

ORIGINAL

Decision No. 85312

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

INDUSTRIAL COMMUNICATIONS
SYSTEMS, INC., a California
corporation,

Complainant,

v.

RADIO DISPATCH CORP., a
California corporation;
CARL B. HILLIARD, Jr., an
individual; RICHARD A. HOWARD,
an individual; ROBERT H.
STOPHER, an individual;
FIRST DOE through FIFTH DOE,

Defendants.

Case No. 9909
(Filed May 6, 1975)

Warren A. Palmer, for complainant.
Ronald M. Sohigian, for Richard A.
Howard; Hilliard, McGuire &
Bauer, by Carl Hilliard, for
Radio Dispatch Corp. and himself;
and Robert H. Stopher, for Radio
Dispatch Corp.; defendants.
Roger Johnson, for the Commission
staff.

ORDER OF DISMISSAL

Industrial Communications Systems, Inc. (ICS), a
California corporation, seeks an order of this Commission that
the certificate of public convenience and necessity held by
Radio Dispatch Corp. (RDC), a California corporation, be revoked
pursuant to Sections 7011 and 1708 and other applicable sections
of the Public Utilities Code.

ICS alleges that it is a radio telephone utility (rtu) engaged in the business of providing public utility radio telephone two-way mobile and one-way paging service in the Metropolitan Los Angeles area and adjacent areas, including major portions of Orange, San Bernardino, Riverside, San Diego, and Los Angeles counties. It provides radio communications service on both UHF and VHF frequencies within its service area, which encompasses more than 10,000,000 people. It received its authority as an rtu by Commission Decision No. 62156, dated June 20, 1961. (58 CPUC 756.)

RDC provides public utility, two-way mobile and one-way paging service to San Gabriel Valley in Los Angeles County, the western section of San Bernardino County, and the northwest section of Riverside County, and provides such radio communications service on both UHF and VHF frequencies to an area having a population of approximately 1,000,000 people. RDC received its authority as an rtu by Commission Decision No. 62156, dated June 20, 1961. (58 CPUC 756.)

Defendants Richard A. Howard and Carl B. Hilliard, Jr., do now and since 1968 have each owned 50 percent of the outstanding capital stock of defendant RDC and each has participated from time to time in the management and operation of RDC. Defendant Robert H. Stopher is the receiver for RDC, having been duly appointed by the Superior Court of the State of California in and for the County of Orange in its Case No. 220031.

ICS alleges that the defendants RDC, Hilliard, and Howard (1) have continuously and willfully ignored and violated the duties and obligations of a radio telephone public utility and have willfully disregarded and violated the respect due this Commission and its staff; (2) have willfully and continuously disregarded and acted in derogation and violation of applicable decisions of this Commission, its General Orders, and its rules

and regulations; (3) are providing a continuously deteriorating public utility radio telephone service to the public and the continuance of any public utility radio telephone service by defendants is impaired and in jeopardy; (4) are or will inevitably be financially unable to continue to provide adequate and reliable public utility radio telephone service; and (5) are or will inevitably be unable to provide the high degree of technical and managerial competence required in the rtu industry.

Defendants RDC, Hilliard, and Stopher filed an answer to the complaint on June 16, 1975. Defendant Howard filed a "Statement of Defects in Complaint in Accordance with Rule 12", dated May 16, 1975, but did not file an answer.

After notice a hearing was held before Examiner James D. Tante in Los Angeles on November 5, 1975 and the motion of ICS to dismiss without prejudice was submitted on that date.

Prior to the hearing ICS had filed and served the defendants with its notice of motion for continuance and consolidation with the case of Howard vs. Radio Dispatch Corp., et al, Case No. 9876, filed February 14, 1975, and in addition notified the defendants that if the motion for continuance is denied that it would move that the case be dismissed without prejudice.

At the hearing ICS withdrew its motion for consolidation and the parties agreed that in the event that the motion for continuance was granted, the dates June 7 to 11, 1976 would be acceptable to all parties. Defendants RDC, Hilliard, and Stopher had no objection to the motion for continuance. ICS had submitted certain verified statements with its notice of motion for continuance and argued that certain matters upon which this case might be based are not yet resolved and in addition it was in the process of negotiating for the purchase of RDC or an

interest therein and that it would be in the interest of all parties to continue this matter for a reasonable period of time. Defendant Howard objected to the continuance stating that a continuance was not necessary, that ICS should be required to proceed on its complaint at the present time, that failure to timely dispose of the matter would hinder the operation of RDC, and would require additional expense to RDC by way of attorneys' fees, investigations, and other expenses. The motion for continuance was denied.

ICS made a motion to dismiss the case without prejudice and agreed that if the dismissal is granted that it would not file a complaint for revocation of certificate of public convenience and necessity as to the defendants or any of them before March 1, 1976. Defendants RDC, Hilliard, and Stopher did not, and defendant Howard did object to the motion. Defendant Howard's objection was based upon the same argument that he had made with respect to ICS's motion for continuance.

Exhibit 1, "Investigative Report on Operations of Radio Dispatch Corp. under Court Appointed Receivers", and Exhibit 2, "Letter dated October 29, 1975 from Commissioner Leonard Ross to Homer N. Harris, President of ICS", were received in evidence for the limited purpose of the motions of ICS.

The defendant Howard has not filed an answer in this case and his "Statement of Defects in Complaint in Accordance with Rule 12" has requested that the complaint be dismissed. This defendant was unable to show any prejudice in the dismissal of the complaint as requested if the dismissal is accompanied by an order that ICS not file any similar action against the defendants or any of them before March 1, 1976.

Findings

1. ICS has made a motion for dismissal of this case without prejudice and such motion has not been resisted by defendants RDC, Hilliard, or Stopher, but has been resisted by defendant Howard.

2. ICS has agreed that if the motion is granted it will not file a complaint for revocation of certificate of public convenience and necessity against the defendants or any of them before March 1, 1976.

3. Defendant Howard has not filed an answer in this case and will not be unduly prejudiced by the granting of the motion to dismiss without prejudice.

The Commission concludes that the motion of ICS to dismiss this case against all of the defendants should be granted as set forth in the following order.


IT IS ORDERED that the complaint herein is dismissed without prejudice and the complainant Industrial Communications Systems, Inc. is ordered not to file a complaint for revocation

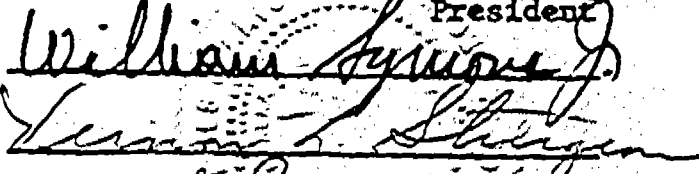
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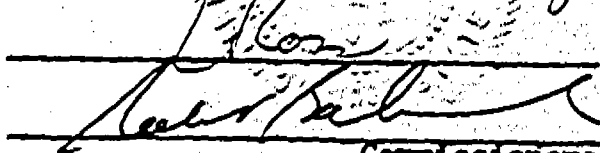
of certificate of public convenience and necessity against the defendants or any of them before March 1, 1976.

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

Dated at San Francisco, California,
this 6th day of JANUARY, 1976.



President




Commissioners