

Decision No. 66374

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KAY K. KIDD, doing business as  
RADIO DISPATCH ENGINEERING COMPANY,

Complainant,

vs.

THOMAS R. POOR, doing business as  
KERN RADIO DISPATCH,

Defendant.

Case No. 7397  
(Filed July 12, 1962)

In the Matter of the Application  
of THOMAS R. POOR, doing business as  
KERN RADIO DISPATCH, for a certificate  
of public convenience and necessity  
authorizing mobile radio communications  
service as a public utility.

Application No. 45121  
(Filed January 21, 1963)

Silver & Cole, by William L. Cole, for complainant  
in Case No. 7397 and protestant in Application  
No. 45121.

Berol, Loughran & Geernaert, by Bruce R. Geernaert,  
and Orrick, Dahlquist, Harrington & Sutcliffe,  
by Warren A. Palmer, for defendant in Case  
No. 7397 and applicant in Application No. 45121.

Paul Popenoe, Jr., for the Commission staff.

INTERIM OPINION

Hearing of this complaint and application on a consolidated  
record was held before Examiner Patterson at Bakersfield on January 30  
and 31, 1963.

No evidence was taken on Application No. 45121, other than  
proof of publication of notice of hearing, but at the conclusion of  
complainant's direct presentation in Case No. 7397, defendant moved  
to dismiss the complaint on the ground of complete failure of proof  
by complainant to establish even a prima facie case. Briefs were  
filed by defendant and complainant in support or opposition to the  
motion which is now before us for decision.

Based upon the record we find that sufficient question has been raised as to the legal status of defendant's operation of his Bakersfield facility to warrant the Commission's denying defendant's motion to dismiss the complaint.

We conclude, therefore, that further hearings should be set to permit defendant to present his defense in Case No. 7397 and his affirmative showing in Application No. 45121.

INTERIM ORDER

IT IS ORDERED that defendant's motion to dismiss Case No. 7397 is denied.

IT IS FURTHER ORDERED that further hearing will be set for the purpose of allowing defendant to present his defense in Case No. 7397 and his affirmative showing in Application No. 45121.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 26<sup>th</sup> day of NOVEMBER, 1963.

William W. Bennett  
President  
George E. Stuchlik  
Wendell W. Page  
George E. Grover  
Friedrich B. Heblhoff  
Commissioners