

Decision S3 03 035 AUG 3 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 Mobile Communications Corporation of
 America, a Delaware corporation;
 American Mobile Radio, Inc., a
 California corporation; and
 Intrastate Radio Telephone, Inc. of
 San Bernardino, a California
 corporation; pursuant to Public
 Utilities Code Section 854.

Application 83-04-64
 (Filed April 29, 1983)

O P I N I O N

Mobile Communications Corporation of America (MCCA), a Delaware corporation, seeks authority to acquire all the outstanding shares of American Mobile Radio, Inc. (AMR) and Intrastate Radio Telephone, Inc. of San Bernardino (Intrastate), both California corporations. MCCA conducts radio common carrier businesses directly and through subsidiaries in various cities, including Los Angeles. Its Los Angeles subsidiary is Intrastate Radio Telephone of Los Angeles, Inc. (now Mobilecomm, Inc.). AMR is a radiotelephone utility (RTU) serving the Long Beach area. Intrastate is an RTU serving the County of San Bernardino.

MCCA will pay \$6,600,000 to the sellers of the shares of AMR and Intrastate. The transaction is to close, according to the terms of the agreement of sale, within 45 days of the last regulatory approval. MCCA will operate AMR and Intrastate as wholly owned subsidiaries and will not merge or consolidate either with itself, with any of its subsidiaries, or with each other.

As reasons for the transaction MCCA states that the RTU industry, especially in large metropolitan areas, is undergoing massive changes due to cellular technology, the allocation of new

frequencies by the Federal Communications Commission (FCC), and the entrance into the marketplace of large, extremely well-funded competitors. AMR and Intrastate, because they are small, family-owned businesses, cannot hope to compete in this environment. They have neither the technical expertise nor the capital needed to do so. MCCA is a publicly held, nationally known RTU, and has successfully constructed and managed radiotelephone systems in many different areas.

Protest

Notice of the filing of the application first appeared in the Daily Calendar on May 3, 1983. On June 2, 1983, Page America Communications of California, Inc. (Page) filed a protest asking that the application be set for hearing after Order Instituting Investigation 83-03-01 is resolved and after related applications for paging certificates are decided and that the application be denied. Page is an applicant for authority to provide paging service in the greater Los Angeles area. ✓

MCCA filed a response to the protest on June 30, 1983. In order to dispose of this matter, we need only to decide the issues raised by the protest.

Would the Proposed Acquisition Violate Antitrust Principles?

Page believes that the effect of the proposed acquisition would be to substantially lessen competition within the market for paging services in the greater Los Angeles area within the meaning of § 7 of the Clayton Act (15 USC § 18). It points out that MCCA's ✓

subsidiary, Mobilecomm. Inc., enjoys 7% to 8% of the Los Angeles market, while AMR and Intrastate control 3% to 4% and 1%, respectively. If the application were approved, MCCA would control 11% to 13% of the market for paging services. At the same time, Page alleges ICS Communications (ICS) and Radio Relay Corporation, the top two firms in the Los Angeles paging market, have market shares totaling 68%.

MCCA replies, first, that § 7 of the Clayton Act, by its own terms, is not applicable to transactions consummated under authority given by the FCC under certain statutes. The FCC has approved the transfer in proceedings under Files 24506-CO-TC-4-83 and 24507-CO-TC-3-83.

Second, MCCA argues that Page has not alleged any anticompetitive conduct by MCCA, AMR, or Intrastate and has offered no market analysis to show that such conduct is likely in the future. Beyond stating the obvious, that $5\% + 8\% = 13\%$, Page has not attempted to show in what way this concentration is predatory, or how it will result in higher rates for applicants' customer, or how MCCA's market power after the transaction is approved will make it more difficult for Page to compete. Page has not offered to prove any anticompetitive effects resulting from the proposed acquisition.

Rule 8.1(c) defines a protest as a pleading containing "an offer of the evidence which the protestant would sponsor or elicit at a public hearing." Rule 8.4 requires a protest to state:

- "(b) The facts constituting the ground for the protest, the effect of the application...upon the protestant, and why the application...may not be justified.
- "(c) The facts the protestant would develop at a public hearing, which could result in the denial of the application..."

Page has not made any effort to comply with these requirements.

We believe that, rather than lessening competition, the proposed transaction is likely to foster competition by strengthening two weak competitors, thus enabling them to compete more effectively with the two dominant companies in the Los Angeles marketplace, ICS and Radio Relay. There is nothing on the face of the application to show that the transaction would have anticompetitive effects. Page does not allege any facts that show that the transaction would have anticompetitive effects. Accordingly, it is not necessary, as Page alleges, for applicants to show that compelling public interest considerations outweigh the anticompetitive effects. It is sufficient to observe that the transaction will strengthen small companies in competing with the dominant paging companies and wireline companies. There is no reason to deny or condition the transaction and it will be approved.

Findings of Fact

1. When the proposed transaction is consummated, MCCA and its subsidiaries will control from 11% to 13% of the market for paging services in the greater Los Angeles area.

2. ICS and Radio Relay together control 68% of the market for paging services in the greater Los Angeles area.

3. Page has offered no evidence and alleged no facts to show that any anticompetitive effects will result from the proposed acquisitions.

4. The proposed acquisitions will strengthen small, underfinanced paging companies in their competition with the dominant RTUs in the greater Los Angeles market area.

5. Page has offered no evidence and alleged no facts to show that the proposed acquisitions will substantially lessen competition.

Conclusions of Law

1. Page has not complied with Rules 8.1(c) and 8.4(b) and (c).

2. The filing of a protest does not insure that a public hearing will be held; the content of the protest is determinative (Rule 8.2).

3. Page has not alleged facts in its protest sufficient to require a hearing.
4. The proposed acquisitions are in the public interest and should be approved.
5. The application should be granted.
6. This order should be effective immediately to enable the transaction to be consummated as soon as possible.

O R D E R

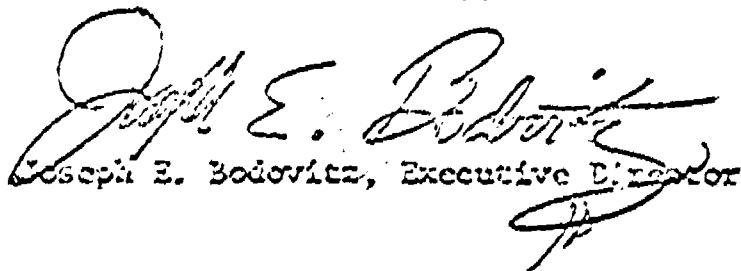
IT IS ORDERED that Mobile Communications Corporation of America is authorized to acquire all the outstanding shares of American Mobile Radio, Inc. and Intrastate Radio Telephone, Inc. of San Bernardino.

This order is effective today.

Dated AUG 3 1983 , at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

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


Joseph E. Bodovitz, Executive Director

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¹ Rule 8.3(b) states: "...a protest shall be filed within 30 days after the latest of the following dates:

* * *

- (b) The date that notice of the filing of the application or petition first appears in the Daily Calendar;"

subsidiary, Mobilecomm, Inc., enjoys 7% to 8% of the Los Angeles market, while AMR and Intrastate control 3% to 4% and 1%, respectively. If the application were approved, MCCA would control 11% to 13% of the market for paging services. At the same time, Page alleges ICS Communications (ICS) and Radio Relay Corporation, the top two firms in the Los Angeles paging market, have market shares totaling 68%.

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