

Decision 90 08 051 AUG 8 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

Application of METROMEDIA
 TELECOMMUNICATIONS INC., a California
 corporation (U-2078-C), for a
 Certificate of Public Convenience and
 Necessity to Construct and Operate
 Additional Radio Telephone Utility
 facilities.

Application 90-05-027
 (Filed May 15, 1990)

O P I N I O N

Metromedia Telecommunications, Inc. (applicant or MTI), a California corporation, requests a certificate of public convenience and necessity (CPCN) to construct and operate two additional one-way radiotelephone utility (RTU) base station facilities in the Oroville and Yuba City areas, pursuant to Section 1001 et seq. of the Public Utilities (PU) Code. Construction permits, engineering statements, and a map identifying the location of applicant's proposed facilities are attached to the application as Exhibit B and C, respectively.

Copies of the application were served on the cities and counties within which applicant's proposed service is likely to operate as listed in Exhibit F to the application.

Notice of the application appeared in the Commission's Daily Calendar of May 15, 1990. No protests to the application were received; therefore, a public hearing is not necessary.

Applicant states that commencing early in 1986, MTI has been granted CPCN to construct and operate facilities to provide a public utility one-way radiotelephone service on frequency 931.8625 MHz throughout a major portion of the State of California-over 70 base station sites. Therefore, this request is in essence a supplement to Application (A.) 85-08-064 and Decision (D.) 86-03-018.

This application specifically requests a CPCN for two additional base sites for providing public utility one-way radiotelephone service on frequency 931.8625 MHz in MTI's Northern Zone. Applicant's facilities will be located at:

<u>Site Name/County</u>	<u>Latitude</u>	<u>Longitude</u>
Bloomer Mt. - Butte	39° 39' 04" N	127° 27' 43" W
Sutter Butte - Sutter	39° 12' 21" N	129° 49' 11" W

The Federal Communication Commission (FCC) has granted construction permits for these sites.

The estimated construction cost of the two base facilities is approximately \$25,000 each.

MTI was a wholly-owned subsidiary of Metromedia, Inc., a Delaware corporation. Pursuant to A.86-07-053, D.86-10-009, dated November 1, 1986, Metromedia Company, a partnership acquired control of MTI on November 28, 1986 through transfer of all of the assets of Metromedia, Inc. to the partnership. Pursuant to A.86-10-048, D.86-12-066, dated December 17, 1986, the Commission authorized transfer of control of MTI to Southwestern Bell Corporation (SWB) and Metromedia Paging Services, Inc. (MPS), a wholly-owned Delaware subsidiary of SWB, through transfer of all of the assets of MTI (100% of outstanding stock), contingent upon approval by the FCC and Federal District Court for the District of Columbia (Judge Greene). Both the FCC and the Federal District Court for the District of Columbia have approved the transfer of control of MTI to SWB and MPS, which was consummated on September 30, 1987.

Applicant states that service is and will continue to be provided by MTI at its rates currently on file with the Commission. No immediate change in rates is contemplated.

Regarding environmental considerations, applicant states that all of MTI's transmitter sites, including the proposed two base station facilities are located at communication sites where

there are already in existence radio facilities, including towers, antennas, buildings or other structures. Applicant represents that the proposed facilities will not have a significant adverse impact on the environment.

Regarding public convenience and necessity, applicant believes that the two additional sites for which a certificate is requested will necessarily improve MTI's ability to provide service and meet the demands of existing and potential customers. Moreover, given the variety of paging services currently available in California, the 900 Band systems of MTI, including the two sites described in this certificate application, will provide competition in the radio telephone paging market, hereby benefiting the public.

Applicant asserts that its financial statements attached to this application as Exhibit D demonstrate that MTI has experienced substantial growth in capital investment, revenues, and expenses, and that the system will ultimately be economically feasible. To the extent that internally generated funds are insufficient, MPS, a wholly-owned subsidiary of SWB, has agreed to fund the obligations and expenses associated with the development of MTI's 900 Band paging system facilities (Exhibit F).

