

ORIGINAL

Decision 83 11 070 NOV 22 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of RADIO RELAY CORP.-CALIFORNIA, )  
a California corporation, for a )  
certificate of public convenience )  
and necessity to acquire and )  
operate two-way radiotelephone )  
utility facilities in the 470-512 )  
MHz band throughout the greater )  
Los Angeles area. )

Application 83-08-73  
(Filed August 31, 1983)

O P I N I O N

Radio Relay Corporation-California (Radio Relay) seeks a certificate of public convenience and necessity (CPC&N) authorizing it to acquire an 8% ownership interest in and to provide two-way radiotelephone service on trunked 470-512 megahertz (MHz) facilities (facilities) recently constructed by a joint venture of Los Angeles area radiotelephone utilities (RTUs). Radio Relay is presently certificated by this Commission as an RTU to provide one-way paging and signaling service in the Los Angeles area. Furthermore, Radio Relay has been granted a license by the Federal Communications Commission (FCC) in Docket No. 21039 to share the 24 mobile channels assigned to the Los Angeles area in the 470-512 MHz band. Special rules adopted by the FCC for the above specific frequencies mandate cooperative shared usage of the facilities among all carriers desiring and capable of participating in the rendering of such service.

As of May 1, 1983 an agreement (agreement) was made among Common Carrier Communications, Inc. (CCC), American Mobile Radio, Inc. (AMR), ICS Communications (ICS), Mobilcomm of Los Angeles, Inc. (Mobilcomm), Intrastate Radio Telephone, Inc. of San Bernardino (IRT), Mobilfone, Inc. (Mobilfone), Orange County Radiotelephone Service, Inc. (Orange County), Radio Dispatch Corporation (Radio Dispatch), Robert L. Mohr, dba Radio Call Corporation (Radio Call), and Radio Relay. AMR, ICS, Mobilcomm, IRT, Mobilfone, Orange County, Radio Dispatch, and Radio Call are RTUs licensed by the FCC and certificated by this Commission to provide two-way domestic public land mobile radio service in and around Los Angeles (Participating Carriers). The Participating Carriers have formed CCC, a California corporation, and each own an equal number of shares in CCC.

Under the provisions of FCC Docket No. 21039, a Technical Compatibility Agreement has been entered into by all the parties under which CCC is authorized to construct the facilities for the account of the Participating Carriers. Such facilities are to be owned and controlled by the Participating Carriers and operated under their individual state and federal authorization. Upon issuance of a CPC&N to provide two-way radio service on trunked 470-512 MHz facilities, Radio Relay will be issued 8% of the total outstanding shares of CCC and will be deemed to be a Participating Carrier provided that within 30 days of attaining the CPC&N Radio Relay will have tendered reimbursement to the Participating Carriers of 8% of the total of the costs incurred through CCC in connection with the construction and licensing of the facilities, together with any net operating losses incurred by CCC for their account

as of the date of tender. According to the application, the total cost of the construction of the facilities is \$594,575.

The board of directors of CCC will consist of one director named by each Participating Carrier and it will decide all matters within its discretion by a majority vote. It will meet on no less than a quarterly basis upon written notice to all Participating Carriers.

The construction of the facilities has been completed by CCC. These facilities consist primarily of two base station facilities (Call Letters WXR 958) located at 8999 Cedro Drive, Beverly Hills, and on Sierra Peak, in Orange County. Each Participating Carrier is deemed to have an equal though undivided interest in these facilities which are co-licensed to the Participating Carriers. These facilities are to be maintained and repaired by CCC at the expense of the Participating Carriers. According to the agreement, CCC is authorized to act as the exclusive agent of the Participating Carriers for purposes of marketing two-way mobile radiotelephone services on the 470-512 MHz band to the public in the certificated service areas of the Participating Carriers.

The means by which such marketing is accomplished will be at the discretion of CCC, except that (a) the terms and conditions under which services are supplied to the ultimate public will in no event be inconsistent with the tariffs of the Participating Carriers and (b) CCC will enter into no wholesale arrangements except on a majority vote by the board of directors.

The Participating Carriers recognize that the service to be provided by them will in fact be from a single system and will be rendered throughout the combined service areas of all.

They further acknowledge that the service area of ICS entirely overlaps the reliable service area of the facilities, and that ICS' currently effective tariff Schedule No. L-6 describes fully the services to be furnished here. Accordingly, the Participating Carriers authorize CCC initially to market the services described above on terms which conform with ICS' currently effective tariffs.

