

ORIGINAL

Decision No. 74364

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Cook's Telephone Answering and
Radio, Inc., and Fresno Mobile
Radio, Inc.

Complainants,

vs.

Jack Loperena, doing business
as Radio Dispatch, Fresno.

Defendant.

Case No. 8658
Filed July 28, 1967

Lester W. Spillane and Edwin Hiber, for
complainants.

Berol, Loughran & Geernaert, by Bruce R.
Geernaert and John Hargrove, for
defendant.

Janice E. Kerr, Counsel, John Gibbons and
John D. Quinley, for the Commission
staff.

O P I N I O N

Complainants allege that defendant has violated, and is violating, the California Public Utilities Code and the Rules of the Public Utilities Commission of California, by rendering paging service within complainants' certificated service area without any tariff on file to cover such service, in duplication of authorized services, and absent any need which can be equated with the public interest. Complainants further allege that the claimed illegal service has already resulted in substantial damage to complainants.

Complainants ask in substance that this Commission order and direct defendant to cease and desist forthwith, the rendering and/or offering of any form of one-way paging or signaling service.

In his answer, defendant alleges that he holds lawful authority from this Commission to operate as a radiotelephone utility providing service in Fresno and the surrounding territory; that under such authority he is authorized, according to decisions of this Commission and the express intent of the Federal Communications Commission, to provide one-way signaling service on the frequencies used in providing two-way communications service; that the deletion of one-way signaling service from the services described in the preliminary statement in his tariff was the result of a misunderstanding by the Commission staff; that on Original Page 14 of the tariff, Section D.3.d, selective signaling is the subject of an express reference; and that this provision in the main body of the tariff clearly controls.

As it appeared clear from reading the complaint that the only material issue presented was: Does defendant hold lawful authority to provide one-way signaling service within Fresno and vicinity? The parties agreed that the matter should require only one day of hearing. However, in an abundance of caution, the presiding officer set the matter for November 29 and 30, 1967. Hearings were held at Fresno before Examiner Gillanders on the above dates. During these two days of hearing, it became obvious that complainant interpreted his complaint to include many ostensible issues.

Eight more days of hearing were held before the matter was finally submitted on April 10, 1968.

During the course of the proceeding, eight exhibits were marked for identification only, 11 exhibits were marked for identification but not received into evidence, and 30 exhibits were received into evidence, 28 witnesses were called and 1,346 pages of transcript were recorded.

On March 11, 1968, complainants filed a "Petition For Proposed Report" claiming that the matter is complex with diverse and complicated ramifications and therefore a proposed report would serve to expedite final conclusion of the matter by contributing to understanding and simplifying procedural steps.

We have reviewed the record and from this review it is apparent that the only material issue in the case requiring a finding of fact is still: Does defendant hold lawful authority to provide one-way signaling service within Fresno and vicinity?

The evidence so overwhelmingly requires that the answer to the question be in the affirmative that a proposed report would serve no useful purpose. The petition is denied.

Exhibit 1 contains true and correct copies of all the tariff sheets of Jack Loperena, doing business as Radio Dispatch, Fresno, on file with this Commission. On Cal. P.U.C. Sheet No. 2-T Preliminary Statement, the words "one-way signalling service" are "x'd" out. Complainants' position is that Sheet 2-T deleted signaling from the services offered by defendant.

Defendant's position is that his tariff filed with this Commission, effective August 11, 1961, expressly refers to selective signaling, and that this portion of the tariff has not been deleted or altered to the present time.

Defendant's tariff (effective date December 22, 1959) filed with the FCC and incorporated with the Public Utilities Commission filing on August 11, 1961, has references to signaling on Original Page 7, B.4.b, which recites:

"In connection with signalling service, Jack Loperena offers his facilities for the purpose of actuating a signal on the mobile unit and accepts no responsibility for the transmission of further intelligence."

and on Original Page 14, D.2, wherein signaling service is described as a one-way service with the mobile unit owned and operated by the customer within the range of the land radio telephone station at a minimum monthly service charge of \$12.50 for each mobile unit; and in D.4.b, setting a rental charge of \$10 monthly, 50 cents daily, installation charge of \$12 for each unit, and a charge of \$3 for removal.

Absent the crossing out on Sheet 2-T no question should arise regarding the offer of signaling service.

On cross-examination defendant testified that he "x'd" out paragraph C-2 on Sheet 2-T for three reasons:

1. He did not offer that type of service "signalling service without a voice message."
2. The tariff pages came to him to fill out and he made no great study as to whether he should type in something extra.
3. "Signalling service without a voice message" was customarily thought of as continuous tape provided on the low band channels (defendant has no low band channel).¹

To fairly evaluate defendant's defense it should be remembered that the tariff sheet under question was filed in accordance with Decision No. 62156, dated June 20, 1961, in Application No. 42456 and Case No. 6945. Respondent RTU's, among whom was Jack Loperena, if they had a tariff on file with the FCC, were permitted to comply with General Order 96 by refiling such tariff with this Commission plus a title page, preliminary statement, and a table of contents. To assist each RTU in the preparation of its filing, the

¹ It is apparent that defendant, in using the term "Signalling service without voice message" was referring to voice-only code numbers recorded by the utility operator and repetitively transmitted on a continuous tape to nonselective receivers.

Communications Branch of the Commission was directed by Decision No. 62156 to prepare and mail to the utility four copies of a form of advice letter and four copies of the required tariff sheets. The utility was required to fill in certain information.... "and such other information as is required in the text of each sheet. The words 'not offered' or 'not available' shall be inserted where the facts necessitate the use of such words."

In retrospect, defendant's actions were reasonable and did not alter or change any service he had previously offered. Indeed, the record shows that he continued to offer and actually supplied one-way paging with a voice message subsequent to the filing of the disputed tariff Sheet 2-T.

We find that defendant has now, and has had since August 11, 1961, lawful authority from this Commission to provide one-way signaling service with voice message.

We conclude, therefore, that defendant's motion to dismiss should be granted.

ORDER

IT IS ORDERED that Case No. 8658 is dismissed.

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

Dated at San Francisco, California, this 9th day of JULY, 1968.

William S. ...
President
William C. Bennett
August 11, 1968
Red P. ...
Commissioners