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Decision 88 06 042

JUN 17 1988

JUN 20 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Oxnard Mobile Phone, a California )  
 general partnership, 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 88-04-061  
(Filed April 25, 1988)

O P I N I O N

Fred W. Daniel and Norm Kramer (applicant), doing business as Oxnard Mobile Phone, requests a certificate of public convenience and necessity (CPC&N) to construct and operate a one-way and two-way radiotelephone utility (RTU) in the greater Oxnard and Ventura area, pursuant to Public Utilities (PU) Code Section 1001 et seq. Engineering statements and a map identifying applicant's proposed service territory are attached to the application as Exhibit A.

Copies of the application have been served on the 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 the application appeared in the Commission's Daily Calendar of April 27, 1988. No protests to the application have been received; therefore, a public hearing is not necessary.

Applicant possesses the requisite Federal Communications Commission (FCC) permit for a base station facility located at Sulphur Mountain, 5.0 miles southeast of Ojai on the 454.5250 and 454.5750 megahertz frequency. Because the FCC permit expires

on June 2, 1988 <sup>1</sup> applicant requests that this application be processed on an expedited basis and be approved by May 25, 1988 to comply with FCC construction requirements.

Should the application be approved by May 25, 1988 interested parties will not have a reasonable period of time to review the application. Rule 8.3 of the Commission's Rules of Practice and Procedure provides interested parties 30 days from the time an application is filed to protest an application. Because this application was filed on April 25, 1988 and interested parties should be afforded a 30-day period to review the application, it is not possible to grant this application by May 25, 1988.

By a May 17, 1988 telephone call, the assigned Administrative Law Judge informed applicant that this application will not be approved by May 25, 1988. Applicant stated that it intends to obtain an extension of time from the FCC. Because applicant has acted in good faith, this application should not be delayed. Therefore, this application should be approved subject to applicant demonstrating that it has a valid FCC permit.

Fred W. Daniel and Norm Kramer, California residents, are applicant's general partners. Daniel holds an FCC first class radiotelephone license and is a certified first class engineer by the National Association of Radio and Telecommunications Engineers, Inc. Daniels has been actively involved in the answering service business since 1965 and holds a certificate of public convenience and necessity to construct and operate a one-way and two-way RTU in and around Southern California, pursuant to Decision 88-04-011.

Kramer holds an FCC first class radiotelephone license, a degree in business administration, and is a graduate of the U.S.

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<sup>1</sup> Although the FCC permit is effective from June 2, 1987 through June 2, 1988, the permit was not issued by the FCC until November 30, 1987.

Naval Electronic Technical School and the Grantham School of Engineering. Kramer owns Lee's Two-Way Radio, a radio communications sales and service facility in Oxnard.

Applicant represents that the FCC 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.

Applicant will offer state-of-the-art fully automated one-way paging and two-way mobile telephone service. These services include "Two Tone Calling, 5/6 Tone Calling, DTMF calling, CTCSS Calling, DTMF inbound, and DTMF overdial."

Automatic alarms will provide immediate notification of certain technical failures. A 24-hour trouble reporting number will be given to all subscribers, and response to system failures will be on a 24-hour, seven day-per-week basis.

Applicant has already acquired all necessary transmitters, receivers, antennas, transmission lines, terminals, duplexes, and related equipment. As of March 10, 1988 applicant, doing business as Oxnard Mobile Phone, had a net worth of \$38,328, Exhibit D to the application. Applicant estimates that the proposed services will result in 65 one-way paging units and 60 two-way mobile units in the first year of operation. By the fifth year of operation applicant estimates that there will be 140 one-way paging units and 180 two-way mobile units. Applicant expects to operate at a \$30,690 profit in the first year of operation, before depreciation and income taxes.

The proposed base station is to be located on an existing tower in an existing antenna farm. Therefore, it can be seen with reasonable certainty that the grant of this application will not have a significant effect on the environment. The rates to be

charged for applicant's proposed one-way paging and two-way mobile services are attached to the application as Exhibit C. Applicant will file a tariff in compliance with General Order 96-A upon grant of this application.

Applicant should be subject to the fee system, as set forth in PU Code Section 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 revenues 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, doing business as Oxnard Mobile Phone, request a CPC&N to construct and operate one-way paging and two-way mobile RTU services in and around the greater Oxnard and Ventura area.

2. Copies of the application have been 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 in the Commission's Daily Calendar of April 27, 1988.

4. No protests to the application have been received.

5. Applicant possesses the requisite FCC permit.

6. The FCC permit will expire on June 2, 1988 if applicant does not obtain an extension of time from the FCC.

7. Public convenience and necessity require the granting of this application.

8. The proposed operation is economically feasible.

9. The proposed operation is technically feasible.

10. It can be seen with certainty that there is no possibility that the grant of this application may have a significant effect on the environment.

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

Only the amount paid to the State for operating rights may be use 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 (CPC&N) is granted to Fred W. Daniel and Norm Kramer (applicant) to construct and operate a public utility one-way and two-way radiotelephone system with a base station located at Sulphur Mountain, 5.0 miles southeast of Ojai (Lat. 34° 24' 40" N, Long. 119° 10' 29" W) and a service area as shown in Exhibit A to Application (A.) 88-04-061.

2. The CPC&N granted in Ordering Paragraph 1 is conditioned upon applicant demonstrating to the Commission Advisory and Compliance Division Director that applicant possesses a valid FCC permit.

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

4. 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.88-04-061.

5. Applicant shall file as part of its individual tariff, after the effective date of this order and, consistent with Ordering Paragraph 4, 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.88-04-061.

6. Applicant shall notify the Commission's Advisory 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. 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 L and prepared according to the instructions included in the form.

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

10. The corporate identification number assigned Fred W. Daniel and Norm Kramer is U-2102-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.

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 JUN 17 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 Weisser, Executive Director