

Decision 89 07 043

JUL 19 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of)
 Gencom Incorporated (U 2019 C),)
 Tel-Page, Inc. (U 2060 C), Intrastate)
 Radio Telephone, Inc. of San)
 Francisco (U 2024 C) and Delta)
 Mobile Radio Service, Inc.)
 (U 2012 C) for authorization under)
 Section 851 of the Public Utilities)
 Code to merge and consolidate their)
 radiotelephone public utility)
 operations, and for a certificate of)
 public convenience and necessity for)
 PacTel Paging of California, as the)
 consolidated entity, to construct)
 and operate additional radiotelephone)
 utility facilities, and PacTel)
 Paging, a Nevada corporation, for)
 authorization under Section 854 of)
 the Public Utilities Code to acquire)
 control of the consolidated entity.)

Application 88-12-014
(Filed December 9, 1988)

OPINION

The parties seek Commission approval of their proposal to merge the four radiotelephone utility (RTU) companies (RTU Applicants) and PacTel Paging of California into one company, transfer ownership of the resultant company to PacTel Paging, a Nevada Corporation, and to obtain a certificate of public convenience and necessity (CPCN) to extend the consolidated service area of the RTU Applicants. Copies of the application have been served on all utilities with which the proposed construction is likely to compete and on all counties and cities within which service will be rendered in the exercise of the requested CPCN pursuant to Rule 18(b) of the Commission's Rules of Practice and Procedure. Notice of the application appeared on December 13, 1988 in the Commission's Daily Calendar. No protests have been received.

The RTU Applicants are Gencom Incorporated (Gencom), Tel-Page, Inc. (Tel-Page), Intrastate Radio Telephone, Inc. of San Francisco (IRT), and Delta Mobile Radio Service, Inc. (Delta Mobile). The paging companies are PacTel Paging of California (PTP-California) and PacTel Paging, a Nevada corporation (PTP-Nevada). These companies are referred to collectively as the Applicants. Applicants are all indirect subsidiaries of Pacific Telesis Group, a Nevada corporation. The RTU Applicants were acquired by PacTel Personal Communications (PTPC), a direct wholly owned subsidiary of Telesis, pursuant to an internal reorganization of Telesis subsidiaries. The Commission approved that acquisition in D.87-09-035 pursuant to Public Utilities (PU) Code § 852. The current organizational chart indicating the ownership of Applicants is attached as Appendix A.

PTP-Nevada is a Nevada corporation that was formed on December 14, 1987 for the purpose of becoming the holding company for the paging operations conducted by the RTU Applicants as well as some of PTPC's paging operations conducted outside of California. PTP-Nevada is a direct wholly owned subsidiary of PTPC. PTP-California was formed on September 30, 1988 for the purpose of being a party along with the RTU Applicants in the present request for consolidation. PTP-California will have no assets or liabilities and will disappear upon the consumation of the consolidation.

The Consolidation

The Applicants seek authority under §§ 851 and 854 of the PU Code by which Gencom, Tel-Page, Delta Mobile, and PTP-California would all merge into IRT, with IRT being the surviving corporation. IRT would continue its existence under California corporations law under the name "PacTel Paging of California" (New PTP-California). PTPC would then contribute its stock in the merged company, New PTP-California, to PTP-Nevada. The RTU Applicants would continue to provide service as a regulated public utility under the name

"PacTel Paging of California." The resulting structure is set forth in Appendix B.

Section 851 requires a public utility to obtain authorization from this Commission prior to any merger or consolidation of its property with any other public utility. Section 854 requires any person or corporation to obtain authorization from the Commission before it may lawfully acquire or control, either directly or indirectly, any public utility organized and doing business in this state.

The Applicants submit that approval under § 854 is not necessary for the insertion of PTP-Nevada as an intermediate holding company over New PTP-California in light of the fact that ultimate control over all of the operations would continue to rest with Telesis. We will exercise our jurisdiction to review the transfer of utility assets to another corporation, regardless of the continuing affiliate relationship between the operators of the paging service and Telesis.

