

Decision SS 02 034

FEB 24 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 NAPA CELLULAR TELEPHONE COMPANY)
 for a certificate of public)
 convenience and necessity under)
 Section 1001 of the Public Utilities)
 Code of the State of California for)
 authority to construct and operate)
 a new domestic public)
 cellular radiotelecommunication)
 service to the public in the Napa-)
 Fairfield-Vallejo Cellular)
 Geographic Service Area in)
 California and for authority under)
 Sections 816 through 830 and 851)
 of the Public Utilities Code to)
 issue evidences of indebtedness in)
 the principal amount of up to)
 \$4,500,000 and to encumber public)
 utility property.)

(U-3016-C)

Application 87-09-022
 (Filed September 15, 1987;
 amended January 4, 1988)

FINAL OPINION

Napa Cellular Telephone Company (NCTC), a California general partnership, seeks a Certificate of Public Convenience and Necessity (CPC&N) to construct and operate a new domestic public cellular radiotelephone service to the public in the Napa-Fairfield-Vallejo (Napa) Metropolitan Statistical Area (MSA), encompassing substantial portions of Napa and Solano Counties. The Commission in an interim decision, Decision (D.) 87-12-052, dated December 17, 1987, granted NCTC a temporary CPC&N to construct the two cell sites which are located in the Napa MSA prior the issuance, if ever, of a certificate authorizing construction of the entire system and operation of the system. In the decision, the Commission, as lead agency adopted a Negative Declaration for the system, which concluded that the project as presented with its

prescribed mitigation measures would have no significant adverse effects upon the environment. NCTC was also authorized to issue evidences of indebtedness in the aggregate principal amount of up to \$4,500,000 under the financing arrangements set forth in NCTC's application.

On January 4, 1988, NCTC filed an amendment to the application which was joined in by McCaw Communications of Vallejo, Inc. (McCaw). The amendment seeks authority for McCaw to increase its interest in NCTC from 46% to 94.5946%.

I. Summary of Decision

This decision grants NCTC a CPC&N to complete the construction of a cellular radiotelephone system and to provide cellular service in the Napa MSA. D.87-12-052, granted NCTC a temporary CPC&N to construct the two cell sites located within the proposed Napa MSA but refrained from granting authority to install radio equipment at the two cell sites located in Bay Area Cellular Telephone Company's (BACTC) service territory because of the absence of FCC approval of BACTC's application to modify its construction permit. Since the FCC granted BACTC's application, a permanent CPC&N authorizing the installation of radio equipment at the Martinez and TV Hill cell sites and the provision of service in the Napa MSA is granted. These latter cell sites are located in the BACTC service territory and will be shared by NCTC and BACTC pursuant to a cell site-sharing agreement.

II. Discussion

As indicated, D.87-12-052 only gave NCTC a temporary CPC&N because the FCC had not given its approval for the construction and use by NCTC of the TV Hill and Martinez cell sites which are outside the Napa MSA. NCTC asserts that the FCC has

granted the approval and that a permanent CPC&N should be issued. The record indicates that on February 4, 1988, the FCC authorized the construction by BACTC of the TV Hill and Martinez cell sites. It is now appropriate to grant a permanent CPC&N.

NCTC contends that since it will be entering into a market in competition with an already constructed and operating cellular system the order granting it permanent authority should be made effective on the date of issuance and it should be permitted to make its tariffs effective on one day's notice. The Commission is of the opinion that the ensuing order should be effective on the date it is issued. However, we find that the filing of tariffs on one day's notice is not appropriate. This does not afford sufficient time for the Commission's Advisory and Compliance Division (ACAD) and members of the public including competitors to reasonably examine the tariffs. Five days' notice is more appropriate and the ensuing order will so provide.

The interim opinion noted that McCaw held options to purchase the interest of each of the remaining partners. The authority to acquire control through the purchase of partnership interests requested in the amendment filed on January 4, 1988, is consistent with this provision and should be granted.

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

Findings of Fact

1. Notice of the filing of the application appeared in the Commission's Daily Calendar on September 22, 1987. Notice of the filing of the first amendment to the application appeared in the Commission's Daily Calendar on January 6, 1988. There are no protests.

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

3. The operation of the proposed system was described in D.87-12-052 and need not be repeated. No modifications have been made in the proposed system configuration.

