

ORIGINAL

Decision No. 84819

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of
Radio Dispatch Corp. for a redef-
inition of its authorized
service area.

Application No. 55195
(Filed September 20, 1974)

Carl B. Hilliard, Jr., and Ronald L. Bauer, Attorneys
at Law, for Radio Dispatch Corp., applicant.
Warren A. Palmer, Attorney at Law, for Industrial
Communications Systems, Inc., and Intrastate Radio-
telephone Inc. of Los Angeles, protestants.
Roger Johnson, for the Commission staff.

O P I N I O NSummary of the Proceedings

On September 20, 1974, Radio Dispatch Corp. filed its application requesting that this Commission redefine the applicant's authorized service area and establish it as coextensive with the relevant dbu contours. Copies of the application were served upon all radiotelephone utilities in the Los Angeles area.

On October 28, 1974, Industrial Communications Systems, Inc. filed a motion to dismiss this application. That motion was denied by the examiner during the hearings on the application.

Pursuant to Rule 55 of this Commission's Rules of Practice and Procedure, Examiner Gillanders on December 16, 1974 consolidated this case with pending Application No. 55176 and complaint Case No. 9722 and set all matters for hearing commencing in Los Angeles on January 21, 1975.

Ultimately, the hearings in Case No. 9722 were completed on January 22, 1975; Application No. 55176 was not then pursued; and public hearings in the present case commenced before Examiner Gillander

in Los Angeles on January 22, 1975. The applicant's president, Richard A. Howard, and its vice president, Carl B. Hilliard, Jr. testified on behalf of the applicant, and Homer Harris, president of Industrial Communications Systems, Inc., testified for the protestants. Hearings were concluded on January 23, 1975, and the matter was thereupon scheduled for the filing of concurrent briefs by the applicant and the protestants. Those briefs were submitted by the parties on June 9, 1975, reviewed by this Commission, and the matter now stands ready for decision.

Commission Regulation of Radiotelephone Utilities

The operations of radiotelephone utilities first came within the jurisdiction of this Commission in 1961 as a result of the grandfather decision (Investigation of Communications Common Carriers, Decision No. 62156, Case No. 6945, 58 CPUC 756 (June 20, 1961)). At that time, the Commission undertook to establish the best means available for defining the service area of radiotelephone utilities. After studying the various service area maps drawn by the respondents who participated in those hearings, the Commission ruled:

"In reviewing the maps so submitted, it appears that no single standard has been applied to determine the coverage area. Some coverages have been estimated on the basis of the maximum distance at which a mobile unit is able to receive the base station, even though the base station cannot receive transmissions back from the mobile station. While it is recognized that satisfactory communications may often be had beyond any arbitrary standard reference level of signal strength, it is, nevertheless, desirable to set forth some standard to provide for a common basis of consideration. For this purpose, we find reasonable the standards adopted by the FCC in Part 21.504 of its Rules, as follows:

'(a) The limits of reliable service area of a base station are considered to be described by a field strength contour of 37 decibels

above one microvolt per meter for stations engaged in two-way communication service with mobile stations and 43 decibels above one microvolt per meter for stations engaged in one-way signaling service. Service within that area is generally expected to have an average reliability of not less than 90 percent."

The foregoing standard remains the rule in California.

History of Applicant's Certificate

In 1961, the applicant (then known as Pomona Radio Dispatch Corp.) was offering service through transmitting facilities located at 840 East Second Street in downtown Pomona. No service area map for the applicant was then on file with this Commission, nor was one filed following Decision No. 62156. It was stated in that decision, however, that any such map must be "based upon specifications set forth" in Part 21.504 of the FCC Rules.

Through Application No. 50594 (Filed October 8, 1968), this applicant sought an expansion of its authorized service area through relocation of its transmitting facilities to new higher locations in the Kellogg Hills and on Sunset Ridge. That application was ultimately granted in Decision No. 76097. Ordering Paragraph 2.a. in that decision stated:

"Pomona Radio Dispatch Corp. is granted a certificate of public convenience and necessity to extend its radiotelephone transmitting facilities and to expand its service area by the removal of its present transmitter antenna from 840 E. 2nd Street, Pomona, and by the installation of a transmitter and antenna in the Kellogg Hills near Puddingstone Reservoir in Los Angeles County, and by the installation of a transmitter and antenna of Sunset Ridge, located north of the City of Pomona in the foothills of the San Gabriel Mountains."

Ordering Paragraph 2.b. then explicitly recognized the service standards which the Commission had first announced in its grandfather decision:

"In the exercise of the foregoing certificate, applicant shall not hold itself out as serving, nor shall it offer to serve, beyond the limits of a 39 dbu^[1] contour emanating from each of its base stations used for two-way radio communications nor beyond a 43 dbu contour from such base stations used for one-way signaling service, except upon the further authorization of this Commission."

Radio Dispatch Corp. operated within the foregoing parameters until the entry of Decision No. 81766. That decision, resulting from a complaint filed by protestant Industrial Communications Systems, Inc., concluded that the Radio Dispatch Corp. service area should be construed so as to be limited by the boundaries of the four specified landline utility telephone exchanges. Radio Dispatch Corp. seeks the removal of such limitation and definition of its service area in terms of the reliable service area standards prescribed by the FCC and adopted by this Commission as applicable to radiotelephone utilities.

The existence of Decision No. 81766 does not require us to ignore the issues raised in the present application. The Commission "has continuing jurisdiction to rescind, alter, or amend its prior orders at any time." See Sale v Railroad Commission, (1940) 15 C 2d 612, 616. Decision No. 81766 itself redefined the applicant's service area which had previously been established in Decision No. 76097 after lengthy hearings. We need make no finding here regarding

1/ For Stations operating in the 450-460 MHz band. Adopted by FCC effective September 22, 1967 by memorandum opinion and order in Docket No. 15694.

37 dbu is still the standard for stations operating in the 152-162 MHz band.

the merits or validity of Decision No. 81766 at the time it was entered. Nor is it appropriate in this case to comment upon the manner in which Radio Dispatch Corp. has sought to comply with the strictures of Decision No. 81766 - except to the extent that those problems indicate any inherent weaknesses in the use of telephone exchange boundaries to define service areas.

Impracticality of Telephone Exchange Boundary Contours

The drawing of telephone exchange boundaries is not related to any factors which affect the signal strength of radio waves. Exchange boundaries result from population density, from corporate mergers and consolidations, from advances in the telephone art, from geography, and from other potential factors - both rational and irrational.

It is not practical or desirable to relocate radiotelephone utility service areas when exchange boundaries are changed. This Commission has long recognized the importance of message centers^{2/} in its regulation of radiotelephone utilities. (Kidd v Poor, Decision No. 68873 dated April 13, 1965 in Case No. 7397.) The location of message centers is directly related to telephone exchange boundaries. Changes in message center locations are submitted to the Commission for approval in the form of tariff changes. The limits of service imposed on Radio Dispatch Corp. in Decision No. 81766 can be more expeditiously administered, reviewed, and considered from time to time as the circumstances may require by this method.

^{2/} A message center is "The point at which messages from members of the public are accepted by the carrier for transmission to the addressee." (Section 21.1 of the FCC Rules and Regulations.)

For the foregoing reasons, this Commission's regulation of radiotelephone utilities has always been based upon the belief that dbu contours provide the best and most logical standard for the definition of a service area. Deviation from this rule is justifiable only in exceptional circumstances. Any alternative service area standards should be carefully scrutinized to insure logical consistency and relevance to radiotelephone operations. Any alternatives should also facilitate regulation of these utilities, and they should be drawn with the best interests of the public and of the utility in mind.

We find that the substitution of telephone exchange area boundaries in place of dbu contours is not an appropriate description of the service area of Radio Dispatch Corp. As reflected in the service area and exchange boundary maps on file with this Commission, there are areas where these four exchanges extend beyond the reliable service area established in accordance with FCC Rules 21.504. This means that the applicant is presently authorized to offer service in geographic areas where the FCC rules predict that optimum service will not be received. These areas are small in the present case, but they point out the weakness inherent in defining service areas by any terms other than dbu contours.

The principals of Radio Dispatch Corp. testified at these hearings about the practical and economic problems presented by the current artificial service area. Mr. Howard experienced difficulties in establishing adequate facilities for the exchange of pagers or for dispatch offices. The utility was also unable to give service to potential customers who wished it and who would receive a strong signal and be well served within the dbu contour. Finally, the utility was unable to compete effectively with other utilities in the area.

Mr. Hilliard testified that the most economic use of the utility's facilities would come only if it was permitted to serve customers throughout the largest practicable area, i.e., the relevant dbu contours. The utility ought to be able to provide such toll-free dialing service as is reasonably required by its subscribers in the Los Angeles metropolitan area.

This Commission feels that the maximum public benefit will result from extending the right of applicant to provide service throughout the area of its 39 dbu contour. Only this service area bears a logical relationship to radio signal strength and to the limits of reliable reception. Only this service area enables maximum effective utilization of the utility's capital plant, with resultant savings to the public. The lowest possible rates can be achieved only if the utility is not hampered by artificial restraints upon its ability to serve the public.

We have sedulously reviewed all fifty pages of complainants brief. ICS concludes as follows:

"ICS respectfully submits that the doctrine of res judicata is fully applicable to this proceeding, and Application No. 55195 should be dismissed.

"ICS further respectfully submits that even if the Commission should determine the doctrine of res judicata is not applicable, nevertheless Application No. 55195 should be denied for complete failure of proof, and Decision No. 81766 upheld and reaffirmed without change.

"There should be no concern as respects subscribers being illegally served by RDC. The record here shows a multitude of competing radiotelephone utilities offering like, but legal, service. For example, in the case of the illegally served Long Beach subscribers, they were able to receive immediate service from Intrastate Radiotelephone Company, Inc. of Los Angeles."

We disagree completely with ICS' conclusions. The doctrine of res judicata is not applicable to this proceeding. RDC has fully proven the desirability of using FCC contour standards to define its

service area. We do and must care for the needs of RDC's subscribers. In addition we point out that under the criteria established for RDC's service area there will be no change in the competitive situation between RDC and ICS; for all practical purposes RDC's service area remains the same. Allowing FEX and WATS lines to RDC is granting them nothing more or nothing less than what is already being utilized by ICS.

Findings

1. Radio Dispatch Corp. is a radiotelephone utility serving the public from transmitters located on Kellogg Hills near Puddingstone Reservoir in Los Angeles County and on Sunset Ridge, located north of the city of Pomona in the foothills of the San Gabriel Mountains. (Radio Dispatch Corp.'s FCC application for a frequency to offer two-way service is still pending.)

2. The relevant dbu contours are the primary standard used by this Commission for the definition of radiotelephone utility service areas.

3. Use of the telephone exchange boundaries to define the applicant's service area is an impractical, unnecessary, and uneconomical deviation from the Commission's primary standard.

Conclusion

We conclude that the applicant's service areas should be defined in terms of its dbu contours, as set forth below.

O R D E R

IT IS ORDERED that:

1. The service area of Radio Dispatch Corp. for its two-way radiotelephone operations shall be described by a field strength contour of 39 decibels above one microvolt per meter for its base stations located at Kellogg Hills and Sunset Ridge in accordance with current FCC criteria.

2. The service area of Radio Dispatch Corp. for its one-way paging operations shall be described by a field strength contour of 43 decibels above one microvolt per meter for its base stations located at Kellogg Hills and Sunset Ridge in accordance with current FCC criteria.

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

Dated at San Francisco, California, this 21st
day of AUGUST, 1975.

~~William J. Gignoux~~
~~President~~

~~William J. Gignoux~~
President
~~James L. Stetson~~
~~Leonard Ross~~
~~Robert R. ...~~
Commissioners