

Decision 90 02 048 FEB 23 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint  
 Application of McCaw Communications  
 of Santa Rosa, Inc. and Cagal  
 Cellular Communications Corporation  
 for authorization to acquire control  
 of Cagal Cellular Communications  
 Corporation (U-3021-C) through the  
 acquisition of the majority interest  
 in Cagal Cellular Communications  
 Corporation.

**ORIGINAL**

Application 89-04-058  
 (Filed April 26, 1989)

O P I N I O N

This is an application in which McCaw Communications of Santa Rosa, Inc. (McCaw) seeks authority to acquire control of Cagal Cellular Communications Corporation (Cagal).

Notice of the filing of the application appeared in the Commission's Daily Calendar on May 1, 1989. There are no protests. The application has been held in abeyance because of the matters hereafter discussed. It is ready for decision.

Discussion1. Compliance with Decision (D.) 88-12-088

Application (A.) 88-07-041 was one in which Cagal sought a certificate of public convenience and necessity to construct and operate an initial five-cell cellular system; to provide roamer service in the Santa Rosa cellular geographic service areas (CGSA); to provide wholesale, retail, and roamer services pursuant to a settlement agreement between Cagal, McCaw Cellular Communications, Inc. (MCCI), and the Cellular Resellers Association, Inc. (CRA); and to file the rates contained in the application modified to reflect the settlement agreement.

D.88-12-088 in A.88-07-041 contained the following:

"We will require Cagal to file evidence, with the Commission and with the Director of CACD,

on how it would create a balanced capital structure. If an application is filed to transfer control of Cagal, the application should contain a similar showing by the buyer."

\* \* \*

"Conclusions of Law"

\* \* \*

- "4. PU Code § 818 generally precludes issuance of long-term debt for operating losses.
- "5. Cagal should have a reasonable balance between debt and equity in its capital structure. The Commission requires a proposal from Cagal on achieving that balance."

\* \* \*

- "7. Cagal should file evidence with the Commission and with the Director of CACD on its proposal to create a balanced capital structure. CACD should review the filing and evaluate its adequacy for the consideration of the Commission. An application to transfer control of Cagal should contain a similar filing by the proposed buyer."

\* \* \*

"INTERIM ORDER"

\* \* \*

- "4. Within 45 days after the effective date of this decision, Cagal shall file evidence with the Commission and with the Director of CACD on its proposal to create a balanced capital structure. CACD shall review the filing and evaluate its adequacy for the consideration of the Commission. Any application to transfer control of Cagal shall contain a similar filing by the proposed buyer."

\* \* \*

- "10. Cagal may issue an indebtedness in principal not to exceed \$3,600,000 and to encumber its public utility property. The terms and conditions of the debt shall be substantially the same as Exhibit F to this application, except that long-term debt shall not be issued to cover operating losses. Cagal shall file an executed copy of this agreement within 30 days after the effective date of this order." (Slip Dec. at pp. 15, 18, 19-21.)

On February 1, 1990, the Finance Branch of Commission Advisory and Compliance Division (CACD) prepared a memorandum which indicates that CACD is of the opinion that Cagal has complied with D.88-12-088 and that Division of Ratepayer Advocates does not intend to participate in the application under consideration. The memorandum has been designed as Exhibit 1.

2. Alleged Confidential Information

McCaw and Cagal did not include in the body of the application the purchase price information required by Rule 35(d). Instead, they filed a motion requesting that they be allowed to file the information as confidential information under seal. The sealed material was attached to the motion. The motion was made under the purported authority of General Order 66-C.

CRA filed an opposition to McCaw's and Cagal's motion on the ground that the information was pertinent to the proper consideration of the application.

On September 18, 1989, the assigned administrative law judge (ALJ) issued an ALJ's Ruling which, after extensive discussion, ruled that, "the material purportedly filed under seal is designated as Exhibit 1 and hereby placed in the formal file, which is available for public inspection pursuant to Government Code § 6253."

