

Decision 90 02 035 FEB 23 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Sierra Communications for a)
certificate of public convenience)
and necessity under Section 1001 of)
the Public Utilities Code of the)
State of California for authority)
to construct and operate a radio-)
telephone telecommunication service)
to the public in Eastern Sacramento)
County and Western El Dorado County.)

ORIGINAL

Application 89-06-054
(Filed June 27, 1989)

O P I N I O N

Summary of Decision

This decision grants a certificate of public convenience and necessity (CPC&N) to Robert Franck, for authority to construct and operate a radiotelephone telecommunication service to the public in Eastern Sacramento and Western El Dorado Counties.

Background

Robert Franck (applicant) is the sole proprietor of Sierra Communications. On June 27, 1989, Sierra Communications filed Application (A.) 89-06-054 requesting a CPC&N to construct and operate a radiotelephone utility (RTU) facilities and to provide one-way paging and two-way mobile RTU services in Eastern Sacramento and Western El Dorado Counties.

Copies of the application were served on cities and counties within the proposed service area and on other entities with which applicant's proposed service is likely to compete, as listed on the certificate of service attached to the application.

Notice of this application appeared on the Commission's Daily Calendar of June 30, 1989.

On July 31, 1989, Sierra Telephone Company, Inc. (SierraTel) filed a protest to the application. According to

SierraTel, the trade name "Sierra Communication" is sufficiently close to the name of Sierra Telephone Company, Inc. as to lead to the probability of confusion and deception of the public. Accordingly, SierraTel requested that Robert Franck be directed to select another trade name one not using the name "Sierra."

SierraTel does not object to any portion of the application other than the use of the "Sierra Communications" trade name. No other protests to the application have been received.

On December 18, 1989, A.89-06-054 was amended to change the applicant from Sierra Communication to Robert Franck.

Applicant possesses the requisite Federal Communications Commission (FCC) permit for a base station facility on the 152.6000 megahertz (MHz) band frequency. The base station facility is authorized at Camino in El Dorado County, as identified in Exhibit B to the application.

Applicant plans to start construction of the facility upon receiving approval from the Commission.

Applicant has been in communications business in El Dorado County for past 11 years. In addition, he employs a technician with 29 years of experience with Pacific Bell. Applicant sells and services 2-way radios.

Applicant represents that the FCC has determined that a need for radiotelephone service has been established throughout the nation and that the service should be made available to the public in accordance with the market structure established by the FCC. According to applicant, prior Commission decisions support the conclusion that there is a need for these services. Based on these representations, applicant asserts that there is a large market of potential users whose presently unmet needs can be met by applicant.

Applicant will offer mobile-to-land, land-to-mobile, and mobile-to-mobile two-way telephone service. As the demand for radiotelephone service increases, applicant will be able to

increase the capacity of the system by additional channels up to a maximum of 12 channels.

The projected capital requirement for the proposed operation is \$9,865. Applicant estimates that the proposed operation will have 25 mobile subscribers at first and will increase by 25 new subscribers over each of the next 5 years. Applicant expects an \$11,260 profit in the first year of operation and an \$85,098 profit in the fifth year of operation, before depreciation and income taxes.

The funds to construct and operate the proposed facilities will be from funds drawn from applicant's account (No. 121000358) with Franklin Money Fund. Applicant's \$80,000 deposit with Franklin Money Fund is sufficient to provide the necessary funds to construct and operate the proposed facilities.

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

A description of the service to be offered is included in Appendix H to the application. Applicant proposes to charge the following rates:

Proposed Retail Rates

<u>A. Basic Service</u>		<u>Per Month</u>
1. <u>Access Charge</u>		
a.	For each access number on VHF	\$22.00
b.	For each access number on UHF	\$15.00
2. <u>Usage Rates</u>		<u>Per Minute</u>
a.	Peak period (7 a.m. - 7 p.m.) Monday - Friday	\$ 0.25
b.	Off-peak period	\$ 0.15
3. <u>Roamer Service</u>		
a.	For each consecutive 5-day period	\$ 5.00
b.	Peak period - per minute	\$ 0.25
c.	Off-peak period - per minute	\$ 0.25
4. <u>Paging Service</u>		
a.	Tone only - per month	\$ 7.00
b.	Tone and Voice - per month	\$15.00

Tariff setting forth the detailed rates practices, and classifications will be filed with the Commission upon exercise of the CPC&N.

Applicant should be subject to the fee system, as set forth in Public Utilities (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-4746, the fee level for fiscal year 1987-88 for telephone corporation was set at 0.10 of 1% (0.0010) of revenue 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 requests a CPC&N to construct and operate a one-way and two-way RTU system in Eastern Sacramento and Western El Dorado Counties.

2. Copies of the application were served on cities and counties within the proposed service territory 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 June 30, 1989.

4. SierraTel protested use the trade name "Sierra Communications" in the original application.

5. On December 18, 1989, the application was amended to change the name of the applicant to Robert Franck.

6. No other protests to the application have been received.

7. Applicant possesses the requisite FCC permit.

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

9. The proposed operation is technically feasible.

10. The proposed operation is economically feasible.

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

12. Applicant is subject to the fee system, as set forth in PU Code § 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 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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Robert Franck (applicant) to construct and operate a public utility one-way and two-way radiotelephone system with base

station facility located at 3435 Carson Court, Camino (Lat. 38° 44' 18" N, Long. 120° 42' 06" W) and service area as shown in Exhibit E and I to the Application (A.) 89-06-054.

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 GO 96-A, tariffs applicable to the service authorized containing rates, charges, and rules applicable to their radiotelephone services. The tariffs shall become effective on not less than 5 days' notice. The rates and charges shall be as proposed for service.

4. Applicant shall file as part of their individual tariff, after the effective date of this order and, consistent with Ordering Paragraph 3, an engineered service area map drawn in conformity with FCC Rule 22.504, commonly known as the "Carey Report," and consistent with Exhibit I to A.89-06-054.

5. Applicant shall notify the Commission 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.

6. Applicant shall keep their books and records in accordance with the Uniform System of Accounts for radiotelephone utilities prescribed by this Commission.

7. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar year basis using CPUC Annual Report Form L and prepared according to the instructions included in the form.

8. The corporate identification number assigned to Robert Franck is U-2112-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.

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

10. 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 FEB 23 1990, at San Francisco, California.

G. MITCHELL WILK

President

FREDERICK R. DUDA

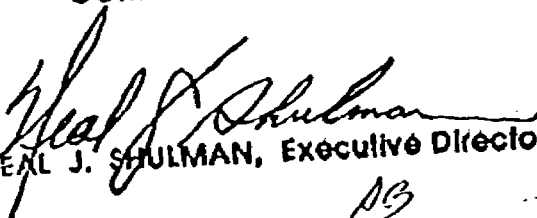
STANLEY W. HULETT

JOHN B. OHANIAN

PATRICIA M. ECKERT

Commissioners

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


NEAL J. SHULMAN, Executive Director
PB