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ORIGINAL

Decision No. 78704

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.

And Related Matters.

Application No. 51951

Application No. 51955
Application No. 51998
Application No. 52018
Application No. 52087
Application No. 52273
Application No. 52281
(Petition, filed
February 16, 1971 by
San Francisco Mobile
Telephone Co. to Amend
and to Prosecute A. 51951)

INTERIM OPINION ON PETITION
TO AMEND AND TO PROSECUTE
APPLICATION NO. 51951

San Francisco Mobile Telephone Company, Inc. (SFMT),
having substantially completed its evidentiary showing in the
subject proceedings in December, 1970 and having, on January 21,
1971 withdrawn its application and requested its dismissal
"without prejudice", has petitioned to amend, reinstate and further
prosecute Application No. 51951 as part of the consolidated and
comparative application proceedings entitled and numbered above.
The petition is opposed by the other applicants and by the
Commission staff.

A. 51951 et al hjh

The petition, together with testimony offered by SFMT's new president, Homer N. Harris (who is also president of Industrial Communications Systems, Inc., of Los Angeles), at a hearing in progress on February 5, 1971 in the consolidated proceeding, discloses that a radical change was taking place in the control of SFMT in the latter part of January, 1971, and that the above-mentioned withdrawal and request for dismissal of Application No. 51951 by its former Pennsylvania sponsors and affiliates - allegedly for financial reasons - resulted from that circumstance.

Cross-examination of Mr. Harris at the February 5 hearing revealed that the presentation theretofore made by SFMT would be changed in at least the following respects: different operating equipment and different service from that previously proposed; different installation and operating personnel; different financing; changes in the SFMT ownership. Accordingly, the Examiner directed Mr. Harris to serve and file a petition, with accompanying corporate records showing the change in ownership and management of SFMT, for the purpose of submitting to the Commission the question of SFMT's reinstatement in the comparative proceeding. The petition, though containing attachments relating to petitioner's arguments for authority to provide "multi-channel, automatic mobile telephone service", is silent both as to the supporting corporate records and any details of proposed alterations in SFMT's previous operating and financial proposals, as mentioned hereinabove.

A. 51951 et al hjh

The general nature of these proceedings has been discussed in previous interim or final decisions.^{1/} Except for Application No. 51951 of SFMT, the evidentiary phase has been completed in both the comparative application proceeding and in a related suspension and investigation case involving National Communications System, Inc. (Case No. 9097, submitted on a separate record on February 16, 1971). The comparative proceeding was submitted on April 6, 1971, subject to proposed report procedures to follow service and filing of concurrent memoranda within 30 days after notice of filing the last volume of the Reporter's Transcript.

We have concluded, after consideration of the petition and objections thereto, together with Mr. Harris' testimony at the February 5 hearing, that the changes in the SFMT application mentioned by Mr. Harris at the February 5 hearing would result in the insertion into the consolidated and comparative proceeding of a substantially new application, to the prejudice of the other applicants who have now completed their evidentiary showings in reliance on an understanding, shown by the record at the outset of the hearings, that the consolidated applications would be "frozen". The "freezing" was designed to provide a fair comparison of all proposals without the disruptions that might develop from changes and amendments to applications as the hearings progressed.

^{1/} Decisions Nos. 77754 and 77755, dated September 22, 1970.

Decision No. 78159 (Order to Show Cause), dated January 5, 1971 and an interim decision in the show cause matter (Decision No. 78658, dated May 11, 1971.)

A. 51951 et al hjh

Petitioner alleges that there is need for "automatic mobile telephone service" in the Bay Area. Without commenting on the merits of that assertion, we note that the record in the consolidated proceeding suggests that there are operating radio-telephone utilities (RTUs) in the Bay Area which could provide such a service, just as Industrial Communications System has recently been authorized by this Commission to do in Los Angeles (ICS, Advice Letter No. 23, Resol. No. T-7271).

The system proposed by the original sponsors of the SFMT application was described as the "Automatic Mobile Secretarial Service" (AMSS-SFMT Exhibit 3; Tr. 415, ls. 12-21; Tr. 430, ls. 1-25). At the close of the hearing on December 11, 1970 SFMT had presented testimony and exhibits which purported to distinguish their proposed equipment and service from that offered by all other RTUs outside the mobile telephone family of utilities controlled by Robert L. Starer, who testified in support of the SFMT application. Attached to the SFMT petition herein is a letter from Starer to Marvin G. Giometti (SFMT counsel at the time), dated January 20, 1971, which directed that Application No. 51951 be withdrawn. SFMT is a wholly owned subsidiary in a holding company structure controlled by Starer. Thus, it is questionable, on this record, whether Homer N. Harris, as the new president of SFMT, has sufficient authority to proceed with Application No. 51951.

The petition should and will be denied. Application No. 51951, however, will be disposed of by final decision in the consolidated proceeding, following completion of proposed report procedures now authorized to be taken in that proceeding.

A. 51951 et al hjh

INTERIM ORDER

IT IS HEREBY ORDERED that the petition of San Francisco Mobile Telephone Company, Inc., filed February 16, 1971, to amend and to prosecute Application No. 51951 be and said petition hereby is denied.

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

Dated at San Francisco, California, this 18th
day of MAY, 1971.

Chairman

Vernon L. Sturgeon

Commissioners