The purpose of the consolidation is to enable PTPC to centralize overall management of its paging operations at one point. The Applicants cite Decision (D.) 87-09-035, wherein this Commission approved a structure identical to the one proposed, except for the substitution of Gencom-Arizona for PTP-Nevada as the resultant corporate owner of the RTU business.

The RTU Applicants originated as independent companies which have gradually been acquired by PTPC. Currently, they maintain six separate sets of tariff schedules and observe formalities under the tax and corporate laws in order to maintain the RTU Applicants as separate legal entities. The consolidation of the four RTU Applicants into one entity will significantly reduce administrative costs and enable the Applicants to provide more efficient service.

As part of the consolidation, the RTU Applicants propose to combine their six separate sets of tariff schedules into one.

The proposed tariff was attached as Exhibit K to the application. The consolidated tariff preserves the current rate structure, creates a uniform set of special conditions and terms for all regions, and maintains current rates by dividing the "rates" sections of the consolidated tariff into regions, based on the service areas of the RTU Applicants. It maintains the level of service currently provided by the individual RTU Applicants, but enlarges the scope of services as more fully discussed below.

The RTU Applicants are currently engaged in the provision of two-way mobile service in the San Francisco, Santa Cruz, San Diego, and portions of the Sacramento-Delta Region. On April 24, 1989, Gencom, which provides this service in the San Diego and Santa Cruz areas, requested Commission approval for discontinuing its two-way mobile service, also known as, "Manual Mobile Service." By Resolution T-13082, July 6, 1989, the Commission approved that advice letter. Manual mobile service is furnished by the RTU Applicants between their base radiotelephone stations and mobile units within the service area of those stations, between two such mobile units, between a dispatch station at a specific location and the mobile units of the subscriber using that dispatch station, or between a mobile unit automatically interconnected to public wireline telephone facilities and such facilities. Except for that of Gencom, the separate two-way mobile service tariffs of the RTU Applicants will be consolidated into Schedule No. L-1 of PacTel Paging of California's tariff. The RTU Applicants believe that this simplified rate structure will be competitive with rates for the other RTUs in Northern California.

Changes to the tariff for one-way paging, Schedule L-2, are minimal, except that optional Northern and Southern California services are introduced in some regions, charges for various services are generally made more uniform between regions, and services for which there are no subscribers are discontinued.

Finally, the Applicants will continue to provide Point-to-Point Microwave Services under schedule number L-5. Subscribers may rent voice grade channels with or without signaling pursuant to this tariff within the San Francisco Region of the Applicants' authorized service area. The utility does not propose to provide point-to-point microwave service on an interLATA basis. This tariff would not be amended as a result of approval of this application, except that non-recurring charges equal to those appearing in Schedule L-1 and L-2 would be added.

In general, the Rules for the consolidated tariff are based on the existing rules of IRT. Proposed amendments to the rules are minor.

Notices detailing the differences between current rates and proposed rates were sent to each current subscriber of each of the RTU Applicants' services. Those notices were attached to the application and are clear and informative. No responses to these notices were received by any of the Applicants.

The merger of the four RTU Applicants will tend to produce economies of scale, which will enable the RTU Applicants to provide the same service at a lower cost. This will in turn benefit the public by making the resultant entity more competitive. Each of the RTU Applicants serves a different geographic region, except for Tel-Page and IRT, which both serve the San Francisco-Oakland Bay Area, where there are many other providers of paging service. There would be no loss of competition as a result of the merger. Therefore, the application for authority to merge under § 851 and to transfer control under § 854 should be granted.

Extension of Service Area

The RTU applicants also request a CPCN pursuant to § 1001 of the PU Code for five additional base station sites for the rendering of public utility one-way radio telephone service beyond the RTU Applicants' presently certificated service area. Four of these sites, known as the "System 83 Sites" have federally-issued

construction permits. The required Federal Communications Commission (FCC) permits for base station facilities are attached as Exhibit N to the application. A contour map describing the area covered by each transmission facility is attached as Exhibit O.

