

**ORIGINAL**Decision No. 72165

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of GEORGE W. SMITH, Santa Ana, )  
California, for a certificate of )  
public convenience and necessity )  
to construct and operate addi- )  
tional transmitters for Radio )  
Station KME-438. )

Application No. 47772  
(Filed July 26, 1965)

Berol, Loughran & Geernaert, by Bruce R. Geernaert,  
for applicant.  
Rodd Kelsey and Robert C. Crabb, for Mobilfone, Inc.,  
and Ball, Hunt & Hart, by Clark Heggeness, for  
Airpage of Long Beach, protestants.  
Roy A. Hull, for Allied Telephone Companies  
Association; Louis Possner, for City of Long Beach;  
Elton G. Grammes, for Signal Hill Radio Users  
Association and Diamond Cab Company; and H. Ralph  
Snyder, Jr. and A. M. Hart, for General Telephone  
Company of California; Interested parties.  
John D. Quinley, for the Commission staff.

O P I N I O N

This application was heard before Examiner Gillanders at Santa Ana on June 8 and 9, at Los Angeles on June 10, July 6, 7, 8, 13, 14, 28, 29, August 3, 4, 5, and on August 18 and 19, 1966, at San Francisco. On the last day of hearing, the matter was submitted upon concurrent briefs due November 7, 1966.

Applicant has petitioned for a presiding officer's proposed report on the grounds that applicant and protestant could express their views concerning the testimony and issues in this record as evaluated by the presiding examiner. The testimony is clear, as are the issues. The petition for a proposed report is hereby denied. The matter is ready for decision.

Applicant requests a certificate of public convenience and necessity authorizing him to construct and operate four additional transmitters for extension of his radio system to provide selective tone signal one-way radio paging service throughout the Los Angeles Basin Area (as defined in Exhibit No. 11). The transmitters are to be located and operated as follows:

- (1) An additional transmitter located on Signal Hill, Hockey #8, Well E 23 & Stanley, Long Beach, California, with coordinates at North Latitude  $33^{\circ} 47' 59''$  and West Longitude  $118^{\circ} 09' 44''$ . The effective radiated power of the base transmitter will be 250 watts and the system will operate on the frequency of 35.2175 mc/s.
- (2) An additional transmitter at 1021-6th Street, Los Angeles, California, with coordinates at North Latitude  $34^{\circ} 03' 11''$  and West Longitude  $118^{\circ} 15' 38''$ . The effective radiated power of this base transmitter will be 250 watts and the system will operate on the frequency of 35.2225 mc/s.
- (3) An additional transmitter on Flint Peak, California, seven-tenths (7/10ths) of a mile due east of Chevy Chase Drive, Glendale, California, with coordinates at North Latitude  $34^{\circ} 09' 45''$  and West Longitude  $118^{\circ} 11' 37''$ . The effective radiated power of this base transmitter will be 250 watts and the system will operate on the frequency of 35.2200 mc/s.
- (4) An additional transmitter at Panorama Towers, 8155 Van Nuys Boulevard, Van Nuys, California, with coordinates at North Latitude  $34^{\circ} 13' 09''$  and West Longitude  $118^{\circ} 26' 55''$ . The effective radiated power of this base transmitter will be 250 watts and the system will operate on the frequency of 35.2175 mc/s.

Applicant will continue to maintain his present control point at 1342 East Chapman Street, Orange, California, and will activate the proposed additional transmitters by the use of telephone land lines which will originate from this control point to the Long Beach site and from there to the 6th Street site and from there to the two outlying sites in Glendale and Van Nuys.

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He will also maintain a message center in the Los Angeles central telephone exchange from which he will maintain foreign exchange lines as needed to enable subscribers to be paged without long distance telephone charges. From this message center in the Los Angeles central telephone exchange paging information will be passed on to the control point at Orange by use of either Telex or TWX lines.

Applicant proposes to continue his existing tariffs for the selective tone service.

