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Decision 92-07-065 July 22, 1992

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 SPECTRTEL, INC. (U-2081-C) and )  
 BEEP CALIFORNIA, INC., pursuant to )  
 Sections 851 and 854 of the )  
 California Public Utilities Code for )  
 authority to sell and assign the )  
 public convenience and necessity )  
 and other utility assets of )  
 SPECTRTEL, INC. to BEEP CALIFORNIA, )  
 INC. and for the exercise of control )  
 thereover by BEEP CALIFORNIA, INC. )

**ORIGINAL**

Application 91-09-031  
 (Filed September 13, 1991)

O P I N I O N

Applicants Spectratel, Inc. (Spectratel) and Beep California, Inc. (Beep) request authority pursuant to Sections 851 and 854 of the Public Utilities (PU) Code for the sale and transfer by Spectratel to Beep of Spectratel's certificate of public convenience and necessity (CPCN) and other assets used in the performance of Spectratel's services in the Sacramento area, and for the exercise of control by Beep over those assets. In this connection Spectratel also requests that its CPCN be canceled prior to transfer, to the extent that its current authority extends beyond the Sacramento area.

Spectratel is a foreign corporation qualified to do business in California. It presently operates a single UHF transmitter which provides one-way paging service in and around Sacramento, pursuant to authority granted in Decision (D.)

86-03-022.<sup>1</sup> For reasons purportedly relating to the ongoing health problems of its chief executive officer, Spectratel has entered into an Agreement to sell its assets, under which Beep has agreed to purchase, and Spectratel has agreed to sell, all of Spectratel's assets for \$130,000, payable in cash at closing.<sup>2</sup>

Beep is a corporation in good standing organized under the laws of the State of California. The application states that its principals and corporate affiliates have for many years been engaged in various aspects of the telecommunications industry in Arizona, Colorado, Iowa, Missouri, and Nebraska. Beep also conducts certain unregulated activities within California, including the operation of telephone answering, voice mail, and private carrier paging services, and the application states that these activities will be integrated with its certificated activities if the application is granted.

The application states that the injury and resultant disability suffered by Spectratel's primary investor and chief executive officer has rendered Spectratel unable to conduct

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1 D.86-03-022 authorized Spectratel to construct and operate a total of eight transmitters in Bakersfield, Fresno, Hughson, Sacramento, San Diego, and Ventura. The amended application states, however, that owing to the injury of its primary investor and chief executive officer shortly after the receipt of its operating authority, Spectratel was forced to abandon its plans to construct or operate facilities other than its single Sacramento transmitter. Spectratel immediately notified the Federal Communications Commission (FCC) of this fact and tendered its construction permits for cancellation, but did not advise this Commission of these circumstances.

2 Of this sum, the applicants state that \$65,000 is for the sale of properties subject to the Commission's approval. The specific utility property to be sold under that Agreement are a 454.425 MHz Quintron VHF paging transmitter, a Decibel Products Transmitting Antenna, and associated cabling, connectors, and miscellaneous parts for these major items of equipment.

operations under its CPCN. In order to enable its assigned frequency to be used on August 29, 1986, Spectratel entered into a Radiotelephone Utility Intercarrier Paging Traffic Exchange Agreement (Intercarrier Agreement) with North State Communications, Inc. (North State) and Citizens Utilities Company of California (Citizens). The application states that such agreements are commonly used within the industry to provide for exchange of message traffic among geographically separated carriers, each of which is licensed by the FCC to operate on the same frequency, thereby affording their customers the benefit of a much wider service area. Under the Intercarrier Agreement, North State and Citizens were permitted to use the Spectratel transmitter to signal their subscribers when they were traveling within a range of the Spectratel transmitter.

After the execution of the Intercarrier Agreement, Citizens' paging operations were transferred to AAlert Paging Company (AAlert), which has assumed Citizens' rights and obligations under the Intercarrier Agreement. By agreement among all of the affected parties, upon consummation of the transaction herein Beep will assume all of Spectratel's rights and obligations under the Intercarrier Agreement, and the customers of North State and AAlert will continue to be served by Beep exactly as they had been previously served under Spectratel's ownership.

Spectratel's tariffs appear never to have been formally filed by the Commission. The application states that it is certain it submitted a set of tariffs to the Telecommunications Branch following its certification, and that at that time radiotelephone utility tariffs commonly were not stamped and returned by the Branch upon filing. However, Beep intends to submit a wholly new set of tariffs following certification, reflecting new activities to be undertaken once it has acquired Spectratel's assets, and incorporating all current Commission requirements. Inasmuch as Spectratel has no current subscribers, the new tariff filing will

not affect existing customers, nor will it affect intercarrier customers, who will continue to be served at their own respective carriers' rates.

