

ORIGINAL

Decision No. 62582

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SYLVAN B. MALIS, doing business)
as COAST MOBILPHONE SERVICE,)

Complainant,)

vs.)

Case No. 7059

GENERAL TELEPHONE COMPANY OF)
CALIFORNIA, a corporation,)

Defendant.)

William L. Cole, for complainant.
Albert M. Hart and H. Ralph Snyder, Jr.,
for defendant.
Paul Popenoe, Jr., for the Commission staff.

O P I N I O NSummary of the Proceedings

On January 6, 1961, General Telephone Company of California¹ transmitted to the Commission, under its Advice Letter No. 1126 tariff schedules relating to the rates, terms and conditions under which it proposes to offer mobile telephone service in the Santa Barbara area. These schedules were received and filed on January 9, 1961, and were to have become effective on February 9, 1961. On February 7, 1961,² Sylvan B. Malis, doing business as Coast Mobilphone Service, filed

¹General Telephone Company of California (General) is the largest independent telephone company in the United States. It provides land-line public message telephone service to about 1,150,000 stations located in approximately 125 California communities within 32 exchange areas, among them being the Santa Barbara and Carpinteria exchanges. In conjunction with providing landline telephone service, General now serves 136 mobile radio stations.

²Coast Mobilphone Service (Mobilphone) offers mobile telephone service in the Santa Barbara area. In this connection, it is licensed by the Federal Communications Commission (FCC) to operate a base radio station and up to 75 mobile radio stations as a miscellaneous common carrier in the Domestic Public Land Mobile Radio Service. Mobilphone provides radiotelephone service to 23 subscribers through a total of 25 mobile stations. It does not own and operate landlines for the rendering of message telephone service to the public.

the above-numbered complaint against General, requesting that said tariff schedules be permanently suspended or cancelled. The Commission by its order of suspension and investigation dated February 7, 1961, suspended said tariffs until May 10, 1961, and instituted an investigation into their propriety and reasonableness. The suspension was subsequently extended by the Commission to November 10, 1961. On March 3, 1961, General filed its answer to the complaint and a motion to dismiss. Mobilphone on March 13, 1961, filed a reply to the motion to dismiss and, on April 17, 1961, filed an amendment to the complaint. On April 27, 1961, General filed its answer to the amendment. Public hearing was held on June 1, 1961, at San Francisco before Commissioner Frederick B. Holoboff and Examiner James F. Haley. The matter was taken under submission upon receipt of briefs on June 15, 1961.

Status of Mobilphone

At the opening of the hearing, General renewed its motion to dismiss, primarily on the grounds of its allegation that Mobilphone is not a public utility and, therefore, does not have appropriate status to bring the complaint. It is unnecessary for the Commission to determine whether, as General contends, that only a public utility could bring such a complaint or whether, as Mobilphone contends, that any individual could so complain. The Commission, on June 20, 1961, issued its second interim opinion and order, Decision No. 62156 in Case No. 6945, an investigation into, among other things, the California intrastate operations of miscellaneous communication common carriers in the Domestic Public Land Mobile Radio Service. Said decision declared that 42 such radiotelephone carriers, among them Mobilphone, are public utility telephone corporations subject to the jurisdiction of this Commission.

³ As defined in Rules and Regulations of the FCC, Section 21.1, Subpart A - Definitions.

Mobilphone's Position

In substance, Mobilphone contends that the suspended tariff schedules should be cancelled by reason of the following allegations and contentions:

1. That, because General has not obtained the necessary radio station license from the FCC, it is not at this time in a position to perform the service which it proposes to offer under the suspended tariff schedules; that it cannot be determined when, if ever, it will be issued such a license and thus be in a position to perform the proposed service, and that, rather than the procedure it did follow, General should have followed the procedure available to it under Section 1003 of the Public Utilities Code, whereby it could have obtained an appropriate order from this Commission in anticipation of a license from the FCC.

2. That General must obtain from this Commission (a) a certificate of public convenience and necessity, under Section 1001 of the Public Utilities Code, authorizing it to construct the plant necessary to provide the proposed mobile telephone service and (b) a certificate of public convenience and necessity, under Section 1002 of that code, to exercise any right or privilege under any franchise or permit granted.

