

Decision No. 77047

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of  
BARSTOW MOBILPHONE CORPORATION  
For Certificate of Public Convenience  
and Necessity to Construct a New  
Radio-Telephone Utility System.

Application No. 50559  
(Filed September 19, 1968;  
Amended July 17, 1969)

Carl B. Hilliard and R. A. Howard, for applicant.  
Homer N. Harris, for Industrial Communications  
Systems; Harold E. Throp, for Continental  
Telephone Company of California; Martin E.  
Willson, for Victor Valley Radio-Telephone  
Company; and Frank Chalfont, for Chalfont  
Communications; interested parties.  
John J. Gibbons, for the Commission staff.

O P I N I O N

Barstow Mobilphone Corporation, a California corporation, seeks a certificate of public convenience and necessity to construct and operate a radiotelephone system to provide service to the City of Barstow and the Greater Barstow area, including the communities of Daggett, Yermo, Lenwood, Calico, Hinkley and Hodge, in the County of San Bernardino.

Public hearing was held before Examiner Gillanders at Barstow on June 17 and 18, 1969.

Testimony on behalf of applicant was presented by its president and 10 members of the public.

During cross-examination of applicant's president, Mr. Harris, on behalf of Industrial Communications Systems, moved either for dismissal of the application or that it be amended. The examiner

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ruled that applicant would have 30 days to amend its application, failing, that the motion to dismiss would be taken under submission. On July 17, 1969 applicant filed an amendment to its application.

Further hearing was held before Examiner Gillanders at Los Angeles on November 4 and 5, 1969. At this hearing, testimony was presented by applicant's president, a staff engineer, a staff accountant, and by Mr. Harris.

At the conclusion of the staff engineer's presentation, Mr. Harris moved to strike the exhibit of the staff engineer (Exhibit 9). This motion was denied by the examiner. The matter was submitted on November 21, 1969 upon receipt of the transcript. On December 5, 1969 Mr. Harris filed a "Petition For Review Of Examiner's Ruling". By Decision No. 76707, dated January 27, 1970 this petition was denied.

At the close of the hearing, the position of the parties was as follows:

Continental Telephone Company of California (Continental) does not protest the filing nor does it object to applicant's proposed service even though it offers public radio mobile telephone and paging service in the Barstow service area. Continental is agreeable to providing required private line service to applicant under Continental's regularly filed tariffs upon request and availability of facilities.

Mr. Harris of Industrial Communications Systems thought that there may be some need for the proposed service but pointed out that none of applicant's witnesses who stated that they would like the service were aware of the actual charges proposed by applicant. It was his opinion that applicant was in essence planning, in a few

years, on selling the certificate for a profit. He asked the Commission to consider, if a certificate is granted, that the certificate be revoked after three years if the actual number of customers was less than applicant's estimate.

The Utilities Division of the staff recommended that the application be granted.

The Finance and Accounts Division of the staff saw no widespread need for the proposed service. It accepted with reservation the Utilities Division's conclusions regarding the technical feasibility of applicant's proposed system. According to the Finance and Accounts Division, applicant's proposal does not meet the test of economic feasibility. The Finance and Accounts Division recommended that the application be denied. If, however, the application were to be granted, it is the recommendation of the Finance and Accounts Division that the certificate be conditioned.

Applicant believes it has shown a need for the service, that it is technically competent to render the service and that it has the resources to finance the system.

#### Discussion

Applicant presented 8 public witnesses who testified as to their requirements for the proposed services. Their testimony indicated a present need for six mobile units and a desire for six pager units. Two of the pager units would be used by city employees, one by a staff member of the city owned hospital, two by employees of the hospital and one by an attorney. Two mobile units would be used by a well drilling contractor, one by a real estate broker, one by the attorney who would also use the paging service, and two by a home furnishing supplier.

The operator of a similar type of service in the Victorville area testified that he was in favor of applicant's proposed service as it would extend his service area. The record shows that certain truck owners are in favor of applicant's proposal as the facilities would enable their trucks to notify their home base of their whereabouts.

Exhibit 9 presented by an engineer from the Utilities Division of the Commission shows that his investigation included ... "interviewing of potential users of applicant's service." Cross-examination revealed that the engineer talked only to a secretary of a plumber and to an accountant at the local hospital. The engineer was aware that the application stated that applicant's customer survey showed that out of 100 questionnaires there were 43 responses with 35 indicating an interest in radio paging and/or radiotelephone service. The engineer did not see or check the validity of the responses.

According to Exhibit 9, dated June 2, 1969, the staff engineer believed that rates should be initially established which would be fully compensatory on a going basis. However, at the hearing held on November 5, 1969 he recommended initial rates comparable to the adjacent utility in Victorville even if such rates would result in a first year loss. He testified he did not know whether or not applicant would ever make a fully compensatory return on his proposed rates. Exhibit 9 and the staff engineer's recommendations are of little probative value in this proceeding.

A staff accountant testified that he thinks the operation as proposed is not economically sound, that it will not in the foreseeable future be able to stand on its own feet and that he was unimpressed by the testimony of the public witnesses that there was any great demand for the proposed service.

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Exhibit 8, presented by applicant's president, shows that in the first year and the fifth year there would be some excess of revenues over expenses. However, the exhibit does not show the amounts allowed for supervision and other services which applicant testified would be provided by other entities. Such amounts are in excess of \$10,000 per year. If such amounts are considered, and they should be, applicant's operations would be run at a considerable loss. Applicant's counsel, who is also an owner of applicant, takes the position that such a loss has tax advantages which should be considered in determining whether or not the requested certificate should be granted.

The staff accountant and Industrial raise the specter of trafficking in certificates. There is little basis here for such concern. *e*

#### Findings of Fact

The Commission finds that:

1. Applicant's proposed operation is not economically feasible.
2. While there is a modicum of demand for the proposed service, applicant has failed to demonstrate that public convenience and necessity require the granting of the requested certificate.

#### Conclusion of Law

The Commission concludes that Application No. 50559 should be denied.

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O R D E R

IT IS ORDERED that Application No. 50559 is denied.

Dated at Los Angeles, California, this 7th  
day of APRIL, 1970.

William Lyons, Jr.  
President

Morgan

Robert D. Brown

Vernon L. Sturgeon  
Commissioners

*I abstain*

*Robinson*