

ORIGINAL

Decision No. 77754

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMUNICATION INVESTMENTS OF CALIFORNIA, INC. (Formerly California Mobile Telephone Co.) and SAN FRANCISCO MOBILE TELEPHONE COMPANY,

Complainants,

vs.

REDWOOD RADIOTELEPHONE CORPORATION, REDWOOD RADIOTELEPHONE CORPORATION-MARIN, and DANIEL W. COCHRAN,

Defendants.

Case No. 9071  
(Filed May 25, 1970;  
Amended June 16, 1970)

In the Matter of the Application of REDWOOD RADIOTELEPHONE CORPORATION, a corporation, and REDWOOD RADIOTELEPHONE CORPORATION-MARIN, a corporation, for authority to suspend tariffs and discontinue service.

Application No. 51922  
(Filed May 27, 1970;  
Amended August 13, 1970)

In the Matter of the Application of SAN FRANCISCO MOBILE TELEPHONE COMPANY, a California corporation, for a Certificate of Public Convenience and Necessity Authorizing Mobile Radiotelephone Communication Service.

Application No. 51951  
(Filed June 9, 1970;  
Suppls. 1 & 2 filed  
July 7, 1970)

In the Matter of the Application of PENINSULA RADIO SECRETARIAL SERVICE, INC., a corporation, for a Certificate to Construct a Radiotelephone Utility System and for Authority to Exercise Rights Not Yet Secured Pursuant to Rule 20 of the Rules of Practice and Procedure.

Application No. 51955  
(Filed June 11, 1970)

In the Matter of the Application of INTRASTATE RADIOTELEPHONE, INC. of SAN FRANCISCO, a corporation, for authorization to construct additional radiotelephone utility facilities in the San Francisco, Oakland, San Rafael and Santa Rosa areas.

Application No. 51998  
(Filed June 26, 1970)

Application of James E. Walley, dba )  
Auto-Phone Company to operate (tem- )  
porary and/or permanent authority), )  
radiotelephone service from Rich- )  
mond, and/or Oakland; formerly )  
operated by Redwood Radiotelephone )  
Corporation, and to establish )  
tariffs for said operation. )

Application No. 52021  
(Filed July 7, 1970;  
Amended July 27, 1970)

(Appearances are listed in Appendix A)

INTERIM OPINION

On or within a few days after June 1, 1970, Redwood Radiotelephone Corporation (Redwood) and Redwood Radiotelephone Corporation-Marin (Marin), both owned by Daniel W. Cochran, discontinued, allegedly for financial reasons, their radiotelephone service in the San Francisco Bay Area without having received the authority to do so requested in Application No. 51922, captioned above. The two utilities then returned their station authorizations to the Federal Communications Commission for cancellation and notified their subscribers of the discontinuance. Enclosed with the notice was a list, prepared by the Commission staff and forwarded to the Redwood companies (Exh. 1), of a number of firms offering similar radiotelephone utility services in the same general area.

California Mobile Telephone Company (CMT), a California corporate subsidiary of Mobile Telephone Company (Mobile), a Pennsylvania corporation, filed a complaint two days prior to the Redwood application (Case No. 9071). CMT requested injunctive relief against the impending Redwood service discontinuance and cancellation of FCC authorities. CMT also requested temporary and permanent authority to provide radiotelephone utility service, subject to acquisition of FCC station authorization, in the Redwood service areas.

CMT, by amended pleadings, alleges it has changed its name to "Communication Investments of California, Inc." (CIC) and its stated primary corporate purpose from that of engaging in business as a radio-telephone utility to that of investing in and holding securities of communications companies. Its wholly owned subsidiary, San Francisco Mobile Telephone Company (SFMT), is one of the applicants herein for temporary and permanent authority. Byron F. Bertram, president of SFMT, was formerly vice-president and sales manager of the two Redwood utilities.

As might have been expected, the Redwood service lapse produced, literally, a flood of requests by both existing and prospective radiotelephone utilities for permanent - also, in most cases, temporary - authority to serve portions or all of the areas vacated by the Redwood utilities, subject to subsequent acquisition of any required FCC station authorizations. Both the existing operators and those applicants seeking initial operating authority have proposed a variety of two-way and one-way services, either by extensions of existing facilities or by construction of new plant. SFMT proposes, in addition, to offer automatic two-way dial mobile service if granted permanent authority.<sup>1/</sup>

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1/ As of this writing, the following applications for temporary or permanent authority have been docketed, in addition to those captioned above:

1. National Communication Systems (formerly Delta Mobile Radio Telephone Company), Advice Letter No. 6, filed July 6, 1970; suspended August 4, 1970, Case No. 9097.
2. Tel-Page, Inc., Application No. 52018, filed July 7, 1970.
3. United Business Services, Inc., Application No. 52087, filed July 30, 1970 (for service in Marin County only).

The Commission, having been presented with the accomplished fact of the Redwood service discontinuance and the almost simultaneous filing of a number of applications seeking, in most cases, both temporary and permanent authority to replace or augment the Redwood services, considered it appropriate to schedule hearings to determine the extent of public need for the temporary services proposed or offered by the several applicants. Accordingly, a hearing was scheduled and held for that purpose, after due notice that included all known subscribers (about 130) of Redwood and Marin.

Testimony was given at the hearings, held on July 7 and 8, 1970, before Examiner Gregory, by 11 former Redwood or Marin subscribers, and by representatives of three of the applicants and of The Pacific Telephone and Telegraph Company, who outlined briefly their existing or proposed radiotelephone services in portions of the areas formerly served by the two Redwood companies. The president of a fourth applicant, SFMT, briefly described a questionnaire solicited by that applicant from prospective subscribers for radiotelephone utility service. The proceedings were then taken off calendar to afford the Commission an opportunity to consider an appropriate order, or orders, at the present stage of the record.

Some preliminary comments, concerning the relation between the Redwood discontinuance application (No. 51922) and CMT's complaint against the Redwood utilities and their president and sole stockholder, Cochran (No. 9071), are offered here by way of background for this wide-ranging controversy. The FCC is also involved, to the extent that implementation of any operating authority we may grant, whether temporary or permanent, is necessarily subject to the requirement that appropriate station authorization first be obtained from that agency.

The background facts appear in a recent decision by this Commission (American Mobile Radio, Inc., et al. vs. California Mobile Telephone Company, et al., Decision No. 77377, dated June 23, 1970, in Case No. 9034), of which we here take official notice. The Commission dismissed that complaint for lack of jurisdiction over the acquisition, respectively, by CMT and its Pennsylvania parent, Mobile, pursuant to two contracts executed in 1969, of the controlling stock in Redwood and Marin owned by Cochran and the controlling stock in Industrial Communications Systems, Inc. (ICS), owned by Homer Harris.

That complaint, filed March 17, 1970, had sought to have this Commission halt certain applications then pending before the FCC for transfer of control of Redwood, Marin and ICS to CMT and to a corporate subsidiary of Mobile later to be formed in California, and to review and issue prior authority for the stock acquisitions and other financial transactions included in the two agreements. The complainants, all radiotelephone utilities operating in Southern California, alleged that the defendants, in pursuing their transfer applications - and an application by CMT for an airground station license in California - before the FCC, were attempting to avoid scrutiny by this Commission of their stock and other financial transactions prior to the time when they would be in a position to make a public offering of automatic dial service, a service claimed by complainants to be injurious to their own operations and adverse to the public interest. As noted earlier, SFMT has offered such a service in its application for permanent authority.

The Cochran-CMT contract, dated November 21, 1969, provided for its termination within six months of that date unless all necessary regulatory approvals for its consummation had theretofore been obtained. This record shows that Cochran gave notice of termination as

of May 25, 1970, and returned to CMT the deposit called for by the contract. The Redwood discontinuance and these proceedings followed in rapid succession, preceded by CMT's anticipatory complaint.

Further consideration of the Redwood application and the CIC-SFMT amended complaint would serve no useful regulatory or public purpose in disposing of the several applications, including that of SFMT, for temporary or permanent operating authority. This Commission is aware that Redwood and Marin have operated at a loss in each year since they commenced offering radiotelephone utility service in December, 1964 (Decision No. 76178, dated September 16, 1969, in Application No. 50852 of Redwood and Marin for rate increases, cited in CIC's amended response to Application No. 51922, page 1). To order temporary restoration of the Redwood services, as demanded by CMT-CIC, would not only be impracticable in light of the fast-breaking events we have described, but would also raise serious constitutional issues.

As for CMT-CIC, its wholly owned subsidiary, SFMT, is here with other applicants seeking operating authority in the former Redwood service areas. Aside from the question of whether CMT, or CIC and SFMT in their amended pleadings, have standing to challenge the Redwood application for discontinuance of service - a question we do not decide here - their complaint has been rendered moot by the accomplished fact that, whether authorized to do so or not, Redwood and Marin ceased operations as of June 1, 1970.

We are of the opinion that consideration of the several applications for operating authority would be aided by disassociating the Redwood application and the CMT-CIC-SFMT amended complaint from the other proceedings. Accordingly, these two matters, Application No. 51922 and Case No. 9071, will be consolidated for disposition by a decision to be issued contemporaneously with this interim decision.

Reverting to the evidence adduced at the July hearing, the testimony of the utility representatives discloses that of the 133 Redwood and Marin subscribers noted, as of June 2, 1970, in one of the staff exhibits (Exh. 3), at least 71 had arranged, by July 8, 1970, for substitute service from three of the existing radiotelephone utilities which are applicants here and from one landline utility, Pacific Telephone, which is not an applicant in this proceeding. Of the 62 remaining Redwood and Marin subscribers, the 11 who testified, with one exception, had either not then sought or secured substitute service, or were then attempting to negotiate satisfactory substitute radiotelephone utility service from one or more of the utilities presently offering such service. One subscriber testified that he had made arrangements to purchase and operate his own system, following unsuccessful efforts to arrange for utility service coverage in portions of the Greater Metropolitan Bay Area.

With respect to range of the various services now offered or proposed to be offered in these applications, as related to the asserted service requirements of the various witnesses, the evidence discloses that the geographical area involved extends generally from Sonoma, Marin, Napa and Solano Counties, in the North Bay area, down through Contra Costa County and the Metropolitan Bay area to Southern Alameda County, and the San Francisco Peninsula to San Jose and vicinity. The service requirements of the several witnesses, either throughout that general area or only in certain portions of it, ranged from vitally urgent to economically convenient needs for reliable and rapid radio communications, without which, as their testimony indicates, they would suffer both inconvenience and economic loss.

We have concluded, with respect to the various applications that request temporary operating authority to replace the discontinued services of Redwood and Marin, that the evidence adduced at the July hearing is not persuasive to show either an urgent or a substantial present public need for the grant of such authority. As noted earlier, not all the applicants, whether captioned above or otherwise identified in this opinion, have requested temporary authority. All, however, seek permanent authority, and to the extent their proposals conflict they are competitive.

We cannot assume, on the basis of their pleadings alone, that one applicant is better qualified than another to meet whatever public need may exist for substituted or additional radiotelephone service in the areas involved in these proceedings. Where competing applicants are before the Commission, as they are here, elementary fairness to the applicants, as well as to present and prospective subscribers, dictates that the qualifications and proposals of the several applicants be searchingly tested by the usual criteria, and that this be done in public hearings.

It is our opinion, based on what this record shows thus far, that not only the interests of the several applicants and the public, but also the regulatory concern of this Commission for both, would be better served by the scheduling of hearings, as promptly as may be



feasible, on a consolidated record, for the purpose of considering whether any of the presently filed requests for permanent operating authority should be granted. If requested by any of the parties, or if the Commission deems them appropriate, pre-hearing procedures will be adopted to expedite these proceedings.

An interim or other order is not necessary.

Dated at San Francisco, California, this 27th day of SEPTEMBER, 1970.

*William L. Steiner* Chairman  
*Augusta*  
*William L. Steiner* Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

LIST OF APPEARANCES

- John R. McDonough, for San Francisco Mobile Telephone Company and Communication Investments of California, Inc., Applicant in A.51951; Complainant in C.9071; and Respondent in A.51922.
- Vaughan, Paul & Lyons, by John G. Lyons, for Intrastate Radiotelephone Inc. of San Francisco, Applicant in A.51998; Protestant in A.51951 and A.51955.
- Bertram S. Silver and John Paul Fischer, Silver, Rosen & Johnson, for Peninsula Radio Secretarial Service, Inc., Applicant in A.51955; Protestant in A.51951 and A.51998.
- Frank Loughran, Loughran, Berol & Haggerty, for Redwood Radiotelephone and Redwood Radiotelephone-Marin, Applicant in A.51922.
- James E. Walley, dba Auto-Phone Company, for self, Applicant in A.52021.
- Frederick M. Lowther, Pepper, Hamilton & Scheetz, for San Francisco Mobile Telephone Company and Communication Investments of California, Inc., Applicant in A.51951.
- Lewis S. Kunkel, Jr., for San Francisco Mobile Telephone Company and Communication Investments of California, Inc., Applicant in A.51951; Complainant in C.9071.
- Robert N. Richards, for San Francisco Mobile Telephone Company and Communication Investments of California, Inc., Applicant in A.51951; Complainant in C.9071.
- Carl B. Hilliard, Jr., for National Communication Systems, Applicant Advice Letter No. 6.
- Marvin G. Giometti, for San Francisco Mobile Telephone Company and Communication Investments of California, Inc., Applicant in A.51951.
- Dudley A. Zinke, Pillsbury, Madison & Sutro, for The Pacific Telephone and Telegraph Company, Interested Party.
- Bacigalupi, Elkus, Salinger & Rosenberg, by Claude N. Rosenberg, for Tel-Page, Inc., Interested Party.
- R. G. Thayer and Roger Johnson, for the Commission staff.