

Decision No. 84820

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

INDUSTRIAL COMMUNICATIONS SYSTEMS,
INC., a California Corporation,

Complainant,

vs.

RADIO DISPATCH CORP., a California
Corporation, GENERAL TELEPHONE
COMPANY OF CALIFORNIA, a California
Corporation, CONTINENTAL ANSWERING
SYSTEM, DIAL ANSWERING & SECRETARIAL
SERVICE, and FIRST DOE through
SIXTH DOE,

Defendants.

Case No. 9722
(Filed April 29, 1974)

Warren A. Palmer and Leonard Gross, Attorneys at Law,
for Industrial Communications System, Inc.,
complainant.

Ronald L. Bauer and Carl B. Hilliard, Jr., Attorneys
at Law, for Radio Dispatch Corp.; A. M. Hart,
H. Ralph Snyder, Jr., and Kenneth K. Okel,
Attorneys at Law, for General Telephone Company
of California; and Joan Wilson, for Continental
Answering System; defendants.

Ben Warner, Jr., for Radio Dispatch Corp. as receiver,
defendant.

Roger Johnson, for the Commission staff.

O P I N I O N

Nature of Proceeding

On April 29, 1974, Industrial Communications Systems, Inc. (ICS) filed this complaint seeking an order directing defendant Radio Dispatch Corp. (RDC) to cease and desist from providing and offering to provide public utility paging communications service contrary to

and in violation of Decision No. 81766 ([1973] 75 CPUC 433), and directing defendants General Telephone Company of California (General), Continental Answering System (Continental), and Dial Answering & Secretarial Service (Dial) to cease and desist from assisting and cooperating in the rendition of or the offering to render such illegal service. The complaint further seeks an order adjudging RDC to be in contempt of this Commission and imposing fines by reason of such contempt, but did not seek such relief as respects General, Continental, and Dial.

Answers were filed by RDC and General (the latter also filed a motion to dismiss) in the latter part of May 1974. No answers or other pleadings were filed by either Continental or Dial. Three days of hearings were held at Los Angeles, California, before Examiner Gillanders on September 24, 25, and 26, 1974. At the conclusion of those hearings, the case was adjourned for further hearing, and ICS moved for an immediate interim order restraining the defendant RDC, its agents and representatives, pending final decision, from adding any paging customers whose billing address was outside the telephone exchange boundaries of the Covina, Pomona, and Ontario Exchanges of General and the Corona Exchange of Pacific Telephone and Telegraph Company. This motion was not acted upon.

In the latter part of September 1974, RDC and R. L. Mohr, dba Radiocall Corporation, filed Application No. 55176 with this Commission for approval of an agreement between the two applicants whereby Radiocall Corporation, in order to provide paging service to its subscribers in the area covered by RDC's paging signal from the latter's transmitter atop Sunset Ridge near Pomona, California, agreed to become an agent for RDC in securing, billing, and dispatching for such subscribers. Radiocall Corporation was to receive 80 percent of the monthly service charges to subscribers secured by it.

In the latter part of September 1974, RDC also filed Application No. 55195 for redefinition of its authorized service area. In support of its application, RDC alleged that its service area had been defined by this Commission in Decisions Nos. 76097 ([1969] 70 CPUC 81) and 81766 ([1973] 75 CPUC 433) in terms other than and contrary to those mandated by the Grandfather Decision (Decision No. 62156 [1961] 58 CPUC 756), and requested the Commission to define its service area in terms consistent with the Grandfather Decision and to consolidate Application No. 55195 with Case No. 9722.

In November 1974, the adjourned hearing in Case No. 9722 was set for January 21, 1975, at Los Angeles, California. On December 16, 1974, Applications Nos. 55176 and 55195 were consolidated with Case No. 9722, and hearings on the consolidated matters were likewise scheduled for January 21, 1975, at Los Angeles. Hearings on the consolidated matters were held before Examiner Gillanders on January 21, 22, and 23, 1975, at Los Angeles, California. At those hearings, motions to dismiss the two pending applications above referenced were denied, Application No. 55176 was unconsolidated from Case No. 9722 and continued for later disposition; Case No. 9722 was submitted, briefs being waived; and Application No. 55195 was submitted on concurrent briefs received on June 9, 1975.