Applicant 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 CPCN until it has obtained an FCC construction permit. Once the FCC permit is obtained, an applicant must file its application for a CPCN with this Commission within 30 days.

Discussion

Applicant received FCC approvals for both sites on March 29, 1990. The application to this Commission was filed on May 15, 1990. Applicant is late and technically not in full compliance with Rule 18(o)(1). However, since applicant has the necessary FCC permits and the delay in filing with the Commission

has caused no harm but to the applicant, it is reasonable to grant applicant's request for waiver.

The Commission is the lead agency under the California Environmental Quality Act (CEQA), with respect to the determination of environmental considerations in connection with this project.

As stated previously, the proposed facilities will be located at an existing communications site. The Commission Advisory and Compliance Division has reviewed the application and concluded that the project should receive a categorical exemption since the proposed construction involves minor alternation of existing facilities. We adopt CACD's conclusions.

Applicant requests that this order become effective on the date of issuance to avoid further delays. Since there were no protests to this application and the proposed base stations are to be an extension of applicant's present service area, we will make this order effective on the date issued.

Findings of Fact

1. Applicant requests a CPCN to construct and operate two additional base station facilities in the Oroville and Yuba City areas, respectively.
2. Notice of the application appeared in the Commission's Daily Calendar of May 15, 1990.
3. No protests to the application were received.
4. Applicant possesses the requisite FCC permits.
5. Applicant is a certificated RTU providing one-way radiotelephone service throughout California.
6. Public convenience and necessity require the granting of this application.
7. The proposed operation is technically feasible.
8. MPS is committed to providing the necessary funds for the construction and operation of the proposed facilities to the extent that internally generated funds are insufficient.
9. The proposed operation is economically feasible.

10. The two proposed base stations are to be located at existing communication sites where there are already in existence radio facilities, including towers, antennas, buildings, or other structures.

11. Since the proposed construction involves minor alteration of existing facilities, the proposed project should receive a categorical (Class 1) exemption from the Environmental Impact Report requirements of CEQA (Rule 17.1(h)(A)2).

12. A public hearing is not necessary.

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

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

Conclusions of Law

1. The 30-day requirement of Rule 18(o)(1) should be waived in this instance.

2. The application should be granted subject to applicant obtaining all local permits and authorizations.

3. Because of the immediate need for service, this order should become effective today.

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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Metromedia Telecommunications, Inc. (applicant) to construct and operate two additional one-way radiotelephone base station facilities as identified in this decision.

2. The Commission having assumed the Lead Agency role in this matter finds that the proposed construction is categorically exempt from the requirements of the California Environmental Quality Act. No Negative Declaration or Environmental Impact Report is required (Rule 17.1(h)(A)2).

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

4. Applicant is authorized to file, after the effective date of this order 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 and charges shall be the same as for similar services that applicant presently has on file with the Commission.

5. 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(b)(2), consistent with its proposed service area as shown on the maps in Exhibit C to A.90-05-027.

6. 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.

7. The corporate identification number assigned to applicant is U-2078-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.

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

9. 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.

10. Applicant shall pay the user fee as a percentage of gross intrastate revenue under PU Code §§ 401, et seq.

11. 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.

12. 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.

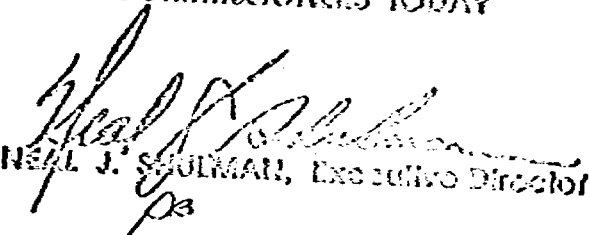
This order is effective today.

Dated AUG 8 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

- 7 -


NEAL J. SCHULMAN, Executive Director