

Decision No. 79799

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RADIO ELECTRONIC PRODUCTS CORPORATION,
a California Corporation,

Complainant,

vs.

PAUL E. BOER; REDDING RADIO PAGE;
VALLEY INDUSTRIAL COMMUNICATIONS, INC.;
SHASTA LOGGERS RADIO ASSOCIATION; RED
BLUFF ANSWERING SERVICE; PHYSICIANS
AND BUSINESS SERVICE; DOES I THROUGH
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Defendants.

Case No. 9276
(Filed September 24, 1971)

Philips B. Patton, Attorney at Law, for Radio
Electronics Products Corporation, complainant.
Farrand, Malti & Spillane, by George M. Malti,
Attorney at Law, for Paul E. Boer, Redding Radio
Page, Valley Industrial Communications, Inc.,
Shasta Loggers Radio Association, Red Bluff
Answering Service and Physicians and Business
Service, defendants.
Rufus G. Thayer, Attorney at Law, for the Commission
staff.

O P I N I O N

After due notice, hearings were held on this complaint before Examiner Coffey. The matter was submitted for decision on February 1, 1972, upon the receipt of defendants' reply brief.

Hearing was held in San Francisco on October 19, 1971, on the order to show cause ^{1/} why defendants should not be ordered to cease and desist from expanding their radiotelephone plant and operations which provide "shared" service to the public. Since the

1/ Decision No. 79222, dated October 5, 1971.

parties stipulated that there be no expansion of users of the shared-use systems in controversy at Redding, Red Bluff and surrounding areas until completion of hearing on the principal issues, the parties agreed that an order limiting service expansion by defendants was not needed.

Hearing was held in San Francisco on December 7, 1971, on why defendants should not be ordered to cease and desist from constructing any radiotelephone system for, or from offering or rendering any radiotelephone service to the public, or any segment thereof, until and unless they shall first apply for and receive from this Commission a certificate of public convenience and necessity.^{2/}

Complainant requests that the complaint against the following be dismissed:

1. Shasta Loggers Radio Association.
2. Paul E. Boer, Valley Industrial Communications, Inc. and Redding Radio Page insofar as the complaint has reference to a 450 MHz band system.
3. Paul E. Boer, Valley Industrial Communication, Inc. and Red Bluff Answering Service insofar as the complaint has reference to a Red Bluff system.

Thus, this complaint is concerned with the activities of Paul E. Boer, Valley Industrial Communications, Inc., and Physicians and Business Service that are related to their construction, service offerings and operations with respect to a 152.48 MHz and 151.995 MHz radio system with the base station located at Physicians and Business Service (PBS) at 1607 Market Street, Redding, California, hereinafter referred to as the Redding Radio Page System.

Complainant Radio Electronic Products Corporation requests that defendants, as defined above, be required to cease and desist from offering or providing radiotelephone service to the public for hire at Redding, California, until and unless they shall apply for and receive from the Commission a certificate of public convenience and necessity.

^{2/} Scope of hearing is prescribed by Decision No. 79222.

The staff recommends that the relief requested by complainant be granted.

At the hearing a stipulation, Exhibit 1 between complainant and defendants, was received in evidence which contained an agreed statement of facts as to the matters at issue. The stipulation also provided the vehicle by which complainant asked the Commission to dismiss its complaint against certain defendants, thereby restricting the issues. Exhibit 4 sets forth the charges for services made by defendants and Motorola Communications and Electronics, Inc. Complainant's one witness presented background information relative to the radiotelephone utility industry and the staff presented a report on mobile radiotelephone services regarding public utility functions of radiotelephone services. Neither witness presented any facts specific to complainant's or defendants' operations.

Defendants relied on Exhibits 1 and 4 and did not present a witness.

Attached to the staff brief as Exhibit A is a schematic diagram of defendants' system and attached as Exhibit B is a comparison of complainant's and defendants' operations. Since this material has not otherwise been presented in this proceeding, it will not be considered in arriving at a decision on this matter.

Complainant would have this decision "constitute a self-sufficient document to explain clearly that public utility operations such as those undertaken by the defendants are in fact unlawful". The staff likewise urged "a comprehensive decision with a complete line of reasoning...in this case". It would be inappropriate to issue this decision as an industry-wide guide inasmuch as many parties with interest have had no notice of this proceeding and are not parties to the proceeding. This decision will be based on and limited by the facts presented as evidence in this proceeding.