On September 19, 1989, McCaw filed a document entitled "Appeal to the Assigned Commissioner of Administrative Law Judge's Ruling and Application for Immediate Temporary Stay Thereof." No

action was taken or needed to be taken on the filing because the Commission's Rules of Practice and Procedure do not provide for appeals to assigned or individual Commissioner from ALJ rulings.

Rule 65 provides that:

"The presiding officer shall rule on the admissibility of all evidence. Such rulings may be reviewed by the Commission in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the Commission is necessary to promote substantial justice, the presiding officer may refer the matter to the Commission for determination."

The Commission has held that:

"There is no appeal from a procedural or evidentiary ruling of a presiding officer prior to consideration by the Commission of the entire merits of the matter. The primary reasons for this rule are to prevent piecemeal disposition of litigation and to prevent litigants from frustrating the Commission in the performance of its regulatory functions by inundating the Commission with interlocutory appeals on procedural and evidentiary matters." (Investigation of Minimum Rate Tariff 6-B, D.87076 in Case 5436, Pet. 194, entered March 9, 1977, rehearing denied, D.87300, entered May 3, 1977.)

The ALJ did not refer the ruling to the Commission under Rule 65. However, in adjudicating the entire application on the merits the Commission may review the ruling. In Santa Barbara Cellular, Inc., D.89-09-092 in A.89-04-059, dated September 28, 1989, the Commission came to a result identical to the ruling made by the ALJ in this proceeding. We affirm the ALJ's ruling.

No other points require discussion. The Commission makes the following findings and conclusion.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. McCaw is a California corporation. It is a wholly owned subsidiary of MCCI, a Delaware corporation. McCaw, its parent entity, MCCI, and affiliated entities are called the McCaw Group.
3. Cagal is a Delaware corporation which is qualified to do business in California. It holds the Federal Communications Commission (FCC) permit to construct and operate a cellular radiotelephone system on the Frequency Block A in the Santa Rosa-Petaluma Metropolitan Statistical Area (MSA), a market adjacent to the Vallejo-Fairfield-Napa market presently served by an MCCI affiliate, and nearby to MCCI's other Northern California service areas. Cagal is authorized to provide wholesale, retail, and roamer cellular service pursuant to D.88-12-088, dated December 19, 1988.

Paul Rosenthal (Rosenthal) owns 50.01% of the issued and outstanding capital stock of Cagal. The remaining 49.99% of Cagal's stock is or will be held by various shareholders, pursuant to the Cellular Mobile Services Settlement Agreement. As of March 1989, 17.6% of the 49.99% minority interest in Cagal had been purchased by the McCaw Group.

Cagal was organized for the purpose of providing cellular service to the Santa Rosa-Petaluma MSA. Neither Cagal nor any of its affiliates provides cellular service outside the Santa Rosa-Petaluma MSA.

The McCaw Group provides paging, traditional mobile telephone, and cellular radio telecommunications services. MCCI is the largest operator of non-wireline cellular systems in the United States. Directly or through its subsidiaries, the McCaw Group has interests in facilities-based cellular telephone companies in more than 80 MSAs, and resells cellular radio telecommunications services in numerous other MSAs.

In California, MCCI operates facilities-based cellular systems through the following affiliated companies:

Fresno Cellular Telephone Company	(U-3014-C, U-4040-C)
Napa Cellular Telephone Company	(U-3016-C)
Oxnard Cellular Telephone Company	(U-3010-C)
Redding Cellular Partnership	(U-3020-C)
Sacramento Cellular Telephone Company	(U-3013-C)
Salinas Cellular Telephone Company	(U-3018-C)
Stockton Cellular Telephone Company	(U-3012-C)

MCCI also resells cellular service in California through its affiliate, Fresno Cellular Telephone Company (U-3014-C and U-4040-C), and provides paging and traditional radiotelephone service through its affiliate, Airsignal of California, Inc. (U-2028-C).

