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Decision No. 83099

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM MILLER and ROBERT STEINBERGER  
dba PHONE CONSULTANTS INTERNATIONAL,

Complainant,

vs.

RADIO CALL CORPORATION, a radio  
telephone utility; R. L. MOHR, its  
president,

Defendant.

Case No. 9477  
(Filed November 28, 1972)

Robert G. Steinberger, for himself,  
complainant.  
Carl B. Hilliard, Jr., Attorney at Law,  
for defendant.

O P I N I O N

Complainant sells simplex<sup>1/</sup> radio and mobile telephone equipment to the public for use on the public mobile telephone systems of the radiotelephone utilities (RTU) and wireline telephone companies in the greater Los Angeles metropolitan area. Defendant R. L. Mohr, dba RadioCall Corporation (RadioCall), provides RTU services in the South Bay area of Los Angeles County pursuant to authority granted by this Commission's Decision No. 66101. Mr. Mohr is also the principal stockholder in Advanced Mobile Radiotelephone Service, Inc. (Advanced), a corporation, which is engaged in radio repair and maintenance in the Los Angeles area.

1/ A duplex mobile telephone uses two frequencies which permit the user to talk and listen at the same time in much the same manner as a land line telephone. A simplex system uses one frequency. A user of a simplex unit must push a button on his microphone to talk and release the button to listen. This type of equipment is used on the typical radio system and requires each party to wait until the frequency is turned "over" to him before he can talk.

All of defendant's customers own and maintain the radio equipment, which is installed in their vehicles and used in communicating via defendant's system.

RadioCall is licensed by the Federal Communications Commission (FCC) to provide mobile telephone service under Part 21 of the FCC rules. Rule 21.514(a) provides:

"The licensee of a base station in this service shall be responsible for exercising effective operational control over all mobile units with which it communicates. The proper installation and maintenance of such mobile units shall be the responsibility of the respective licensees thereof."

RadioCall is the licensee for all mobile units operated on its system.

RadioCall's Tariff Rule No. 16, contained in Sheet No. 48T, provides:

"A. Equipment may be provided by the utility or by the subscriber, at the subscriber's option. If provided by the subscriber, the equipment shall be suitable for the proper operation of the service and approved by the utility.

"B. Where utility furnishes the equipment, or the subscriber provides his own equipment and operates the equipment under the utility's FCC license, all installation and maintenance of the equipment is done by the utility or its designated agency, subject to the appropriate rates of these tariff schedules." [Emphasis added.]

The complaint alleges that defendant refuses to provide service to customers who have purchased simplex equipment, either from complainant or from others. It is further alleged that defendant has maligned the equipment complainant offers for sale, interfering with complainant's relationships with actual and prospective equipment purchasers. The complaint further alleges

that defendant owns or controls corporations engaged in servicing and sales of radiotelephone equipment and that the conduct complained of was therefore anticompetitive.

Complainant requested that defendant be ordered to allow a specified simplex owner to become a subscriber, that defendant be restrained from "malignment" and from recommending any brand or type of radiotelephone equipment, and that defendant "accept FCC standards and the consensus of their contemporaries with regard to duplex equipment."

Hearings were held in Los Angeles on July 25 through 27, 1973 before Examiner Gilman. At the conclusion of the hearings the examiner ordered the matter submitted to the Commission subject to the filing of briefs, due September 30, 1973. Defendant's brief was timely filed. Complainant's brief was not filed until January 11, 1974.

Defendant twice moved for dismissal of the complaint for failure to file a brief in accordance with the order of submission. Since the complaint raised matters which purport to affect significant public interests, we will decide the proceeding on the merits.

#### Discussion

Complainant's first cause of action appeared to be based on the theory that defendant was tying its utility service to sales or leasing of radiotelephone equipment. If such were the case, the situation would require sua sponte action by this Commission. (Northern California Power Agency v PUC (1971) 5 Cal 3d 370, Phonetele, Inc. v PUC (1974) \_\_\_ Cal 3d \_\_\_.)

Just as with a trademark or patent (Siegel v Chicken Delight (9 Cir 1971) 448 F 2d 43, Warriner Hermetics, Inc. v Copeland Refrig. Corp. (5 Cir 1972) 463 F 2d 1002), a utility's ability to exclude competitors (cf. Section 1001, Public Utilities Code) may provide the necessary market power so that the utility service could be characterized as a tying service.

However, the record herein demonstrates that neither defendant nor any affiliated company sells, leases, or otherwise sells radiotelephone equipment to potential RTU customers in the Los Angeles Basin. Thus, there is no tied product and no issue under Northern California Power Agency, supra.

The complaint also appeared to raise a public convenience and necessity issue. In most situations, the mere fact of utility status is enough to raise a presumption that a utility's refusal to give a certain form of service totally denies that service to a portion of the public.

In this case such a presumption would be inappropriate. Defendant is a radiotelephone utility, not a conventional utility with a fixed distribution/transmission system, and immobile services. Hence it is not a natural monopoly. Any casual observer of the industry would recognize that there are several RTUs in the Los Angeles Basin with antenna sites which could potentially or actually give multiple overlapping simplex coverage throughout most of the Basin. It is thus not a monopoly created by law.

Therefore, in order to require defendant to dedicate its property to the service of that portion of the public which needs simplex service, it would first have to be shown that no other local RTU is willing and able to supply those needs.

We find that complainant has failed to show that:

1. Defendant or any affiliated company sells radiotelephone equipment in the Los Angeles Basin.
2. Defendant has dedicated itself to providing simplex service.
3. No other radiotelephone utilities are willing and able to supply simplex service near defendant's antennas.

We conclude that the relief requested should be denied.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 9<sup>th</sup> day of JULY, 1974.

Vernon L. Sturgeon  
President  
William J. Fyfe, Jr.

[Signature]  
Commissioners

*I dissent.*

*Thomas Moran*

Commissioner

*I abstain*

*William J. Fyfe, Jr., Commissioner*