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Decision 91-09-052 September 25, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
McCaw Cellular Communications, Inc. )  
and Santa Cruz Cellular Telephone, )  
Inc. for Authorization Under )  
Section 852 of the Public Utilities )  
Code for McCaw Cellular Communica- )  
tions, Inc. to Acquire Stock in )  
Santa Cruz Cellular Telephone )  
Company (U-3019-C). )

ORIGINAL

Application 91-06-033  
(Filed June 13, 1991)

OPINION

McCaw Cellular Communications, Inc. (MCCI) and all of its affiliated companies (collectively McCaw) and Santa Cruz Cellular Telephone, Inc. (SCTI), seek authorization under Section 852 of the Public Utilities Code for McCaw to take, acquire, and hold up to 49% of the outstanding shares of common stock of SCTI.<sup>1</sup>

McCaw presently holds approximately 11% of the outstanding shares of common stock in SCTI. These shares were purchased prior to January 1, 1990.<sup>2</sup> McCaw has also acquired rights to obtain an additional interest of approximately 11% of the common stock of SCTI, and has subscribed to a preemptive offering issued by SCTI. SCTI is presently holding the stock certificates representing all of these additional shares in escrow pending grant

1 MCCI requests that authorization to purchase shares in SCTI be granted to itself, and affiliate companies listed in the application.

2 At the time, Commission approval for this purchase was not required because the purchaser, McCaw Cellular Interests, Inc. (MCII), is not a utility. Subsequently, Section 852 of the Code was amended, effective January 1, 1990, to require "affiliates" of utilities such as MCII to obtain Commission approval of such purchases of minority interests in utilities.

of this application. MCCI requests that the Commission expressly approve its acquisition of this additional 11% of common stock in SCTI and any future acquisitions up to a cumulative total of 49% of SCTI's outstanding common stock.<sup>3</sup> SCTI has not issued outstanding shares of preferred stock or other types of stock besides common stock.

MCCI also owns or has a controlling interest in several affiliated entities including MCII. It is currently envisioned that MCII, a wholly-owned subsidiary of MCCI created for the purpose of acting as a holding company of MCCI's purchases of stock in cellular companies, would purchase, acquire, take or hold any stock of SCTI. However, this application seeks authority for such stock to be transferred to and held by any affiliate of MCCI.

SCTI is a California corporation. SCTI's principal line of business is cellular radiotelephone service. SCTI's service territory is described more fully in its application for a certificate of public convenience and necessity, Application 88-03-030, and in its tariff on file with the Commission. By Decision (D.) 88-09-029 and D.89-01-050, SCTI was certificated to construct and operate a facilities-based cellular system in the Santa Cruz Cellular Geographic Service Area. SCTI does not own interests in any other cellular system in California.

A copy of the most recently available financial statements (as of December 31, 1990), of MCCI and its affiliated companies, as filed with the Securities and Exchange Commission, was provided as was a copy of SCTI's most recently available financial statements (as of December, 1990).

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<sup>3</sup> No transfer of control would result from any of these purchases. McCaw would file a subsequent application pursuant to Section 854 of the Code if it were to agree to purchase, acquire or hold 50% or more of SCTI's common stock.

McCaw requests permission to take, acquire, and hold up to 49% of all outstanding shares of common stock of SCTI. With respect to the possible purchase of SCTI stock above its 22% holdings, no arrangements have been made and therefore the purchase price and other terms and conditions applicable to the purchase of these outstanding shares would be based on the market conditions at the time of the purchase.

McCaw has agreed to purchase shares of SCTI common stock from several holders of such shares. The shares involved equal approximately 11% of SCTI's outstanding stock, and are currently being held in escrow by SCTI pending grant of this application. In addition, McCaw has subscribed to an additional preemptive stock offering recently made by SCTI. Because these agreements were made at varying times, contain varying terms and involve numerous small purchases, they have not been attached. Subject to General Order 66-C, McCaw will file these agreements upon request of the Commission. After the transactions, MCII will hold approximately 22% of SCTI's common stock. If the Commission grants this application, McCaw may periodically purchase outstanding shares of common stock in SCTI from its holders in the future. There are no bills of sale or other agreements memorializing any transactions for the possible additional purchases of SCTI's stock up to 49% that McCaw seeks permission from the Commission to acquire and hold in the future.

MCCI, through subsidiaries, is engaged in the provision of paging, mobile telephone services, and cellular radiotelecommunications services throughout the country. Through its subsidiaries, MCCI is the largest operator of nonwireline cellular systems in the United States. MCCI has interests in facilities-based cellular telephone companies in more than eighty (80) metropolitan service areas (MSAs) and resells cellular radiotelecommunications services in numerous other MSAs.

MCCI's affiliates own cellular systems which are concentrated into several regional, multi-market cellular systems or "clusters." In the California/Nevada Cluster, MCCI subsidiaries hold controlling interests in the following facilities-based companies which are certificated by this Commission:

Cagal Cellular Communications Corporation (U-3021-C)

Fresno Cellular Telephone Company (U-3014-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)

Santa Barbara Cellular Systems, Ltd. (U-3015-C)

Stockton Cellular Telephone Company (U-3012-C)<sup>4</sup>

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

McCaw seeks to establish the potential to provide cellular services in regions that it presently does not serve. McCaw currently owns an interest in Bay Area Cellular Telephone Company, the nonwireline carrier in the Bay Area. McCaw seeks to acquire additional outstanding shares of common stock in SCTI to facilitate its ability to participate in the provision of cellular service in the Santa Cruz area.

It is alleged that the public interest would be served by the Commission's authorization of the proposed purchases. The proposed purchases will allow MCCI or any of its wholly-owned

<sup>4</sup> MCCI also serves Nevada markets within the California/Nevada Cluster through McCaw Communications of Nevada, Inc. and Reno Cellular Telephone Company.

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... subsidiaries to purchase up to 49% of SCTI. McCaw has previously been found by this Commission to be technically and financially qualified to provide cellular service in a significant number of California's markets. The public will gain the benefit of additional financial resources which can be invested for the provision of cellular service in the Santa Cruz MSA.

Notice of the application was given by publication in the Commission's Daily Calendar on June 20, 1991. No protests have been received. The Commission Advisory and Compliance Division (Section 2091) has made no recommendations concerning the application.

Findings of Fact

- 1. No protests have been received, and no hearing is required.
- 2. The proposed acquisition is not adverse to the public interest.

Conclusion of Law

The application should be granted.

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IT IS ORDERED that:

- 1. McCaw Cellular Communications, Inc. or any corporation controlled by McCaw Cellular Communications, Inc. may acquire and hold up to a total of not more than 49% of the capital stock of Santa Cruz Cellular Telephone Company (U-3019-C).

2. This order grants the application in full and terminates the proceeding.

This order becomes effective 30 days from today. Dated September 25, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
JOHN B. OHANIAN  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

I abstain.  
/s/ G. MITCHELL WILK  
Commissioner

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

  
NEAL J. SHULMAN, Executive Director