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Decision No. 90063 MAR 13 1979**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In THE MATTER OF THE APPLICATION
 of MELVIN L. LINDSEY and
 SHARON A. LINDSEY, dba HIGH SIERRA
 MOBILPHONE, for the sale and transfer
 of High Sierra Mobilfone, including
 the transfer of the Certificate of
 Public Convenience and Necessity
 granted in Decision No. 81878.

Application No. 58315
 (Filed August 24, 1978)

O P I N I O N

By this application, Melvin L. Lindsey and Sharon A. Lindsey (herein Buyers), doing business as High Sierra Mobilfone, seek authority pursuant to Section 851 of the Public Utilities Code to acquire the title, rights, and all property, including the Certificate of Public Convenience and Necessity, of James T. Downey and David D. Walizer (herein Sellers), doing business as High Sierra Mobilfone.

High Sierra Mobilfone is a radiotelephone utility (RTU) duly certificated by the Commission to provide radiotelephone utility service in Bishop and Inyo Counties, and neighboring territory in Mono County. High Sierra Mobilfone's operating authority from this Commission emanates from Decision No. 81878^{1/}.

On May 31, 1978, Buyers and Sellers entered into an Agreement of Sale, whereby Buyers agreed to buy all rights, title, and property, including the Certificate of Public Convenience and Necessity, of High Sierra Mobilfone from Sellers. The full Agreement of Sale is identified as Exhibit G to the application.

^{1/} Decision No. 81878, dated September 14, 1973, in Application No. 54100 (James T. Downey and David D. Walizer, granted Certificate of Public Convenience and Necessity to operate High Sierra Mobilfone).

In consideration for the acquisition, Buyers will pay the sum of \$25,000 less the amount of an obligation due the Bank of America (approximately \$3,500). Buyers request authority to execute a long-term indebtedness to pay the \$25,000 purchase price according to the last paragraph of the Agreement of Sale. The requested method of purchase is as follows: \$5,000 on or before the close of escrow, with Buyers to execute a promissory note for the balance of the purchase price less the amount of the obligation due the Bank of America; said note to be paid in equal monthly payments of \$500 each, including interest at a rate of 9% per annum; the first payment being due on July 1, 1978, and the entire balance to be due and payable on or before May 1, 1983.

The application was filed with the Public Utilities Commission on August 24, 1978, and notice to the public was given by the Commission Calendar of the same day. No protests have been received by the Commission. In addition, staff members of the Communications Division and the Finance Division have advised there is no reason that the application should not be accorded ex parte treatment as requested by the Buyers. Buyers have informally requested that the application be expeditiously granted and put in effect. Absent any facts or protests contesting this request, it is reasonable that the effective date of this order be the date hereof.

In issuing our order herein, we place Buyers and Sellers on notice that we do not regard the purchase price, financial statements or property descriptions stated in the application as indicative of the return the company should be allowed to earn on its investment in plant, and that the authorization herein given is not to be construed as a finding of the value of its stock or properties nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

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

"The Commission shall have no power to authorize the capitalization of the right to be a corporation, or the capitalization of any franchise or permit, or the right to own, operate, or enjoy any such franchise or permit, 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 such franchise, permit, or right."

The Commission makes the following findings and conclusions.

Findings of Fact

1. By Decision No. 81878, dated September 14, 1973, Sellers were granted certificate authority to own and operate High Sierra Mobilfone, a radiotelephone utility.
2. On May 31, 1978, Sellers entered into an Agreement of Sale to transfer all properties of High Sierra Mobilfone to Buyers.
3. Sellers desire to withdraw from the public utility radiotelephone business.
4. Buyers are qualified and desirous to acquire and operate High Sierra Mobilfone.
5. Buyers have need for external funds for the purposes set forth in this application.
6. The proposed note to be executed by Buyers to procure properties set forth in this application would not be adverse to the public interest.
7. The transfer of ownership of High Sierra Mobilfone and all operating rights of High Sierra Mobilfone would not be adverse to the public interest.
8. It is reasonable that the effective date of this order be the date hereof.
9. The authorization herein granted is for the purpose of this proceeding only, and is not indicative of amounts to be included in future proceedings for the determination of just and reasonable rates.

Conclusions of Law

1. Sellers should be authorized to sell and Buyers to acquire the title, rights, and all property, including the Certificate of Public Convenience and Necessity, of High Sierra Mobilfone.

2. Upon completion of the sale and transfer of the public utility operating rights, properties, and equipment to Buyers, Sellers should be relieved of all public utility obligations coincident with the full assumption of such responsibilities by Buyers.

3. The proposed Agreement of Sale and encumbrance of debt by Buyers is proper to procure or pay for the utility properties of Sellers, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

O R D E R

IT IS ORDERED that:

1. Within one hundred and twenty days after the effective date of this order, James T. Downey and David D. Walizer may sell and transfer; and Melvin L. Lindsey and Sharon A. Lindsey may acquire all properties of the radiotelephone utility system known as High Sierra Mobilfone in accordance with the agreement attached to the application as Exhibit G. Within thirty days of the actual transfer of ownership, Buyers shall notify this Commission, in writing, of the date upon which the transfer was consummated.

2. Melvin L. Lindsey and Sharon A. Lindsey shall file with this Commission the report required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

3. On or before the end of the third month after the date of actual transfer, Buyers shall cause to be filed with the Commission, in such form as it may prescribe, an annual report covering the operations of the Sellers for the period commencing with the first day of the current year to and including the effective date of the transfer.

4. On or before the actual date of transfer James T. Downey and David D. Walizer shall deliver to Melvin L. Lindsey and Sharon A. Lindsey and the latter individuals shall receive and preserve all records, memoranda, and papers pertaining to the construction and operation of the radiotelephone utility system authorized to be transferred.

5. Upon compliance with all of the terms and conditions of this order, James T. Downey and David D. Walizer shall be relieved of their public utility obligations as partners in connection with the radiotelephone system being transferred.

6. The authority granted by this order to issue a promissory note will become effective when Melvin L. Lindsey and Sharon A. Lindsey have paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$50.

7. Within sixty days after the date of actual transfer, Melvin L. Lindsey and Sharon A. Lindsey shall, by advice letter filing, revise High Sierra Mobilfone's tariff in accordance with the procedure prescribed in General Order No. 96-A to indicate any changes affecting the present tariff on file as a result of the transfer authorized herein. No increases in the presently authorized filed rules and rates shall be made unless otherwise authorized by the Commission.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 13th day of MARCH, 1979.

John E. Byrne
President
Raymond L. Stanger
Richard W. Steele
Clair T. Smith
Edward J. Smith
Commissioners