Rule 18 of the Commission's Rules of Practice and Procedure, subsection (o) requires of applications to furnish one-way paging or two-way mobile telephone service that the applicant submit its application for CPCN no later than 30 days after the grant of the relevant FCC construction permit. This was not done here, and Applicants request a waiver of the 30-day deadline. Since the public has not been prejudiced by the delay, a waiver will be granted.

The four paging transmitters which comprise the "System 83" facilities will operate on radio frequency 931.0625 MHz. A fifth transmitter will operate on radio frequency 152.2400 MHz.

The proposed transmitter locations are as follows:

- Location 1: 1230 "N" Street
Sacramento, CA
- Location 2: 142 N, 9th Street
Modesto, CA
- Location 3: Mt. Oso, near
Westley, CA
- Location 4: Loma Prieta Mt., 4.5 miles
Southwest of New Almaden, CA
- Location 5: Mt. Barham, 5.5 miles
N. E. of Santa Rosa, CA

These facilities will enable New PTP-California to offer state-of-the-art paging service in an expanded area of California. This will include parts of the Sacramento and San Joaquin Valleys not presently served by the RTU Applicants. The fifth station is located atop Mount Barham in Santa Rosa. Although operated by IRT since 1985 (prior to acquisition by Telesis) pursuant to an FCC license, no filing had ever been made with the CPUC. Thus, the RTU

Applicants request that the CPCN authorize construction and operation of all five transmission sites.

Because the Applicants are uncertain as to the extent of IRT's certificated service area, IRT has completed construction at the System 83 Sites but has not placed these sites in service. The uncertainty arises from the fact that while Delta Mobile has effectively provided service to the Sacramento vicinity for many years, that service territory may have been eroded when the CPUC began to require service area maps in conformity with FCC standards. The pre-existing Delta Mobile map may have been superseded by the new standard. Under the FCC contour, Delta Mobile was not deemed to be providing service to the area it was in fact serving. Moreover, the RTU Applicants propose to serve largely rural and unpopulated areas with the System 83 Sites, in which case the Applicants believed that a CPCN may not be required under the exceptions contained in Rule 18(0)(4) or Rule 18(0)(5). The Applicants have provided copies of the construction permit for the System 83 Sites, the license for the Mount Barham Site and supportive engineering data submitted to the FCC. All of the transmitter sites will be located at preexisting communication sites such as towers, transmitters, antennae, or other structures. There is no possibility that the proposed facilities would have a significant adverse impact on the environment.

The resulting facilities configuration is intended to permit the final entity, PTP-Nevada, doing business as "PacTel Paging of California" to offer area-wide paging. This expansion of paging service is partly possible through the fact that the Applicants' System 83 facilities will utilize the same frequency as that currently employed by Gencom, one of the RTU Applicants, in its operations in Southern California.

Schedule No. L-2 of the proposed tariff describes One-Way Paging and Signaling Service. The proposed entity would offer a basic one-way paging and signaling service between the base

stations and pocket or mobile receiver units within specific geographic regions. These correspond to the existing serving territories of the RTU Applicants. These are the San Francisco Region, Sacramento-Delta Region, Santa Cruz Region, Fresno Region, San Diego Region, and Los Angeles Region. The subscriber would have the option to select tone-only paging, tone and voice paging, and alphanumeric paging. Expanded area paging is available in the San Francisco and San Diego Regions to subscribers of local display paging service. This service permits subscribers to receive alphanumeric messages when they travel from their home service area to the service area of certain other providers of radio paging service. This service would be provided pursuant to a contract between the Applicant and Metrocast. The latter has contracts with providers in major metropolitan areas in the U.S., Canada, and Great Britain to transmit alphanumeric messages to subscribers who travel into their service areas.

Schedule No. L-2 provides rates by geographic region, such as "San Francisco and Sacramento-Delta Regions," "Fresno Region," "Los Angeles Region," etc. Under each region, the availability of southern California Regional Service and Northern California Regional Service is noted and a monthly rate is quoted. That is, in addition to service within the region, customers would also have the option of subscribing to regional service for their half of the state. For example, a Santa Cruz Region customer may subscribe to Northern California Regional Service. Once that option has been chosen, the customer may also subscribe to regional service for the other half of the state. Schedule No. L-2 defines "Northern and Southern California Regional Services" as follows:

"Northern California Regional Service allows a subscriber to be paged simultaneously throughout the area served by Utility's 931.0625 MHz transmitters in the San Francisco, Sacramento-Delta, Santa Cruz, and Fresno Regions (currently no 931.0625 MHz transmitters exist in the Fresno Region). Southern California Regional Service allows a subscriber

to be paged simultaneously through the area served by Utility's 931.0625 MHz transmitters in the Los Angeles and San Diego Regions."

