

ORIGINAL

Decision No. 66101

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of
R. L. MOHR dba ADVANCED ELECTRONICS,
for a certificate of public con-
venience and necessity to construct
a new radiotelephone utility system.

)
) Application No. 44642
) (Filed July 16, 1962)
) Amendment filed
) March 21, 1963

- Saul Grayson, Joseph T. Vodnoy and Saul R. Levine,
for applicant.
- Silver & Cole by William L. Cole, for Industrial
Communications Systems, Inc., Lyman Berg, dba
Radio Dispatch Service and Orange County
Radio Telephone Service, protestants.
- Lester W. Spillane for Industrial Communications
Systems, Inc., protestant.
- Sylvan B. Malis for Coast Mobilphone Service,
protestant.
- R. W. Russell by K. D. Walpert, for City of
Los Angeles, interested party.
- Eugene S. Jones, for Commission staff.

O P I N I O N

By this application as amended, applicant requests a certificate of public convenience and necessity pursuant to Section 1001 of the Public Utilities Code to construct a two-way radio dispatch common carrier system to provide service to the South Bay communities adjacent to the City of Los Angeles and requests an order pursuant to Section 1003 of the Public Utilities Code declaring that upon supplemental application a certificate of public convenience and necessity will be granted to exercise all rights and privileges to be obtained under a construction permit and license that may be issued to applicant by the Federal Communications Commission authorizing the construction of the

contemplated base station and associated facilities.

Public hearing on the application as originally filed was held before Examiner Patterson in Los Angeles on January 9 and March 13, 1963.

Applicant's motion for an extension of time and leave to amend the application was granted at the hearing on March 13, 1963, and hearings on the amended application were held in Los Angeles on March 25, 26, and April 22, 1963. The matter was submitted on April 22, 1963, subject to receipt of concurrent briefs. Applicant's motion to strike protestant's brief on the ground that it was not filed concurrently with applicant's brief is denied.

Under the application as amended, applicant proposes to provide two-way radio communications service on a common carrier basis in the cities of Rolling Hills Estates, Rolling Hills, Palos Verdes Estates, Torrance, Redondo Beach, Hermosa Beach, Manhattan Beach, El Segundo, Hawthorne, and Gardena, and in unincorporated portions of the County of Los Angeles contiguous with the aforesaid cities.

The area to be served is represented as having a population of approximately 500,000 persons. The base station transmitter and antenna would be located at an elevation of 1,150 feet, in the Palos Verdes Hills, on property owned by the applicant. Applicant's control point, which would be linked to the base station by a leased telephone line, would be located in Torrance and under the

agreement, dispatching would be handled on a 24-hour basis by Arthur D. Kinane, dba Arthur's Answering Service. With the message center at this location, the Redondo, El Segundo, Hawthorne, Torrance, Lomita, San Pedro and Compton (DA) exchanges fall within the local calling area.

The proposed system would operate on frequencies of 454.30 mc for the base station and 459.30 mc for the mobile units. The directional antenna would beam the signal in a northwesterly direction towards the South Bay communities along the coast. The intended area of coverage is shown by the 37 DBU contour on Exhibit No. 7. Said contour is shown as passing just west of Wilmington, east of Gardena and then northerly through the Hollywood area and into a portion of the San Fernando Valley and then curving back to the coast line at a point approximately half way between Malibu Beach and Dume Point.

Under the application prior to amendment the base station was to be located in the City of San Pedro and the control point was to be located in Wilmington. According to the record the application was amended in an endeavor to eliminate opposition of certain protestants that the proposed service would constitute an invasion of their service areas and also to provide a system which would more nearly meet the needs of the South Bay communities by providing better coverage and service.

The applicant, Robert L. Mohr is a graduate engineer who has been in the electronics business since 1951 and a resident of the South Bay area since 1939. Presently he owns and operates maintenance and service facilities for two-way radio equipment

in Wilmington. According to the evidence he currently services approximately 700 privately-owned two-way radio units and also services the communications equipment of most of the cities comprising the South Bay area.

As to the need for a two-way radio common carrier system to serve the South Bay area, testimony presented on behalf of applicant, indicates that service which is now provided by existing operators, may not be meeting the need in all respects. The testimony shows that the two-way radio service provided by General Telephone Company is satisfactory as far as coverage is concerned, but the telephone company's facilities are oversubscribed to the extent that a long waiting period is required before a new subscriber can receive service. The evidence further indicates that the private radio services including the Citizens band is so overcrowded that effective utilization of the frequencies is impossible.