3. That Mobilphone is at the present time rendering mobile telephone service comparable in type and superior in quality to that which General proposes to provide; that the public interest does not require and would not be served by two utilities offering such service in the Santa Barbara area; that, if two utilities were allowed to serve the area, there would be a dilution of the limited market, requiring of Mobilphone to increase its already somewhat higher rates and resulting in a destructive loss of Mobilphone's business.

General's Position

Defendant generally denies the allegations of Mobilphone.

As a defense, it alleges and contends substantially as follows:

1. That it has complied with all applicable laws and the regulatory requirements of this Commission and the FCC in preparing to offer mobile telephone service in the Santa Barbara area; that, sequentially, the appropriate procedure for obtaining the necessary approvals of the respective Commissions is, first, to apply for and obtain a construction permit from the FCC, second, to file tariffs and receive from this Commission approval of the rates and conditions under which the proposed service is to be offered, and, finally, to apply for and obtain a radio station license from the FCC; that General has obtained the necessary construction permit from the FCC and has filed the applicable tariffs with this Commission; that construction under the permit will be completed by June 18, 1961; and that, were it not for the suspension of its tariffs, General would now be in a position to make application to the FCC for a station license.

2. That mobile telephone service is no different from the normal public utility telephone service that General is already furnishing to its subscribers under appropriate certificates from this Commission; that General is merely proposing the extension of its exchange and toll telephone facilities to subscribers in vehicles; that Section 1001 of the Public Utilities Code permits an extension within or to territory already served by a utility, necessary in the ordinary course of its business; and that General is also authorized to provide mobile telephone service under the franchise granted by Section 7901 of the Public Utilities Code.

3. ⁴That Mobilphone is permitted to offer only dispatching ⁵ service, whereas General is proposing to furnish general service⁵ and signalling service⁶ in addition to dispatching service.

Required FCC Authorization

Prior to filing tariff schedules for the proposed mobile service with this Commission, General applied for and on October 18, 1960, was granted a construction permit by the FCC for the transmitting station required. The permit authorized construction of a base station and up to 100 mobile units. Subsequently, it developed that General would not be able to use the site specified in the construction permit for its base station. Therefore, on April 12, 1961, it made application to the FCC for a modified construction permit providing for another base station site. On June 5, 1961, the FCC granted the modified construction permit. General stated herein that it would be able to complete construction in 14 to 18 days after receiving the modified permit.

⁴Dispatching service contemplates two-way communications, normally of not more than one-minute's duration, between a base radio station and a mobile radio station, between two mobile radio stations, or between a mobile radio station and a landline telephone station not connected to a public message telephone system.

⁵General service permits direct two-way voice communications between a mobile radio station and a landline telephone station connected to a public message telephone system, or between two mobile radio stations via a base radio station.

⁶Signaling service is limited to one-way communications from a base radio station transmitted to a mobile radio station receiver.

Having obtained the appropriate construction permit, General must, before it may under any circumstances render the proposed mobile service, obtain the necessary radio station license from the FCC. The record herein indicates that as one of the prerequisites to the actual granting of such a license an applicant telephone utility must demonstrate to the FCC that it is authorized to render the proposed service by the appropriate authority within the State involved-- in this instance, of course, the Public Utilities Commission of the State of California. In the appreciable number of prior instances where such licenses have been granted to California telephone utilities, the FCC appears to have been satisfied as to this particular by showings that appropriate tariffs have been filed with and not suspended by this Commission. It is reasonable to assume, therefore, that such a showing by General would satisfy the FCC as to this particular in this instance.

Required CPUC Authorization

The evidence leaves no doubt that General possesses all necessary certificates and other authorization from this Commission to provide general telephone service both in the City and the County of Santa Barbara. The franchises and certificates under which General so operates place no limitation as to the mode or manner in which the provision of such telephone service is to be accomplished. General's proposal to provide telephone service to subscribers in vehicles is a normal extension of its plant and telephone service. It is immaterial that the proposed extension is, perforce, to be accomplished by a radio link rather than a wire link. General's authority to offer mobile service without obtaining a certificate of public convenience and necessity is contained in Section 1001 of

the Public Utilities Code, which provides in part that a telephone utility is not required to secure such a certificate for an extension within or to territory already served by it, necessary in the ordinary course of its business.

