

Decision No. 85345

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

INDUSTRIAL COMMUNICATIONS  
SYSTEMS, INC., a California  
corporation,

Complainant,

vs.

MOBILFONE, INC., FIRST DOE  
through FIFTH DOE,

Defendant.

Case No. 9906  
(Filed April 28, 1975)

Warren A. Palmer, Attorney  
at Law, for complainant.  
Silver, Rosen, Fischer &  
Stecher, by John Paul  
Fischer, Attorney at Law,  
and Robert B. Lisker,  
Attorney at Law, for  
defendant.  
Roger Johnson, for the  
Commission staff.

O P I N I O N

Industrial Communications Systems, Inc. (ICS), a California corporation, seeks an order directing Mobilfone, Inc. (Mobilfone) to cease and desist from representing to the Federal Communications Commission (FCC) that no certificate of public convenience and necessity is required from this Commission for it to serve the area encompassed by proposed additional frequencies 454.15 MHz, 454.175 MHz, 454.20 MHz, and 454.30 MHz at its existing and proposed locations and an order directing Mobilfone

to cease and desist from constructing the plant and facilities required to provide service by means of the proposed additional frequencies without first obtaining authorization from this Commission to do so, and an order finding and adjudging Mobilfone in contempt of this Commission by reason of the representations, acts, operations, and conduct of the defendant, and an imposition of proper fines by reason of such contempt.

After notice, a public hearing was held before Examiner James D. Tante in Los Angeles on October 9 and 10, 1975 and the matter was submitted subject to the parties filing concurrent briefs on or before November 4, 1975.

Pursuant to motion of ICS, First Doe through Fifth Doe defendants are dismissed. The president of ICS testified for ICS; a staff engineer employed by Silliman, Moffet, & Kowalski, consulting radio engineers, testified for Mobilfone; and an associate utilities engineer in charge of the radio telephone unit for the Commission testified for the Commission staff. Exhibits 1 through 14, including 10 and 10-A, and 12-A, 12-B, and 12-C, were received in evidence.

At the request of ICS, the Commission took official notice of the annual reports filed with the Commission by ICS and Mobilfone for 1972, 1973, and 1974; Commission Decision No. 62156 dated June 20, 1961 (58 CPUC 756); the tariffs of ICS and Mobilfone on file with the Commission; ICS's cancelled tariff page 3-T dated August 10, 1961; Mobilfone's cancelled tariff page 5-T filed August 17, 1961; and Mobilfone's current tariff page 37-T filed July 23, 1965. The parties stipulated that the authorization set forth in Mobilfone's cancelled tariff page 5-T and its current tariff page 37-T are identical.

ICS 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 portions of Orange, San Bernardino, Riverside, San Diego, and Los Angeles counties. It provides radio communications service on UHF frequencies 454.15 MHz (Channel 26), 454.175 MHz (Channel 27), 454.20 MHz (Channel 28), 454.30 MHz (Channel 32), and on VHF frequency 158.70 MHz (Channel P-6) within its service area, which encompasses more than 10,000,000 people. ICS received its authority as an rtu by Commission Decision No. 62156 dated June 20, 1961 (58 CPUC 756).

Mobilfone, a California corporation, is an 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 Los Angeles, Orange, Ventura, Riverside, and San Bernardino counties. It provides radio communications service on UHF frequencies 454.05 MHz (Channel 22), and 454.10 MHz (Channel 24), VHF frequencies 152.03 MHz (Channel 1), 152.06 MHz (Channel 3), 152.24 MHz (Channel P-5), and two low band frequencies. Like ICS, it received its authority to operate as an rtu by Commission Decision No. 62156 dated June 20, 1961 (58 CPUC 756).

On or about May 10, 1974 Mobilfone, as licensee of two-way (mobile) Station KMA 253, filed applications with the Federal Communications Commission (FCC File No. 21390-C2-P-(24)-74), for authority to add frequencies 454.15 MHz (Channel 26), 454.175 MHz (Channel 27), 454.20 MHz (Channel 28), and 454.30 MHz (Channel 32) at its existing location No. 5 (San Pedro Hill), No. 6 (La Habra Heights), No. 7 (Oat Mountain), No. 8 (Union Bank Square), and its proposed locations No. 9 (Box Springs Mountain) and No. 10

(Newport Beach). The frequencies requested by the application are the identical frequencies which ICS is licensed and authorized to use and is using.

In connection with the application Mobilfone represented to the FCC that no certification was required from this Commission for it to operate as requested in the application because all of the 37 dbu contours of the proposed additional frequencies were within its service area as heretofore certificated by the California Public Utilities Commission.

ICS alleges that the representation of Mobilfone to the FCC with respect to the extent of its service area certificated by this Commission is untrue and that in fact certification by this Commission is required before it may operate as proposed in its application; that FCC permission for it to operate on the frequencies applied for in the application would permit it to operate from its proposed location No. 7 (Oat Mountain) approximately 12 miles in a westerly direction outside of its certificated area; from its proposed location No. 9 (Box Springs Mountain) to operate ten miles outside the contour perimeter of its authorized service area and 17 miles in an easterly direction beyond its certificated service area; from its proposed location No. 10 (Newport Beach) to serve ten miles in a southerly direction beyond its certificated service area.

Decision No. 62156 from which Mobilfone obtained authority to operate as an rtu provides in part as follows:  
". . . 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 micro-volt per meter for stations engaged in two-way communication service with mobile stations and 43 decibels above one micro-volt 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%."

"Radiotelephone utilities will not be required to file a service area map at this time, but those desiring to file a map defining their coverage area may file such map as part of their tariff schedules provided such map is based upon specifications set forth in the preceding paragraph."

Ordering Paragraph 4 provides:

"4. No radiotelephone utility listed in Appendix A hereto shall, after the effective date of this decision, expand its operations to include any territory not theretofore served by it except in accordance with the provisions of Section 1001 of the Public Utilities Code."

Pursuant to Decision No. 62156 Mobilfone filed a map purporting to describe its service area as found in the Commission's record under Revised Cal. P.U.C. Sheet No. 5-T, filed August 17, 1961 under Advice Letter No. 3, revised by Revised Cal. P.U.C. Sheet No. 37-T, filed July 23, 1965.

If, as Mobilfone contends, the map filed properly sets forth the territory served by Mobilfone, there is no requirement in Decision No. 62156 for further certification by this Commission for Mobilfone to operate within the area involved in its application.

If, however, as ICS contends, the map filed by Mobilfone does not properly set forth the territory served by Mobilfone, but the authorized territory is smaller than the area set forth in the map, it does require further certification by this Commission for it to operate within the area involved in its FCC application.

Exhibits 10 and 10-A show an area by a dotted line which is the same as that filed with the Commission by Mobilfone, and a smaller area by a heavy black line which ICS contends is the area which sets forth 37 dbu contour within which Mobilfone is authorized to operate in accordance with Decision No. 62156.

The standards adopted by the FCC in Part 21.504 of its Rules, and found to be reasonable in Decision No. 62156, were adopted from an ad hoc technical pamphlet prepared by William Boese, an engineer for the FCC, for the purpose of determining contours in establishing service areas and referred to as the "Boese Report".

At the time of Mobilfone's authorization to operate, the antenna on its transmitter was more than 500 feet above the average terrain. The president of ICS testified that notwithstanding such height, the Boese Report should have been used to determine Mobilfone's service area and it was unnecessary to use anything in addition thereto to make such determination, but he stated that in determining the service area of ICS, the UHF television chart was used in addition to the Boese Report.

The engineering firm of Kear & Kennedy had prepared the contour designating the original service area of Mobilfone. This firm has been dissolved and the engineering data to substantiate the contour area cannot be found.

The engineer who testified for Mobilfone stated that in developing 37 dbu contours for rtus, the Boese Report is applicable to antennas 500 feet or less in height but not to antennas of a height greater than 500 feet. He considered the Boese Report in attempting to determine the basis for the service area of Mobilfone as filed with the Commission, but stated that it was not applicable and he used television curves to determine the service area of Mobilfone based on a 37 dbu contour. His opinion was that the service area of Mobilfone as filed with the Commission is correct. His report (Exhibit 13) was received in evidence.

ICS' evidence shows that in letters and in applications to the FCC, Mobilfone had stated that the 37 dbu contour outlining its service area was smaller than that set forth in its map filed with the Commission and that the service area on that map was not approved as a true representation of its authorized area; and that Mobilfone made other statements inconsistent with its present contentions. (Exhibits 9 and 11.) ICS did not present any engineering analysis of the actual 37 dbu contour as shown in Revised Cal. P.U.C. Sheet No. 5-T.

The staff representative, an associate utilities engineer, testified that the 37 dbu contour area as filed with the Commission by Mobilfone is its service area. He stated, however, that in the event it applies to the FCC for further authorization, or if a parameter of operation or permanent location of a transmitter is changed, the staff's position is that further approval is required and the service area will be recomputed based on current FCC rules.

For the purpose of this case, Mobilfone's service area map contained in Tariff Sheet No. 5-T was properly engineered and was submitted under the auspices of a recognized engineering firm and is its certificated area as granted by Decision No. 62156.

Ordering Paragraph 6 of Decision No. 62156 provides:

"6. Except where exempted by Section 1001 of the Public Utilities Code, no radiotelephone utility of the miscellaneous common carrier class shall begin the construction of a plant, or system, or any extension thereof without first obtaining from the Commission a certificate that the present or future public convenience and necessity require or will require such construction, nor shall any such utility offer its service to the public without authorization of this Commission."

There is no evidence that Mobilfone is now constructing or intends in the near future to construct the plant and facilities required to provide service by means of the proposed additional frequencies; and it is aware that if it does so without the authorization required by this Commission that it proceeds at its own risk and cannot complain if such authorization is thereafter properly denied.

Findings

1. Mobilfone is an rtu and provides public utility radio telephone and paging service in California and received its authority by Commission Decision No. 62156 dated June 20, 1961.



2. In its application with the FCC on or about May 10, 1974, Mobilfone stated that no certification was required from this Commission for it to operate as requested in the application.

3. The service area of Mobilfone is as set forth in its 37 dbu contour map in Revised Cal. P.U.C. Sheet No. 5-T, filed in August of 1961, and Sheet No. 37-T, filed July 23, 1965.

4. The statements made by Mobilfone in its application to the FCC are not untrue or misrepresentations.

5. Mobilfone is not now constructing and has no intentions of constructing the plant and facilities in the near future which are necessary to provide service by its proposed additional frequencies.

The Commission concludes that the relief requested by ICS should be denied.

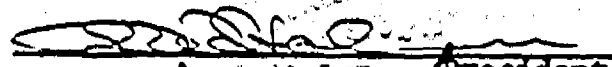
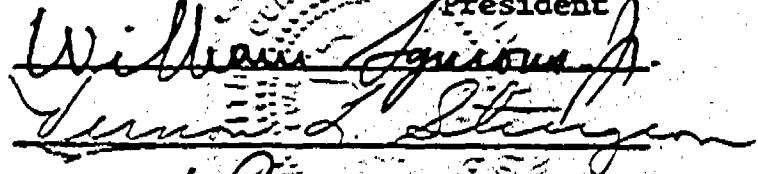


The parties are placed on notice that in issuing this decision the order is based upon the evidence in this case and applies to the parties to this case, and is not necessarily a Commission certification that Mobilfone, Inc. is authorized to operate in the contour service area it has filed with the Commission.

O R D E R

IT IS ORDERED that the relief requested by Industrial Communications Systems, Inc. is denied.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of JANUARY, 1976.

  
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President  
  
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Commissioners