

Decision 90 06 029 JUN 06 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of META RCC INC.,)
a Delaware corporation, for a)
certificate of public convenience)
and necessity to construct and)
operate radiotelephone utility sites)
in order to provide alphanumeric)
one-way paging and messaging service)
at various points in the State of)
California.)

Application 90-04-008
(Filed April 4, 1990)

O P I N I O N

Applicant, META RCC Inc. (Meta), seeks a certificate of public convenience and necessity (CPC&N) pursuant to Public Utilities Code Section 1001 for the purpose of providing paging and messaging service and to construct one radiotelephone utility site in each of the San Francisco, Los Angeles, San Diego, and Sacramento metropolitan areas. Meta is a Delaware corporation authorized to conduct business in this state.

Notice of this application appeared in the Commission's Daily Calendar on April 11, 1990. Copies were served on all utilities and other entities with which applicant's proposed service is likely to compete and on the counties within the proposed service areas. Copies were also served on each of the four cities in which construction is proposed. Applicant has served the cities within its proposed service area with notice that its application has been filed and an offer to provide a copy on request. No protests to the application have been received. A public hearing is not necessary.

Request and Motion for Waiver of Rules

In its application, Meta requests a waiver of Rule 18(o)(1) of the Commission's Rules of Practice and Procedure. The Rule establishes special requirements for applications involving RTUs who provide paging services. Under Rule 18(o)(1) an applicant may not apply for a CPC&N until it has obtained an FCC construction permit. Once the FCC permit is obtained, an applicant must file its application for a CPC&N with this Commission within 30 days.

Meta's application was filed on April 4, 1990. It comes eleven months late for the proposed facility sites in Los Angeles and San Francisco and is premature as to the Sacramento site. Applicant received Federal Communications Commission (FCC) approval for its proposed San Diego site on March 13, 1990, so no waiver is needed for that portion of the application.¹

In support of its request for waiver, applicant states that it desired to consolidate all four metropolitan service areas into a single application, thus eliminating the need for four separate applications. Applicant's reasoning has merit, but we must also consider our reasons for imposing timelimits.

The requirement that the CPC&N application may be filed only after approval by the FCC was intended to avoid wasting this Commission's resources in considering proposals which might subsequently be modified or denied altogether by the FCC. The requirement for filing not later than 30 days after FCC approval was established because FCC construction permits expire within one year from the date of issuance (unless extended). Where an FCC permittee delays its application for a CPC&N until near the end of

¹ As originally filed, the application sought a waiver of the permit-in-hand requirement for San Diego as well as Sacramento. The request was mooted when Meta received FCC approval.

that period, there may be insufficient time for processing by the Commission. This can be a particular problem where an application is protested or involves potential environmental impacts. Fortunately, neither of those conditions is present here.

Applicant bases its request for waiver of the requirement that it obtain construction permits prior to application for the Sacramento site on recent changes in the FCC construction permit procedure. In 1989 the FCC amended Part 22 of Title 47 of the Code of Federal Regulations to allow certain Public Land Mobile Service applicants to begin construction after filing a federal "Form 401" application but prior to the issuance of a construction permit. Under the new rule applicants assume the risks of early construction and may proceed so long as none of seven specified conditions exist. Applicant submits that none of the prohibiting conditions exist, that it has filed a "401" application for Sacramento and that it, in effect, has permission from the FCC to proceed with construction.

We noted in D.90-03-010 (Application of International Paging Corporation) that the FCC has amended its rules to allow construction to begin prior to the issuance of a permit under certain conditions. In that decision we waived the permit-in-hand requirement where it was shown that all FCC conditions were met. Since the facts in this case are substantially the same, we will waive the rule here as well. We caution prospective RTU applicants, however, that we will continue to be reluctant to waive these rules in cases where a proposed project may have an impact on the environment or may otherwise appear unlikely to successfully complete the FCC review process. ✓

In a separately filed motion, Meta requests an additional waiver of that portion of Rule 18(b) which requires service of a copy of its application on cities located within the proposed service area. Applicant bases this motion on the fact that it has served copies on the 16 counties in the service area and on those

four cities in which site construction will occur, and on the fact that notice has appeared in the Commission's Daily Calendar. Applicant argues that full service under Rule 18(b) would require serving over 100 additional copies, substantially increasing the expense of the application.

