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Decision No. 85356

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Industrial Communications
Systems, Inc.; Intrastate Radiotelephone,
Inc. of Los Angeles; Mobilfone, Inc.; Radio
Page Communications, Inc.,

Complainants,

v.

Pacific Telephone and Telegraph Company
and General Telephone Company of California,

Defendants.

Case No. 9395
(Filed June 26, 1972)

In the Matter of The Pacific Telephone and
Telegraph Company,

Complainant,

v.

Industrial Communications Systems, Inc.
Intrastate Radiotelephone, Inc. of Los
Angeles; Mobilfone, Inc.; and Radio Page
Communications, Inc.,

Defendants.

Case No. 9450
(Filed October 6, 1972)

In the Matter of the Suspension and
Investigation on the Commission's own
motion of tariffs filed under General
Telephone Company of California Advice
Letter No. 3121 establishing a radio
paging personal signaling service in the
Los Angeles Extended Area.

Case No. 9715
(Filed April 23, 1974)

In the Matter of the Suspension and
Investigation on the Commission's own
motion of tariffs filed under The Pacific
Telephone and Telegraph Company Advice
Letter No. 11277, establishing a radio
paging personal signaling service in the
Los Angeles Extended Area.

Case No. 9716
(Filed April 23, 1974)

O P I N I O N

An examiner's Proposed Report was filed June 26, 1975 in this matter and duly served on the parties. The staff, complainants, The Pacific Telephone and Telegraph Company (Pacific), General Telephone Company of California (General), and Martin Marietta filed exceptions to the Proposed Report on July 16, 1975. Replies to the exceptions were filed by General on July 28 and by complainants and Pacific on July 31, 1975.

The Commission finds merit in a number of the exceptions, particularly those raised by the staff, and rejects the Proposed Report in substantial part.

In issuing an opinion under such circumstances the Commission may either attach the Proposed Report to its own opinion, in which it identifies the unadopted portion and sets forth only its modifications or the Commission may issue a revised opinion. In this case, considering the 101-page length of the Proposed Report, as well as the extensiveness of the modifications, we issue a revised opinion incorporating much of the Proposed Report, believing this method will provide a shorter and more cogent opinion.

History of Proceeding

June 1, 1972. General Telephone Company of California (General) filed, by Advice Letter No. 2765, tariff sheets covering the offering by General of one-way tone signaling service in the Los Angeles Extended Area (LAEA).

June 2, 1972. The Pacific Telephone and Telegraph Company (Pacific) filed, by Advice Letter No. 10834, tariff sheets covering the offering by Pacific of one-way tone signaling service in the Los Angeles Extended Area.

June 26, 1972. A complaint (Case No. 9395) was filed by Allied Telephone Companies Association (Allied), American Mobile Radio, Inc. (American), Industrial Communications Systems, Inc. (ICS), Intrastate Radiotelephone, Inc. of Los Angeles (Intrastate), Mobilfone, Inc. (Mobilfone), and R. L. Mohr dba RadioCall Corporation (RadioCall). The complaint alleged that Pacific and General lack authority to provide the services and that the proposed rates were anticompetitive. An amended complaint was filed on June 28, 1972 with Allied, American, and RadioCall withdrawing their names from the complaint, and Radio Page Communications, Inc. (Radio Page) joining the complaint. The complainants are radiotelephone utilities (RTUs) engaged in the business of providing personal signaling service comparable to that proposed to be provided by Pacific and General in the Los Angeles Extended Area.

June 27, 1972. The Commission suspended operation and effectiveness of Pacific's tariff sheets until October 28, 1972, pending an investigation to determine the reasonableness and lawfulness of the tariff sheets (Case No. 9396). A similar order suspended General's tariff sheets for the same time period (Case No. 9397).

August 9 and 16, 1972. By notices of hearing, the Commission consolidated Cases Nos. 9395, 9396, and 9397.

September 19, 1972. A prehearing conference was held at San Francisco before Examiner Parke L. Boneysteele.

October 6, 1972. Pacific filed a complaint against ICS, Intrastate, Mobilfone, and Radio Page, Case No. 9450, requesting a cease and desist order and that the matter be consolidated for hearing with Cases Nos. 9395, 9396, and 9397.

October 10, 1972. General filed a "Petition to Issue Order Instituting Investigation."

October 11, 1972. The Commission, by Decision No. 80608 in Case No. 9450, denied Pacific's request for a cease and desist order.

October 17, 1972. The Commission issued Decision No. 80623 in Cases Nos. 9395, 9396, and 9397 extending the suspension of the tariff sheets of Pacific and General an additional six months beyond October 28, 1972.

October 27, 1972. Chalfont Communications (Chalfont) filed a "Petition by Chalfont Communications for Leave to Intervene and for Broadening of the Issues".

November 8, 1972. General filed an "Opposition of General Telephone Company of California to Petition by Chalfont Communications for Leave to Intervene and for Broadening of the Issues; Motion to Deny Introduction of Proposed Testimony of Chalfont".

November 10, 13, 14, 15, 16, 27, and 30, 1972. Hearings were held at Los Angeles before Examiner Boneysteele. On November 10, Examiner Boneysteele denied General's petition filed on October 10, and Mr. Chalfont's petition filed on October 27. Mr. Chalfont is a party under Rule 54 and need not intervene.

December 1, 1972. Hearing was held at Los Angeles before Examiner Boneysteele.

April 24, 1973. By Decision No. 81312, the Commission permanently suspended the proposed tariff schedules being investigated in Cases Nos. 9396 and 9397, noting a stipulation, filed March 29, 1973, between complainants and defendants in Case No. 9395 that all of the record in those terminated cases "should apply to and become a part of any and all proceedings respecting such refiled tariffs".

May 1, 1973. Pacific and General refiled similar tariffs, which were suspended, with new Orders of Suspension and Investigation assigned Cases Nos. 9551 and 9552, respectively.

June 14 and 15, 1973. Hearings were held in Los Angeles before Examiner John R. Gillanders.

June 20, 21, and 22, 1973 and July 16, 17, and 18, 1973. Hearings were held in San Francisco.

July 24, 1973. The Commission, in Decision No. 81627, extended the periods of suspension of the tariffs being investigated in Cases Nos. 9551 and 9552 to March 3, 1974.

September 28, 1973. Pacific filed a "Petition to Modify Order of Suspension".

November 23, 1973. Complainants filed a "Complainants' Reply to Pacific's Petition to Modify Order of Suspension; Combined with Memorandum of Points and Authorities".

November 23, 1973. Chalfont Communications filed an "Opposition by Chalfont to Pacific Company's Petition to Modify Order of Suspension".

November 26, 1973. Examiner Gillanders announced that Case No. 9450 had been consolidated with Cases Nos. 9395, 9551, and 9552.

November 26 and 27, 1973 and December 3 and 10, 1973. Hearings were held in San Francisco.

December 14, 1973. Pacific filed a "Petition for a Proposed Report".

December 17 and 18, 1973. Hearings were held in Los Angeles.

December 20, 1973. Complainants filed a "Reply to Petition for a Proposed Report" agreeing to support Pacific's request on condition the parties be given 45 days after notice of mailing of the Reporter's Transcript of the last day of hearing to submit concurrent opening briefs and ten days for reply briefs prior to the preparation by the Examiner of the Proposed Report.

January 7, 1974. Hearing was held in San Francisco and the matters were submitted with the understanding that concurrent opening briefs would be due 45 days after notice of mailing of the last volume of the Reporter's Transcript with 10 days thereafter for reply briefs.

May 13, 1974. Opening briefs were filed.

May 23, 1974. Reply briefs were filed.

March 25, 1975. Attorneys for Pacific, General, and complainants filed a "Waiver of Proposed Report".

March 31, 1975. The staff attorney, by letter, concurred with the parties' waiver.

April 4, 1975. By letter, Philips B. Patton requested that the Commission strike his signature from the waiver and that such action indicate that the complainants do not join Pacific and General in the waiver.

April 7, 1975. By letter, Warren A. Palmer became managing counsel for complainants and renewed their request for a Proposed Report.

June 26, 1975. Examiner filed his Proposed Report.

July 16, 1975. Staff, complainants, Pacific, General, and Martin Marietta each filed exceptions to the Proposed Report.

July 28, 1975. General filed replies to exceptions to the Proposed Report.

July 31, 1975. Complainants and Pacific filed their replies to exceptions to the Proposed Report.

Contents of the Record

The record of these matters, defined as those materials which may be cited in briefs, consists of a Reporter's Transcript containing 2,187 pages in 23 volumes, plus a 27-page volume covering the prehearing conference, Exhibits 1 through 123, and the following additional materials:

- (a) Official Notice has been taken of the Form M Reports filed by Pacific and General with the Commission and Form L Reports filed by all California radio-telephone utilities with the Commission.
- (b) Official Notice has been taken of all the tariffs of all the California RTUs.
- (c) Notice has been taken of every document filed or distributed in this proceeding, including correspondence, if served on the parties and received by the Commission.

The Parties

The complainants in Case No. 9395 are: Industrial Communications Systems, Inc.; Intrastate Radiotelephone, Inc. of Los Angeles; Mobilfone, Inc.; and Radio Page Communications, Inc.

The complainants are radiotelephone utilities (RTUs) engaged among other activities, in the business of providing personal

signaling service in the LAEA.^{1/} Since early January 1969, ICS has offered and furnished personal signaling service in the LAEA pursuant to tariffs on file with this Commission. As of May 31, 1973, ICS had 584 guard band high speed paging units in operation. The tariff rate for the paging service offered by ICS is \$10 per month and the tariff rate for receiver rental is also \$10 per month.

Mobilfone, according to the testimony of its president, Robert C. Crabb, is the largest single revenue producing RTU in the United States. Mobilfone's predecessor company first commenced providing signaling service in the LAEA in 1954. These signaling services were nonselective in that all radio receivers were activated by the radio signal. The customer could determine from the nature of the signal if it was intended to alert him. In 1967, Mobilfone instituted a selective signaling service which insured that the radio signal activated only the desired customer's radio receiver, a service similar to Pacific's proposed one-way tone signaling service. At the end of 1972, Mobilfone had in service 3,439 paging units in the LAEA. The tariff rates are \$20 per month for the paging service and receiver rental. However, the customer who owns his own receiver may subscribe to the paging service only for \$8 per month.

Intrastate instituted one-way personal paging in the LAEA in November 1967. At the end of 1972, Intrastate had 1,434 paging subscribers. The tariff rates for Intrastate's radio paging service are \$8 per month for the service and \$12 per month for the receiver rental. A subscriber may own his own receiver and pay only the \$8 per month service charge.

^{1/} The Los Angeles Extended Area is generally defined as a group of Pacific and General telephone exchanges in Los Angeles County situated below the San Gabriel Mountains.

Radio Page has been a radiotelephone utility in the Southern California area for eight years. Radio Page first began one-way paging services in 1964. In June 1972 Radio Page instituted high speed service. Radio Page's tariff rates for service are \$10 per month for the paging service and \$10 per month for the receiver rental. A subscriber may own his own receiver and pay only the \$10 per month service charge.

The defendants in Case No. 9395, Pacific and General, are wireline common carriers. Pacific and General have long provided public utility communications services, including two-way mobile radio service, in the LAEA.

Statement of Issues in Cases Nos. 9395, 9715, and 9716

At the prehearing conference held on September 19, 1972, statements of the broad issues for Cases Nos. 9395, 9396 (9716), and 9397 (9715) were established, as follows:

Issue No. 1

Are the parties authorized to provide present and proposed personal signaling or paging service subject only to tariffs being accepted for filing and being permitted to go into effect?

Issue No. 2

Would it be in the public interest to permit the proposed tariffs filed by Pacific and General to become effective, public interest being deemed to include but not limited to relevant consideration of alleged anti-competitive impact of such action?

The issues raised in Case No. 9450 by complainant Pacific, in which the Case No. 9395 complainants are defendants, are (1) whether the complainants in Case No. 9395 have authority to offer paging service in the LAEA, (2) whether the Commission should order the complainants to cease and desist from utilizing the so-called "guardband frequencies" to provide paging service in the LAEA, pending final resolution of the matters at issue in these consolidated cases, and (3) whether RTU complainants' rates, terms, and conditions for such service are just and reasonable.

Issue (2) of Case No. 9450 was disposed of by the Commission in its Decision No. 80608 issued October 11, 1972 when the Commission denied Pacific's request for a cease and desist order regarding use of guard band frequencies. That issue, therefore, needs no further consideration or discussion.

We will discuss the issues raised in Case No. 9450 first because in our discussion we will point out some of the history of our regulation of RTU's which should be helpful in understanding the issues in Cases Nos. 9395 et al.

Case No. 9450

The burden of proof in this matter was placed on Pacific as Pacific alleged that the existing and effective tariffs of the four RTU complainants are not just and reasonable.

According to Pacific, the evidence in this proceeding on the issues raised in Case No. 9450 compels Commission action. Pacific's complaint challenges the rates, terms, and conditions of RTU service in the LAEA. It questions the failure of the Commission to consider the change in operating conditions between prior serving arrangements and those proposed to be offered. It questions the use of this Commission's process to deny Pacific access to the LAEA paging market and thereby raises the issue of defendants' improper and anticompetitive conduct. In addition, Pacific claims that the evidence in this proceeding shows, and upon such evidence the

Commission can find, that defendants' RTUs must begin to conform to the same regulatory principles which are applied to other telephone corporations in California. The failure to apply reasonable and equal standards to all telephone corporations in California^{2/} can be nothing less than an unlawful discrimination, especially, as in this case, when the varying standards are applied to telephone corporations who are competitors between themselves (Northern California Power Agency v Public Util. Com. (1971) 5 Cal 3d 370).

Defendants answered Pacific's allegations and made a motion to dismiss. Alternatively, defendants requested an OII into the rates, terms, and conditions of service of all RTU's in California or all RTU's in Los Angeles County and such OII be consolidated with Case No. 9450. A further alternative proposed was a request by defendants that Case No. 9450 be consolidated with Case No. 9395. The Commission chose consolidation.

According to Pacific, the evidence of rate parallelism among the "competing" RTUs in the LAEA demonstrates the need for Commission review.

The RTU complainants in Case No. 9395, who are defendants in Case No. 9450, were required to present results of operations studies.^{3/} Pacific claims that it is clear from the studies presented by the RTUs involved that the rates currently being offered in the LAEA are wholly unrelated to the costs of such service.

^{2/} This has not always been Pacific's position. In Application No. 52649, A. W. Brothers dba Lake Tahoe Marine Telephone Co., Pacific opposed the application solely on the grounds that Mr. Brothers was asking for the same settlement treatment as independent wire line carriers received from Pacific.

^{3/} By the examiner at the request of complainant Pacific.

Pacific argues that the "follow the leader" rates of the RTUs in the Los Angeles area cannot by any stretch of the imagination be regarded as a proper standard by which to judge the proposed rates of Pacific which are based on cost. The record according to Pacific urges that an investigation be issued into the rates, terms, and conditions of the service by the LAEA RTUs to determine the appropriate costs and rate levels for each of the utilities involved.

According to Pacific, the LAEA RTUs have and continue to use separate corporate entities to escape regulation and divert appropriate regulatory attention from the total utility enterprise.

Pacific claims that each of the complainants in Case No. 9395 (defendants in Case No. 9450) have separate nonregulated operating subsidiaries which offer to the public utility with which it is associated various services in the completion of its public utility obligation. Pacific claims that none of these operating subsidiaries has ever been fully investigated by this Commission nor have the RTUs involved provided adequate information to this Commission either in this proceeding or elsewhere to permit us to rule on the appropriateness of the affiliation.

In light of the "adjustments" made by the RTUs in the preparation and discussion of the results of operations of their various enterprises, it is not difficult, according to Pacific, to understand how the RTUs can persist year after year ostensibly losing money in the provision of public utility service while paying substantial salaries to its officers and employees.

Beyond the lack of information provided to the Commission, Pacific claims that the public must endure at the very least a deception by the use of the various corporate entities, and quite possibly is being subjected to improper serving arrangements by way of pseudo common carriers^{4/} and service resale operations, which are encouraged and condoned by the attitude of the RTUs and by regulatory inaction in this industry.

Pacific claims that the record is replete with indications that the public in Los Angeles is being deceived by this industry. For example, Beep Alert, ostensibly a fictitious name and business logo, was repeatedly confused by the public witnesses in this case as an operating service in the Los Angeles area. A similar situation exists with respect to Answer Page and Radio Page.

According to Pacific, public witnesses were repeatedly surprised that the organizations that provided them service in the LAEA were regulated public utilities; if by reason of corporate form, operating practices, or by reduced levels of regulatory attention, an RTU is permitted to operate in the circumstances which encourage public misunderstanding or deception, renewed regulatory attention is indicated.

In terms of the quantum of proof required of Pacific in these proceedings in order to justify the rate levels proposed, an extensive 23-day proceeding was required. These proceedings were generated, according to Pacific, by a complaint which in essence stated that Pacific was attempting to offer a service in the LAEA at a rate level that was not in conformance with the rate levels that complainants as a group deemed proper. In terms of regulatory equities, it must be pointed out, according to Pacific, that the record in these proceedings show that not one shred of evidence is on a public record which would support the rate levels currently in

^{4/} Pseudo or Quasi Common Carrier, an uncertificated radio telephone operation, which provides services to some segment of the public in a manner similar to that of a certificated RTU.

existence for one-way signaling service by the RTUs involved in the LAEA. Not only is there an opportunity for abuse in a situation such as this, but, claims Pacific, it is clear that that opportunity has been exercised.

Where, asks Pacific, is the public interest being served when the complainant RTUs can deprive the public of the use of valuable radio spectrum allocated to wire line carriers specifically for the provision of one-way signaling service? Where, asks Pacific, is the public interest being served by an almost hopeless mumbo jumbo of RTU corporate organizations that wheel and deal, act, react, and interact, sometimes within and sometimes without the regulatory environment^{5/}; so as to lead to the absurd result that apparently thriving industries are purported to be losers before the Public Utilities Commission of the State of California? Pacific alleges that the defendants are abusing this Commission's process in an unlawful attempt to preclude competition from other radiotelephone utilities and wire line carriers. Pacific also alleges that the public is being misled and deprived of needed communications services in the LAEA. The public witness testimony in this case reveals, according to Pacific, that the public (1) is receiving minimal information on the extent of public utility service in the area of one-way tone signaling, or (2) is not being informed of the public utility nature of such service, or (3) is being confused by the conglomeration substructure organizations devised by the RTUs, or (4) is being subjected to pseudo common carrier services by the absence of a responsible attitude on the part of the RTUs, or (5) is being denied an effective choice between wire line and nonwire line services as envisioned by the FCC in its guard band decisions, or (6) is being subjected to our charges which increase the effective and actual rates being charged for public utilities services, or

^{5/} In some instances according to Pacific the revenues from the regulated and unregulated sources are so confused and commingled that it is impossible to determine true financial position.

(7) is being denied the beneficial effects of competition in this area by the parallelism in the rate structures of the defendant RTUs and by said defendants' action to preclude the effectiveness and operation of Pacific's rates and system in the LAEA, or (8) is being denied the quality of service that is expected and which it would get from Pacific's system.

Pacific therefore joined in defendants' alternative request for an order of investigation into the rates, terms, and conditions of RTU service and urged this Commission to take evidence sufficient to evaluate the source of defendants' rates, charges, and revenues, the nature and effect of affiliated relationships, the operations, combinations, and interlocking agreements which bind the "competitors" in proceedings such as Case No. 9395 and the antitrust case^{6/} now on appeal; and the curiously uniform rate levels they provide to the public.

According to Pacific, the antitrust/anticompetitive issues raised by the complaint and evidence in Case No. 9450 must be considered by the Commission.

As the Supreme Court pointed out in Northern California Power Agency v Pub. Util. Com. (1971) 5 Cal 3d 370, the effect of utility rates on competition is a proper and necessary factor which the Commission must consider in weighing the public interest. The current rate levels of the LAEA RTUs have been urged by those RTUs as the appropriate standard by which the proposed rates of Pacific should be judged. Having urged that standard, a record has been developed which, according to Pacific, clearly indicates that RTU rates are unrelated to the costs of the service currently being provided in the LAEA. On the contrary, Pacific's claims its proposed rate is fully supported in this record by the appropriate costs and is the only cost supported one-way signaling tone in the LAEA.

^{6/} On October 4, 1974, the United States Court of Appeals for the Ninth Circuit rendered its Opinion No. 73-1032 in Industrial Communications Systems, Inc. and Intrastate Radio Telephone, Inc. of Los Angeles, Plaintiffs-Appellants vs Pacific Telephone & Telegraph Company and General Telephone Company of California, Defendants-Appellees reversing and remanding with instructions to the district court to stay the case pending the outcome of the proceedings. (Case 9395 et al.)

In Fischer Berkeley Corp. v P.T.&T. Co. (1968) 68 CPUC 649, the Commission recognized that the rates applicable to competitive services must cover their costs. Pacific claims that defendant RTUs have admitted their rates are not based on cost and yet are not reluctant to use the Commission's process to delay or prevent effective competition in the LAEA, thus Northern California Power requires in this instance that the Commission evaluate the evidence before it and institute an investigation.

Pacific argues that administrative procedure is intentionally flexible and not bound by formal procedure. In that regard, the Commission should not and cannot be artificially limited to narrow construction of the issues placed before it. Rather, as evidence is received, the Commission should review (and in the case of antitrust must review) such evidence and make the appropriate determinations thereon. In this case, Pacific claims that the evidence compels attention to the practices of the RTUs in the LAEA in derogation of the public interest normally respected by a public utility.

General submits that the issue of reasonableness of rates is strictly a factual one and the record certainly contains sufficient facts to correctly decide this issue.

According to defendants their rates and conditions of service are prima facie just and reasonable, and no contrary showing has been made.

Pacific, according to defendant, having alleged that the rates and conditions of service of the RTU complainants in Case No. 9395 were unjust and unreasonable, had the burden to prove this allegation.

According to counsel for complainants they searched the record for any detailing by Pacific of facts, factors, reasons, or arguments to support the bare allegation of paragraph VI of its complaint to the effect that "defendants' rates, terms, and conditions for such service are not just and reasonable". None appears. Complainants claim they cannot respond in any detail to completely vague and unsubstantiated conclusionary allegations.

According to defendants all of their rates, terms, and conditions for service are contained within duly filed and effective tariffs of which official notice has been taken in this proceeding. Lacking any proof being submitted to the contrary, it is a proper legal presumption that tariffs filed and accepted by the Commission are just and reasonable, otherwise the Commission would have been obligated to suspend and investigate any tariffs filed which were not prima facie just and reasonable.

Defendants submit that this issue must be decided favorably to Industrial, Intrastate, Mobilfone, and Radio Page due to a complete failure of proof on the part of Pacific.

According to the staff, the briefs of Pacific and the RTUs discuss in some detail the rates of the RTUs. Apparently, Pacific still desires the Commission to institute an investigation into the reasonableness of the RTU rates if it determines that Pacific's proposed rates are unreasonably low.

The staff states that all of the RTUs' tariffs were subject to at least staff review, if not review in formal proceedings. This record establishes that the RTUs are at least attaining a reasonably sound financial position. Perhaps, if the market growth exceeds the estimates of staff witness Popenoe, it will be necessary to consider reducing RTU rates in the future. The staff states that this record, however, will not support a reduction, particularly in light of today's inflationary spiral. In the opinion of the staff, its limited resources would be better spent in areas other than an investigation of RTU tariff rates.

Discussion

On December 17, 1968 this Commission filed Case No. 8880, an investigation on its own motion into the operations, practices, rules, regulations, classifications, services, contracts, and procedures of all radiotelephone utilities and other individuals and entities furnishing intrastate public utility telephone service by radio.

The results of the investigation were so clearly and succinctly set out by the presiding examiner that the report is reproduced below:

"PROPOSED REPORT OF EXAMINER F. EVERETT EMERSON

"O P I N I O N

"An investigation into the operations, practices, services and related matters of entities furnishing intrastate public utility telephone service by radio was instituted on the Commission's own motion by order dated December 17, 1968. The order was served upon each radiotelephone utility and every land-line telephone company operating in California. By such investigation practically every facet of the radiotelephone industry in this State would receive the close attention of the Commission. The order of investigation, in setting forth the purposes, enumerated nine areas of inquiry.

"Some 18 months have passed since this matter was instituted. It is now appropriate to review its genesis, its progress, its present status and its future course. To do such, the Commission has authorized the issuance of this proposed report by the Examiner.

"Although the radiotelephone business has existed in California since shortly after World War II, the Commission's attention was directed, on a formal basis, to the segment here under consideration in 1961. By a decision in that year (Decision No. 62156 in Case No. 6945; 58 CPUC 756), this Commission determined that 'Miscellaneous Common Carriers', as defined by the Federal Communications Commission (FCC), were telephone corporations within the meaning of Section 234 of the California Public Utilities Code and thus were subject to regulation by this Commission. They were then designated and have since been known in this State as Radiotelephone Utilities

companies). The RTU industry in California now commonly calls this the 'Grandfather Decision'. In order to assign an area of service to each RTU, the Commission adopted the FCC standards then in effect regarding coverage area (37 dbu for two-way and 43 dbu for one-way signaling).^{1/} RTU's then serving areas greater than these standards were not restricted to those defined by the adopted signal-strength contours, however. All RTU's were required to file rates.

"The radiotelephone utility business grew rapidly and in the next several years RTU's were before the Commission on numerous occasions; some for new certificates, some with complaints against the land-line telephone companies, some with complaints against each other and some for rate increases. In a far too large number of instances, inept presentations made the regulatory process difficult and unnecessarily costly, both for the regulated and the regulator. Decisions on matters of first instance (so-called 'landmark' decisions) were both misunderstood and misconstrued. As in any young, dynamic and rapidly developing industry the RTU field was beset with problems. It was also beset with internal rivalries and bickerings. When RTU's were not challenging each other or non-regulated operators their target was either regulation in general or this Commission in particular. Recalcitrant response to Commission inquiries and directives seemingly became the rule rather than the exception. Certain industry spokesmen and their counsel publicly castigated the Commission, its Examiners, its staff and its decisions. In short, those who did not wish to understand, did not understand. Some seemed well content with confusion and tried to profit from it. Others, however, seeing some of the advantages of regulation as well as its disadvantages, privately urged that, for the industry's own best

^{1/}'dbu', as here used, is a measure of the signal strength at the radio receiver.

interests, the Commission should investigate the operations and practices of the entire industry and should set guidelines for its future conduct.

"The industry uses a jargon which in some instances is difficult for the uninitiated to understand and a number of RTU operators felt that they were unable to 'get through' to the Commission because the Commission lacked understanding of their technical as well as their operational terms. Those who held this view urged that an investigation would provide a means for overcoming this lack of understanding by developing a mutually acceptable glossary of terms.

"Many RTU's, if indeed not all, face competition from non-regulated radiotelephone and signaling services as well as from the land-line telephone companies and other neighboring RTU's. According to the RTU's, FCC rules and the licensing thereunder foster this competition and seem to be more concerned with problems of radio-frequency assignment and mitigation of interference between the various services than with the adequacy, economic stability, continuity or public necessity of public utility radiotelephone service. The RTU's have generally claimed that private radio systems, which they term pseudo common carriers, are in fact public utilities and that they too should fall within the regulatory jurisdiction of this Commission so that destructive competition with possible attendant deterioration of service to the public may be avoided. Those who hold this view urged investigation on a statewide basis rather than on a more costly case-by-case basis, as a means of affording protection to the existing utility industry and of assuring an adequate service to the public.

"Radio by its very nature knows no precise boundaries. Unlike other utility services such as gas or water where the distribution or service area may be defined or contained within limits set by physical properties, the service area of a radio utility can and often does overlap that of another utility. In many instances the service area of one utility, where defined by a signal-strength contour, may overlap several other utilities' similarly defined areas. The San Francisco bay area and the greater Los Angeles area are prime examples. While uncertainties respecting the responsibilities as well as the rights of utilities within service areas may be settled through litigation on a case-by-case basis, an industry-wide investigation might develop a better criterion than the signal-strength contour concept. Thus, it was urged that such be undertaken.

"The staff of the Commission urged that an industry-wide investigation be undertaken because of all of the above-recited circumstances and in addition desired a means by which such matters as accounting, financing, rates, tariff provisions, filings and utility regulations concerning customer relations might be uniformly understood and applied throughout the industry.

"With all of the foregoing in mind, the Commission instituted this investigation. The investigation has a two-fold purpose; that of more fully informing the Commission and of reaching lawful and reasonable solutions to some of the problems aggravating the industry. It is not for the purpose, as one RTU owner expressed it, of 'trying to find out what else the Commission wants to regulate'. Nor should it in any way be looked upon as a step in the direction of making the Commission a paternalistic despot for the RTU industry.

"As a matter of procedural convenience, the nine lengthily specified areas of inquiry set forth in the order of investigation were grouped into three phases which, briefly restated, are as follows:

"Phase I. Radiotelephone Services and Jurisdiction

- a. Nature of utility services.
- b. Nature of private services.
- c. Nature of maritime services.
- d. Extent of areas served, overlapping, competition.
- e. Nature and extent of utility and customer-furnished equipment.
- f. Regulatory jurisdictions (FCC, CPUC) pertaining to the above.
- g. Requirements for certificates of public convenience and necessity.

"Phase II. Accounting and Financing Matters

"Phase III. Rates and Tariffs

- a. Results of Operations Analyses.
- b. Utility rules governing practices and customer relations.
- c. Rate filings, form and content.
- d. Service area maps and limits.

"At the outset, the staff envisioned that staff-industry committees would formulate most of the issues and subsequent proposals and much of the evidence respecting them. Such an attempt was made and staff-led committees were formed on an informal basis. Because the RTU's necessarily had to carry on their own businesses, the amount of time which could be devoted to committee work was not

great. A few diligently applied themselves to the task; the greater number gave minimal or no assistance. Upon being advised of this situation, the Examiner called a prehearing conference (held April 16, 1969 at San Francisco) at which the parties were informed as to the future general procedures and the staff requested the assistance of a committee in the preparation of a general report which would include descriptions of service, definitions of terms and other data, and serve as a basic informational standard. The parties were advised that after such report was completed and accepted, the staff would itself have the burden of carrying the investigation forward and to conclusion.

"The first two days of public hearing were held on July 29 and 30, 1969, at San Francisco. The above-mentioned general report was identified as Exhibit No. 1 and was explained by two staff witnesses. The exhibit contains a brief history of the development of public usage of radiotelephone service, a description of the equipment used in mobile radio systems and their present capabilities, a discussion of the licensing and other regulatory functions of the FCC, a classification of mobile services (public and private) with an explanation as to how they are operated, a discussion of the methods by which radio equipment is provided to customers, and four appendices of tables, charts, maps and other useful information including a glossary. In a sense, this exhibit is a small textbook on the radiotelephone industry in California. It had been widely distributed prior to the hearing. It produced both commendatory and condemnatory reactions. It was a first attempt; a generalized exposition and not an all-inclusive treatment of the complex field with which it was dealing. Its introduction in evidence occasioned lengthy and laborious cross-examination of minutia compounded by confusing questioning on phrases taken out of context. In fact, the

cross-examination finally and frustratingly 'bogged down' because of unanswerable questions. At this point, the Examiner appointed a specific staff-industry committee of seven persons for the exploration of points of agreement and disagreement and a resolution of the latter. The committee proceeded immediately to its work and because of its diligence a new or supplementary report was soon produced.

"The third day of hearing was held on August 19, 1969, at Los Angeles. At this hearing the staff made a number of changes in Exhibit No. 1 and introduced, ostensibly on behalf of the committee, a document titled 'Corrections of Record by Committee and by Staff to General Report on Mobile Radiotelephone Services' which was received in evidence as Exhibit No. 4. This is a document of 48 pages and includes a glossary of some 91 terms. In essence, it is a re-write of Exhibit No. 1. It contains certain corrections of Exhibit No. 1 agreed to by the committee and certain corrections initiated by the staff without committee concurrence. In certain areas, material in the exhibit was discussed in committee and left for the staff to clarify and review. In other areas, there was no agreement reached by the committee and in these the staff assumed responsibility for the final wording. By testimony at the time of introduction of Exhibit No. 4 into evidence, the staff witness made additional corrections or changes on 18 pages. Almost the entire third day of hearing was occupied with cross-examination on this document. Once again, questioners were concerned with such minutia as whether or not 'rules and regulations' should be capitalized. Semantics, argument with the witness and unsupported statements of alleged facts predominated. Sight was lost of the purpose of the exhibit; that of placing a 'primer' or elementary textbook in the hands of the Commission. A practically complete lack of understanding as to either judicial or legislative procedures whereby opposing

views are presented, was evidenced by spokesmen and by certain of the counsel for the industry. When invited to call witnesses and present evidence respecting areas of disagreement, they refused. Thus, after the passage of ten months' time and after three days of public hearing not even an agreed-upon glossary of the terms used by the RTU industry had been achieved. In looking to the next day of hearing, the staff indicated that it would prepare a report which would be 'the heart of this investigation' and would cover such items as types of services rendered, the problem of multiple-licensed repeater operations, cooperative operations and arrangements with telephone answering services, utility status, the concept of dedication and the problems of lease-maintenance. Although it was stated that this report would be distributed in October, with hearing thereon in early November, the staff report was not distributed until December 19, 1969.

"The fourth day of hearing was held on January 6, 1970, at San Francisco. Some two weeks prior thereto a staff report, titled 'Second Report on Mobile Radiotelephone Services Regarding Public Utility Functions of Radiotelephone Services' was widely distributed. It was identified as Exhibit No. 8 at the hearing. Its staff-stated purposes were:

- a. To set forth a framework for approaching the question of the utility status of various types of radiotelephone services.
- b. To bring to the Commission's attention pertinent reference material on this subject.
- c. To suggest the facts which the Commission should have available to it before considering the utility status of a particular radiotelephone operator.

- d. To recommend to the Commission those types of radiotelephone operations which are of a public utility nature and should be considered within the scope of this Commission's jurisdiction.

"Serious and strenuous objections were quickly raised respecting the receipt of this document in evidence. Questioning of the staff witness by industry counsel established that the document was virtually barren of facts within the personal knowledge of the witness, that it contained a multiplicity of opinions, legal conclusions, inaccurate paraphrases of FCC rules and the witness' personal version of statutes and what the courts think about them. Further, counsel asserted that the report treated of matters about which the witness had neither the competency nor the qualifications for the rendering of expert opinion. The exhibit was admitted into evidence over these objections. A careful perusal of the document and the cross-examination of the witness, however, convinced the Examiner of the merits of the original objections and, by reversal of his earlier ruling, the exhibit was rejected. Exhibit No. 8, therefore, is not in evidence. Thus, after the passage of 13 months and with four days of hearing, 'the heart of this investigation', as visualized by the staff, had not been reached.

"A motion was made, joined in by several parties, that this investigation be terminated and that the many issues within it be handled on an industry-wide committee basis. At the request of several counsel, a recess was taken for the purpose of holding a mid-hearing conference with the Examiner. At such mid-hearing conference, various counsel argued that the investigation was too broad, much too time consuming and far more costly to the industry than any foreseeably desirable end result might warrant, that the industry was fearful that an incomplete or improper record would lead the

Commission to false conclusions and thus to harmful regulation, that in some respects the passage of time had remedied certain ills within the industry and that in other respects imminently prospective advances in the art and changes in FCC rule making make a number of aspects of the investigation premature, that a truly factual base must be developed before a Commission decision should be made on any issue, that the staff has neither the intimate knowledge nor the manpower necessary to develop such a base in depth, and that many RTU's are struggling to maintain their financial existence and can not afford further fruitless days of hearing from which they dare not stay away. On a return to the hearing and thus to the record, these arguments were summarized for the benefit of all present (somewhat more than 40 persons). Further or additional statements were invited and were made. One party desired to make later written comment and was instructed as to how to do so, but such has not yet been received.

"Upon much serious reflection and review of the record, including its exhibits, it is concluded that the motion to terminate this investigation should be granted.

"There is no doubt that many of the issues set forth in the order of investigation are of importance to the industry and to this Commission. A number of them can and should be resolved by earnest staff-industry committee work. Others seem to be wholly dependent upon in-depth studies and preparation of evidence by the industry alone. Overall, they can be resolved on a case-by-case or issue-by-issue basis and it now appears that most of the areas of inquiry can best be so handled.

"It is suggested that at such time as a particular problem or a specific proposal, which either the staff or the industry or an individual RTU feels must be considered, and for which any of them develop full, factual, and lawful supporting documentation and evidence, an order of investigation be opened on and limited to such specific problem or proposal. In this regard, it is recommended that early attention be given to the development of (1) a more meaningful criterion respecting the specification of 'service areas', (2) limitations respecting competition and (3) the standardization of tariff rules.

"A disservice would be done if this investigation were to be terminated without due recognition being given to the 'primer' which is in evidence by Exhibits Nos. 1 and 4. After editing, it should be distributed as a general reference work and as a basis for common understanding of terms applicable to radiotelephone service. It is not a statement of 'the law'. It should not remain static. Its revision and perhaps expansion is to be expected as time passes.

"The foregoing opinion and the following order are recommended for filing as the opinion and order of the Commission in Case No. 8880.

"O R D E R

"Good cause appearing,

"IT IS ORDERED that:

"1. The Secretary, with the editorial concurrence of the Examiner, shall prepare and distribute to the parties to this proceeding and to other interested persons and organizations, a report titled 'General Report on Mobile Radiotelephone Service', said report substantially consisting of the material contained within Exhibits Nos. 1 and 4 in this proceeding.

"2. The investigation herein, Case No. 8880, is hereby terminated.

"Dated at San Francisco, California, this 26th day of May, 1970."

"APPENDIX A

"Appearances

"For the Commission staff:

Janice E. Kerr, Counsel, and Paul Popenoe.

"For Respondents:

Frank Chalfont, for Chalfont Communications.

R. L. Mohr, for Advanced Electronics.

Homer Harris, for Industrial Communications Systems, Inc.

Avery H. Simon, for Mobile Radio System of San Jose, Mobile Radio System of Ventura and Pacific Communications Corporation.

Daniel W. Cochran, for Redwood Radio Telephone Corp. and for Redwood Radio Telephone Corp. Marin.

Jerry Grotzky, for Peninsula Radio Secretarial Service, Inc.

Dudley A. Zinke and Erwin E. Adler, of Pillsbury, Madison & Sutro, for The Pacific Telephone and Telegraph Company.

John P. Vetromile, for California-Pacific Utilities Company.

Albert M. Hart, Donald J. Duckett, Walter Rook, for General Telephone Company of California.

Harold E. Throp, for California Interstate Telephone Company, Golden State Telephone Company and Golden West Telephone Company.

"For Interested Parties:

Lester W. Spillane and Phillips Wyman, for Allied Telephone Companies Association.

Neal C. Hasbrook, for California Independent Telephone Association.

Keatinge & Sterling, by Robert Yale Libbott, for Mobile Telephone Company (Philadelphia) and California Mobil Telephone Company.

R. A. Isberg, for Mobilfone Inc., Kern Radio Dispatch, and Mt. Shasta Radiotelephone Co.

Bacigalupi, Elkus, Salinger & Rosenberg, by Claude N. Rosenberg, for Telephone Answering Services of California, Inc.

J. M. James, for Bell & Howell Communications Co.

Carl B. Hilliard, Jr., for National Communications Airsignal and Pomona Radio Dispatch.

Ronald B. Zimmelman, for National Association of Business and Educational Radio, Inc."

On August 11, 1970 the Commission issued Decision No. 77591 which is quoted below:

"OPINION AND ORDER

"The Proposed Report of Examiner F. Everett Emerson in this matter was filed May 26, 1970, and duly served upon the parties. The only exception to the Proposed Report was filed by Industrial Communications Systems, Inc. (Industrial) on June 15, 1970, and a reply thereto was filed by Pomona Radio Dispatch Corp. (Pomona) on June 26, 1970. By a further filing on July 3, 1970, Industrial moved 'to set aside' the reply of Pomona Radio Dispatch, Corp.^{1/} Such motion is hereby denied.

"In his Proposed Report, the Examiner concluded that this investigation should be terminated.

"In substance, the 'exception' of Industrial urges that the investigation be continued as to two of the items (Nos. 5 and 6) set forth in the order of investigation, viz.:

"1/ In passing it should be noted that no provision is made for such a filing by the Commission's Rules of Practice and Procedure. The rules pertaining to proposed reports amply provide for the expression of opinions without recourse to repeated filings on the same subject.

- '5. To investigate and review the operations and activities of entities and individuals not regulated as public utilities, such as private mobile lease-maintenance service companies and telephone answering services, to determine the extent to which provision of multiple-licensed, shared or cooperative land-mobile radiotelephone systems, operator dispatch services, message relay services and the connection of private radio systems with the land-line telephone network, or any combination of such activities, constitutes public utility telephone service.
- '6. To review Commission policy governing the authorization of radiotelephone operations within specified territorial limits to determine the extent to which particular areas should be limited to exclusive operation by one radiotelephone utility, or to dual or multiple operation, and the extent to which overlap of service areas should be permitted.'

"Industrial further urges that the Commission institute 'an investigation of all telephone answering services providing intrastate telephone services by means of radio'.

"The 'reply' of Pomona requests that the Proposed Report be made the order of the Commission.

"Careful consideration has been given to the views and concerns expressed, each point raised and every allegation made in these filings. We are convinced that the Examiner's analysis of the record in this proceeding and his recommendations should prevail. We add our emphasis to the suggestion and words of the Examiner:

"...that at such time as a particular problem or a specific proposal, which either the staff or the industry or an individual RTU feels must be considered, and for which any of them develop full, factual, and lawful supporting documentation and evidence, an order of investigation be opened and limited to such specific problem or proposal."

"This criterion is directly applicable to the above-quoted items Nos. 5 and 6 for which Industrial would have this proceeding continued.

"Industrial alleges that it stands ready 'to produce evidence as it relates to the illegal, uncertificated common carriers'. If Industrial is in fact ready and can meet the above-emphasized criterion, it should consult with staff counsel with a view to institution of a specific and limited investigation, or it should file its own specific complaint respecting the alleged illegal operations. Continuance of the present proceeding for such limited purpose is not warranted.

"No other points raised by Industrial's 'exception' require discussion.

"The Commission adopts as its own the opinion and order set forth in the Examiner's Proposed Report. Accordingly,

"IT IS ORDERED that the opinion and order recommended by the Examiner in the Proposed Report in this matter, as appended hereto, be and it is hereby made the opinion and order of the Commission."

As can be seen from the pleadings in Case No. 9450 and the list of appearances, Case No. 9450 could be a replay of Case No. 8880.

If the quality of the record adduced in the current proceedings is an indicator of what would be produced if the Commission opened an OII as requested, the presiding officer could probably use Mr. Emerson's report, with changes of time and place, as his own. For example, in its opening brief, the staff said:

"Pacific, in its Memorandum of Points and Authorities in support of its petition for an interim decision, recognizes that the FCC imposed conditions on the granting of the guard band frequencies. It purports to quote the conditions at page 10. Pacific's omission of vital language in its 'quoted' condition number 3 is a keen disappointment to the staff. Following is the FCC's complete discussion of condition number 3. The language Pacific saw fit to quote is underlined.

'17. As we indicated above, we are concerned with establishing, and maintaining a fair and equitable climate within which the wireline and nonwireline carriers may compete. Thus, if in any community a wireline carrier offers free toll service for "Bellboy" or advertises or otherwise indicates that such free toll-call service is available, we require that the wireline company make available the same facilities or services to the MCC free of charge so that the MCC may be in a position to supply the same service to its subscribers free of toll charges. Again we state, we are not attempting to limit the activity of the wireline company; we are merely requiring that a balance be established so that the wireline company will not be in a position, because of its control over dial access interconnection, to claim or enjoy advantages not available to the MCC.' 12 F.C.C. 2d 841, 850."

General, in its closing brief said:

"Thus, the Commission is told that the proceeding entitled in Re George W. Smith, Decision No. 72165, Application No. 47772, is fully applicable to the instant case and the facts are somehow on all four's with the instant proceeding. Nothing, of course, could be further from the truth. In appearing in the Smith case, as stated by complainants, General offered no service, filed no tariffs, made no factual showing concerning public demand or made and presented no evidence concerning public interest, convenience or necessity. General's appearance was for the sole purpose of providing information to the Commission of its future plans. Under such circumstances, the so-called holding in the Smith case was, in effect, pure dictum. There were no findings of fact based on specific and detailed evidence to support the conclusion cited on page 29 of complainants' Brief and quoted as finding no. 6 from the Smith case. