

Decision 89 03 035

MAR 2 2 1989

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mailed

In the Matter of the Application of)
RADIO RELAY CORP.-CALIFORNIA,)
(U-2049-C), a California corporation,)
for a certificate of public convenience)
and necessity to construct and operate)
radiotelephone utility facilities)
in Santa Barbara-San Luis Obispo,)
Bakersfield-Fresno, Salinas-Monterey,)
San Francisco and Sacramento.)

MAR 2 2 1989

Application 88-11-003
(Filed November 2, 1988)

O P I N I O N

Radio Relay Corp.-California (applicant), a California corporation, requests a certificate of public convenience and necessity to construct and operate additional radiotelephone facilities on a newly authorized frequency which will add service areas in the Santa Barbara, Santa Clara, Marin, San Francisco, Alameda, Contra Costa, Monterey, Kern, and San Diego counties. Applicant attached as Exhibits B and C engineering data for the new sites and a map of the proposed service area.

Copies of the application were served on required city and county governmental agencies within the proposed service areas and on potential competitors listed on the service list attached to the application.

Notice of this application appeared on the Commission's Daily Calendar of November 7, 1988. No protests were received within the 30-day protest period.

On December 2, 1988, applicant was notified by the assigned Administrative Law Judge that the Federal Communications Commission (FCC) permit in the application had expired. Applicant was requested to amend its application.

On December 14, 1988 applicant amended its application to explain that the requested facilities were completed before the FCC expiration date and subsequently assigned to applicant. Notice of the Amendment to the Application appeared on the Commission's Daily Calendar of December 21, 1988. The application amendment was served upon the same parties as the original application. No protests were received.

Applicant presently owns and operates a certified radiotelephone utility providing one-way high speed tone, digital display, and alphanumeric display paging service to areas encompassing portions of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties. Applicant's present service area map was attached as Exhibit A.

Applicant requests authority to construct and operate base station facilities at fourteen of the twenty-one sites approved by the FCC. However, facilities at the fourteen FCC-licensed sites were constructed by Mr. Leslie K. Harris under a valid FCC permit prior to the expiration date of July 31, 1988. (Exhibit E.) Applicant alleges that because Mr. Harris did not intend to offer any service to the public, he did not view his construction of the facilities as being within the scope of PU Code § 1001. The permit was subsequently assigned by Mr. Harris to applicant on June 29, 1988. (Exhibit F.)

The FCC has extended the completion date on the seven unconstructed sites; however, applicant represents that they will not be built since they are not needed. The fourteen constructed sites are adequate to serve the locations desired by applicant.

The proposed additions are technically feasible, and the applicant possesses the necessary technical expertise to operate them. Applicant and its affiliates operate a network of radio paging systems in a number of major markets in the United States. Other affiliates design and manufacture terminals and switching equipment, and still other affiliates are involved in cellular,

multipoint distribution, international data communications, and other similar fields. Applicant has a full-time technical staff employed in Los Angeles, as well as numerous other technical and engineering personnel available on call through applicant's affiliates. The proposed additions to applicant's system have been designed by experienced radio engineers.

The new base stations are to be located in existing buildings and antennas added to existing towers. Therefore, it can be seen with certainty that there is no possibility that the granting of such an application may have a significant adverse effect upon the environment. For this reason no environmental impact statement is required.

Applicant asserts that there is a substantial need among subscribers to be able to receive paging signals in each of the areas throughout the state sought to be covered by the new transmitters, both individually and on a combined basis.

Applicant estimates that the total cost of acquiring and installing the new facilities will be approximately \$551,700. A schedule of the various items comprising those capital costs together with their respective recurring expenses was attached. (Exhibit G.)

A copy of applicant's most recent balance sheet and profit and loss statement was enclosed. (Exhibit H-1.) Applicant is wholly-owned subsidiary of Graphic Scanning Corp. (Graphic). Graphic owns and operates telecommunications facilities throughout the United States and abroad, and is publicly traded on the National Over the Counter Exchange. Applicant enclosed a copy of Graphic's most recent Form 10-Q, as filed with the Securities and Exchange Commission. (Exhibit H-2.) Graphic has agreed to guarantee on applicant's behalf all costs associated with the acquisition, installation, and operation of the proposed facilities, up to a maximum amount of \$2,000,000, which is several times the maximum amount expected to be spent on the project. A

copy of Graphic's guarantee appeared in Exhibit I. Exhibit J was a pro forma projection showing the anticipated revenue and expenses attributable to the proposed facilities, and showing that the proposed facilities should in fact become profitable approximately eight months after operations commence.