The Regional Bell Operating Companies (RBOC) were formerly constrained by the Modified Final Judgment in the case of U.S. v. Western Electric Co., Inc. (Civil Action No. 82-0192) (the "Ma Bell Breakup") from offering paging services across LATA boundaries. By order dated February 16, 1989, the U.S. District Court for D.C. granted the RBOCs a blanket waiver to provide multiLATA one-way paging services regardless of geographic scope, subject to conditions. Those conditions require the RBOCs to provide exchange access and interconnection on an equal basis to both affiliated and nonaffiliated paging firms. Also, the RBOCs must continue to lease the interexchange links for the multiLATA paging services from nonaffiliated interexchange carriers.

Thus, the proposal to provide wide-area paging is consistent with the court's order in U.S. v. Western Bell. The question of whether the public interest would be served by the proposed expansion of facilities may be squarely addressed by this Commission.

It appears that the proposed service will benefit the public because the regional paging service option will enhance the usefulness of one-way paging service. Subscribers of the service will be much less limited in terms of mobility than they are under the types of paging service now available. The availability of paging services throughout the state, within the Applicants' service areas, or through other carriers pursuant to the "foreign area capability" and "expanded area" options enhances the value of one-way paging service. These features recall the "roamer" service available to subscribers of cellular telephone service. We expect that some of the benefits of cellular telephones may be available to those who use the Applicants' one-way paging service, at a

fraction of the cost. We believe that consumers will derive a benefit from our approval of the instant application.

The estimated construction costs total \$1.35 million for all five transmitter sites. Estimates of revenue at the end of one year and at the end of five years were provided by region. Since a merger of the RTU Applicants is proposed, it is not clear how reliably these estimates can predict the potential profitability of the enterprise. It appears that the consolidated revenues will be sufficient to cover the cost of the facilities.

The year-end balance sheets and income statements of the RTU Applicants were provided. The assets portion of a pro forma balance sheet of New PTP-California (the consolidated entity to be formed from the merger of the RTU Applicants) was provided. Since the RTU Applicants are wholly-owned subsidiaries of Pacific Telesis, their individual balance sheets are not necessarily indicative of their potential to provide reliable utility service. The Notice of 1988 Annual Meeting and Proxy Statement for Pacific Telesis was incorporated as Exhibit A to the application. This provides a basis for concluding that the RTU Applicants have the resources necessary to provide the proposed service. If they did not, they might be forced to rely on the financial resources of their parent, Pacific Telesis. In that case, the public interest requires that ratepayers of another public utility subsidiary, Pacific Bell, not be called on to subsidize the operations of New PTP-California. It will be incumbent upon the Applicant to avoid such cross subsidies.

The Applicants should be subject to the fee system, as set forth in PU Code § 401, et seq., which is used to fund the cost of regulating common carriers and businesses related thereto and public utilities. By Resolution M-4750, dated May 25, 1988, the fee level for fiscal year 1988-89 for telephone corporations was set at 0.10 of 1¢ (0.0010) of revenue subject to the fee. Schedule Nos. L-1 and L-2 of the proposed tariff contain a section entitled,

"Regulatory Surcharges." That section appropriately notifies customers of the levying of regulatory surcharges on the customer's bill.

Findings of Fact

1. Applicants Gencom Incorporated, Tel-Page, Inc., Intrastate Radiotelephone, Inc. of San Francisco, and Delta Mobile Radio Service, Inc. are radiotelephone utilities (RTU) subject to the jurisdiction of this Commission. These Applicants are owned by PacTel Personal Communications (PTPC), a direct wholly owned subsidiary of Pacific Telesis.

