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Decision No. 82386

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of PENINSULA RADIO
SECRETARIAL SERVICE, INC.,

Complainant,

v.

Case No. 9651

SAN MATEO COUNTY MEDICAL SOCIETY,
aka SAN MATEO MEDICAL SOCIETY,
DOE I, DOE II, DOE III, DOE IV,

Defendants.

ORDER GRANTING INTERIM RELIEF AND
REQUIRING IMMEDIATE ANSWER TO COMPLAINT

Complainant alleges that defendant San Mateo County Medical Society (Society) is a public utility soliciting contracts for radio paging service in the area presently certificated to complainant. Complainant further alleges that the Society has caused an application to be filed with the Federal Communications Commission (FCC) for radio station and frequency authorization.

Complainant asserts that a substantial portion of its present paging service revenue comes from medical doctors presumed to be members of the Society and that loss of a large portion of its paging customers would endanger the rate structure of the remaining customers and endanger the survival of complainant.

Complainant also filed an affidavit of its president stating that the radio equipment ordered by the Society is on hand and ready for installation pending receipt of the FCC license. The affidavit further states that this license is likely to be issued during the week of January 21, 1974, based on current practices of the FCC, despite a request by complainant that an investigation be made before the license is issued.

Complainant asks that a cease and desist order be issued forthwith to prevent defendants from constructing radio paging facilities, pursuant to the authority granted this Commission in Section 1006 of the Public Utilities Code.

Section 1006 provides:

"When a complaint has been filed with the commission alleging that a public utility of the class specified in Section 1001 is engaged or is about to engage in construction work without having secured from the commission a certificate of public convenience and necessity as required by this article, the commission may, with or without notice, make its order requiring the public utility complained of to cease and desist from such construction until the commission makes and files its decision on the complaint or until the further order of the commission."

The validity of a Commission order consonant with the relief requested by complainant must depend on a finding of public utility status of one or more defendants, as alleged by complainant. The Commission is loathe to make such an assumption of status solely on verified pleadings and affidavits. However, the facts as alleged in the complaint are similar to those in Mobile Radio System of San Jose, Inc. v. Vogelmann and Podesta, 69 CPUC 333 (1969), wherein the Commission issued a cease and desist order, albeit after a hearing.

Further, the allegations of immediate irreparable injury to complainant's remaining paging customers and the threat to the viability of complainant's total operations move us to act on this complaint without hearings, decision on the evidence, and the possibility of protracted appellate procedures.

In order to mitigate any injury to defendants should it later be determined that defendants are not subject to this Commission's jurisdiction, we shall only order defendants to cease and desist from completion of construction of their proposed system pending further order of this Commission. Defendants may begin or continue such construction as they desire provided it does not make

the system operable in competition with complainant.

In order that this matter might be resolved with the least amount of delay we shall provide for an immediate answer to this complaint.

IT IS ORDERED that:

1. Defendants shall cease and desist from completing construction of a telephone line, as that term is defined in Public Utilities Code, Section 233, until further order of this Commission removing this restriction or authorizing completion of construction.

2. Defendants shall answer the complaint herein within ten days of the date of service of the complaint.

The Secretary is directed to cause service of this order on defendants at the same time as service of the complaint.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 22nd day of JANUARY, 1974.

Vernon L. Sturgeon
President
William J. Quinn, Jr.
H. M. Quinn, Jr.
[Signature]
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Commissioners