

JUN 9 1988

Decision 88 06 012 JUN 8 1988

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
McCaw Communications of Stockton, )  
Inc. for Authorization to acquire )  
control of Stockton Cellular )  
Telephone Company (U-3012-C) )  
through the acquisition of the )  
partnership interests of Lextel, )  
Inc., et al. )

Application 88-03-027  
(Filed March 10, 1988)

OPINION

This is an application in which McCaw Communications of Stockton, Inc. (McCaw) seeks authority to acquire control of Stockton Cellular Telephone Company (Cellular).

Notice of the filing of the application appeared in the Commission's Daily Calendar on March 17, 1988. There are no protests.

The Commission makes the following findings and conclusion:

Findings of Fact

1. A public hearing is not necessary in this matter.
2. McCaw is a California corporation. It is a wholly-owned subsidiary of McCaw Cellular Communications, Inc. of Kirkland, Washington. Over 98% of the voting equity of McCaw Cellular Communications, Inc. is held by McCaw RCC Communications, Inc. of Kirkland, Washington. Fifty-five percent of the voting stock of McCaw Communications Companies, Inc. is held by MFC, Inc. of Kirkland, Washington and 45% of such voting stock is held by Affiliated Publications, Inc. of Boston, Massachusetts. McCaw, its parent, and its affiliated entities are hereinafter collectively referred to as the "McCaw Group."

3. Cellular is a California partnership. It provides domestic public cellular radiotelephone services pursuant to Decision (D.) 87-11-061, dated November 25, 1987. The partnership is comprised of the following entities:

McCaw	48.4848%
National Material Corporation	6.0606
Cellular Technology, Inc.	6.0606
TeleCellular Corporation	6.0606
International Cellular Systems, Inc.	6.0606
Comstar Cellular Limited Partnership	6.0606
Cellular Communications & Cable	6.0606
Lextel, Inc.	6.0606
Pinnacle Communications, Inc.	6.0606
Stockton Celcom Associates	<u>3.0304</u>
	100.0000%

4. McCaw has options to purchase each of its partners' interests in Cellular, with the exception of Stockton Celcom Associates. It seeks herein authority to exercise its options to acquire an additional 48.4848% interest in Cellular, through purchase of 6.0606% partnership interests in Cellular from each of Lextel, Inc., National Material Corporation, Cellular Technology, Inc., Pinnacle Communications, Inc., Cellular Communications & Cable, Comstar Cellular Limited Partnership, International Cellular Systems, Inc., and TeleCellular Corporation (collectively, "Lextel, Inc. et al."). Upon consummation of the proposed transaction, McCaw would hold a 96.9696% interest in Cellular. The general partnership of Cellular would continue as described in Application (A.) 87-06-019.

The approximate price to be paid for each 6.0606% partnership interest being purchased is \$240,000 which will increase by \$29,997.75 per 6.0606% interest if the transfer closes after April 7, 1988.

5. McCaw is an experienced operator of cellular common carrier systems. The McCaw Group is a communication company which provides paging, traditional mobile telephone, and cellular radio telecommunication services. McCaw Cellular Communications, Inc. (McCaw Cellular) and its affiliates are currently providing facilities-based cellular radio telecommunication services in 25 Metropolitan Statistical Areas (MSAs) in 18 states. The McCaw Group is also reselling cellular radio telecommunication services in an additional 16 MSAs.

McCaw Cellular is the largest non-wireline cellular telephone company in the United States. It operates nine regional multi-market cellular systems, or "clusters." McCaw Cellular is assembling a cluster of cellular operations in Northern California and Nevada, including the Sacramento MSA, adjacent to the Stockton MSA. The coordinated operation of these clusters provides the opportunity to concentrate switching functions utilizing a small number of switches in the region, rather than committing capital to install switches to serve each MSA. The integrated wireline systems in Northern California and Nevada achieve operating efficiencies that result in enhanced service to the public that would be unavailable to a single small-market operator. The consolidation of markets permits a non-wireline operator like McCaw Cellular to offer service areas that are more comparable and competitive with the wireline multi-market systems. The Stockton system, adjacent to the Sacramento cellular system controlled and operated by McCaw Cellular, would be operated as a part of the latter system and regional network.

The proposed acquisition will not adversely affect competition in the Stockton cellular market. Competition between the two cellular carriers, Cellular and Sacramento Valley Limited Partnership will continue as before.

6. McCaw had assets of \$3,548,100 as of September 30, 1987. It had gross revenues of \$1,312,900 for the nine-month period ending September 30, 1987.

7. McCaw has the ability, including financial ability, to acquire control and continue the operations of Cellular.

8. Until recently, the structure of federal regulation encouraged creation of independent non-wireline cellular systems each owned by many partners with small interests. The Federal Communications Commission (FCC) had prevented sale, at a profit, of ownership of unbuilt systems, to enforce the rule that cellular licensees must intend to provide service. (Public Mobile Radio Services, 95 F.C.C. 2d 769, 801 (1983), recon. 101 F.C.C. 2d 799 (1985), further recon. 2 F.C.C. Rcd 1798 (1987).) Market forces, however, rendered this policy impractical and contrary to the public interest. In the Madison Cellular Telephone Company decision, 2 F.C.C. Rcd at 5397 (released August 28, 1987), the FCC recognized that independent non-wireline systems with fractured ownership could not effectively compete with integrated multi-MSA wireline systems. Following the Madison decision, the FCC has approved transfer of ownership even before a system became operational.

The ownership of Cellular was structured under the pre-Madison regulatory regime. The competitive difficulties facing Cellular as an independent system with many small owners forced its partners to consider selling the system to McCaw. Under the previously applicable regulations, the sale could not be completed until Cellular became operational, and Cellular could not become operational until it received a certificate of public convenience and necessity (CPCN). The proposed transaction was structured to close shortly after issuance of a CPCN, construction of the system and licensing by the FCC. It is the judgement of McCaw and Lextel, Inc. et al., that rapidly and fully integrating Cellular into McCaw

Cellular's multi-MSA system is necessary to preserve Cellular's competitive viability.

9. The proposed acquisition and control of Cellular by McCaw is not adverse to the public interest.

10. Since the ensuing order primarily affects the parties to this application, it should be made effective on the date of issuance.

Conclusion of Law

The application should be granted.

This authorization is not a finding of the value of the property for which authorization to acquire control is granted.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order, McCaw Communications of Stockton, Inc. (McCaw) may acquire control of Stockton Cellular Telephone Company through the acquisition of partnership interests in accordance with the terms set forth in the application.

2. McCaw shall file written notice of the acquisition of control with the CACD within 15 days after it has occurred.

3. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised before December 31, 1988.

This order is effective today.

Dated June 8, 1988, at Carson, 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 Weisner, Executive Director  
20

3. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised before December 31, 1988.

This order is effective today.

Dated JUN 8 1988, at San Francisco, California.

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