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Decision 98-01-049 January 21, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Metrocall, Inc. (U-2079-C), a Delaware Corporation, for a Certificate of Public Convenience and Necessity to Add Radiotelephone Utility Facilities and to Extend Utility's Service Areas in and Around the Counties of Sierra, Nevada, San Luis Obispo, and El Dorado, California, Pursuant to Sections 1011, et seq., of the California Public Utilities Code.

ORIGINAL

Application 93-10-029
(Filed October 14, 1993)

ORDER GRANTING MOTION TO DISMISS

By this decision, we grant the motion to dismiss Application (A.) 93-10-029 as moot. The applicant in this matter, Metrocall of Delaware, Inc. (Metrocall), originally filed an application in October 1993. Metrocall is a radiotelephone utility (RTU) with its principal place of business in Arcadia, California, providing one-way paging services throughout its service area.

Applicant Metrocall, whose predecessor in interest had been certificated by Decision (D.) 86-03-021, and which had obtained expanded authority through D.88-04-012 and D.89-08-024, desired to further expand its service area at four locations near Truckee, Shingle Springs, and San Luis Obispo, California. Since at least two of these sites were located outside of the federally defined service area surrounding Metrocall's existing transmitters, Metrocall filed to request expanded authority from this Commission.

The above was done notwithstanding the provisions of the Budget Act, which had been enacted on August 10, 1993. The Budget Act provided, among other things, that, absent a petition from this Commission on or before August 10, 1994, the Federal Communications Commission (FCC) would preempt state authority over conditions of entry and rates charged by commercial mobile radio service (CMRS) providers.

Since the precise extent of federal preemption was not yet clear at the time, Metrocall filed its application. Subsequently, however, in D.94-10-031, the Commission confirmed that:

"The Budget Act eliminated the requirement for a certificate of public convenience and necessity as a prerequisite to providing wireless communications services."

Applicant Metrocall believes that the Budget Act, taken together with D.94-10-031, has eliminated the need to obtain a separate certificate of public convenience and necessity for the expansion of its system described in A.93-10-029. Accordingly, the applicant filed a motion to dismiss the application.

Discussion

We agree that the Budget Act taken together with D.94-10-031 has rendered A.93-10-029 moot. In addition, our jurisdiction over all aspects of regulation of one-way paging services terminated effective January 1, 1996 due to the passage of AB 202 (Chapter 357, 1995 statutes). Accordingly, the motion to dismiss is granted and the application is closed.

Findings of Fact

1. Applicant filed an application to add additional radiotelephone utility paging sites and to extend its paging service area pursuant to Sections 1001, et seq. of the California Public Utilities Code.
2. As acknowledged by the Commission's Decision 94-10-031, the Budget Act has eliminated the requirement for a certificate of public convenience and necessity as a prerequisite to providing wireless communications services such as that offered by applicant in California.
3. The Commission's jurisdiction over one-way paging was terminated effective January 1, 1996.

Conclusion of Law

Since the instant application was based on the law prior to the Budget Act, and assumed the necessity of a certificate of public convenience and necessity, it should be dismissed as moot.

IT IS ORDERED that:

1. The motion to dismiss Application (A.) 93-10-029 is granted.
2. A.93-10-029 is closed.

This order is effective today.

Dated January 21, 1998, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners