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Decision 92-04-026 April 8, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Page-U, Inc. (U-2094-C) for a)
 Certificate of Public Convenience and)
 Necessity under Section 1001 of the)
 Public Utilities Code of the State of)
 California for Authority to Expand)
 its Radiotelephone Paging System in)
 the State of California.)

Application 92-01-053
(Filed January 23, 1992)

O P I N I O N

Page-U, Inc. (U-2094) (applicant) seeks a certificate of public convenience and necessity to expand its radiotelephone paging system by adding twelve new base station transmitters. Applicant is currently a party to Application (A.) 92-01-055 in which applicant and its affiliates, CalPage of Ukiah, Inc., CalPage Inc., Americall Corporation, and Pac-West Telecomm, Inc. (Pac-West), have sought authority to merge. Upon approval of the merger application, Pac-West would be the sole surviving corporation. However, Page-U would continue to operate as a division of Pac-West under existing tariffs. Applicant requests that, in the event the merger is approved during the pendency of this application, Pac-West be automatically substituted in as the applicant in this proceeding. On March 31 in Decision (D.) 92-03-081, we approved the merger. Pac-West is substituted for Page-U, Inc. as applicant.

Applicant was issued a certificate of public convenience and necessity in D.87-10-015 to provide radiotelephone paging service in various areas of California. Through subsequent tariff filings, applicant expanded its initial system. Applicant now provides paging service in the surrounding areas of the following cities: Stockton; Sacramento; Modesto; Ukiah; Fort Bragg; Westley; Lakeport; Vacaville; Fresno; Merced; South Lake Tahoe; Malibu; and Poway.

By this application, applicant seeks authority to install and operate twelve new base station transmitters. The approximate transmitter locations are near Cameron Park, San Andreas (two locations), Redding, New Almaden, Milpitas, Mariposa, Oakland, Calistoga, Oroville, Laguna Hills, and Beverly Hills. The construction required to carry out the proposed expansion is very minor, consisting simply of the installation of new radios in existing shelters and the installation of associated antennas on existing towers, all at existing antenna farms.

Applicant admits that due to several misunderstandings, both internal and between applicant and its counsel, regarding the procedures for obtaining Commission authority to construct paging facilities to serve new areas, this application is being filed subsequent to the actual installation of the new facilities in a number of the areas for which approval is sought.

These misunderstandings, in applicant's opinion, arose primarily as the result of the manner in which applicant's 1990 service area expansion was handled. During that year, applicant added a number of new transmitters in order to expand its operations into new areas contiguous to its existing service areas. Those additions were made through two advice letters. Based on the number of transmitters added through those filings, applicant expected to be able to follow the same process for the transmitters proposed in this application. Accordingly, applicant requested Commission Advisory and Compliance Division (CACD) approval to follow the advice letter procedure for its 1991 expansion.

In considering applicant's request, the CACD took a more restrictive view of the advice letter procedure than it had taken the previous year, and declined to approve its use unless applicant obtained the consent of its competitors. Unfortunately, applicant had misunderstood the timing of the tariff filing procedure in the first place, and delayed seeking CACD's approval until a number of the Federal Communications Commission (FCC) construction permits

were near expiration. (In the case of the permit for the Redding site, which had a March 1991 expiration date, the need to file for prior approval had simply been overlooked.)

Because of these misunderstandings, applicant claims that it was faced with the choice of either allowing its FCC construction permits to expire or installing its new facilities without having received prior Commission approval. As the new facilities consist simply of base station radios installed in existing shelters and small antennas installed on existing towers, applicant determined that the least wasteful alternative was to go ahead and install the facilities. However, applicant has no plans to commence service using any of the new facilities until proper authorization from this Commission is obtained.

Applicant regrets the errors that led to its need to install the facilities without prior approval, and has taken steps to ensure that these same circumstances will not arise in the future.

Applicant has been issued construction permits for all proposed transmitter locations. No franchise or health and safety related permits are required by local or regional public authorities to construct and operate the expansion facilities.

Applicant's updated financial statements are appended to its application in Exhibit C. The expansion for which authority is requested will be financed through advances from applicant's parent, CalPage, Inc., whose financial ability is shown in its financial statements, which are also appended in Exhibit C. Upon approval of the merger described above, applicant will operate as a division of Pac-West, and responsibility for project financing will be assumed by Pac-West. Pro forma financial statements showing the effect of the merger and Pac-West's financial ability are included in Exhibit C. The rates to be charged by applicant for its expanded service will be the same as those pertaining to its existing service.

The areas into which applicant proposes to expand its operations are contiguous to areas in which applicant currently provides paging and private radio services. Based upon its knowledge of those areas and its receipt of requests for expanded service from existing customers, applicant believes there is a substantial market for additional paging service in those areas.

Applicant contends that its proposed service is well suited to meet the needs of the public in the expanded areas. Applicant will utilize standard equipment capable of providing service in all conventional paging formats at operating frequencies that are currently uncongested. It will provide such service under the same terms and conditions, and will offer the same features, as are currently available in its existing service areas. Applicant states that its service will be a high quality alternative to the services already being provided. Applicant's entry into these markets will enhance competition and should thereby help ensure the continuing availability of quality service at reasonable prices.

Applicant alleges that it and its affiliates, which utilize common operating and management personnel, have significant experience in providing radiotelephone services and applicant has successfully started up and maintained one-way paging operations in the areas it presently serves. As applicant or its affiliates currently provide paging or private radiotelephone services in areas contiguous to the proposed areas (and, in some cases, within those areas), applicant asserts that it has the existing capability to maintain and operate the expanded systems at virtually no additional cost beyond the initial investment in new facilities. Accordingly, applicant believes the economic feasibility of its expanded operations is virtually assured.

The proposed construction involves the installation of base station radios in existing shelters and the installation of antennas on existing towers, all located at existing antenna farms. Thus, applicant submits that it can be concluded with certainty

that there is no possibility that construction and operation of the proposed system might have an adverse effect on the environment.

Findings of Fact

1. Notice of the filing of the application appeared in the Daily Calendar on January 31, 1992. No protests have been filed. A hearing is not necessary.

2. Applicant seeks authority to install and operate twelve new base station transmitters to expand its radiotelephone paging system.

3. Applicant has the financial resources and the management experience to operate the proposed service.

4. Applicant's proposed service will enhance competition.

5. Applicant should be granted a certificate of public convenience and necessity to provide the proposed service.

Conclusion of Law

The application should be granted.

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

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Pac-West Telecomm, Inc. for the construction and operation of the expansion of its public utility (one-way and/or two-way, as applicable) radiotelephone system with (a) base stations and service areas as follows:

a. Base station locations: As shown in Exhibit A to Application (A.) 92-01-053.

b. Service areas: As shown in Exhibit E to A.92-01-053.

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

3. Applicant is authorized to file, after the effective date of this order and in compliance with General Order 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 for the expanded service shall be the same as those for applicant's existing service.

4. Applicant shall file as part of its individual tariff, after the effective date of this order and, consistent with Ordering Paragraph 3, an 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 E to A.92-01-053.

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

6. 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.

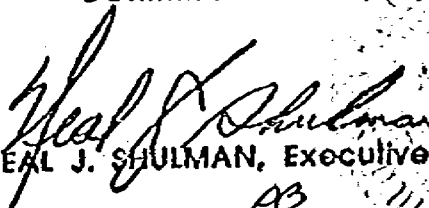
7. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

This order is effective today.

Dated April 8, 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