

Decision 88 01 060 JAN 28 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
MCCA Microwave, Inc., a Delaware )  
corporation, for a certificate of )  
public convenience and necessity )  
to operate an interLATA Telecommu- )  
nications System within California. )

Application 87-09-032  
(Filed September 23, 1987)

U-5141-C

OPINION

This is an application in which MCCA Microwave, Inc. (Applicant) seeks a certificate of public convenience and necessity authorizing it to operate an interLATA telecommunications system in California.

Notice of the filing of the application appeared in the Commission's Daily Calendar on September 28, 1987. Pacific Bell (Pac Bell) filed a protest to the application on October 27, 1987. Applicant filed a response to the protest on November 4, 1987.

Pac Bell argues that the wording of the application raises concerns that applicant will provide intraLATA service in violation of Decision (D.) 84-06-113, dated June 13, 1984, which will bypass Pac Bell's facilities also in violation of D-84-06-113. It asserts that:

"Applicant should be required to state and make clear that it will not engage in intraLATA competition with Pacific, which is expressly forbidden by Commission Decision No. 84-06-113, by selling "excess" capacity on intraLATA circuits to "intraLATA carriers, and/or end users" or anyone else. In the absence of any such statement, the Application should be denied." (Protest p. 4.)

Pac Bell also asserts that it protests:

"The Application insofar as it fails to include the tariffs pursuant to which Applicant proposes to sell telecommunications services. Commission Decision No. 85-05-072 (May 15, 1985) unequivocally requires applicants seeking California interLATA authorization to file tariffs as a condition of their certification. Pacific furthermore protests Applicant's request that its tariffs become effective not less than one day after filing." (Ibid.)

Applicant filed a response to the protest of Pac Bell. The response contends that the application clearly shows that it only seeks to provide interLATA service. The response also states that:

"Applicant is willing for its certificate to provide explicitly that Applicant shall not hold out the availability of intraLATA telecommunications services to its customers, and that Applicant shall advise its subscribers that their intraLATA communications needs should be met by a duly certificated local exchange company."

Applicant, cites Donald R. Cook, D.87-09-062, dated September 23, 1987, to the effect that:

"Applicant's circuits may be utilized by other interLATA carriers in putting together their networks, by end users as part of their interLATA private line communications systems, and by certificated intraLATA carriers as a means of delivering or terminating interLATA traffic."

Applicant also argues that the objection of Pac Bell to not having applicant's tariffs with the application is one of form. The response indicates that applicant stipulates to having a decision provide for its publishing tariffs on 15 days notice.

The Commission has considered the protest and response. We are of the opinion that D.85-05-072 (Hamid Helmandi) does not support the proposition for which it is cited by Pac Bell. That

decision provides that "Applicant may not offer service until tariffs are on file." (Ordering Paragraph 3.) It does not hold that proposed tariffs must be filed as part of an application. Furthermore, Applicant has stipulated to a 15 day effective date of tariff filing. In Cook, the Commission authorized interLATA service in an application which indicated:

"... Applicant desires to provide private line data and voice grade microwave services on an interLATA basis to intraLATA carriers and/or end users within the State of California. Applicant has already entered into an interLATA Service Agreement with PacTel Cellular.... The agreement describes interLATA microwave circuits between the Cities of Lodi and Elk Grove, California. There has also been agreement in principle between Applicant and PacTel Cellular for similar interLATA links between the towns of Banning and Whitewater, California. It is anticipated that the links described in these agreements may be used in connection with switched intraLATA services rendered by PacTel Cellular or its affiliates.. While it is not clear that applicant's provision of such circuits to PacTel Cellular requires that applicant be certificated as an interexchange carrier, applicant desires such authority in light of his plans to construct other interLATA microwave facilities and to provide service on them to other customers."

This is similar to the authority requested herein.

In the light of the stipulations filed by Applicant, this application is similar to others which have received ex parte treatment by the Commission.

No other points require discussion. The Commission makes the following findings and conclusion.

Findings of Fact

1. Applicant is a Delaware corporation qualified to do business in California. It is a wholly owned subsidiary of Mobile Communications Corporation of America (MCCA), a Delaware corporation engaged primarily in the business of providing domestic

public land mobile radio services through its affiliates to the public in various states, including California. MCCA's California affiliates include Mobilecomm of California, Inc.; Mobilecomm of Los Angeles, Inc.; Mobilecomm of Ventura, Inc.; Mobilecomm of San Bernardino, Inc.; Mobilecomm of Orange County, Inc.; Mobilecomm of San Francisco, Inc.; and Mobilfone. All of these affiliates are certificated by this Commission and licensed by the Federal Communications Commission (FCC).

2. The application was filed on September 23, 1987. Pac Bell filed a protest on October 27, 1987. Applicant filed a response to the protest on November 4, 1987.

