

ORIGINAL

Decision 92989 MAY 5 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of EVELYN MARIE)
 MASSETTI, Executrix of the Will of)
 Fred C. Massetti; EVELYN MARIE)
 MASSETTI, FRED C. MASSETTI, JR.,)
 DOMINIC O. MASSETTI, JAMES P.)
 MASSETTI, and CECELIA A. MASSETTI,)
 heirs and legatees under the Will)
 of Fred C. Massetti; and MADERA)
 RADIO DISPATCH, INC., a California)
 corporation, for an Ex-Parte Order)
 of Authorization to a series of)
 Permit Transfers culminating in a)
 transfer to MADERA RADIO DISPATCH,)
 INC., and Application of MADERA)
 RADIO DISPATCH, INC., to borrow)
 money.)

Application 60119
(Filed December 1, 1980)

O P I N I O N

Evelyn Marie Massetti, Executrix (Executrix) of the Will of Fred C. Massetti (Deceased) late sole owner of Madera Radio Dispatch (MRD) on behalf of the heirs (Heirs) to the Estate: Evelyn Marie Massetti; Fred C. Massetti, Jr.; Dominic O. Massetti; James P. Massetti; and Cecelia A. Massetti and the newly formed corporation; Madera Radio Dispatch, Inc. (MRD, Inc.), request authority, pursuant to Sections 816, 825, 851 and 854 of the Public Utilities Code, for the following:

- A. Executrix:
 - 1. To transfer the Certificate of Public Convenience and Necessity and control of MRD, a sole proprietorship formerly owned by the Deceased, to MRD, Inc.

- B. MRD, Inc.:
2. To issue and sell three Installment Promissory Notes (Notes) in the aggregate principal amount of up to \$72,000 plus accrued interest;
 3. To encumber the assets of the utility under Security Agreements (Agreements); and
 4. To acquire control of MRD and its Certificate of Public Convenience and Necessity.

Notice of the filing of the application appeared on the Commission's Daily Calendar of December 9, 1980. No protests have been received.

MRD, a sole proprietorship, operates as a radiotelephone utility (RTU) under the jurisdiction of this Commission. MRD provides RTU service to its customers located principally in Madera County and in portions of surrounding counties in the State of California.

Attorney for the Heirs, MRD and MRD, Inc., in his letter dated March 17, 1981, confirms that MRD inadvertently entered into a long-term commitment to purchase 90 mobile radio units formerly belonging to Radio TV Hospital (Radio TV), a partnership owned 50% by the Deceased and 50% by Angelo F. Massetti and Gloria Massetti, his wife. These mobile radio units are to become the property of MRD, Inc., in the final settlement of the Estate and will, therefore, become a long-term obligation of the utility. The sale of the mobile radio units is evidenced by an Agreement of Sale of Personal Property (Agreement) between the Executrix and the other partner(s), Angelo F. Massetti and Gloria Massetti. A copy of the Agreement is attached to

the Attorney's letter of March 20, 1981. The terms of this Agreement call for the total aggregate payment of up to \$14,000 together with accrued interest computed at 5% annually on the unpaid balance. The payments were scheduled as follows:

	<u>Amount</u>	<u>Date</u>
Down Payment	\$ 4,060	July 1, 1979
1st Payment	4,970	July 1, 1980
2nd Payment	4,970	July 1, 1981
Total	<u>\$14,000</u>	

This transaction is void under Sections 825 and 851 of the Public Utilities Code. Since this transaction was consummated to provide for capital improvements, it is within the Commission's jurisdiction to grant approval of the transaction for this purpose.

MRD reported in its annual report to the Commission for calendar year 1979 that it generated total operating revenues of \$122,135 and net income of \$19,044. For the 13 months ended August 31, 1980, MRD reports it generated total operating revenues of \$175,383 and net income of \$12,486 shown as part of Exhibit A attached to the application.

MRD's Balance Sheet as of August 31, 1980, also shown as part of Exhibit A, reflects the utility's assets and liabilities which include the plant and long-term indebtedness discussed as inadvertent transactions. The balance sheet is summarized as follows:

	<u>Assets</u>	<u>August 31, 1980</u>
	Net Equipment	\$76,662
	Current Assets	20,044
	Total	<u>\$96,706</u>
	<u>Liabilities and Equity</u>	
	Common Equity	\$77,531
	Long-Term Debt	17,661
	Current Liabilities	1,514
	Total	<u>\$96,706</u>

On August 21, 1978, Fred C. Massetti, sole owner of MRD, died leaving his Estate to the five Heirs named in his Will. Evelyn Marie Massetti, his wife and stepmother to his children, was appointed Executrix of the Estate on September 19, 1978. The assets and operations of MRD, according to the application, were properly included in the Estate and were administered in probate proceedings.

