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Decision 91-05-010 May 8, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 RANDOLPH CELLULAR LIMITED
 PARTNERSHIP, a Virginia limited
 partnership and CALIFORNIA 1
 CELLULAR CORPORATION, a Delaware
 corporation, for a Certificate of
 Public Convenience and Necessity to
 construct and operate a domestic
 public land cellular radiotelecom-
 munications system in Humboldt, Del-
 Norte, Siskiyou, and Trinity
 Counties; for authority under
 Section 816-30 and 851 to issue
 secured evidences of indebtedness;
 and for authority under
 Section 854 for CALIFORNIA 1
 CELLULAR CORPORATION to control the
 system.

ORIGINAL

Application 90-07-032
(Filed July 13, 1990)

OPINION

On October 12, 1990, the Public Utilities Commission issued Decision (D.) 90-10-011 granting a certificate of public convenience and necessity to Randolph Cellular Limited Partnership (Randolph) to provide cellular radio telecommunications service as the non-wireline carrier in California Rural Service Area (CRSA) 1 (northwestern counties). The certificate granted was conditioned on the transfer of the proposed service to California 1 Cellular Corporation (Cal 1) within one year. On November 13, 1990, Randolph filed a petition for modification (petition) seeking to remove the condition requiring the transfer.

In its petition, Randolph stated that due to circumstances beyond the control of either Randolph or Cal 1, the intended transfer cannot occur. Randolph also provided a copy of its current balance sheet and a description of the qualifications of its general partners.

In contemplation of the intended transfer of Randolph's interests to Cal 1, Application 90-07-032 provided adequate information as to the technical and financial qualifications of Cal 1. As originally proposed, Novatel, Inc. agreed to lend General Cellular Corp. (GCC), Cal 1's corporate parent, \$3,000,000 for the construction and initial operation of the service. GCC, in turn, agreed to loan the funds to Cal 1. First year capital costs were estimated at \$1,979,000 with a first year operating loss projected to be \$72,883. The application was silent as to Randolph's financial qualifications except for a copy of what appears to be a portion of Randolph's 1989 federal income tax form listing assets of \$76,976. Based on the information contained in the application, the Commission concluded:

"While Cal 1 is adequately qualified, nothing in the application shows that Randolph is prepared to or qualified [sic] offer the proposed cellular service. Therefore, in light of the pending buy-out of Randolph's interest, we will grant the CPCN to Randolph for the limited purpose of transferring it to Cal 1. We will also approve the transfer to Cal 1, and we will require that the transaction be perfected within one year from the effective date of this decision." (D.90-10-011, mimeo. p. 5.)

Randolph's petition adequately described its technical qualifications but did not clearly establish the partnership's financial capability to construct and operate the proposed service. Exhibit B to the petition showed current assets of \$1,048,076 consisting of cash and Treasury Bills; it also listed the market value of partnership interests in four cellular licenses valued at \$18,890,000 (of that amount \$17,325,000 is attributed to RSA California 1). The petition was silent as to whether the \$3,000,000 original construction loan continues to be available.

By ruling issued November 29, 1990, the assigned Administrative Law Judge (ALJ) required Randolph to amend its petition to include facts pertaining to its financial fitness.

sufficient to support an order of the Commission modifying the order D.90-10-011 as requested.

Randolph responded to the ALJ's ruling on January 28, 1991. The response shows that Randolph has obtained a credit facility from Northern Telecom Finance Corporation (Northern) in the aggregate amount of \$5,300,000. The proceeds of the loan will be used for the purchase and installation of equipment, revenue shortfalls, and financing cost. The loan is to be secured by the assets of the system.

Randolph also included in its amended petition a request for authority under Public Utilities Code Section 851 to transfer all the assets of Randolph to Randolph Cellular Corporation (RCC).¹ RCC is a Delaware corporation wholly owned by the eight partners in Randolph. Randolph states that the transfer is proposed on advice of its counsel because of a variety of legal and tax considerations. According to Randolph, the transfer will have no measurable impact on the control of the cellular utility or its financing and operations.

Randolph has adequately demonstrated that it is qualified to operate as a cellular radiotelecommunications utility in CRSA-1. Randolph's request for authority to encumber its assets and to

¹ Although Randolph did not file a separate application for authority to transfer its assets to RCC, its petition satisfies all information requirements, including those embodied in Rule 36, applicable to transfer applications. We will consider the petition adequate under Rule 87; however, we emphasize that the correct practice is the filing of a formal transfer application. In this instance, the failure to file an application has caused a delay in processing this matter because we were required to re-notice the matter in the Commission's Daily Calendar on March 25, 1991 to ensure that all potentially interested persons would receive notice of the proposed transfer from Randolph L.P. to Randolph Cellular, Inc.

transfer them to RCC is necessary and properly made. Accordingly, we will modify D.90-10-011 as follows:

1. On page 1 delete "conditional" in paragraph 1.
2. On page 1 delete footnote 1.
3. On page 2 delete last sentence in paragraph continuing at top of page.
4. Throughout, delete "applicants" and replace with "applicant."
5. On page 3 delete the second and third full paragraphs.
6. On page 4 delete all text from end of second full paragraph continuing to end of first full paragraph on page 6.
7. On page 6 delete Finding of Fact 2.
8. On page 7 delete Findings of Fact 5 and 7 and Conclusions of Law 2 and 3.
9. Change ordering paragraphs to read as shown in Appendix A attached to this decision.

