

ORIGINAL

Decision 88 12 037 DEC 9 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Advanced Paging & Communications, Inc., a California corporation, and Tempo Personal Communications of California, Ltd., a Colorado limited partnership, for Authority to Sell and Purchase Radiotelephone Utility Assets. (U-2071)

DEC 12 1988

Application 88-10-049 (Filed October 28, 1988)

OPINION

This joint application of Advanced Paging & Communications, Inc. (Seller), a California corporation, and Tempo Personal Communications of California, Ltd. (Purchaser), a Colorado limited partnership, seeks authorization from this Commission for the sale by Seller and the purchase by Purchaser of all of the property and assets used in connection with the radio common carrier and paging business of Seller.

On or about September 22, 1988, Seller and Purchaser caused to be filed with the Federal Communications Commission (FCC) applications for assignment from Seller to Purchaser of radio station licenses (and applications for construction permits) for Seller's radio common carrier and paging business.

Seller currently provides one-way paging service, including tone-only, tone-and-voice, and digital display service, in its certificated service area, which encompasses part of the greater San Francisco Bay Area, including Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, and Solano Counties.

Purchaser is a Colorado limited partnership recently formed for the purpose of owning, operating, and managing the

business and assets of Seller. The general partner of Purchaser is TCC/Forsythe, Inc., a Colorado corporation that is wholly owned by R. Scott Forsythe and Richard S. Sigel.

The limited partners of Purchaser will be approximately five to ten investors. The required funding for the Purchaser will come from the capital contributions to the partnership and through senior and subordinated loans from institutions and private lenders, respectively.

The partnership will enter into a management agreement with Forsythe & Associates, Inc. covering the daily operations of Seller. R. Scott Forsythe is the president and Richard S. Sigel is the executive vice president of Forsythe & Associates, Inc.

Forsythe has been involved in the communications industry since 1972 when he became a customer service representative for Radio Contact Corporation. During the ensuing 13 years with Radio Contact Corporation, Forsythe held various positions of responsibility involving sales, customer services, engineering, planning, licensing, and regulation. Forsythe became a vice president and general manager and was made a Director of Radio Contact in 1982. Forsythe left in 1987 to form Forsythe & Associates, Inc.

Sigel has been involved in the communications industry for nearly 12 years. Sigel began his career with Motorola Communications & Electronics and after advancing through sales, management, and marketing positions, became regional manager for the Rocky Mountain area. He next joined MCI Communications as manager of sales and marketing for their cellular telephone and paging operations, including the Los Angeles, Denver, Minneapolis, and Atlanta markets. The paging and cellular division of MCI was subsequently acquired by McCaw Communications Companies and Sigel became the general manager for McCaw's Cellular One operations in Colorado where his responsibilities included all phases of the

business including technical operations, marketing, finance, public relations, and customer service.

Forsythe & Associates, Inc. currently manages several paging and telephone answering service companies located in the Phoenix, Arizona, area on behalf of a partnership that is controlled by Forsythe and Sigel.

Agreement For the Sale of Assets

Pursuant to the Agreement for the Sale of Assets, Seller has agreed to sell and deliver and Purchaser has agreed to purchase and accept substantially all of the assets owned by Seller and used in connection with Seller's business. These assets include, without limitation, fixed assets, equipment and related assets, licenses, customer lists, contracts, leases, financial books and records, software, trademarks, trade names, choses in action, and other tangible and intangible assets. The assets also include the certificate of public convenience and necessity granted to Seller by the Commission in Decision 85-09-015. Purchaser has agreed to pay Seller a base purchase price of \$535,017 plus the assumption of the indebtedness owed by the Seller to Motorola Communications and Electronics, Inc. in an amount not to exceed \$900,000.

Purchaser does not intend at this time to change the operating staff, existing tariffs, or method of operation of Seller. By this sale of assets, Purchaser, as successor to Seller, will be better able to participate in the rapid technological changes and new service possibilities present in the radiotelephone utility industry. The radiotelephone industry is becoming increasingly competitive and capital-intensive. The cost of development, engineering, and offering the most sophisticated service is steadily increasing. Purchaser and Forsythe & Associates, Inc. will not only bring experience to the future operations and growth of the Advanced Paging systems, but will materially contribute to the financial resources necessary to fully

participate in the growth of such systems, and the competitive improvement thereof.

The latest available financial statements of Seller, including a balance sheet as of June 30, 1988, and statement of revenues, expense, and retained earnings for the six months ended June 30, 1988, show that it is in a very poor financial condition and may not be able to continue to serve the public.

Since Purchaser was only recently organized as a Colorado limited partnership, no financial statements exist for Purchaser. Purchaser is currently negotiating a revolving line of credit and term loan with an institutional lender allowing Purchaser to borrow up to \$1,250,000 on a revolving credit basis. In addition, Purchaser will borrow additional funds from one or more lenders on a subordinated basis. The senior loan, together with the subordinated loans and capital contributions will provide Purchaser with the funding required for the acquisition and anticipated capital expenditures. The ability of Purchaser to fulfill its financial obligations under the Agreement for the Sale of Assets, as well as to improve, maintain, and expand the current operations of the Advance Paging system should be adequate.

The proposed acquisition of the business, operations, and assets of Seller by Purchaser is in the public interest. Purchaser and its owners are committed to maintaining the level of service now provided to subscribers by Seller and to enhance that service through the addition of high quality, innovative radiotelephone utility offerings. Transfer of the assets of Seller will serve the public demand and need for the latest available competitive and sophisticated radiotelephone utility services and related telecommunications services, which are beyond the financial means of Seller to achieve under present ownership.

Purchaser does not initially propose any changes in the rates, conditions of service, or tariffs of Seller currently on file with the Commission.

Applicants request that this application be granted ex parte, without the necessity of notice or hearing. No protests have been received.

Findings of Fact

1. Advanced Paging & Communications, Inc., is presently authorized to provide radiotelephone service in the San Francisco Bay Area.

2. Tempo Personal Communications of California, Ltd. seeks to purchase all of the property and assets, including the certificate of public convenience and necessity of Seller.

3. Purchaser will operate the radiotelephone service network at the same level as Seller.

4. The transfer of the property and assets, including the certificate of public convenience and necessity from Seller to Purchaser is not adverse to the public interest.

5. Seller, Advanced Paging, is authorized to sell, transfer, and deliver and Purchaser, Tempo, to purchase and acquire the business, assets, and operations of Seller in accordance with the terms, conditions, adjustments, representations, and warranties of the Agreement for the Sale of Assets including the transfer of the certificate of public convenience and necessity granted to Seller.

6. Seller, upon consummation of the Agreement for the Sale of Assets, is authorized to withdraw from the radiotelephone utility business, and be relieved of all the duties and obligations of a radiotelephone utility.

Conclusions of Law

1. The proposed transfer is in the public interest and should be authorized. A public hearing is not necessary.

2. 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. The granting of this application is not a

finding of the value of the rights and properties to be transferred.

3. Tempo Personal Communications of California, Ltd., is subject to the one-half percent (1/2%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf. (Resolution T-13005, dated July 22, 1988; Public Utilities Code § 2881, as amended by SB 2268, signed June 30, 1988.)

ORDER

IT IS ORDERED that:

1. Tempo Personal Communications of California, Ltd. (Purchaser), a Colorado limited partnership, may acquire the property, assets, and authority of Advanced Paging & Communications, Inc. (U-2071) (Seller), to provide telecommunications service as specified in the purchase agreement attached to the application as Exhibit B.

2. Written notice of the consummation of the transaction authorized by this order shall be filed with the Commission Advisory and Compliance Division within 10 days after its completion.

3. The corporate identification number assigned to Purchaser, a Colorado limited partnership, is U-2105 which should be included in the caption of all original filings with this Commission.

4. The certificate of public convenience and necessity issued to Seller in Decision 85-09-015 and its identification number U-2071 is cancelled upon receipt of the notice required by Ordering Paragraph 2.

5. Upon compliance with Ordering Paragraphs 1 and 2, a certificate of public convenience and necessity is granted to Purchaser, a Colorado limited partnership, for the operation of a

public utility radiotelephone system with base stations and service areas as shown in Exhibit B to this application.

6. Written acceptance of the certificate granted in this proceeding shall be filed simultaneously with the written notice submitted pursuant to Ordering Paragraph 2.

7. Purchaser is authorized to file, after compliance with Ordering Paragraph 2 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 those presently in effect for Seller.

8. Purchaser shall file as part of its individual tariff, an engineered service area map drawn in conformity with the provisions of Federal Communications Commission Rule 22.504, commonly known as the "Carey Report," and consistent with Seller's service area.

9. Purchaser shall notify this Commission in writing of the date service is first rendered to the public as authorized herein, within 5 days after service begins.

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

11. Purchaser 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 that Form.

12. 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.

13. Purchaser shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

This order is effective today.

Dated DEC 9 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 Weisberg
Victor Weisberg, Executive Director
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