As previously noted, the Deceased was half owner of Radio TV, a partnership he held with his brother, Angelo F. Massetti and Angelo's wife, Gloria Massetti. The Executrix agreed to enter into an Agreement with Angelo F. Massetti and his wife to purchase 90 mobile radio units to be transferred to MRD thereby separating the interests of the Deceased from Radio TV and benefiting MRD in the process. This resulted in the inadvertent contract to pay Angelo F. Massetti and Gloria Massetti the amount of \$14,000 representing their interest in the mobile radio units without the required Commission approval prior to the transaction.

After the Agreement was consummated and MRD was in control of all assets affecting its operations under the Estate, MRD continued

in active operation as a RTU under the custodianship of Fred C. Massetti, Jr. and James P. Massetti who had previously been employees and assistants to their father until his death.

According to the application, pursuant to the terms of the Will of the Deceased, the assets and operations of MRD were distributed in equal undivided interests to the following Heirs:

<u>Heirs</u>	<u>Relationship</u>
Evelyn Marie Massetti	Executrix and Stepmother to:
Fred C. Massetti	Son
Dominic O. Massetti	Son
James P. Massetti	Son
Cecelia A. Massetti	Daughter

The five Heirs, named above, initiated a plan (Plan) whereby all of the assets comprising MRD would be transferred to a newly formed corporation, MRD, Inc., with Fred C. Massetti, Jr. and James P. Massetti being officers and the only shareholders. MRD, Inc.'s articles of incorporation became effective as of May 30, 1980 and copies are attached to the application as Exhibit B.

Under the Plan, the two-fifths interests of Fred C. Massetti, Jr. and James P. Massetti would be transferred to MRD, Inc. to form its initial capitalization. The corporation would thereafter acquire the three-fifths interests of the remaining Heirs for \$72,000 in addition to the accrued interest. The Agreements with the remaining Heirs are evidenced by Contracts of Sale (Contracts) attached to the application as part of Exhibit D. MRD, Inc., proposes to issue to each of the three remaining Heirs a Note bearing the face value of

\$24,000 for a combined total of \$72,000 in addition to accrued interest thereon. Under the terms of the Notes, each of the three Heirs, Evelyn Marie Massetti; Cecelia A. Massetti; and Dominic O. Massetti, are to receive semiannual payments of \$1,000 or more plus accrued interest on the unpaid balance. Notes to Cecelia A. Massetti and Dominic O. Massetti bear interest at 9% per annum and Evelyn Marie Massetti's Note bears interest at 12% per annum with the added provision that no prepayments of principal may be made within the first 5 years without her prior consent.

MRD, Inc., proposes to issue to each of the Heirs (Secured Parties) an Agreement similar in form to that attached to the application as part of Exhibit D. Each of the Secured Parties has signed a Contract signifying agreement with the terms of the Plan and certifying consent.

The Executrix requests authority to transfer control of MRD and its Certificate of Public Convenience and Necessity to MRD, Inc. MRD, Inc., requests permission to control MRD under MRD's operating authority. All of the assets and operating rights originally vested in MRD would then be effectively transferred to MRD, Inc.

The books and record of MRD, Inc., must be kept in accordance with the Uniform System of Accounts for Radiotelephone Utilities. This System of Accounts for RTUs was adopted by Commission Decision (D.) 76362, dated November 4, 1969 in Case 8968 and provides that the

properties, which are to be transferred from MRD (and Radio TV) to MRD, Inc., are to be recorded on the utility's accounting records at their original cost. Original cost is defined as the cost of such properties to the person first devoting them to public service. The System of Accounts also provides that the utility is obligated to obtain (from MRD) all existing records for the properties transferred including records of plant construction dates, cost and records of depreciation and reserves applicable to this property.

The staffs of the Revenue Requirements Division and the Communications Division have reviewed the proposals set forth in the application and the letters from applicant's attorney. The Division considers the requests reasonable and not adverse to the public interest.

