

Decision No. 77591

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
practices, rules, regulations,
classifications, services, con-
tracts and procedures of all radio-
telephone utilities and other
individuals and entities furnish-
ing intrastate public utility
telephone service by radio.

Case No. 8880
(Filed December 17, 1968)

(A List of Appearances is attached hereto)

OPINION AND ORDER

The Proposed Report of Examiner F. Everett Emerson in this matter was filed May 26, 1970, and duly served upon the parties. The only exception to the Proposed Report was filed by Industrial Communications Systems, Inc. (Industrial) on June 15, 1970, and a reply thereto was filed by Pomona Radio Dispatch Corp. (Pomona) on June 26, 1970. By a further filing on July 3, 1970, Industrial moved "to set aside" the reply of Pomona Radio Dispatch, Corp.^{1/} Such motion is hereby denied.

In his Proposed Report, the Examiner concluded that this investigation should be terminated.

In substance, the "exception" of Industrial urges that the investigation be continued as to two of the items (Nos. 5 and 6) set forth in the order of investigation, viz:

^{1/} In passing it should be noted that no provision is made for such a filing by the Commission's Rules of Practice and Procedure. The rules pertaining to proposed reports amply provide for the expression of opinions without recourse to repeated filings on the same subject.

"5. To investigate and review the operations and activities of entities and individuals not regulated as public utilities, such as private mobile lease-maintenance service companies and telephone answering services, to determine the extent to which provision of multiple-licensed, shared or cooperative land-mobile radiotelephone systems, operator dispatch services, message relay services and the connection of private radio systems with the land-line telephone network, or any combination of such activities, constitutes public utility telephone service.

"6. To review Commission policy governing the authorization of radiotelephone operations within specified territorial limits to determine the extent to which particular areas should be limited to exclusive operation by one radiotelephone utility, or to dual or multiple operation, and the extent to which overlap of service areas should be permitted."

Industrial further urges that the Commission institute "an investigation of all telephone answering services providing intrastate telephone services by means of radio".

The "reply" of Pomona requests that the Proposed Report be made the order of the Commission.

Careful consideration has been given to the views and concerns expressed, each point raised and every allegation made in these filings. We are convinced that the Examiner's analysis of the record in this proceeding and his recommendations should prevail. We add our emphasis to the suggestion and words of the Examiner:

"... that at such time as a particular problem or a specific proposal, which either the staff or the industry or an individual RTU feels must be considered, and for which

any of them develop full, factual, and lawful supporting documentation and evidence, an order of investigation be opened and limited to such specific problem or proposal."

This criterion is directly applicable to the above-quoted items Nos. 5 and 6 for which Industrial would have this proceeding continued.

Industrial alleges that it stands ready "to produce evidence as it relates to the illegal, uncertificated common carriers". If Industrial is in fact ready and can meet the above-emphasized criterion, it should consult with staff counsel with a view to institution of a specific and limited investigation, or it should file its own specific complaint respecting the alleged illegal operations. Continuance of the present proceeding for such limited purpose is not warranted.


No other points raised by Industrial's "exception" require discussion.

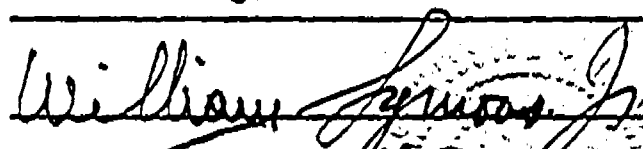
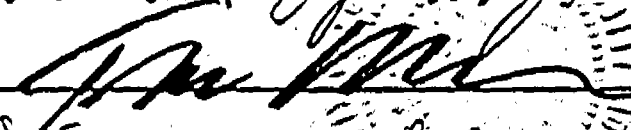

The Commission adopts as its own the opinion and order set forth in the Examiner's Proposed Report. Accordingly,

IT IS ORDERED that the opinion and order recommended by the Examiner in the Proposed Report in this matter, as appended hereto, be and it is hereby made the opinion and order of the Commission.

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

Dated at San Francisco, California, this 11th day of AUGUST, 1970.


Chairman




Commissioners

APPENDIX A

Appearances

For the Commission staff:

Janice E. Kerr, Counsel, and Paul Popenoe.

