

ORIGINAL

Decision No. 74967

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, dba Radio Dispatch
Fresno,

Defendant.

Case No. 8746
(Filed January 9, 1968)

In the Matter of the suspension and
investigation on the Commission's own
motion of the tariff sheets and portions
thereof covering the furnishing of "One-
Way Signalling Service" filed under
Advice Letter No. 3, by Jack Loperena,
dba Radio Dispatch Fresno.

Case No. 8748
(Filed January 16, 1968)

Lester W. Spillane, for complainants in Case
No. 8746.

Bruce R. Geernaert, for Jack Loperena, de-
fendant in Case No. 8746 and respondent in
Case No. 8748.

John D. Quinley and Paul Popenoe, Jr., for the
Commission staff.

O P I N I O N

Jack Loperena, dba Radio Dispatch Fresno, on December 21, 1967, under Advice Letter No. 3, filed, among other tariff rates, rules and conditions, the words "One-Way Signalling Service" in paragraph D, Services Furnished, Cal. P.U.C. Sheet 11-T, Schedule No. L-2, Cal. P.U.C. Sheets Nos. 22-T, 23-T, 24-T, 25-T, 26-T and 27-T, Summary List of Contracts and Deviations, Cal. P.U.C. Sheet No. 28-T, and paragraph A.3. of Rule No. 2, Cal. P.U.C. Sheet No. 30-T, which provide a new offering of one-way tone and voice message signalling service to vehicle mounted and pocket receivers.

On January 9, 1968 Cook's Telephone Answering and Radio, Inc., and Fresno Mobile Radio, Inc., filed a complaint, docketed as Case No. 8746, in which they "protest against any acceptance at this time of the service offering which is in issue in Case No. 8658, (one-way signalling) and, in any event prays that the said tariff, filed with Advice Letter No. 3, be suspended and order an investigation with respect thereto."

On January 16, 1968, the Commission issued an "Order of Suspension and Investigation" in which it instituted an investigation to determine whether said rates, rules, and conditions for one-way signalling service of Jack Loperena, dba Radio Dispatch Fresno, are unreasonable or unlawful in any particular and suspended to and including May 19, 1968 the operation and effectiveness of the words "One-Way Signalling Service," in paragraph D, Services Furnished, Cal. P.U.C. Sheet No. 11-T, and Schedule No. L-2, Cal. P.U.C. Sheets Nos. 22-T, 23-T, 24-T, 26-T, and 27-T, Summary List of Contracts and Deviations, Cal. P.U.C. Sheet No. 28-T, and paragraph A.3. of Rule No. 2, Cal. P.U.C. Sheet No. 30-T, filed under Advice Letter No. 3.

By Decision No. 74064, dated April 4, 1968, the period of suspension was extended to and including November 19, 1968.

On June 5, 1968 a prehearing conference was held before Examiner Gillanders at which the matter of scheduling of Case No. 8746 and Case No. 8748 was discussed. All parties agreed that the matters should not be scheduled for hearing until a decision was rendered in Case No. 8658 - Cook's Telephone Answering and Radio Inc., and Fresno Mobile Radio, Inc., complainants vs. Jack Loperena, doing business as Radio Dispatch Fresno, defendant.

By Decision No. 74364, dated July 9, 1968, the Commission dismissed Case No. 8658. On July 29, 1968 complainant petitioned for reconsideration and rehearing. By Decision No. 74597, dated August 27, 1968 the Commission denied rehearing.

After due notice, hearing in the instant matters was held on September 18, 19, and 25 at San Francisco, before Examiner Gillanders. Neither complainant, nor defendant, nor the staff offered any evidence in connection with Case No. 8746.

As part of its presentation in Case No. 8748 the staff produced, through an Associate Utilities Engineer employed in the Communications Branch of the Utilities Division, a document entitled "Radio Dispatch Fresno One-Way Tone and Voice Paging Service Full Cost Estimate." This document was marked for identification as Exhibit No. 1. It was not received into evidence as the witness would not vouch for the accuracy of some of the figures contained therein and was not willing to stand cross-examination on said figures.

In place of Exhibit No. 1 for identification, the staff introduced a document entitled "Radio Dispatch Fresno One-Way Paging Service Incremental Cost Analysis." This document was marked for identification as Exhibit No. 2. After attempting to qualify the exhibit, the staff representative offered it into evidence. Objection to the exhibit was expressed by the other parties.

After hearing the objections, the staff representative withdrew his offer. At this juncture, having nothing more to present, the staff witness was temporarily excused with the understanding that if after hearing the testimony of respondent he wished to present further testimony or exhibits he would be permitted to do so.

Respondent then took the witness stand and testified that by filing Advice Letter No. 3 he did not intend to change any rate, but only intended to change the format of the tariff from the FCC format to the PUC format.