Findings of Fact

1. MRD, a sole proprietorship, operates as an RTU subject to the jurisdiction of this Commission.

2. MRD, the predecessor of MRD, Inc., without Commission approval inadvertently obligated the utility for a long-term commitment in the aggregate principal amount of \$14,000 to acquire 90 mobile radio units from Radio TV. This transaction is void under Sections 825 and 851 of the Public Utilities Code.

3. MRD, Inc., a newly formed California corporation, seeks to control MRD and to acquire its Certificate of Public Convenience and Necessity. The acquisition of control by MRD, Inc. would not be adverse to the public interest.

4. The proposed authority to issue Installment Promissory Notes and Security Agreements to encumber the utility's assets would not be adverse to the public interest and would be for proper purposes.

5. The money, property or labor to be procured and paid for with the borrowed funds and covered by the Notes, herein authorized, are required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

6. There is no known opposition and no reason to delay granting the authority requested.

Conclusions of Law

1. A public hearing is not necessary.

2. The application should be granted to the extent set forth in the order which follows.

The authority, herein granted, is for the purpose of this proceeding only and is not to be construed as a finding of the value of the rights and properties to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1981, Evelyn Marie Massetti, Executrix of the Will of Fred C. Massetti, may transfer all properties of the radiotelephone utility system known as Madera Radio Dispatch to Madera Radio Dispatch, Inc., in accordance with the terms in the application.

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2. Madera Radio Dispatch, Inc., may receive the utility assets, assume all of the liabilities and shall undertake the public utility obligations of Madera Radio Dispatch.

3. Within 10 days after transfer, Madera Radio Dispatch, Inc., shall write the Commission stating the date of transfer and that it assumes radiotelephone utility obligations.

4. Madera Radio Dispatch, Inc., shall either file a statement adopting Madera Radio Dispatch's tariffs or refile those tariffs under its own name as prescribed in General Order Series 96. Rates shall not be increased unless authorized by this Commission.

5. Before the transfer occurs, Madera Radio Dispatch shall deliver to Madera Radio Dispatch, Inc., and Madera Radio Dispatch, Inc., shall keep all records of the construction and operation of the radiotelephone utility system.

6. Madera Radio Dispatch, Inc., shall maintain its accounting records on a calendar year basis in conformance with the Uniform System of Accounts for Radiotelephone Utilities adopted by Commission Decision 76362, dated November 4, 1969, in Case 8968, and shall file with the Commission on or before March 31 of each year, an annual report of its operations in such form, content and number of copies as the Commission, from time to time, shall prescribe.

7. Within sixty days after actual transfer, Madera Radio Dispatch, Inc., shall file with the Commission a copy of each journal entry to record the transfer on its books of account.

8.. When this order has been complied with, Madera Radio Dispatch shall have no further obligation in connection with this radiotelephone utility system.

9. On or after the effective date hereof and on or before December 31, 1981, Madera Radio Dispatch, Inc., may issue and sell Installment Promissory Notes in the aggregate principal amount of up to \$72,000 plus accumulated interest thereon bearing the same terms and conditions as the notes attached to the application as part of Exhibit D.

10. Madera Radio Dispatch, Inc., may issue and deliver Security Agreement(s) encumbering the assets of the utility.

11. On or after the effective date of this order, Madera Radio Dispatch, Inc., may issue a promissory note in the aggregate principal amount of \$14,000 to Radio TV Hospital bearing the terms and conditions agreed to under the Agreement of Sale of Personal Property attached to applicants' attorney's letter of March 20, 1981.

12. Madera Radio Dispatch, Inc., shall issue the promissory notes, herein authorized, for the purposes stated in the application and in the attorney's letters to the Commission.

13. Madera Radio Dispatch, Inc., shall file with the Commission a report, or reports, as required by General Order Series 24, which, insofar as applicable, is made a part of this order.

14. This order shall be effective when Madera Radio Dispatch, Inc., has paid the \$172 fee prescribed by Section 1904(b) of the Public Utilities Code. In all other respects this order becomes effective 30 days from today.

Dated MAY 5 1981, at San Francisco, California.

John E. Byrne
President
Richard D. ...
Victor ...
Priscilla C. ...
Commissioners

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
PAID
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MAY 6 - 1981
\$ 172.00
BY J. J. Palomga