

ORIGINAL

Decision No. 88769 MAY 2 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
INDUSTRIAL COMMUNICATIONS SYSTEMS, INC. Application No. 57851
 a California corporation, for authorization (Filed February 7, 1978)
 to reclassify, issue, sell, and exchange
 common stock for preferred stock pursuant
 to agreement and plan of reorganization.

788,000.00 771,200.00 206,800.00
 078,200.00 230,200.00 P I N I O N 206,800.00

Industrial Communications Systems, Inc. (ICS) requests authority (1) to split, convert, and reconstitute each share of its \$10 par value stock outstanding into 8 1/25 shares of common stock, (2) to issue, sell and exchange not to exceed 88,800 shares of its preferred stock in exchange for all of the outstanding stock of Peak Rentals, Inc. (Peak), and in exchange for the reconstituted 1,690,000 common shares of ICS. ^{1/}

ICS is a public utility radiotelephone corporation which provides two-way mobile and one-way paging service in portions of San Bernardino, Riverside, Los Angeles, Orange and San Diego Counties.

Peak, a California corporation, is a nonutility affiliate of ICS. It is engaged in the business of selling, leasing, and renting radiotelephone and radio communications equipment, and in addition provides equipment such as transmitters, microwave equipment, mobiles and pagers to ICS.

228,000.00 228,200.00 228,000.00

All of the Peak stock (84 common shares) and 208 shares of ICS stock (1,690,000 after reconstitution) belong to Homer and Dolores Harris. The remaining 192 shares of ICS stock are owned by their three children, each in the amount of 64 shares.

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The balance sheets at November 30, 1977, for ICS and Peak, based on data contained in Exhibit E, attached to the application and information provided to the staff by the applicant's attorney, are summarized as follows:

	<u>Industrial Communications Systems, Inc.</u>	<u>Peak Rentals Inc.</u>
Operating revenues	\$1,495,177	\$1,490,337
Net income	\$ 165,084	\$ 218,470

The balance sheets at November 30, 1977, for ICS and Peak, based on data contained in Exhibit E, attached to the application and information provided to the staff by the applicant's attorney, are summarized as follows:

	<u>Industrial Communications Systems, Inc.</u>	<u>Peak Rentals Inc.</u>
Assets		
Plant in service (net)	\$265,915	\$2,347,622
Current assets	494,357	199,355
Other assets	4,818	22,505
Total	\$765,090	\$2,569,482
Liabilities & Stockholder's Equity		
Long-term debt	\$ 28,748	\$ 907,378
Other liabilities	536,723	142,005
Common stock	4,000	4,200
Retained earnings	195,619	515,899
Total	\$765,090	\$2,569,482

The controlling shareholders of ICS and Peak, namely, Homer and Dolores Harris, propose to reorganize and recapitalize the two corporations by exchanging all of their presently held common stock in ICS and in Peak for 88,800 shares of newly

authorized voting preferred stock of ICS. As a result of the proposed reorganization and recapitalization, Peak would become a wholly owned subsidiary of ICS, and the three Harris children would own all of the outstanding reconstituted common stock of ICS (aggregating 1,560,000 shares). The plans of reorganization, recapitalization, and the written consents and approvals of the Board of Directors and shareholders of the respective companies are attached to the application as Exhibits B and B-1.

The proposed reorganization and recapitalization will be accomplished as a "reverse triangular A" reorganization in accordance with the provisions of Sections 354 and 368 of the Internal Revenue Code of 1954, as amended. These sections prescribe certain conditions which must be met in order to effect a tax free exchange of stock resulting from a plan of reorganization and recapitalization. To effect such reorganization, ICS incorporated a wholly owned nonutility California subsidiary, Sirrah, Inc., all of the capital stock of which (1,000 shares) was purchased and acquired by ICS pursuant to the California Corporate Securities Law of 1968, as amended, and to appropriate rules and regulations issued by the Commissioner of Corporation. Sirrah, Inc., as a result of the proposed reorganization, will be merged into Peak, and the 1,000 shares of the capital stock of Sirrah, Inc. owned by ICS will be converted into 100 shares of the common (Class A) stock of Peak.

The application sets forth the following reasons and purposes underlying the proposed reorganization and recapitalization:

1. Simplification of regulation of ICS by this Commission and the Federal Communications Commission.
2. Consolidation of the operations of ICS and Peak in order to enable them to share tax and management benefits, including the filing of consolidated income tax returns.

3. Increase the equity position of the three Harris children in ICS, commensurate with their increasing participation in the management and operation of ICS and Peak.

4. Assist Homer and Dolores Harris in estate planning.

The application also states that the proposed reorganization and recapitalization would not only be beneficial to the Harris family, but also would be in the public interest in that it would promote more orderly and efficient regulation and savings in management and operation costs.

Pursuant to the Restated Articles of Incorporation, attached to the application as Exhibit A, the capitalization of ICS was revised to authorize the issuance of five million shares of common stock and 100,000 shares of preferred stock and, to split, convert, and reconstitute each common share of \$10 par value stock outstanding into 8,125 shares of reconstituted common stock. The Restated Articles of Incorporation also provide for the rights, preferences, and privileges of the holders of the preferred stock, and eliminate the preemptive rights of existing shareholders of ICS to purchase and/or subscribe for a proportionate part of newly issued shares of ICS.

The basic rights, preferences, and privileges of the holders of the preferred stock of ICS as set forth in the application, include the following:

1. Each share of preferred stock is entitled to fifty (50) votes; each share of common stock is entitled to one (1) vote.
2. Both the common and preferred stock have cumulative voting rights.
3. The preferred stock is entitled to annual, cumulative cash dividends of two (2) percent of the Liquidation Value of each share, in preference and priority to the common stock.

4. The preferred stock is entitled to noncumulative additional annual dividends, in preference and priority to the common stock, at the election of the Board of Directors, up to a maximum of the greater of (a) six percent (6%) of the Liquidation Value of each share, or (b) the percentage of the Liquidation Value equal to the prime lending rate for commercial loans of the Los Angeles main branch of the Bank of America National Trust and Savings Association (or successor) in effect on the first day of the fiscal year.

5. On voluntary or involuntary liquidation or dissolution, the preferred stock is entitled to receive the Liquidation Value of each share and all unpaid dividends before any payment or distribution is made to the common stock.

6. ICS, at its option, may redeem not less than all of the preferred stock upon payment of 105% of the Liquidation Value of each share if redeemed prior to November 1, 1982, and 100% thereafter, plus unpaid dividends. ICS, at its option, may also redeem preferred stock upon the death of the owner thereof up to a maximum of the aggregate of federal estate and state inheritance taxes imposed by reason of such owner's death and funeral and administrative expenses, and

7. The Liquidation Value of each share of Preferred Stock is established at \$10.

The Finance Division and the Communications Division have reviewed the application and they have determined that the proposed issuance of preferred stock, the proposed split up of the common stock by ICS, and the acquisition of the common stock of Peak are reasonable and not adverse to the public interest.

The Finance Division recommends that ICS be ordered to keep a complete set of accounting and financial records for Peak, separate from records of ICS' utility operations, and also be ordered to maintain detailed records of all transactions between the two companies.

The Finance Division further recommends that ICS be placed on notice that no portion of Peak's revenues, expenses, assets, or capitalization will be considered for rate-making purposes in any future proceeding, and that the profits earned by Peak from services provided to ICS will be limited for rate-making purposes to the return allowed on utility operations.

The Communications Division concurs with the recommendations of the Finance Division.

After consideration the Commission finds that:

1. The proposed transactions would not, under the conditions specified in the order that follows, be adverse to the public interest.
2. The proposed stock issues would be for proper purposes.
3. The concurring recommendations of the Finance Division and of the Communications Division regarding accounting and rate-making treatment of the proposed transactions are reasonable.
4. The money, property or labor to be procured or paid by the issue of the securities authorized by this decision is reasonably required for the purposes specified, which purposes are not in whole or part reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that the application should be granted upon the conditions contained in the following order. A public hearing is not necessary.

In issuing this order we place ICS and its shareholders on notice that we do not regard the number of shares outstanding, the total par value of the shares, nor the dividends paid, as measuring the return it should be allowed to earn on its investment in plant, and that this authorization is not to be construed as a

finding of the value of the company's stock or property nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

ICS is placed on notice that no portion of Peak's revenues, expenses, assets, or capitalization will be considered for rate-making purposes in any future proceedings; and that the profits earned by Peak from goods or services provided by it to ICS will be limited for rate-making purposes to the return allowed on utility operations.

O R D E R

IT IS ORDERED that:

1. Industrial Communications Systems, Inc., on or after the effective date hereof and on or before December 31, 1978, may split, convert and reconstitute each share of its \$10 par value capital stock outstanding into 8.125 shares of its common stock and may issue certificates representing the 3,250,000 reconstituted shares of common stock.

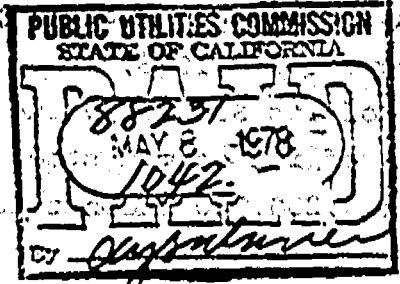
2. Industrial Communications Systems, Inc., may issue not to exceed 88,800 shares of its voting preferred stock as requested in the application for the purposes and under the terms and conditions set forth in the application.

3. Industrial Communications Systems, Inc., shall keep and maintain a complete set of accounting and financial records for Peak Rentals Incorporated, separate from records of its utility operations, and shall keep and maintain detailed records of all transactions between the two companies.

4. Industrial Communications Systems, Inc., shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

5. This order shall become effective when Industrial Communications Systems, Inc. has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$1,042.

Dated at San Francisco, California, this 7th day of MAY, 1978.



Robert Bateman
President
William Synson J
Commissioners
C. J. ...
C. J. ...