For Respondents:

Frank Chalfont, for Chalfont Communications.
R. L. Mohr, for Advanced Electronics.
Homer Harris, for Industrial Communications Systems, Inc.
Avery H. Simon, for Mobile Radio System of San Jose,
Mobile Radio System of Ventura and Pacific
Communications Corporation.
Daniel W. Cochran, for Redwood Radio Telephone Corp.
and for Redwood Radio Telephone Corp. Marin.
Jerry Grotsky, for Peninsula Radio Secretarial
Service, Inc.
Dudley A. Zinke and Erwin E. Adler, of Pillsbury,
Madison & Sutro, for The Pacific Telephone and
Telegraph Company.
John P. Vetromile, for California-Pacific Utilities
Company.
Albert M. Hart, Donald J. Duckett, Walter Rook, for
General Telephone Company of California.
Harold E. Throp, for California Interstate Telephone
Company, Golden State Telephone Company and
Golden West Telephone Company.

For Interested Parties:

Lester W. Spillane and Phillips Wyman, for Allied
Telephone Companies Association.
Neal C. Hasbrook, for California Independent
Telephone Association.
Keatinge & Sterling, by Robert Yale Libbott, for
Mobile Telephone Company (Philadelphia)
and California Mobil Telephone Company.
R. A. Isberg, for Mobilfone Inc., Kern Radio Dispatch, and
Mt. Shasta Radiotelephone Co.
Bacigalupi, Elkus, Salinger & Rosenberg, by
Claude N. Rosenberg, for Telephone Answering
Services of California, Inc.
J. M. James, for Bell & Howell Communications Co.
Carl B. Hilliard, Jr., for National Communications
Airsignal and Pomona Radio Dispatch.
Ronald B. Zimmelman, for National Association of
Business and Educational Radio, Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
practices, rules, regulations,
classifications, services, con-
tracts and procedures of all
radiotelephone utilities and other
individuals and entities furnishing
intrastate public utility telephone
service by radio.

Case No. 8880
(Filed December 17, 1968)

(Appearances are set forth in Appendix A hereto)

PROPOSED REPORT OF EXAMINER F. EVERETT EMERSON

O P I N I O N

An investigation into the operations, practices, services and related matters of entities furnishing intrastate public utility telephone service by radio was instituted on the Commission's own motion by order dated December 17, 1968. The order was served upon each radiotelephone utility and every land-line telephone company operating in California. By such investigation practically every facet of the radiotelephone industry in this State would receive the close attention of the Commission. The order of investigation, in setting forth the purposes, enumerated nine areas of inquiry.

Some 18 months have passed since this matter was instituted. It is now appropriate to review its genesis, its progress, its present status and its future course. To do such, the Commission has authorized the issuance of this proposed report by the Examiner.

Although the radiotelephone business has existed in California since shortly after World War II, the Commission's attention

was directed, on a formal basis, to the segment here under consideration in 1961. By a decision in that year (Decision No. 62156 in Case No. 6945; 58 CPUC 756), this Commission determined that "Miscellaneous Common Carriers", as defined by the Federal Communications Commission (FCC), were telephone corporations within the meaning of Section 234 of the California Public Utilities Code and thus were subject to regulation by this Commission. They were then designated and have since been known in this State as Radiotelephone Utilities (RTU's, in order to distinguish them from land-line telephone companies). The RTU industry in California now commonly calls this the "Grandfather Decision". In order to assign an area of service to each RTU, the Commission adopted the FCC standards then in effect regarding coverage area (37 dbu for two-way and 43 dbu for one-way signaling).^{1/} RTU's then serving areas greater than these standards were not restricted to those defined by the adopted signal-strength contours, however. All RTU's were required to file rates.

The radiotelephone utility business grew rapidly and in the next several years RTU's were before the Commission on numerous occasions; some for new certificates, some with complaints against the land-line telephone companies, some with complaints against each other and some for rate increases. In a far too large number of instances, inept presentations made the regulatory process difficult and unnecessarily costly, both for the regulated and the regulator. Decisions on matters of first instance (so-called "landmark" decisions) were both misunderstood and misconstrued. As in any young,

^{1/} "dbu", as here used, is a measure of the signal strength at the radio receiver.

dynamic and rapidly developing industry the RTU field was beset with problems. It was also beset with internal rivalries and bickerings. When RTU's were not challenging each other or non-regulated operators their target was either regulation in general or this Commission in particular. Recalcitrant response to Commission inquiries and directives seemingly became the rule rather than the exception. Certain industry spokesmen and their counsel publicly castigated the Commission, its Examiners, its staff and its decisions. In short, those who did not wish to understand, did not understand. Some seemed well content with confusion and tried to profit from it. Others, however, seeing some of the advantages of regulation as well as its disadvantages, privately urged that, for the industry's own best interests, the Commission should investigate the operations and practices of the entire industry and should set guidelines for its future conduct.

The industry uses a jargon which in some instances is difficult for the uninitiated to understand and a number of RTU operators felt that they were unable to "get through" to the Commission because the Commission lacked understanding of their technical as well as their operational terms. Those who held this view urged that an investigation would provide a means for overcoming this lack of understanding by developing a mutually acceptable glossary of terms.

Many RTU's, if indeed not all, face competition from non-regulated radiotelephone and signaling services as well as from the land-line telephone companies and other neighboring RTU's. According to the RTU's, FCC rules and the licensing thereunder foster this competition and seem to be more concerned with problems of radio-frequency assignment and mitigation of interference between the

various services than with the adequacy, economic stability, continuity or public necessity of public utility radiotelephone service. The RTU's have generally claimed that private radio systems, which they term pseudo common carriers, are in fact public utilities and that they too should fall within the regulatory jurisdiction of this Commission so that destructive competition with possible attendant deterioration of service to the public may be avoided. Those who hold this view urged investigation on a statewide basis rather than on a more costly case-by-case basis, as a means of affording protection to the existing utility industry and of assuring an adequate service to the public.

Radio by its very nature knows no precise boundaries. Unlike other utility services such as gas or water where the distribution or service area may be defined or contained within limits set by physical properties, the service area of a radio utility can and often does overlap that of another utility. In many instances the service area of one utility, where defined by a signal-strength contour, may overlap several other utilities' similarly defined areas. The San Francisco bay area and the greater Los Angeles area are prime examples. While uncertainties respecting the responsibilities as well as the rights of utilities within service areas may be settled through litigation on a case-by-case basis, an industry-wide investigation might develop a better criterion than the signal-strength contour concept. Thus, it was urged that such be undertaken.

The staff of the Commission urged that an industry-wide investigation be undertaken because of all of the above-recited circumstances and in addition desired a means by which such matters

as accounting, financing, rates, tariff provisions, filings and utility regulations concerning customer relations might be uniformly understood and applied throughout the industry.

With all of the foregoing in mind, the Commission instituted this investigation. The investigation has a two-fold purpose; that of more fully informing the Commission and of reaching lawful and reasonable solutions to some of the problems aggravating the industry. It is not for the purpose, as one RTU owner expressed it, of "trying to find out what else the Commission wants to regulate". Nor should it in any way be looked upon as a step in the direction of making the Commission a paternalistic despot for the RTU industry.

As a matter of procedural convenience, the nine lengthily specified areas of inquiry set forth in the order of investigation were grouped into three phases which, briefly restated, are as follows:

Phase I. Radiotelephone Services and Jurisdiction

- a. Nature of utility services.
- b. Nature of private services.
- c. Nature of maritime services.
- d. Extent of areas served, overlapping, competition.
- e. Nature and extent of utility and customer-furnished equipment.
- f. Regulatory jurisdictions (FCC, CPUC) pertaining to the above.
- g. Requirements for certificates of public convenience and necessity.

Phase II. Accounting and Financing Matters

Phase III. Rates and Tariffs

- a. Results of Operations Analyses
- b. Utility rules governing practices and customer relations.
- c. Rate filings, form and content.
- d. Service area maps and limits.

At the outset, the staff envisioned that staff-industry committees would formulate most of the issues and subsequent proposals and much of the evidence respecting them. Such an attempt was made and staff-led committees were formed on an informal basis. Because the RTU's necessarily had to carry on their own businesses, the amount of time which could be devoted to committee work was not great. A few diligently applied themselves to the task; the greater number gave minimal or no assistance. Upon being advised of this situation, the Examiner called a prehearing conference (held April 16, 1969 at San Francisco) at which the parties were informed as to the future general procedures and the staff requested the assistance of a committee in the preparation of a general report which would include descriptions of service, definitions of terms and other data, and serve as a basic informational standard. The parties were advised that after such report was completed and accepted, the staff would itself have the burden of carrying the investigation forward and to conclusion.

The first two days of public hearing were held on July 29 and 30, 1969, at San Francisco. The above-mentioned general report was identified as Exhibit No. 1 and was explained by two staff witnesses. The exhibit contains a brief history of the development of public usage of radiotelephone service, a description of the

equipment used in mobile radio systems and their present capabilities, a discussion of the licensing and other regulatory functions of the FCC, a classification of mobile services (public and private) with an explanation as to how they are operated, a discussion of the methods by which radio equipment is provided to customers, and four appendices of tables, charts, maps and other useful information including a glossary. In a sense, this exhibit is a small textbook on the radiotelephone industry in California. It had been widely distributed prior to the hearing. It produced both commendatory and condemnatory reactions. It was a first attempt; a generalized exposition and not an all-inclusive treatment of the complex field with which it was dealing. Its introduction in evidence occasioned lengthy and laborious cross-examination of minutia compounded by confusing questioning on phrases taken out of context. In fact, the cross-examination finally and frustratingly "bogged down" because of unanswerable questions. At this point, the Examiner appointed a specific staff-industry committee of seven persons for the exploration of points of agreement and disagreement and a resolution of the latter. The committee proceeded immediately to its work and because of its diligence a new or supplementary report was soon produced.

