed in existing buildings and antennae attached to existing towers or building tops. Therefore, it can be seen with certainty that there is not any possibility that the proposed facilities may have a significant effect on the environment.

The facilities for which applicant seeks a CPC&N are operational. Such facilities utilize conventional industry standard equipment employing the latest technological advancements. The paging stations are high-stability Quintron models. The system is capable of supporting conventional analog and digital signaling

formats. Applicant anticipates installing fill-in stations to improve system performance on an as needed basis. Maintenance will be provided by applicant's president John Ryan.

Applicant represents that a public need and demand exists for the proposed service, which will provide area residents an alternative to other paging services and the opportunity to select paging services of a quality and coverage area best fitting their particular needs.

Applicant also represents that the population density and demographics of the market to be served is capable of supporting its wide-area and commonly owned and operated paging system. The financial statement, Exhibit D to the application, shows that applicant had approximately \$12,000 of equity at December 31, 1986. Since the cost to construct the proposed facilities has already been met, additional funds should not be needed.

However, should applicant need to install additional fill-in stations discussed above, it may be necessary for applicant to obtain additional financing. Therefore, applicant is notified that Public Utilities Code Sections 817 through 830 requires a public utility to obtain Commission authority to enter into long-term (periods of more than 12 months) financing arrangements.

The authority addressed in this opinion pertains only to applicant's request for a CPC&N to construct and operate three base station facilities, and does not provide applicant blanket authority to construct additional base station facilities or provide any exemption from obtaining the necessary authority to enter into long-term financing arrangements.

The rates to be charged for applicant's proposed one-way paging services are attached to the application as Exhibit E. Tariffs setting forth the detailed rates, practices and classifications are to be the same as those currently on file with the Commission.

Findings of Fact

1. Applicant requests a CPC&N to construct and operate additional one-way RTU facilities.
2. No protests to the application have been received.
3. Applicant possesses the requisite FCC permits for base station facilities at Mt. Vaca, Vacaville; 5331 Walnut Avenue, Sacramento; and 3899 Security Park Drive, Rancho Cordova.
4. The FCC permits are in the name of J & S Investments, Inc. doing business as Valley Instant Page.
5. Applicant is wholly owned by Mr. and Mrs. Ryan who are also the sole owners of J & S Investments, Inc. doing business as Valley Instant Page.
6. The five FCC permits whereby applicant obtained a CPC&N by A.85-06-007 were in the name of J & S Investments, Inc. doing business as Valley Instant Page.
7. Applicant represented that the FCC permits would be transferred to applicant.
8. The facilities for which a CPC&N is requested have already been constructed.
9. Applicant was under the misapprehension that D.85-09-008 authorizing certain construction in named counties authorized all construction in those counties.
10. An additional motive for proceeding with construction prior to Commission authority was the developmental nature of FCC grants for operating on the 43 MHz.
11. Construction of facilities without a CPC&N is in violation of Section 1001 of the PU Code and Rule 18 of the Commission's Rules of Practice and Procedure.
12. Applicant is a RTU certified to provide one-way paging and signaling services in the San Francisco Bay and Sacramento areas.
13. Applicant's president has considerable experience in the field of electronic communication, including several years'

experience in design and marketing of UHF and UHF mobile radio systems.

14. Only two of the three sites presently sought by applicant are in a county which applicant previously obtained a CPC&N.

15. Ordering Paragraph 1 of D.85-09-008 granted applicant authority to construct and operate five specific base stations.

16. The Commission did not grant blanket authority to construct and/or operate RTU facilities.

17. The proposed facilities were installed in existing buildings and antennae attached to existing towers or building tops.

18. It can be seen with certainty that there is not any possibility that the proposed facilities may have a significant effect on the environment.

19. The facilities for which applicant seeks a CPC&N are operational.

20. The proposed operation is technically feasible.

21. Public convenience and necessity require the granting of the application.

22. The proposed operation is economically feasible.

23. The rates to be charged for applicant's proposed one-way paging services are attached to the application as Exhibit E.

Conclusions of Law

1. Since applicant is requesting a CPC&N, any authority granted should be conditioned upon applicant demonstrating that its FCC permits have been transferred from J & S Investments, Inc. doing business as Valley Instant Page to applicant.

2. A CPC&N for the facilities which applicant constructed in violation of Section 1001 of the PU Code and Rule 18 of the Commission's Rules of Practice and Procedure should be authorized because applicant came forth with the application, and no protests were received.

3. PU Code Sections 817 through 830 require applicant to obtain Commission authority before entering into long-term financing arrangements.

4. The application should be granted to the extent provided in the following order.

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

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPC&N) is granted to Westel Holdings, Inc. (applicant) for the construction and operation of a public utility one-way radiotelephone system with base stations and service area as follows:

Base station locations:

- a. Mt. Vaca, approximately 6.5 miles northwest of Vacaville.
(Lat. 38 23' 34" N, Long. 122 05' 52" W)
- b. 5331 Walnut Avenue, Sacramento.
(Lat. 38 39' 49" N, Long. 121 20' 51" W)
- c. 3899 Security Park Drive, Rancho Cordova.
(Lat. 38 33' 48" N, Long. 121 12' 12" W)

Service area: As shown in Exhibit A to Application (A.) 87-05-050.

2. Applicant shall demonstrate to the Commission's Evaluation and Compliance Division Director that the Federal Communications Commission (FCC) permits identified in A.85-06-007 and A.87-05-050 (this application) have been transferred from J & S

Investments, Inc., doing business as Valley Instant Page, to applicant.

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

4. Upon compliance with Ordering Paragraphs 2 and 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 5 days' notice. The rates and charges shall be the same as proposed for service in Exhibit E to A.87-05-050.

5. Applicant shall file, after the effective date of this order and in compliance with Ordering Paragraph 5, as part of its individual tariff, service area maps drawn in conformity with the provisions of the FCC Rule 22.504, commonly known as the "Carey Report," and consistent with Exhibit A to A.87-05-050.

6. Applicant shall notify the Commission's Evaluation and Compliance Division Director in writing of the date service is first rendered to the public as authorized herein, within 5 days after service begins.

7. 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.

8. The corporate identification number assigned to Westel Holdings, Inc. is U-2069-C which should be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

9. This application is granted as set forth above.
This order becomes effective 30 days from today.
Dated OCT 28 1987, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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


Victor Weisser, Executive Director

AS