Section 7901 of the Public Utilities Code is inapplicable to the facts in this proceeding. By that section the Legislature tendered a franchise to all telephone and telegraph companies to use streets, public highways and public places for construction and operation of telephone or telegraph lines. (Pac Tel & Tel v City of Los Angeles, 44 C 2d 282; City of Petaluma v Pac Tel & Tel Co., 44 C 2d 284.)

Comparability of Service

Mobilphone's tariffs as filed with the FCC,⁷ and as introduced into this proceeding as Exhibit No. 2, permit it to offer dispatching service only. They do not provide for the offering of either general service or signaling service, both of which General proposes to provide as well as dispatching service. Further, Mobilphone's tariffs state that there are no concurring, connecting or other participating carriers involved in the rendering of its service offerings.

Notwithstanding the provisions of its tariffs to the contrary, Mobilphone asserts that it does render general service and does so by inductively coupling into General's Santa Barbara system at the telephone subscriber facilities located at the control point of its base station. By means of this interconnection, Mobilphone's subscribers are presumably able to communicate from their vehicles with all telephones in the Santa Barbara and Carpenteria exchanges, or for that matter, all telephones available through the nationwide toll network. The record reveals that Mobilphone has no authorization for this interconnection, either from General or any other telephone utility, or from this Commission or any other regulatory authority.

⁷Decision No. 52156 directs Mobilphone to refile such tariffs with this Commission on or before August 9, 1961.

The interconnection, as now made, is plainly not contemplated under either Mobilphone's tariffs or General's tariffs. Except as to dispatching service, Mobilphone does not offer a properly authorized service which is comparable in type to that proposed by General. This seriously detracts from the merits of Mobilphone's allegations that the public interest would not be served if General were also to offer mobile service in the Santa Barbara area.

Desirability of Competition

As is the case with other types of communication utilities, both the FCC and this Commission have spheres of regulatory authority over the operations of radiotelephone utilities. Where regulatory authority is so divided, the public interest demands that the policies of the two jurisdictions be sufficiently consistent to prevent an impasse under which business cannot be conducted because of one jurisdiction thwarting the mandates of the other.

Brought to the fore by this proceeding is the question of the desirability of permitting competition between a radiotelephone utility of the miscellaneous common carrier class and a landline utility providing general telephone service. In all instances, the furnishing of mobile telephone service by either class of utility is possible only upon the issuance of a radio station license by the FCC. As set forth in Exhibit No. 15 in this proceeding, the FCC has encouraged the development of competitive public radiotelephone systems through the provision of a family of frequencies within which the development of common carrier mobile radio systems by enterprises other than existing telephone companies may take place.

In establishing that policy, the FCC notes that its determinations

³FCC Memorandum Opinion and Order, adopted December 21, 1960, in Docket No. 13900, in re Application of General Telephone Company of California for a construction permit to establish a new two-way common carrier station in the Domestic Public Land Mobile Radio Service at Santa Barbara, California (Station KME440), in which Mobilphone appeared as a protestant.

have been effected advisedly, and with the stated purpose, among others, of fostering the development of competing systems, techniques and equipments. The FCC expresses the view that this purpose, in the light of experience since it was so stated in 1949, has proved to be salutary. This Commission expresses the concurring view that a policy of fostering limited competition has a beneficial effect on the development of the communications art and industry. The pursuance of such a policy by this Commission will, in a manner consistent with the established licensing policies of the FCC, go far toward assuring optimum utilization in California of the respective portions of the radio-frequency spectrum allocated by the FCC to telephone utilities as a class and to miscellaneous common carriers as a class.