In D.90-03-010 granted a similar request stating that in the future, applicants should serve a copy of a summary of the application, in lieu of the full text, on cities. Inasmuch as applicant has complied with this requirement, we will grant the motion.

The Proposed Service

Applicant proposes to provide alphanumeric one-way paging and messaging service in four metropolitan areas consisting of Alameda, Amador, Contra Costa, El Dorado, Los Angeles, Marin, Orange, Placer, Sacramento, San Diego, San Joaquin, San Mateo, Solano, Sutter, and Yolo Counties and in the City and County of San Francisco. Service will be offered 24 hours per day. Applicant's facilities and equipment will be completely automatic utilizing current radio and computer control technology. Facilities will be maintained and repaired by Metagram, a sister subsidiary of Meta's parent, Millicom, Inc.

Applicant believes that economic and population growth in the four metropolitan areas provides significant demand for its paging services. It is applicant's understanding that an increase in the number of radio common carriers stimulates demand as the public develops a greater awareness of the availability and convenience of paging services. Applicant believes that demand is also growing in the non professional market. ✓

Applicant estimates that it will have 350 subscribers in the first year of service and 1400 after the fifth year. Almost 75 percent of the subscriptions would come from the San Francisco and Los Angeles markets. It is applicant's intent to charge \$35.00

per month plus a charge of \$0.015 for usage over 3,000 (alphanumeric) characters.

Applicant's capital requirements for construction and one year of operations will be approximately \$172,000, applicant will be financed through Millicom, Inc., its parent corporation. Pursuant to Rule 18, this application contains evidence of Millicom's commitment to financing the applicant up to \$250,000, and a pro forma statement of income and expense. Applicant has included a copy of Millicom's last proxy statement.

Millicom is a Delaware corporation whose business is developing, acquiring, and operating telecommunications systems. It owns and operates telecommunications enterprises in 10 states and it intends to offer new radiotelephone paging in 25 major cities in addition to the service proposed in this application.

Environmental Considerations

Applicant proposes to construct four RTU sites at or near the following locations: (1) Sutro Tower, 1 La Avanzada Road, San Francisco; 707 Wilshire Boulevard, Los Angeles; 591 Camino Del La Rena, San Diego; and 6660 Bruceville Road, Sacramento. Each site will consist of a transmitter and antenna. Each site will use existing antenna and transmitter structures without increasing the height of the antennas. It can be seen with certainty that there is no possibility that the proposed construction may have a significant adverse effect on the environment.

Findings of Fact

1. Applicant requests a CPC&N to construct and operate radiotelephone utility facilities for one-way paging services in the counties of Alameda, Amador, Contra Costa, El Dorado, Los Angeles, Marin, Orange, Placer, Sacramento, San Diego, San Joaquin, San Mateo, Solano, Sutter; and Yolo Counties and in the City and County of San Francisco.

2. Copies of the application and motion for waiver of a portion of Rule 18(b) were served on the counties in the proposed

service area and on other entities with which the proposed service is likely to compete. A summary of the application was served on the cities within the proposed service area.

3. Notice of this application appeared in the Commission's Daily Calendar on April 11, 1990.

4. No protests to the application have been received.

5. Applicant seeks a waiver as to proposed RTU sites in Los Angeles and San Francisco of that portion of Rule 18(o)(1) which requires an applicant to apply for a CPC&N in not less than 30 days after obtaining an FCC construction permit.

6. Applicant seeks a waiver as to its proposed Sacramento RTU site from that portion of Rule 18(o)(1) which requires that an applicant first obtain an FCC construction permit before filing its application with this Commission.

7. Applicant has obtained construction permits for the sites to be located in Los Angeles, San Francisco, and San Diego.

8. Applicant did not file its application to this Commission within 30 days as to proposed sites in Los Angeles and San Francisco. ✓

9. Applicant has filed an application for construction approval by the FCC for the RTU site to be located in Sacramento, but had not obtained approval prior to filing this application.

10. The FCC has amended 47 CFR 22 which now permits RTU applicants to proceed with construction prior to obtaining a permit subject to certain prohibitory conditions, including that the applicant bears the risk of proceeding without construction approval.

11. Applicant is a Public Land Mobile Service within the meaning of the new FCC rule and none of the prohibitory conditions in that rule apply to applicant.

12. Applicant filed a separate motion requesting a waiver of that portion of Rule 18(b) which requires that an application

include certification that it has been served on cities within the area to be served.

13. The proposed paging service will be responsive to public need and demand.

14. The proposed service is technically and economically feasible.

15. The applicant will employ the management and maintenance services of its parent Millicom, Inc.

16. The proposed communication antennas will be constructed on existing towers with no increase in the height of the towers.

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

18. Applicant is subject to the user fee system as set forth at PU Code § 401, et seq.

19. Applicant has furnished a copy of its last proxy statement filed with the Securities Exchange Commission.

20. Applicant is not subject to assessment for a share of program costs for the deaf and disabled.

21. A public hearing is not necessary.

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

Conclusions of Law

1. The requirement of Rule 18(o)(1) that an FCC construction permit be obtained prior to applying to this Commission for a CPC&N should be waived as to that portion of the application pertaining to service proposed in Sacramento.

2. The requirements of Rule 18(o)(1) that an application to this Commission for a CPC&N be filed within 30 days of the granting of construction approval by the FCC should be waived as to the proposed RTU sites in San Francisco and Los Angeles.

3. Applicant should file copies of the FCC construction permit for the Sacramento site, when it is granted.

4. The requirement of Rule 18(b) that copies of this application be filed on each city within the proposed service area should be waived.

5. The application should be granted.

6. The user fee the 1989-1990 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 Meta RCC, Inc. to construct and operate a radiotelephone utility one-way alphanumeric paging service with transmitter locations and service areas as identified in Appendix A.

2. The requirement of Rule 18(o)(1) that FCC construction permits be obtained prior to application to this Commission is waived as to the proposed site in Sacramento. Applicant shall immediately provide this Commission copies of the permit when it is issued.

3. The requirement of Rule 18(o)(1) that an application be filed with this Commission within 30 days of the granting of a construction permit by the FCC is waived.

4. The requirement of Rule 18(b) that each city in the proposed service area be served with a copy of the application is waived.

5. Within 90 days of the effective date of this order, applicant shall file two copies of the FCC construction permit for its proposed site in Sacramento. Two copies of the permit will be filed with the Director of the Commission Advisory and Compliance

Division (CACD) who will place one copy in the formal file for this application in our Central Files.

6. Within 30 days of the effective date of this order, applicant shall file a written acceptance of the certificate granted in this proceeding.

7. 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 radiotelephone services. The tariffs shall become effective on not less than 5 days' notice. The rates, charges, and rules shall be the same as those contained in its application.

8. Applicant shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 7, engineered service area maps drawn in conformity with the provision of FCC Rule 22.504, commonly known as the "Carey Report," and consistent with Exhibits 3, 5, 6, and 8 in A.89-10-024.

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

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

11. Applicant 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 with that form.

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

13. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if applicant has not filed the remaining FCC construction permit

required in Ordering Paragraph within 180 days of the effective date of this order, or if the certificate is not exercised within 12 months after applicant has complied with Ordering Paragraph 5.

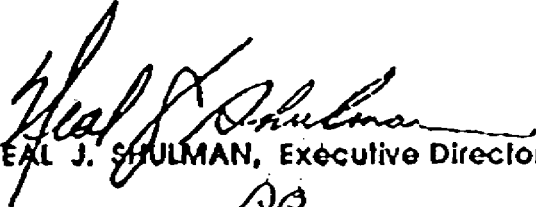
14. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the effective date of this order.

This order is effective today.

Dated JUN 06 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. CHANAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SHULMAN, Executive Director
js

APPENDIX A

TRANSMITTER LOCATIONS AND SERVICE AREAS

Transmitter locations requested in this application, A.90-04-008.

San Francisco: Sutro Tower
1 La Avanzada Road
San Francisco, CA
Latitude 37° 45' 20" N
Longitude 122° 27' 05" W

Los Angeles: 707 Wilshire Blvd.
Los Angeles, CA
Latitude 34° 2' 50" W
Longitude 118° 15' 22" W

San Diego: 591 Camino Del La Reina
San Diego, CA
Latitude 32° 46' 10" N
Longitude 117° 9' 16" W

Sacramento: 660 Bruceville Road
Sacramento, CA
Latitude 38° 28' 17" N
Longitude 121° 25' 13" W

(END OF APPENDIX A)

