

Decision No. 80098

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application No. 51951
(Filed June 9, 1970;
Amended July 7, 1970 and
December 2, 1970)

Application No. 51955
(Filed June 11, 1970)

Application No. 51998
(Filed June 16, 1970)

Application No. 52018
(Filed July 7, 1970)

Application No. 52087
(Filed July 30, 1970;
Amended August 28, 1970)

Application No. 52273
(Filed November 2, 1970;
Amended November 30, 1970)

Application No. 52281
(Filed November 6, 1970)

And Related Matters.

(See list of appearances in Appendix A of Proposed Report)

O P I N I O N

This consolidated proceeding involves the applications of seven existing or prospective radiotelephone utilities (RTUs) for certificates of public convenience and necessity (Public Utilities Code, sec. 1001) to replace or expand former RTU services, abruptly terminated on June 1, 1970, of Redwood Radiotelephone Corporation and Redwood Radio Telephone Corporation-Maria (Redwood) in the

San Francisco/Oakland metropolitan area and in portions of Marin and Sonoma Counties.

A proposed report, prepared by Examiner John M. Gregory at the Commission's direction, was filed herein on September 23, 1971. Exceptions and replies thereto were filed by December 27, 1971. As noted in the report (p. 6), only five of an original group of nine requests for, or claims to, RTU operating authority, filed during the six-month period following termination of the Redwood services, remain for active consideration. Of the five, two are by existing RTUs and three seek initial certificated authority.^{1/}

The examiner recommended, with respect to the five remaining applications, that Intrastate be granted a certificate to extend its existing RTU operations by adding a base station transmitter on Round Top Mountain, in the Berkeley hills; that certificates to construct and operate RTU systems in Marin and Sonoma Counties be granted, respectively, to United Business Services, Inc., and Colclough & LaFrance; and that the application of Peninsula, to extend its existing system to Oakland, San Rafael and Santa Rosa and the application of Bay Area, for an initial RTU certificate at Oakland, be denied.

^{1/} The five remaining applicants are:

<u>Application No.</u>	<u>Applicant</u>	
51955	Peninsula Radio Secretarial Service, Inc.	(existing RTU)
51998	Intrastate Radio Telephone, Inc. of San Francisco	(existing RTU)
52087	United Business Services, Inc.	(prospective RTU)
52273	Bay Area Radio Telephone Service, Inc.	(prospective RTU)
52281	Colclough & LaFrance, dba KVRE Communications	(prospective RTU)

The report recommends dismissal of Application No. 51951 (San Francisco Mobile Telephone, Inc.) and denial of Application No. 52018 (Tel-Page, Inc.) for reasons stated therein. We adopt the examiner's recommended disposition of those two applications.

Exceptions to the proposed report were filed by the following:

1. Peninsula Radio Secretarial Service, Inc. - Exceptions and Petition to Set Aside Submissions.
2. Bay Area Radio Telephone Service, Inc. - Exceptions.
3. Intrastate Radio Telephone, Inc. of S. F. - Exceptions.
4. National Communications Systems, Inc. - Memorandum of Exceptions.^{2/}

Replies to the foregoing exceptions were filed by United Business Services, Inc. Replies were filed by other parties as follows:

1. Intrastate - To the exceptions and petition to set aside submissions filed by Peninsula.
2. Peninsula - To exceptions filed by Bay Area.
3. Commission staff - To the exceptions and petition filed by Peninsula and to the exceptions filed by Bay Area, Intrastate and National.

This proceeding is unique. The nine original proposals filed during the period June-November, 1970 were not for new or extended RTU services in a single area, but were only for replacement (in one case for expansion), in whole or in part, of the unsuccessful and abruptly terminated "wide area" Redwood operations in territory that included both congested metropolitan areas and less densely populated peripheral localities. All proposals, however, contemplated

^{2/} The exceptions of National and Intrastate refer only to certain language in proposed ordering paragraph 8 of the report which, they assert, amounts to an invasion of Federal Communications Commission jurisdiction over frequency assignments. National, originally a party to these proceedings prior to their consolidation, elected to proceed independently on its Advice Letter No. 6 tariff proposals, by which it sought to extend its then existing RTU operations to San Rafael and Santa Rosa without further certificated authority. The proposed tariffs were annulled (see Item 5, Appendix B to the Proposed Report). The point to which National's and Intrastate's exceptions refer will be considered later in this opinion.

securing FCC authorization for use of some or all of Redwood's former transmission frequencies (except the 43.22 MHz paging frequency) which were cancelled by the FCC on June 22, 1970.^{3/}

The nature of this proceeding, which appeared at first to involve a comparison of nine proposals to replace all or portions of the former Redwood operations, has since undergone substantial changes, both as to the number of proposals and the restricted scope of some of them. The evidence and exceptions to the proposed report disclose that what has emerged here is a three-way controversy among Intrastate, Peninsula and Bay Area for authority to replace and improve the former Redwood East Bay operations, using the former Redwood transmission site on Round Top Mountain, located in the Berkeley hills in the vicinity of the Alameda-Contra Costa County boundary line. All three proposals contemplate improved signal reception in portions of Contra Costa County east of the Berkeley hills.

Although the abovementioned three proposals originally contemplated service to Marin and Sonoma Counties (Intrastate and Peninsula from San Rafael and Santa Rosa transmission sites and Bay Area by intercarrier arrangements with United and KVRE Communications should Bay Area, United and KVRE be certificated), the exceptions and replies thereto reveal that Intrastate and Peninsula have since

^{3/} National and Intrastate, as well as other RTUs not parties to the pending main proceedings, filed FCC applications for all or some of the former Redwood frequencies during the period July-December, 1970 (see Decision No. 78658, referred to in Item 6, Appendix B of the Proposed Report). National states, in its exceptions, that it since has withdrawn its FCC applications for frequencies to serve Santa Rosa and San Rafael and that it currently has on file applications for frequencies (not specified) to serve Sacramento and Vallejo.

abandoned their proposals for direct service in Marin and Sonoma Counties based on transmitter sites at San Rafael and Santa Rosa. Bay Area, which originally proposed to serve the entire San Francisco-Oakland-Peninsula region formerly comprising Redwood's Oakland-based service territory, restricted that proposal at the hearing by evidence from its sponsoring witnesses to the effect that it did not propose to solicit subscribers in San Francisco or the Peninsula, but would attempt to serve such persons if they might need its facilities for East Bay or Contra Costa County localities to be reached by its signals.

Intrastate, Peninsula and Bay Area did not except to the examiner's recommendation that certificates be granted to United and KVRE Communications for service in Marin and Sonoma Counties, respectively. Bay Area asserts, however, that as the "East Bay" comprises a distinct business, social and cultural area, it requires a locally established and managed RTU service like those in Marin and Sonoma Counties recommended to be certificated here, and also like other established "local" RTU services at San Francisco (Intrastate and Tel-Page, Inc.), San Mateo (Peninsula), Palo Alto (Central Exchange Mobile Radio Co.) and San Jose (Tel-Rad).

We adopt the examiner's recommendations that certificates be issued to United and KVRE Communications for RTU service, respectively, in Marin and Sonoma Counties. We also are of the opinion and find that the chronology and material issues set forth in the proposed report are correct and need not be repeated.^{4/}

^{4/} The Supreme Court of California, by a decision issued July 13, 1971 (some three months after conditional submission of the instant consolidated proceeding), has directed this Commission to consider and make appropriate findings on antitrust issues or implications in matters before it for decision, whether such issues be raised by the parties or not (Northern California Power Agency v. Public Util. Com.; Pacific Gas & Electric Co., Real Party in Interest, 5 C. 3d 370). The parties here did not specifically raise antitrust issues, and the proposed report does not discuss whatever antitrust implications may inhere in this record. We shall consider that subject sua sponte and make whatever findings appear to us to be appropriate.

We next consider the several exceptions to the proposed report and the replies thereto, but will reserve for later discussion the point raised by the Intrastate and National exceptions concerning certain language in proposed ordering paragraph 8.

Peninsula lists 17 specific exceptions to the report (Exceptions, Part III, pp. 7-11, pars. A-Q) followed by an "Argument in Support of Exceptions" (pp. 13-58). Peninsula's argument, however, contains no further reference to any of the specific exceptions.

The specific exceptions fall into three general categories:

(1) statements or comments made, or omitted, by the examiner in discussing the evidence (pars. A, B, C, D, E, F, G, L, M, and Q); (2) statements, "intimations", or omissions by the examiner in discussing evidence concerning the need for - or conditions for FCC authorization of - new channels for Intrastate's or Peninsula's proposed Oakland-based extensions (pars. H, I, J and K); (3) exceptions to the proposed finding of need for Intrastate's Oakland-based extension (Report, Finding No. 1a); to the proposed finding of lack of need for additional RTU services in former Redwood territory other than those proposed to be authorized herein (Report, Finding No. 6), and to the proposed finding that Peninsula's and Intrastate's proposals to extend their existing systems on a wide area service basis to Marin and Sonoma Counties are not feasible and are not supported by adequate showings of public need "for such wide area service" (Report, Finding No. 7). (Peninsula's Exceptions lettered N, O and P, pp. 9-10.)

Peninsula has also generally excepted to the report (Exceptions pp. 3-7) as deficient in failing to state, separately, findings of fact and conclusions of law as required by the Commission's procedural rule 79 and by Section 1705 of the Public Utilities Code; for its failure to discuss testimony presented by witnesses sponsored by Peninsula and Intrastate; for its lack of discussion of the competitive significance of Intrastate's failure to publish a rate for its authorized tone-only paging service; and for its failure to discuss the comparative aspect of the Peninsula and Intrastate applications.

Peninsula has petitioned to set aside submission of and to reopen this proceeding for the purpose of receiving in evidence a letter, dated August 17, 1971, from the FCC to Intrastate's Washington, D.C. representative, concerning the need for further information in connection with Intrastate's application for a construction permit for additional facilities at Oakland which involves the use of former Redwood frequencies (Ex. A to Exceptions and Petition). The letter concerns allocation of channel facilities, which is a matter within the exclusive jurisdiction of the FCC. Peninsula, itself, has stated (Exceptions, p. 32) that pending FCC applications are not relevant here.

We agree that such FCC applications have no relevancy for disposition of the merits of this proceeding. Their relevancy, however, for purposes of restraining, as we have done, parties and non-parties to this proceeding from preempting former Redwood frequencies pending finality of our decision here, is not open to serious question. The petition to reopen lacks merit and should be denied.

Reverting first to Peninsula's "general exceptions", we note that while asserting the report is deficient in failing to state, separately, findings of fact and conclusions of law, Peninsula has not referred to any particular findings in the report and has not alluded to this question of the adequacy of findings in its "Argument in Support of Exceptions".

The required findings in a certificate application concern (1) the adequacy of existing services, (2) the ability of applicant to render the proposed service, and (3) the impact certification would have on other carriers (California Motor Transport Co. v. PUC (1963) 59 C. 2d 270, 275). Proposed Finding No. 6 (Report, pp. 26-27) reads:

"There is no significant public need, at present and for an indeterminable future time, for additional public utility radiotelephone services other than those to be authorized herein,..., that cannot presently be met by the one-way and two-way radio-telephone services presently offered..."

The foregoing finding, based on resolution of conflicting evidence, clearly discloses that existing services, combined with the new services recommended to be authorized herein, will be adequate without Peninsula's (or Bay Area's) proposed Oakland-based services. Hence, any finding regarding the ability of Peninsula (or Bay Area) to perform their proposed services based on Round Top Mountain would be superfluous, as would a finding regarding the impact of Peninsula's (or Bay Area's) proposed services from that location upon existing carriers. The latter two findings would, of course, be required if Peninsula's (or Bay Area's) applications were to be granted.