MCCI and its California affiliates operate their cellular systems through regional, multi-market cellular systems, or clusters. Four clusters of facilities-based operations form the basis of MCCI's cellular operations in California. Currently, the San Francisco Bay Area cluster includes the Napa Cellular Telephone Company, through which MCCI serves the Vallejo-Fairfield-Napa MSA; the Salinas Cellular Telephone Company, through which MCCI serves the Salinas-Seaside-Monterey MSA; and the Bay Area Cellular Telephone Company, in which MCCI holds a partnership interest, and through which it serves the San Francisco-San Jose CGSA.

4. Under a letter of intent dated May 3, 1988, McCaw commenced negotiations to acquire Rosenthal's stock. Upon execution of the letter of intent, McCaw paid Rosenthal \$750,000 nonrefundable deposit. The deposit will be subtracted from the purchase price in the proposed transaction.

Pursuant to a stock purchase agreement, dated September 19, 1988, entered into by and among McCaw, Rosenthal, and MCCI, Rosenthal agreed to sell 50,010 shares of his one cent (\$0.01) par value common stock, comprising 50.01% of the issued and outstanding voting stock in Cagal to McCaw for \$17,750,000. Upon completion of the transaction, McCaw would hold a majority of the

interest in, and thereby will acquire control of, Cagal. Cagal has obtained all necessary shareholder approval for the sale of the stock.

5. McCaw Group's unaudited balance sheet as of September 30, 1988 indicates that it had \$714,430,000 total current assets and \$165,229,000 total current liabilities. It had operating revenues of \$219,521,000 for the nine months ending on September 30, 1988. MCCI has given a commitment letter indicating it will give financial support for the transaction.

6. Since Cagal provides service within the Santa Rosa-Petaluma MSA, if the proposed transaction is authorized Cagal would become an integral part of MCCI's Bay Area cluster. The coordination of MCCI of its cellular systems into an operational network of regional systems would enable MCCI to enjoy functional and competitive advantages. The cluster strategy enables MCCI to concentrate switching functions using a small number of switches in each region, and to avoid committing capital to the installation of individual switches in each MSA. It allows MCCI to offer to its subscribers expanded service areas and enhanced services, such as automatic roaming and reduced roaming rates. The addition of Cagal to MCCI's San Francisco Bay Area cluster would increase the benefits MCCI can provide both to Cagal's customers and to customers of other MCCI affiliates serving the Bay Area cluster.

7. On March 22, 1989, McCaw filed with the FCC an application for authority to acquire control of Cagal. The application avers that McCaw will notify the Commission as soon as it receives FCC approval.

8. It is not necessary to pass upon the management agreement, dated September 19, 1988, among Cagal, McCaw, MCCI, and Rosenthal in this proceeding.

9. This application complies with the requirements of D.88-12-088.

10. McCaw has the ability, including financial ability, to acquire control and continue the operations of Cagal.

11. The proposed acquisition of control of Cagal by McCaw is not adverse to the public interest.

Since the ensuing order primarily affects the parties to this application, it should be made effective on the date of issuance.

Conclusion of Law

The application should be granted.

This authorization is not a finding of the value of the property for which authorization to acquire control is granted.

O R D E R

IT IS ORDERED that:

1. On or after the effective date of this order, McCaw Communications of Santa Rosa, Inc. (McCaw) may acquire control of Cagal Cellular Communications Corporation (Cagal) through the acquisition of capital stock in accordance with the terms set forth in the application.

2. McCaw shall file written notice of the acquisition of control with the Commission Advisory and Compliance Division within 15 days after it has occurred.

3. Cagal shall continue to use Identification No. U-3021-C in the caption of all original filings with the Commission, and in the titles of other pleadings filed in existing cases.



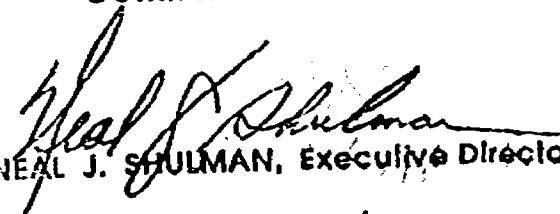
4. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised before February 28, 1991.

This order is effective today.

Dated FEB 23 1990, at San Francisco, California.

G. MITCHELL WALK  
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

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