Applicant proposes to maintain twenty-four (24) hour service, seven (7) days a week for an unlimited number of pages.

To demonstrate public need for his proposed service, applicant presented testimony of 28 witnesses, some of whom are users of his existing service and some of whom are prospective users of the proposed service. These witnesses were a representative cross-section of the types of users who presently use radio paging in connection with their trade or profession. The proposed service would be particularly useful to the medical profession. As one doctor testified ". . . it has changed the whole way of living" (for him).

Applicant produced a pro forma profit and loss statement (Exhibit 9) for three years of operation. This statement, based upon an estimated gain of 50 units per month, shows, for the third year, an operating profit (before income taxes) of \$114,330. After income tax, return on net plant investment would be approximately 313 percent and the operating ratio would be approximately .73.

With respect to plant items, applicant estimates that his base station equipment, for the four additional locations, will have a total cost of \$20,000.

Applicant intends to purchase Bogen receivers and sell them at his cost to his customers.

Applicant's Exhibit No. 9 reveals that his proposed charges would produce both an unreasonable operating ratio and an unreasonable return on net plant investment. Applicant will be authorized to charge \$7.00 per month instead of \$10.00 per month for his proposed service. In view of evidence that some customers do not desire to purchase their own paging receivers, applicant is instructed to provide the customer with an option of purchasing or renting paging receivers.

Protestants in this matter are Mobilfone, Inc., and Airpage of Long Beach.

On August 3, 1966, the eleventh day of hearing, and more than one year after the application was filed, General Telephone Company of California (General) made an appearance in the proceeding as an interested party.

General's purpose in appearing in the proceeding was to inform the Commission of its plans to provide one-way paging service with transmitters located in West Los Angeles and Santa Monica. General states that an application has been filed with the Federal Communications Commission for authority to construct the transmitters; the application was filed on August 5, 1966; the transmitters will operate on a frequency of 35.22 mc/s, the only available frequency for radio paging service in the area; the system will offer one-way, selective tone, paging service with dial access from any telephone; the proposed rate to subscribers

of the service, as quoted in its application to the Federal Communications Commission, is \$12 a month, which will include all equipment, unlimited pages and full maintenance; and that the area of coverage of the system would generally be the western portion of the Los Angeles metropolitan area, including Santa Monica, West Los Angeles, Malibu, and portions of Beverly Hills and Culver City.

General claims its authority to provide its proposed service is found in Sections 1001 and 7901 of the Public Utilities Code. General contends re Section 1001 that it requires no further certification from this Commission and relies upon Malis v. General Telephone Company of California (59 C.P.U.C. 110). Further, that Section 7901 has a long history of construction by the courts of this state, holding, among other things, that a company which has obtained a franchise thereunder need not obtain a certificate of convenience and necessity (Postal Tel. - Cable Co. v. Railroad Com. (1927) 200 Cal. 463, 472) and that such franchise places no restrictions upon what may be transmitted by means of electrical impulses over a telephone line (Pac. Tel. & Tel. Co. v. City of Los Angeles (1955) 44 Cal. 2d 272, 282).

A careful reading of Decision No. 62582 in Case No. 7059 (Malis v. General Telephone Company of California) shows that the Commission rejected General's contention that Section 7901 was applicable to the facts in that proceeding. Likewise, Section 7901 is inapplicable to the facts in this proceeding.

The Commission, in Decision No. 62582, based its findings and conclusions that General had authority to offer mobile service without obtaining a certificate of public convenience and necessity on the part of Section 1001 which provides 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.

The facts in Case No. 7059 are not on all fours with the facts in this proceeding.

The record in Case No. 7059 is clear that General proposed no extension into contiguous territory not theretofore served by a public utility of like character.

The record in this proceeding shows that General proposes to provide paging service not only in territory included in the service area in which it supplies telephone and related communication services but proposes to extend such paging service to contiguous territory in which it does not now provide telephone service. This contiguous territory is now supplied paging service by Mobilfone - a protestant in this proceeding - and is territory the applicant is proposing to serve.

Section 1001 says in part:

"This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations, or for an extension into territory either within or without a city or city and county contiguous to its street railroad, or line, plant, or system, and not theretofore served by a public utility of like character, . . ."

Section 1001 makes it clear that General does require further certification from this Commission before it can lawfully offer its proposed paging service. ✓

Based upon the above, the Commission must now determine what entity, if any, should be authorized to provide additional paging service in the disputed territory. Before ruling on the protest of Mobilfone and Airpage, it is appropriate to discuss the conflict between applicant Smith and General as both are proposing to provide service on the same frequency (35.22 mc/s). ✓

Part 21, subpart G, §21.501(d) of the Rules and Regulations of the Federal Communications Commission assigns the frequencies of 35.22 mc/s, 35.58 mc/s, 43.22 mc/s and 43.58 mc/s for use of base stations of communications common carriers for use exclusively in providing a one-way signaling service to mobile receivers. In addition, §21.501(d)(2) requires that an applicant for authorization to provide an exclusive one-way signaling service who provides or proposes to provide general or dispatch service, support his application with full information to show why the proposed signaling service could not be provided in connection with the base station facilities used for such general or dispatch service.

General does provide general or dispatch service in most of the area in which it proposes to provide one-way signaling; applicant Smith provides no general or dispatch service of the type mentioned in §21.501(d)(2) in either its presently certificated area or its additional requested area. Both General and applicant are proposing the use of 35.22 mc/s for one-way paging in the disputed area. Applicant is presently authorized to use 35.22 mc/s in its Orange County operations.

General did not explain to this Commission why its proposed signaling service could not be provided in connection with its existing general or dispatch service because its policy witness did not know that there were other frequencies available for paging and his entire testimony was based on his understanding that there are only four paging frequencies available to any operator in the Los Angeles Basin Area.

It is General's contention that the best use of scarce natural resources (radio frequencies) is to establish several systems within the same over-all area, each system serving the same limited number of units. General contends that competition in the paging field is in the greatest public interest. However, in the instant proceeding, because of the availability of only one frequency and the criteria of no interference as set by the FCC, General believes that it alone should be authorized to provide paging service in the area it proposes to serve even if it means denying certain individuals the opportunity to enjoy a "new way of life." General's request that the application be denied as far as it concerns the Santa Monica and West Los Angeles areas, if granted, could result in the frequency of 35.22 mc/s being unuseable in the heart of Los Angeles and surrounding territory.

Protestant, Airpage of Long Beach (Airpage), has been providing one-way paging service in Long Beach and the surrounding area since 1955 utilizing the frequency of 35.58 mc/s. Airpage began offering selective tone paging in its service area in 1962 utilizing the frequency of 152.09 mc/s.

Airpage contends that granting the application would authorize applicant to enter into head-on competition with it.

Airpage urges that the application be denied for the following reasons:

1. It has been and is now adequately serving the Long Beach and surrounding areas with both voice and tone paging. Certification of a competing service should be denied when the existing utility is providing adequate service.



2. Public convenience and necessity will not be served by the granting of the application. Certification would give Smith, to the exclusion of all others, an unwarranted monopoly of the one remaining frequency available for paging in the Los Angeles Basin.

3. Smith's proposal is defective. It uses receivers of questionable reliability. The proposed system will not provide the service claimed by Smith. Airpage is concerned with the prospect of any poor tone paging service in the Los Angeles Basin. It will cause the public to lose confidence in tone paging to the detriment of Airpage's service.

Protestant Mobilfone, Inc., (Mobilfone) is, and has been, furnishing one-way voice paging service throughout its certificated area which includes a large portion of the service area proposed by applicant. Mobilfone provides voice paging as opposed to applicant's selective tone-only paging. Mobilfone has not used selective tone paging service in addition to voice paging because it maintains that reliable tone-only paging equipment was not available until July, 1966. Mobilfone is presently installing tone-only selective paging for use on its authorized frequency of 43.22 mc/s.

Mobilfone protests the granting of the application on grounds which fall within the following areas of concern:

1. The demand and the reasonably anticipated growth of such demand for paging service, whether of the selective tone paging or the comparatively non-selective voice paging type, are limited.

2. A selective tone-only paging service involves stringent requirements of reliability in terms of:

- (a) Number, location and phasing of transmitters.
- (b) Selectivity, sensitivity and durability of the paging receiver.

3. Mobilfone submits that a poorly designed system, or the use of unreliable equipment (particularly receivers), would detract seriously from public acceptance of, and benefit from, paging service of any kind.

The City of Long Beach, the Diamond Cab Company and the Signal Hill Radio Users Association are concerned that applicant's proposed antenna installation on Signal Hill may interfere with the city's communication system and with other existing communication systems on Signal Hill. They urge that if the Commission grants the application, the certificate should provide that the system must not interfere with the testing and/or operations of the City of Long Beach's system or with other communication systems on Signal Hill, and if this condition cannot be obtained, the application should be denied.

This Commission understands the concern of other users of equipment installed on Signal Hill, but it must point out to each user that it does not regulate the type of operations which the city and others fear. This Commission must and does assume that interference problems are properly decided by the Federal Communications Commission.

Allied Telephone Companies Association, in essence, takes the position that improvements of existing service within a certificated area are in the public interest, but that extensions into territory already being served by existing one-way service are not in the public interest.

A considerable amount of hearing time was devoted to the development of the potential future demand for one-way paging in the Los Angeles Basin Area.

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Applicant estimates that there will be an ultimate demand for 50,000 units in the Los Angeles Basin area.

General estimates, based upon a market survey, that by the end of the first year its proposed system would be producing service to 800 to 1,000 pocket paging units in its proposed service area. General indicates that its estimates would lend support to applicant's estimate.

Airpage estimated a total potential of 2,500 to 3,000 subscribers in the Los Angeles Basin Area.

Mobilfone projected 5,100 to 5,300 units for Los Angeles County by 1970.

Applicant, Airpage, and Mobilfone base their estimates on the percentage of telephone answering customers who would use paging service. Applicant, in addition, maintains that persons who do not have a requirement for telephone answering service can and do have a requirement for paging service.

In summary, the self-serving estimates of potential demand for paging service in the Los Angeles Basin Area range from a low of 2,500 units to a high of 50,000 units. We are more impressed by estimates based on market surveys than we are by estimates based on number of customers of telephone answering services who presently utilize paging service in conjunction with such answering service.

However nebulous estimates of future demand might be, the record is crystal clear that the equipment now being used by protestants, that equipment proposed to be used by protestants and that equipment proposed by applicant can supply no more than 7,950 units when all four low-band paging frequencies are utilized to the maximum capability of the present state-of-the-art.

It is apparent that there will be a more than adequate paging market available to protestants, interested parties, and applicant. The evidence clearly establishes that applicant, because of the integrated nature of his proposed operations, offers to provide a service different from any now available to the public and, we believe, one which will serve the future and growing radiotelephone needs of the public.

Based upon the record, the Commission finds as follows:

1. Public convenience and necessity require the radiotelephone service which applicant seeks to provide. An appropriate certificate should be issued.
2. Applicant possesses the financial resources to construct and operate the proposed radiotelephone system.
3. Applicant's proposed service will not result in wasteful duplication of natural resources nor will the proposed service result in harmful competition to existing utilities within their certificated areas in the Los Angeles Basin Area.
4. Applicant's proposed charges would produce an unreasonable operating ratio and an unreasonable return on net investment.
5. A charge of \$7.00 per month for twenty-four (24) hour service, seven (7) days a week for an unlimited number of pages will produce a reasonable operating ratio and a reasonable return on applicant's net investment.
6. General Telephone Company of California requires further certification from this Commission before it can lawfully offer its proposed paging service.
7. The requests of protestants and interested parties that the application be denied are without merit and are hereby denied.

The Commission concludes that the application herein should be granted to the extent set forth in the following order.

The certificate issued herein is 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.

In view of our findings and conclusion, General Telephone Company of California is hereby placed on notice that it shall not offer its proposed paging service until it has obtained a certificate of public convenience and necessity from this Commission authorizing it to supply paging service to the area involved in its application to the FCC filed August 5, 1966 or in any subsequent amendment or new application covering the same territory.

We emphasize that our findings and conclusion are based solely upon the facts as developed in this proceeding and that we recognize, as should all communication common carriers, that the situation in the Los Angeles Basin Area is unique.

Numerous days of hearing were consumed by testimony pro and con as to the merits of the Bogen receiver used presently by applicant as well as the merits of the improved Bogen model which applicant proposes to use. The testimony of witnesses both for and against the Bogen receiver is not persuasive that it will or will not provide the reliability necessary to furnish adequate service.

Before applicant Smith will be authorized to offer one-way tone only selective paging throughout the Los Angeles Basin Area

the Commission must be furnished a field survey and report of performance of the installed equipment certified to by a competent radio engineer which will show actual reliable operation of the Bogen receiver throughout the certificated area. The report must include performance data on reception within and throughout the UCLA Medical Center Complex.

O R D E R

IT IS ORDERED as follows:

1. A certificate of public convenience and necessity is hereby granted to George W. Smith to construct base station radio equipment in the Los Angeles Basin Area at the locations set forth in Paragraph IV of his Application and, with control points and message centers in said area as may be determined as necessary to provide adequate service to the public, to operate as a public utility in providing radio telephone service therefrom.

2. Before the certificate hereinabove issued may be exercised, applicant shall furnish this Commission in writing the report described in the opinion and receive from this Commission written authority to offer his service to the public.

3. The certificate hereinabove issued will lapse and be of no further effect unless exercised prior to December 31, 1968.

4. Upon receipt of the authority described in ordering paragraph 2 (supra) applicant is authorized to file with this Commission, in conformity with the provisions of General Order No. 96-A, a complete set of tariffs (including rates, rules and maps), said tariffs setting forth in proper format the rates and charges set forth in Appendix A attached to this order and, on not less than five days' notice to the public and to this Commission,

to make said tariffs effective on the date on which public utility service thereunder is first established for public use. Applicant shall, in addition, file a supplementary rate for rental of paging receivers satisfactory to the Commission.

5. In the exercise of the foregoing certificate, applicant shall not hold himself out as serving, nor shall he offer to serve, beyond the limits of the 43 dbu contour line delineated upon Exhibit No. 11, except upon the further authorization of this Commission.

6. Applicant shall make accruals for depreciation by dividing the original cost of depreciable plant, less estimated salvage less depreciation reserve, by the estimated remaining life of the plant. Applicant shall review said accruals by accounts as of the first day of January of each year and shall report the results of said reviews to the Commission by not later than February 15th of each year, unless by further order of this Commission he may be relieved from so reporting.

7. Applicant shall so set up his records and books of account that revenues and operating expenses pertaining to his tariff offerings may readily be separately stated.

8. Applicant shall file with this Commission true copies of any authorizations he may receive from the Federal Communications Commission respecting the licensing or operating of the

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radio installations covered by the certificate of public convenience and necessity hereinabove issued, within fifteen days of their receipt by applicant.

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

Dated at San Francisco, California, this 21<sup>st</sup> day of MARCH, 1967.

[Signature]  
President

[Signature]

[Signature]

[Signature]

[Signature]  
Commissioners



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APPENDIX A

AUTHORIZED RATES AND CHARGES

A. One-Way Signalling Service

1. Monthly Message Charge,

Unlimited Service

\$ 7.00