

Decision 84 01 061 January 19, 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application )  
of American Paging, Inc. (of )  
California), a California )  
corporation, for a certificate ) Application 83-02-30  
of public convenience and ) (Filed February 14, 1983;  
necessity to construct and ) amended October 3, 1983)  
operate a radiotelephone paging )  
system for San Jose and Environs. )

O P I N I O N

Applicant American Paging, Inc. (of California), a California corporation organized in 1981, requests a certificate of public convenience and necessity to construct and operate a radiotelephone system for the purpose of providing one-way radio paging service with a base station located at a site 2.36 miles east-northwest of Albercroft Heights, Santa Clara County, and a base station located at a site 2.24 miles north of Milpitas, Santa Clara County. The application, as amended, was protested by General Telephone Company of California (General). Applicant has the requisite Federal Communication Commission (FCC) construction permit (Exhibit 1).

Applicant proposes to offer tone-only, tone-and-voice, and alphanumeric digital display paging services. The system will be automatically interconnected with the wireline telephone system, which will eliminate the necessity of a subscriber having to leave a message with an operator for later transmittal. The base control computer will be linked to other facilities of applicant and its sister companies in other states through the public telephone network, thus providing "roamer" service to numerous areas through the United States. Applicant states it is in a uniquely advantageous position to satisfy the public need for paging service because it proposes to provide it over frequency 158.10 megahertz (MHz), which

it considers to be one of the most highly prized frequencies in public mobile radiotelephone service. Applicant contends that frequency 158.10 MHz is considered optimal because it allows greater signaling distance than ultra high frequencies while affording greater signal penetration of buildings and foliage and lower noise than either low-band or ultra high frequencies.

Applicant's proposed service area has as its perimeter the communities of Hayward, Fremont, Milpitas, Los Gatos, Saratoga, Los Altos, and Menlo Park.

Applicant intends to assess the following basic rates and charges for its services:

Service:

Tone-Only	\$10.00
Tone-and-Voice	17.00
Numeric Display	13.00
Alphanumeric	15.00

Equipment:

Tone-Only	10.00
Tone-and-voice	12.00
Numeric Display	14.00
Alphanumeric	19.00

Applicant estimates its capital requirements for construction and initial operation of the system to total approximately \$342,000. It will finance the cost of the proposed operations through capital provided by applicant's parent company, Telephone and Data Systems (TDS), of Chicago, Illinois. A letter of commitment from TDS, signed by TDS' president, to furnish capital is attached to the application (Exhibit E). TDS owns over 50 telephone companies located in 20 states. It also owns and operates companies engaged in cable television service and radio paging service in various locations. TDS is publicly held and listed on the

American Stock Exchange. As of June 30, 1983 TDS has a consolidated net worth measured by common stockholders' equity of \$62,493,737, of which \$18,455,773 represents retained earnings (Exhibit 2).

Maintenance and repair of the proposed facilities will be performed under the supervision the Technical Manager of TDS and its subsidiaries. Day-to-day maintenance and repair of the facilities will be performed by the local Motorola authorized service center in Sunnyvale. Applicant's local service personnel, who will hold valid first-class or second-class FCC radio telephone operators licenses, will monitor the system on a 24-hour-a-day basis to detect any system malfunction. Applicant's employees will also have the capacity to diagnose equipment failure by remote dial-up to the system terminal. A telephone number will be established to permit subscribers to obtain assistance quickly.

By the end of the first year of operations applicant expects to be serving 1,750 pagers, and have \$280,303 in revenues. Applicant expects to incur net losses during its start-up year and first full year of operation of, respectively, \$277,810 and \$33,390. It expects its second, third, and fourth years of operation to return a net profit of, respectively, \$154,000, \$300,000, and \$282,000. By the end of the fifth year it anticipates it will be serving 6,918 pagers.

Applicant objects to the receipt or consideration of General's protest because it was not timely filed or served. The application was filed February 14, 1983 and amended on October 3, 1983 as ordered by Decision (D.) 83-08-059. General's protest was filed November 3, 1983. The service list attached to the protest lists neither applicant nor his attorney as being served with a copy of the protest. General does not object to the application being granted. Rather, General opposes the method by which applicant proposes to utilize and switch into the wireline telephone network,

namely, by using selector-level telephone numbers (assigning a different seven digit telephone number to each pager). General claims the use of selector-level telephone numbers is wasteful, unnecessary, inappropriate, and a drain on telephone company capacities.

Discussion

Applicant's objection to General's protest is well taken. The original application was filed February 14, 1983 and stated that applicant intended to use selector-level telephone numbers. General did not protest the original application within the 30 days allowed by Rule 8.3 of the Commission's Rules of Practice and Procedure. The amendment to the original application did not indicate any change in the proposed service or in applicant's desire to use selector-level telephone numbers. Nor did the amendment make any new proposals which could be construed to make the amendment a "new" application and so open to a new protest. D.83-08-59 allowed only those "protestants presently involved in the applications" to amend their protests. General was not a protestant to the original application. Since General did not file its protest to the application until many months after the time allowed by Rule 8.3 of the Commission's Rules of Practice and Procedure General's protest must be dismissed as not being timely filed. However, the Commission gives no assurance that General will necessarily be able to meet all of applicant's requests for selector-level telephone numbers.

With respect to the applicant's proposed offerings of pagers on a tariffed basis, recent actions by the FCC have established that pagers were in fact detariffed by the FCC's prior orders in the Second Computer Inquiry. We take notice of the relevant portion of the FCC's Notice of Proposed Rulemaking, FCC Docket No. 83-372, adopted April 7, 1983 and released April 28, 1983, which reads as follows:

"While we reserved judgment in the Second Computer Inquiry regarding deregulation of mobile telephone CPE, we expressed no such reservation with respect to common carrier paging receivers. To the extent that there is any ambiguity, we here confirm that paging receivers were included in the generic categories of CPE deregulated in the Second Computer Inquiry." (Mimeo. page 2.)

Consequently, there is no basis for authorizing the offering of pagers under tariff, and we will deny that portion of the application. Because applicant needs to begin construction promptly, this order should be effective today.

Findings of Fact

1. Applicant requests a certificate to construct and operate radiotelephone utility facilities for the purpose of providing one-way public utility radio paging service in the southern and southeastern portion of the San Francisco Bay area as more particularly described in the application, as amended, and the exhibits. ✓
2. Applicant possesses the requisite FCC construction permits.
3. Applicant proposes to offer tone-only, tone-and-voice, and alphanumeric digital display paging services.
4. The proposed system will be entirely automatic and interconnected with the wireline telephone system.
5. Applicant estimates its capital requirements for construction and initial operation of the system to be approximately \$342,000, which will be financed through capital advanced by its parent company, TDS.
6. As of June 30, 1983 TDS had a net worth of approximately \$62,493,737.
7. Applicant expects that by the end of the first year of operation it will be serving 1,750 pagers and by the end of the fifth year will be serving 6,918 pagers.

8. During the first two years of operations applicant expects to sustain a net loss from operations, but for the next three years expects to have a net profit from operations for each of those three years.

9. Applicant will provide for the construction, maintenance, and repair of its proposed facilities by competent persons.

10. Applicant has the financial resources available to it to construct and operate the proposed system.

11. The proposed service is technically feasible.

12. Public convenience and necessity require the issuance of the requested certificate.

13. A grant of the proposed service will not so damage existing service or the particular marketplace as to deprive the public of adequate service. ✓

14. The application was filed February 14, 1983 and General's protest was not filed until November 3, 1983.

15. A public hearing is not necessary.

16. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

17. Paging receivers are considered Customer Premises Equipment and are not offered on a tariffed basis.

Conclusions of Law

1. The application should be granted to the extent stated herein.

2. The protest of General should be dismissed.

3. Only the amount paid to the State for operative rights may be used in ratefixing. The State may grant any number of rights and may cancel or modify the monopoly feature 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 American Paging, Inc. (of California) for the construction and operation of a public utility one-way radiotelephone system with base stations and a service area as follows:

Base station locations:

- a. 2.36 Miles east-northeast of Albercroft Heights, Santa Clara County.
- b. 2.24 miles north of the City of Milpitas, Santa Clara County.

Service area:

The composite of the signal contours set out on the two maps in Exhibit B of amended Application 83-02-30.

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, tariffs applicable to the service authorized herein containing rates, charges, and rules applicable to its radiotelephone services. This filing shall comply with General Order 96-A. The tariffs shall become effective on not less than 5 days' notice. The rates and charges shall be those shown in A.83-02-30.

4. Applicant shall file, after the effective date of this order and compliance with Ordering Paragraph 3, as part of its individual tariff, an engineered service area map drawn in conformity with the provisions of the Federal Communications Commission Rule 22.504, commonly known as the "Carey Report", consistent with Exhibit B of the amended application.

5. Applicant shall notify this Commission, in writing, of the date service is first rendered the public under the rates, rules, and charges authorized, within 5 days after service begins.

6. Applicant shall keep its books and records in accordance with the Uniform System of Accounts for Radiotelephone Utilities prescribed by this Commission.

7. Applicant shall file an annual report, in compliance with General Order 104-A, on a calendar-year basis using CPUC Annual Report Form L and prepared according to the instructions included in that form. ✓

8. That portion of A.83-02-30 which pertains to the offering of paging receivers under tariff is denied.

9. The certificate granted and the authority to render service under the rates, rules, and charges authorized will expire if not exercised within 12 months after the effective date of this order.

10. The protest of General Telephone Company of California is dismissed. ✓

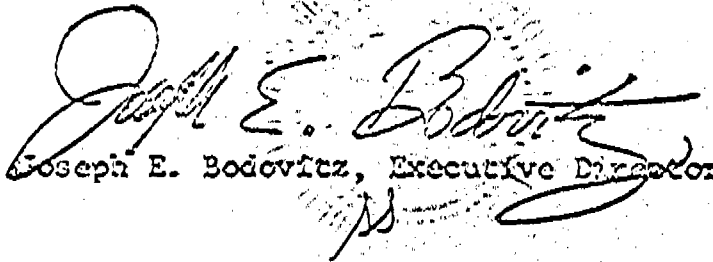
This order is effective today. ✓

Dated JAN 19 1984, 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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