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Decision 92-02-071 February 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Cook Telecom, Inc. of San Francisco (U-2096-C), a California corporation and American Paging, Inc. (of California), a California corporation for Authority to Acquire Assets of American Paging, Inc. (U-2001-C) Pursuant to Public Utilities Code Section 851.

ORIGINAL

Application 91-08-047
(Filed August 21, 1991)

In the Matter of the Application of Cook Telecom, Inc. of San Diego, a California corporation, for a Certificate of Public Convenience and Necessity under Section 1001 of the Public Utilities Code, Granting Authority to Provide Radiotelephone Utility Paging Services in the San Diego Market Area; and of Cook Telecom, Inc. of San Diego for Authority to Acquire, and American Paging, Inc. (U-2001-C) to Transfer, Pursuant to Public Utilities Code Section 851, Certain Assets of American Paging, Inc.

Application 91-08-057
(Filed August 28, 1991)

O P I N I O N

Cook Telecom, Inc. of San Francisco (Cook-SF), a California corporation, is authorized to provide public utility radiotelephone (RTU) service throughout Northern California. Its original articles of incorporation were filed with the Commission in Application (A.) 87-06-023. Amendments to the articles of incorporation were filed with A.89-10-049.

Cook-SF provides RTU service pursuant to operating authority acquired through a transfer of assets from Angelo R. Turrini, as authorized by Decision (D.) 87-11-050. Cook-SF was

authorized to extend its one-way RTU system pursuant to a certificate of public convenience and necessity (CPC&N) granted by D.90-04-011. Additionally, by D.90-10-022, Cook-SF was authorized to acquire through merger the CPC&Ns and other assets of affiliates Cook Telecom, Inc. and Cook Telecom, Inc. of Fresno and to remain as the surviving corporation.

Cook Telecom, Inc. of San Diego (Cook-SD), an affiliate of Cook-SF, is a newly formed California corporation whose articles of incorporation are annexed to A.91-08-057. Like Cook-SF, its principal offices are at San Rafael, California, and Tom L. Cook is its president, chief operating officer, and sole shareholder. Cook-SD was formed for the purpose of providing public land mobile RTU services in the San Diego area.

American Paging, Inc. (of California) (American), is a privately held California corporation with principal offices at Minneapolis, Minnesota. American's articles of incorporation are on file with the Commission in A.83-02-32. All of American's outstanding stock is held by American Paging, Inc., a Delaware corporation which is, in turn, a wholly owned subsidiary of Telephone and Data Systems, Inc., a publicly held Iowa corporation.¹

American is authorized by D.85-05-012 and D.86-08-064 to provide one-way and two-way public land mobile service in the Sacramento area, as shown in Exhibit B of A.91-08-047. American is authorized by D.84-04-044 and D.86-11-065 to provide one-way RTU paging services in the San Diego area, as shown in Exhibit B of A.91-08-057.

¹ Applicants in A.91-08-057 state, under the heading "Identities of Applicants," that "American Paging, Inc." is one of the applicants. In response to a data request by the Administrative Law Judge (ALJ), applicants confirm that the correct identity of this co-applicant is American Paging, Inc. (of California).

The applicants in A.91-08-047 (the Sacramento application) are Cook-SF and American. They seek authority for American to sell, and Cook-SF to purchase, certain utility assets of American, pursuant to § 851.² The assets are related to American's Sacramento paging system, and consist of Federal Communications Commission (FCC) authorizations which are listed in Exhibit D of the Sacramento application, five Motorola transmitters operating on a frequency of 454.575 megahertz (MHz), a 459.575 MHz control transmitter at Orangevale connected to the terminal by telephone company facilities, a Day Terminal, and various other system support equipment which is itemized in Exhibit E of the application.

In A.91-08-057 (the San Diego application), the applicants are Cook-SD and American. They make two requests. First, Cook-SD requests the issuance of a CPC&N under § 1001 authorizing it to provide RTU paging service in the San Diego area. Second, they seek authority pursuant to § 851 for American to sell, and Cook-SD to purchase, assets related to American's San Diego paging system. These consist of FCC authorizations listed in Exhibit E of the San Diego application, 18 Motorola transmitters operating on a frequency of 158.10 MHz, primary and secondary control links working through coaxial cables, antennas and phone lines, a BBL System III Paging Terminal, simulcast system controllers, and associated telephone interconnection facilities as itemized in Exhibit C of the application.

The proposed transactions in both applications are the subject of an Asset Purchase Agreement dated August 6, 1991 (the August 6 agreement). A copy of the August 6 agreement is attached to each application. Applicants request consolidation of the

² All references are to the Public Utilities Code.

applications because they involve the single underlying transaction described in the agreement.

Under the terms of the August 6 agreement, Cook-SF will pay \$450,000 to American following approval of the transfer by the FCC and this Commission. The payment will be made in two installments of \$90,000 "earnest money" and \$360,000 to be paid at closing. If the parties are unable to close the transaction with regard to both sets of assets, closing will be bifurcated such that Cook-SF will pay either \$240,000 for the San Diego system, or \$120,000 for the Sacramento system.

Applicants state that American desires to cease operations in California and has already transferred its customer base in a trade with ICS Communications and Metromedia Telecommunications. Thus, applicants allege that no American customers will be affected by the acquisition of American's Sacramento and San Diego assets.³ They further allege that the RTU industry is undergoing dramatic changes, particularly in large metropolitan areas such as Sacramento and San Diego. Cook-SF and Cook-SD require, respectively, the Sacramento and San Diego system assets of American to meet increasingly competitive communications market demands. The acquired assets will provide them with technological capacity for expanded service and operations and assure uninterrupted service.

³ A copy of a letter dated March 8, 1991 and addressed to the Commission Advisory and Compliance Division is attached to each application. The letter describes the customer base trade and states the understanding of American's counsel that the transfer does not require prior Commission authorization. This understanding appears to be based on an interpretation of § 851 that a customer base is not necessary or useful utility property. The Commission reaches no opinion on this issue in this decision, but notes that it has previously authorized a customer base transfer between telephone corporations. Western Union Corporation, D.89-06-043 (A.89-04-026).

Discussion

By acquiring American's Sacramento system assets, Cook-SF will be able to expand and improve service within its market area and meet competitive marketplace demands. Granting the San Diego application will permit continuity of RTU paging service in the San Diego area.

Cook-SF represents that it has the financial ability to conduct expanded operations with the acquisition of American's Sacramento system, as shown by a May 31, 1991 balance sheet. Cook-SD is a new corporation and does not have historical financial statements. Cook-SD projects operating losses of \$58,000 in the first year of operation and pre-tax income of \$5,000, \$27,000, \$65,000, and \$145,000, respectively, in the succeeding four years. Its principal, Tom Cook, will provide necessary equity as evidenced by a letter of intent dated July 25, 1991 (A.91-08-057, Exhibit H). As we noted in D.87-11-050, Mr. Cook has extensive experience in RTU operations. Applicants Cook-SF and Cook-SD have the necessary expertise and financial ability to conduct the proposed operations.

The parties to the August 6, 1991 agreement are listed therein as American and Cook Telecom, Inc. Tom L. Cook is one of the signatories to the agreement. He is listed as the president of Cook Telecom, Inc. As noted above, in D.90-10-022 we authorized Cook affiliates Cook Telecom, Inc. and Cook Telecom, Inc. of Fresno to merge into Cook-SF with the understanding that the former two entities would cease to exist. Thus, the agreement appears to be one between American and a non-existent corporation. In response to a data request by the assigned Administrative Law Judge, applicants have stated that the entity "Cook Telecom, Inc." which is referenced as the buyer in the August 6 agreement is the same entity as Cook-SF.

Although the August 6 agreement provides that American will execute and deliver transfer documents to the buyer (Cook-SF),

applicants represent that in return for the payment of \$450,000 by Cook-SF:

1. "American will execute and deliver to Cook of S.F. all deeds, bills of sale, assignments and other documents of transfer sufficient to transfer the Sacramento assets free and clear of any encumbrances." (A.91-08-047, p. 5.)

and

2. "American will execute and deliver to Cook of S.D. all deeds, bills of sale, assignments and other documents of transfer sufficient to transfer the subject assets free and clear of any encumbrances." (A.91-08-057, p. 5.)

