

ORIGINAL

Decision No. 78159

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN FRANCISCO
MOBILE TELEPHONE COMPANY for a
Certificate of Public Convenience
and Necessity Authorizing Mobile
Radiotelephone Communication
Services.

Application No. 51951
(Petition to amend Decision No.
77754, or for order pursuant
to California Public Utilities
Code, sec. 701 - filed
December 15, 1970)

ORDER TO SHOW CAUSE AND
TEMPORARY RESTRAINING ORDER

Petitioner seeks an order for preservation of the status quo, pending final disposition of the subject application and a number of related proceedings now being heard by this Commission, of certain radiotelephone channel facilities formerly used by Redwood Radiotelephone Corporation and Redwood Radiotelephone Corporation-Marin for service in portions of the San Francisco Bay Area. The Redwood companies abruptly ceased operations on or about June 1, 1970 and returned their station authorizations to the Federal Communications Commission for cancellation. The several applications followed in short order.

Petitioner and the other entities are seeking, or asserting, authority to replace or expand the former Redwood services. Petitioner alleges that the present proceedings will be futile if, due to applications recently filed with the FCC by some of the parties as well as by some non-parties, the facilities enabling a successful applicant or claimant before this Commission

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to provide services in the former Redwood areas were rendered unavailable for later assignment by the FCC to such successful applicant.^{1/}

The cancelled Redwood station authorizations in question are as follows (frequencies shown as MHz):

<u>San Francisco</u> <u>Oakland</u> <u>Richmond</u>	<u>San Rafael</u>	<u>Santa Rosa</u>
454.250	454.050	454.150
454.225	454.175	
152.12	43.22	43.22

Petitioner alleges that applications for all but the 43.22 MHz channel have been filed with the FCC by the following radiotelephone utilities for the indicated locations:

<u>Utility</u>	<u>Date Filed</u> <u>With FCC</u>	<u>Frequency</u> <u>(MHz)</u>	<u>Proposed</u> <u>Location</u>
National Communication Systems	8/24/70	454.250	Vallejo
		454.225	Sacramento
	9/14/70	454.150	Santa Rosa
		454.175	San Rafael
Intrastate Radiotelephone, Inc. of S.F.	11/12/70	454.150	Oakland
		454.175	Oakland
	-	152.12	Oakland
Knox La Rue, dba Tracy Mobilphone	-	152.12	Stockton, Livermore and Angel's Camp
Salinas Valley Radio Telephone Company	-	454.050	Salinas

^{1/} Consolidated proceedings now being heard by this Commission, in addition to Application No. 51951 of San Francisco Mobile Telephone Company, are the following:

Peninsula Radio Secretarial Service, Inc., Application No. 51955
Intrastate Radiotelephone, Inc. of
San Francisco, Application No. 51998
Tel-Page, Inc., Application No. 52018
United Business Services, Inc., Application No. 52087
Bay Area Radio Telephone Service, Inc., Application No. 52273
Colclough and La France (KVRE Communication), App. No. 52781.

Not consolidated with the above, but physically related and set for hearing are:

National Communication Systems, Advice Letter No. 6, Case No. 9097
Intrastate Radiotelephone, Inc. of San Francisco vs.
National Communication Systems, Case No. 9137.

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Petitioner further alleges that, because of FCC rules,^{2/} applicants in Applications Nos. 51951, 52087, 52273 and 52281 herein are precluded by the above-mentioned FCC applications from seeking FCC authority to operate on any former Redwood channels except Channel 43.22 MHz, should any of those applicants obtain operating certificates from this Commission in the pending proceedings.

In addition to the effect mentioned above, other effects of the aforementioned FCC filings, petitioner alleges, are that because of the proposed change of locations for use of the former Redwood channels, no channels remain available for service from San Rafael and Santa Rosa to the public in the greater portion of Marin and Sonoma Counties, and the channels available under the FCC applications for use in Oakland differ from those used by Redwood to provide service from Oakland. Thus, petitioner asserts, the public in Marin and Sonoma Counties would no longer be able to receive any service at all, let alone the services formerly provided by Redwood, and the public formerly served by Redwood from Oakland would no longer be able to receive service on equipment purchased for use on the Redwood system.

Petitioner concludes by asserting that unless this Commission issues an appropriate order to protect the public interest and to enable it to render effective decisions in the pending proceedings, the further conduct of those proceedings will be nothing more than an exercise in futility.

^{2/} Rule 21.30(b) - the so-called "60-day rule", which allegedly prevents any party from filing for a channel more than 60 days after another party has filed for that channel. Also, Rule 21.15(c)(4), which allegedly provides that no party may file within the 60-day period without first having obtained a state certificate authorizing provision of radiotelephone service.

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Petitioner has proposed a form of order (Petition, Exhibit A), the primary effect of which, it alleges, would be to render the aforementioned FCC applications - and any future applications involving the former Redwood channels - defective under Rule 21.15(c)(4) and subject to dismissal by the FCC. Such dismissals, petitioner asserts, would in turn "preserve the status quo as of the date of the Redwood termination and maintain the Commission's power to protect and consider the public interest as it relates to radiotelephone services in the San Francisco Bay Area."

The gist of the petition herein was stated orally by San Francisco Mobile's counsel at the opening of the hearing in the consolidated application proceeding.^{3/} Counsel for Intrastate Radiotelephone, Inc. of San Francisco then asked for and was granted 10 days to respond to the written petition, filed December 15, 1970, and Mobile was granted five days to reply. Intrastate's time was later extended to January 4, 1971. A written request from National's counsel, received December 23, 1970, for 30 days' time within which to respond to the petition, was telegraphically granted to the extent of allowing National to and including January 4, 1971 within which to serve and file a formal pleading stating the substance of National's response, with an opportunity to argue prior to submission of the petition for decision.

As a result of the foregoing pleading schedule, which indicates that January 11, 1970 (the date for reconvening of the

^{3/} The hearing commenced December 8, 1970, proceeded through December 11 and was then continued to the week commencing January 11, 1971. A hearing on National Communication Systems' Advice Letter No. 6 (Case No. 9097 - a suspension and investigation case pursuant to Public Utilities Code sec. 455), and on Intrastate's complaint against National (Case No. 9137), is scheduled to commence January 6, 1971.

consolidated application proceeding) is the date for filing San Francisco Mobile's reply to the answers to its petition herein, we deem it appropriate to make the show cause order to be issued herein returnable somewhat later than normally would be the case, with the view to accommodating both parties and non-parties to the pending main proceedings.

Petitioner asserts that the relief it seeks may be accomplished either by an amendment to Decision No. 77754 or by an order issued pursuant to the statutory authority conferred by Public Utilities Code, sec. 701. Decision No. 77754, dated September 22, 1970, was an interim opinion issued following hearings held July 7 and 8, 1970, in applications filed on or prior to those dates, for the limited purpose of determining whether any public need existed for granting temporary operating authority, proposed by some of the applicants, to replace the discontinued services of the two Redwood companies. The Commission, finding that no urgent or substantial need for the proposed temporary authority had been shown, stated--

"...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."

The hearings on the several requests for permanent operating authority were, as mentioned above, commenced on December 3, 1970 and are now in progress.

We are of the opinion that the more appropriate procedure would be to issue an Order to Show Cause, inasmuch as radiotelephone

utilities in the greater San Francisco Bay Area, who are not otherwise parties to the main proceedings herein, may be involved to the extent necessary to protect the Commission's functions in disposing of those proceedings. Due process dictates that such entities be given an opportunity to appear and be heard before any order, except a temporary order pending such hearing, be issued that might affect their activities.

We assert here this Commission's plenary jurisdiction over radiotelephone utilities operating, or seeking to operate, in California, subject, however, to the requirement that such utilities, prior to commencing authorized service to the general public initially or by extensions authorized by California statutes or specifically authorized by orders of this Commission, obtain appropriate construction permits or other station authorizations required by rules and regulations of the Federal Communications Commission.

We also assert here this Commission's jurisdiction to hear and determine applications, complaints, investigations and other proceedings that involve requests for, or assertions of, operating authority or for the establishment or change of rates, rules, or conditions of service, by radiotelephone utilities in California. In furtherance of such jurisdiction, the Commission may supervise and regulate every public utility, including every radiotelephone public utility, in this State and may do all things, whether specifically designated in Part I of the Public Utilities Code or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction (Public Utilities Code, sec. 701).

We find, from a consideration of the petition herein, that it is necessary and convenient, for the purpose of preserving the

status quo with respect to former Redwood channel facilities, described earlier, that the parties to the pending proceedings as well as radiotelephone utilities operating within or near former Redwood service areas, whose proposed or contemplated use, in either case, of former Redwood channels, as described earlier, or otherwise, would render any of such channels electrically exclusive or otherwise unavailable for later assignment by the FCC to any of the applicants for or claimants of operating authority in these proceedings, be required to appear and show cause why they should not be restrained from initiating or pursuing action before the FCC for assignment to any of them of any former Redwood channel facility, pending determination of the several requests for or assertions of operating authority now before this Commission.

Therefore, on consideration of the motion, or petition, of San Francisco Mobile Telephone Company herein, IT IS HEREBY ORDERED that:

1. The persons and entities named in Appendix A attached to and hereby incorporated in this order as though fully set forth herein, shall appear before Commissioner Moran or Examiner Gregory on Thursday, January 21, 1971, at 10:00 a.m. of said day, at the Commission's Courtroom, State Building, 350 McAllister Street, San Francisco, California, then and there to show cause, if any there be, why they, or any of them, should not be required to cease and desist and thereafter refrain, pending determination by this Commission of the several proceedings hereinabove specified, from initiating, or pursuing further, any applications before the Federal Communications Commission for construction permits, station authorizations, radiotelephone frequency assignments, or other authorities involving the construction, use, location, or relocation

of radiotelephone channel facilities, designated earlier in the preceding discussion, formerly held by Redwood Radiotelephone Corporation or Redwood Radiotelephone Corporation-Marin and used for service by said Redwood companies for service to the general public in the San Francisco Bay Area and vicinity.

2. Said persons and entities named in said Appendix A, attached hereto, their officers, employees, agents and attorneys are, and each of them is, hereby enjoined and restrained, pending completion of the hearing specified in the foregoing Order to Show Cause, paragraph 1 hereinabove, and until further order or orders of this Commission, from initiating, or further pursuing, any application before the Federal Communications Commission that involves the construction, use, location, or relocation of any of said former Redwood channel facilities heretofore used by said Redwood companies for service to the public in and in the vicinity of the San Francisco Bay Area.

The Secretary of the Commission is directed to cause personal service of a certified copy of this order to be made on each of the persons and entities named in Appendix A, attached hereto, and to mail a copy of said order to each of the parties

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designated in Footnote 1 of said order and a copy to the
Secretary of the Federal Communications Commission.

Dated at San Francisco, California, this 5th
day of JANUARY, 1971.

J. M. [Signature]
Chairman
William [Signature]
[Signature]
Vernon L. Stenger
Commissioners

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APPENDIX A
of
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TEMPORARY RESTRAINING ORDER

National Communication Systems, Inc.
910 - 15th Street, Sacramento, Calif. 95814

Intrastate Radio Telephone, Inc. of San Francisco
415 Cambridge Avenue, Palo Alto, Calif. 94306

Peninsula Radio Secretarial Service, Inc.
135 South "B" Street, San Mateo, Calif. 94401

Mr. Knox La Rue, dba Tracy Mobilphone
2171 Ralph Avenue, Stockton, Calif. 95206

Salinas Valley Radio Telephone Company
323 Rianda Street, Salinas, Calif. 93903

Carford Corporation
140 West College Street, Suite 203, Covina, Calif. 91722

Mr. Joseph A. Smiley, dba Central Exchange Mobile Radio Co.
415 Cambridge Avenue, Palo Alto, Calif. 94306

Mr. John R. Nissen, dba Clearlake Radiotelephone
Clearlake Garage, Highway 20, Clearlake Oaks, Calif. 95423

Mr. L. T. Niethammer, Partner, dba Delta Mobile Radio Service
1912 West Texas Street, Fairfield, Calif. 94533

Delta Valley Radiotelephone Company, Inc.
2171 Ralph Avenue, Stockton, Calif. 95206

Mobile Radio System of San Jose, Inc.
777 North First Street, San Jose, Calif. 95112

Mr. W. R. Fox, dba Santa Cruz Telephone Answering and Radio Service
628 Ocean Street, Santa Cruz, Calif. 95062

Stockton Mobilphone, Inc.
2171 Ralph Avenue, Stockton, Calif. 95206

Mrs. C. L. Tadlock, dba Tadlock's Radio Dispatch
26 Main Street, Woodland, Calif. 95695

Tel-Page, Inc.
733 Laurel Street, San Carlos, Calif. 94070

Mr. Melvin L. Pugh, Jr. and Mr. Larkin D. Younce,
Copartners, dba Ukiah Answering Service
1498 Lockwood Drive, Ukiah, Calif. 95482