

ORIGINAL

Decision No. 92374 NOV 4 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
ROCKY TOP ENTERPRISES INCORPORATED)
for a certificate of public convenience))
and necessity to construct a radio-)
telephone utility system.)

Application No. 59843
(Filed July 29, 1980)

O P I N I O N

Rocky Top Enterprises Incorporated (applicant) seeks a certificate of public convenience and necessity to construct and operate a radiotelephone utility (RTU) system. Applicant will offer mobile and paging services from one base station on Big Hill Road, Columbia, approximately 3,000 feet north-northeast of Halters Hill. The base station coordinates are 38° 02' 55" north latitude and 120° 20' 41" west longitude. The base station and the two-way and one-way mobile units will operate on frequency 152.18 MHz.

Applicant's principal place of business is 13562 Rocky Top End Road, Sonora, where it will maintain its message center and from which control point it will perform all dispatching. The message center and base station are approximately 150 feet apart. Services will be rendered on a 24-hour-per-day basis.

Applicant is concurrently requesting a construction permit and license from the Federal Communications Commission (FCC) covering the same system and services.

The proposed service area comprises the county of Tuolumne, the incorporated cities of Sonora, Jamestown, and Columbia, as well as a portion of the surrounding unincorporated areas of the County. The proposed service area is not currently served with either RTU two-way mobile or one-way paging service.

Applicant's market research indicates that the proposed RTU system will have approximately 100 one-way paging units and 75 two-way mobile units in the first full year of operation. Applicant estimates that by the fourth full year of operation the proposed system will have 175 one-way paging and 100 two-way mobile units.

Howard J. Kooyers, president of applicant, intends to devote full time to the supervision of the proposed RTU system. Kooyers has been in the radio business since 1957. He holds an FCC General Mobile Radio License for frequency 462.650 MHz (call letters KAC 4086). Applicant holds an FCC license for frequency 464.275 MHz (call letters WZP 899) for operation of a community repeater. Kooyers is a partner in Mother Lode Communications and C.B. Center (Mother Lode), a two-way radio sales and service company. Mother Lode also holds the FCC business radio licenses on the following frequencies: 151.625 MHz (call letters WXS 815), 151.865 MHz (call letters WXS 814), 157.740 MHz (call letters WRS 216), and 464.275 MHz (call letters WZR 359).

Kooyers, who holds an FCC Technician License Class 3, and Kevin S. Stone, who holds an FCC Technician License Class 2, will oversee all maintenance activities. They will be assisted by a third licensed FCC technician. Regular and emergency maintenance service on the proposed facilities will be available on a 24-hour-per-day, 7-day-per-week basis. Maintenance of the proposed facilities will be conducted in accordance with FCC standards to ensure proper functioning of the equipment, to prevent service problems, and to remedy equipment and service defects as they occur. A reserve supply of equipment will be maintained at applicant's premises, so that equipment temporarily or permanently out of service may be promptly replaced. This will ensure continuous service to all customers.

Applicant alleges that it was originally organized in August 1979 as a close corporation^{1/} for the purpose of operating a private radio business. Applicant subsequently issued all 1,600 authorized shares of capital stock to:

Howard J. and Dolores Ann Kooyers	48.75%
James S. and Mildred R. Cavanagh	48.75%
Kevin S. Stone	2.50%

On January 11, 1980 applicant executed 2 promissory notes evidencing two loans to applicant of \$2,500 each, one by Mildred R. Cavanagh and the other by Howard J. Kooyers for the purchase of private radio equipment.

Applicant requests that the issuance of stock and notes by applicant either be ratified, authority be given to reissue such securities, or that the Commission declare that it lacks jurisdiction over the execution and issuance of the securities.

There is nothing in the application to indicate that at the time of the issuance of stock or of the execution of the notes applicant was conducting a public utility business. Such transactions do not, therefore, require our authority.

A copy of the application was served by mail upon six RTUs in central California, Pacific Telephone and Telegraph Company, Tuolumne County, and the city of Sonora. Notice of the filing of the application was published in the Commission's Daily Calendar. No protests have been received. A public hearing is not necessary.

Findings of Fact

1. The public needs the proposed services, which are not provided by other RTUs in the area.

^{1/} In March 1980 its articles of incorporation were amended to delete the provision making applicant a close corporation.

2. Public convenience and necessity require that applicant construct and operate a radiotelephone and paging service within the 37 dbu contour shown on the map attached to the application as Exhibit D.

3. Total estimated start-up expenses are \$13,477.

4. The proposed rates (Exhibit I to the application) are fair and reasonable for the services rendered.

5. The applicant is technically qualified to operate the utility and has the capacity to finance the system.

6. The antenna pole and other support structures are already constructed and owned by Mr. and Mrs. James Cavanagh for private business radio services and will be leased to applicant for use in the proposed RTU system.

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

Conclusions of Law

1. The certificate should be granted.

2. The certificate granted herein and any to be granted for the exercise of any permit or license shall be subject to the following proviso:

Applicant is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Rocky Top Enterprises Incorporated authorizing it to construct and operate a common carrier mobile radiotelephone and paging system in Tuolumne County within the 37 dbu contour as shown on the map attached to the application.

2. Applicant is authorized to file, after the effective date of this order, the schedule of rates and charges attached to the application, to be effective on or before the date service is first rendered to the public under the authority herein granted, together with rules governing service to subscribers, tariff service area maps, and sample copies of printed forms normally used in connection with subscribers' services, in accordance with the requirements of General Order No. 96-A. Such rates, rules, tariff service area maps, and forms shall become effective on five days' notice to this Commission and to the public.

3. Applicant shall notify this Commission, in writing, of the date service is first rendered to the public under the rates and rules authorized herein, within ten days thereafter.

4. Applicant shall file with this Commission copies of all annual reports made to the Federal Communications Commission.

5. Applicant shall determine accruals for depreciation by dividing the original cost of the depreciable utility plant, less estimated future net salvage and less depreciation reserve, by the estimated remaining life of the depreciable plant. Applicant shall review the accruals as of January 1, following the date service is first furnished to the public under the rates and rules authorized herein and thereafter when major changes in depreciable utility plant composition occur, and at intervals of not more than five years. Results of these reviews shall be submitted to this Commission.

6. Applicant shall maintain its books of account in accordance with the Uniform System of Accounts for Radiotelephone Companies as prescribed by this Commission.

7. The certificate granted herein and the authority to render service under the rates and rules authorized herein will expire if not exercised within one year after the effective date of this order.

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

Dated NOV 4 1980, at San Francisco, California.

John E. Boyer
President
Vernon L. Sturgeon
Richard D. Howell
Charles J. Dequiel
Edmund J. Gray
Commissioners