The third day of hearing was held on August 19, 1969, at Los Angeles. At this hearing the staff made a number of changes in Exhibit No. 1 and introduced, ostensibly on behalf of the committee, a document titled "Corrections of Record by Committee and by Staff to General Report on Mobile Radiotelephone Services" which was received in evidence as Exhibit No. 4. This is a document of 48 pages and includes a glossary of some 91 terms. In essence, it is a re-write of Exhibit No. 1. It contains certain corrections of

Exhibit No. 1 agreed to by the committee and certain corrections initiated by the staff without committee concurrence. In certain areas, material in the exhibit was discussed in committee and left for the staff to clarify and review. In other areas, there was no agreement reached by the committee and in these the staff assumed responsibility for the final wording. By testimony at the time of introduction of Exhibit No. 4 into evidence, the staff witness made additional corrections or changes on 18 pages. Almost the entire third day of hearing was occupied with cross-examination on this document. Once again, questioners were concerned with such minutia as whether or not "rules and regulations" should be capitalized. Semantics, argument with the witness and unsupported statements of alleged facts predominated. Sight was lost of the purpose of the exhibit; that of placing a "primer" or elementary textbook in the hands of the Commission. A practically complete lack of understanding as to either judicial or legislative procedures whereby opposing views are presented, was evidenced by spokesmen and by certain of the counsel for the industry. When invited to call witnesses and present evidence respecting areas of disagreement, they refused. Thus, after the passage of ten months' time and after three days of public hearing not even an agreed-upon glossary of the terms used by the RTU industry had been achieved. In looking to the next day of hearing, the staff indicated that it would prepare a report which would be "the heart of this investigation" and would cover such items as types of services rendered, the problem of multiple-licensed repeater operations, cooperative operations and arrangements with telephone answering services, utility status, the concept of dedication and the problems of lease-maintenance. Although it was stated

that this report would be distributed in October, with hearing thereon in early November, the staff report was not distributed until December 19, 1969.

The fourth day of hearing was held on January 6, 1970, at San Francisco. Some two weeks prior thereto a staff report, titled "Second Report on Mobile Radiotelephone Services Regarding Public Utility Functions of Radiotelephone Services" was widely distributed. It was identified as Exhibit No. 8 at the hearing. Its staff-stated purposes were:

- a. To set forth a framework for approaching the question of the utility status of various types of radiotelephone services.
- b. To bring to the Commission's attention pertinent reference material on this subject.
- c. To suggest the facts which the Commission should have available to it before considering the utility status of a particular radiotelephone operator.
- d. To recommend to the Commission those types of radiotelephone operations which are of a public utility nature and should be considered within the scope of this Commission's jurisdiction.

Serious and strenuous objections were quickly raised respecting the receipt of this document in evidence. Questioning of the staff witness by industry counsel established that the document was virtually barren of facts within the personal knowledge of the witness, that it contained a multiplicity of opinions, legal conclusions, inaccurate paraphrases of FCC rules and the witness' personal version of statutes and what the courts think about them. Further, counsel asserted that the report treated of matters about which the witness had neither the competency nor the qualifications for the rendering of expert opinion. The exhibit was admitted into evidence over these objections. A careful perusal of the document

and the cross-examination of the witness, however, convinced the Examiner of the merits of the original objections and, by reversal of his earlier ruling, the exhibit was rejected. Exhibit No. 8, therefore, is not in evidence. Thus, after the passage of 13 months and with four days of hearing, "the heart of this investigation", as visualized by the staff, had not been reached.