The following stipulations relate to defendants' operations:

- "4. The mobile radiotelephone and paging base station located at the Physicians and Business Service (PBS) at 1607 Market Street, Redding, California licensed for operating on

152.48 MHz and 151.955 MHz (Redding Radio Page System) was installed for and at the expense of Paul E. Boer, dba Redding Radio Page, and was first licensed only to him. It is installed at the premises of PBS, who pays the rent and electrical bills and has the only control or dispatch point. Paul E. Boer is in the business of selling, renting, leasing, installing and maintaining radio equipment. PBS is in the business of telephone answering and private radio system dispatching. PBS advertises "Mobile Telephone Service" in the City Directory and elsewhere. Boer and/or PBS controls the system, and the users of the system have not reserved to themselves in their arrangements with Boer and PBS an arbitrary right to decide whether other persons also can share its use. Licensees have no formal contracts as to their use of the equipment owned by Boer and operated or dispatched by PBS. Equipment capable of interconnecting the radiotelephone system to the public exchange telephone network is included in the radio control equipment installed at PBS, but no telephone lines are connected to it at this time.

- "5. There are only two users of the PBS system. The system has been in use less than six months. Each user is licensed for his use by the Federal Communications Commission, but the users have not, in fact, had the right vis-a-vis Boer and PBS to say who else shall or shall not be given service over the same system as is required by the FCC for non-common carrier shared-use multiple-licensed systems. Users have unwritten agreements with Boer for use of the base station and control equipment; and with PBS for dispatching. The installed cost to Boer of the equipment used in this system at PBS was approximately \$5,700.00. Each paging user's cost paid to Boer is \$4.00 per month for the use of the base station. There are at present no two-way mobile users on the system, but the system is equipped with such a capability. Total rental revenue to Boer at this time is \$8.00 per month, against a \$5,700.00 investment and to offset maintenance costs.
- "6. Boer and PBS have no written contract between themselves concerning the equipment or operation of the radio system. Many new users would be required to enable Boer to break-even on the cost of the equipment.

- "7. All persons who could qualify for a radio license in the Business Radio Service who have a good credit rating and who operate a lawful business have been acceptable for service over the system. FCC requirements for licensing in the Business Radio Service are set out at Section 91.551 of the FCC Rules and include "any person engaged in a commercial activity.
- "8. The local Motorola communications salesman contacts prospective users of the Redding Radio Page system and arranges, where possible, for their purchase or rental of Motorola mobile equipment, and for their licensing by the FCC. Users who have been so licensed by the FCC are accepted on the system upon their agreement to pay the charges assessed by Boer and PBS. One of the present users on the Redding Radio Page System who operates two pagers was a subscriber to the similar REPCO paging service before he was solicited by Motorola for purchase of his own pager and for substitution of the service of Redding Radio Page for the service of REPCO.
- "9. The type of tone and voice paging service given users over the Redding Radio Page system is essentially the same type of paging service given to the public under California Public Utilities Commission (PUC) tariffs by the complainant. There is no tone only paging on the Redding Radio Page system. A person calls the paging operator over public telephone facilities. The operator takes the message and relays it to the paging subscriber over the radio system. The forwarding of intelligence is via a human telephone answering service operator, rather than by any automatic means. The respective service areas of the Redding Radio Page and the RTU largely overlap. The equipment purchased by the present subscribers of Redding Radio Page will operate in the same fashion when tuned to the paging frequency of REPCO which tuning requires changing of the crystal. PUC tariffs of REPCO permit users to own their own equipment, and REPCO is obligated to furnish service to the present Redding Radio Page subscribers, they using their privately owned pagers, on demand."

Exhibit 4 indicates that for its customers who have a pager PBS adds \$5.00 to the base rate for its answering service. Each request for paging counts as a message unit against the message unit allowance under the base rate. The charge for each message unit above the basic allowance is 15 cents.

Radio paging receivers, with chargers, are available from Motorola Communications and Electronics, Inc., for a cash payment of \$344.40 or for lease for 24 months on the payment of \$34.44 and monthly lease payments of \$15.19.

Valley Industrial Communications, Inc., charges for the use of the base station at Redding as follows:

<u>Service</u>	<u>Monthly Charge</u>
Use of Base Station	\$ 4.00
Maintenance of Paging Receiver	<u>3.00</u>
Total, receiver customer furnished	7.00
Rental of Paging Receiver	<u>12.50</u>
Total, where receiver not customer furnished, dispatching not included	\$19.50

Findings and Conclusions

We find that:

1. Defendant Paul E. Boer, doing business as Redding Radio Page, has installed a radiotelephone one-way signaling or paging transmitter at the offices of Physicians and Business Service, a telephone answering service located in Redding, California.
2. Physicians and Business Service dispatches and controls the Redding Radio Page radio system, and provides space and power for its operation.
3. A local Motorola communications salesman solicits persons engaged in commercial activities and prospective users of the Redding Radio Page System to purchase or rent paging receivers and arranges for their licensing by the FCC. Users so licensed are accepted on the Redding Radio Page System upon their agreement to pay charges assessed by Boer and PBS.
4. Motorola sells paging receivers to the public for a total cash price of \$344.40.
5. Motorola leases paging receivers to the public for a down payment of \$34.44 and 24 monthly payments of \$15.19.

6. Paul E. Boer, doing business as Valley Industrial Communications, Inc., charges users \$7.00 per month for use of the base station and maintenance of a paging receiver not owned by Mr. Boer, or \$19.50 per month for use of the base station and rental of a pager furnished by Mr. Boer.

7. Physicians and Business Service charges users \$5.00 per month for paging service, and makes an additional charge of 15 cents per call if the user's total paging and answering service message units exceed the message unit allowance available under the user's base rate for answering service.

8. Each user is separately licensed by the FCC.

9. Paul E. Boer owns and he and Physicians and Business Service are in control of the system and its usage. Users do not have a right to decide whether other persons may use the system.

10. The Redding Radio Page radio transmitters are not connected directly or indirectly to the public land line telephone system, but communications received over the public land line telephone system by the paging operator at Physicians and Business Service are routinely forwarded over the radio system by the telephone answering operator.

11. No certificate of public convenience and necessity has been issued by the California Public Utilities Commission to Paul E. Boer, Redding Radio Page, Valley Industrial Communications, Inc. and/or Physicians and Business Service for provision of radiotelephone public utility service at Redding, California.

12. One-way radiotelephone signaling or paging service offered or provided to the public for hire in California by defendants, as herein defined, is a public utility radiotelephone service subject to the jurisdiction and regulation of this Commission.

13. The offering by defendants, as herein defined, of the use of a one-way signalling or paging radiotelephone transmitter, of the maintenance of paging receiver used with said transmitter, of the furnishing of pagers to use with said transmitter and of the relaying of paging messages over said transmitter to that limited portion of

the public at Redding, California, which is licensed for such service in the FCC's Business Radio Service is an offering of radiotelephone service to the public which is an offering of telephone service for compensation within the meaning of the California Public Utilities Code.

14. Defendants as herein defined are public utility telephone corporations as defined by the California Public Utilities Code.

15. Defendants as herein defined have not obtained from this Commission a certificate that the present or future public convenience and necessity require the construction of a radiotelephone one-way signalling or paging transmitter in Redding, California.

We conclude that defendants, being telephone corporations that operate and/or have constructed a radio telephone system without having obtained a certificate of public convenience and necessity as required by Section 1001 of the California Public Utilities Commission, should be ordered to cease and desist from offering or providing radiotelephone service to the public for hire until they have been granted such a certificate.

O R D E R

IT IS ORDERED that:

1. Defendants Paul E. Boer, Redding Radio Page, Valley Industrial Communications, Inc., and Physicians and Business Service shall cease and desist from offering or providing radiotelephone service to the public for hire at and in the vicinity of Redding, California, until and unless they shall first apply for and be granted a certificate of public convenience and necessity from this Commission.
2. Said defendants shall notify users of the Redding Radio Page System, within fifteen days of the effective date of this order, that the Redding Radio Page service is to be terminated thirty days thereafter.
3. Said defendants shall terminate their provision of radiotelephone service to the public for hire forty-five days after the effective date of this order.

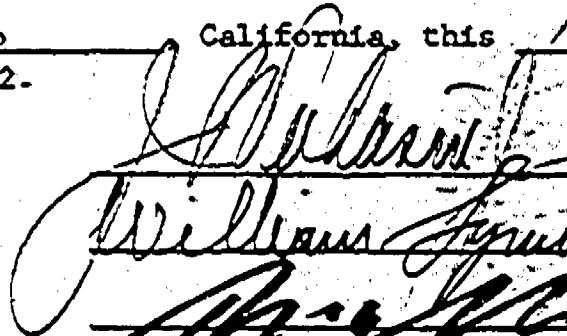
4. Said defendants shall report their compliance with the terms of this order within twenty days, and again within fifty days, of its effective date.

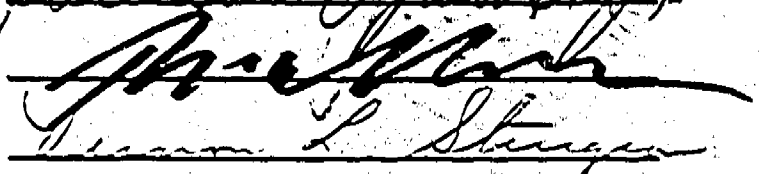
5. All motions consistent with the findings and conclusions of this opinion and order are granted; those not consistent therewith are denied.


The Secretary of the Commission is directed to cause a certified copy of this order to be served upon said defendants and to cause a copy to be mailed to each appearance of record.

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

Dated at San Francisco California, this 14th day
of MARCH, 1972.



Chairman


William L. Sturgeon


Commissioners