

ORIGINAL

Decision No. 73632

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of DELTA MOBILE RADIO TELEPHONE
COMPANY, a corporation, (1) for
a certificate of public conven-
ience and necessity authorizing
mobile radio communications
service as a public utility in
the Counties of Butte, Colusa,
El Dorado, Nevada, Placer, Sacra-
mento, San Joaquin, Solano, Stan-
islaus, Sutter, Yolo, Yuba, and a
portion of Amador, in the State
of California, and (2) for
authority to sell and issue shares
of its common stock.

Application No. 42456
(Filed July 13, 1960;
amended January 4, 1965)

Additional Appearances

Lester W. Spillane, for petitioner
James Edwin Walley.

OPINION AND ORDER ON REHEARING

By this application, filed July 13, 1960 and as amended on January 4, 1965, applicant sought a certificate of public convenience and necessity, pursuant to Section 1001 of the Public Utilities Code, for the construction of plant and the operation of mobile radio communication services as a public utility in portions of Amador, Butte, Colusa, El Dorado, Nevada, Placer, Sacramento, San Joaquin, Solano, Stanislaus, Sutter, Yolo and Yuba Counties.

By Decision No. 70731, dated May 17, 1966, applicant was authorized to operate mobile radio communications service as a public utility in the service areas surrounding Modesto, Stockton, Vallejo, Sacramento, Yuba City, Chico, and Lake Tahoe, California.

Between May 27, 1966 and July 20, 1966 four petitions for reconsideration and for other relief were filed by various protestants or interested parties.

On September 6, 1966, the Commission issued its order granting partial rehearing limited to L-1 service in the Yuba City-Marysville-Chico area. The order also suspended the effective date of Decision No. 70731 as to L-1 service in the above area pending further Commission order.

A prehearing conference was held on May 23, 1967 before Examiner Gillanders at San Francisco, attended by applicant, petitioner, and a member of the Commission staff.

Rehearing was held before Examiner Gillanders at Marysville on November 8 and 9, 1967.

The first day of rehearing was devoted to petitioner's direct case.

On the morning of the second day, the parties offered a stipulation in an effort to resolve the matter. The examiner requested that the proposed stipulation be made in the form of an agreement, reduced to writing, and signed by the principals. Exhibit 68 was assigned, as a late-filed exhibit, to this document. Upon the receipt of Exhibit 68, on December 5, 1967, the matter was submitted.

Exhibit 68 shows that the parties have agreed as follows:

1. James E. Walley dba Auto-Phone Company hereby agrees, within six months after the dismissal of Delta Mobile Radio Telephone Company, Application No. 42456 for a certificate in the Marysville-Yuba City and Chico area, to apply for construction permits for authorization to construct and operate Mobile Radio Base Stations for the Yuba City-Marysville-Chico area; and further agrees, within six months of the granting of such authorization, to construct such facilities compatible with the Mobile Radio

system being constructed by Delta in the adjacent areas above referred to, so that subscribers may receive service on the 450 mc band when they are in the said Yuba City-Marysville-Chico area.

2. Delta therefore agrees to request the California Public Utilities Commission to dismiss that portion of Application No. 42456 requesting authority to provide L-1 service in the Yuba City-Marysville-Chico area. Delta further agrees that upon the completion of the undertaking of Walley, as set forth in this agreement, Delta will request the California Public Utilities Commission to withdraw and cancel that portion of the certificate of public convenience and necessity issued in Decision No. 70731 authorizing L-2 service in the Yuba City-Marysville-Chico area. Delta will support the Federal Communications Commission's applications which Walley files pursuant to the terms of this agreement. However, the costs of such applications shall be borne by Walley. Delta will also enter into an agreement with Auto-Phone Company for an equitable distribution of message rates.

The Commission finds that::

1. The agreement (Exhibit 68) is not unreasonable.
2. That portion of Application No. 42456 requesting authority to provide L-1 service in the Yuba City-Marysville-Chico area should be dismissed.

The Commission concludes that:

1. The parties may carry out the terms of the agreement (Exhibit 68).
2. The dismissal of applicant's request for L-1 service in the Yuba City-Marysville-Chico area renders moot the suspension of such service.

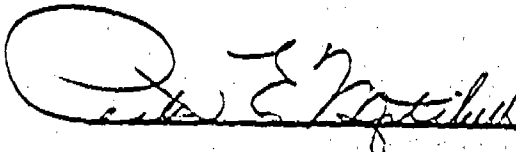
In approving the agreement between the parties, the Commission places James Edwin Walley on notice that any increased costs associated with carrying out the provisions of the agreement must not be urged as a reason for requesting increased charges to customers of his 152 mc operations.

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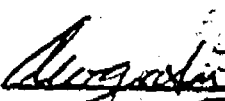
IT IS ORDERED that the portion of Application No. 42456 requesting authority to provide L-1 service in the Yuba City-Marysville-Chico area is dismissed.

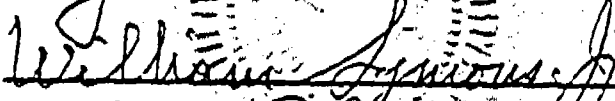
The effective date of this order shall be twenty days after the date hereof.


Dated at San Francisco, California, this 16th day of JANUARY, 1968.



President







Commissioners

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