The following statement, in the report's discussion of evidence concerning competitive aspects of the several applications in metropolitan and outlying areas (Report, pp. 20-22), indicates the primary reason - uneconomic dilution of the East Bay metropolitan market - which, in addition to lack of a substantial showing by Peninsula or Bay Area of public need for their proposed services, is the rationale underlying Proposed Finding No. 6 and the proposed denial of the Peninsula and Bay Area applications for Oakland-based RTU services. The statement reads:

"Establishment at Oakland of a new RTU service by BARTS [Bay Area], or by Peninsula's proposed extension (which because of its scope should be considered as tantamount to a new Oakland-based service), would pose formidable added competition, as regards both subscribers and channels, for Intrastate's operations, as to which there were no significant public complaints." (Report, pp. 20-21.)

Contrary to Peninsula's assertion (Exceptions, p. 6) that the report is so general "as to make it virtually impossible for Peninsula to determine the basis for the conclusions stated", we see nothing obscure in the examiner's quoted comment on the competitive aspects of the Peninsula and Bay Area applications in relation to Intrastate's proposal to utilize Round Top Mountain as a base for

improvement of its existing East Bay service, or in the basic finding herein, Proposed Finding No. 6, quoted above. Peninsula's general exception to the report in its entirety lacks merit and should be disallowed.

Peninsula's second general exception - concerning asserted lack of discussion of the testimony of witnesses sponsored by Peninsula or Intrastate - also lacks merit. Public testimony sponsored by the several applicants, taken as a whole, indicated a variety of needs for replacement or improvement of RTU service in various portions of the former Redwood metropolitan or outlying service territories. All of that testimony was considered by the examiner in reaching the proposed findings, conclusions and order set forth in his report. The record shows that while most of the metropolitan-based public witnesses wanted RTU service in Marin County, a few, sponsored by Peninsula or Intrastate, also wanted "reliable" service beyond the East Bay hills, which they had not been getting from Intrastate.

The needs of former Redwood customers in Marin County and in the Santa Rosa area are proposed to be supplied, respectively, by United and KVRE Communications, not by Intrastate. Intrastate has been and is providing service to many former Redwood customers in Intrastate's service area, and Peninsula has not shown that Intrastate's service is unsatisfactory in that area. Peninsula does not reveal any need for its Oakland-based service extension by arguing that some former Redwood customers are not now able to get from Intrastate all the service they need in other portions of the former Redwood territory.

Peninsula, by its third general exception, states there is no discussion of Intrastate's apparent violation of "statutes, rules and regulations of the Commission" in its provision of tone-only paging service without tariff authority. That statement ignores the record. Intrastate's L-2 schedule on file with this Commission authorizes one-way paging service and sets forth rates for both tone-only and tone and voice paging (Staff Ex. 2, pp. 5, 6). Intrastate, however,

has charged the \$24 rate, applicable to tone and voice paging, for both types of service, but is prepared to correct its schedule to show a recommended \$20 rate for tone-only paging (Report, Ordering Par. 5). Peninsula's claim that Intrastate, because of the foregoing tariff defect, has forfeited all protection as an existing utility is frivolous and should be disallowed.

Peninsula's fourth - and final - general exception is that there is no discussion of the comparative aspect of the Intrastate and Peninsula applications. The record shows otherwise. The report, after eliminating, for stated reasons, four of the nine original proposals from further consideration, discussed various aspects of the five remaining proposals, as well as aspects of the "wide area" versus "transient service" question and "local" versus "wide area" RTU services (Report, pp. 20-24). That discussion included the original proposals of Intrastate and Peninsula to provide replacement of the Redwood services throughout the whole of Redwood's former territory. It applies equally, from a competitive standpoint, to their proposals to use Round Top Mountain as a base for replacing or improving the former Redwood East Bay operations from that former Redwood transmission site.

We are of the opinion that the examiner's conclusion, as stated in the above-quoted comment concerning the competitive aspects of Peninsula's and Bay Area's proposals on Intrastate's existing East Bay operations, correctly reflects the record concerning the competitive aspects of Peninsula's and Intrastate's proposals in the East Bay portion of Redwood's former operations. Peninsula's fourth general exception, therefore, should be disallowed.

We have previously stated that while Peninsula has listed 17 "specific exceptions" to the report (Exceptions, Part III, A-Q, pp. 7-11), its Argument in Support of Exceptions (pp. 13-58) contains no further reference to those exceptions. That statement, however, should be modified to reflect that Peninsula, in its "specific exceptions" lettered "H", "I", "J" and "K" (pp. 8-9) did point to

certain statements or omissions in the report relating to the substantial amount of evidence in this record concerning the use or allocation of radio frequencies, and has proceeded, in its Argument (pp. 28-34), to speculate on possible uses or allocations of RTU channels. Those specific exceptions and the related argument need no further discussion here, as they concern matters within the exclusive jurisdiction of the FCC. Any comments, or omissions, in the report concerning possible uses or allocations of channels among the various applicants should be disregarded as surplusage. The question before us here, as Peninsula, itself, asserts (Argument, p. 33) is basically the determination of the operating areas to be authorized regardless of channel allocations by the FCC.

Intrastate, in its Reply and Argument (pp. 2-28) has examined Peninsula's general and specific exceptions and argument page by page in detail. We have reviewed the evidence in light of Peninsula's exceptions and arguments and of Intrastate's reply and arguments. Peninsula's proposal, as it now stands after dropping its request for "wide area" service in Marin County and the Santa Rosa area, amounts to virtual duplication, by use of a new transmission site on Round Top Mountain, of Intrastate's service areas in San Francisco and Oakland not now served by Peninsula. There is no justification in this record for such a result. None of Intrastate's subscribers complained of Intrastate's service in San Francisco or Oakland. The fact that a few former Redwood customers testified to difficulties in applying for Intrastate's service following the Redwood collapse and at a time when Intrastate was changing the location of its San Francisco headquarters, or that some former Redwood customers indicated a need for broader coverage than Intrastate could then supply, does not require us to permit such a substantial invasion into the core of Intrastate's present operations merely because some of Peninsula's witnesses - and a few others - testified to a need for service in areas of Contra Costa County beyond the Berkeley hills.

We are of the opinion that the proposed findings and conclusions are in accord with the record and are substantially based on the evidence. Accordingly, Peninsula's exceptions and its five proposed alternate findings should be disallowed.

The exceptions and arguments of Bay Area Radio Telephone Service, Inc. (BARTS) emphasize that its proposed new service for the East Bay counties of Alameda and Contra Costa, to be based on Round Top Mountain and locally controlled from Bay Alarm Company's headquarters in Oakland, is superior in every respect to the proposals of all other applicants seeking certification for RTU services in those areas. BARTS asserts, in its "Preface to Exceptions" (p. i), that Intrastate's "monopoly" in the East Bay area - to be gained from its sought acquisition here of a transmission site on Round Top Mountain - is not warranted, as Intrastate had a profitable operation when competing with Redwood and restoration of a similar competitive situation is required in the public interest by certification of BARTS' proposals.

BARTS' exceptions to the portion of the report which discusses Peninsula's and Intrastate's proposals (Report, Part II, pp. 6-10) are limited, as to Peninsula, to proposing additional findings related to Peninsula's asserted lack of financial ability and deficiencies in its technical presentation in connection with the expansion it originally proposed into all areas formerly served by Redwood (Exceptions, Part I, pp. 2-3). With regard to Intrastate, BARTS' exceptions (Part I, pp. 3-12) propose additional findings on evidence concerning Intrastate's volume of two-way mobile business before and after acquiring some 34 former Redwood customers in 1970; on the relatively small proposed extension of Intrastate's East Bay operations; on the lack, "for all practical purposes", of competition from any other RTU for Intrastate's East Bay mobile service; on the asserted lack of "hard" evidence to support Intrastate's contention, or comments in the report, concerning the possible adverse effect on

existing RTU paging services of eventual inauguration of Pacific Telephone's "Bellboy" paging service in the San Francisco/Oakland area and, finally, on complaints voiced by 13 public witnesses concerning Intrastate's present service.

BARTS voluminous and detailed exceptions and additional or substitute findings (Exceptions, Parts II and III, pp. 12-41), including those directed at the proposals of Peninsula and Intrastate, are asserted - as to evidentiary material - to be "required in order to fully, fairly and accurately reflect the evidence received:..." (Exceptions, Part I, p. 2). BARTS' proposed formal findings, conclusions and order, comprising Parts IV through VII of its Exceptions (pp. 41-46), merely link BARTS with United and KVRE Communications as proposed recipients of certificated RTU operating authority in these proceedings.

Peninsula, replying to BARTS exceptions, states that its reply goes to two basic issues: (1) statements in BARTS' exceptions challenging the financial and technical aspects of Peninsula's original wide area proposals, and (2) that BARTS has failed to show a need for certification of a "prospective" RTU in the "San Francisco Bay Area" (Reply, pp. 1-2). Peninsula asserts that as most of its originally projected start up costs and operating losses could be attributed to its original proposals to serve Marin County and the Santa Rosa area, its available financial resources are more than sufficient to inaugurate what it terms a "minor" extension of its existing operations in Oakland from the proposed Round Top Mountain site (Reply, pp. 2-3). Also, with regard to BARTS' exceptions concerning technical defects in Peninsula's original showing, Peninsula replies that Redwood operated from Round Top Mountain without substantially interfering with other utilities and that Peninsula's modified proposal for service from Round Top does not differ "to any substantial degree" from the former Redwood operation from that site (Reply, pp. 3-4). Peninsula also asserts, and we agree, that this Commission is concerned here primarily with

authorizing an operating area, rather than with technical configurations of signal strength contours to be authorized under the exclusive jurisdiction of the FCC.

Peninsula, in Parts IV, V, and VI of its Reply, argues that BARTS lacks experience to conduct a successful RTU service (Part IV); that its proposal to serve only East Bay subscribers negates a public utility duty to serve the general public throughout the area for which it seeks certificated authority, which includes not only the East Bay but San Francisco, San Mateo and parts of Marin County. (Part V); and that BARTS has not proved a need for establishment of an entirely new RTU service "within the service area of existing utilities" (Part VI).

Peninsula urges, with respect to the latter point, that it has been rendering all its presently authorized service "on a lawful basis and to the extreme of the extent possible", and that "the proposed BARTS service would not only invade the existing Peninsula service area, but would, in fact, blanket and go beyond" that area. BARTS, Peninsula asserts, "has not shown any circumstance which would support such an invasion of the Peninsula territory". Furthermore, Peninsula maintains, "To authorize a BARTS operation at this point in time would, in fact, punish Peninsula for Intrastate's failure to properly give service" (Emphasis Peninsula's). Finally, Peninsula states, when there is a comparative proceeding the applicant who has pioneered in the field and who has been rendering proper service within its authority must be given preference, citing Asbury Rapid Transit System, 47 Cal. PUC 317. Also, where competing applications seek to serve the same area, paramount public interest, Peninsula asserts, requires that existing public utilities serving nearby be allowed to extend rather than by adding additional utilities, citing H. K. George, 63 Cal. PUC 200. Peninsula argues that BARTS has failed to evidence any circumstances which would justify deviation from the principles stated in Asbury and George, and that its application

here, therefore, must be denied. Parenthetically, we observe that Intrastate, no doubt, could also agree with Asbury and George in connection with its own proposal in relation to those of BARTS or Peninsula.

