

**ORIGINAL**

Decision No. 83899

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SALINAS VALLEY RADIO  
TELEPHONE COMPANY for better defini-  
tion of its authorized service area,  
and for authority to activate a new  
radio transmitting site.

Application No. 54543  
(Filed December 28, 1973)

O P I N I O N

Applicant is Salinas Valley Radio Telephone Company. Its principal place of business is 323 Rianda Street, Salinas, California.

Applicant is a corporation duly organized and existing pursuant to the laws of the State of California, whose Articles of Incorporation are on file with this Commission in connection with the Commission's proceedings which resulted in the radiotelephone utility (RTU) grandfather Decision No. 62156. Applicant is presently authorized by this Commission to provide and does in fact provide radiotelephone public utility service in and around the Salinas Valley, over an area including Gilroy on the north, King City on the south, Los Banos on the east, and the Pacific Ocean on the west.

Applicant's operating rights originated on June 20, 1961 as a result of Commission Decision No. 62156 wherein applicant was permitted and required to "continue its California intrastate public utility communications service..." and not to "discontinue the offering of its service to the public or withdraw any portion of its service offering..." Subsequent to that time, however, the exact geographical area contained within applicant's authorized service area has not been defined by the Commission, nor has applicant previously filed radio field strength contour maps in its tariffs by which the service area contained within r-f contours could be determined.

As a consequence of the factors set out above, the exact perimeter of applicant's authorized service area, within which applicant has both the right and the obligation to provide service, is questionable and has recently been challenged by a contiguous service area RTU when applicant planned to install a new transmitter to improve its r-f signals within its authorized service area (Case No. 9561). A primary purpose of this application is to secure an order of this Commission setting forth applicant's present authorized service area in unambiguous terms to permit applicant to improve its service within that area by installation of new transmitters and new foreign exchange telephone service without facing challenges from competing or contiguous RTUs which require hearings before this Commission, and to facilitate any showing it might make before the FCC concerning its boundaries. The future of the RTU industry, if service is to be upgraded and improved by using new technology and higher operating frequencies, must include frequent installation of radio transmitting equipment at new sites within the authorized service area to assure proper r-f signal coverage. Areas which now receive marginal r-f signal coverage at 150 or 450 MHz range frequencies may be complete dead spots in a 900 MHz dial or otherwise fully automatic radiotelephone system of the near future.

Subsequent to the issuance of the grandfather decision, applicant filed a "practical" service area map which showed the areas within which the majority of applicant's customers communicated using applicant's system. This map still appears at Revised Cal.P.U.C. Sheet No. 44-T of applicant's tariff.

The 37 dBu contour of Station KMA-837 at Mt. Toro, presently authorized by the FCC and this Commission and presently operated by the applicant, is shown on Exhibit B attached to the application. This contour takes into account a power waiver increase for the Mt. Toro location authorized by the FCC on November 20, 1973. The

power increase was applied for at the FCC in 1971. Contiguous service area RTUs, and other RTUs that might possibly encounter co-channel interference, agreed in 1971 to applicant's proposed power increase. The Commission secretary on May 28, 1971 advised applicant that it was the staff's view that it would not be necessary for the applicant to secure additional authority from this Commission for the proposed power increase.

In spite of the fact that Hollister and San Juan Bautista lie well within the outlines of both the practical service area and the 37 dBu contours, r-f signal coverage in and around those cities from the Mt. Toro location is inadequate. Communication to and from the Mt. Toro base station is simply not possible at some locations in and around Hollister and San Juan Bautista because of the shadow effect which is produced by the Gabilan Range of mountains lying between Mt. Toro and those points. Communication is marginal in other spot areas in and around Hollister and San Juan Bautista. Hollister and San Juan Bautista and surrounding areas are important agricultural areas which have a growing need for adequate radio-telephone service. Applicant proposes to install a repeater-function transmitter at Fremont Peak better to serve this area and seeks the Commission's approval to do so by this application. The 37 dBu contour from the proposed Fremont Peak location is shown on Exhibit D attached to the application.