3. The response to the protest contained certain stipulations, which, whether they be deemed clarifications or modifications, make the application similar to other applications which have received ex parte treatment by the Commission.

4. A public hearing is not necessary in this matter.

5. Applicant proposes to provide private line data and voice grade microwave services on an interLATA basis to intraLATA carriers, other interLATA carriers, and/or end users within California. In order to do this Applicant may be licensed by the FCC to construct and operate certain point-to-point microwave facilities. Applicant has also made arrangements with the other MCCA affiliates to lease excess microwave circuits on links that have been licensed to them and constructed by them.

6. The microwave paths listed in the application are licensed to other MCCA affiliates who will use them primarily in connection with their radio paging and conventional mobile telephone operations. Technical standards for these circuits are those established by Part 22 of the FCC's Rules and Regulations. The standards applicable to circuits provided under applicant's tariff will be those generally prevalent among interexchange carriers operating in California.

7. Applicant has provided a pro forma balance sheet which indicates cash assets of \$47,000 for 1988; \$343,000 for 1989 and \$3,529,000 for 1990. The application avers that the cash will be provided by MCCA. A financial statement of MCCA, attached to the application, indicates that as of June 30, 1987, it had assets of \$276,552,127 and for the six months ending on that date, it had a net income of \$3,469,268.

8. Applicant has the ability, including financial ability, to conduct the proposed operations.

9. In D.84-01-037 the Commission authorized interLATA entry generally.

10. In D.84-06-113 the Commission denied applications to provide competitive intraLATA telecommunications service and required persons not authorized to provide intraLATA telecommunications service to refrain from holding out the availability of such services and to advise their subscribers that intraLATA communications should be placed over the facilities of the local exchange company.

11. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

12. Public convenience and necessity require that the application be granted.

13. It is reasonable to require that the initial tariffs filed by Applicant be filed on not less than 15 days notice before they become effective.

14. As a telephone corporation operating as a telecommunications service supplier, Applicant should be subject to the 4% interim surcharge on gross intrastate interLATA revenues and the conditions as set forth in D.87-07-090.

15. Applicant should be subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435. The fee is currently 0.1% for the 1987-88 fiscal year.

16. Because of the public interest in effective competition interLATA this order should be effective on the date of issuance.

Conclusion of Law

The application should be granted.

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.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity to operate as a telephone corporation as defined in PU Code § 234 for the purpose of operating an interLATA telecommunications system is granted to MCCA Microwave, Inc. (Applicant) in accordance with the terms of the application, except as herein modified.

2. The authority granted in Ordering Paragraph is subject to the condition that applicant refrain from holding out to the public the provision of intraLATA service and subject to the requirement that it advise its subscribers that intraLATA communications should be placed over the facilities of the local exchange company.

3. Applicant is authorized to file with this Commission, after the effective date of this order, on not less than 15 days notice to the public and Commission, tariff schedules for the provision of interLATA service. Applicant may not offer service until tariffs are in effect. If Applicant has an effective FCC-approved tariff, it may file a notice adopting such FCC tariff with a copy of the FCC tariff included in the filing. Such adoption notice shall specifically exclude the provision of intraLATA service. If Applicant has no effective FCC tariffs, or wishes to file tariffs applicable only to California intrastate interLATA service, it is authorized to do so, including rates, rules,

regulations, and other provisions necessary to offer service to the public. Such filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than 15 days after filing.

4. After the filing of initial tariffs, as provided for in Ordering Paragraph 3, Applicant is authorized to deviate on an ongoing basis from the requirements of GO 96-A in the following manner: (a) to deviate from the pagination requirements set forth in paragraph II.C.(1)(b) which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) to deviate from the requirements set forth in paragraph II.C.(4) that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's Telecommunications Branch. Tariff filings shall reflect the 4% interim surcharge noticed in Ordering Paragraph 6.

5. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived in order that changes in FCC tariffs may become effective on the same date for California interLATA service for those companies that adopt the FCC tariffs.

6. Applicant is subject to the 4% interim surcharge applicable to the gross revenues of intrastate interLATA services as outlined in D.87-07-090 in Order Instituting Investigation 83-11-05 dated July 29, 1987. The 4% interim surcharge collected shall be retained in an interest bearing account pending further order of the Commission.

7. Applicant is subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435.

8. The corporate identification number assigned to MCCA Microwave, Inc. is U-5141-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.

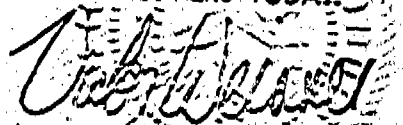
9. The certificate of public convenience and necessity granted by this order shall expire on December 31, 1988, if Applicant has not filed tariffs and commenced operations by that date.

This order is effective today.

Dated JAN 28 1988, 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 Wulser, Executive Director