2. Applicant PacTel Paging of California is a California corporation created solely for the purpose of accomplishing a merger of the RTU Applicants. It is a wholly owned subsidiary of PTPC.

3. Applicant PacTel Paging, a Nevada corporation, was formed for the purpose of becoming the holding company for the paging operations conducted by the RTU Applicants. It is a wholly owned subsidiary of PTPC.

4. The Applicants seek authority under § 851 of the PU Code to merge the four RTU Applicants and PacTel Paging of California into Intrastate Radiotelephone, Inc. (IRT). IRT would continue its existence as a California corporation under the name "PacTel Paging of California."

5. PTPC would contribute its stock in PacTel Paging of California to PacTel Paging, the Nevada corporation.

6. The RTU Applicants would continue to provide service as a regulated public utility doing business under the name, "PacTel Paging of California."

7. Notice of the application appeared in the Commission's Daily Calendar of December 13, 1988.

8. No protests to the application have been received.

9. The RTU Applicants currently maintain six separate sets of tariffs and observe formalities under the tax and corporate laws in order to maintain the RTU Applicants as separate legal entities.

10. The six existing tariffs would be consolidated into one tariff, based on the existing rules of IRT.

11. Notices detailing the differences between current rates and proposed rates were sent to each ratepayer. No responses to these notices were received by any of the Applicants.

12. The merger of the RTU Applicants as proposed would enable these providers of radio telephone utility service to realize economies of scale and to reduce fixed administrative costs.

13. The merger of the RTU Applicants will result in lower costs which may benefit ratepayers of these RTU companies.

14. Since each of the RTU Applicants serves a different geographic region (except for Tel-Page and IRT, which both serve the San Francisco-Oakland Bay Area, where there are many other providers of paging services) no loss of competition will result from the merger.

15. Applicant PacTel Paging, a Nevada corporation, requests authorization under § 854 of the PU Code to acquire control of the consolidated entity.

16. The Applicants request that a CPCN pursuant to PU Code § 1001 be issued to PacTel Paging of California for five additional base station sites in order to render public utility one-way radio telephone service beyond the Applicants' presently certificated service area.

17. Copies of the application were served on the cities and counties within Applicants' proposed service territory and on other entities with which Applicants' proposed service is likely to compete. No protests were received.

18. Construction of the base station sites will enable the Applicants to provide wide-area paging on a regional and state-wide basis.

19. The Regional Bell Operating Companies, including the Applicants' parent corporation, are permitted to offer paging services across LATA boundaries, subject to certain restrictions.

20. The provision of wide-area paging by the Applicants will provide ratepayers with a lower-cost alternative to cellular phones.

21. Applicants possess the requisite FCC permits.

22. Applicants are certificated RTUs.

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

24. The proposed operation is technically feasible.

25. The proposed operation is economically feasible.

26. 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.

Conclusions of Law

1. The application to merge pursuant to § 851 and to transfer control pursuant to § 854 of the PU Code should be granted.

2. The application for CPCN under § 1001 of the PU Code should be granted.

3. 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. Applicants Gencom Incorporated, Tel-Page, Inc., Intrastate Radiotelephone, Inc. of San Francisco, and Delta Mobile Radio Service, Inc. and PacTel Paging of California are authorized to merge into one corporation, Intrastate Radiotelephone, Inc. of

San Francisco. The surviving corporation shall continue its corporate existence as a California corporation. Its name shall become "PacTel Paging of California."

2. PacTel Personal Communications may transfer its stock in the surviving corporation to PacTel Paging, a Nevada Corporation, and PacTel Paging may thereby acquire control of PacTel Paging of California.