Fremont Peak is the logical place to install a new transmitter for a number of reasons: (1) there is an existing TV transmitter complex fully developed and operating, so no new power lines, roads, towers, or buildings which would significantly impact the environment would be required; (2) the transmitting location is ideally suited to accomplish the prime purpose of putting useable signals into the Gabilan Range shadows; and (3) the location would also receive weaker signals from some locations near the Watsonville area that cannot be accommodated by the Mt. Toro location. In short, the location selected would require the least expense, the least possibility

of ecological injury, excellently accomplish the primary purpose of the installation, and generally improve northern and western fringe-area communications for the public served by the applicant.

The 37 dBu contour for a combination of the Mt. Toro station as now operated and the Fremont Peak station as proposed is shown on Exhibit E attached to the application and is supported by engineering data included therein. If this application is approved the first page of Exhibit E will be filed by applicant in its tariffs as its service area map. A comparison of Exhibits A, B, D, and E shows that no significantly populated areas not already included in both the "practical" 1961 service area (Exhibit A) and the existing authorized 37 dBu r-f contour from Mt. Toro (Exhibit B) are included in the contours of Exhibit E. The small r-f contour excursion from the Mt. Toro 37 dBu contour created by the proposed Fremont Peak 37 dBu contour is not a significant intrusion into an area actually served by any other RTU which could cause injury to it, nor does the excursion from existing contours include any city or county not now served in part by the applicant.

Applicant suggested to the Commission that new transmitting locations within the applicant's authorized service area should be permitted by the Commission routinely and without formal proceedings if such locations are well suited to improve communications within the authorized service area and cause minimum ecological impact, even if insignificant excursions from the existing contours occur, provided that such excursions do not increase the total authorized service area significantly or introduce service into a city or county not previously served in part. The authorized service area proposed on Exhibit E meets those criteria. It also suggested to the Commission that new arrangements for flat rate or one message unit rate telephone service by applicant should be permitted, without the necessity of formal Commission proceedings, from any telephone exchange area wholly or partly located within applicant's authorized service area.

The cost of the proposed Fremont Peak facilities is estimated to be \$4,000 per channel equipped, consisting of materials (\$3,300) and labor (\$700). One channel only is initially proposed. Applicant regularly files its annual report Form L with the Commission and, as is apparent from its Form L, applicant is in proper financial condition to carry out the plans outlined above.

Inasmuch as the construction of no new roads, sources of electric power, buildings, or towers are required to permit the Fremont Peak installation to go forward, it can be seen with reasonable certainty that the project involved will not have any significant effect upon the environment, and, hence, pursuant to Rule 17.1(a)(2), no Environmental Impact Report or Environmental Data Statement need be submitted with this application.

Salinas Valley Radio Telephone Company requests the Commission to issue its decision defining the applicant's authorized service area as follows:

"Salinas Valley Radio Telephone Company is authorized to operate Domestic Public Land Mobile Radio Service transmitting facilities, when authorized by the FCC, to serve the area shown within the 37 dBu contour shown on the attached Service Area Map (first page of our Exhibit D). Salinas Valley Radio Telephone Company is authorized by this Commission to install additional radio transmitters, when authorized by the FCC, to improve communications within such authorized service area; provided that the reliable service contours as defined by the then current FCC Rules, of any additional transmitters installed under authority of this Decision do not include any portion of a city or of a county not already partially included within the authorized service area, and do not otherwise expand the service area significantly. Excursion beyond contours shown on the attached Service Area Map which do not cumulatively include new areas equal to more than five percent of the area previously included, into a city or county previously partially included, shall not be considered significant for purposes of this paragraph. Salinas Valley Radio Telephone Company is further authorized by this Commission to establish dispatch and control points, when authorized by the FCC, and to contract with serving land line telephone companies

to provide no-charge, flat rate or one message unit rate land line telephone service to and from any telephone exchange serving a portion of the service area shown on the attached Service Area Map."

On January 28, 1974, Mobile Radio System of San Jose, Inc. (Mobile) filed a protest.