Further, under the terms of the agreement, CCC will act solely as an agent for the Participating Carriers for construction, maintenance, marketing, and collection purposes. Accordingly, CCC's customer list will be available for inspection and copying by the Participating Carriers, each of which agrees not to reveal any of the contents. Invoices to the public will clearly state CCC's agency status and will identify by name the Participating Carriers as the providers of the relevant service. CCC will use its best efforts to collect on such invoices, and, on no less than a quarterly basis, will distribute equally to the Participating Carriers all receipts after deducting for costs incurred, and after paying any outstanding advances from the Participating Carriers.

If at any time the revenues of CCC should be insufficient to cover the maintenance, repair, marketing, and other operating expenses of CCC, the board of directors may call upon each of the Participating Carriers to reimburse CCC to the extent of the shortfall.

In its application, Radio Relay notes that the transmitting facilities are located such that they are not susceptible of operation in a manner which will enable Radio Relay to contain its radio signals within the contours of its

presently certificated service area. Therefore, Radio Relay requests that for the two-way radio transmission involved in its certificate request it be certificated to operate throughout the area permissible under the FCC's rules, i.e. within a 30-mile radius of each transmitter. The area outside Radio Relay's certificated area and within the 30-mile radius is believed by Radio Relay to be within the ICS' certificated service area, which, according to the agreement, will be included in the common service area of the joint venture. It is understood that such service area is for the purposes of the joint venture only and is not deemed to entitle Radio Relay to offer another service beyond its presently certificated service area.

It is noted that the FCC defines the service area as being within the 39 decibel (dB) above one microvolt per meter contour but not more than 30 miles. The Commission staff has furnished a contour map delineating the service area within this criterion. This map will be accepted as Exhibit 1 for this application. Inasmuch as the service area thus delineated is common to all the Participating Carriers for this joint venture, the fact that Radio Relay's presently certificated service area does not include the entire common service area is immaterial. It should be noted, however, that the service area depicted by Exhibit 1 is only for the two-way radio communications in the 470-512 MHz bands and cannot be construed as a service area for any other RTU service.

As noted in the application, all the facilities for the joint venture have already been constructed and no additional construction is contemplated. Consequently, it may be seen with certainty that there is no possibility that granting the requested authority will have an adverse effect on the environment.

In the agreement, it is recognized that public interest, convenience, and necessity will be served by having Radio Relay participate in the joint venture. Furthermore, in releasing the 24 frequencies in the 470-512 MHz band the FCC stated that:

"All frequencies presently available to RCC's are either fully occupied or have been applied for and...there are waiting lists of potential customers which cannot be accommodated at this time." 30 FCC2d 221, 233 reaffirmed at 69 FCC2d 1569.

Public need was also demonstrated on the record developed before this Commission in the Application of Advanced Mobile Phone Service, Inc., Application 83-01-12.

In granting a construction permit for the facilities, the FCC has reviewed in detail and passed upon the technical feasibility of the system as a prerequisite of having issued its construction permits. This, combined with the fact that the system has already been constructed, indicates there can be no basis upon which to doubt its technical feasibility.

The RTUs which might have had an interest in protesting the application are all parties to the agreement. No protest has been received.

#### Findings of Fact

1. Radio Relay is presently certificated by this Commission as an RTU to provide one-way paging and signaling service in the Los Angeles area.

2. Radio Relay has been granted a license by the FCC in Docket No. 21039 to share the 24 mobile channels assigned to the Los Angeles area in the 470-512 MHz band.

3. Special rules adopted by the FCC for the above frequency band mandate cooperative shared usage of the facilities among all carriers desiring and capable of participating in the rendering of such service.

4. As of May 1, 1983 an agreement was made among CCC, AMR, ICS, Mobilcomm, IRT, Mobilfone, Orange County, Radio Dispatch, Radio Call, and Radio Relay providing:

- a. CCC was authorized to complete the facilities required to provide two-way mobile phone service on the 24 channels in the 470-512 MHz band.
- b. The facilities so constructed are to be owned and controlled by the Participating Carriers and operated under their individual state and federal authorization.
- c. When Radio Relay is certificated to provide two-way mobile phone service in the 470-512 MHz band, it will be issued 8% of the total outstanding shares of CCC and shall be deemed to be a Participating Carrier provided that within 30 days of obtaining the CPC&N, it will have reimbursed the other Participating Carriers 3% of the total costs incurred through CCC in connection with the construction and licensing of the facilities, together with any net operating losses incurred by CCC for their account.
- d. The cost of the facilities is \$594,575 and each Participating Carrier is deemed to have an equal though undivided share in these facilities which are co-licensed to the Participating Carriers.

