

ORIGINAL

Decision No. 81766

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

INDUSTRIAL COMMUNICATIONS SYSTEMS,  
INC.,

Complainant,

v.

POMONA RADIO DISPATCH CORP.,

Defendant.

Case No. 9382  
(Filed May 18, 1972)

Homer N. Harris and Warren A. Palmer,  
Attorney at Law, for Industrial  
Communications Systems, Inc.,  
complainant.

Carl B. Hilliard, Jr., Attorney at Law,  
for Pomona Radio Dispatch Corp.,  
defendant.

Roger Johnson, for the Commission staff.

O P I N I O N

Summary of Proceedings

On May 18, 1972, Industrial Communications Systems, Inc. filed this complaint against Pomona Radio Dispatch Corp. (name subsequently changed to Radio Dispatch Corp.), requesting the Commission to issue a cease and desist order against expansion of the defendant's operations, and for other relief. After hearing was held before Examiner Coffey in San Francisco on July 31 and August 1, 1972, the matter was taken under submission upon the filing of briefs on October 20, 1972.

On complainant's petition, submission of the case was set aside on December 5, 1972 for the taking of additional evidence. Further hearing was held before Examiner Coffey in San Francisco on March 22, 1973, and the matter was resubmitted upon the receipt of supplemental briefs on June 4, 1973.

Operations of Complainant and Defendant

Complainant provides public utility radiotelephone two-way mobile and one-way paging or signalling service from two base station locations, Santiago Peak southeast of Los Angeles and Verdugo Peak northeast of Los Angeles, in metropolitan Los Angeles and adjacent areas, including major portions of Orange County, San Bernardino County, Riverside County, San Diego County, and Los Angeles County. Complainant provides radio communication service on both UHF and VHF frequencies within a service area encompassing more than ten million people. Complainant was "grandfathered in" by Decision No. 62156 of the Commission (58 CPUC 756 (1961)).

Defendant provides public utility two-way mobile and one-way paging service from a base station location at Kellogg Hills, Los Angeles County, to Pomona Valley and San Gabriel Valley, Los Angeles County, and the western section of San Bernardino County. Late in 1972, defendant commenced furnishing one-way paging service from a base station location atop Sunset Ridge, Los Angeles County, a substantially higher elevation than Kellogg Hills. This operation is the subject of this complaint proceeding. Defendant currently provides radio communication service to an area having a population in excess of one million, the area having an economy primarily agricultural and industrial in nature. Like complainant, defendant holds a "grandfather" certificate under Commission Decision No. 62156.

The area served by defendant is also served, in whole or in part, by five other radiotelephone utilities with both mobile and paging service. These include complainant, Intrastate Radiotelephone, Inc. of San Bernardino, Mobilfone, Inc., Radio Page Communications, Inc., and Intrastate Radiotelephone Inc. of Los Angeles.

The principal issue to be decided in this case concerns a prior proceeding before this Commission involving both complainant and defendant. In 1968, by Application No. 50594, defendant sought authority to expand its service area by removing its UHF transmitter from a downtown location in the city of Pomona to a higher elevation, approximately 1,200 feet, in Kellogg Hills, Los Angeles County, and by installing a new UHF transmitter on Sunset Ridge, which has an elevation of approximately 5,000 feet. Complainant opposed this application. By Decision No. 76097 dated August 26, 1969, the Commission granted a certificate to defendant to relocate its UHF transmitter (frequency 454.350 MHz) to Kellogg Hills, and to install a new UHF transmitter having a different UHF frequency on Sunset Ridge.

By its Decision No. 76097, the Commission expressly found defendant's expanded service area to consist of the east San Gabriel Valley - Pomona Valley - West San Bernardino County area. For the purposes of its complaint, complainant has merged the West San Gabriel Valley and East San Gabriel Valley areas. By its order, the Commission directed defendant not to serve beyond the limits of a 39 dbu contour for two-way radio communications, nor beyond a 43 dbu contour for one-way signaling service.

Due to a paucity in available radio frequencies, defendant as yet has not obtained a license for a UHF frequency atop Sunset Ridge, although its application to the Federal Communications Commission for such frequency (454.125 MHz) has been pending since December 1969.<sup>1/</sup> However, since 1972, defendant has been providing paging service from Sunset Ridge on a VHF transmitter (frequency 158.7 MHz) pursuant to license granted by the Federal Communications Commission, which was unopposed by complainant. Additionally, in

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<sup>1/</sup> Complainant filed a competing application with the Federal Communications Commission for such frequency.

November 1972, while this proceeding was under submission and over the protest of complainant, the Federal Communications Commission granted a license to defendant for a VHF paging transmitter (158.7 MHz) on Sunset Ridge and, pursuant thereto, defendant has installed and now operates such facilities from Sunset Ridge.<sup>2/</sup>

Respective Positions of Complainant and Defendant

Complainant's basic contentions are twofold. Complainant first asserts that Decision No. 76097 primarily involved an expansion of defendant's mobile radiotelephone service on UHF channels, that the institution of one-way paging service on a VHF channel from Sunset Ridge by defendant constituted the offering of an entirely new service with an entirely different system at a new location in an expanded service area already adequately served by competing radiotelephone utilities, and that before legally providing such service, defendant was required to obtain a certificate of public convenience and necessity from this Commission.

Complainant's second basic contention is that even if Decision No. 76097 authorized defendant to provide paging (or mobile) service from Sunset Ridge on either VHF or UHF channels, the authorized service area for such service is explicitly limited by the findings in that decision to the San Gabriel Valley - Pomona Valley - West San Bernardino County area, and not by the 39 dbu contour specified in the Commission's order, which would have the effect of substantially enlarging defendant's authorized service area beyond such territorial description.

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<sup>2/</sup> At the request of defendant, the Commission staff gave its informal opinion, which was furnished to the Federal Communications Commission, that no additional state certification was required to offer such paging service.

Complainant seeks a cease and desist order from the Commission either restraining defendant from installing and operating VHF paging facilities from Sunset Ridge, unless and until it first obtains additional certification from the Commission, or at least restraining defendant from offering to provide or providing radio communication service west of the Covina Telephone Exchange of General Telephone Company of California, south of the Pomona and Corona Telephone Exchanges of General Telephone Company of California and Pacific Telephone and Telegraph Company, respectively; east of the Ontario Telephone Exchange of General Telephone Company of California; and north of the Covina, Pomona, and Ontario Telephone Exchanges. These telephone exchange boundaries, filed with this Commission, are approximately co-terminous with the San Gabriel Valley - Pomona Valley - West San Bernardino County geographical area. Additionally, to implement the integrity of such service area, complainant requests that such order restrain defendant from establishing message centers and foreign exchange lines outside such telephone exchange boundaries, unless and until defendant obtains additional certification from this Commission.

Defendant, on the other hand, contends that its service area, as authorized by Decision No. 76097, constituted a 39 dbu signal strength contour from Sunset Ridge for two-way mobile radio communications and a 43 dbu signal strength contour for one-way paging service and, since the contour for paging service from Sunset Ridge on a VHF channel was entirely within its 39 dbu service contour, no additional certification is required from the Commission. In this connection, defendant claims that its service area, as authorized by Decision No. 76097, is governed and controlled by the order and not by the findings of the Commission in that proceeding, and that limiting its service area to that specified in the findings would be a denial of due process. Consistent with such interpretation, the defendant offers to serve well beyond the geographical limits of the San Gabriel Valley - Pomona Valley - West San Bernardino County area, and indeed, beyond the limits of the 39 dbu contour.

The record in this proceeding consists essentially of documentary evidence, together with explanatory testimony, relating to the chronology of operations of complainant and defendant as they bear on their conflicting interpretations of Decision No. 76097. There was a dearth of showing as to the factors commonly considered by the Commission in certificate proceedings, particularly that of public need and benefit, other than the fact the expanded area defendant seeks to serve is already wholly or partially served by five competing radiotelephone utilities.

Scope of Decision No. 76097

This Commission, in the establishment of service areas for radiotelephone utilities, has normally adopted the signal strength contour as a guideline for the definition or determination of such service areas. Hence, without more, we might be inclined to accept defendant's contention as to the definition of its service area.

(Compare Loperena v Fresno Mobile Radio, Inc. (1970) 71 CPUC 645.)

However, contours are not an absolute standard or guide and, where otherwise warranted or required, the authorized service area of a radiotelephone utility will not be co-terminous with a theoretical signal strength contour. (Compare S. B. Malis (Coast Mobilphone Service) (1962) 59 CPUC 559; Robert C. Crabb (Mt. Shasta Radiotelephone Co.) (1970) 71 CPUC 340; and R. L. Mohr (Advanced Electronics) (1963) 61 CPUC 479.) That is the situation here.

Contrary to the defendant's contention, it is a settled administrative principle that an order of the Commission is governed and controlled by its findings. An order of the Commission cannot be sustained if it is contrary to or not supported by the findings contained in the decision of the Commission. If the order is susceptible of different interpretation, that construction which is consistent with the findings must be adopted, and prevails. (Public Utilities Code, Section 1705; Pacific Freight Lines (1952) 51 CPUC 744; Chicago, R. I. & P. R. Co. v United States (1931) 284 US 80, 76 L ed 177, 52 S Ct 87.)

In the face of the record in this proceeding, we must reject the complainant's claim that defendant lacked any authority to provide paging service from Sunset Ridge. But, that authority is not unlimited. The order of the Commission in Decision No. 76097 is necessarily governed by the findings in that case. As we have seen, the order could not grant operative rights to the defendant in excess of those findings, and must be so interpreted. Accordingly, we hold that the service area of defendant authorized by that proceeding was the geographical San Gabriel Valley - Pomona Valley - West San Bernardino County area, and no more. Such holding is fully consistent with Decision No. 76097 and the record made in this proceeding. In view of our conclusion, it follows that defendant, not being deprived of any service area, is not denied due process of law.

The evidence shows that defendant has been offering to provide radio communication services beyond the geographical limits of the San Gabriel Valley - Pomona Valley - West San Bernardino County area. In order to safeguard the integrity of the service area certificated to defendant by Decision No. 76097, we further conclude that defendant should be restrained from serving or offering to serve beyond the telephone exchange boundaries which are approximately co-terminous with defendant's authorized service area, including a prohibition against installing or operating message centers, foreign exchange lines, or other fixed stations beyond such telephone exchange boundaries.

We further hold that neither the filing of tariffs by defendant, nor its investment in and operation of paging facilities on Sunset Ridge, conferred any rights on defendant. We have long held that a utility acts at its peril in expanding its plant without prior Commission approval, and that the filing of tariffs does not, of itself, confer any rights on a public utility. (Dyke Water Co. (1957) 56 CPUC 109; Decker (1931) 36 CRC 317; Blair v Coast Truck Lines (1922) 21 CRC 530.) The opinion of the Commission staff (see Footnote 2), under the particular circumstances, does not compel a different conclusion than that reached here. (Coast Trucking Co. (1962) 60 CPUC 67.)

Findings and Conclusion

The Commission finds that:

1. The service area of defendant, as authorized and established by Decision No. 76097, is limited to the San Gabriel Valley - Pomona Valley - West San Bernardino County area.

2. The defendant is offering to provide two-way radio communication service and one-way radio communication service beyond the defendant's service area authorized by Decision No. 76097.

3. The defendant's authorized service area is approximately co-terminous with the boundaries of the Covina, Pomona, and Ontario Telephone Exchanges of General Telephone Company of California, and the Corona Telephone Exchange of The Pacific Telephone and Telegraph Company.

4. It is reasonable that defendant be required to cease and desist from providing, or offering to provide, either two-way or one-way radio communication service west of the Covina Telephone Exchange of General Telephone Company of California; south of the Pomona Telephone Exchange of General Telephone Company of California and the Corona Telephone Exchange of The Pacific Telephone and Telegraph Company; east of the Ontario Telephone Exchange of General Telephone Company of California; and north of the Covina, Pomona, and Ontario Telephone Exchanges of General Telephone Company of California, unless and until defendant shall have obtained from the Commission a certificate of public convenience and necessity therefor.

5. It is reasonable that defendant be required to cease and desist from establishing or operating message centers, foreign exchange lines, or other fixed stations beyond the aforesaid telephone exchange boundaries, unless and until defendant shall have obtained from the Commission a certificate of public convenience and necessity therefor.

The Commission concludes that a cease and desist order should issue as provided in the ensuing order.

O R D E R

IT IS ORDERED that:

1. Radio Dispatch Corp. is directed to cease and desist from providing, or offering to provide, either two-way or one-way radio communication service west of the Covina Telephone Exchange of General Telephone Company of California; south of the Pomona Telephone Exchange of General Telephone Company of California and the Corona Telephone Exchange of Pacific Telephone and Telegraph Company; east of the Ontario Telephone Exchange of General Telephone Company of California; and north of the Covina, Pomona, and Ontario Telephone Exchanges of General Telephone Company of California, unless and until defendant shall have obtained from this Commission a certificate of public convenience and necessity therefor.

2. Radio Dispatch Corp. is directed to cease and desist from establishing or operating message centers, foreign exchange lines, or other fixed stations beyond the aforesaid telephone exchange boundaries, unless and until defendant shall have obtained from the Commission a certificate of public convenience and necessity therefor.

The Secretary is directed to cause a certified copy of this decision to be served upon defendant. The effective date of this order shall be twenty days after the date of such service.

Dated at San Francisco, California, this 21<sup>st</sup> day of AUGUST, 1973.

Vernon L. Sturgeon  
President  
William J. Holmes  
D. W. Holmes  
[Signature]  
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.