4. The proposed system provides that BACTC will build, install, manage, and operate the system for NCTC pursuant to a Construction and System Management Agreement. NCTC will share BACTC's Mobile Telephone Switching Office (MTSO) and two cell sites located in BACTC's service territory pursuant to switch-sharing and cell site-sharing agreements.

5. In D.87-12-052, the Commission ordered that:

"1. A temporary certificate of public convenience and necessity is granted to Napa Cellular Telephone Company (NCTC) for construction of two cell sites within the Napa MSA, at the following locations:

"a. Mount Saint Helena off Highway 29 near Robert Louis Stevenson State Park, about 5.5 miles north of Calistoga;

"b. Radio Station KVON, Northeast of Silverado Trail and Oakvale Cross Road, about 3.5 miles east of Yountville.

"2. NCTC shall not operate this system in service to the public without further authorization from this Commission. There is absolutely no guarantee that such operating authority will be forthcoming."

NCTC was not granted authority to install radio equipment at the shared cell sites outside the Napa MSA because BACTC had not obtained FCC approval to modify its construction permit to enable it to enter into the cell site-sharing arrangement with NCTC.

6. On February 4, 1988, the FCC issued in Docket 00341-CL-MP-88 authority for BACTC to modify its construction permit to construct the TC Hill and Martinez cell sites.

7. In addition to the cell site radio equipment, the proposed system requires interconnection with the Public Switched Telephone Network (PSTN). There are essentially two types of interconnection facilities required to link telephone equipment

with the operational cellular system. The interfacing between the cellular system and the PSTN is undertaken through central office connecting circuits, known as PSTN interconnections. To link the cell site to the MTSO, and the MTSO to the appropriate Pacific Bell central offices, dedicated private line facilities (both voice and data) will be used. NCTC's customers will be provided with wide area coverage through an automatic roaming agreement to be made between NCTC and BACTC. Under this agreement, NCTC's customers may roam in BACTC's territory at "home carrier" rates and with all calling abilities available to BACTC's customers.

8. NCTC has selected a cellular system manufactured by Ericsson, Inc. (Ericsson), a distributor of cellular mobile telephone systems. Ericsson cellular equipment is in use in several cities in the United States, including San Francisco, San Jose, and Los Angeles. Ericsson equipment meets the applicable FCC specifications, and has a record of successful performance. The proposed system will provide all the basic cellular capabilities, including normal call processing, hands-off and traffic data, plus five enhances features such as call forwarding, call waiting, and three-way calling. The initial system is designed to create a probability of over 90% that a mobile unit will receive a signal at -100 dBm or better, a range that provides good sound quality. Ericsson will provide warranties covering equipment, installation, software, system, and grade of service. All the equipment necessary for NCTC's initial Napa-Fairfield-Vallejo cellular system has been identified, and its availability has been assured by Ericsson. Personnel operating the NCTC system will be fully trained on the Ericsson equipment and software. They will participate in a testing program, will work with Ericsson during installation, and will be performing acceptance tests on the entire system before commercial service begins. Any revisions will be conducted jointly by personnel from Ericsson and the NCTC system operators.

The CACD has reviewed the information provided by NCTC. CACD concluded that the proposed sharing of BACTC's MTSO, the proposed cell sites, and the equipment are adequate to handle the traffic demands and are capable of expansion to meet demand. CACD has reviewed the terms and conditions of NCTC's interconnection arrangements with BACTC and Pacific Bell and finds them to be acceptable. CACD also reviewed the construction and systems management and switch-sharing agreements between NCTC and BACTC and found them to be acceptable.

9. NCTC included with the application a pro forma balance sheet which projects viability for the proposed operation. Funding for construction of the proposed system is to be provided by loans from Ericsson. If the Ericsson loans do not become available McCaw has agreed to provide financing. A consolidated balancing sheet filed with the Securities and Exchange Commission by McCaw Cellular Communications, Inc., a Delaware Corporation, and its subsidiaries, which includes McCaw, indicates that for the 9 months ending September 30, 1987, the companies had gross revenues of \$38,024,000 and as of September 30, 1987 they had total current assets of \$714,635,000.

10. NCTC was authorized to issue evidence of indebtedness and to encumber its property in the aggregate principal amount of up to \$4,500,000 in D.87-12-052.

11. NCTC has the ability, including financial ability to conduct the proposed operations.

12. The Commission has determined that construction of NCTC's proposed system will not significantly impact the environment and issued its Notice of Determination with D.87-12-052.

13. Public convenience and necessity require that the requested CPC&N be granted.

14. McCaw seeks to acquire control of NCTC from 46% to 94.5946%. McCaw is a California corporation and maintains its principal offices in Burlingame, California. McCaw has obtained

the consent of the FCC to acquire control of NCTC. (Consent to Transfer, FCC file No. 00111-CL-TC-01-88, dated December 10, 1987.) The proposed increase in ownership is to be gained through the purchase of the ownership interests of nine of the remaining partners in NCTC. McCaw is one of many subsidiaries of McCaw Cellular Communications, Inc. which is 86% owned by McCaw RCC Communications, Inc. and is 14% publicly traded. McCaw RCC Communications, Inc. is a wholly owned subsidiary of McCaw Communications Companies, which is a corporation whose voting stock is owned 55% by MFC, Inc. and 45% by Affiliated Publications, Inc. (API). API is a publicly traded corporation that owns and operates various communications and media properties.

McCaw is an experienced operator of common carrier radio systems. The McCaw Communications companies are engaged in radio paging, mobile telephone, and cellular radiotelecommunication services. McCaw Cellular Communications, Inc. and its affiliate subsidiaries currently provide facilities based cellular radio telephone service to 19 MSAs in 14 states. In addition, McCaw Cellular Communications is a reseller of cellular radio service in 18 additional MSAs. Affiliates of McCaw are holders of interest in frequency block "A" carriers that are offering cellular services or awaiting Commission approval for such offering of service in the Fresno, Sacramento, Stockton, and Oxnard-Ventura-Simi Valley MSAs among others. McCaw has stated that it is prepared to provide additional financing, if required, to operate NCTC.

Under the terms of the option agreements between McCaw and each of the remaining partners in NCTC, McCaw will pay each partner a maximum of \$352,482 for each partner's interest. This purchase price includes the option fee paid by McCaw as initial payment of the purchase price.

15. The proposed acquisition of control of NCTC by McCaw is not adverse to the public interest.

16. NCTC is subject to the user-fee system set forth in Public Utilities (PU) Code § 401, et seq. The surcharge is 0.10% for the fiscal year 1987-1988.

16. As an FCC Cellular Communications Licensee, NCTC should be required to use the Uniform System Accounts established by D.86-01-043 in OIR 85-03-075.

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

Conclusions of Law

1. McCaw should be authorized to acquire control of NCTC.

2. The application should be granted as provided in the following order.

Only the amount paid to the State 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.

FINAL ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Napa Cellular Telephone Company (NCTC) to operate as a telephone corporation as defined in PU Code § 234 for the purpose of constructing and providing the proposed cellular mobile telecommunications system in the Napa-Fairfield-Vallejo Metropolitan Statistical Area, as set forth in the application.

2. McCaw is authorized to increase its ownership in and acquire control of NCTC in accordance with the terms set forth in the application as amended.

3. On or after the effective date of this order, NCTC is authorized to file in compliance with General Order No. 96-A wholesale or retail tariff schedules containing the base rates set

forth in Section VIII of its Application. The tariff shall be effective on not less than five days' notice.

4. NCTC is authorized to use in its tariff filing the alternative method of page numbering described in Resolutions U-275 and T-4886.

5. Within 30 days after this order is effective, NCTC shall file a written acceptance of the CPC&N with the Commission Advisory and Compliance Division (CACD).

6. NCTC shall notify the CACD in writing of the day it begins service.

7. NCTC shall keep its books as directed by the Uniform System of Account for cellular communications licensees as prescribed by D.86-01-043.

8. NCTC shall pay a user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431 through 435.

9. NCTC shall file the annual reports required by General Order Series 24, 65-A, and 104-A as appropriate.

10. The corporate identification number assigned to NCTC is U-3016-C, which shall be included in the caption of all original filings with the Commission and in the titles of other pleadings filed in existing cases.

11. NCTC's and McCaw's application is granted as set forth above.

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

This order is effective today.

Dated FEB 24 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
JOHN B. OHANIAN
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

Commissioner G. Mitchell Wilk,
being necessarily absent, did
not participate.

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

Victor Weissert
Victor Weissert, Executive Director

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