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Decision 92-01-049 January 21, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Appli-)
 cation of California RSA #9, Inc., a)
 California corporation, and Califor-)
 nia 9 Cellular Corporation)
 (U 3023 C), for an order (1) author-)
 izing California 9 Cellular Corpor-)
 ation (U 3023 C) to transfer and)
 assign assets, (2) granting Califor-)
 nia RSA #9, Inc. authority to)
 provide cellular mobile radio)
 service in Rural Service Area 9, and)
 (3) authorizing California RSA #9,)
 Inc. to issue additional stock.)

ORIGINAL

Application 91-09-005
(Filed September 5, 1991)

O P I N I O N

Statement of Facts

On July 20, 1989, the Federal Communications Commission (FCC) granted Gardner Enterprises, Inc., authorization to construct a nonwireline cellular mobile radio system in the Rural Service Area (RSA) comprising Mendocino and Lake counties in California. Gardner Enterprises, Inc. was then the general partner, along with Robert J. Gardner and Patricia A. Gardner as limited partners, in Mendocino Limited Partnership (MLP). The FCC also consented to transfer of the construction authority granted Gardner Enterprises, Inc. to MLP.

By Decision (D.) 90-08-024 issued shortly thereafter on August 8, 1990 in Application (A.) 90-03-021, this Commission authorized MLP and California 9 Cellular Corporation (CAL 9) to construct and operate a nonwireline cellular mobile radio service in the Mendocino-Lake counties RSA (RSA 9), assigning U-3023-C to be the utility's corporate identification number. CAL 9, a Delaware corporation qualified to do business in California, is a wholly owned subsidiary of General Cellular Holdings, Inc. (GCHI),

also a Delaware corporation and itself a wholly owned subsidiary of General Cellular Corporation (GCC), also a Delaware corporation. Under a purchase and sale agreement between MLP and GCC, GCC was to construct and manage the planned system pending transfer of full control and ownership to GCC's corporate grandchild CAL 9. GCC further agreed under the purchase and sale agreement to loan CAL 9 funds needed for capital expenses, and to furnish funds to cover operating expenses insofar as these exceed revenues.

Pursuant to a loan agreement dated March 9, 1990, AIG Capital Corporation (AIG), a Delaware corporation, extended loans to GCHI, which loans were secured by, among other things, all the issued and outstanding shares of CAL 9's capital stock and all of CAL 9's assets. As of December 10, 1990, GCHI went into default on these loans, and by August 14, 1991, the principal, and interest accrued through August 12, 1990 totaled \$8,377,103.57. The CAL 9 RSA 9 system presently requires a substantial capital infusion to meet its ongoing obligations and to expand its operations in response to technological changes and increasing subscribers' demand.

Accordingly, and subject to FCC and California Public Utilities Commission (PUC) consents, CAL 9, its corporate grandparent GCHI, and the secured lender, AIG, determined upon a sale of CAL 9's assets and operating license, with a declared intention of using a portion of the consideration to be obtained from such a sale of assets to repay in full the AIG obligations, thereby obtaining a release of AIG's lien and security interests.

United States Cellular Corporation (USCC), a Delaware corporation qualified to do business in California, presently holds minority interests in a number of California cellular mobile radio

systems located in both metropolitan statistical areas and RSAs.¹ An affiliate holds an option to acquire control of the FCC nonwireline license for the California RSA 1 area (Del Norte, Siskiyou, Humboldt, and Trinity counties) adjacent to RSA 9. Believing that significant operating efficiencies and economies of scale could be obtained in a larger combined area embracing the two RSAs, USCC determined upon acquisition of CAL 9's operating authority and assets.

To accomplish the acquisition of CAL 9, USCC organized California RSA #9, Inc. (CRSA #9), a California corporation, as a wholly owned second-tier subsidiary. CRSA #9 has issued 100 shares at \$1.00 per share. It presently has no balance sheet or income statement of its own and does not expect to have them until its proposed acquisition of CAL 9 has been approved. Meanwhile, the consolidated balance sheet and income statement of its corporate grandparent USCC are being submitted along with USCC's Securities and Exchange Commission Form 10-Q for the quarter ending June 30, 1991.

