

ORIGINAL

Decision No. 78658

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 (Filed June 9, 1970) (Petition to Amend Decision No. 77754 or for Order Pursuant to Sec. 701 Public Utilities Code, filed December 15, 1970)
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(Appearances at Hearing on Order to Show
Cause as listed in Appendix A)

INTERIM OPINION ON ORDER TO SHOW CAUSE

The Commission, on consideration of a petition by San Francisco Mobile Telephone Company (SFMT) for an injunctive order, pending resolution of a number of applications and other proceedings for radiotelephone utility (RTU) authority in the San Francisco Bay Area and vicinity, issued an order to show cause and temporary restraining order, returnable January 21, 1971 (Decision No. 78159, dated January 5, 1971). The order forbids, pendente lite, the initiation or further pursuit, by certain RTUs which are parties to pending proceedings and by a number of RTUs in various Bay Area localities, of applications before the Federal Communications Commission for assignment, at the same or other locations, of radiotelephone frequencies formerly licensed to Redwood Radiotelephone Corporation or Redwood Radiotelephone Corporation-Marin, for service in the San Francisco/Oakland Metropolitan Area and nearby communities.

The Redwood Companies abruptly ceased operations on June 1, 1970. The FCC cancelled their station licenses on June 22, 1970. This Commission held hearings on July 7 and 8, 1970 to determine whether any substantial public need then existed for temporary replacement of the Redwood services, as proposed by some

existing and prospective RTUs whose applications had then been filed. No such need was found, and the Commission, by an interim decision (Decision No. 77754, dated September 22, 1970, in Case No. 9071 et al.), directed that hearings be held on the merits of the several proposals, augmented by applications later filed, to commence with the SFMT application (No. 51951) on December 8, 1970.^{1/}

Before discussing the issues raised by SFMT's petition for injunctive relief, we mention here the current status of the two main proceedings; i.e., (1) a consolidated and comparative proceeding involving the several applications by existing and prospective RTU's for state authority to replace or expand the former Redwood services, and (2) a physically related but separately considered matter involving the suspension and investigation of a tariff filed by National Communications System, Inc., Advice Letter No. 6, to extend RTU service, without further state authority, to some localities involved in the comparative application proceeding (Case No. 9097, submitted, after hearing and briefs, on February 16, 1971).

In the comparative proceeding, SFMT, after substantially completing its case in December, 1970 (except for some remaining cross-examination and for rebuttal by other applicants), moved for a further continuance at a continued hearing on January 11, 1971. The

^{1/} Background facts and issues, in addition to those discussed in the show cause order (Decision No. 78159, supra), are also discussed in Decision No. 77754, supra and in a decision, contemporaneously issued, which dismissed a complaint by a predecessor of SFMT against the Redwood companies and their owner, Cochran, and granted Redwood's application to discontinue RTU service as of May 31, 1970 (Decision No. 77755, in Case No. 9071 and Application No. 51922).

Examiner denied that motion. On January 21, 1971 (the return date of the show cause order) SFMT withdrew its application and moved for its dismissal without prejudice. That application (No. 51951) is presently in a suspended status, pending resolution of a petition, filed February 16, 1971 by San Francisco Mobile Telephone Company to amend substantially and to further prosecute the SFMT application. That petition will be resolved by a separate decision. The other applicants and the Commission staff have completed their evidentiary showings.^{2/}

For convenience here, the former Redwood frequencies and localities where used, and the various FCC applications filed by parties to pending main proceedings, are indicated below.

Former Redwood Frequencies (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

^{2/} Those applicants are:
 Peninsula Radio Secretarial Service, Inc., Application No. 51955
 Intrastate Radiotelephone, Inc. of San Francisco, Application
 No. 51993
 Tel-Page, Inc., Application No. 52018
 United Business Services, Inc., Application No. 52087
 Bay Area Radiotelephone Service, Inc., Application No. 52273
 KVRE Communications, Application No. 52281
 (The latter three applicants are seeking original certificates
 of public convenience and necessity to provide RTU service
 in portions of the former Redwood service areas.)

Applications for all but the 43.22 MHz (low band paging) frequency have been filed with the FCC as follows:

<u>RTU</u>	<u>Date Filed With FCC</u>	<u>Frequency (MHz)</u>	<u>Proposed Location</u>
National Communications System, Inc.	8/24/70	454.250	Vallejo
(respondent in S & I Case No. 9097)	9/14/70	454.225	Sacramento
		454.150	Santa Rosa
		454.175	San Rafael
Intrastate Radiotelephone, Inc. of San Francisco	11/12/70	454.150	Oakland
(Appl. 51998 in comparative proceeding)		454.175	Oakland
		152.12	Oakland
Knox La Rue, dba Atlas Radiophone-Tracy, et al.	-	152.12	Stockton, Livermore and Angels Camp
(respondent to show cause order only)			
Salinas Valley Radio Telephone Co.	-	454.050	Salinas
(respondent to show cause order only)			

In determining whether further temporary restraints are appropriate, we have considered the several memoranda and briefs filed both before and after issuance of the show cause order. Those opposing any form of restraint comprise the four RTUs, named above, which have filed FCC applications for assignment of one or more former Redwood station authorizations. Those who support temporary restraints comprise the three applicants seeking original certification, one existing RTU (Peninsula Radio Secretarial Service, Inc.) and the Commission staff. Of the respondents served with the show cause order who appeared at the hearing, three disclaimed any intent to file FCC applications for former Redwood frequencies and another took no active part in the hearing.^{3/}

^{3/} The record shows that all but one of the respondents were duly served with a certified copy of the show cause order prior to the return date, and that four respondents, though so served, did not appear (Carford Corporation, Mobile Radio System of San Jose, Inc., Tel-Page, Inc. and Larkin D. Younce, copartner, Ukiah Answering Service).

Knox La Rue, proprietor or a corporate officer of four RTUs located in or near the Sacramento-San Joaquin River Delta region (Atlas Radiophone-Tracy; Atlas Radiophone-Antioch; Stockton Mobilphone, Inc. and Delta Valley Radiotelephone Company, Inc.), appeared on behalf of that RTU group except Stockton Mobilephone, Inc. He asserted, in his oral and written objections to any injunctive restraints, that his proposed use at Livermore or Angels Camp of the 152.12 MHz frequency formerly used by Redwood at San Francisco, Oakland and Richmond, as sought in his pending FCC application, would not be incompatible with its use by a successful party in the main proceedings. Similarly, Phillips Wyman, testifying as president of Salinas Valley Radio Telephone Company, urged that his company's proposed use at Salinas of the 454.050 MHz frequency formerly used by Redwood at San Rafael, as sought in Salinas Valley's pending FCC application, would not interfere with its use by a successful party here, especially if used by such party at a San Rafael transmission site.

The evidence at the show cause hearing persuades us, together with what we can officially note concerning the geographic and topographic aspects of the localities involved, that, so far as these proceedings are concerned, there is little reason to suppose that Salinas Valley's use of the 454.050 MHz frequency at Salinas and less reason to expect that La Rue's use of the 152.12 MHz frequency at Angels Camp would constitute a serious obstacle to the use of those frequencies at locations proposed by parties to the main proceedings here. Accordingly, no further injunctive restraints will be imposed to inhibit further pursuit by La Rue or Salinas Valley of FCC applications that involve the use of the 152.12 MHz frequency at Angels Camp or the 454.050 MHz frequency at Salinas.

The evidence is persuasive, however, that La Rue's proposed use of the 152.12 MHz frequency at transmission sites of his four systems, other than the proposed site at Angels Camp, and the use of that, or other, former Redwood VHF or UHF frequencies by RTUs in the San Francisco/Oakland Metropolitan Area and nearby localities, would probably render those frequencies unavailable for later FCC assignment to one or more successful parties to the main proceedings.