3. A certificate of public convenience and necessity is granted to PacTel Paging of California to construct and operate five additional base station sites for the rendering of public utility one-way radio telephone service beyond the Applicants' presently certificated service area as follows:

<u>Location</u>	<u>Call Letters</u>	<u>Frequency</u>
1. Mt. Barham Approx. 5.5 miles NE of Santa Rosa, CA Lat: 38-30-31 Long: 122-39-41	KQZ 714	152.24 MHz
2. Mt. Oso, CA Lat: 37-30-27 Long: 121-22-23	KMB 305	931.0625 MHz
3. Modesto, CA Lat: 37-38-50 Long: 121-00-33	KMB 305	931.0625 MHz
4. Sacramento, CA Lat: 38-34-29 Long: 121-29-26	KMB 305	931.0625 MHz
5. Loma Prieta, CA Lat: 37-06-38.5 Long: 121-50-31	KMB 305	931.0625 MHz

4. Within 30 days after this order is effective, PacTel Paging of California shall file a written acceptance of the certificate granted in this proceeding with the Director of the Commission's Advisory and Compliance Division (CACD).

5. PacTel Paging of California shall notify the Director of the CACD in writing of the completion of the merger authorized herein within 5 days of the merger. Written notice of the commencement of operation of the certificated transmission facilities shall likewise be provided.

6. PacTel Paging of California is authorized to file, after the effective date of this order and in compliance with General Order 96-A, a tariff applicable to the service authorized containing rates, charges, and rules applicable to its radiotelephone services. The rates and charges shall be the same as those listed in Exhibit K to the application. The tariffs shall become effective on not less than 5 days' notice.

7. PacTel Paging of California shall file as part of its tariff, after the effective date of this order and, consistent with Ordering Paragraph 6, an engineered service area map drawn in conformity with the provisions of Federal Communications Commission (FCC) Rule 22.504, commonly known as the "Carey Report" and consistent with Exhibit O to A.88-12-014.

8. Gencom, Tel-Page, IRT, and Delta Mobile will file advice letters effective on 1-day notice canceling their individual tariffs, respectively, after the tariffs of PacTel Paging become effective.

9. The Director of the CACD will cancel the corporate identification numbers (CIS) assigned to Gencom, Tel-Page, IRT, and Delta Mobile.

10. The CIS assigned to PacTel Paging of California is U-2111-C.

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.

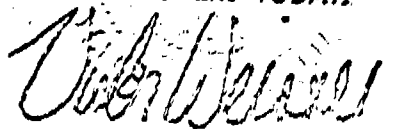
This order is effective today.

Dated JUL 19 1989 , at San Francisco, California.

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

Commissioner Patrick M. Eckert,
being necessarily absent, did
not participate.