Issue

There is no evidence that persuades us that the role of General, Dial, or Continental in relation to the other defendants was more than that of a utility providing service. The issue that must be resolved is:

Have RDC and its officers failed to comply with any part of the following order in Decision No. 81766 and, if so, are they in contempt of the Commission for failing to obey such order?

"O R D E R

"IT IS ORDERED that:

"1. Radio Dispatch Corp. is directed to cease and desist from providing, or offering to provide, either two-way or one-way radio communication service west of the Covina Telephone Exchange of General Telephone Company of California; south of the Pomona Telephone Exchange of General Telephone Company of California and the Corona Telephone Exchange of Pacific Telephone and Telegraph Company; east of the Ontario Telephone Exchange of General Telephone Company of California; and north of the Covina, Pomona, and Ontario Telephone Exchanges of General Telephone Company of California, unless and until defendant shall have obtained from this Commission a certificate of public convenience and necessity therefor.

"2. Radio Dispatch Corp. is directed to cease and desist from establishing or operating message centers, foreign exchange lines, or other fixed stations beyond the aforesaid telephone exchange boundaries, unless and until defendant shall have obtained from the Commission a certificate of public convenience and necessity therefor."

The Evidence

Records of the Commission show that RDC, its president Richard A. Howard, and Carl B. Hilliard its vice president received copies of Decision No. 81766 on August 24, 1973. Mr. Howard and Mr. Hilliard testified that they had received copies but were not sure of the date. No petition for rehearing of Decision No. 81766 was filed with this Commission by RDC.

Presently, RDC is in the hands of a court appointed receiver. However, at the time of the acts alleged to be in violation of the order in Decision No. 81766, Mr. Howard was president and Mr. Hilliard was vice president of RDC and each claimed to own 50 percent of the outstanding stock of the corporation and had control of the corporation.

At the hearing Mr. Howard, testifying on his own behalf, admitted that as the operating manager of RDC he, on his own, knowingly provided two-way radio communication service and, on Mr. Hilliard's advice as the legal representative of RDC, provided one-way radio service in violation of Ordering Paragraph 1 of Decision No. 81766. Mr. Howard also admitted that he had violated Ordering Paragraph 2 in that he had established and operated message centers and a foreign exchange (WATS) line beyond the telephone exchange boundaries described in Ordering Paragraph 1.

Mr. Hilliard's testimony when called as an adverse witness by ICS and when testifying as a witness called on behalf of RDC revealed that he had little or no knowledge of the operations of RDC. In our opinion, in Mr. Hilliard's position as vice president and director of RDC it was his responsibility to know what the corporation was doing.

The testimony and exhibits produced by General, Continental, and Dial corroborated Mr. Howard's admissions.

Findings

1. By Decision No. 81766 dated August 21, 1973 Radio Dispatch Corp. was directed to cease and desist from providing, or offering to provide, either two-way or one-way radio communication service west of the Covina Telephone Exchange of General Telephone Company of California; south of the Pomona Telephone Exchange of General Telephone Company of California and the Corona Telephone Exchange of Pacific Telephone and telegraph Company; east of the Ontario Telephone Exchange of General Telephone Company of California; and north of the Covina,

Pomona, and Ontario Telephone Exchanges of General Telephone Company of California, unless and until it obtained from this Commission a certificate of public convenience and necessity therefor.

Radio Dispatch Corp. was also directed to cease and desist from establishing or operating message centers, foreign exchange lines, or other fixed stations beyond the aforesaid telephone exchange boundaries, unless and until it obtained from the Commission a certificate of public convenience and necessity therefor.

2. At all times from August 24, 1973 to date, RDC and its president, Mr. Howard and its vice president, Mr. Hilliard have had knowledge of Decision No. 81766.

3. RDC never petitioned for rehearing nor appealed Decision No. 81766. ✓

4. RDC never applied for a certificate of public convenience and necessity to provide the services prohibited by Decision No. 81766.

5. At all times from August 1973 to date, RDC and its president and vice president have had the ability to comply with the terms of Ordering Paragraphs 1 and 2 of Decision No. 81766, by ceasing and desisting from the activities prohibited by such ordering paragraphs.

6. Radio Dispatch Corp. through its president knowingly and deliberately violated the cease and desist orders contained in Decision No. 81766.

7. Radio Dispatch Corp.'s vice president, Carl B. Hilliard counseled its president, Richard A. Howard to violate an order of this Commission regarding the establishment of one-way paging service.

8. General, Continental, and Dial did not knowingly or deliberately aid Radio Dispatch Corp. in violating the orders of this Commission.

9. RDC, Richard A. Howard, and Carl B. Hilliard willfully committed separate contempts of the Commission on each and every day from August 24, 1973 to the present by continuing to serve beyond the limits set by Ordering Paragraph 1 of Decision No. 81766.

10. Richard A. Howard willfully committed separate contempts of the Commission by having established two FEX lines and a WATS line subsequent to August 24, 1973.

11. In assessing the penalties to be adjudged we have taken into consideration the fact that Mr. Hilliard was and is a lawyer well versed in the practice of public utility law and has appeared before this Commission and other regulatory bodies on a continuing basis.

Conclusions of Law

1. RDC, Richard A. Howard, and Carl B. Hilliard should be punished for contempt for willfully disobeying the terms of Ordering Paragraphs 1 and 2 of Decision No. 81766.

2. RDC should be fined \$500 for being in contempt of Ordering Paragraph 1 and \$500 for being in contempt of Ordering Paragraph 2.

3. Richard A. Howard should be fined \$500 for being in contempt of Ordering Paragraph 1 and \$500 for being in contempt of Ordering Paragraph 2.

4. Carl B. Hilliard should be fined \$500 for being in contempt of Ordering Paragraph 1 and \$500 for being in contempt of Ordering Paragraph 2.

5. The relief requested against General, Dial, and Continental should be denied.

7. It appears from this record that punishment for one contempt of Ordering Paragraph 1 and one contempt of Ordering Paragraph 2 should be sufficient.

O R D E R

IT IS ORDERED that:

1. Radio Dispatch Corp. is guilty of contempts of the Commission and that for its contempts it shall be punished by the payment of a fine in the sum of \$1,000 payable to the Secretary of the Commission on or before September 15, 1975.

2. Richard A. Howard and Carl B. Hilliard are guilty of contempts of the Commission and that for their contempts each shall be punished by the payment of a fine in the sum of \$1,000 payable to the Secretary of the Commission on or before September 15, 1975 and, in default thereof, shall be ordered committed to the County Jail of the county of San Bernardino until such fine shall have been paid at the rate of one day's imprisonment for each \$100 of said fine that remains unpaid.

3. The relief requested against General Telephone Company of California, Continental Answering System, and Dial Answering & Secretarial Service is denied.

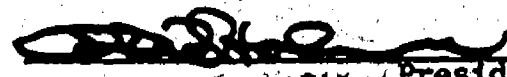
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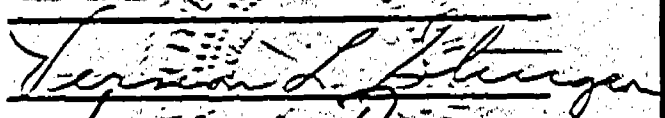
The Secretary is directed to cause personal service of this order on Radio Dispatch Corp., Richard A. Howard, and Carl B. Hilliard.


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

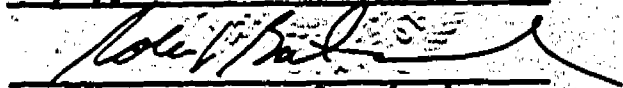
Dated at San Francisco, California, this 26th
day of AUGUST, 1975.

I dissent
William Synovs. Jr.



President






Commissioners