Peninsula concludes its Reply (Part VII, pp. 12-16) by arguing that BARTS, by grounding its application on the theory that the East Bay area requires a locally owned and operated RTU and by restricting its proposed service essentially to East Bay subscribers, would be unable to meet the needs of Peninsula's subscribers or others who might desire service throughout the "Bay Area" or beyond the East Bay hills. Moreover, Peninsula asserts, the testimony of BARTS' witnesses, unlike that of Peninsula's, does not show their real need for RTU service but only that "they have great faith in the Westphals' speculative activity and wish to support this new venture" (Reply, p. 14). Peninsula states that though both Peninsula and Intrastate presently serve the "East Bay" from either San Francisco or San Mateo transmitter sites and though Peninsula provides excellent service within its existing authority, "the evidence shows that because of the changing needs of Peninsula's subscribers, public convenience and necessity require that Peninsula be authorized to extend its services at least in the San Francisco Bay and Contra Costa County areas" (Reply, p. 13).

Before resolving the questions presented by BARTS' exceptions and Peninsula's reply thereto, we think it appropriate first to consider the replies filed by United Business Services, Inc. and the Commission's staff to the exceptions of the other parties. Having done that, we shall re-examine Peninsula's exceptions to the report, which we have previously concluded should be disallowed, to ascertain whether there should be any modification of that conclusion. We note, parenthetically, that in a multi-party case of this nature, which now concerns the proposals of three applicants to replace the former Redwood Oakland-based RTU service, the mere statement - not to mention the resolution - of their conflicting contentions concerning the proposed report is likely to result in something less than a free-flowing or continuous narrative.

United's reply is brief. It notes that neither Peninsula nor BARTS has challenged the report insofar as it concerns United's proposed certification for a San Rafael-based RTU service in Marin County. It also notes that the exceptions of Intrastate and National are directed only to certain language in the cease and desist order (Report, Ordering Paragraph 8). United asserts that "it is absolutely necessary to make any orders of this commission meaningful, and to prevent chaos in scrambling for frequencies, that the cease and desist order remain in effect" (Reply, p. 2). United concludes that the evidence fully supports the examiner's proposed findings, conclusions and order.

The staff, replying to the exceptions filed by the other parties, urges that the report, including proposed ordering paragraph 8, remain undisturbed. The staff has referred to - and incorporated in its reply - the arguments in its brief, filed February 2, 1971, which urged imposition of restraints, pendente lite, on prosecution of FCC applications for use of former Redwood channels by the parties here (Decisions Nos. 78159 and 78658, supra). The rationale of the staff's position in support of the proposed form of the desist order appears to be that such restraint is necessary, in the extraordinary circumstances of this proceeding, to prevent frustration of this Commission's power to resolve substantial local issues which are predominately, if not completely, within our regulatory concern (Reply, Part I, pp. 2-3, citing cases). The staff argues that as the proposed order operates with respect to our jurisdiction and thus is limited to acts of entities subject to regulation by this Commission, the order itself does not specifically impinge on the power of the FCC to operate in the exercise of its jurisdiction over RTU channel allocations (Reply, p. 3, citing cases).

We have considered the language of proposed ordering paragraph 8 in light of the exceptions filed by Intrastate, National and United Business Services, Inc. and of the reply filed by the staff. We are of the opinion that it is unnecessary, for purposes of our

jurisdiction, to continue the cease and desist order in effect beyond the point at which our decision here becomes final as to all matters within our jurisdictional cognizance. Proposed ordering paragraph 8, therefore, will be modified accordingly.

The balance of the staff's reply (Part II, pp. 4-7) refers to the exceptions filed by BARTS and to the exceptions and petition filed by Peninsula. We have already indicated that Peninsula's petition to reopen this proceeding should be denied. As that is also the staff's position there is no need for further discussion of the point here.

The staff urges, in connection with the BARTS and Peninsula exceptions, that the report recognizes and adequately discusses, in a number of aspects, the fundamental issue of public need for the proposed services (Public Util. Code, sec. 1001; Coast Mobilphone Service (1962) 59 Cal. PUC 559), and that the proposed disposition of the five remaining applications appears to be supported by ample Commission precedent (Stewart, et al. (1966) 66 Cal. PUC 145 and other citations - Reply, pp. 5-6). The staff argues that, as the five applicants considered in the report appear to possess reasonably sufficient financial and technical ability, the ultimate issue to be decided is what grant, or grants, of operating authority would best meet public needs in the various former Redwood territories.

The report discusses public need in light of (a) competitive aspects of RTU service in all or portions of former Redwood areas (Report, pp. 20-22), (b) in light of the "wide area" vs. "transient" service question (Report, pp. 22-24), and (c) in light of the question whether locally-based RTUs or "wide area" RTUs would best meet public needs (Report, p. 24). The report concluded, on the basis of the foregoing discussion - which involved consideration of conflicting evidence - that public need in the Marin County and Santa Rosa areas would best be served by the locally-based United and KVRE Communications proposals, respectively. As indicated, the other three applicants have not excepted to the certification of those two proposals.

The report also concluded, for reasons discussed therein which we find sufficient, that Intrastate's proposal for replacement of the former Redwood metropolitan area operations by establishing a transmitter on Round Top Mountain would be preferable, from the standpoint of public need for reliable service in that area, to establishment by BARTS of a new East Bay-oriented local service, or to the virtual blanketing of Intrastate's present territory by Peninsula's major extension northerly and easterly from its present San Mateo-based operations.

Both BARTS and Peninsula, in their exceptions, have emphasized a need to restore the former competitive situation in the "Bay Area" or in the "East Bay", and have joined in asserting that Intrastate's proposals are entitled to no consideration because of "serious" complaints concerning its presently authorized service or because it provided tone-only paging at the same rate as that published for tone and voice paging.

The report, as we have indicated, discussed competitive and public need aspects of the several proposals, in both metropolitan and outlying areas of Redwood's former operations, in the context of original proposals by Intrastate, Peninsula and BARTS that, either by extensions of existing operations or - in BARTS' case - by inter-carrier arrangements with United and KVRE Communications, would have covered all areas of the former Redwood operations. The reduced scope of this proceeding, which now concerns only the replacement of Redwood's former Oakland-based operations (which included northern Alameda County areas and areas in Contra Costa County east of the Berkeley hills), suggests that competitive and public need aspects of the Intrastate, Peninsula and BARTS applications be viewed in light of what those applicants now propose. Especially is this required for evaluating and weighing the testimony of former Redwood subscribers and others who either wanted service in former Redwood areas not covered by Intrastate's or Peninsula's present operations, or who had experienced delays in gaining access to Intrastate's facilities during periods of channel congestion in metropolitan areas.

The report, in our opinion, has sufficiently summarized, for present purposes, the competitive situation in the San Francisco Bay metropolitan area (Report, p. 8). BARTS' present limited proposal, though designed to restore Redwood's former capacity to serve northern Alameda County and western Contra Costa County areas, would not reinstate the regulated RTU competitive situation that existed when Redwood was providing service between West Bay localities and those areas. Although Peninsula's proposal would provide coverage to northern Alameda County and to localities east of the Berkeley hills, it would do so only by a major invasion of Intrastate's San Francisco and Alameda County operations as to which no serious complaint is disclosed by this record. Furthermore, we are not persuaded that it is necessary, from a public need standpoint, that either a new local East Bay RTU service, as proposed by BARTS, or a major northward extension of Peninsula's operations into Intrastate's present service area, is required to meet needs of West Bay or East Bay RTU subscribers for RTU service to northern Alameda County or western Contra Costa County areas not presently served by either Intrastate or Peninsula from their existing transmission facilities.

Complaints against Intrastate's service, which both BARTS and Peninsula assert are so widespread and serious as to require denial of its application, have been previously noted, hereinabove, in connection with Intrastate's reply to Peninsula's exceptions. Examination of the full testimony of the 13 complaining witnesses referred to by BARTS (of whom eight, plus a witness sponsored by Intrastate - Springer - are mentioned by Peninsula) discloses that BARTS' summarizations in its proposed additional findings and Peninsula's selected excerpts and comments in its argument do not, because of significant omissions, "fully, fairly, and accurately reflect the evidence received", as BARTS has asserted to be the case

in connection with its proposed additional findings on that evidence.^{5/} Moreover, the testimony of these witnesses reveals that, except for a few instances of delays in gaining access to Intrastate's facilities during periods of channel congestion, the other complaints, like those of other witnesses who were either Intrastate's or Peninsula's subscribers, related to the admitted inability of those two applicants to provide more than a "spotty" service - or none at all - in former Redwood territory beyond reliable reach of their existing systems. Also, with regard to three of BARTS' and Peninsula's "complaining witnesses", one (Ososke-Peninsula's maintenance man) had not seen Intrastate's old San Francisco headquarters for at least a month prior to his testimony, but had no criticism of the facilities still being installed at its new San Francisco control center. The second (McLane) had not been a Redwood subscriber since 1969, but later, as a subscriber of a San Jose RTU, had used Intrastate's transient service on a few occasions. The third (Herzog) had been unable to obtain assurances from either Peninsula or Intrastate of reliable RTU service in Berkeley or in Contra Costa County beyond the Berkeley hills.

We do not regard the "complaints" of the foregoing 14 witnesses as serious when viewed either in the context of the traumatic Redwood collapse in which the complaints were voiced, or in light of the presently condensed scope of this proceeding.

BARTS' exceptions, as well as its proposed evidentiary and formal findings, conclusions and order, in our opinion, lack substantial merit and should be disallowed.

^{5/} The witnesses include: nine former Redwood subscribers with varying RTU service needs in all or portions of Redwood's former territories; three sponsored by Intrastate, two of whom desired service beyond the East Bay hills and one only in Marin and Sonoma Counties; one (Ososke), Peninsula's maintenance man for 12 years who occasionally serviced Intrastate's equipment "on-call", and one (Herzog) who had been unable to arrange with either Intrastate or Peninsula for service in some areas of Berkeley or beyond the East Bay hills.

The report, together with the foregoing opinion, represents what in our view is a preferable and practical resolution of a complex service problem for subscribers of RTU services in the San Francisco/East Bay/Peninsula portion of Redwood's former operations who may need service between those localities and the Alameda and Contra Costa County areas formerly served by Redwood.

Admittedly, if Intrastate's proposal is authorized, Peninsula's two-way mobile subscribers who have service needs in upper East Bay localities and in Contra Costa County areas beyond the Berkeley hills would be required to use Intrastate's transient service to reach those areas. On the other hand, if Peninsula or BARTS were to be granted the authorities they seek, Intrastate's mobile subscribers, both in West and East Bay areas, would be required to use Peninsula's or BARTS' transient services if offered, in order to communicate reliably with those East Bay or Contra Costa County areas. With respect to one-way paging services, the report notes that "wide area" or "transient" facilities for those services are not presently available in the San Francisco Bay area; hence, users of those services would seem necessarily to be restricted to their home-based carriers.

The parties have not specifically raised federal or state antitrust issues in this proceeding. Peninsula and BARTS, however, have contended that to grant Intrastate's application and deny theirs would permit Intrastate to monopolize the East Bay two-way mobile market. Any antitrust implications resulting from that action, however, must be considered in light of the paramount needs of RTU users in Redwood's former metropolitan area for reliable home-based and transient service in all portions of that area.

