

Decision No. 83242

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Peninsula Radio Secretarial Service,
Inc., and Mobile Radio System of
San Jose, Inc.,

Complainants,

vs.

Case No. 9749

Joseph A. Smiley dba Central Exchange
Mobile Radio Company,

Defendant.

ORDER OF DISMISSAL

Complainants and defendant are radiotelephone companies regulated by this Commission. Complainants allege that defendant, by Advice Letter No. 6, filed November 24, 1973, and Advice Letter No. 7, filed March 25, 1974, expanded its service area without obtaining a certificate of public convenience and necessity, pursuant to Section 1001 of the Public Utilities Code, and that this expansion has and continues to damage them.

In its letter of defects to the complaint, filed pursuant to Rule 12 of the Commission's Rules of Practice and Procedure, defendant asserts that the Advice Letters in question merely reflected the changed conditions brought about by relocation of its transmitter. The revised Service Area Map was a direct result of the changed contours brought about by the transmitter relocation, not an attempt to expand the service area.

Defendant also enclosed letters from each complainant, written in 1969, indicating that neither had any objection to the transmitter relocation contemplated by defendant. He further enclosed letters from the Secretary of this Commission indicating the

informal staff position that no certificate of public convenience and necessity would be required to accomplish the transmitter relocation to a contiguous area, and that letters had been received by the Commission from the five surrounding radiotelephone utilities which indicated no objection to the increased paging coverage that would result.

The transmitter was relocated in 1970, and has been operating since that time. The Commission is not aware of any protests to its operations or complaints thereto.

Advice Letters Nos. 6 and 7 could have been challenged by complainants by the timely filing of a protest not less than 10 days prior to the regular effective date of the tariff filings, pursuant to Section III. H., of General Order No. 96-A. As regulated utilities, complainants are well aware of this provision. No protest was received by the Commission and the tariffs are now in effect.

The Commission finds that defendant was not required to obtain a certificate of public convenience and necessity to relocate its transmitter under the facts of this proceeding. We further find that the tariffs filed by defendant in Advice Letters Nos. 6 and 7 do no more than represent the changed conditions resulting from this transmitter relocation, that they went into effect without protest, and that there are no valid grounds raised by the complaint for suspending or investigating them.

We conclude that the complaint should be dismissed.

IT IS ORDERED that the complaint herein is dismissed.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 6th day of

AUGUST, 1974.

Leslie L. Sturgen
President
William Lyndon J.
William
John

Commissioners