A motion was made, joined in by several parties, that this investigation be terminated and that the many issues within it be handled on an industry-wide committee basis. At the request of several counsel, a recess was taken for the purpose of holding a mid-hearing conference with the Examiner. At such mid-hearing conference, various counsel argued that the investigation was too broad, much too time consuming and far more costly to the industry than any foreseeably desirable end result might warrant, that the industry was fearful that an incomplete or improper record would lead the Commission to false conclusions and thus to harmful regulation, that in some respects the passage of time had remedied certain ills within the industry and that in other respects imminently prospective advances in the art and changes in FCC rule making make a number of aspects of the investigation premature, that a truly factual base must be developed before a Commission decision should be made on any issue, that the staff has neither the intimate knowledge nor the manpower necessary to develop such a base in depth, and that many RTU's are struggling to maintain their financial existence and can not afford further fruitless days of hearing from which they dare not stay away. On a return to the hearing and thus to the record, these arguments were summarized for the benefit of all present (somewhat more than 40 persons). Further or additional statements were invited and were

made. One party desired to make later written comment and was instructed as to how to do so, but such has not yet been received.

Upon much serious reflection and review of the record, including its exhibits, it is concluded that the motion to terminate this investigation should be granted.

There is no doubt that many of the issues set forth in the order of investigation are of importance to the industry and to this Commission. A number of them can and should be resolved by earnest staff-industry committee work. Others seem to be wholly dependent upon in-depth studies and preparation of evidence by the industry alone. Overall, they can be resolved on a case-by-case or issue-by-issue basis and it now appears that most of the areas of inquiry can best be so handled.

It is suggested that at such time as a particular problem or a specific proposal, which either the staff or the industry or an individual RTU feels must be considered, and for which any of them develop full, factual, and lawful supporting documentation and evidence, an order of investigation be opened on and limited to such specific problem or proposal. In this regard, it is recommended that early attention be given to the development of (1) a more meaningful criterion respecting the specification of "service areas", (2) limitations respecting competition and (3) the standardization of tariff rules.

A disservice would be done if this investigation were to be terminated without due recognition being given to the "primer" which is in evidence by Exhibits Nos. 1 and 4. After editing, it should be distributed as a general reference work and as a basis for common understanding of terms applicable to radiotelephone service.

C. 8880 JR
Pro. Rpt.

It is not a statement of "the law". It should not remain static. Its revision and perhaps expansion is to be expected as time passes.

The foregoing opinion and the following order are recommended for filing as the opinion and order of the Commission in Case No. 8880.

O R D E R

Good cause appearing,

IT IS ORDERED that:

1. The Secretary, with the editorial concurrence of the Examiner, shall prepare and distribute to the parties to this proceeding and to other interested persons and organizations, a report titled "General Report on Mobile Radiotelephone Service", said report substantially consisting of the material contained within Exhibits Nos. 1 and 4 in this proceeding.

2. The investigation herein, Case No. 8880, is hereby terminated.

Dated at San Francisco, California, this 26th day of May, 1970.

F. Everett Emerson

F. Everett Emerson
Examiner

APPENDIX A

Appearances

For the Commission staff:

Janice E. Kerr, Counsel, and Paul Popenoe.

For Respondents:

Frank Chalfont, for Chalfont Communications.
R. L. Mohr, for Advanced Electronics.
Homer Harris, for Industrial Communications Systems, Inc.
Avery H. Simon, for Mobile Radio System of San Jose,
Mobile Radio System of Ventura and Pacific
Communications Corporation.
Daniel W. Cochran, for Redwood Radio Telephone Corp.
and for Redwood Radio Telephone Corp. Marin.
Jerry Grotsky, for Peninsula Radio Secretarial
Service, Inc.
Dudley A. Zinke and Erwin E. Adler, of Pillsbury,
Madison & Sutro, for The Pacific Telephone and
Telegraph Company.
John P. Vetromile, for California-Pacific Utilities
Company.
Albert M. Hart, Donald J. Duckett, Walter Rook, for
General Telephone Company of California.
Harold E. Throp, for California Interstate Telephone
Company, Golden State Telephone Company and
Golden West Telephone Company.

For Interested Parties:

Lester W. Spillane and Phillips Wyman, for Allied
Telephone Companies Association.
Neal C. Hasbrook, for California Independent
Telephone Association.
Keatinge & Sterling, by Robert Yale Libbott, for
Mobile Telephone Company (Philadelphia)
and California Mobil Telephone Company.
R. A. Isberg, for Mobilfone Inc., Kern Radio Dispatch, and
Mt. Shasta Radiotelephone Co.
Bacigalupi, Elkus, Salinger & Rosenberg, by
Claude N. Rosenberg, for Telephone Answering
Services of California, Inc.
J. M. James, for Bell & Howell Communications Co.
Carl B. Hilliard, Jr., for National Communications
Airsignal and Pomona Radio Dispatch.
Ronald B. Zimmerman, for National Association of
Business and Educational Radio, Inc.