Beep's June 30, 1991, balance sheet shows total current assets of \$270,475, including cash of \$105,475, and it appears that Beep will be able to close the purchase of the assets involved in the transaction. The applicants have already received authorization from the Federal Communications Commission for the transaction, and only the approval of this Commission is required in order that the transaction be fully authorized.

The Commission has received no protests to the application. As no construction or alteration of any facilities will result from the transaction, there is no possibility that granting the application will have a significant adverse impact upon the environment.

In view of all of the circumstances of the application, the applicants' request should be granted, effective immediately upon the date the order herein is signed.

Findings of Fact

1. Spectratel is a radiotelephone utility authorized to do business in the State of California.

2. Beep is a corporation engaged in various unregulated telecommunications activities in California, including the operation of telephone answering, voice mail, and carrier paging services.

3. The instant application is a request by the applicants for authority to transfer assets and control pursuant to PU Code Sections 851 through 854, or specific provisions thereof.

4. No protests have been filed with this Commission in response to the application.

5. Spectratel currently operates a single UHF transmitter which provides one-way paging service in and around Sacramento, California.

6. Spectratel was authorized, pursuant to D.86-03-022, to construct and operate a total of eight transmitters in Bakersfield, Fresno, Hughson, Sacramento, San Diego, and Ventura, but has neither facilities nor operations other than those identified above.

7. Beep has sufficient resources to conclude the transfer of the utility properties which are the subject of this application, in accordance with the terms of the parties' agreement.

8. There is no possibility that transfer of the assets which are the subject of this application will have a significant adverse impact upon the environment.

9. Spectratel has no customers of its own.

10. Spectratel attempted to file its tariffs with this Commission in accordance with D.86-03-022, but its tariffs were never formally filed.

11. The facilities which are the subject of the transfer are currently utilized by North State and AAlert pursuant to the Intercarrier Agreement.

Conclusions of Law

1. The application should be granted.

2. Although no protests were filed, this order should not be issued by the Executive Director pursuant to D.86-08-057 because of the interrelated nature of Beep's regulated and unregulated activities.

3. Beep should not be permitted to integrate its certificated and non-certificated activities without the restrictions and limitations contained in the order herein.

O R D E R

IT IS ORDERED that:

1. The authority granted in paragraphs 1a., c., d., e., f., g., and h. of Decision (D.) 86-03-022 is hereby rescinded.

2. Application 91-09-031 for the sale and transfer of assets and control over those assets, pursuant to Public Utilities (PU) Code Sections 851 through 855, is granted, subject to the terms and conditions set forth in this order. This authorization is not a finding of the value of the rights and properties to be transferred.

3. Beep California, Inc. (Beep) shall file an annual report on a calendar-year basis in compliance with General Order 104-A, using CPUC Annual Report Form L and prepared in accordance with the instructions therein.

4. Beep is subject to the user fee as a percentage of gross intrastate revenue, pursuant to PU Code Sections 432-435.

5. Beep is authorized and directed 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 service. The tariffs shall become effective on not less than 5 days' notice.

6. Within 90 days after the transfer is complete, Beep shall file with the Commission, in the prescribed form, an annual report on Spectratel, Inc.'s (Spectratel) operations from the first day of the current year through the effective date of the transfer.

7. Within 60 days of the effective date of this order, Beep shall comply with PU Code Section 708, Employee Identification Cards, and notify in writing the Chief of the Telecommunications Branch of the Commission Advisory and Compliance Division (CACD) of Beep's compliance therewith.

8. Spectratel shall make a final accounting and remittance to the Commission of the Public Utilities Commission Reimbursement fees to the date of sale and transfer of the assets hereunder to Beep.

9. The authority granted to Beep hereunder is conditioned upon written demonstration to the Chief of the Telecommunications

Branch of CACD that the applicants have secured any requisite Federal Communications Commission (FCC) approvals.

10. Beep shall establish accounting separation and full allocation of costs between its regulated and nonregulated activities, in accordance with applicable rules and regulations of this Commission, as directed by the Chief of the Telecommunications Branch of CACD.

11. Beep shall use the frequencies authorized to be transferred hereunder solely for the purposes licensed by the FCC, and radio spectrum licensed for certificated utility purposes hereunder shall not be used for any of Beep's unregulated operations.

12. When the authorized transfer is completed and the conditions of this order are fulfilled, Spectratel shall be relieved of its public utility obligations for the transferred system and its corporate identification No. U-2081-C shall be abrogated.

13. The certificate granted to Beep 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.

14. The corporate identification number assigned to Beep is U-2132-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.

15. As a regulated radiotelephone utility, Beep is subject to the jurisdiction of this Commission and must comply with the California statutes and the rules of this Commission which govern telephone corporations.

This order is effective today.

Dated July 22, 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