Requirement for Mobile Telephone Service

A witness for General testified that a commercial survey of the Santa Barbara area had been conducted and that, of 173 business firms contacted, 133 expressed interest in the mobile service General proposes. Of these 133 firms, General obtained signed statements from 74 expressing need for a total of 157 mobile units. While the initial development to be realized may fall short of 157 units, it is reasonable to conclude that there is a considerable public requirement at present for the proposed service.

Mobilphone either has not exploited or it has been unable to meet the needs of its potential market area. Mobilphone has been in operation since 1957, and its business has levelled off at 25 mobile stations, or at one-third of its licensed capacity of 75 stations. Underlying Mobilphone's demonstrated inability to grow with the expanding demand for mobile service may be the rate treatment which it affords to its customers. According to Mobilphone's

witness, all of its subscribers purchased their own mobile equipment and have Mobilphone provide maintenance thereon. According to this witness, all of Mobilphone's customers elected to purchase rather than rent their radio equipment even though a considerable capital outlay per station is involved. This fact suggests that mobile development would be considerably accelerated by the offering of vehicular station equipment on a monthly rental basis as General herein proposes.

It is apparent that, if the demand indicated by the commercial survey were to materialize, and this Commission believes such demand will ultimately be surpassed, then the limited frequencies available to General as a telephone utility might become congested, causing a deterioration of mobile service and a backlog of held orders in the manner already experienced by a telephone utility in a California metropolitan area. For this and other reasons, the Commission is of the opinion that the public interest would be best served by mobile general service being rendered in Santa Barbara by both a general telephone utility and a radiotelephone utility of the miscellaneous common carrier class. Such an arrangement would assure the greatest possible frequency availability, thus permitting the maximum number of Santa Barbara residents to obtain such service.

In connection with the rendition of mobile general service by a telephone utility of the miscellaneous common carrier class, the Commission reminds the parties that the Legislature has conferred upon it by Section 766 of the Public Utilities Code jurisdiction to determine whether the public convenience and necessity require physical interconnection between the lines of two or more telephone corporations and to order that such connection be made upon the payment of just and reasonable compensation.

Findings and Conclusions

Based upon a careful consideration of the record, the Commission finds and concludes that:

1. The proposed mobile service is a normal extension of telephone service within or to territory already served by General, necessary in the ordinary course of its business.
2. Without additional certification by this Commission, General has the authority to provide mobile telephone service in the Santa Barbara area by virtue of the certificates of public convenience and necessity under which it now operates.
3. General followed proper procedure before this Commission in the filing of tariff schedules for the proposed mobile service under its Advice Letter No. 1126.
4. There is a public requirement for both the service proposed by General and the mobile general service now being provided by Mobilphone.
5. The complaint of Mobilphone against General should be dismissed and the suspended tariffs allowed to become effective.
6. Mobilphone is not presently authorized to provide mobile general service.
7. Mobilphone's interconnection with General, as now established, is neither authorized nor concurred in.
8. The public interest would be served if Mobilphone were authorized to provide mobile general service through a regularized interconnection with General.

O R D E R

Public hearings having been held, evidence having been received and the matter having been submitted for decision,

IT IS ORDERED that:

1. The complaint filed under Case No. 7059 be and it hereby is dismissed.
2. The investigation instituted under Case No. 7059 be and it hereby is discontinued and the orders therein dated February 7 and April 18, 1961, be and they hereby are vacated; the suspension is lifted and the rates filed by General Telephone Company of California

under its Advice Letter No. 1126, Revised Cal. P.U.C. Sheets Nos. 8608-T through 8615-T, inclusive, are accepted and shall become effective on the effective date of this order.

3. Coast Mobilphone Service shall undertake to regularize its interconnection with General Telephone Company of California and to obtain all necessary authorizations to provide general service. Failing in or not pursuing either endeavor, it shall forthwith terminate its interconnection with General and cease holding out that it offers general service.

4. General Telephone Company of California shall lend its best offices to a mutually cooperative effort with Coast Mobilphone Service toward regularizing the interconnection now existing between the two utilities.

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

Dated at San Francisco, California, this 19th day of SEPTEMBER, 1961.

Crest R. Ray
President

C. L. Taylor

George H. Hoover

Fredrick B. Holbrook

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.