

Decision No. 88940

JUN 13 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

IN THE MATTER OF APPLICATION OF
 JOHN ROLAND NISSEN dba CLEARLAKE
 RADIOTELEPHONE for authority to
 sell and transfer its Certificate
 of Public Convenience and
 Necessity and related assets to
 William H. Colclough dba Clear-
 lake Communications; and for
 authority to issue an unsecured
 note of indebtedness payable over
 a period exceeding twelve (12)
 months.

Application No. 57654
(Filed October 28, 1977)

O P I N I O N

By his application, John R. Nissen (Nissen), doing business as Clearlake Radiotelephone, seeks authority pursuant to Section 851 of the Public Utilities Code to sell and transfer to William H. Colclough (Colclough), doing business as Clearlake Communications, his miscellaneous business assets, including his certificate of public convenience and necessity. In addition, Colclough seeks authority pursuant to Section 818 of the Public Utilities Code to issue an unsecured promissory note to Nissen in the amount of \$9,800 for the purpose of partially financing the purchase of the utility assets and to make other existing cash assets immediately available for the upgrading of the utility's existing equipment and service. The term of the note exceeds 12 months.

The application was listed on the Commission's Daily Calendar and copies of the application were mailed by Colclough to Lake County, the city of Lakeport, The Pacific Telephone and Telegraph Company, California Independent Telephone Association, Tadlock's Radio Dispatch, Sonoma Communications, Inc., Silverado Communications, Cal Autofone of

Ukiah, and Auto-Phone Company. No protests have been received by the Commission. In addition, staff members of the Communications Division and the Finance Division have advised us that there is no reason that the application should not be accorded ex parte treatment as requested by the applicants.

Nissen by letter dated April 13, 1978 requested that the application be canceled. Colclough in a letter dated May 8, 1978 stated that he is "unalterably opposed to the cancellation of Application No. 57654." The purchase agreement between Nissen and Colclough states that: "...either party may withdraw from the agreement if license transfer approval is not granted within nine (9) months of the effective date of this agreement." The effective date of the agreement is September 27, 1977.

In view of the terms of the agreement the Commission finds that the application should not be withdrawn pursuant to Nissen's request.

In issuing our order herein, we place Colclough on notice that the action taken herein is not to be considered as indicative of the amounts to be included in future proceedings for the purpose of determining just and reasonable rates.

The authority herein granted is subject to the following provision of law:

The Commission shall have no power to authorize the capitalization of any certificate of public convenience and necessity, franchise, or permit, or the right to own, operate, or enjoy any such right in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of any such right.

O R D E R

IT IS ORDERED that:

1. John R. Nissen (Nissen), on or after the effective date hereof and on or before sixty days thereafter, may sell, assign, and transfer all assets of his radio common carrier system public utility business, including his certificate of public convenience and necessity, to William H. Colclough (Colclough) in accordance with the terms and conditions contained in the Purchase Agreement executed as of October 1, 1977, a copy of which is attached to the application as Exhibit 2.
2. Colclough may issue an unsecured promissory note in the amount of \$9,800 bearing interest at 7½ percent per annum in favor of Nissen, payable over a period exceeding 12 months, as set forth in Exhibit 2, attached to the application.

3. Colclough may provide interconnected two-way radiotelephone service tone-only and tone and voice, one-way signaling service, rural radio communication service, and point-to-point microwave service primarily to Lake County, including Lakeport, Kelseyville, Lower Lake Middletown, Clearlake Highlands, Lucerne, Nice, and Upper Lake and may use two message center locations, one at each end of Clearlake, at Lakeport, and at Clearlake Highlands.

4. As a condition of the authority herein granted, Colclough is hereby directed to continue the public utility responsibilities of Nissen with respect to the area served by the properties being transferred.

5. Within sixty days after the date of actual transfer the tariffs of Nissen now on file with this Commission shall be refiled under the name of Colclough in accordance with the procedure prescribed in General Order No. 96-A or, in lieu of such refileing, Colclough may file within thirty days after the date of actual transfer, by advice letter, a notice of adoption of said presently filed tariffs. No increase in the presently filed tariffs shall be made with this refileing, except as may be authorized by this Commission.

6. On or before the date of actual transfer of the specific properties herein authorized, Nissen shall transfer and deliver to Colclough, and the latter shall receive and preserve, all records, memoranda, and papers pertaining to the construction and operation of the radiotelephone utility authorized to be transferred.

7. If the authority herein granted is exercised, Colclough shall, within thirty days thereafter, notify this Commission, in writing, of the date of such completion of the property transfer herein authorized and of its compliance with the conditions hereof.

8. Upon compliance with the above ordering paragraph, Nissen is hereby relieved of his public utility responsibilities with respect to the property being transferred coincident with the full assumption of such responsibilities by Colclough.

9. Colclough 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.

This order shall become effective when William H. Colclough has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$50.

Dated at San Francisco, California, this 13th day of JUNE, 1978.

Robert Balgum
President

William S. Jones, Jr.

William A. Steadman

George D. Swale

Clair T. DeBrie
Commissioners

