

APR 13 1988

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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Fred W. Daniel, d/b/a Orion Telecom,)
for a certificate to construct)
radio-telephone utility facilities)
serving areas in Southern California)
as may be required by Section 1001,)
et seq. of the California Public)
Utilities Code.)

Application 87-12-045
(Filed December 21, 1987)

(U-2098-C)

OPINION

Fred W. Daniel (applicant), doing business as Orion Telecom, requests a certificate of public convenience and necessity (CPC&N) to construct and operate radiotelephone utility (RTU) facilities to provide one-way paging and two-way mobile RTU services in and around Southern California. Maps and engineering statements of the proposed service area are attached to the application as Exhibit A.

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 December 30, 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 ten proposed base station facilities on the 454.0000 megahertz (MHz) band frequency. Two base station facilities are authorized at each of the Beaumont, Palm Springs, San Bernardino, and Ramona grid coordinates, as identified in Exhibit B to the application. One base station facility is

authorized at both the Chula Vista and the Altaloma grid coordinates. All but one of the FCC construction permits expired in 1987.

In June 1987 applicant retained legal counsel to prepare and file this application. Applicant constructed his system to comply with FCC requirements prior to the expiration of his FCC permits, after legal counsel informed applicant that the CPC&N was to be granted in August 1987. Subsequently, applicant was informed that his legal counsel did not file the application and that a CPC&N had not been issued. Immediately, applicant retained new legal counsel to file this application. Accordingly, applicant requests that this application be granted even though construction is completed. Also, applicant requests a waiver of Rule 18(o) (1) of the Rules of Practice and Procedure which requires applicant to submit his application within 30 days from the grant of an FCC permit.

Since applicant has demonstrated that he acted in good faith, this application should be granted and made effective on the date signed.

Applicant, a California resident, holds an FCC 1st Class Radiotelephone license and is certified as a first class engineer by the National Association of Radio and Telecommunications Engineers, Inc. From 1965 to 1981, applicant developed and operated three communications sales and service companies, Communications Engineering Corporation, General Systems 75, and Telephone Specialties, Inc. Subsequent to the selling of the first two companies, he expanded the radio relay systems of General Systems 75, forming a general partnership with two other companies to become a major "SMR" operator in Southern California under the name of Sigma Telecommunications. Applicant is also actively involved in the answering service business.

Applicant represents that the FCC, via the grant of applications for numerous radio telephone frequencies, conclusively

demonstrates that there is a present ever-increasing demand for radiotelephone service in California and throughout the United States. Based on this representation, applicant asserts that there is a large market of potential users whose service needs presently are not being met, but can be met by applicant.

It is estimated that the proposed service will result in 395 one-way paging units and 350 two-way units in the first year of operation. By the fifth year of operation it is estimated that there will be 950 one-way paging units and 810 two-way units. Applicant expects to operate at a \$62,800 profit in the first year of operation, before depreciation and income taxes.

Applicant has already acquired all necessary transmitters, duplexes, and related equipment. Therefore, there are no capital requirements to construct the proposed facilities. However, should additional funds be necessary, applicant can draw from his net worth of approximately \$183,000 as at September 30, 1987, and from the first year's projected profit.

The proposed facilities will be operated under the direct supervision and control of applicant. Control of the base stations will be provided at facilities located at Rancho Cucamonga and automatic alarms will be installed at the base station facilities to provide immediate notification of certain technical failures. Subscribers will be provided a telephone number to obtain assistance quickly on a 24-hour basis.

State-of-the-art fully, automated RTU services are to be offered by applicant. These services include two-tone calling, 5/6 tone calling, DTMF calling, IMPTS, DTMF inbound, direct inward dialing, and DTMF over-dial.

The proposed base stations are to be located on existing towers in existing antenna farms. Therefore, it can be seen with certainty that there is not any possibility that the grant of this application may have a significant effect on the environment.

Applicant's rates to be charged for the proposed service are attached to the application as Exhibit C. Tariffs setting forth the detailed rates, practices, and classifications are to be filed with the Commission upon exercise of the CPC&N.