Mobile states as follows:

"1. Mobile is one of the numerous radiotelephone utilities found to be within the Commission's jurisdiction in Decision No. 62156. At that time, Mobile was providing service over a VHF frequency from a mountain top transmitter location known as Loma Prieta. Thereafter, because of certain VHF interference, Mobile was required to and did involuntarily remove the Loma Prieta transmitter to Mt. Umunhum. This relocation resulted in some minimal reduction of radio signal strength in certain sparsely traveled portions of Mobile's service area. At all times, Mobile regarded such relocation as temporary and planned to reactivate the facilities on Loma Prieta when technically possible. During the intervening period, Mobile has been able to meet the need for radio coverage throughout its area, from its Mt. Umunhum facility.

"2. The interference problem on Loma Prieta does not affect UHF frequencies. When UHF frequencies became available, Mobile promptly filed applications with the Federal Communications Commission (FCC) seeking assignment of two channels. Because of the growth and development of the communities it serves, Mobile proposed to improve its signal strength throughout its service area by using these frequencies from transmitter sites on both Loma Prieta and Mt. Allison. Neither Intrastate Radio Telephone, Inc. of San Francisco (Intrastate) or Salinas Valley Radio Telephone Company (Salinas) objected to these filings within the time permitted under the FCC rules.

"3. In Case No. 9561, Mobile opposed the efforts of Salinas to invade Mobile's territory by the filing of tariffs proposing the establishment of a transmitter near Gilroy. On November 15, 1973, Mobile requested termination of the proceedings and permanent suspension of the tariffs. Salinas thereafter withdrew said tariffs. At no time did Salinas disclose that it had an FCC application pending to expand its service as discussed in paragraph 5, infra.

"4. Thereafter, in what Mobile believes is retaliation, Intrastate, Salinas and Joseph A. Smiley, dba Central Exchange Mobile Radio Co., (central), jointly filed a complaint, Case No. 9615, with this Commission in an effort to block Mobile's FCC applications, by claiming that additional certificate authority is required for Mobile to establish facilities on Loma Prieta and Mt. Allison. On December 26, 1973, Mobile filed an application, No. 54538, requesting a determination that no further authority is required or in the alternative, for a grant of such authority.

"5. Intrastate now seeks, in Application No. 54542, to invade Mobile's service area by establishing a transmitter on Mt. Allison, the same site Mobile selected. Thus, Intrastate would expand its service from the North to a point at 'Morgan Hill' and Salinas, in Application No. 54543, proposes to expand from the South to the same point. Exhibits 'B' and 'C' to Application 54543 are representative of Salinas' unlawful de facto expansion into Mobile's territory. Salinas' actual authorized service area marked 'KMA-837 as presently authorized' is depicted on Exhibit '1' which is attached hereto and incorporated herein by this reference. Exhibit '1' was introduced by Salinas during the hearing in Case No. 9561, on November 15, 1973. Said Exhibit 'C' contains a Staff opinion premised on the assumption that Mobile consented to the Salinas expansion. No such consent was obtained and Mobile was totally unaware of the Staff opinion letter until now. Such opinion letters do not satisfy the requirements of California Public Utilities Code Section 1001. It is apparent that

Salinas has unlawfully extended its area and now seeks to use such maneuver as a basis to further invade Mobile's territory.

"6. Intrastate attempts to claim rights premised on actual radio reception by subscribers of its predecessor's predecessor in interest! The Commission has recognized that radio signals know no bounds and usable transmissions may be received beyond the theoretical limits of the radio strength contour. No rights can be premised on such fact. Intrastate was granted authority by Decision No. 80098 to improve its service in the San Francisco/Oakland metropolitan area. The Commission expressed concern in that Decision over the need for frequencies to serve the public in that area. No authority was intended or granted to Intrastate to remove its facilities into Mobile's area or to establish message centers and control points outside of San Francisco and Oakland.

"7. The invasion of Mobile's territory proposed by Applications Nos. 54542 and 54543 will result in wasteful duplication of service and irreparable harm and injury to Mobile. Mobile affirmatively alleges that it has the ability and willingness to meet present and future needs for service within its service area.

"8. Mobile is informed and believes and thereon alleges that the applications of Intrastate and Salinas are in furtherance of a concerted anticompetitive scheme to harm and injure Mobile in an effort to undermine and destroy its business.