Findings of Fact

1. In A.90-07-032 Randolph sought authority to operate as a cellular radiotelephone communications utility; Randolph proposed to engage California 1 Cellular Corporation to manage and finance the proposed service and to transfer its interests to California 1 Cellular Corporation within one year.

2. On October 12, 1990, the Commission granted Randolph a CPCN, but because Randolph did not show that it possessed the necessary technical and financial qualifications, limited the authority to a period of one year, subject to expiration unless Randolph completed its proposed transfer of assets to California 1 Cellular Corporation.

3. On November 13, 1990, Randolph filed a petition to modify D.90-10-011 stating that the sale to California 1 Cellular

Corporation could not be perfected and seeking to be relieved of the conditions attached to its CPCN.

4. Randolph has demonstrated that it now has the necessary technical and financial qualifications to provide cellular services.

5. The transfer of the assets of Randolph to RCC will not affect the control or operation of the utility services.

Conclusions of Law

1. D.90-10-011 should be modified to delete Ordering Paragraphs 2 and 17 therein.

2. Ordering Paragraphs 7, 8, 9, 12, 13, 14, 15, and 16 of D.90-10-011 should be modified to read as shown in Appendix A to this decision.

3. Authority to encumber the assets of Randolph should be granted.

4. Authority to transfer the assets of Randolph to Randolph Cellular Corporation should be granted.

ORDER

IT IS ORDERED that:

1. D.90-10-011 is modified to delete Ordering Paragraphs 2, 3, and 17 and to renumber and modify Ordering Paragraphs 7, 8, 9, 12, 13, 14, 15, and 16 to read as shown in Appendix A attached hereto.

2. Randolph Cellular Limited Partnership (Randolph) is authorized to encumber its utility assets up to the amount of \$5,300,000 as security to Northern Telecom Finance Corporation.

3. Randolph is authorized to transfer its utility assets, pursuant to Public Utilities Code Section 851 to Randolph Cellular Corporation.

4. Upon completion of the transfer authorized in Ordering Paragraph 3 of this decision, Randolph is relieved of its obligation to serve as a public utility in this state.

5. Upon completion of the transfer authorized in Ordering Paragraph 3 of this decision, RCC shall use the corporate identification number U-3031-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.

6. RCC shall notify the Director of the Commission's Advisory and Compliance Division within seven days of the date the transfer of the utility assets of Randolph is completed.

This order becomes effective 30 days from today.

Dated May 8, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL W. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

Neal J. Shulman
NEAL J. SHULMAN, Executive Director

APPENDIX A
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IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Randolph Limited Partnership for the provision of cellular telephone utility service as proposed in A.90-07-032 and as described in Appendix A to this decision.

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

3. Construction of additional cell sites in yet undetermined locations shall be subject to the Commission's General Order (GO) 159, adopted March 28, 1990, pursuant to D.90-03-080.

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

5. Applicant Randolph Limited Partnership or Randolph Cellular Corporation as its successor is authorized to file, after the effective date of this order in compliance with GO 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 has on file with the Commission.

6. Applicant shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 5, an engineered service area map drawn in conformity with Federal Communications Commission Rule 22.504(b)(2), and consistent with Exhibit E to A.90-07-032.

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7. Applicant shall notify the Commission Advisory and Compliance Division (CACD) director in writing of the date service is first rendered to the public as authorized herein within 5 days after service begins.

8. The corporate identification number assigned to Randolph Limited Partnership is U-3031-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. 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.

10. Applicant is subject to the user fee as a percentage of gross intrastate revenue pursuant to PU Code §§ 431-435.

11. Applicant is subject to a monthly surcharge to fund Telecommunications Devices for the Deaf as outlined in Resolution T-13061 dated April 26, 1989 pursuant to Public Utilities (PU) Code § 2881.

12. Applicant shall keep its books and records in accordance with the Uniform System of Accounts for cellular communications licensees as prescribed by D.86-01-043.

13. Within 60 days of the effective of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify, in writing, the Chief of Telecommunications Branch of the CACD of compliance.

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

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15. Applicant shall provide a copy of this decision to all local permitting agencies not later than 30 days from today.

This order is effective today.

Dated October 12, 1990, at San Francisco, California.

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

(END OF APPENDIX A)