

ORIGINALDecision No. 91331 FEB 13 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Valley Mobilefone, Inc. for a Certification of Public Convenience and Necessity to Provide One-Way Paging and Two-Way Mobile Telephone Service in the City of Red Bluff and Portions of Tehama County and Vicinity, California.

Application No. 58743
(Filed March 15, 1979)

In the Matter of the Application of RADIO ELECTRONICS PRODUCTS CORPORATION, a California corporation, For a Certificate of Public Convenience and Necessity to Extend Its Radiotelephone Utility System.

Application No. 58951
(Filed June 21, 1979)

O P I N I O N

Application No. 58743 is the application of Valley Mobilefone, Inc. (Mobilefone) for a certificate authorizing it to construct and operate a radiotelephone utility (RTU) system to furnish one-way paging and two-way mobile telephone service in the City of Red Bluff and portions of Tehama County, as more particularly set out in the application. The application of Mobilefone is protested by Radio Electronics Products Corporation (Repc) and James E. Walley, dba Auto-Phone Company.

Application No. 58951 is the application of Repco for a certificate authorizing Repco to expand by 10 percent its RTU system's service area in the Redding-Red Bluff area as more particularly set out in the application or, in the alternative, for

a finding that the extension involves a minor or insignificant extension of its service area and hence, pursuant to Rule 18(o)(2)(iii) of the Commission's Rules of Practice and Procedure, a certificate authorizing such expansion is unnecessary.

The applications were consolidated for decision.

In Application No. 58743 Mobilefone proposes to construct and operate a RTU system to furnish one-way and two-way mobile telephone service in the City of Red Bluff and portions of Tehama County with its transmission site located at Tuscan Buttes, Tehama County. Mobilefone represents that there is presently no paging service and no local dispatching service generally available in the Red Bluff area, which has an urban and suburban population totaling 25,000. Repco objects to the granting of Mobilefone's application on the grounds that Mobilefone's proposed service area will overlap some of the Repco's southeast service area which extends almost to the city limits of Red Bluff. Subsequent to the filing of the applications Mobilefone and Repco entered into a written "Stipulation and Request for Dismissal with Prejudice" (the stipulation) which has been filed as part of the application cases. The stipulation provides that Application No. 58743 may be dismissed with prejudice and that Mobilefone will not file with the Federal Communications Commission for permits and licenses contemplated by Application No. 58743, subject to the approval by the Commission of an agency agreement attached to the stipulation. Generally, the agency agreement, which has been executed by the respective presidents of Mobilefone and Repco, empowers Mobilefone to act as a nonexclusive, independent contractor agent for Repco for five years, to advertise for, secure, and accept in the name of Repco subscribers to Repco's RTU paging service. Mobilefone will be responsible for billing and collecting the appropriate charges from the customers it secures. The agency agreement requires that Mobilefone's contracts for customer service and

statements for charges for Repco's service shall contain a clear and concise notification advising the customer that the radio communication service is provided through the radio communication facilities of Repco under duly filed Repco tariffs. Repco will maintain day-to-day control, operation, and supervision of all station facilities. Mobilefone will be allowed to sell or lease its communication equipment to the customers it secures. Repco will pay Mobilefone a monthly fee equal to a specified percent of the unit rate for each customer Mobilefone secures for Repco's one-way paging service and a "finder's fee" equal to the first month's billing for each customer Mobilefone secures for Repco's two-way mobile service. During the term of the contract Mobilefone has agreed not to obtain any interest in a competitive RTU, and if Mobilefone terminates the agency agreement without cause, Mobilefone has agreed not to file any application with either the Federal Communications Commission or this Commission for RTU service within the Counties of Shasta, Lassen, or Tehama for a period of two years after the termination of the agency agreement. Paragraph 30 of the sales agreement provides as follows:

"30. This Agreement incorporates by reference the standards of nondiscriminatory service established by the FCC and PUC and binds AGENT to adhere to those standards in all practices and activities undertaken pursuant to this Agreement."

The agreement also provides that when Mobilefone furnishes equipment to subscribers of a type also offered under Repco's tariff, Mobilefone shall charge the rates set forth in Repco's tariff.

In Application No. 58951 Repco proposes to establish two new 43 dBu field strength base stations for its one-way paging service, one station located at Redding and the other at Tuscan Buttes near Red Bluff. The proposed stations will operate simultaneously and be controlled from a proposed control point at Redding. Appropriate delay networks would be incorporated in the

systems so as to synchronize the phasing of the two signals. The modified system will be operated in 158.70 MHz frequency and upon grant of its Federal Communications Commission construction permit and license Repco will file an appropriate application with the Federal Communications Commission to relinquish its present license for 152.24 MHz frequency with transmitter located at Shasta Bally Mountain, approximately 12 miles west of Redding. The service area contour of the Shasta Bally Mountain transmitter reaches southeast almost to the City of Red Bluff. In establishing a transmission station at Tuscan Buttes, lying northeast of Red Bluff, Repco will be extending its contour service area to encompass a new service area which includes Red Bluff and points ten miles to the east, south, and west of Red Bluff. Repco represents that this new service area constitutes less than a 10 percent expansion of its present service area. Repco represents that it has been advised by James E. Walley, dba Auto-Phone Company, an RTU whose service area may be overlapped by Repco's new service area, that he has no objection to Repco's requested expansion. The proposed service will be maintained on a continuous 24-hour basis. Repco is currently serving approximately 350 paging units on its existing paging system and estimates that with the requested modification it will add approximately 150 paging units in the first full year of operation and 500 new paging units by the fifth full year of operation, including 22 units in the Red Bluff area in the first full year of operation and 150 units in that area by the fifth full year of operation. Existing rates will be charged in the new operation. The proposed project does not involve or entail construction of any substantial consequence as both the control facility at Redding and the base station at Tustin have already been developed for electronic use, and the Redding transmitter site is already occupied with a tower on which Repco's antenna will be mounted. Repco's application shows that as of September 30, 1978

