

Decision 91-09-079 September 25, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of United States Cellular Corporation)
for an Order Exempting It From the)
Requirements of Section 852 of the)
California Public Utilities Code,) Application 91-05-014
Or, In The Alternative, for an) (filed May 7, 1991)
Order Authorizing Its Acquisition)
of the Stock of Santa Cruz Cellular)
Telephone, Inc.)

OPINION

Summary of Decision

This decision grants United States Cellular Corporation (US Cellular) the exemption from the requirements of Public Utilities (PU) Code § 852 requested in Application (A.) 91-05-014 (Application).

US Cellular requests authority under PU Code § 853 for an exemption from the requirements of § 852 for its purchase of 4.5 shares of the common stock of Santa Cruz Cellular Telephone, Inc. (Santa Cruz) for the aggregate principal amount of \$1,937.60.

Notice of the filing of the Application appeared on the Commission's Daily Calendar of May 2, 1991. No protests have been received.

Discussion

US Cellular, a Delaware corporation, has its principal place of business in Chicago, Illinois. US Cellular holds direct and indirect equity interests in cellular companies organized or existing under California law, including Santa Cruz.

Telephone and Data Systems, Inc. (TDS), a corporation operating under the laws of the State of Iowa, has its principal place of business in Chicago, Illinois. It owns more than 80 percent of the combined total of the outstanding common shares and Series A common shares of US Cellular, and controls more than 95 percent of the combined voting power of both classes of capital stock. Through its ownership interest, TDS may elect at least five of the seven directors of US Cellular. TDS holds equity interests in various public telephone utilities organized or existing under California law.

US Cellular is the current record holder of 40.73850 shares of the common stock of Santa Cruz. This 0.19 percent interest in Santa Cruz represents, according to the Application, ". . . one full undiluted original minority interest . . ."

US Cellular notes in the Application that Santa Cruz is a corporation organized and existing under the laws of the State of California; its principal place of business is in California; since 1988 it has continuously operated as a radio common carrier within California as authorized by the Commission; and it is the non-wireline carrier designated by the FCC to serve the Santa Cruz Service Area.

On January 15, 1991, Santa Cruz offered to sell 2,322.4757 shares of its common stock at \$430.575 per share to its shareholders of record pursuant to the preemptive rights provision set forth in Santa Cruz's Articles of Incorporation, and with authority granted by the Commission in Decision (D.) 90-12-095. Santa Cruz made this offering to raise \$1,000,000 of equity capital before February 13, 1991, to comply with a covenant contained in its loan agreement with its institutional lender.

US Cellular was offered 4.5 shares of Santa Cruz's common stock offering for an aggregate principal amount of \$1,937.60. If US Cellular failed to avail itself of this

offering, it would find its ownership in Santa Cruz diluted accordingly. US Cellular complied with the terms of the stock offering by completing the proper subscription documents and returning these along with a check in the proper amount. Santa Cruz issued the shares, although US Cellular had requested that it not do so until US Cellular had received an exemption from this Commission. Thus, US Cellular holds the shares, but has yet to exercise any stockholder rights in connection with those shares.

PU Code § 852 states in part that:

"No public utility, . . . or affiliate of, a public utility, shall purchase or acquire, take or hold, any part of the capital stock of any other public utility, without having been first authorized to do so by the commission; . . ."

US Cellular asserts that § 852 would appear to be applicable to its purchase of the 4.5 shares of Santa Cruz's stock since both US Cellular and TDS hold equity stakes in public telephone utilities organized or existing under California law. Though there is some question whether US Cellular is actually an "affiliate" of Santa Cruz, based upon its equity holdings, we agree with US Cellular's assertion, and deem § 854 to be applicable.

US Cellular argues that § 853(b) of the PU Code provides the Commission with the authority to exempt any utility from the provisions of § 852 if it finds that the application of § 852 is not necessary in the public interest. US Cellular alleges that § 852's requirement of Commission authorization for the acquisition of public utility stock by another public utility need not be applied to US Cellular's acquisition of the common stock of Santa Cruz because such authorization is not necessary or in the public interest. Accordingly, US Cellular alleges

that its acquisition of the common stock pursuant to the terms of Santa Cruz's stock offering should be exempted from the provisions of § 852 under § 853(b).

