

ORIGINAL

Decision No. 71209

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
CLARENCE E. STEWART, NORMAN A. PADUANO,
ROBERT V. SCHUCKER, STANLEY J. LLOYD,
and ROSCOE D. KEAGY, doing business as
IMPERIAL CONSTANT COMMUNICATIONS, for
a certificate of public convenience
and necessity to construct a new radio-
telephone utility system.

Application No. 48161
(Filed December 31, 1965;
Amended April 7, 1966)

- Roscoe D. Keagy, for Imperial Constant Communi-
cations, applicant.
- McCutchen, Doyle, Brown, Trautman & Enersen,
by Frederick O. Koenig, for ITT Mobile
Telephone, Inc., protestant.
- Homer Harris, for Industrial Communications
System, Inc.; Roy Hull, for Allied Telephone
Companies Association; and John E. Buma, for
Business Communications, Inc.; interested
parties.
- N. C. Bruner, for the Commission staff.

O P I N I O N

Clarence E. Stewart, Norman A. Paduano, Robert V. Schucker, Stanley J. Lloyd and Roscoe D. Keagy, a copartnership, doing business as Imperial Constant Communications, seek a certificate of public convenience and necessity to construct and operate a radiotelephone system in Imperial Beach (San Diego) and vicinity.

Public hearing was held before Examiner Gillanders at San Diego on April 5, 6 and 7, 1966 and in San Francisco on April 25, 1966, on which date the matter was submitted. The application was protested by ITT Mobile Telephone, Inc. (ITT). ITT provides service as a mobile radiotelephone utility (RTU) in the same general area as that for which certification is sought by applicants.

Applicants' proposed base station will be located on Mt. San Miguel, and their message center will be located in Imperial Beach. The station will provide two-way voice communications and signaling as well as one-way signaling. Within the territory sought to be served are the communities of San Diego, Imperial Beach, Chula Vista, La Mesa, Lakeside, El Cajon, Escondido, Oceanside, Del Mar, National City and Lemon Grove.

The application states that applicants are in the process of filing with the Federal Communications Commission (FCC) their application for a construction permit to construct the facilities described above; that the FCC, before issuing a permit, will require applicants to present evidence of having obtained authority from this Commission to engage in the proposed common carrier business under California statutes; and that applicants are not required to obtain any other special permit or franchise.

Evidence in support of the authority sought was offered by several witnesses presented by applicants. Evidence in opposition to the granting of the sought authority was presented by protestant.

Applicants presented fourteen witnesses who testified that they would use applicants' service if the sought certificate is granted. Eight of such witnesses testified that they are or were subscribers to the mobile RTU service offered by ITT and that they had found such service unsatisfactory. The principal reasons given were that the base station transmitter or mobile equipment did not function properly or that the operators were unable to properly handle calls.

Three witnesses were presented by applicants to describe the services and facilities which are to be provided and the experience and financial ability of applicants. This evidence showed that applicants will be able to use a building on Mt. San Miguel for their base station which was specially constructed for radio transmission facilities; that they will acquire through a lease-purchase arrangement from a major radio supplier the radio equipment necessary for their operations; that applicants have the financial ability to acquire said facilities; and that a partner and several of the employees of applicants have the necessary experience to provide the contemplated mobile RTU services.

A partner of applicants testified that he had made an analysis of the rates and services of mobile RTU's providing service in other areas of California. Assertedly applicants' proposed rates are based on the median of the tariff rates for mobile RTU service on file with this Commission. The witness stated that his analysis of the mobile RTU services provided in areas of a size similar to the San Diego area showed that in several of these areas the use of RTU service is greater than the current use in the San Diego area, indicating that the current market for mobile RTU service in the San Diego area has not yet reached the potential for such service. Also, in several areas where there is a heavy usage of mobile RTU service, there is more than one RTU certificate issued by the Commission.

Witnesses presented by ITT stated that although ITT's service had been poor in the past, it was making every effort to improve service, such as installation of a new transmitter and a new antenna at its base station and acquisition of new mobile equipment.

ITT contends that with the improvements instituted by it service should be adequate for the future; that it is capable of providing all the service needed in the San Diego area; and, therefore, a certificate should not be granted to a competing RTU in the same area as it now serves.

The position of the Allied Telephone Companies Association, whose membership includes the majority of RTU's operating within this State, is that it is not in the public interest to duplicate RTU service in the same service area because such duplication would dilute the market. The Association contends that if existing service is deficient, the Commission should order the existing carrier to improve its service.

Discussion, Findings and Conclusions

The record shows that applicants possess the experience, personnel and financial resources to institute and maintain the service for which a certificate is sought. The record also shows that protestant's service in the past has been poor and that many of the service improvements made by it were not begun until after the application herein was filed. The record indicates that there are several potential users of applicants' services, some of whom have never used mobile RTU service. However, several of the potential users who are not using mobile RTU service at present formerly used protestant's service.

Historically, landline telephone utilities have been granted a monopoly for the area in which they are certificated, principally to avoid wasteful duplication of facilities and the attendant unnecessarily high rates to compensate for such improvident investment. While the certification of two mobile

radiotelephone utilities in the San Diego area at this time would produce some duplication of facilities, such certification would not result in wasteful duplication of facilities nor cause any material difference in rates. On the contrary, the limited competition provided by the granting of an additional certificate would provide the stimulus for the maintenance of reasonably adequate service on the part of the competing utilities. Also, it is clear that the market for mobile radiotelephone service in the San Diego area is growing and has not yet reached the saturation point.

The Commission finds that:

1. ITT is now certificated and provides service as a mobile radiotelephone utility in the San Diego area.
2. ITT has not provided reasonably adequate service in the past, although steps have been taken by it to improve its service for the future.
3. Applicants have established that there is a public need for their service in addition to that provided by protestant.
4. Certification of applicants would provide competition between them and ITT and such competition in this situation would be in the public interest.
5. Public convenience and necessity require that applicants construct and operate the proposed system.
6. The rates proposed in the application and set forth in Appendix A attached hereto are fair and reasonable for the service to be rendered.

The Commission concludes that:

1. The application should be granted as set forth in the ensuing order.

2. Applicants should file rules, standard forms and other tariff sheets as needed to define the conditions of rendering public utility service; applicants should file for each of three twelve-month consecutive periods a special report on the results of their utility operation so that the reasonableness of their rates may be reviewed.

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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Clarence E. Stewart, Norman A. Paduano, Robert V. Schucker, Stanley J. Lloyd and Roscoe D. Keagy, a copartnership, doing business as Imperial Constant Communications, authorizing them to construct and operate a mobile communications service in the area of Imperial Beach (San Diego) California, within the 37 dbu contour as shown in Exhibit No. 1.

2. Applicants are authorized to file, after the effective date of this order, the schedule of rates and charges set forth in Appendix A, attached hereto and by this reference made a part hereof, to become effective on or before the date service is first rendered to the public under the authority herein granted, and rules governing service to subscribers, tariff service area

maps and sample copies of printed forms normally used in connection with subscribers' services, in accordance with the requirements of General Order No. 96-A. Such rates, rules, tariff service area maps and forms shall become effective on five days' notice to this Commission and to the public, after filing as hereinabove provided.

3. Applicants shall notify this Commission, in writing, of the date service is first rendered to the public under the rates and rules authorized herein, within ten days thereafter.

4. Applicants shall file with this Commission copies of all annual reports made to the Federal Communications Commission.

5. Applicants shall determine accruals for depreciation by dividing the original cost of the depreciable utility plant, less estimated future net salvage and less depreciation reserve, by the estimated remaining life of the depreciable plant. Applicants shall review the accruals as of January 1, following the date service is first furnished to the public under the rates and rules authorized herein and thereafter when major changes in depreciable utility plant composition occur, and at intervals of not more than five years. Results of these reviews shall be submitted to this Commission.

6. For each of three consecutive twelve-month periods subsequent to the date service is first rendered to the public under the rates and rules authorized herein and within two months after the end of each period, applicants shall file a written report of the results of their utility operations separated from their nonutility business. The report shall include revenues by types of service, average and end of period number of subscribers to each type of service, expenses by each major class of operating expense, operating taxes, depreciation, the basis of separation

of common utility and nonutility expense and plant, the amount of the depreciation reserve, and the plant and other assets devoted to public service.

7. The certificate herein granted and the authority to render service under the rates and rules authorized herein will expire if not exercised within two years after the effective date of this order.

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

Dated at San Francisco, California, this 30th day of AUGUST, 1966.

Robert E. Mitchell
 President

George G. Foster

Augustan

 Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

AUTHORIZED RATES AND CHARGES

A. General Mobile Telephone Service. Equipment and service rates:

Installation and Removal of Mobile Units:	\$35.00
Monthly Mobile Unit rental and maintenance:	30.00
Monthly service charge includes 100 message units, each message unit equals one minute of air time	
Monthly service charge:	18.00
Each additional message unit charge is:	.15

B. Two-Way Signaling Service:

Monthly Unit rental and maintenance:	15.00
Monthly service charge:	15.00

The unit above mentioned consists of a pocket-size receiver and transmitter.

Monthly service charge includes 75 message units, each unit consisting of one message transmitted and acknowledged.

Additional message unit charge:	.20
---------------------------------	-----

C. One-Way Signaling Service:

Monthly unit rental and maintenance:	9.00
Monthly service charge:	6.50

Unit consists of pocket page receiver with built-in Ni-Cad Battery and Charger.

Monthly service charge includes 50 message units, each unit consisting of one message transmitted until acknowledged by phone.

Additional message charge:	.15
----------------------------	-----