

ORIGINAL

Decision No. S0954

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Thomas Poor dba
Kern Radio Dispatch for a certifi-
cate of public convenience and
necessity authorizing two-way
mobile communication service as a
Radiotelephone Utility.

Application No. 52827
(Filed August 26, 1971)

Warren A. Palmer, Attorney at Law, for Kern Radio
Dispatch, applicant.

Donald R. Cook, for Fresno Mobile Radio, Inc. and
Hankford Mobile Radio, Inc., protestants.

Carl Hilliard, Attorney at Law, for Airsignal of
California, Inc.; and Philip B. Patton, Attorney
at Law, for Kidd's Communications, Inc.;
interested parties.

Walter H. Kessenick, Attorney at Law, for the Commission
staff.

O P I N I O N

On August 26, 1971 Thomas R. Poor, doing business as Kern Radio Dispatch, requested that the Commission issue him a certificate of public convenience and necessity authorizing him to construct and operate an extension of his radiotelephone system, or, in the alternative, dismissing his application on the ground he already holds the authority requested by such application.

On September 24, 1971 Airsignal of California, Inc. filed a protest alleging that it serves the area requested and thus the duplication of service proposed by applicant would be harmful and injurious to protestant and would not be in the public interest.^{1/}

Fresno Mobile Radio, Inc., by letter dated September 10, 1971, stated it opposed "the granting of the application until the potential interference problem is resolved."

^{1/} At the hearing Airsignal, because it had entered into an agreement to purchase Poors' utility, withdrew its protest and entered its appearance as an interested party.

Because of the opposition to the application, applicant attempted through discussions with the other parties to resolve the conflicts and arrive at a mutually agreeable solution which could be presented to the Commission. Failing to consummate such agreement, applicant requested that the matter be set for hearing.

After due notice, public hearing was held at Bakersfield before Examiner Gillanders on July 18 and 19, 1972, and the matter was taken under submission subject to the filing of briefs by parties desiring to do so within thirty days after receipt of transcript.^{2/} Thirty-three exhibits (22 proffered by applicant) were received in evidence and testimony was taken from six witnesses.

Applicant's Present Operations

Applicant is a radiotelephone utility providing two-way mobile radio communication service on three channels in portions of Kern County and adjacent areas. Applicant's base station facilities are located on Paleto Peak, south of Taft, California, and are operated by radio links from control centers at Bakersfield and Taft. Applicant also provides one-way paging service to its subscribers under an agency contract with Kidd's Communications, Inc., a competing radiotelephone utility, which agency contract was approved by the Commission in Application No. 52843, Decision No. 79190, dated September 28, 1971.

Applicant has approximately 155 mobile units and 27 paging units currently in service. Applicant has been operating as a radiotelephone utility since 1961 pursuant to authority granted by the "grandfather" decision of this Commission (Decision No. 62156, dated June 20, 1961, 58 CPUC 756). Applicant is the president and majority shareholder of Communication Enterprises, Inc., which has its headquarters in Bakersfield and owns and operates three telephone answering services, three radiotelephone installation and maintenance divisions, two radiotelephone utilities (subsidiary corporations) at Eureka and Redding, and a communications leasing service.

^{2/} The matter was submitted for decision on September 12, 1972.

Applicant's Proposed Extension

Applicant proposes to extend his radiotelephone system two-way mobile communication service to existing subscribers, and to provide such service to potential new subscribers in the Blackwell Corners-Lost Hill and McKittrick regions in the northwest portion of Kern County and areas adjacent thereto. The proposed service would be provided by two transmitters located on Hillcrest Point and Orchard Peak, respectively, operating on frequencies 454.225 mhz (Channel 29) from Orchard Peak, and frequency 454.050 (Channel 22) from Hillcrest Point, or other available frequencies in the 454 band. Control centers would be located at Bakersfield in the case of Orchard Peak, and at Bakersfield and Taft in the case of Hillcrest Point

The proposed facilities would be installed, maintained, and repaired by personnel of Bakersfield Electronics, Bakersfield, a radio maintenance division of Communication Enterprises, Inc. Dispatching at Bakersfield would be processed by a telephone answering service owned by Communication Enterprises, Inc., and at Taft by an independent telephone answering service. Thomas R. Poor and his wife, Alberta Poor, both of whom have had long experience in the radiotelephone industry and are familiar with the service areas in question, would manage and supervise the operations of the proposed facilities. Financing would be provided through internally generated funds and under revolving credit arrangements with an established financial institution with which applicant has dealt for several years. Applicant's rates currently on file with the Commission for two-way mobile radio communication service would be charged for the proposed service.

Respective Positions of Applicant, Protestants, Interested Parties, and the Staff

Applicant requests the Commission to grant a certificate of public convenience and necessity for the proposed extension (Orchard Peak and Hillcrest Point) if the Commission adheres to the

standards for coverage or service area adopted by the Commission in Decision No. 62156, Case No. 6945, Inv. Communication Common Carriers, 58 CPUC 756 (1961), commonly called the "grandfather" decision. These standards are the signal (field) strength contours (37 and 39 decibels for frequencies in the 152 and 454 bands, respectively) adopted by the Federal Communications Commission as the limits of reliable service area for the purposes of providing protection from co-channel interference and defining areas within which claims of economic competitive injury would be considered (47 CFR, Sec. 21.504).

Alternatively, applicant requests the Commission to dismiss his application in the event the Commission should adopt, as the criterion of coverage, the practical service area of the radio-telephone utility, on the ground the applicant is already serving most of the area in question and the small area not already served is encompassed by the contiguous territory extension provisions of Section 1001 of the Public Utilities Code. As defined during the course of this proceeding, the practical service area or the service area from a practical standpoint of the radiotelephone utility encompasses the area within which the radiotelephone utility can actually provide service to its subscribers having 90 percent reliability from the utility's base station facilities. In view of the findings hereinafter set forth there is no need for the Commission to respond to applicant's alternative request for dismissal of the application.

Protestants Fresno Mobile Radio, Inc. and Hanford Mobile Radio, Inc. (the latter's service area is practically congruous with that of Fresno Mobile Radio, Inc.) oppose the granting of the application on the grounds the proposed service area of applicant is already adequately served by other certificated radiotelephone utilities including protestants, Airsignal of California, Inc. and Kidd's Communications, Inc., and on the further ground of harmful interference with the facilities of protestants.

Kidd's Communications, Inc., a radiotelephone utility serving part of the questioned area appeared as an interested party and expressly disclaimed any opposition or protest to the application.

The applicant and Kidd's Communications, Inc. had previously entered into an agency contract for the furnishing by applicant as agent of Kidd's of one-way paging service in the Southern San Joaquin Valley. One of the considerations for such contract was Kidd's agreement not to protest any application filed by the applicant with the Commission and the Federal Communications Commission for authority to serve the Orchard Peak-Hillcrest Point areas. As already observed, this contract was approved by this Commission in Decision No. 79190, Application No. 52843, dated September 28, 1971.^{3/}

Airsignal of California, Inc., a radiotelephone utility also serving part of the questioned area, appeared and announced that it was withdrawing any protest to the application, stating that it had entered into an agreement, subject to regulatory approval, to purchase the radiotelephone utility owned and operated by applicant as Kern Radio Dispatch. A representative of Airsignal of California, Inc. testified that such purchase was not contingent on any decision in this proceeding. He further testified that Airsignal would reveal the terms of the proposed purchase and future operation of Poor's public utility business before August 20, 1972.^{4/}

The position of the staff at the hearing on this application was that it was not opposed to the grant thereof. After reviewing the record, the staff's position remains unchanged.^{5/}

^{3/} The covenant not to protest this application expired on August 2, 1972.

^{4/} Airsignal did not meet this commitment. In fact, Airsignal has not yet filed an application with this Commission.

^{5/} The record is silent as to the reasons why staff arrived at its position.

We have long held that before granting a certificate for service in an area presently being served by like utility service applicant has the burden of showing that the existing service is not adequate or satisfactory.

Findings

1. Applicant's evidence is not persuasive that there is a need for its proposed service.
2. Applicant has not presented evidence sufficient to persuade the Commission to alter or modify its service area standards.
3. Three utilities are now rendering similar service to that proposed by applicant within applicant's proposed service area and that such service is not unsatisfactory.
4. Applicant has failed to establish that public convenience and necessity require the proposed service.
5. No other points need be discussed.

The Commission concludes that the application should be denied.

O R D E R

IT IS ORDERED that Application No. 52827 is denied.

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

Dated at San Francisco, California, this 16th day of JANUARY, 1973.

Vernon L. Sturgeon
President
[Signature]
[Signature]
[Signature]
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.