Respondent's testimony reveals that he charges his paging customers \$12.50 per month for message service if the customer owns his own pocket pager; that he charges a customer \$15.00 per month if the customer uses a pocket pager supplied by the utility and that since February, 1968 he has been charging new customers using the utility's pocket pager a total of \$22.50 per month.

The existing tariff sheet on file with this Commission (Original Page 14, D.2) shows that respondent offers message service for \$12.50 per month and \$10.00 per month for rental of pager equipment. It is clear therefore that previous to February 1968 he has misapplied his tariffs for those customers utilizing the utility's pagers. In addition, he testified that even though he, since February, 1968, charges new customers the filed tariff rates he has not increased the charge for equipment to customers who signed up for service previous to February, 1968. The record thus reveals that he is discriminating between customers.

Respondent introduced a document entitled "Radio Dispatch Fresno One-Way Paging Service Incremental Cost Analysis" which was marked as Exhibit No. 3 and received into evidence. The purpose of Exhibit No. 3 was to justify a rate of \$12.50 per month for message service (including maintenance) and an equipment rate of \$6.50 per month for use of a utility owned pager. As certain figures used by respondent in Exhibit No. 3 were based upon figures taken from respondent's 1967 income tax return, the staff offered a copy of

respondent's Schedule C (Form 1040) which showed that Radio Dispatch Fresno realized a net profit of \$19,279.09 for the year 1967. This document was received into evidence as Exhibit No. 4. Radio Dispatch Fresno engages in the following businesses:

1. Two-way radio telephone service
2. One-way paging service
3. Telephone answering service
4. Mountaintop leasing
5. Radio rental
6. Radio sales

The two-way radio telephone service and the one-way paging service are conducted as public utility services while the other businesses listed above are conducted as nonutility operations. Exhibit No. 4 contains the revenues and expenses of both the utility and non-utility operations of Radio Dispatch Fresno. Exhibit No. 3 purports to allocate to one-way paging service the costs associated with such service. Exhibit No. 3 was presented during the afternoon session of the hearing held on September 18. The entire hearing held on September 19 was devoted to cross-examination regarding Exhibit No. 3. Cross-examination disclosed that the purpose of Exhibit No. 3 was to justify the existing \$12.50 for message service. It was also determined that Exhibit No. 3 was developed on a "rate-of-return" basis. At the close of the hearing the matters were adjourned to September 25.

Shortly after the hearing began on September 25, respondent introduced an exhibit entitled "Radio Dispatch Fresno One-Way Paging Service Incremental Cost Analysis." This document was marked and received into evidence as Exhibit No. 5. Exhibit No. 5 was developed on an "operating ratio basis." Exhibit No. 5 shows a cost of \$11.20 for message service, a cost of \$2.50 for maintenance, and an equipment cost of \$6.66 or a total of \$20.36. At the conclusion of the examination of respondent, he was excused.

The staff witness then took the witness stand and introduced a document entitled "Radio Dispatch Fresno One-Way Paging Service Full Cost Estimate." This document was marked and received into evidence as Exhibit No. 6. Exhibit No. 6 is developed on a "rate-of-return" basis.

The staff witness recommended, based on Exhibit No. 6, a rate of \$10.00 per month for message service with 100 call allowance and 10 cents per overcall. He recommended that the receiver rental and maintenance charge be set at \$9.00 per month or a minimum total of \$19.00 per month for paging service using the utility's pocket paging equipment.

The Commission has before it the following cost analysis:

	<u>Exhibit No. 3</u>	<u>Exhibit No. 5</u>	<u>Exhibit No. 6</u>
Monthly Cost of Message Service	\$12.50*	\$11.20	\$ 9.93
Monthly Rent of Utility Pager	6.50	6.66	9.62*
Maintenance of Pager	<u> </u>	<u>2.50</u>	<u> </u>
	\$19.00	\$20.36	\$19.55

* Includes \$2.50 for maintenance of pager

Both respondent and staff testified that the allowance of \$2.50 per month for pager maintenance was based on the fact that Motorola (Motorola Communications & Electronics, Inc.) charges \$2.50 per month per pocket pager if the person requiring maintenance signs a Motorola maintenance contract. Respondent testified he does not use Motorola's maintenance service. He uses the facilities of Fresno Electronics, a partnership in which he owns a 50 percent interest. Fresno Electronics is not an authorized Motorola Service Station. He further testified that he has no records which would show the

actual cost of maintenance but that his receivers require little or no maintenance. The staff witness testified that he made no study of respondent's maintenance requirement; that he did not know if the equipment required regular maintenance; and that he did know that Motorola charges \$14.00 per hour labor on a time and material basis to perform maintenance on Motorola pocket pagers. This record contains not a shred of evidence regarding the actual costs incurred by respondent for maintenance of pocket pagers.

Respondent has obtained most of his pocket pagers from Motorola under Motorola's standard 60-month lease agreement which calls for an initial rental payment and 60 equal monthly rental payments. Respondent testified that after the required initial rental payment he would pay \$5.95 per month for 60 months for each pocket pager costing \$275. In some instances, respondent and Motorola enter into an option to purchase agreement covering equipment under lease from Motorola which agreement allows the licensee at any time during the term of the lease to purchase the equipment. Respondent testified he has not requested permission from this Commission to enter into such agreements. It appears from the testimony so far adduced in this proceeding that such lease and/or lease plus option agreements may require authorization by this Commission under Section 818 of the Public Utilities Code. Further hearings will be scheduled to investigate this phase of respondent's operations.

Cross-examination of respondent revealed that Exhibit No. 3 contained many errors. Likewise, cross-examination of respondent revealed numerous errors in his Exhibit No. 5. Cross-examination of the staff witness on Exhibit No. 6 revealed that

although he used a rate of return of 8 percent in his exhibit he had no idea of what a proper rate of return should be for Loperena's operation. Although the witness had before him Loperena's actual tax return, he testified he used a 7 percent rate as that was the figure he used in similar calculations for land line telephone companies. Exhibit No. 6, although developed on a rate-of-return basis, includes interest charges as an above-the-line operating expense.

The fatal defect in Exhibits Nos. 3, 5, and 6 is the failure of respondent and staff to develop their costs based on the actual operations of Loperena. The record reveals that during the evening hours and on weekends operators employed by the Fresno County Medical Society actually operate the equipment necessary to place a page to a doctor on the air. Neither respondent nor the staff considered this fact in developing the costs of message service. The only probative value that can possibly be assigned to Exhibits Nos. 3, 5, and 6 is to show that if the errors disclosed in the exhibits were corrected the end result would be lower costs for both message service and rental than those developed in the exhibits. It follows, therefore, that the existing tariff charges are too high for these services.

Findings of Fact

1. Respondent's tariff (Original Page 14, D.2) shows that message service is offered for \$12.50 per month and pager equipment rental for \$10.00 per month.

2. Respondent charges \$12.50 per month for message service if the customers own his own pager.

3. Respondent charges some of his customers \$12.50 per month for message service and \$2.50 per month additional if the customer uses a pager furnished by the utility.

4. Respondent charges some of his customers \$12.50 per month for message service and \$10.00 per month for use of a utility supplied pager.

5. Respondent pays Motorola \$5.95 per month to lease a pocket pager based upon a 60-month lease.

6. The record does not reveal the actual costs of rendering message service.

7. The record does reveal that \$12.50 per month is an unreasonable charge for message service.

Conclusions of Law

1. Jack Loperena has violated his filed tariff.

2. Jack Loperena has discriminated between customers by charging his tariff rate for receiver rental to some customers but not to others.

3. Jack Loperena's filed tariff is unreasonable.

4. A reasonable charge, based upon this record, for message service is \$8.00 per month.

5. A reasonable charge, based upon this record, is \$6.00 per month for receiver rental.

6. The charges for message service and receiver rental requested by Advice Letter No. 3 are unreasonable.

7. The suspension ordered by Decision No. 74064 should be made permanent.

8. Jack Loperena should be ordered to file new tariffs for one-way message service and rental of pager equipment.

9. Case No. 8746 should be dismissed for lack of prosecution.

O R D E R

IT IS ORDERED that:

1. Case No. 8746 is dismissed.
2. The suspension of the words "One-Way Signalling Service" in paragraph D, Services Furnished, Cal. P.U.C. Sheet No. 11-T, and Schedule No. C-2, Cal. P.U.C. Sheets Nos. 22-T, 23-T, 24-T, 26-T, and 27-T, Summary List of Contracts and Deviations, Cal. P.U.C. Sheet No. 28-T, and paragraph A.3. of Rule No. 2, Cal. P.U.C. Sheet No. 30-T, filed by Jack Loperena, dba Radio Dispatch Fresno, by Advice Letter No. 3 is hereby made permanent.
3. On the effective date of this order, respondent must file a revised rate schedule of \$8.00 per month for message service with unlimited calls and a receiver rental charge of \$6.00 per month. Such charges to replace the existing charges shown in respondent's tariff on Original Page 14, D.2. Such filing shall comply with General Order No. 96-A. The effective date of the filing shall be four days after the date of filing. The revised schedule shall apply only to service rendered on and after the effective date thereof.
4. Respondent shall cease and desist from charging and collecting compensation for the furnishing of message service and/or receiver rental in a lesser amount than the rates and charges prescribed by this Commission.
5. The submission heretofore entered in Case No. 8748 is set aside and the matter reopened for further hearing before such

Commissioner and/or Examiner and at such time and place as later may be designated by notice of the Secretary for the purpose of determining if respondent's leases with Motorola require authorization of this Commission and whether or not any other practices of respondent are unlawful or unreasonable.

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

Dated at San Francisco, California, this 19th day of NOVEMBER, 1968.

Stallman President
August
W. P. Morrissey
Commissioners

Commissioner William Symons, Jr.

Present but not participating.

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.