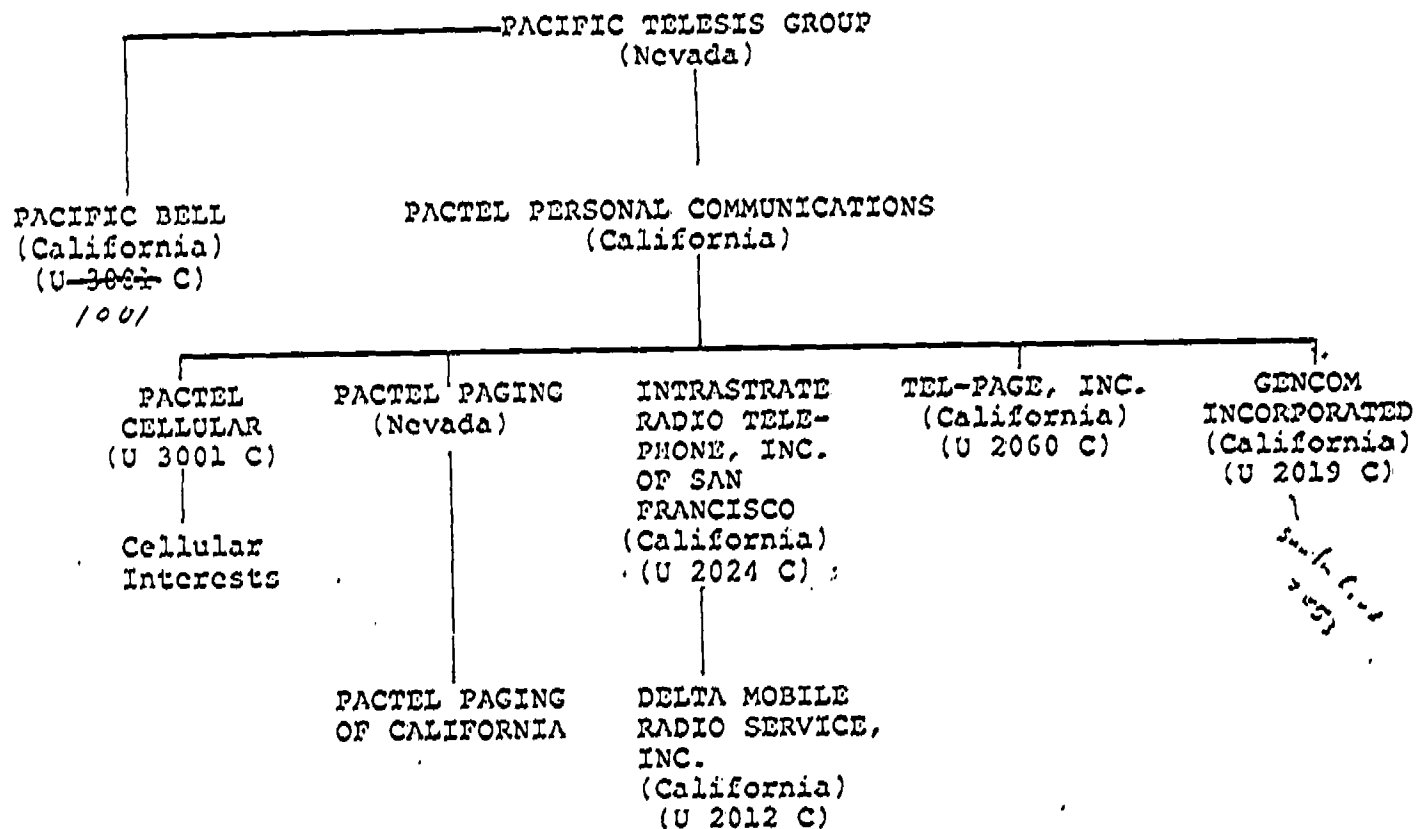
I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weissert, Executive Director

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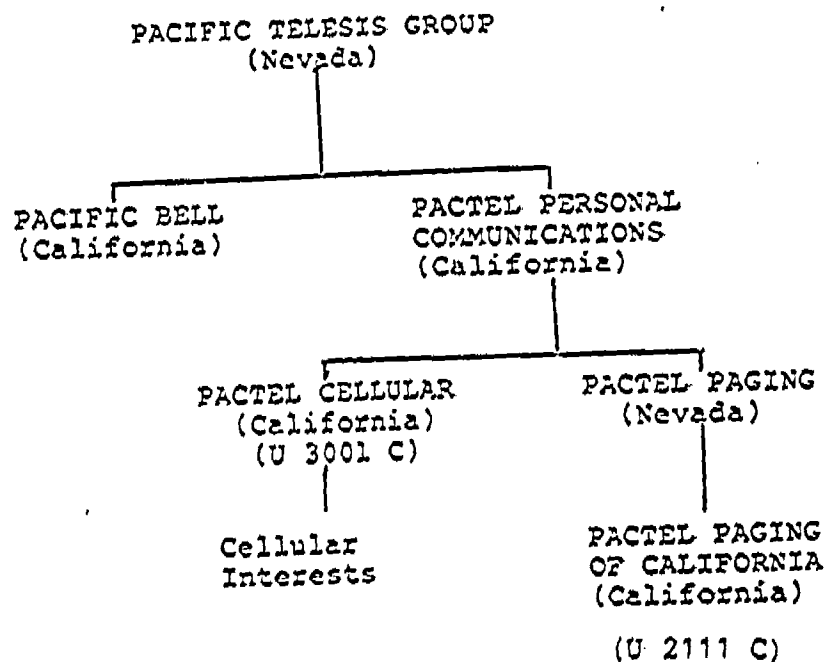
NOTE: For clarity, only those subsidiaries of Pacific Telesis Group mentioned in this application are identified below.

APPENDIX A
CURRENT STRUCTURE



(END OF APPENDIX A)

APPENDIX B
FINAL STRUCTURE



(END OF APPENDIX B)