Recco had a net worth of \$82,900 and for the nine months ending on that date had a gross revenue of \$138,000. The largest shareholder of Recco is Communication Enterprises, Inc., whose president, Thomas R. Poor, will be ultimately responsible for the direction, management, and supervision of Recco assisted by the president of Recco. The estimated cost of construction for the new paging system, less equipment presently owned, is \$40,700, of which \$30,000 is for one-way pagers.

Discussion

The Commission sees no necessity for the exercise of its jurisdiction to regulate RTUs to require a RTU to obtain prior approval of a contract covering the performance of some of the RTU's sales, billing, and collecting work by a fully disclosed agent of the RTU rather than by an employee of the RTU. The determination of who should handle these routine business matters is best left up to the discretion of the management of the RTU. While the Commission declines to either approve or disapprove the sales agreement, it should be pointed out that any activities or practices engaged in by Mobilefone as agent for Recco or in connection with Mobilefone's business dealings for Recco which are found to be improper public utility practices or activities will be imputed to Recco in similar fashion as though the activity or practice had been done by an officer or employee of Recco. Also, our declining to approve or disapprove the sales agreement should not be construed as passing upon the prudence of contracting out the functions or the reasonableness of all or any part of the agreement. ✓

Despite the fact that the parties have conditioned the voluntary dismissal of the Mobilefone application upon the approval of the sales agreement by the Commission, we will dismiss Mobilefone's application since the differences of the parties

KN appears to have been resolved by the agreement. However, should the failure of the condition of Commission approval cause either of the parties to negate the sales agreement, a petition for modification can be filed. ✓

Findings of Fact

1. Mobilefone proposes to construct and operate a RTU system with an antenna location at Tuscan Buttes to serve an area to include the City of Red Bluff and portions of Tehama County.

2. Mobilefone's proposed service area will overlap part of the RTU service area of Repco, which has protested Mobilefone's application.

3. To settle their differences, Mobilefone and Repco have entered into a written sales agreement whereby Mobilefone has agreed to the dismissal of its Application No. 58743 and Repco has agreed to appoint Mobilefone as Repco's selling, billing, and collecting agent as more particularly set out in the sales agreement.

4. It is not necessary for the Commission to approve the sales agreement. ✓

5. Repco proposes to establish two additional base stations with 43 dBu field strength, and a control facility for use in its one-way paging service.

6. One of Repco's new base stations (and the control facility) will be located at Redding and will serve an area wholly within Repco's present service area.

7. The other new Repco base station will be located at Tuscan Buttes and will serve the same area proposed to be served by Mobilefone.

8. There is presently no paging service in Red Bluff or in the close in area around Red Bluff.

9. Repco's proposed service will be maintained on a continuous 24-hour basis.

10. Repco estimates that it will add 150 new paging units in the Redding-Red Bluff area the first full year of operation, and 500 new units in that area by the fifth full year of operation.

11. Repco will charge existing rates in the new operations.

12. Repco's new operations will not involve or entail construction of any substantial consequence.

13. Repco is financially able to establish and conduct the proposed service.

14. Public convenience and necessity require the issuance of the certificate requested in Application No. 58951.

15. It can be seen with reasonable certainty that there is no possibility that the proposed service may have a significant effect on the environment.

Conclusions of Law

1. Application No. 58951 should be granted.

2. Application No. 58743 should be dismissed.

The certificate hereinafter granted is subject to the provision of law that the Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Radio Electronics Products Corporation (Repco) to construct, operate, and maintain a one-way radiotelephone paging system to serve within the 43 dBu contour of the radiotelephone signal from proposed antennas to be located at Tuscan Buttes in Tehama County and in the City of Redding, including the establishment of a control station at Redding.

2. Repco is authorized to file after the effective date of this order, tariffs applicable to the service authorized herein containing the same rates and charges applicable to its present one-way paging service. Such filing shall comply with General Order No. 96-A. The tariffs shall become effective on not less than ten days' notice.

3. Repco shall file after the effective date of this order, as part of its tariff, an engineered service area map drawn in conformity with the provisions of Federal Communications Commission Rule 21.504.

4. Repco shall notify this Commission in writing of the date service is first rendered to the public under the tariffs herein authorized within ten days thereafter.

5. The certificate herein granted shall terminate if not exercised within one year after the effective date of this order.

6. Application No. 58743 is dismissed.

The effective date of this order shall be thirty days after the date hereof.

Dated FEB 13 1980, at San Francisco, California.

John E. Byrne
President

Veronica L. Stevenson

Robert W. Swartz

Clara T. DeBriol

Commissioners

Commissioner Leonard M. Grimes, Jr., being necessarily absent, did not participate.