By an acquisition agreement dated August 14, 1991, and subject to the condition precedent of FCC and PUC approval, USCC and CAL 9 have contracted for the sale to USCC for \$12 million of CAL 9's authority to provide cellular mobile radio service in RSA 9 and tangible and intangible assets including CAL 9's subscribers list and leasehold interests. According to CAL 9's annual report to the Commission for the year ending December 31, 1990, the

¹ A majority of USCC's voting stock is owned by Telephone and Data Systems, Inc. (TDS), a publicly held utility holding corporation with over \$900 million in assets. TDS has been found qualified to indirectly control numerous California public utilities. For example, in D.89-10-045 (October 26, 1989) and D.91-04-005 (April 10, 1991), the Commission authorized TDS to acquire three local exchange telephone companies through intermediary subsidiaries.

historic book cost of the RSA 9 cellular investment was approximately \$11.3 million with a depreciation reserve of \$29,329.

In the captioned application, CRSA #9 and CAL 9 have jointly filed to obtain authorization for the proposed sale and transfer, and for CRSA #9 to issue up to 1,000 shares of common stock at \$1.00 per share. The capital realized from sale of this stock would be used only for the acquisition of CAL 9 assets, improvement of the acquired facilities, and maintenance of service. Additional funding for CRSA #9 would come from capital infusions by USCC. For the present, CRSA #9 proposes to utilize only those towers presently used by CAL 9 to provide service. As the use of those towers was found to be categorically exempt from environmental requirements (see D.90-08-024 issued August 8, 1990), there is no possibility that the presently proposed sale and transfer would have any significant impact on the environment.² CRSA #9 states its intention to provide uninterrupted cellular mobile service operations initially at the same rates, terms, and conditions currently in effect in CAL 9's lawfully filed tariffs. CAL 9 further requests that upon consummation of the proposed sale and transfer, it be relieved of its public utility duties and responsibilities to provide further cellular mobile radio service in RSA 9, and that upon the effective date of CRSA #9's tariff, CAL 9's presently filed tariffs with regard to provision of service to RSA 9 subscribers be canceled.

² The initial system was a two-cell system. The mobile telecommunications switching office (MTSO) is located in Ukiah where it interconnects with Pacific Bell. Cell #1 on Cow Mountain is linked to the MTSO via a microwave link. Cell #2 is located in Willits and is also linked to the MTSO via a microwave link. In April 1991, the cell extender earlier placed on Bold Hill was replaced by Cell #3 linked to the MTSO by a microwave link from Cell #2, and the extender was moved to Clear Lake to extend coverage from Cow Mountain. The system thus provides service to 96% of the market population and 72% of the market highway miles.

In that the present operations are solely beset with financial problems, and that both applicants seek to have service continue without interruption, the applicants hereto seek expeditious ex parte approval of the application. The application appeared on the Commission's Daily Calendar of September 11, 1991, and there have been no protests filed. Accordingly, the administrative law judge determined to proceed ex parte.

Discussion

It has long been settled that cellular mobile telecommunications service is a necessary service for the public and business in general and that it should be made available as widely and expeditiously as possible consistent with reasonable safeguards for the public interest.³ In the present case we have this technologically advanced telecommunications service in use in a rural area of California, serving 700 subscribers as well as roamers. But availability and continued service is jeopardized by financial problems encountered by the present provider who seeks to resolve these problems and to assure continued availability and service by expeditiously selling and transferring the system to another operator, in this instance a subsidiary of the fourth largest cellular telephone company in the nation outside of the regional Bell operating companies. This operator is prepared to continue and expand the service at the same rates and conditions as the present operator.

The primary function of public utility regulation is to fairly control public utilities and the service they provide for the protection and welfare of the general public. The transfer of authority to operate is an exercise of the State's power to determine whether the rights and interests of the general public will be advanced by such a transfer. The Commission represents the

3 See Public Utilities (PU) Code § 709.

public interest and is charged with the protection of that interest (Hanlon v. Eshelman (1915) 169 C. 200, 200-203; Sale v. Railroad Commission (1940) 15 C. 2d 612, 617-618). The concern is to prevent the impairment of the public service by the transfer of utility property and operating rights into the hands of parties incapable of rendering adequate service at reasonable rates or upon terms which would bring about the same undesirable result (So. Cal. Mountain Water Co. (1912) 1 CRC 520).

In the present matter the application provides evidence that CRSA #9, backed as it is by its parent USCC's ample financial resources and technical experience, will not only be able to continue the existing service but also be able to extend service availability through the RSA. There are no environmental issues involved in the transfer of the existing system. Construction of additional cell sites in yet undetermined locations will be subject to the provisions of the Commission's General Order 159 adopted March 28, 1990 pursuant to D.90-03-080.