"WHEREFORE, Protestant joins in the applicant's request that the Commission define its service area and respectfully requests that in such definitions, applicant be prohibited from holding itself out as serving or offering to serve the public in any part or portion of Mobile's service area and be further enjoined from establishing transmitter facilities, message centers, dispatch, control points and toll free or single message unit interconnected wireline service from any telephone exchange within Mobile's service area."

On April 15, 1974, Salinas filed a "Reply To Protest Of Mobile Radio System of San Jose, Inc."

The reply is as follows:

"1. Salinas admits that Mobile is one of the numerous radio-telephone utilities found to be within this Commission's jurisdiction in Decision No. 62156 and that in June 1961 Mobile was giving radiotelephone service over a VHF frequency from Loma Prieta. Salinas admits that Mobile did thereafter remove its transmitter from Loma Prieta and commence operations on the same VHF frequency from Mt. Umunhum. On information and belief, Salinas alleges the move occurred in 1969.

"2. Mobile did not notify this Commission of the proposed move of its transmitter or of the actual move when or shortly after it occurred, although the move did greatly reduce the reliable service area of Mobile, as defined in Decision No. 62156 by reference to Federal Communication Commission (FCC) Rules, Section 21.504. Exhibit A hereto shows as dashed lines, Curves A and B, the Loma Prieta 37 dbu contours calculated both by Boese and Carey Report methods; and as a solid line, Curve C, the 37 dbu contour from Mt. Umunhum calculated according to present day (Carey Report) FCC Section 21.504 standards.

"3. It will be recognized by examination of Exhibit A that Mobile's original 37 dbu contour from Loma Prieta did include the City of Gilroy and surrounding areas as far South as San Juan Bautista, but that the move to Mt. Umunhum resulted in the Mobile 37 dbu contour being moved, to fall North of Gilroy. Mobile did not actually serve subscribers in the Gilroy area either before or after the move. Thus, Mobile, when it moved to Mt. Umunhum in the year 1969, in fact abandoned any right to claim a service area in and around Gilroy, California, but Mobile did not advise this Commission of its factual abandonment of the right to make a claim to the area. For approximately five years past, the Mobile VHF common carrier frequency 37 dbu contour has been as is shown by Curve C of Exhibit A.

"4. Mobile indicates in its Protest that when UHF frequencies became available, Mobile 'promptly' filed applications with the FCC to re-establish service to its original service area, which it had abandoned in 1969. However, the record shows that this is not a true statement. UHF frequencies were made available in the FCC DPLMR service effective June 1, 1968. Mobile applied for UHF frequencies on August 6, 1973, some five years later--and three months after Mobile had, on May 10, 1973, blocked Salinas' service improvement in the Gilroy area by filing a Protest to Salinas' Advice Letter No. 19. A copy of the FCC Report and Order of March 8, 1968 in Docket 17023 making UHF frequencies available to the DPLMR service, together with relevant portions of the Appendix is attached as Exhibit B hereto.

"5. Salinas admits it did not object to the Applications of Mobile at the FCC, for the reason that Salinas has no radio interference problem with Mobile's FCC Applications. To have protested the Applications at the FCC, Salinas would have been required to falsely indicated to the FCC that the Applications created some FCC problem. Salinas believes it is proper to make Protests in a forum which has jurisdiction of its problem. Accordingly, Salinas did, on or about September 19, 1973, bring Complaint, No. 9615, before this Commission challenging Mobile's right to represent that it is authorized to serve the Gilroy area which would be enclosed within the 37 dbu contour from Loma Prieta, as is shown on Mobile's Cal. P.U.C. Tariff Sheet No. 25-T, in view of the five year service abandonment described above.

"6. Mobile's allegation in Paragraph 3 of its Protest that 'At no time did Salinas disclose' that it had an FCC Application pending to expand its service area through FCC power waiver with respect to Salinas' Mt. Toro transmitting locations also is an untrue allegation. Mobile well knew of Salinas' FCC Application and had agreed to it in writing, as had other contiguous or overlapping area

RTUs. See Exhibit C, copy of Mobile's written approval, dated April 29, 1971, and Exhibit D, copy of a Staff letter concerning the matter.

"7. Salinas denies that Complaint, Case No. 9615, was in 'retaliation' for Mobile's Protest of Salinas' Advice Letter No. 19, and alleges that there exists no rational basis for Mobile making such a scandalous claim. Salinas has been and is in the radio-telephone utility business in the Gilroy area, and wishes to improve its service there. It certainly intends to do so, if possible, whether or not Mobile objects. After Mobile had blocked Salinas' proposed public service improvement in an area where Salinas has many present customers, and then had filed an Application to initiate a competing and unnecessary service in that same area, Salinas complained against Mobile, but for sound business reasons. It should be noted that Salinas has now asked the Commission to withdraw the Complaint, since the extent of Mobile's service area has been put in issue before this Commission in Mobile's Application No. 54538.

"8. In Paragraph 5 of Mobile's Protest, it charges Salinas with an 'unlawful defacto' expansion into 'Mobile's territory', and protests again that Mobile had no knowledge of the Salinas power waiver application 'until now'. Exhibit C hereto proves that the latter allegation is untrue. Mobile charges Salinas with an effort to 'further invade Mobile's territory.' Salinas is not trying to carry out an 'invasion'--Salinas is trying to better serve its subscribers when they travel into the Hollister-San Juan Bautista areas.

"9. The 'defacto expansion', or the present Salinas 37 dbu contour, approved by the FCC by grant of power waiver and approved by this Commission's Staff, subject of course to Commission action to the contrary, is shown as Exhibit B of the Application in this Matter. Gilroy and the surrounding area now falls within Salinas' 37 dbu contour. Unless the Commission should now find something

contrary to public interest in the power increase already accomplished, and should order Salinas to reduce power at its transmitters, Salinas' right to serve Gilroy is not now in question. The only issue in this Application is whether Salinas should be permitted to transmit from Fremont Peak to improve reception in the San Juan Bautista-Hollister areas. Such authority would increase the Salinas contour only slightly, as is shown on Exhibit E of the Application, but Salinas acknowledges that it requires this Commission's approval for that slight expansion.

"10. The allegations of Paragraph 6 of the Protest do not concern Salinas and are irrelevant to this proceeding. Salinas has no information sufficient to permit it to judge the truthfulness or untruthfulness of the allegations, and on that basis denies them, should they be considered relevant in this Matter by the Commission.

"11. Salinas denies each and every allegation of Paragraphs 7 and 8 of the Protest, and alleges that Mobile will not be injured, but that the public will be well served by grant of the Application in this Matter."

By notice dated August 8, 1974, a prehearing conference was set for August 22, 1974 at San Francisco before Examiner Gillanders.

At the prehearing conference a settlement was proposed by applicant and Mobile.

The presiding examiner took the agreement under submission with the request that the staff review it and forward its comments to him. On September 12, 1974, Mobile filed an "Amendment to Protest". The amendment states:

"1. On January 28, 1974 Mobile Radio System of San Jose, Inc. filed its protest to the grant of the above-referenced application.

"2. On August 21, 1974 Mobile Radio System of San Jose, Inc. and the applicant agreed to certain terms and conditions in an effort to more clearly define their respective service areas in territory where the radio signals from both carriers overlap. Such agreement

is subject to the approval of the California Public Utilities Commission and has been submitted to the hearing Examiner for review. A copy of this Agreement is attached hereto as Exhibit 'A' and incorporated herein by reference.

"3. Mobile Radio System of San Jose, Inc. has no objection to the grant of the above-captioned application if the Commission approves the terms of said Agreement and incorporates its limitations into any Decision allowing Salinas Valley Radio Telephone Company to expand its service area northward.

"WHEREFORE, Mobile Radio System of San Jose, Inc. prays that the Agreement of the parties be approved and made a part of any Decision granting an increase of the service area of Salinas Valley Radio Telephone Company or that in the event the Agreement is not approved, the matter be set down for hearing."

On September 17, 1974, the staff informed the examiner that it had no objection to the proposed agreement.

Finding and Conclusion

The application should be granted in accordance with the "Memorandum of Agreement" signed by the parties on August 21, 1974.

O R D E R

IT IS ORDERED that Application No. 54543 is granted in accordance with the "Memorandum of Agreement" attached hereto as Appendix A.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 30<sup>th</sup>  
day of DECEMBER, 1974.

Vermon L. Sturges  
President  
William J. Lyons  
Thomas Moran  
Robert E. McFarland  
Commissioners

APPENDIX A  
Page 1 of 3

MEMORANDUM OF AGREEMENT

This Agreement is executed this 21st day of August, 1974 by and between Mobile Radio System of San Jose, Inc. and Salinas Valley Radio Telephone Company, hereinafter sometimes referred to as "the parties".

Each of the parties to this Agreement is a radiotelephone utility duly authorized by the Public Utilities Commission of the State of California and the Federal Communications Commission to provide a public utility or common carrier radiotelephone service within contiguous or slightly overlapping service areas. Certain ambiguities exist with respect to the exact definition of the boundary line between the service areas of the parties along Highway 101 between San Jose and Salinas, California.

Because of the ambiguities which exist, and the necessity for each of the parties to retain its authorized service area intact, disagreements or misunderstandings have arisen between the parties with respect to certain Public Utilities Commission tariff filings and applications. These disagreements or misunderstandings have resulted in each of the parties protesting or otherwise opposing certain filings of the other party. It would be advantageous to the parties and in the public interest for the parties hereto to resolve their misunderstandings or disagreements and to dismiss their various complaints or protests against each other. The purpose of this Agreement is to define the dividing line between the service areas of the parties along Highway 101 between San Jose and Salinas and to agree to dismiss all presently existing protests and complaints by each of the parties against the other.

Salinas Valley Radio Telephone Company (Salinas) hereby and herein agrees, subject to the approval of the Public Utilities Commission of the State of California, that it will not hold itself out as serving or offering to serve the public north of the northern

APPENDIX A  
Page 2 of 3

boundary (north boundary) of the Continental Telephone Gilroy telephone exchange. A copy of the Continental Telephone Gilroy telephone exchange map is attached hereto as Exhibit A and incorporated herein by this reference. Salinas further agrees that it will not maintain or establish any radio transmitter, control point, dispatch point, message center, or any arrangement for free customer telephone service north of the north boundary referred to above.

Mobile Radio System of San Jose, Inc. (Mobile) hereby and herein agrees, subject to the approval of the Public Utilities Commission of the State of California, that it will not hold itself out as serving or offering to serve the public south of the southern boundary (south boundary) of the Continental Telephone Gilroy telephone exchange. Mobile further agrees that it will not maintain or establish any radio transmitter, control point, dispatch point, message center, or any arrangement for free customer telephone service south of the south boundary referred to above.

In consideration for the promises set out above, Salinas will petition the Public Utilities Commission of the State of California to dismiss its complaint against Mobile, Case No. 9615. Salinas also agrees hereby not to oppose the CPUC or FCC applications of Mobile for authority, if required, to construct additional radio-telephone facilities at Loma Prieta and Mt. Allison for its use in its certificated area, provided, however, that such agreement will not preclude protests on the grounds of electrical influence.

Mobile hereby agrees that it will petition the California Public Utilities Commission to dismiss its protest to the application of Salinas for a better definition of its authorized service area and for authority to activate a new radio transmitting site at Fremont Peak, California, Application No. 54543. Mobile further agrees that it will not oppose any application by Salinas to be made at the Federal Communications Commission for authority to operate from a new radio transmitting site at Fremont Peak for use in its certificated area, provided, however, that such agreement will not preclude protest on the grounds of electrical influence.

APPENDIX A  
Page 3 of 3

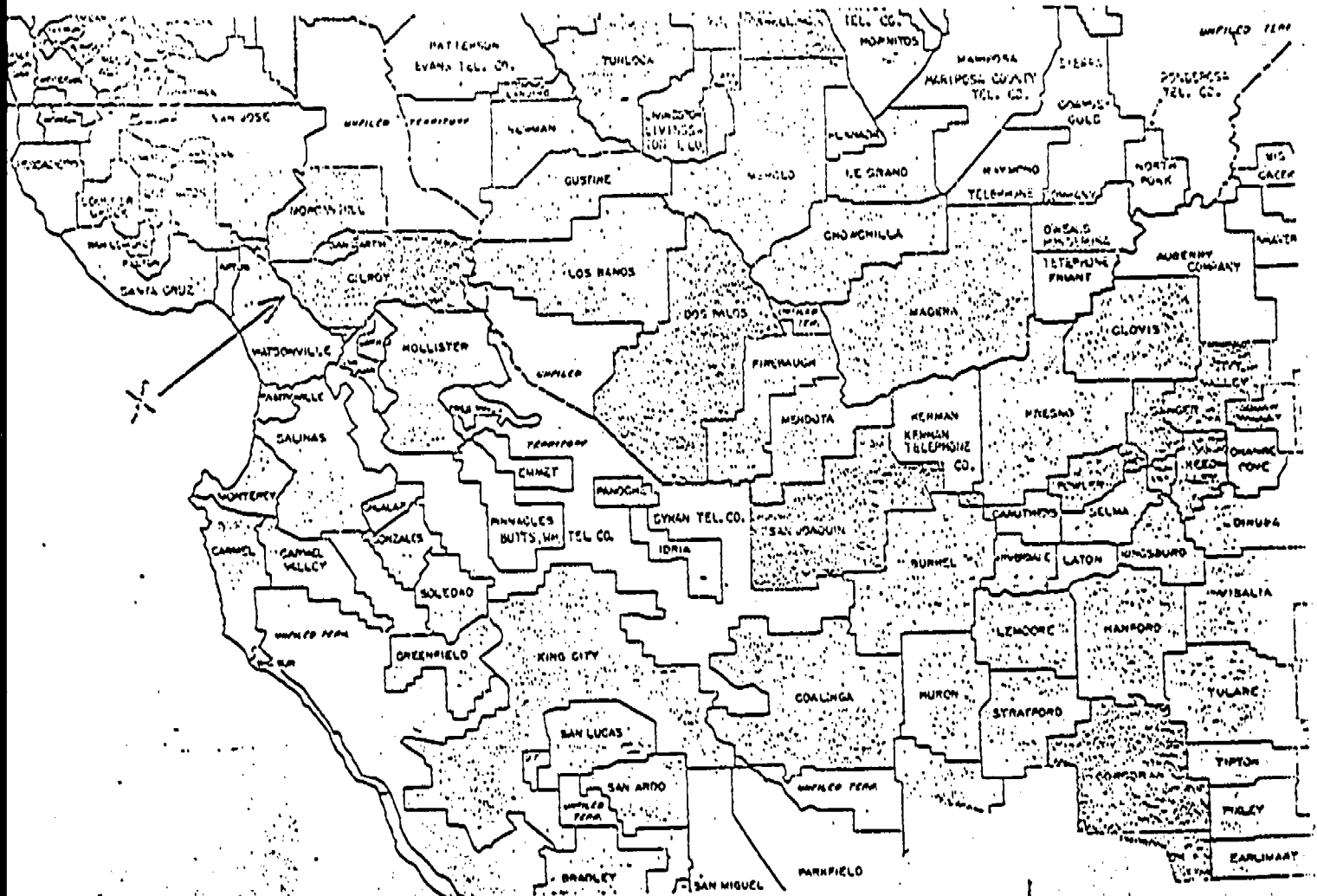
Mobile understands that Salinas cannot control the actions of other radiotelephone utilities who have protested the application of Mobile and that the agreement herein to petition the California Public Utilities Commission to dismiss Case No. 9615 is made only as to the complaint of Salinas.

Each of the parties agrees to implement its promised withdrawal from a position of protest or opposition at the California Public Utilities Commission within thirty days of the date hereof.

This agreement will continue in effect until otherwise changed, modified, or cancelled by the parties, subject to the approval of the Public Utilities Commission of the State of California, or until further order of the Public Utilities Commission.

# STATE OF CALIFORNIA TELEPHONE EXCHANGE AREAS

APRIL 1970



X = Confidential Gilroy  
Exchange

A. 54543  
Exhibit A

SCALE IN MILES