Thus, while the agreement indicates that American's assets will be transferred to the buyer (Cook-SF), American's San Diego system assets will in fact be transferred to Cook-SD. Only the Sacramento system assets will be transferred to Cook-SF. The order which follows will reflect this modification to the August 6 agreement.

In authorizing Cook affiliates Cook Telecom, Inc. and Cook Telecom, Inc. of Fresno to merge into Cook-SF, the Commission ordered Cook-SF to file copies of all executed merger documents in that docket (D.90-10-022, Ordering Paragraph 4 (A.90-01-046)). Although applicants represent in the instant proceedings that the merger was completed, the Commission's formal files do not include the required filing. Additionally, the Commission's tariff files do not include tariff filings which were ordered by D.90-10-022. Since Cook-SF is the buyer of the American assets, the exact status of the previously authorized merger should be reflected in the official records of the Commission. We will condition approval of the transfer of American's assets upon a demonstration of Cook-SF's full compliance with the merger decision.

Findings of Fact

1. Notice of the filing of A.91-08-047 appeared in the Daily Calendar dated August 30, 1991. Notice of the filing of A.91-08-057 appeared in the Daily Calendar dated September 5, 1991.

2. A.91-08-047 was served on competitors and government entities in the Sacramento area, and A.91-08-057 was served on competitors and government entities in the San Diego area.

3. No protests have been filed.

4. A hearing is not necessary.

5. Applicants in both applications request that the matters be consolidated for decision because they involve a single underlying transaction and because consolidation will promote judicial economy.

6. American desires to cease operations throughout its California service area.

7. American will not conduct any public utility operations in California after the specified Sacramento and San Diego system assets are transferred.

8. With the exception of the CPC&Ns granted by D.84-04-044 and D.86-11-065, applicants do not propose, or seek approval of, transfer of the CPC&Ns granted to American by this Commission.

9. Applicants represent that the entity "Cook Telecom, Inc." which is referenced as the buyer in the August 6 agreement is Cook-SF.

10. Under the terms of the August 6 agreement, as clarified by applicants, in return for payment of \$450,000 by Cook-SF, American will execute and deliver to Cook-SF all transfer documents sufficient to transfer the Sacramento system assets to Cook-SF free and clear of any encumbrances, and will execute and deliver to Cook-SD all transfer documents sufficient to transfer the San Diego system assets to Cook-SF free and clear of any encumbrances.

11. Acquisition of American's Sacramento system assets will allow Cook-SF to expand and improve service within its market area

and allow it to meet competitive marketplace demands. This expansion and improved service is in the public interest.

12. Granting of the relief sought in the San Diego application will permit continuity of applicant's RTU paging service in the San Diego area which is in the public interest.

13. Public convenience and necessity require the granting of the authority requested by Cook-SD.

14. Through the proposed acquisitions of American's Sacramento and San Diego system assets, Cook-SF and Cook-SD, respectively, will possess the requisite FCC permits, subject to FCC approval of the transfers.

15. Cook-SF and Cook-SD have the necessary financial responsibility and technical ability to conduct the proposed operations.

16. With the acquisition of American's Sacramento system, Cook-SF will provide expanded service in the Sacramento area at its existing tariff rates.

17. Cook-SD's proposed rates for one-way RTU service are set forth in Exhibit K of the San Diego application.

18. Cook-SD proposes no new construction or system modifications for the San Diego system.

19. Applicants represent that the merger authorized by D.90-10-022 was completed.

20. The Commission's formal files do not include the filing required by D.90-10-022, Ordering Paragraph 4.

21. The Commission's tariff files do not include tariff filings which were ordered by D.90-10-022.

22. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. The applications should be consolidated for decision.

2. The applications should be granted to the extent provided in the following order.

3. Since Cook-SF is the buyer of the American assets, the exact status of the previously authorized merger should be reflected in the official records of the Commission.

4. This order should be effective on the date signed because public convenience requires prompt commencement of the proposed services by Cook-SF and Cook-SD.

5. Applicants are subject to the user fee required by §§ 431-435.

6. This authorization is not a finding of the value of the rights and properties to be transferred.

7. The State may grant any number of operative rights and may cancel or modify the monopoly feature of those rights at any time.

ORDER

IT IS ORDERED that:

1. Within six months after the effective date of this order, American Paging, Inc. (of California), whose corporate identification number is U-2001-C, (American) may transfer to Cook Telecom, Inc. of San Francisco (Cook-SF), whose corporate identification number is U-2096-C, the property described in Application (A.) 91-08-047 in accordance the terms described in the application; and transfer to Cook Telecom, Inc. of San Diego (Cook-SD), a California corporation, the property described in A.91-08-057, including the certificates of public convenience and necessity granted to American by Decision (D.) 84-04-044 and D.86-11-065, in accordance the terms described in the application. This authority is subject to the following conditions:

- a. Cook-SF shall first demonstrate in writing to the Director of the Commission Advisory

and Compliance Division (CACD Director) that it is in compliance with with D.90-10-022.

- b. The authority for Cook-SF to acquire Federal Communications Commission (FCC) authorizations for the base stations identified in Appendix A, and the authority for Cook-SD to acquire FCC authorizations for the base stations identified on Appendix B shall be conditioned upon written demonstration to the CACD Director that applicants have secured the requisite FCC approvals.
- c. Cook-SF and Cook-SD shall inform the CACD Director in writing within five days after the transfer from American is completed.

2. When the authorized transfers are complete and the conditions of this order are fulfilled, American shall be relieved of its public utility obligations for the transferred system.

3. When the authorized transfers are complete and the conditions of this order are fulfilled, Cook-SF is authorized to expand its existing public utility radiotelephone services by conducting one-way paging operations from the base stations identified in Appendix A to this order and in the service area shown on Exhibit B of A.91-08-047.

4. Cook-SF is authorized and directed to file, after the effective date of this order and in compliance with General Order (GO) 96-A, revised tariffs for its Northern California system to effect the authorized system expansion. The tariff revisions shall include the additional areas to be served and the new base stations; and a revised, legible engineered service area map, consistent with Exhibit B of A.91-08-047. The tariffs shall become effective on not less than five days' notice. The rates and charges shall be the same as for similar services that applicant presently has on file with the Commission.

5. When the authorized transfers are complete and the conditions of this order are fulfilled, a certificate of public convenience and necessity is granted to Cook-SD for the operation of a public utility one-way radiotelephone system with base stations as identified in Appendix B to this order and service areas as shown on Exhibit B of A.91-08-057. Within 30 days after this order is effective, Cook-SD shall file a written acceptance of this certificate.

6. Cook-SD is authorized and directed to file, after the effective date of this order and in compliance with GO 96-A, tariffs applicable to the service authorized containing rates, charges, and rules applicable to its radiotelephone services, subject to the following:

- a. The tariffs shall become effective on not less than five days' notice.
- b. The rates and charges shall be the same as proposed for service in Exhibit K of A.91-08-057.
- c. The tariffs shall include a legible engineered service area map drawn in conformity with the provisions of Federal Communications Commission Rule 22.504, commonly known as the "Carey Report," and consistent with Exhibit B of A.91-08-057.

7. Cook-SD shall notify the CACD Telecommunications Branch in writing of the date service is first rendered to the public as authorized herein, within five days after service begins.

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

9. Cook-SD 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 in that form.

10. The certificate granted to Cook-SD 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.

11. The corporate identification number assigned to Cook-SD is U-2127-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.

12. Cook-SF and Cook-SD shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

13. Within 90 days after the transfers are complete, Cook-SF and Cook-SD shall each file with the Commission, in the prescribed form, an annual report on seller's operations from the 1st day of the current year through the effective date of the transfer.

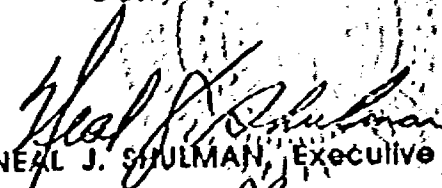
14. This is a final order and the proceedings are closed.
This order is effective today.

Dated February 20, 1992, at San Francisco, California.

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

Commissioner Patricia M. Eckert,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director
PB

APPENDIX A

SACRAMENTO SYSTEM

FCC RADIO STATION AUTHORIZATIONS FOR
CALL SIGN KNKC761

- a. 926 J Street Building, Sacramento.
Lat. $38^{\circ} 34' 49''$ N, Long. $121^{\circ} 29' 34''$ W
- b. 12 Mi. NW of Fairfield & 1/2 Mi. NW of Intersection
of Mix Canyon & Gates.
Lat. $38^{\circ} 25' 06''$ N, Long. $122^{\circ} 06' 57''$ W
- c. 2 Mi. SW of LaBarr Meadows, 3/4 Mi. W of Hwy 49, Wolf
Mountain.
Lat. $39^{\circ} 08' 01''$ N, Long. $121^{\circ} 05' 58''$ W
- d. 6331 Main Ave., Orangevale.
Lat. $38^{\circ} 40' 52''$ N, Long. $121^{\circ} 12' 08''$ W
- e. 242 N. Sutter Ave., Stockton.
Lat. $37^{\circ} 57' 16''$ N, Long. $121^{\circ} 17' 12''$ W
- f. 2.5 Mi. from Int. Green Valley Rd. & Yulen Camp Rd.,
Cameron Park.
Lat. $38^{\circ} 43' 10''$ N, Long. $120^{\circ} 59' 24''$ W

(END OF APPENDIX A)

APPENDIX B
Page 1

SAN DIEGO SYSTEM

FCC RADIO STATION AUTHORIZATIONS FOR
CALL SIGN KNKB400

- a. 1646 Front St., San Diego.
Lat. $32^{\circ} 43' 37''$ N, Long. $117^{\circ} 09' 51''$ W
- b. 5.16 Mi. SW of Ramona.
Lat. $33^{\circ} 00' 34''$ N, Long. $116^{\circ} 58' 11''$ W
- c. 2.2 Mi. SSW of Steele.
Lat. $32^{\circ} 41' 47''$ N, Long. $116^{\circ} 56' 07''$ W
- d. 9750 Miramar Dr., San Diego.
Lat. $32^{\circ} 53' 40''$ N, Long. $117^{\circ} 07' 05''$ W
- e. San Marcos Mtn, San Marcos.
Lat. $33^{\circ} 12' 53''$ N, Long. $117^{\circ} 11' 15''$ W
- f. 5252 Balboa Ave., San Diego.
Lat. $32^{\circ} 49' 09''$ N, Long. $117^{\circ} 10' 50''$ W
- g. 321 Washington Dr., San Marcos.
Lat. $33^{\circ} 07' 20''$ N, Long. $117^{\circ} 11' 25''$ W
- h. 1.7 Mi. NE of San Clemente.
Lat. $33^{\circ} 25' 52''$ N, Long. $117^{\circ} 35' 50''$ W
- i. Palomar Observatory, Escondido.
Lat. $33^{\circ} 18' 45''$ N, Long. $116^{\circ} 51' 32''$ W
- j. 1200 Harbor Dr. North, Oceanside.
Lat. $33^{\circ} 12' 27''$ N, Long. $117^{\circ} 23' 19''$ W
- k. 701 Crest Rd, Del Mar.
Lat. $32^{\circ} 57' 10''$ N, Long. $117^{\circ} 15' 21''$ W
- l. 6160 Mission Gorge Rd, San Diego.
Lat. $32^{\circ} 47' 14''$ N, Long. $117^{\circ} 05' 50''$ W
- m. 290 Via Cantabria, Encinitas.
Lat. $33^{\circ} 03' 03''$ N, Long. $117^{\circ} 16' 02''$ W
- n. 5360 East Gate Mall, San Diego.
Lat. $32^{\circ} 53' 00''$ N, Long. $117^{\circ} 11' 25''$ W

APPENDIX B
Page 2

- o. Otay Mountain, San Diego.
Lat. $33^{\circ} 35' 42''$ N, Long. $116^{\circ} 50' 39''$ W
- p. 1020 Prospect Street, La Jolla.
Lat. $32^{\circ} 50' 53''$ N, Long. $117^{\circ} 16' 25''$ W
- q. 8242 Valley High Rd., Santee.
Lat. $32^{\circ} 49' 45''$ N, Long. $116^{\circ} 56' 30''$ W
- r. 5.6 Mi. SW of Ramona (Mt. Woodson).

FCC RADIO STATION AUTHORIZATIONS FOR
CALL SIGN KNKC215

- a. 9825 Carroll Canyon Road, San Diego.
Lat. $32^{\circ} 54' 12''$ N, Long. $117^{\circ} 06' 50''$ W

(END OF APPENDIX B)