Since the capital proposed to be realized by issuance of 1,000 shares of common stock at \$1.00 per share will be used only for acquisition of CAL 9's assets, improvement of facilities, and maintenance of service, all purposes authorized under PU Code § 817, CRSA #9 should be granted the requested authority to issue 1,000 shares of common stock at \$1.00 per share.

For a certificate authorizing an issue of stock, a fee of \$2.00 for each \$1,000 of the face value of the authorized issue is charged by the Commission pursuant to the requirement of PU Code § 1904.1.

Finally, upon consummation of the sale and transfer, CAL 9 should be relieved of its public utility obligations with respect to provision of nonwireline cellular mobile radio service in RSA 9, and its corporate identification number should be retired.

Findings of Fact

1. By D.90-08-024, applicant CAL 9 in association with MLP was granted a certificate of public convenience and necessity to construct and operate a nonwireline cellular mobile radio service in RSA 9.

2. MLP has since transferred control of the system to CAL 9 as provided for in Ordering Paragraph 3 of D.90-08-024.

3. CAL 9's corporate grandparent GCC is in default of loans made to it, and seeks to sell CAL 9's operating authority and assets to USCC which in turn has caused creation of a corporate grandchild CRSA #9 to acquire CAL 9's authority and assets.

4. The proposed sale and transfer has no known opposition.

5. It can be seen with reasonable certainty that the sale and transfer to CRSA #9 would present no significant impact on the environment.

6. CRSA #9, backed as it is economically and technologically, has ample resources and ability to continue and expand the present service as warranted by public demand and market conditions.

7. CRSA #9 would continue service initially at the same rates, terms, and conditions currently in place in CAL 9's tariffs.

8. The proposed issuance of 1,000 shares of common stock for purposes authorized by PU Code § 817 is reasonable.

Conclusions of Law

1. No public hearing is necessary on this application.

2. The public interest would be served by granting the applications as set forth in the following order.

3. CRSA #9 should be granted authority to issue 1,000 shares of common stock at \$1.00 per share after payment of the fee required pursuant to PU Code § 1904.1.

4. The following order should be effective on the date the order is signed to assure continuity of service without

interruption in the face of present financial difficulties of the seller.

O R D E R

IT IS ORDERED that:

1. Within 6 months after the effective date of this order, California 9 Cellular Corporation (CAL 9) may sell and transfer its operating authority and assets to California RSA #9, Inc. (CRSA #9). If not exercised within 6 months of the effective date of this order, the authority granted will expire.

2. Within 15 days of the actual transfer, CAL 9 shall notify the Commission in writing of the date on which the sale and transfer were consummated. A true copy of the instrument effecting the sale and transfer shall be attached to the written notification.

3. CRSA #9, after the effective date of this order and in compliance with General Order 96-A, is authorized to file tariffs containing rates, terms, and conditions applicable to the nonwireline cellular mobile radiotelephone service it will provide. These tariffs will become effective on not less than 5 days' notice. The rates, terms, and conditions of service shall be the same rates, terms, and conditions currently being offered by CAL 9, and in the interim until CRSA #9 files, CRSA #9 will abide by CAL 9's current tariffs.

4. The corporate identification number assigned CRSA #9 is U-3042-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.

5. CAL 9 shall file a separate Advice Letter withdrawing its tariffs once the CRSA #9 tariffs are effective. The Commission Advisory and Compliance Division Director will then cancel CAL 9's corporate identification number.

6. CAL 9 shall make a final accounting and remittance to the Commission of the Public Utilities Commission Reimbursement Fees and of the Telecommunications Devices for the Deaf fees collected to the date of sale and transfer of the system to CRSA #9.

7. On or after the effective date of this order, but within 6 months, and upon payment of \$2.00, the fee set by Public Utilities Code § 1904.1, for the purposes specified CRSA #9 may issue up to 1,000 shares of common stock with a par value of \$1.00 per share.

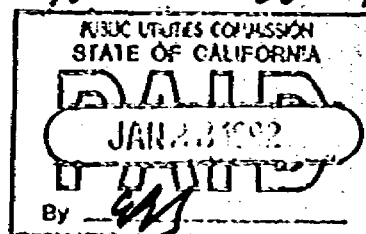
8. CRSA #9 shall file the reports required by General Order No. Series 24-B.

9. When the authorized sale and transfer is complete and the conditions of this order are fulfilled, CAL 9 shall be relieved of its public utility obligations for the sold and transferred system.

This order is effective today.

Dated January 21, 1992, at San Francisco, California.

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



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

NEAL J. SHULMAN, Executive Director