Applicant enclosed proposed rates for its new service as Exhibit D. These rates are comparable with the rates of other similar services and are, therefore, reasonable.

Discussion

Applicant requests authority to operate facilities which were constructed without Commission approval by the prior owner. Under § 1001 every public utility must obtain Commission approval prior to the construction of facilities. Applicant alleges that the prior owner did not believe our permission was required to complete construction since he did not intend to operate the facilities. This belief is in error. Under § 1001 there are no exceptions for facilities where the owner does not intend to offer a service to the public. However, the acts in violation of Commission authority were not performed by applicant. Applicant, by its application for Commission approval to construct these sites and place the completed facilities into service, submits to our jurisdiction under § 1001. Applicant does not argue that the completed facilities are lawful. Applicant seeks to overcome any unlawfulness by obtaining our approval of the completed construction after the fact and for the future operation of these facilities.

When the public interest so warrants, the Commission has authorized the continuance of radiotelephone operations rather than issue a cease and desist order pursuant to § 1006, where compliance with § 1001 is required but has not been sought. (John S. Landes, M.D. (1976) 80 CPUC 543.) The conditions in the Landes decision warranting the continuance of service were: (1) the party is providing service superior to that of any other intervenor;

(2) dismantling the system would interrupt service to 449 customers; (3) the service is provided to doctors and veterinarians under Part 39 of FCC regulations; (4) authorization of the service does not conflict with any other FCC license in the same area.

Even though Radio Relay's service is not limited to a certain type of customer and is not yet operating, we find that these facilities will enhance service in applicant's existing service areas and extend service to new areas. The proposed two-way service on new frequencies is superior to the existing one-way service presently provided by applicant. There are no conflicts in FCC licensing for the proposed sites and no party has protested this application or its amendment. Therefore, the public interest is best served by approving the already completed construction and authorizing the operation of the facilities at the fourteen requested sites. However, applicant is hereby cautioned that it must abide by our regulations governing RTU's. Our excusing behavior which violates § 1001 in this proceeding is no indication of leniency for future violations of the statutes or our regulations.

Findings of Fact

1. Applicant requests a certificate to construct and operate RTU facilities in and around Santa Barbara, Santa Clara, Marin, San Francisco, Alameda, Contra Costa, Monterey, Kern, and San Diego counties for the purpose of providing a two-way communications system using radio frequency 931.0875 MHz.

2. Notice of this application appeared on the Commission's Daily Calendar of November 7, 1988. No protests to this application were received.

3. Applicant amended its application on December 14, 1988 to explain that construction of the facilities had been completed before the expiration date of July 31, 1988 by Mr. Leslie K. Harris and subsequently assigned to applicant. Notice of the Amendment to

the Application appeared on the same calendar on December 21, 1988. No protests to the Amendment to the Application were received.

4. Applicant possesses the requisite FCC construction permits for the fourteen sites requested in this application.

5. Applicant does not desire to construct facilities at the remaining seven FCC-approved sites.

6. Applicant operates existing one-way radio facilities in Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura Counties. Applicant presently serves approximately 30,000 paging users within its existing authorized service areas.

7. The proposed operation is economically feasible.

8. The proposed base station antennae are to be located on existing towers in existing antenna farms.

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

10. The proposed operation is technically feasible.

11. Public convenience and necessity require the granting of authority to construct and operate the two FCC licensed facilities.

12. A public hearing is not necessary.

Conclusions of Law

1. Authority to construct and operate facilities at the fourteen locations licensed by the FCC should be granted.

2. Applicant did not participate in the unauthorized construction of facilities at the fourteen sites.

3. It is in the public interest to excuse the construction of facilities prior to obtaining Commission approval based upon the proposed service being superior to applicant's existing service, where no conflict exists in the licensing within the proposed service areas, and where no protests to this application have been filed.