- e. CCC is the exclusive agent of the Participating Carriers for the purposes of marketing on terms which conform with ICS' currently effective tariffs for two-way mobile radiotelephone services in the 470-512 MHz band to the public in the certificated service areas of the Participating Carriers.

5. The service area lies within the 39 dB above one microvolt per meter contour but not more than 30 miles from the transmitters as delineated in Exhibit 1.

6. It can be seen with certainty that there is no possibility that granting the requested authority will have an adverse effect on the environment.

7. Public convenience and necessity will be served by having Radio Relay participate in the joint venture.

8. There is a public need in the Los Angeles area for the 24 mobile radio channels in the 470-512 MHz band.

9. The system is technically feasible.

10. Construction of the system consisting primarily of two transmitters (Call Letters WXR 958) located at 8999 Cedro Drive, Beverly Hills, and on Sierra Peak, in Orange County, has been completed.

11. The RTUs which might have had an interest in protesting the application are all parties to the agreement; no protest has been received.

12. Service should be provided for two-way mobile telephone service on the 470-512 MHz band in accordance with the provisions of a tariff schedule similar to ICS' tariff Schedule No. L-6.

13. A public hearing is not necessary.



Conclusion of Law

Radio Relay should be granted a CPC&N to acquire an 8% interest in the joint venture facilities and provide two-way mobile radiotelephone service in the Los Angeles area on the 24 channels authorized by the FCC in the 470-512 MHz frequency band.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Radio Relay Corporation-California (Radio Relay) to acquire an 8% ownership interest in and to provide two-way radiotelephone services on trunked 470-512 MHz facilities recently constructed by Common Carrier Communications, Inc. on behalf of American Mobile Radio, Inc., ICS Communications (ICS), Mobilcomm of Los Angeles, Inc., Intrastate Radio Telephone, Inc. of San Bernardino, Mobilfone, Inc., Orange County Radiotelephone Service, Inc., Radio Dispatch Corporation, and Robert L. Mohr, dba Radio Call Corporation.

2. Within 15 days of the effective date of this order Radio Relay is to file tariff schedules, including provisions for providing two-way mobile radiotelephone service on the 24 channels authorized by the Federal Communications Commission in the 470-512 MHz band, establishing a tariff for such service similar to ICS' tariff Schedule No. L-6, and delineating its

service area as set forth in Exhibit 1. This filing shall comply with General Order Series 96. The effective date of these tariff schedules shall be the date of filing. The tariff schedules shall apply to service rendered on and after their effective date.

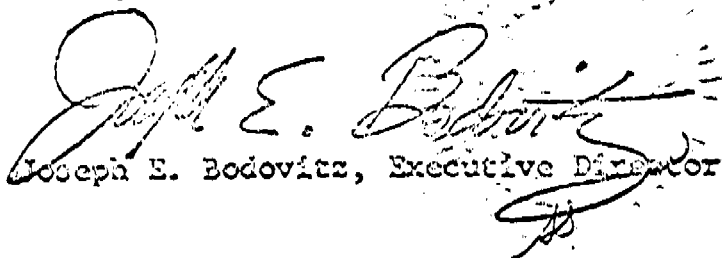
This order becomes effective 30 days from today.

Dated NOV 22 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President  
VICTOR CALVO  
PRISCILLA C. CREW  
WILLIAM T. BAGLEY  
Commissioners

Commissioner Donald Vial, being necessarily absent, did not participate.

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

  
Joseph E. Bodovitz, Executive Director

3. Special rules adopted by the FCC for the above frequency band mandate cooperative shared usage of the facilities among all carriers desiring and capable of participating in the rendering of such service.

4. As of May 1, 1983 an agreement was made among CCC, AMR, ICS, Mobilcomm, IRT, Mobilfone, Orange County, Radio Dispatch, Radio Call, and Radio Relay providing:

- a. CCC was authorized to complete the facilities required to provide two-way mobile phone service on the 24 channels in the 470-512 MHz band.
- b. The facilities so constructed are to be owned and controlled by the Participating Carriers and operated under their individual state and federal authorization.
- c. When Radio Relay is certificated to provide two-way mobile phone service in the 470-512 MHz band, it will be issued 8% of the total outstanding shares of CCC and shall be deemed to be a Participating Carrier provided that within 30 days of obtaining the CPC&N, it will have reimbursed the other Participating Carriers 8% of the total costs incurred through CCC in connection with the construction and licensing of the facilities, together with any net operating losses incurred by CCC for their account.
- d. The cost of the facilities is \$594,575 and each Participating Carrier is deemed to have an equal though undivided share in these facilities which are co-licensed to the Participating Carriers.