

ORIGINAL

Decision 83 10 036 OCT 19 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of (a) COMMON CARRIER )  
 COMMUNICATIONS, INC., to issue 1,000 )  
 shares of \$10.00 par value stock; )  
 and (b) AMERICAN MOBILE RADIO, INC., )  
 INDUSTRIAL COMMUNICATIONS SYSTEMS, INC., )  
 INTRASTATE RADIOTELEPHONE, INC. OF )  
 LOS ANGELES, INTRASTATE RADIOTELEPHONE, )  
 INC. OF SAN BERNARDINO, MOBILPHONE, INC., )  
 ORANGE COUNTY RADIOTELEPHONE SERVICE, )  
 INC., RADIO DISPATCH CORPORATION, and )  
 ROBERT L. MOHR, dba RADIOCALL CORPORA- )  
 TION, to purchase, acquire and hold )  
 capital stock of COMMON CARRIER COM- )  
 MUNICATIONS, INC. )

Application 57016  
(Filed January 17, 1977)

ORDER RESCINDING DECISION 86972

By Application (A.) 57016, American Mobile Radio, Inc., Industrial Communications Systems, Inc., Intrastate Radio Telephone, Inc. of Los Angeles, Intrastate Radio Telephone, Inc. of San Bernardino, Mobilphone, Inc., Orange County Radiotelephone Service, Inc., Radio Dispatch Corp., and Robert L. Mohr, doing business as Radiocall Corporation, sought authority to purchase, acquire, and hold 125 shares, each, of the 1,000 shares of \$10 par value capital stock which Common Carrier Communications, Inc. (CCC) seeks authority to issue for working capital.

CCC is a California corporation incorporated on June 9, 1976. Decision (D.) 86972, dated February 15, 1977, granted the requested authority for CCC to issue 1,000 shares of capital stock to be sold to the above-listed eight radiotelephone utilities (RTUs). At the time of issue of D.86972, CCC was envisioned as a separate utility with its own service area, tariffs, and marketing

responsibilities. It was intended that CCC would construct and maintain the physical facilities necessary for each of the existing RTUs to provide wide-area telephone service to its own subscribers on the 24 new channels on the 470-512 MHz frequency bands to be made available by the Federal Communications Commission. Based on Public Utilities (PU) Code Sections 233, 234, 216(b), and 207 CCC's proposed operations are public utility operations subject to this Commission's jurisdiction. Under these circumstances under PU Code Section 1001, a certificate of public convenience and necessity (CPC&N) is required from this Commission before beginning construction of a line, plant, or system, or any extension thereof.

Consequently, when by A.59906, filed August 28, 1980, CCC requested authority to carry out the terms and conditions set forth in an Intercarrier Agreement dated August 1, 1980 between CCC and the eight RTUs we, by D.82-03-010 dated March 2, 1983, dismissed the application on the basis that CCC did not possess the required CPC&N.

As of May 1, 1983, a new agreement among American Mobile Radio, Inc., MCS Communications, Mobilcomm of Los Angeles, Inc., Intrastate Radio Telephone, Inc. of San Bernardino, Mobilfone, Inc., Orange County Radiotelephone Service, Inc., Radio Dispatch Corporation, Robert L. Mohr, dba Radiocall Corporation, and Radio Relay Corp.-California was executed completely superseding the Intercarrier Agreement dated August 1, 1980 attached to A.59906. Under the terms of this agreement CCC will act as an agent enabling the RTUs to offer automatic two-way mobile telephone service on these 24 channels under their existing CPC&Ns. This agreement contains the following conditions among others:

1. CCC was authorized to construct the facilities for the RTUs who are to own and control them.
2. CCC, as the agent of the RTUs, shall construct, maintain, and operate the facilities, and market the direct dial mobile telephone services which will be made possible thereby.
3. The RTUs agree to reimburse CCC for all costs reasonably incurred by it in connection with the construction.
4. Each RTU shall be deemed to have an equal though undivided interest in the facilities constructed by CCC.
5. CCC is the exclusive agent to market 470-512 MHz service in the certificated service area of RTUs. Service is to be supplied consistent with the tariffs of the RTUs.
6. Invoices to the public shall clearly state CCC's agency status and identify by name the RTUs as the provider of relevant service.

It is obvious from the above that the contemplated operations of CCC have been drastically changed. It will own no plant, cannot exercise independent judgment, and is under complete control of the RTUs. Under these circumstances it is obvious that CCC is not a public utility subject to our jurisdiction. Consequently, CPUC approval is not required for the issuance and sale of stock and D.86972 should be rescinded.

Findings of Fact

1. CCC is a California corporation incorporated on June 9, 1976.
2. D.86972 dated February 15, 1977 in A.57016 granted CCC authority to issue 1,000 shares of common stock and sell 125 shares to each of eight RTUs although at the time D.86972 issued, CCC did not possess a CPC&N.

A.57016 ALJ/EA

3. At the time D.86972 issued, it was intended that CCC would construct and maintain the facilities necessary for each of the existing RTUs to provide wide-area telephone service to its own subscribers on the 24 channels on the 470-512 MHz frequency bands and would obtain the required CPC&N from this Commission.

4. A new agreement dated May 1, 1983 between CCC and the RTUs provides that CCC will act as an agent for the RTUs and will own no plant, cannot exercise independent judgment, and is under the complete control of the RTUs.

5. CCC, operating in accordance with the provisions of the Intercarrier Agreement dated May 1, 1983, is not a public utility subject to our jurisdiction.

Conclusions of Law

1. Inasmuch as CCC is not a utility subject to our jurisdiction, Commission approval is not required for it to issue stock.

2. D.86972 should be rescinded.

A.57016 ALJ/EA

IT IS ORDERED that D.86972 dated February 15, 1977 in  
A.57016 is rescinded.

This order becomes effective 30 days from today.

Dated OCT 19 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO

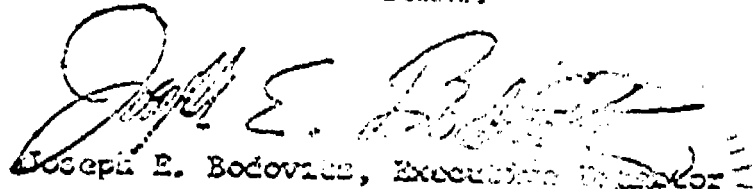
PRISCILLA C. GREW

DONALD VIAL

WILLIAM T. BAGLEY

Commissioners

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

  
Joseph E. Bodovius, Executive Director