Only the amount paid to the State for operating rights may be used in rate fixing. The State may grant any number of

rights and may cancel or modify the monopoly features of these rights at any time.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Radio Relay Corporation of California (applicant), a California corporation, for the construction and operation of a public utility two-way radiotelephone system with base station locations as follows:

- a. Base station locations: See Appendix A to this decision.
- b. Service areas: As shown in Exhibits B and C to Amendment to Application (A.) 88-11-003.

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 additional 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 D to A.88-11-003.

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 the provisions of Federal Communications Commission Rule 22.504, commonly known as the "Carey Report," and consistent with Exhibit B to A.88-11-003.

5. Applicant 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.

6. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify, in writing, the Chief of the Telecommunications Branch of the Commission Advisory and Compliance Division of compliance.

7. 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.

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

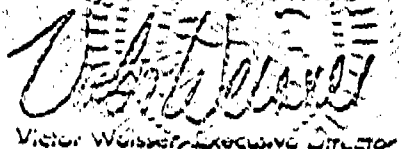
This order becomes effective 30 days from today.

Dated MAR 22 1989, at San Francisco, California.

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

Commissioner Patricia Eckert,
present but not participating

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


Victor Weisberg, Executive Director

BB

APPENDIX A

Page 1

Radio Relax
A.88-11-003
CPUC/FCC Licensed Sites*

1. Mount Diablo, approximately 6 miles NE of Danville, CA
(Contra Costa): Latitude - 37' 52' 54" N.
Longitude - 121' 55' 05" W.
2. 1 La Avanzada Boulevard, San Francisco, CA
(San Francisco): Latitude - 37' 45' 20" N.
Longitude - 122' 27' 05" W
3. Mose Wood Building, Oakland, CA
(Alameda): Latitude - 37' 49' 24" N.
Longitude - 122' 15' 32" W.
4. Big Rock Ridge, 4.5 miles East of Novato, CA
(Marin): Latitude - 38' 03' 33" N.
Longitude - 122' 36' 16" W.
5. Loma Prieta, 11 miles of SE of Los Gatos, CA
(Santa Clara): Latitude - 37' 06' 39" N.
Longitude - 121' 50' 31" W.
6. Fremont Peak, 9 miles NE of Salinas, CA
(Monterey): Latitude - 36' 45' 22" N.
Longitude - 121' 30' 06" W.
7. 2315 Q. Street, Bakersfield, CA
(Kern): Latitude - 35' 22' 49" N.
Longitude - 119' 00' 36" W.
8. Saddle Peak, 3.5 miles NW of Malibu, CA
(Los Angeles): Latitude: 34' 04' 35" N.
Longitude: 118' 39' 27" W.
9. Sunset Peak, Glendora, CA
(Los Angeles): Latitude: 34' 11' 17" N.
Longitude: 117' 42' 16" W.
10. Heaps Peak, 2 miles NW of Running Springs, CA
(San Bernardino): Latitude: 34' 14' 03" N.
Longitude: 117' 08' 25" W.

* All sites operate on new base frequency 931.0875.

APPENDIX A
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11. Crest Road, San Pedro Hill, Palos Verde, CA
(Los Angeles): Latitude: 33' 45' 41" N.
Longitude: 118' 21' 53" W.
12. Tepusquet Peak, 13 mi. SSE of Santa Maria, CA
(Santa Barbara): Latitude: 34' 54' 36" N.
Longitude: 120' 11' 08" W.
13. Mount Woodson, 20 miles NNE of San Diego, CA
(San Diego): Latitude: 33' 00' 34" N.
Longitude: 116' 58' 11" W.
14. Mount San Miguel, 5 miles south of San Diego, CA
(San Diego) Latitude: 32' 41' 49" N.
Longitude: 116' 56' 09" W.

(END OF APPENDIX A)

multipoint distribution, international data communications, and other similar fields. Applicant has a full-time technical staff employed in Los Angeles, as well as numerous other technical and engineering personnel available on call through applicant's affiliates. The proposed additions to applicant's system have been designed by experienced radio engineers.

The new base stations are to be located in existing buildings and antennas added to existing towers. Therefore, it can be seen with certainty that there is no possibility that the granting of such an application may have a significant adverse effect upon the environment. For this reason no environmental impact statement is required.

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Applicant estimates that the total cost of acquiring and installing the new facilities will be approximately \$551,700. A schedule of the various items comprising those capital costs together with their respective recurring expenses is attached hereto marked as Exhibit G.

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