

Mailed

AUG 11 1992

Decision 92-08-025 August 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of MADERA RADIO DISPATCH, INC.,)
(U-2029-C), a California Corpor-)
ation, for a Certificate of Public)
Convenience and Necessity to Add)
Radiotelephone Utility Facilities,)
and to Extend Utility's Service)
Areas in and Around the City of)
Madera and the Counties of Madera,)
Merced, Fresno, Stanislaus and)
Parts of San Joaquin, Santa Clara,)
and San Benito, California, Pur-)
suant to Sections 1001, et seq.,)
of the California Public Utilities)
Code.)

ORIGINAL

Application 92-03-046
(Filed March 25, 1992)

O P I N I O N

Madera Radio Dispatch, Inc. (applicant) requests a certificate of public convenience and necessity (CPC&N) to expand its radiotelephone utility (RTU) one-way paging and two-way mobile telephone facilities in the Merced area, pursuant to Public Utilities Code § 1001 et seq. Maps and engineering statements of the proposed service area are attached to the application as Exhibits C, D, and E.

By supplement dated July 21, 1992 (supplement), applicant requested a waiver of Rule 18(b)'s requirement that the application be served on the cities or counties within the proposed service territory. Copies of the application have been served on 87 other entities with which the proposed service is likely to compete, as listed in applicant's proof of service attached as Exhibit I to its application. Notice of this application appeared in the Commission's Daily Calendar of March 31, 1992. No protests to the application have been received; therefore, a public hearing is not necessary. We have granted waivers of the Rule 18(b) service on

cities or counties to other similarly situated nondominant interLATA carriers, such as in Decision (D.) 92-02-006 and D.92-02-069. Such waivers should also be available under similar circumstances to RTUs. See e.g., In re WTG-West, Inc. D.91-06-035 (waiver granted when no rate changes requested and no new construction proposed).

Applicant possesses the requisite Federal Communications Commission (FCC) permit to construct two additional transmitter site locations in Merced, one RTU, and one microwave, on a frequency of 152.78 megahertz (RTU) and 2119.4 megahertz (microwave), as set forth in Exhibit E to the application, as clarified by the supplement.

Applicant, a California corporation, is a certificated RTU which provides one-way paging and two-way mobile telephone service throughout its certificated service area in and around Madera. Service is furnished by means of radio facilities and control and switching equipment owned by applicant and interconnected with the wireline facilities of one or more other carriers.

Applicant represents that, based on its own marketing analyses and numerous inquiries of present and potential customers, there is a public need and demand for the expanded services. It also contends that the expansion will provide state-of-the-art telecommunications services at reasonable, competitive rates. Thus, the requested expansion will benefit its present and potential customers because applicant will be able to increase its service offerings to the Merced area.

As clarified in its supplement, applicant will finance the construction and operation of its additional base station, including equipment, licenses, and labor, by cash on hand in its savings account which totals \$26,894.26. The total capital requirement for the proposed facilities will be \$14,295. By the supplement and financials attached to the application, applicant

shows that it has sufficient funds and common equity to construct and operate the proposed facilities with a net worth of approximately \$232,558 as of December 31, 1991.

The proposed base station's control point will be staffed by applicant's present employees who are qualified technicians holding the required licenses. The equipment and facilities will utilize the latest state-of-the-art paging and microwave technology.

Applicant represents that no new franchises or health and safety permits are required for the proposed expansion, because no additional construction is planned. Instead, transmitting equipment will be placed in existing structures and antennae will be placed on existing towers and communications sites at applicant's base station located at 510 W. 19th Street in Merced, California.

Applicant represents that, because of this, the proposed facilities will have no adverse impact on the environment. Based on the data set forth in the application, an environmental document will not be required to comply with the California Environmental Quality Act of 1970 (CEQA) because the project is categorically exempt. As the lead agency for this utility project, we conclude that, since the proposed construction involves minor alteration of existing facilities, the project should receive a categorical (Class 1) exemption from the Environmental Impact Report requirements of CEQA.¹

We note, however, the concern expressed in our RTU rulemaking proceeding that, in rare instances, new RTU construction

¹ Rule 17.1(h)(A)(2) of the Rules of Practice and Procedure provides for categorical exemption of projects involving "minor alteration of existing facilities used to convey or distribute electric power, natural gas, water, or other substance."

on existing facilities could have environmental impact.² Therefore, our order today requires that applicant in the future submit additional environmental data to the Commission prior to expanding antenna sites to serve other portions of its market area.

The rates to be charged for applicant's proposed service are the same rates and charges for similar services that applicant presently has on file with the Commission.

Findings of Fact

1. Applicant requests a CPC&N to construct and operate RTU one-way paging facilities and microwave two-way mobile telephone facilities in the Merced area.

2. Copies of the application were served on other entities with which applicant's proposed service is likely to compete. A waiver of Rule 18(b)'s requirement that the application be served on cities or counties within the applicant's proposed service territory was requested. We have granted such waivers to other similarly situated nondominant interLATA carriers. There is no basis for treating this RTU application differently than those of other similar applicants.

3. Notice of the application appeared in the Commission's Daily Calendar of March 31, 1992.

4. No protest to the application has been received.

5. Applicant possesses the requisite FCC permits.

6. Applicant is a certificated RTU.

7. Public convenience and necessity require the granting of this application, to be effective on the date signed.

² In D.92-01-016, pp. 47-48, we noted that the Commission is not able on a general basis "to clearly define the new RTU construction on existing structures with no adverse environmental impact from the rare new RTU construction on existing structures which may significantly affect the environment and require environmental review."

8. The proposed operation is technically and economically feasible.

9. The proposed facilities will be installed at developed sites with existing facilities.

Conclusions of Law

1. Applicant should be exempted from the service requirement found in Rule 18(b) which requires that a copy of its application be served on cities or counties in which the proposed service will be rendered under the requested certificate.

2. The Commission is the lead agency in this matter.

3. The proposed construction is categorically exempt from the requirements of CEQA (Rule 17.1(h)(A)(2)).

4. Applicant should be required in future applications to submit environmental information to the Commission for expansion antenna sites to serve other portions of its market area.

5. The application should be granted.

Only the amount paid to the State for operating rights may be used in rate-fixing. The State may grant any number of rights and may cancel or modify the monopoly features of these rights at any time.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Madera Radio Dispatch, Inc. (applicant) to construct and operate a one-way paging and two-way mobile telephone radiotelephone public utility with a base station facility located at 510 West 19th Street, Merced (Lat. 37° 18' 30" N, Long. 120° 28' 22" W) and a service area as shown in Exhibit D to Application (A.) 92-03-046.

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 shall be the same as for similar services that applicant presently has on file with the Commission.

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 FCC Rule 22.504, commonly known as the "Carey Report," and consistent with Exhibit D to A.92-03-046.

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

6. The corporate identification number assigned to applicant is U-2029-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.

7. 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.

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

9. For future expansion antenna sites to serve other portions of this market area, the applicant shall submit

environmental information to the Commission prior to construction of such antennas. The Commission will review this material and determine at that time whether any supplemental environmental documentation is required in accordance with the provisions of the California Environmental Quality Act.

This order is effective today.

Dated August 11, 1992, at San Francisco, California.

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

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director
PB