US Cellular further postulates that this exemption is consistent with the public interest because US Cellular's acquisition of Santa Cruz's stock is *de minimis* and merely allows US Cellular to retain an undiluted minority interest in Santa Cruz. US Cellular states that neither the public nor any other radio common carrier will be harmed by US Cellular's acquisition of an additional 4.5 shares of Santa Cruz's common stock or by the requested exemption. US Cellular states: "In fact, the Commission has, in the past, approved similar pro rata stock acquisitions as part of its approval of the issuance of the subject stock."

US Cellular cites D.90-07-024 in which the Commission granted Southern California Gas Company (SoCalGas) the authority to issue shares of its common stock to its parent, Pacific Enterprises (Pacific). This transaction, in conjunction with SoCalGas issuing \$75 million of its Series Preferred or Preference Stock, allowed Pacific to maintain its current percentage ownership of SoCalGas' voting capital stock. US Cellular notes that D.90-07-024 is an example of a Commission-approved pro rata stock acquisition as part of the approval of the issuance of the subject stock.

The Commission Advisory and Compliance Division (CACD) has reviewed the application and has concluded that the purchase of 4.5 shares of Santa Cruz's common stock by US Cellular is a reasonable means of allowing US Cellular to maintain its undiluted original minority interest; that neither the public at large, nor Santa Cruz's customers, nor its competitors will be harmed by the transaction; and that US Cellular should be exempted from § 852, since the application of that statute is not necessary in the public interest.

CACD recommends, and we concur, that the purchase of the shares should be exempt from the provisions of PU Code § 852 pursuant to § 853(b).

Findings of Fact

1. US Cellular, a Delaware corporation, has its principal place of business in Chicago, Illinois.
2. US Cellular holds direct and indirect equity interests in cellular companies organized or existing under California law, including Santa Cruz.
3. TDS, a corporation operating under the laws of the State of Iowa, has its principal place of business in Chicago, Illinois.
4. TDS owns more than 80 percent of the combined total of the outstanding common shares and Series A common shares of US Cellular, and controls more than 95 percent of the combined voting power of both classes of capital stock.
5. TDS may elect at least five of the seven directors of US Cellular.
6. TDS holds equity interests in various public telephone utilities organized or existing under California law.
7. US Cellular is the current record holder of 40.73850 shares of the common stock of Santa Cruz.
8. Santa Cruz is a corporation organized and existing under the laws of the State of California; its principal place of business is in California; since 1988 it has continuously operated as a radio common carrier within California as authorized by the Commission; and it is the non-wireline carrier designated by the FCC to serve the Santa Cruz Service Area.
9. On January 15, 1991, Santa Cruz offered to sell 2,322.4757 shares of its common stock at \$430.575 per share to its shareholders of record pursuant to authority granted by the Commission in D.90-12-095.

10. US Cellular was offered 4.5 shares of Santa Cruz's common stock offering for an aggregate principal amount of \$1,937.60.

11. US Cellular has complied with the terms of the stock offering.

12. Santa Cruz has issued the shares of stock to US Cellular.

13. With the purchase of 4.5 shares of Santa Cruz's capital stock, US Cellular has maintained its undiluted minority ownership interest in Santa Cruz.

14. The purchase of 4.5 shares of Santa Cruz's common stock is a reasonable purchase and is for proper purposes.

15. There is no known opposition to the Application and no reason to delay granting the authority requested.

Conclusions of Law

1. A public hearing is not necessary.

2. US Cellular's acquisition of 4.5 shares of Santa Cruz's capital stock is not harmful to the public interest, and this purchase is exempt from PU Code § 852.

3. The Application should be granted to the extent set forth in the following Order.

4. The following Order should be effective on the date of signature.

ORDER

IT IS ORDERED that:

1. United States Cellular Corporation's purchase of 4.5 shares of the capital stock of Santa Cruz Cellular Telephone, Inc. is exempt from the requirements of Public Utilities (PU) Code § 852 pursuant to PU Code § 853(b).

2. The Application is granted as set forth above.
This Order is effective today.

Dated September 25, 1991, at San Francisco, California.

I abstain

G. MITCHELL WILK
Commissioner

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

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


NEAL J. SHULMAN, Executive Director
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