The record shows that the South Bay area is presently served in whole or in part by four existing common carrier radiotelephone utilities. It is the contention of applicant that the service rendered by these radiotelephone utilities is not satisfactory for the South Bay area as (1) the maintenance facilities of these carriers are a great distance from the South Bay area, (2) the residents of the South Bay area have not been apprised of outside services being available either through local telephone directory advertising or other recognized advertising means, (3) the cost of the telephone messages used in connection with the radio system are prohibitive inasmuch as the message control centers of the existing radiotelephone systems are foreign to the South Bay area and (4) the

unique terrain conditions prevailing in the South Bay area make it impracticable for outside transmitters to provide adequate coverage in all areas of the South Bay.

As to the specific need which exists in the South Bay area, applicant presented three witnesses who testified that they would subscribe to the service which he proposes to provide. This testimony was also supplemented by testimony of the Assistant Chief of Police for the City of Redondo Beach who testified that a local two-way radio system would help relieve the congestion on the city's private communication system. He also testified that he had made an investigation to determine if any existing common carrier services could satisfy the need for the area, and that he was unable to find any that would be adequate.

The record shows there is a substantial concentration of commercial and industrial development in the South Bay area.

Applicant's proposed tariff schedule is set forth in amended Exhibit E attached to the amendment to the application. Under this tariff there would be a \$15 per month charge for an unlimited number of one-minute calls. All calls in excess of one minute would be charged at the rate of 8 cents for each 30 seconds or portion thereof. Subscribers would have the option of providing their own mobile units or renting them from the applicant. Applicant's rental charge would be \$20 per month per unit with an additional charge of \$1.50 per month per unit if selective calling is desired. The installation charge would be \$25 per mobile unit.

The principal protestant in this proceeding is Industrial Communications Systems (ICS) which obtained its first license from

the Federal Communications Commission (FCC) in December 1958 and was authorized and directed to continue service as a radiotelephone utility by the California Commission in the "grandfather rights" Decision No. 62156 dated June 20, 1961. ICS operates on two channel pairs from transmitting stations on Verdugo Peak in the City of Glendale and Santiago Peak in Orange County. Its control point and message center are both located at 1500 W. 50th Street, Los Angeles, California. With the message center location at this point the Los Angeles, Inglewood, Hawthorne, and Compton exchanges fall within the local calling area. In addition the El Segundo, Redondo and Torrance exchanges have recently been made available on a local calling basis by virtue of a foreign exchange line installed pursuant to request of ICS made shortly before the hearing was concluded.

ICS presently has about 95 subscribers and 125 mobile units and under its FCC license is authorized to serve approximately 210 mobile units.

On August 14, 1962, ICS filed with the FCC for the same channel pair that Mr. Mohr has requested. The ICS filing was made subsequent to the Mohr filing and it is understood that the FCC is withholding action on the two filings pending this Commission's disposition of the instant application.

Counsel for ICS stated that if ICS were to utilize the frequency under consideration, it would do so within the confines of its present 37 DBU contour and so would not require certification of this Commission.

A consulting engineer for ICS testified that his studies show that the present ICS two-channel operation is capable of handling up to 300 mobile units and that the addition of a third

channel should permit service to 200 or 300 additional units. He testified that on the other hand a single channel use of the available frequency such as proposed by Mr. Mohr would only permit service to approximately 100 units.

In addition to its operation in the Los Angeles basin area ICS also operates a radiotelephone utility system in Lancaster. The transfer of this system from the former operator to ICS was authorized by Decision No. 63333 dated February 26, 1962, in Application No. 44043. According to the record ICS presently does not serve any customers in its Lancaster operation.

ICS, in substance, contends that it presently provides an extensive common carrier service which includes the South Bay area and that ICS, through its operation, would make a more efficient utilization of this channel which currently is the only one available for the Los Angeles area.

Protestant, Lyman Berg, dba Radio Dispatch Service, operates a radiotelephone utility with a transmitter located on Signal Hill which serves generally the greater Long Beach area and also the cities of Torrance, Redondo Beach, Hermosa Beach and Manhattan Beach in the South Bay area. He has operated his common carrier system for 14 years and presently serves approximately 29 customers with 64 mobile units and is authorized under his FCC license to serve up to 150 mobile units. According to his testimony most of his customers are in the greater Long Beach area but he does have two customers in the South Bay area.

By means of foreign exchange trunks Mr. Berg has extended his local calling area to the exchanges for Los Angeles, Compton, Torrance, Lomita and Redondo but not for Hawthorne or El Segundo. He protests the Mohr application on the basis that it would be a new operation within his 37 DBU contour and so might take away some of his existing subscribers as well as potential subscribers. The record shows he would not oppose use of the frequency by ICS, provided ICS could show a need for it.

The Orange County Radiotelephone Service, a radiotelephone utility operating basically in Orange County, protests the Mohr application even though its 37 DBU contour would not be overlapped by the Mohr proposal. The protest is on the basis that Mohr might solicit customers from his area and on an opinion that it would not be an efficient utilization of the frequency which is available. From the evidence it is apparent that Orange County Radiotelephone Service would not protest the use of the frequency by ICS.

A protest to the Mohr application was also lodged by Sylvan B. Malis, who operates the Coast Mobilphone Service at Santa Barbara. His protest is based upon fear of interference, as his radio link from control point to transmitter is on the same frequency as the Mohr proposed operation. Such a protest has no weight in this proceeding as matters of interference and frequency assignments fall within FCC jurisdiction.

Testimony was presented by witnesses for applicant to indicate that present radiotelephone service in the South Bay area is inadequate, and testimony was presented by witnesses

for protestants to indicate that the present service is satisfactory. Such testimony is conflicting but it is clear that in certain areas, below the high ground between the Pacific Coast Highway and the ocean, there are dead spots where messages could not be received or transmitted.

The issue before us in this proceeding is whether public convenience and necessity require that we award operating rights to a new radiotelephone utility which will provide a specialized service for the particular community of South Bay, or whether the request for such operating rights should be denied and thereby make the frequency available for an existing radiotelephone utility for use throughout the Los Angeles Basin area.

The evidence shows and we so find that there is a need for mobile common carrier service in the South Bay area and that this need is not being fully met by the existing mobile common carriers either because of crowded facilities, lack of adequate coverage, or failure to expand facilities so as to meet the particular needs of the South Bay community.

It is necessary then to decide whether further competition such as would be afforded by certification of a new carrier would be in the over-all public interest.

In Malis v. General Telephone Co., 59 Cal. P.U.C.

110,115, we stated:

" . . . 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 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."

We are of the opinion that granting of the certificate requested herein will be consistent with our policy above expressed of fostering limited competition.

We find that applicant has demonstrated the technical qualifications and financial ability to construct and operate the proposed system.

We find that public convenience and necessity require the construction by applicant of a two-way radiotelephone common carrier system to provide service to the South Bay communities in the County of Los Angeles, as set forth in the ensuing order. We conclude that the application should be granted, and that applicant should be authorized to establish rates, as set forth in the order following.

The certificate hereinafter granted shall be subject to the following provision of law:

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.

We also conclude that, when applicant has established that a construction permit and license has been issued by the Federal Communications Commission authorizing the construction of the base station and the associated facilities, an order should issue granting applicant a certificate of public convenience and necessity to exercise all rights and privileges granted by such construction permit and license.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to R. L. Mohr to construct and operate a two-way radio-telephone utility system to provide service to the South Bay communities in the County of Los Angeles, all as more fully described in the application as amended.
2. Applicant is authorized to file in quadruplicate with this Commission after the effective date of this order a complete set of tariff schedules including a service area map substantially in the form of the map comprising a part of Exhibit 7, and rates as set forth in amended Exhibit E attached to the amendment to the application, and to make such rates effective upon not less than five days' notice to the Commission and to the public. Such filing shall be made in accordance with the provisions of General Order No. 96-A.
3. Upon filing of an application and a showing that a construction permit and license has been issued by the Federal

Communications Commission to applicant an appropriate order shall issue granting a certificate of public convenience and necessity to exercise all rights and privileges granted under said construction permit and license.

4. The authorization herein granted shall expire if not exercised within two years from the effective date hereof.

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

Dated at San Francisco, California, this 1st
day of OCTOBER, 1963.

William L. Bennett
President
George H. Dwyer
Frederick B. Holdcroft
Commissioners