Accordingly, any temporary restraint should also extend, in addition to National, Intrastate and the four La Rue systems mentioned above, to respondents who, though served, did not appear at the show cause hearing, or, if appearing, did not otherwise participate in that proceeding. Restraints need not be imposed, however, on the three respondents who disclaimed any intent to file FCC applications for the former Redwood channels (Nissen, dba Clearlake Radio Telephone; Niethammer, copartner, Delta Mobile Radio Service, and Mrs. C. L. Tadlock, dba Tadlock's Radio Dispatch), and cannot be imposed on the one respondent who was not served with the show cause order (Fox, dba Santa Cruz Telephone Answering and Radio Service).

Although the evidentiary stage has ended, some time necessarily will be consumed in concluding the final phases of these proceedings and, perhaps, for post-decision review. With all deference to the jurisdictional ambit of the FCC over radio common carriers, we cannot permit - if we can prevent - the acquisition by certain RTUs of preemptive authority from the FCC, in derogation both of our paramount certification jurisdiction and of the correlative right of the parties to have the merits of their respective proposals meaningfully resolved by this Commission.

Accordingly, we are of the opinion, and we find, that it is necessary and convenient, pending resolution of both the comparative application proceeding and the tariff suspension proceeding involving National Communications System, Inc., that the temporary restraining order heretofore issued by Decision No. 78159 herein be continued in effect, as to respondents named in the ensuing order, as a temporary cease and desist order.

No reason appears, however, to make such an order retroactive to June 1, 1970 (the date Redwood ceased operations), as requested by petitioner.

INTERIM ORDER

IT IS HEREBY ORDERED that:

1. The temporary restraining order heretofore issued by Decision No. 78159 is continued in effect as a temporary cease and desist order with respect to the radiotelephone utilities herein-after named, pending further order or orders of this Commission, or until final determination by this Commission of the issues of fact and law in the main proceedings herein, as such proceedings are described in the foregoing opinion:

National Communications Systems, Inc.
Intrastate Radiotelephone, Inc. of San Francisco
Peninsula Radio Secretarial Service, Inc.
Knox La Rue, dba Atlas Radiophone-Tracy and
dba Atlas Radiophone-Antioch
Stockton Mobilphone, Inc.
Delta Valley Radiotelephone Company, Inc.
Carford Corporation
Joseph A. Smiley, dba Central Exchange
Mobile Radio Co.
Mobile Radio System of San Jose, Inc.
Tel-Page, Inc.
Larkin D. Younce, copartner, Ukiah
Answering Service.

2. Said temporary restraining order is dissolved with respect to all respondents or parties to the order to show cause herein except those named in ordering paragraph one, above.

3. Except as granted hereinabove, the petition of San Francisco Mobile Telephone Company for injunctive relief, filed December 15, 1970 is denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 11th
day of MAY, 1971.

[Signature]
Chairman
William J. Quinn
[Signature]
Verna L. Sturgeon
[Signature]
Commissioners

APPENDIX A

LIST OF APPEARANCES

Petitioner: Marvin G. Giometti, Attorney at Law, for San Francisco Mobile Telephone Company.

Applicants: Bryan R. McCarthy, Attorney at Law, for United Business Services; Farrand, Malti & Spillane, by George M. Malti and Lester W. Spillane, Attorneys at Law, for Bay Area Radiotelephone Service, Inc. and KVRE Communications.

Respondents: L. T. Niethammer, for Delta Mobile Radio Service; Carl B. Hilliard, Attorney at Law, for National Communication Systems, Inc.; Vaughn, Paul & Lyons by John G. Lyons, Attorney at Law, for Intrastate Radio Telephone, Inc. of San Francisco, and Central Exchange Mobile Radio Company; Tom L. Cook, for Intrastate Radiotelephone, Inc. of San Francisco; John Paul Fischer, Attorney at Law, Silver, Rosen & Johnson, for Peninsula Radio Secretarial Service, Inc.; Knox LaRue, for Atlas Radiophone, Tracy; Atlas Radiophone, Antioch, and Delta Valley Radiotelephone Company, Inc.; Phillips Wyman, for Salinas Valley Radio Telephone; Joseph A. Smiley, for Central Exchange Mobile Radio Company; John Nissen, for Clearlake Radio Telephone and Lowell G. Harris, for Tadlock's Radio Dispatch.

Commission Staff: R. G. Thayer, Attorney at Law.