Applicant should be subject to the fee system, as set forth in Public Utilities (PU) Code Sections 401, et seq, which is used to fund the cost of regulating common carriers and businesses related thereto and public utilities. By Resolution M-4746, the fee level for fiscal year 1987-88 for telephone corporations was set at 0.10 of 1% (0.0010) of revenue subject to the fee. Appropriate tariff rules should be incorporated in applicant's tariff rules for the imposition of this surcharge.

Findings of Fact

1. Applicant, an individual doing business as Orion Telecom, requests a CPC&N to construct and operate one-way paging and two-way mobile RTU services in and around Southern California.

2. 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.

3. Notice of this application appeared on the Commission's Daily Calendar of December 30, 1987.

4. No protests to the application were received.

5. Applicant possesses the requisite FCC permits.

6. All but one of the FCC construction permits expired in 1987.

7. Applicant constructed his system to comply with FCC requirements prior to the expiration of his FCC permits, after legal counsel informed him that an application was filed and that a CPC&N was to be granted in August 1987.

8. Applicant retained new legal counsel after being informed that the application was not filed and that a CPC&N had not been issued.

9. Applicant requests a waiver of Rule 18(o)(1).

10. Applicant holds an FCC 1st Class Radiotelephone license and is a certified first class engineer.

11. Public convenience and necessity require the granting of this application, with a contemporaneous effective date.

12. The proposed operation is economically feasible.

13. The proposed operation is technically feasible.

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

15. Applicant is subject to the fee system, as set forth in PU Code Section 401, et seq.

Conclusions of Law

1. The application should be granted.

2. Waiver of the 30-day filing requirement of Rule 18)0)(1) of the Commission's Rules of Practice and Procedure should be granted.

3. The user fee for the 1987-88 fiscal year should be 0.10%.

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 is granted to Fred W. Daniel (applicant) to construct and operate a public utility one-way and two-way radiotelephone system with base stations and service areas as follows:

Base Station locations:

- a. Mt. David, 5.0 miles west of State Highway 79 and 2.0 miles south southwest of Beaumont.
(Lat. 33° 54' 29" N, Long. 116° 59' 45" W)

- b. Edom Hill, 5 miles northeast of Palm Springs.
(Lat. 33° 51' 57" N, Long. 116° 25' 56" W)
- c. Onxy Peak, 1.5 miles west of State Highway 38 and 8 miles south of Big Bear.
(Lat. 34° 11' 31" N, Long. 116° 42' 31" W)
- d. Mt Woodson, 6.5 miles southwest of the intersection of State Highway 78 and State Highway 67, and 0.7 miles southwest of Ramona.
(Lat. 33° 00' 54" N, Long. 116° 58' 11" W)
- e. Otay Mountain, 14 miles east of Chula Vista.
(Lat. 32° 35' 54" N, Long. 116° 50' 35" W)
- f. 2 miles north Chaffey Union Jr. College, Altaloma.
(Lat. 34° 10' 35" N, Long. 117° 34' 27" W)

Service areas: As shown in Exhibit A to Application (A.) 87-12-045.

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 5 days' notice. The rates and charges shall be as proposed for service in Exhibit C to A.87-12-045.

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 Federal Communications Commission Rule 22.504, commonly known as the "Carey Report," and consistent with Exhibit A to A.87-12-045.

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

6. The 30-day filing requirement of Rule 18(o)(1) of the Commission's Rules of Practice and Procedure is waived for this application only.

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

8. 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 the form.

9. The corporate identification number assigned Fred W. Daniel is U-2098-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.

10. Applicant is subject to the user fee as a percentage of gross intrastate revenue under PU Code Sections 401, et seq.

11. 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.

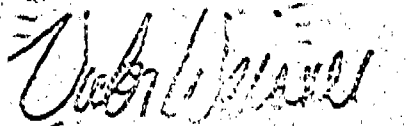
This order is effective today.

Dated APR 13 1988, at San Francisco, California.

STANLEY W. HULETT
President
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHEANIAN
Commissioners

Commissioner Donald Vial, being necessarily absent, did not participate.

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


Victor Weisser, Executive Director