

ORIGINAL

Decision No. 77205

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 (a) COMMON CARRIER COMMUNICATIONS,)
 INC., a corporation, for a Certificate)
 of Public Necessity and Convenience)
 and for authority to issue and sell)
 securities; (b) COMMON CARRIER)
 COMMUNICATIONS, INC., to borrow money;)
 and (c) the following listed public)
 utility organizations to purchase)
 securities: AMERICAN MOBILE RADIO,)
 a corporation; ORANGE COUNTY RADIO-)
 TELEPHONE SERVICE, a corporation;)
 INDUSTRIAL COMMUNICATIONS SYSTEMS,)
 a corporation; POMONA RADIO DISPATCH,)
 a corporation; MOBILEPHONE, INC., a)
 corporation; INTRASTATE RADIO-)
 TELEPHONE, INC. OF LOS ANGELES,)
 a corporation; and ROBERT L. MOHR,)
 doing business under the firm name)
 and style of ADVANCED ELECTRONICS.)

Application No. 50631
 (Filed October 18, 1968;
 Amended October 14, 1969)

Carl B. Hilliard, Jr. for applicant.
Homer Harris, in propria persona, interested
 party.
Janice E. Kerr, Counsel, for the Commission
 staff.

O P I N I O N

By this application, filed October 18, 1968, Common Carrier
 Communications, Inc.,^{1/} a California corporation formed on March 21,
 1968, (1) seeks a certificate of public convenience and necessity for
 the purpose of engaging in radio paging and other radiotelephone public
 utility operations and (2) seeks authority to issue securities and (3)
 seeks authority to borrow funds. Joining in the application and

^{1/} Hereinafter sometimes referred to as CCC or as applicant.

seeking authority to purchase the common shares of Common Carrier Communications, Inc., are six^{2/} radiotelephone utilities operating in the greater Los Angeles area of southern California.

Public hearing in the matter was held before Examiner Emerson in Los Angeles on February 10, 1970, and the matter was submitted on such date.

As above noted, the application was filed on October 18, 1968. The application was deficient in that it did not contain or have appended thereto information required by the Commission's Rules of Practice and Procedure. This was brought to applicant's attention on November 15, 1968. No response having been made, the Commission by letter of January 2, 1969, made written request for the missing information. Again, no response was made. On July 15, 1969, the Examiner placed the matter on calendar for hearing on August 19, 1969. The Examiner was then informed that the persons involved would not cooperate in assembling the data necessary to proceed to hearing. By letter of August 4, 1969, applicant informed the Commission that it could not develop the required information and requested that the matter be taken off calendar. Such was done and by letter of August 6, 1969, the Commission informed applicant that if applicant was not ready to proceed by September 15, 1969, the matter would be dismissed for lack of prosecution. Upon telephone request by one of the parties, the Examiner granted a further extension of time and on October 14, 1969, applicant filed an amendment to its application, by which certain of the originally required information was supplied. We recite the

^{2/} The application named seven; one (Mobilphone, Inc.) withdrew on February 10, 1970, and the application is therefore considered amended to such extent.

foregoing because we believe it is indicative of the cross-purposes which have pervaded the entities or persons involved in this matter.

The evidence shows that the primary purpose of the applicant corporation is that of acquiring a presently unused pair of radio frequencies (Channel 11) allocated by the Federal Communications Commission (FCC) for radiotelephone utility (RTU) usage in two-way communications and in paging service. According to the testimony, seven or eight of the RTU's in the greater Los Angeles area were interested in obtaining the assignment of this channel and three (Mobilphone, Intra-state and Industrial Communications) directly applied to the FCC for the same. Competitive hearings before the FCC and litigation over a period of years were thus in prospect. Past experience in such respects, described by applicant's witness as being those in which a "good deal of their waking hours and money were spent in litigations among themselves or with the outside world" over a period of years, led seven of the RTU's to form the corporation which is the applicant herein. They would thus share in the profits, if any, derivable from the service which might flow from Channel 11 operations and avoid costly litigation among themselves. They proposed that the applicant be financed through bank borrowings and by their equal-share subscriptions of common stock.

Applicant proposes to construct a base station transmitter on Oat Mountain in Los Angeles County; the site to be subleased from an RCA Communications manufacturer's representative. Utility operations would be handled by Intrastate Radiotelephone, Inc. of Los Angeles^{3/} from its Burbank control center under a "dispatch contract"^{4/}

^{3/} Hereinafter sometimes referred to as Intrastate.

^{4/} An "Agency Agreement for Dispatching"; part of Exhibit No. 3 in this proceeding.

between it and applicant. The testimony indicates that Intrastate was selected by the group primarily because the costs of telephone lines to and from the Burbank center are lower than those which would be required if any of the other RTU's were to perform CCC's operation for it.

The proposed operations would primarily provide extended coverage to those mobile subscribers of the seven RTU's who might transit the Simi and Santa Clarita Valleys and Soledad Canyon, areas which are now incapable of being reached by the Los Angeles area RTU's because of screening by intervening mountainous terrain. Although the testimony indicates that some present users may desire the transient service, the number of specific requests for such service is not disclosed by the record and no prospective user of transient service was brought forward to testify respecting the same.

Applicant also proposes to provide regular RTU mobile service to its own hoped-for subscribers in the Simi and Santa Clarita Valleys. Its prospects in such regard, in the now foreseeable future, would seem to be scant, however. Applicant basically relies on the promotional literature respecting population and growth issued by Chambers of Commerce for its assertion of public need for this service. It presented three letters from persons who may be interested and stated that nine others had expressed an interested response when approached by representatives of the RTU's, but it brought forward no applicant for service as a witness to support the same.

The testimony is not convincing that there is in fact a public need for the proposed services (either transient or regular) at this time or in the immediately foreseeable future; nor is the

testimony respecting the financial results of applicant's proposed operations, whereby net revenues of only \$1,200 per year might be produced, convincing that applicant has much prospect for success. A financially unsuccessful operation invariably produces an inadequate service. It appears that the proposed services, if a public need therefor is assumed, might better be provided as an incremental undertaking by an existing utility.

The real reason for applicant's corporate existence is not to provide a service needed by the public but to mitigate litigation among its founders, as the record makes abundantly clear.

Cooperative efforts by the RTU's in the Los Angeles area should provide a better, more useful and more reliable service to the public. The instant proposal seemed to be a step in such direction but of itself it has not brought to a halt the bickerings, misunderstandings and antagonistic infringements which, while hopefully subdued, lie so close to the surface as to produce recurrent eruption. An example of the latter occurred practically at the last moment of the hearing in this matter, when one of the original petitioning RTU's stated that it was withdrawing its support, would not purchase its shares of stock, protested the granting of a certificate to applicant and urged that the certificate be issued to Intrastate. Another RTU owner, by letter directed to applicant, has resigned as a director of applicant and has denied any obligations to applicant. Thus, two of the seven RTU's have by now withdrawn their support of applicant. We are constrained to point out, therefore, that the primary interest in proceedings of this nature is the public interest and further to point out, in case any RTU is as yet unaware of it, that certificates of public convenience

and necessity are granted only when the record will clearly support a finding by this Commission that the public convenience and necessity requires or will require the proposed service and by the specific applicant therefor. Certificates are not issued to bring internecine warfare within an industry to a halt. There are other means for accomplishing that and of protecting the interests of the utility-using public.

In short, applicant herein has not made its case as to the need for the service.

In view of such facts, other and ancillary issues such as the proposal to overcapitalize applicant or the restrictions as to stock ownership of applicant by the remaining RTU's become moot and will not be further discussed herein.

In view of the evidence, the more important elements of which are hereinabove discussed, the Commission makes the following findings of fact:

1. After due notice, public hearing has been held, evidence has been adduced, the Commission has been fully informed and the matter has been submitted.

2. The evidence does not support a finding that public convenience and necessity requires or will require the proposed construction of plant or the providing of the proposed radiotelephone services.

The Commission concludes that the application herein should be denied.

O R D E R

IT IS ORDERED that the application herein (Application No. 50631) be and it is hereby denied.

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

Dated at _____ San Francisco, California, this 12th day of MAY, 1970.

William Synovis Jr.
President
[Signature]
[Signature]
[Signature]
Vernon L. Sturgeon
Commissioners