Redwood was unable to operate profitably in competition with regulated and unregulated carriers, either in the metropolitan market or elsewhere in its system. Intrastate, with its present broadly-based financial, technical and operational affiliations shown by this

record, as well as its central location in the core of Redwood's former San Francisco/Oakland operations, would be in a position, if granted its requested Oakland transmitter site, to respond to public needs throughout all portions of Redwood's former metropolitan operations.

We see no justification or public need, at this time and on this record, for fragmenting and diluting Redwood's former San Francisco/Oakland/Peninsula metropolitan market, including the northern Alameda and western Contra Costa County areas it formerly served, by authorizing either BARTS' local East Bay proposal or Peninsula's substantial extension to San Francisco and East Bay areas it presently does not serve.

Accordingly, the findings set forth in the proposed report herein (Findings Nos. 1-10) will be amended by adding, as Proposed Finding No. 11, the following:

- "11. Public need for replacement and improvement by Intrastate of Redwood's former Oakland-based RTU services in the San Francisco/East Bay/Peninsula metropolitan area and adjacent northern Alameda and western Contra Costa County areas, overrides whatever federal or state antitrust issues may exist in this record or that may be implied from the proposed disposition of the applications of Intrastate, Peninsula and BARTS."

Certain minor typographical errors in the proposed report (pp. 7, 8, 12 and 23) have been corrected. The proposed opinion should be modified to reflect our recognition, indicated in our opinion hereinabove, of the exclusive jurisdiction of the FCC in matters pertaining to allocation of RTU channels or frequencies. Proposed ordering paragraph 8 (Report, p. 31) should be amended to read as follows:

- "8. The temporary cease and desist order, issued by Decision No. 78658 herein, is continued in effect pending finality, for purposes of this Commission's jurisdiction, of this order."

The Commission, therefore, concludes that said proposed report, corrected, modified and amended as indicated hereinabove, should be approved and adopted as the opinion, findings, conclusions and order of the Commission.

O R D E R

IT IS HEREBY ORDERED that:

1. The Proposed Report filed in these proceedings on September 23, 1971, corrected, modified and amended as indicated hereinabove, is approved and adopted as the opinion, findings, conclusions and order of the Commission in the subject proceedings. A copy of said report is appended as Attachment A to this decision.

2. The exceptions to said Proposed Report filed, respectively, by National Communications Systems, Inc., Intrastate Radio Telephone, Inc. of San Francisco, Peninsula Radio Secretarial Service, Inc. and Bay Area Radiotelephone Service, Inc., except to the extent allowed by the modifications and amendments referred to in the foregoing opinion, otherwise are disallowed.

3. The petition of Peninsula Radio Secretarial Service, Inc. to set aside submissions and to reopen these proceedings is denied.

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

Dated at San Francisco, California, this 31st day of MAY, 1972.

Chairman

William J. Lyons Jr.

Vernon L. Sturgeon

Thomas Moran
Commissioners

Idreant
William J. Lyons Jr., Chairman

ek /vo

ATTACHMENT A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.

And Related Matters.

Application No. 51951
Filed 6-9-70
Amd. 7-7-70, 12-2-70

Application No. 51955
Filed 6-11-70

Application No. 51998
Filed 6-16-70

Application No. 52018
Filed 7-7-70

Application No. 52087
Filed 7-30-70
Amd. 8-28-70

Application No. 52273
Filed 11-2-70
Amd. 11-30-70

Application No. 52281
Filed 11-6-70

(Appearances listed in Appendix A)

PROPOSED REPORT OF EXAMINER JOHN M. GREGORY

O P I N I O N

I. Introductory Statement.

This consolidated radiotelephone utility (RTU) certification proceeding (Public Utilities Code, sec. 1001, par. 1) was heard before Examiner Gregory on 25 days during the period December 8, 1970-April 6, 1971. It was submitted for decision on the latter date, subject to receipt of concurrent memoranda, since filed and considered, and to completion of proposed report procedures directed

ATTACHMENT A

by the Commission (Rules 68-72, Rules of Procedure). Antecedent and related proceedings are listed in Appendix B.

On June 1, 1970, following collapse of negotiations for acquisition by Pennsylvania mobile telephone interests of control of Redwood Radiotelephone Corporation, Redwood Radiotelephone Corporation-Marin (both hereafter "Redwood") and Industrial Communications Systems, Inc. (the latter a Los Angeles based RTU), Redwood abruptly ceased RTU operations in the San Francisco/Oakland; San Rafael and Santa Rosa areas (Appendix B, Item 1). The Federal Communications Commission, on June 22, 1970, cancelled Redwood's station authorizations. A majority of Redwood's approximately 130 paging or mobile subscribers, chiefly those in the San Francisco/Oakland area, soon obtained substituted RTU service from carriers in the metropolitan core of Redwood's former territory. Others were less fortunate.

Between June 9 and November 6, 1970 nine proposals were filed by existing or prospective RTUs for authority to replace or expand, in whole or in part, the former Redwood services, and to utilize, subject to later FCC authorization, the former Redwood transmission frequencies at the same or different localities. This Commission, after hearings in July, 1970, found no substantial need for temporary replacement services proposed by some of the parties, and ordered that hearings start as soon as possible, on a consolidated record, on the various requests for permanent state authority (Appendix B, Items 2, 3).

The hearings commenced December 8, 1970 with Application No. 51951 of San Francisco Mobile Telephone Company (SFMT), a corporate affiliate of the Pennsylvania mobile telephone group.

A. 51951 et al. ek/vc
(Prop. Rept.)

ATTACHMENT A

SFMT, in addition to proposing the more common manually-controlled one-way paging and two-way mobile services, also proposed to inaugurate in California a highly sophisticated and relatively more costly system, termed "Automatic Mobile Secretarial Service" (then in operation by its Pennsylvania associates in three eastern cities), and to extend its total proposed operations throughout the former Redwood areas and beyond to Santa Clara and vicinity, some 50 miles south of San Francisco.

In the period between the July and December hearings a number of RTUs, both parties and non-parties to then-pending proceedings, filed FCC applications for assignment of all former Redwood frequencies, except the 43.22 MHz (low band paging) frequency.^{1/} SFMT, having substantially completed its showing by December 11, 1970, filed a petition on December 15, 1970 for a restraining order that, in effect, would prevent pre-emption at the FCC, pendente lite, of former Redwood frequencies by RTU parties or non-parties to pending proceedings, the effect of which pre-emption would be to render such frequencies unavailable for later assignment to a successful applicant before this Commission. Such an order, modified after hearings on January 21 and 22, 1971, is now in effect as a temporary cease and desist order (Appendix B, Item 6).

Significant changes in control of SFMT occurred in the latter part of January, 1971. On January 21, SFMT appeared at the show cause hearing, withdrew its application, assertedly for financial reasons and on orders from its Pennsylvania sponsors, and moved for its dismissal without prejudice. On February 5, 1971, Homer N. Harris, president of Industrial Communications Systems, Inc.,

^{1/} National Communications System, Inc., Intrastate Radio Telephone, Inc. of San Francisco (parties); Knox La Rue, dba Atlas Radio-phone-Tracy, et al., Salinas Valley Radio Telephone Co. (non-parties).

ATTACHMENT A

appeared during the course of a hearing in the consolidated proceeding, announced that he had become president of SFMT, and orally requested permission to proceed with that applicant's showing, with substantial alterations, however, in the original proposals. The Commission denied Harris' written petition to amend and to prosecute further the SFMT application, filed at the Examiner's direction, on the ground that to do so would prejudice other applicants by injection of a virtually new application into a proceeding that had been "frozen" for the express purpose of providing a fair comparison of all proposals as the hearings progressed (Appendix B, Item 7). No further consideration will be given here to the SFMT application.

Three other proposals, of the original nine, need not be considered here except to indicate their disposition; namely, those of National Communications System, Inc., (Case No. 9097), Tel-Page, Inc. (Application No. 52018) and Walley, dba Auto-Phone Company (Application No. 52021).

National's Advice Letter No. 6, with proposed tariffs for extension, without further state authority, of its existing RTU service to the former Redwood territories centered on Santa Rosa and San Rafael, was suspended and, after hearings on a separate record at National's request, the tariffs were nullified (Appendix B, Item 5). Parenthetically, a complaint by Intrastate Radio Telephone, Inc. of San Francisco, protesting National's proposed extension, was dismissed by stipulation of the parties (Appendix B, Item 4).

Tel-Page, Inc., which now, as a subsidiary of Ventec, Incorporated (a holding company whose subsidiaries other than Tel-Page are engaged in the telephone answering business in San Francisco and Los Angeles), offers three classes of paging service based at San Francisco and Oakland, and which shares transmission facilities with Intrastate for one of such services, proposes both two-way mobile and one-way paging services throughout

ATTACHEMENT A

the former Redwood territories. Tel-Page did not respond to the staff's request of July 3, 1970 for technical and financial information related to its proposal. Its proposed coverage (Application No. 52018, Exhibit A) was based on out-dated Redwood information available from the files of this Commission. Its financial and technical data, as disclosed by exhibits attached to its application and by the testimony of its president, Peter A. Nenzel (who is also president of Ventec, Incorporated), taken in connection with its equivocal basic position at the hearing, are not sufficiently detailed to permit an informed evaluation of the merits of its proposal, especially as regards financial feasibility. The latter is a critical field of inquiry for a proposal, like that of Tel-Page's, which seeks to expand from a metropolitan based paging service to wide area coverage for both paging and two-way mobile service, under conditions of substantial estimated construction costs and limited demand potential in fringe areas developed in the Tel-Page application and in other portions of this consolidated record.

Tel-Page, at the hearing and in its memorandum, took the position that, with the possible exception of Santa Rosa and its environs, present and future public demand for both paging and mobile service in former Redwood territory could be adequately met by existing RTUs, including Tel-Page's present paging services, and that dilution of the market by granting additional certificates - except for the Santa Rosa area - would result in financial loss to the existing carriers.

We cannot say, in light of the Redwood experience, that Tel-Page's showing gives promise of overcoming the financial and operational difficulties of meeting both metropolitan and fringe area service demands of the nature and extent disclosed by this record. No useful purpose, therefore, would be served by further consideration of the Tel-Page application.

A. 51951 et al. ek/vo
(Prop. Rept.)

ATTACHMENT A

The Walley application was withdrawn prior to the December hearings and was later dismissed (Decision No. 78086, dated December 15, 1970, Application No. 52021).

It results, from the foregoing discussion, that of the nine proposals offered for our consideration following the termination of Redwood's operations, there remain but five, of which two are by existing carriers (Intrastate Radio Telephone, Inc. of San Francisco and Peninsula Radio Secretarial Service, Inc.) and three by prospective RTU applicants (United Business Services, Inc., Bay Area Radio Telephone Service, Inc. and KVRE Communications). We next turn to those proposals, in chronological order as filed and heard.

II. Summary of Applicants' Proposals-Existing Carriers

1. Peninsula Radio Secretarial Service, Inc.,
Application No. 51955.

Peninsula, a wholly-owned subsidiary of Answer-Ring Telephone Service, a corporation, owned by Jerome Grotzky and his wife and located at San Mateo, presently offers one-way tone-only and tone and voice paging service (341 units as of January 12, 1971) and two-way mobile service (132 units as of the same date), in the San Francisco Peninsula, parts of San Francisco, parts of Alameda County from Piedmont south and parts of Santa Clara County. Its gross revenue for 1970 was approximately \$86,000, as compared with about \$22,000 for 1967 when the Grotzkys acquired control of the operations which then were limited to two-way mobile service. Peninsula's service has been growing during the last three years, especially since inauguration of its paging service in April, 1968.

Peninsula proposes to duplicate the former Redwood system, using the same transmission sites (Oakland, San Rafael and Santa Rosa) and frequencies (except a low-band 43.22 MHz paging frequency), and thus to offer to its own and former Redwood subscribers a joint, multichannel paging and mobile service throughout the extended area.

ATTACHMENT A

Paging service in the San Rafael and Santa Rosa areas would be offered initially on UHF mobile channels, as Peninsula now does on its own system, or on one of the VHF guardband frequencies (158.70 MHz) shared by Peninsula and other Bay Area RTUs. Peninsula proposes to establish a message center in Oakland and to arrange with local answering services in San Rafael and Santa Rosa for message and dispatch functions.

Peninsula sponsored nine of the 49 public witnesses who appeared in the consolidated proceeding. Public need for RTU service in the former Redwood territory will be discussed later.

2. Intrastate Radio Telephone, Inc. of San Francisco,
Application No. 51998.

Intrastate, with offices in San Francisco and Fresno, presently provides public utility two-way mobile and one-way paging service and non-utility telephone answering service in an area that generally includes San Francisco, the East Bay and the San Francisco Peninsula, under operating authority, including "grandfather rights", acquired from ITT Mobile Telephone, Inc. (ITT) (Decision No. 72542, dated June 6, 1967, Application No. 49268).

Intrastate's affiliated or related businesses include Fresno Mobile Radio and Hanford Mobile Radio, both in the Central San Joaquin Valley; Cooks Communications Corporation, located at Fresno, which manufactures and supplies two-way mobile, one-way paging, transmitter, control and telephone interconnection equipment, and Central Exchange Mobile Radio Company, a proprietary RTU located at Palo Alto and owned by Joseph A. Smiley, who also is the president, a director and a major stockholder (33-1/3%) of Intrastate. The other stockholders are Cooks Communications Corporation (33-1/3%), Tom L. Cook, vice-president, a director and operating manager (16-2/3%), and Hugh Robertson (16-2/3%), a director. Donald R. Cook, father of Tom Cook, is a director and the secretary-treasurer.

ATTACHMENT A

When Intrastate acquired the ITT system in 1967, that system was serving 119 mobile units and 96 pocket pagers. In January, 1971, with additional facilities, Intrastate was serving about 189 mobile and 820 pager units and had acquired 46 former Redwood two-way mobile or one-way paging subscribers in the East Bay.

Intrastate's transmitters are presently located at San Bruno Mountain, near South San Francisco, at the Wells Fargo Building in San Francisco and on Diablo Drive in the Oakland hills. Its principal message and control center is located in its new offices at 70 Oak Grove Street, San Francisco, at which all present channels are controlled. Another message and control center at Albany, in the East Bay, controls one UHF channel. Other frequencies are proposed to be added at that control point.

Although Intrastate's basic coverage extends through the San Francisco-East Bay-Peninsula area between mid-Marin County and under an intercarrier agreement with Central Exchange-San Jose and vicinity, it also serves its subscribers, though with a lesser degree of reliability, in places as far north as parts of the Santa Rosa and Petaluma areas and as far south as Gilroy. Intrastate also provides transient service for subscribers of other RTUs. It experiences competition-as do other RTUs in the metropolitan area and its environs-from other regulated radio common carriers, including landline company RTU services, and from unregulated common carriers ("bootleggers") and private systems that cover essentially the same areas and provide services not essentially dissimilar to those of Intrastate.

Another potential source of competition is expected by Intrastate and by other RTUs in the Bay Area from Marin County to Santa Clara County, from the anticipated early inauguration by Pacific Telephone of its "Bellboy" one-way, high capacity, wide area, dial-access paging system, now in operation by Bell System companies in other West Coast cities and in Washington, D.C. Intrastate

ATTACHMENT A

asserts that the "Bellboy" service, if offered at rates anticipated to be lower than present Bay Area RTU paging rates, will have a substantial adverse effect on the paging services and revenues of the Bay Area RTUs with which it may compete.

Intrastate's present operations appear to rest on an adequate financial and technical base, and were shown to be profitable. No complaints were voiced at the hearing concerning its Oakland and San Francisco service. A few witnesses, however, complained about Intrastate's inability immediately to replace the Redwood services in Marin County and the Santa Rosa area and in those areas of Contra Costa County east of the Oakland hills. Intrastate sponsored three public witnesses, all current subscribers to its service.

Intrastate proposes to extend its present operations into the former Redwood areas, with greater coverage, however, north and east of Oakland, using former Redwood transmission sites at San Rafael (San Rafael Hill), Santa Rosa (Taylor Mountain) and Oakland (Round Top Mountain), and to use Redwood's former contracted dispatch facilities at San Rafael and Santa Rosa. Dispatching in the extended East Bay area is proposed to be consolidated with its existing operations. Although proposing, in its application, to utilize former Redwood frequencies and other facilities at the various locations, Intrastate's showing indicates that some additions, deletions, or rearrangements-including sharing with a Stockton RTU, as did Redwood, of one of Redwood's former San Rafael UHF channels-were being considered should its application here be granted. Also, with respect to the Taylor Mountain transmitter site at Santa Rosa, there is some controversy in the record, to be discussed later, as to coverage available from that location southwards toward the Petaluma area.

Aside from questions concerning need for and technical feasibility of Intrastate's proposed extended service to Sonoma

ATTACHMENT A

and Marin Counties, also to be discussed later, the record makes clear that it possesses adequate financial resources and operating experience for all proposals it has offered here.

III. Proposals by Prospective Radio Telephone Utilities.

The three applications for initial operating authority-United Business Services, Inc. (United), Bay Area Radio Telephone Service, Inc. (BARTS) and KVRE Communications (KVRE)-share certain common features. Each proposes essentially a local one-way paging and two-way mobile service based on their respective headquarters at San Rafael, Oakland and Santa Rosa. Each proposes to use former Redwood frequencies and, with some changes, former Redwood transmission sites. United also proposes to use former Redwood base station equipment on San Rafael Hill now owned by Angelo Turrini, its president, who is a former co-owner of Redwood-Marin. Each has proposed to enter into traffic sharing agreements with the other so as to offer extended coverage between Sonoma and Marin Counties and the Oakland/San Francisco Area. Finally, each of the three applicants is sponsored by closely held affiliated-and successful-business interests variously engaged in radio broadcasting, telephone answering and paging, private radio communications and private alarm services. A summary of their respective proposals follows:

1. United Business Services, Inc.,
Application No. 52087.

United is a California corporation with headquarters in San Rafael, Marin County. Angelo R. Turrini, its president, owns 90% of the corporate stock. Its basic corporate business, since its inception in 1936, is a telephone answering service that presently serves 600 accounts. The business includes sales and rentals of medical equipment and supplies and radio paging and dispatching for the Marin County Physicians Group, the AAA towing services and United Ambulance Service. The answering service is used by doctors, lawyers, constructors, real estate brokers and many other businessmen. Turrini also has a one-half interest in Marin Communications,

ATTACHMENT A

which owns a modern, fully-equipped antenna site and other facilities on San Rafael Hill. That site would be used for United's mobile radio telephone operations if certificated by this Commission, and is the same site proposed by other applicants in this proceeding for transmitter facilities at San Rafael.

Turrini was involved in the ownership and operation of Redwood-Marin for about three years during its early stages, but left when it became apparent to him that the operation was deteriorating under the management of Redwood-Marin's other co-owner, Daniel Cochran. United, however, continued to dispatch and interconnect for Redwood-Marin until about mid-1969, when those services were discontinued because Turrini did not wish United to become involved in the already deteriorating Redwood situation.

The record shows that United, with its present technical and financial resources and long experience in related radio communication services, can provide, at relatively small cost, the necessary office, base station and other facilities and equipment, as well as trained personnel, to inaugurate promptly and to operate the two-way mobile and one-way paging services it proposes for San Rafael and Marin County.

United's position at the hearing regarding public need testimony was that, because of testimony received in the consolidated proceeding from Marin County and other witnesses, including former Redwood subscribers, a reservoir of various needs had been shown for utility services in the former Redwood territories, including Marin County. Consequently, United did not itself produce public need witnesses in support of its application, but relied chiefly on a showing designed to demonstrate that its centrally located and long standing communications and related business activities in Marin County make it the logical choice for RTU certification in that area.

CORRECTION

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

ATTACHMENT A

which owns a modern, fully-equipped antenna site and other facilities on San Rafael Hill. That site would be used for United's mobile radio telephone operations if certificated by this Commission, and is the same site proposed by other applicants in this proceeding for transmitter facilities at San Rafael.

Turrini was involved in the ownership and operation of Redwood-Marin for about three years during its early stages, but left when it became apparent to him that the operation was deteriorating under the management of Redwood-Marin's other co-owner, Daniel Cochran. United, however, continued to dispatch and interconnect for Redwood-Marin until about mid-1969, when those services were discontinued because Turrini did not wish United to become involved in the already deteriorating Redwood situation.

The record shows that United, with its present technical and financial resources and long experience in related radio communication services, can provide, at relatively small cost, the necessary office, base station and other facilities and equipment, as well as trained personnel, to inaugurate promptly and to operate the two-way mobile and one-way paging services it proposes for San Rafael and Marin County.

United's position at the hearing regarding public need testimony was that, because of testimony received in the consolidated proceeding from Marin County and other witnesses, including former Redwood subscribers, a reservoir of various needs had been shown for utility services in the former Redwood territories, including Marin County. Consequently, United did not itself produce public need witnesses in support of its application, but relied chiefly on a showing designed to demonstrate that its centrally located and long standing communications and related business activities in Marin County make it the logical choice for RTU certification in that area.

ATTACHMENT A

2. Bay Area Radio Telephone Service, Inc.,
Application No. 52273.

Bay Area (BARTS), which is seeking initial authority to provide one-way paging and two-way mobile RTU service primarily in the East Bay sphere of the former Redwood operations, is a subsidiary of a successful East Bay-based fire and burglar alarm business, Bay Alarm, founded in 1946 by Everett A. Westphal whose son, Bruce A. Westphal, associated with Bay Alarm since 1959, is president and general manager of BARTS. Everett Westphal, as vice-president, plans to be active in BARTS' management and direction. In 1964 he founded Alarm Equipment Corporation, which manufactures and sells central office receiving and transmitting alarm equipment for which he holds two patents. Bay Alarm also owns and operates private radio communication facilities in connection with its alarm services. The record discloses that, if certificated, BARTS would have available to it adequate financial resources for commencement of its proposed RTU operations, including support during the development stage.

BARTS, asserting that it can offer services superior in all respects to those of the defunct Redwood companies as well as those proposed by the other applicants here, plans to site its transmitters on Round Top Mountain (the former Redwood Oakland site), and to establish satellite receivers at a number of locations, so as to be able to receive signals from low-power mobile or portable equipment operating in areas that might be shadowed by Round Top. Initially, one-way tone and voice paging would be on the former Redwood 152.12 MHz frequency and-if authorized by the FCC-on one of the two guardband frequencies (152.24 MHz) shared by other Bay Area RTUs. Tone-only paging would start on the 454.225 and 454.250 MHz frequencies, with subaudible tones after establishment of a dial accessed paging terminal during the second year of operations. Two-way mobile services would use the 152.12, 454.225 and 454.250 megaHertz frequencies.

ATTACHMENT A

Although BARTS has proposed, according to contour maps and engineering data submitted with its amended application, to serve the entire Bay Area region formerly comprising Redwood's Oakland-based service territory, it restricted that proposal, at the hearing, by evidence from its sponsoring witnesses to the effect that it did not propose to solicit subscribers in San Francisco or the Peninsula, but would attempt to serve such persons if they might need its facilities for East Bay or Contra Costa County localities reached by its signals.

BARTS proposes to initiate what is essentially an Oakland-based East Bay RTU operation dispatched, controlled and serviced at Bay Alarm's present headquarters using Bay Alarm's personnel, and to enter into an intercarrier agreement with United and KVRE should those applicants be certificated for service at San Rafael and Santa Rosa, respectively.

BARTS sponsored nine witnesses, of whom eight had no previous experience with RTU service and one who, after leaving Redwood's service prior to its collapse because his office was moved, is now a subscriber of a San Jose RTU. Of the eight, five were either family friends or business associates of the Westphals, two were sub-contractors providing services for Bay Alarm and one was an alarm system subscriber of Bay Alarm.

3. William H. Colclough and Edward La France,
co-partners, dba KVRE Communications,
Application No. 52281.

KVRE Communications (KVRE), is a partnership formed by the co-owners of KVRE, Inc., which they acquired in 1965 and which operates a radio broadcasting station at Santa Rosa, the county seat of Sonoma County located about 55 miles north of San Francisco. There is presently no radiotelephone utility at Santa Rosa or which directly serves the areas proposed to be served by KVRE, namely: Santa Rosa and Sonoma County, Healdsburg, Petaluma, Sebastopol and small portions of Napa and Lake Counties.

ATTACHMENT A

Both partners are residents of Santa Rosa and are active in civic affairs, especially La France. Colclough, a graduate of Boston University's School of Public Communications where he majored in communications management, also studied at Massachusetts School of Radio and holds a first class radiotelephone license issued by the FCC. He also served in the United States Air Force, 1962-1965, with duties that included supervising installation of radio and telephone communications equipment at major defense installations in the Western United States.

La France, a graduate of the University of New Hampshire, was engaged primarily in broadcasting activities with a number of stations in the East and Southwest before he acquired, with Colclough, Station KVRE in 1965. His efforts since then have been chiefly devoted to the fields of production and sales and to a variety of community organizations and activities.

Santa Rosa, with a population of about 51,450, is the largest city in Sonoma County (pop. 202,400 approx.). It is the primary center of the area and the major economic, medical services and cultural center for the Counties of Sonoma, Lake, Mendocino and part of Napa. The record indicates that, though separated by only a relatively short distance from metropolitan Bay Area communities, Santa Rosans incline toward the view that their primary interests lie in the Sonoma Valley region and adjacent areas, rather than in the Bay Area.

The partners, after an intensive personal survey of the potential market for their proposed locally based RTU service, and after evaluating favorable responses conservatively in light of their local and business experience, have estimated an initial need for 24 two-way mobile and 21 one-way paging units, with fifth year estimates of 90 two-way and 60 one-way units. It may be observed, parenthetically, and evidence in this record by the staff shows, that pre-certification projections of public need by applicants

ATTACHMENT A

before this Commission for RTU authority invariably have turned out to be overoptimistic.

Prior to Redwood's entry (from its East Bay base) into the Santa Rosa area, following certification in 1964-1965 when this Commission specifically found public need for RTU service in that area, only a two-way mobile service of Pacific Telephone, from a transmitter in downtown Santa Rosa, was available to the locality. There was no paging service in the Sonoma County area until Redwood appeared on the scene. With the exception of citizens band communications and a private radio system established by some local physicians, there are presently no local communications services in Santa Rosa that offer both two-way mobile and one-way paging services. KVRE witnesses variously described the citizens band and physicians' systems as "unreliable" or "limited", and the telephone company's two-way service as "unsatisfactory".

KVRE proposes to operate its system with its base station on Mount Barham, located approximately 5-1/2 miles northeast of the Santa Rosa post office and at an elevation of 1,754 feet, arrangements for the use of which have been made. Its message center, to be contracted with Santa Rosa Medical & Secretarial Answering Service (also proposed to be used by Intrastate and Peninsula) which will perform dispatching functions, will be open 24 hours a day. Servicing and maintenance of equipment will be performed by an experienced radio and electronic service firm (also proposed to be contracted by Intrastate and Peninsula) working from a downtown Santa Rosa location. In addition, KVRE itself has expert, licensed technicians at its principal place of business on Bennett Valley Road, Santa Rosa.

Intercarrier arrangements with United, at San Rafael, and BARTS, at Oakland, are contemplated if the three applicants are certificated. Incidentally, the record indicates that KVRE probably could negotiate similar arrangements with, or would provide

ATTACHMENT A

transient service for, metropolitan-based carriers, if the certificates to be granted in this proceeding fail to meet fully the expectations of the other applicants. It may be noted, in passing, that Redwood did not offer transient service. Such service, of course, envisages compatible mobile facilities, as well as substantial rate parity, to be attractive to roaming subscribers of participating carriers.

Reverting to KVRE's proposed base station on Mount Barham, the engineering for which was prepared by R. A. Isberg (who also was engineering consultant for BARTS and at times prior to this proceeding, for Peninsula), it was shown that the base station coordinates are 38° 30' 30" North Latitude and 122° 39' 40" West Longitude, that effective radiated power will be 87 watts and that the system will be operated on frequencies in the 450 MHz band. Exhibit A attached to the KVRE application, is a map, prepared by Isberg, which shows the predicted 39 dbu and 43 dbu coverage contours of the proposed station in accordance with current FCC rules and regulations. This site would afford coverage to Santa Rosa, Petaluma, Calistoga and west of Santa Rosa towards the Pacific Ocean.

KVRE's engineer demonstrated by appropriate engineering methodology that a transmitter on the northwest slope of Taylor Mountain, formerly used by Redwood and here proposed by Intrastate and Peninsula, would not provide reliable service to Petaluma because of interference from the peak of Taylor Mountain (elev. 1401 ft.), which is between Petaluma and the Taylor Mountain transmitter site at 765 feet elevation. An exact comparison, however, of the Mount Barham and Taylor Mountain sites cannot be made on this record because of the failure of Intrastate and Peninsula to prepare coverage engineering for Taylor Mountain by current FCC standards.

Isberg's testimony concerning the interference problem southerly from Taylor Mountain toward the Petaluma area was confirmed by Gordon Zlot, a qualified electrical engineer who owns and operates

ATTACHMENT A

radio station KZST-FM at Santa Rosa with a transmitter located on Taylor Mountain, adjacent to the former Redwood site. Test results, conducted by Zlot before establishing his transmitter, showed unacceptable interference on both the 150 MHz and 450 MHz bands, especially the latter, for signals into the Petaluma area. Zlot's 25-year site lease requires his approval, which he presently is not inclined to grant, before construction of other radio communication facilities on the leasehold. In addition, his testimony was that an RTU antenna would have to be located at a point on the KZST tower which would place it below the tree line and that such a location would effectively block communications. This site is the one proposed by all applicants in this proceeding except KVRE.

KVRE proposes to use the present business offices, management and personnel of its affiliated radio station in Santa Rosa for the proposed RTU service, in addition to the dispatch and maintenance facilities previously mentioned.

Financial statements of the partners, together with the balance sheet and profit and loss statement of KVRE, Inc., of which Colclough and La France are the only stockholders, show sufficient cash assets to meet estimated start-up expenses of approximately \$14,000 for the RTU proposal. KVRE, Inc. has increased its revenues and profits in every year of its existence. Its gross revenues for the 12 months ending February 28, 1971 were approximately \$117,000. The evidence shows that both General Electric and Motorola have offered to make the necessary financial arrangements for purchase by KVRE of all equipment required in the RTU operation.

KVRE sponsored 15 public witnesses who either reside or have business interests in the Sonoma County communities of Santa Rosa, Windsor and Petaluma. Most of them conduct business or provide services throughout the county. On a combined basis, these witnesses testified that they would subscribe to from 32 to 37 two-way mobile units and from 12 to 14 one-way paging units. We

ATTACHMENT A

observe here, however, that KVRE's initial projections for start-up and five-year requirements for one-way paging and two-way mobile equipment show a preponderance of mobiles, and that a re-evaluation of those projections by its sponsors resulted in projections for more paging than mobile equipment, which is consistent with the RTU equipment use patterns otherwise shown in this record. We renew, at this point, our previous cautionary observation that RTU subscriber interest projections are normally overoptimistic.

A fair summary, we think, of the KVRE public witness testimony is that: (1) it points to dissatisfaction with the radio communications services presently available in Santa Rosa and throughout Sonoma County and adjacent areas; (2) it generally favors a locally-based, managed and serviced two-way mobile and one-way paging RTU system, in preference to being relegated to fringe areas of metropolitan-centered carriers; (3) it voices a need, from recent earthquake experience and because of the increasing scope of its medical, hospital and public health and safety programs, for a responsibly operated local public radio communications service. In connection with the latter, KVRE has indicated the possibility of future arrangements with Santa Rosa and Sonoma County public health and safety officials to connect their radio communications with the KVRE system, so as to provide more extended coverage for the public in emergencies.

Aside from testimony of public witnesses, the record indicates that population projections for Sonoma County estimate the Petaluma-Cotati-Rhonert Park area, in southern Sonoma County, to be the fastest growing in the county, and that in 10 years Petaluma may be that county's largest city. The question of reliable RTU coverage to that area from Santa Rosa-based transmitters thus takes on added significance in this proceeding.

ATTACHMENT A

IV. Discussion

1. The Issues.

Intrastate's counsel, in his memorandum, after complimenting the Commission on what he terms its "extraordinarily good record" in enabling various types of utilities to survive in business and give continuing satisfactory service, and stating that "only extremely rarely" does a utility regulated by this Commission fail, concludes that "The demise of Redwood therefore represents a rare black mark on this Commission's record" (Intrastate Memo, p. 5).

Whatever may have contributed to Redwood's deterioration and ultimate collapse, this record clearly shows that it was unable to conduct a "wide area" operation, from its headquarters in San Francisco, with the financial and technical resources available to it. Moreover, it did not offer "transient" service to subscribers of other RTUs who roamed its territory.^{2/}

This record also makes clear that the radiotelephone utility industry in California, regulatory jurisdiction over which was only recently acquired by this Commission ("Grandfather" Decision No. 62156, Application No. 42456, Case No. 6945 (1961), 58 Cal. P.U.C. 756), is a rapidly growing, technologically expanding and often obstreperous business that entails great financial risk and requires a high degree of technical and managerial competence. Subscribers to RTU one-way paging or two-way mobile services, whether in metropolitan or less congested areas, require both continuity of and ready access to those services for a variety of business and professional needs ranging from mere convenience to urgent necessity.

The primary issue in these proceedings, as we view this record in light of the Redwood experience, is the determination of which of the proposals offered by the five remaining applicants

^{2/} The term "wide area" service refers to the availability of service in many communities by the same utility. "Transient" service refers to the availability of service in many communities by different utilities.

ATTACHMENT A

appears better to respond to public needs in the former Redwood territories and, at the same time, to be both financially and operationally feasible. We recognize, of course, that our resolution of those questions is subject to later action by the FCC pursuant to its exclusive jurisdiction to assign available frequencies and to grant station authorizations.

We have concluded that the proposals of United Business Services, Inc., for the San Rafael and Marin County area, of KVRE Communications, for the Santa Rosa and Sonoma County region, and of Intrastate, for an extension of its existing service northerly and easterly from base station facilities on Round Top Mountain, in the Berkeley Hills, best meet the public needs for one-way paging and two-way mobile RTU service in those areas, respectively. Reasons for the foregoing conclusion follow.

2. Competitive Aspects - Bay Area and Outlying Areas.

In essence, all proposals filed subsequent to the Redwood collapse sought to replace or extend all or portions of the former Redwood certificated operations and frequencies which, especially in metropolitan areas, were competitive in some degree with regulated and unregulated radio common carrier services as well as with private communications services. That competition, both for subscribers and for additional channel capacity-the latter especially in congested areas where problems of electronic interference abound-still exists and may be expected to increase with, as an example, the anticipated Bellboy paging services of Pacific Telephone. Some alleviation of channel congestion, however, may come from recent FCC action indicating that additional UHF channels may become available, though with more limited coverage, for existing RTUs in the San Francisco/Oakland area.

Establishment at Oakland of a new RTU service by BARTS, or by Peninsula's proposed extension (which because of its scope should be considered as tantamount to a new Oakland-based service), would

ATTACHMENT A

pose formidable added competition, as regards both subscribers and channels, for Intrastate's operations, as to which there were no significant public complaints. A new RTU in Oakland would require three channels, and an RTU with two UHF channels is more attractive to subscribers. Only five former Redwood UHF and one VHF channels are available, at present, for assignment to Bay Area RTUs. If one UHF channel each were assigned to Santa Rosa and San Rafael only three UHF and one VHF channels remain.

Both Intrastate and Peninsula have shown their need for additional channels for existing operations. Intrastate has applied to the FCC for two former Redwood UHF and one VHF channels, and has demonstrated that, aside from the temporary cease and desist order in these proceedings, its existing state authority is adequate to obtain three channels provided no power waiver is required to be obtained at the FCC on the VHF channel.

It is doubtful that the FCC could be induced to assign three channels to a new Oakland RTU on the basis of the limited showing of public need for such a new service disclosed by this record.

The record shows that RTUs in the Stockton, Vallejo and Sacramento areas have filed with the FCC for former Redwood channels, except the low band paging frequency of 43.22 MHz. As authorization for use of these channels in surrounding areas might preclude their use in the San Francisco Bay Area, consideration should be given to public need for these channels. The staff, in that connection, has asked that an exhibit (Staff Exhibit 4), which shows populations of counties in the Bay Area and surrounding localities and which includes Redwood's channels at their former locations, be appended hereto, primarily for information of the FCC in its selection among any conflicting applications for the Redwood channels. The exhibit will be attached as Appendix C hereto.

ATTACHMENT A

As previously noted, there is presently no local RTU service in either Marin or Sonoma Counties. Whatever competition might develop for the proposed services of United and KVRE would seem, so far as shown by this record, to originate from later comparative applications at the FCC for station authority involving former Redwood frequencies, and from enhanced coverage, from Round Top Mountain transmission facilities proposed by Intrastate, of portions of Marin, Sonoma or Napa Counties. Also, the possibility of competition in lower Marin County from Pacific Telephone's Bellboy paging system cannot be discounted. No evidence is available on this record to assess the possible competitive impact of existing citizens band or private physicians' systems on the proposed KVRE service; however, we think it will be minimal. Possible competition from landline radio services at Santa Rosa (Pacific Telephone) and Novato (Marin County-Western Telephone) likewise cannot be assessed on this record.

3. Public Need and the Wide Area vs.
Transient Service Question.

Although public need testimony has been touched on earlier in connection with particular proposals, a few observations may be pertinent here. Bearing in mind that a substantial number of former Redwood subscribers in the metropolitan area have been absorbed by Intrastate or Tel-Page, and that many public witnesses-chiefly those who had never used RTU services-either were somewhat restrained in their eagerness to become RTU subscribers immediately or indicated no preference as among the several applicants, it cannot be said that this record discloses a substantial need for RTU services not now available from existing carriers, with the exception of Marin and Sonoma Counties and portions of Contra Costa County to the north, as well as easterly beyond the Oakland hills.

Incidentally, the record shows that at least one of the factors contributing to Redwood's difficulties in the Bay Area was a scarcity of subscribers for its two Oakland-based UHF channels at

ATTACHMENT A

a time when Intrastate's two UHF channels-one based in San Francisco and the other in Oakland-were congested.

Concerning the "wide area" and "transient service" question, which inheres especially in the proposals of Peninsula to extend to Oakland, San Rafael and Santa Rosa and of Intrastate to extend to San Rafael and Santa Rosa, as well as in the proposals of BARTS, United and KVRE to provide intercarrier accommodations to their subscribers, it can be stated that provision of such services is considered important for attracting subscribers who have communication needs beyond reach of their federally restricted home bases. Assuming compatible mobile equipment and frequencies, such extended coverage (which was not available on a transient basis from Redwood) enhances the value of RTU mobile service to a roaming subscriber.

Wide area paging service, which requires multiple transmitters on the same frequency, does not seem to be feasible at this time in the San Francisco Bay Area, unless all RTUs in that area cooperate in further implementing arrangements for use of the two guardband frequencies, previously mentioned. (See Staff Exhibit 5).

This record lacks convincing evidence that the wide area proposals of Peninsula or Intrastate are so uniquely different from existing transient services as to be a significant factor in resolving their applications. Moreover, the evidence indicates little usage of transient service in the Bay Area and only about one or two per cent usage out of total RTU traffic statewide. Witnesses stating they desired wide area coverage had not used, and were generally unaware of, existing transient service.

The record shows that there is a substantial reservoir of paging capacity in the San Francisco/Oakland area. Redwood served only 14% of two-way and 8% of one-way units served by utilities in the metropolitan area. Compared with the 60 paging units served by Redwood from Oakland when it ceased operations, Intrastate increased its paging units served from 438 on December 31, 1969 to about 800 on

ATTACHMENT A

February 1, 1971. The staff showed that existing San Francisco/Oakland area RTUs have capacity to develop existing channels (4,700 units) to meet potential paging markets (2,400 to 4,800 units), and that Pacific Telephone may be expected to add additional capacity of 3,200 units (Staff Exhibit 1, Attachment 2).

4. Local vs. Wide Area RTUs.

Redwood was a wide area RTU with fewest subscribers in the San Rafael and Santa Rosa areas. Its offices and sales force were based at San Francisco for most years of its operation, and it served message centers in Oakland, San Rafael and Santa Rosa. Peninsula and Intrastate are home based RTUs with offices and sales forces at San Mateo and San Francisco, respectively. Public witnesses especially at Santa Rosa, emphasized their need to contact management personnel directly for decisions and for solutions of subscribers' problems. Aside from the technical defects of Peninsula's and Intrastate's proposed Taylor Mountain transmission site at Santa Rosa, mentioned earlier herein, we are of the opinion that the relatively small sizes of the proposed San Rafael and Santa Rosa operations would militate against their feasibility as extensions of existing services by these two applicants. In addition, management and sales personnel based in San Mateo or San Francisco might well be discouraged from making frequent trips to Santa Rosa, if not to San Rafael also.

We have concluded, therefore, that both the Marin and Sonoma operations are peculiarly suited to locally owned and managed RTU firms, the interests of whose owners and personnel are oriented daily to the development of their respective communities and surrounding areas. We recognize, however, that such local RTU operations, even with the aid of established affiliated business, may be slow in fulfilling the hopes of their founders.

ATTACHMENT A

V. Rate Considerations - Staff Recommendations.

Intrastate's two-way rates are about the same as Peninsula's. United's two-way rates, which are similar to Redwood's, are not typical of the RTU industry but are lower (\$12) for a two-way message service with a 20-call allowance and higher (\$37) for rental of two-way equipment. This would adversely affect revenues during months of small message usage and would be excessive for the larger users. KVRE's proposed two-way rates are reasonable and should be used by United.

With respect to one-way service United's \$24 tone-only paging rate, which is \$4 higher than Peninsula's, should be corrected to \$20. KVRE proposed no rate for tone-only paging and would charge \$27 for tone and voice paging. KVRE should file a tone-only rate of \$20. Intrastate would continue its \$24 tone and voice paging rate, authorized in 1969, but its failure to file a tone-only rate should be corrected by filing a \$20 rate for tone-only service. We adopt the staff's rate recommendations.

VI. Findings of Fact.

We find the following facts on this record:

1. Public convenience and necessity require and will require the public utility radiotelephone services proposed by Intrastate Radio Telephone, Inc. of San Francisco, United Business Services, Inc. and William H. Colclough and Edward La France, co-partners doing business as KVRE Communications, as follows:

a. Intrastate Radio Telephone, Inc. of San Francisco.

For an extension of its existing certificated RTU system in the San Francisco/Oakland Metropolitan Area by addition of a base station to be located on Round Top Mountain, near the Alameda-Contra Costa County boundary line.

ATTACHMENT A

b. United Business Services, Inc.

For the construction and operation of a public utility radiotelephone system for service to San Rafael and the County of Marin from a base station to be located on San Rafael Hill, near the City of San Rafael.

c. KVRE Communications.

For the construction and operation of a public utility radiotelephone system for service to Santa Rosa and other portions of Sonoma County and portions of the Counties of Napa and Lake, from a base station to be located on Mount Barham, approximately five and one-half miles northeast of the Santa Rosa post office.

2. Intrastate has the ability and resources to construct and operate the proposed base station on Round Top Mountain as an extension of its existing certificated Bay Area operations. United and KVRE each has the ability and resources to construct and operate their proposed systems at San Rafael and Santa Rosa, respectively.

3. The proposed operations of Intrastate, United and KVRE, as generally described in Finding No. 1 hereinabove, are, and each is, economically feasible.

4. The rates proposed by United and KVRE, as modified in accordance with the staff's recommendations heretofore referred to, are just and reasonable for the services to be rendered by said applicants.

5. Provision, by Intrastate, of tone-only one-way paging service without having on file and in effect appropriate tariff rates for such service, is both unreasonable and in violation of the statutes, rules and regulations enforceable by this Commission.

6. There is no significant public need, at present and for an undeterminable future time, for additional public utility radiotelephone services, other than those to be authorized herein, in the areas formerly served by Redwood; i.e., the San Francisco/Oakland,

ATTACHMENT A

Marin County and Sonoma County areas, that cannot presently be met by the one-way and two-way radiotelephone services presently offered by radiotelephone utilities and landline common carriers in said former Redwood service areas or portions thereof.

7. It is specifically found that the proposals of Peninsula and Intrastate to extend their respective existing systems on a wide area service basis to Marin and Sonoma Counties, are neither technically nor economically feasible and are not supported by adequate showings of public need for such proposed wide area services.

8. It is specifically found that the proposed initiation by Bay Area Radio Telephone Service, Inc. of radiotelephone utility service in Oakland and vicinity, and the proposal of Peninsula to extend its existing service on a wide area basis to Oakland and vicinity are, and each of them is, not technically, financially or operationally feasible in view of the present scarcity of available channels in that area, the lack of any substantial showing that existing RTU services are not able to respond adequately to public needs therein, and the lack of a substantial showing of public need for either of such proposed services.

9. It is specifically found that the Tel-Page, Inc. application to enlarge and extend its present one-way paging service has not been supported by sufficient evidence of economic feasibility or public need.

10. It is specifically found that no present need exists for the RTU services proposed originally, or as sought to be amended, by San Francisco Mobile Telephone Company within the areas, or expansion thereof, formerly served by Redwood.

VII. Conclusions.

1. The applications of Intrastate, United and KVRE Communications should be granted in accordance with the provisions of the ensuing order.

ATTACHMENT A

2. Said applicants should file rules, standard forms and other tariff sheets, including service area maps, as needed or appropriate to define conditions of rendering the public utility radiotelephone services herein authorized.

3. Intrastate should be directed to file with this Commission a \$20 rate for its present tone-only paging service.

4. The applications of Peninsula to extend its service to Oakland, San Rafael and Santa Rosa; of Intrastate to extend its service to San Rafael and Santa Rosa; of Bay Area Radio Telephone, Inc. to initiate RTU service in Oakland and vicinity, and of Tel-Page, Inc. to provide two-way mobile service, in addition to its existing one-way paging service, in the San Francisco/Oakland and Marin County areas, should each be denied.

5. The application of San Francisco Mobile Telephone Company, as sought to be amended, should be dismissed.

The certificates of public convenience and necessity hereinafter granted are each subject to the provision of law that:

The Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

O R D E R

IT IS ORDERED that:

1. Certificates of public convenience and necessity are hereby granted as follows:

- a. To Intrastate Radio Telephone, Inc. of San Francisco, to the extent necessary to authorize the construction and operation of a base station on Round Top Mountain in the vicinity of the Alameda-Contra Costa County boundary.

ATTACHMENT A

- b. To United Business Services, Inc., for the construction and operation of a public utility radiotelephone system for service to the City of San Rafael and Marin County.
- c. To William H. Colclough and Edward La France, co-partners, for the construction and operation of a public utility radiotelephone system, with the name of "KVRE Communications", for service to Sonoma County, including Santa Rosa, Healdsburg, Petaluma and Sebastopol, and to small portions of the Counties of Napa and Lake adjacent to Sonoma County.

2. United and KVRE, respectively, are authorized to file, on or after the effective date of this order and in conformity with the provisions of General Order No. 96-A, tariffs containing schedules of rates and charges as follows:

United - rates and charges set forth in the staff's Exhibit No. 2, pp. 4 and 7, as modified by the staff's recommendations, Section VI of the preceding opinion;

KVRE Communications - rates and charges set forth in KVRE's Exhibit No. 11, as modified by the staff's recommendations, Section VI of the preceding opinion -

together with rules governing conditions of service to subscribers, service area maps and sample copies of printed forms normally used in connection with subscribers' services and, on not less than five days' notice to this Commission and to the public, to make said tariffs effective for service as of the date of such filings.

3. Applicants United and KVRE Communications each shall notify this Commission, in writing, of the dates their respective services are first rendered the public under the rates and rules hereinabove authorized, within five days thereafter.

4. Applicants United and KVRE Communications shall keep their respective books and records in accordance with the Uniform System of Accounts prescribed by this Commission for radiotelephone

ATTACHMENT A

utilities, and shall determine accruals for depreciation by dividing the original cost of depreciable utility plant, less estimated future net salvage and less depreciation reserve, by the estimated life of the depreciable plant. Further, said applicants, respectively, shall review said accruals as of January 1, following the date service is first rendered and thereafter whenever major changes in plant composition may occur and at intervals of not more than five years. Results of these reviews shall be submitted to this Commission.

5. Intrastate is authorized to file, on or after the effective date of this order and in conformity with applicable provisions of General Order No. 96-A, such tariff revisions, including service area maps, as may be necessary or appropriate to indicate changes in its service areas or offerings of service resulting from establishment of an additional base station on Round Top Mountain, and any changes affecting its service resulting from additional message or dispatch facilities at its San Francisco or East Bay control centers. In addition, Intrastate is directed to file, also on or after the effective date of this order and in conformity with the provisions of General Order No. 96-A, a rate of \$20 and conditions of service at that rate for one-way tone only paging service and, on not less than five days' notice to this Commission and to the public to make said tariff rate and conditions effective for service as of the date of such filing.

6. Application No. 51955 of Peninsula; Application No. 51998 of Intrastate, except as hereinabove granted for a base station on Round Top Mountain; Application No. 52018 of Tel-Page, Inc., and Application No. 52273 of Bay Area Radio Telephone Service, Inc. are, and each of said applications is, denied.

7. Application No. 51951, as amended and as sought to be amended by a petition filed February 16, 1971, is dismissed.

A. 51951 et al. ek/vo
(Prop. Rept.)

ATTACHMENT A

8. The temporary cease and desist order issued by Decision No. 78658 (Show Cause Proceedings, Application No. 51951 and Related Matters) is continued in effect pending either final order of this Commission in these consolidated proceedings, or, if necessary or convenient in the exercise of our jurisdiction, pending final action by the FCC in implementing, under its jurisdiction, the authorities herein granted.

9. The certificates herein granted and the authority to render service under the respective rates and rules hereinabove authorized or directed will expire if not exercised, respectively, within thirty months after the effective date of this order.

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

Dated at San Francisco, California, this 23rd day of September, 1971.

John M. Gregory
JOHN M. GREGORY
Examiner

ATTACHMENT A

APPENDIX A

APPEARANCES IN CONSOLIDATED APPLICATION PROCEEDING

Marvin G. Giometti and Frederick M. Lowther, Attorneys-at-Law, and Homer Harris, for San Francisco Mobile Telephone Company, applicant in Application No. 51951, protestant in other applications.

Bertram S. Silver and John Paul Fischer, Attorneys-at-Law, of Silver, Rosen & Johnson, and Jerry Grotsky, for Peninsula Radio Secretarial Service, Inc., applicant in Application No. 51955, protestant in other applications.

Vaughan, Paul & Lyons, by John G. Lyons, Attorney-at-Law, for Intrastate Radio Telephone, Inc. of San Francisco, applicant in Application No. 51998, protestant in other applications.

Bacigalupi, Elkus, Salinger & Rosenberg, a professional corporation, by Claude N. Rosenberg, Attorney-at-Law, for Tel-Page, Inc., applicant in Application No. 52018, protestant in other applications.

Bryan R. McCarthy, Attorney-at-Law, and Angelo R. Turrini, for United Business Services, Inc., applicant in Application No. 52087.

George M. Malti, Attorney-at-Law, of Ferrand & Malti, and Lester W. Spillane, Attorney-at-Law, for Bay Area Radio Telephone Service, Inc. and KVRE Communications, applicants, respectively, in Application No. 52273 and Application No. 52281, protestants in other applications.

L. T. Niethammer, for Delta Mobile Radio Service; Carl B. Hilliard, Attorney-at-Law, for National Communications System, Inc.; Vaughan, 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 Radio Telephone, 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 Company; Joseph A. Smiley, for Central Exchange Mobile Radio Company; John Nissen, for Clearlake Radio Telephone and Lowell G. Harris, for Tadlock's Radio Dispatch, respondents to Order to Show Cause.

R. G. Thayer, Jr., Attorney-at-Law, and John D. Quinley, for the Commission staff.

A. 51951 et al. ek/vo
(Prop. Rept.)

ATTACHMENT A

APPENDIX B

ANTECEDENT AND RELATED PROCEEDINGS

<u>ITEM</u>	<u>PROCEEDING</u>
1.	American Mobile Radio Co., et al. v. California Mobile Telephone Co., et al., Decision No. 77377, dated June 23, 1970, Case No. 9034.
2.	Communication Investments of California, Inc., et al. v. Redwood Radiotelephone Corporation, et al., Decision No. 77754, dated September 22, 1970, Case No. 9071, et al. (Interim Opinion).
3.	Communication Investments of California, Inc., et al., v. Redwood Radiotelephone Corporation, et al., Decision No. 77755, dated September 22, 1970, Case No. 9071, Application No. 51922.
4.	Intrastate Radio Telephone, Inc. of San Francisco v. National Communications System, Inc., Decision No. 78243, dated February 2, 1971, Case No. 9137 (Order of Dismissal).
5.	National Communications System, Inc., Suspension & Investigation, Advice Letter No. 6 Tariff Sheets, Decision No. 78705, dated May 18, 1971, Case No. 9097 (Rehearing denied August 24, 1971, Decision No. 79043).
6.	San Francisco Mobile Telephone Co., Decision No. 78159, dated January 5, 1971, Application No. 51951 (Order to Show Cause and Temporary Restraining Order), and Decision No. 78658, dated May 11, 1971 (Interim Order in Show Cause Proceeding).
7.	San Francisco Mobile Telephone Co., et al., Decision No. 78704, dated May 18, 1971, Application No. 51951, et al. (consolidated proceeding-Interim Order Denying Petition by San Francisco Mobile Telephone Co. to Amend and Further Prosecute Application No. 51951).

ATTACHMENT A

APPENDIX C

POPULATIONS AND RTU CHANNELS BY COUNTIES

SAN FRANCISCO BAY AREA AND ADJACENT AREAS

1970 CENSUS FIGURES (PRELIMINARY)^{1/}

Counties	1970 Population:	Two-Way and One-Way Channels: Licensed to RTUs ^{2/}	County Population Per Channel:
San Francisco	704,217	7	
Alameda	1,059,051	<u>4</u> ^{3/}	
San Francisco-Alameda	1,763,268	11	160,000
San Mateo	551,027	2 $\frac{1}{2}$	220,000
Marin	204,046	<u>3</u> ^{3/}	68,000
Sonoma	199,360	<u>2</u> ^{3/}	100,000
Mendocino	50,600	1	51,000
Lake	18,816	1	19,000
Contra Costa	551,456	1	551,000 ^{4/}
Solano	164,513	2	82,000
Yolo	90,794	4	23,000 ^{5/}
Sacramento	636,137	7	91,000
San Joaquin	284,506	6	47,000
Stanislaus	191,679	2	96,000
Santa Clara	1,057,032	4 $\frac{1}{2}$	234,000
Santa Cruz	120,882	2	60,000

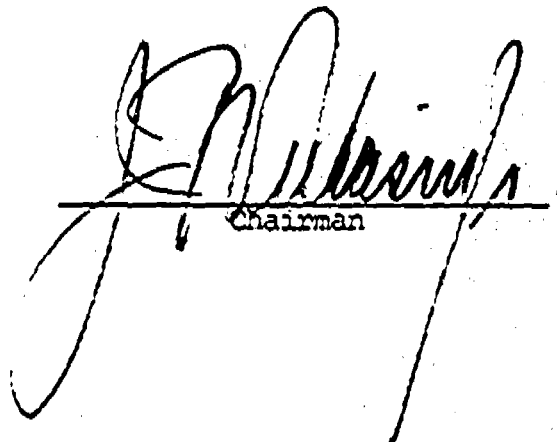
- ^{1/} Population counts for California, PC(P1)-6, September 1970, United States Department of Commerce.
- ^{2/} Sources: NARS Nationwide Service Directory, 1969, RTU Tariffs and FCC Public Notices on DPLMRS Applications and Grants.
- ^{3/} Redwood Radiotelephone channels included.
- ^{4/} Also served by Oakland channels.
- ^{5/} Channels also cover Colusa County.

D. 30098 A. 51951, et al.

J. P. VUKASIN, JR., CHAIRMAN, Dissenting in Part:

I dissent to that portion of the decision which denies certification to the Bay Area Telephone Service, Inc. Bay Area, based in Oakland, seeks to provide one-way paging and two-way mobile RTU service primarily in the East Bay counties of Alameda and Contra Costa. The record discloses that Bay Area can offer services superior not only to the defunct Redwood companies but to other applicants. It is well qualified in its financial, technical and operational abilities.

Forty-six witnesses indicated a need for the type of service Bay Area proposes. The public interest of the residents of the East Bay in the certification of Bay Area far outweighs the restriction in authorized radiotelephone utilities imposed by this decision. (See Northern California Power Agency v. Public Utilities Com. 5 C3d 370).


Chairman

San Francisco, California

May 31, 1972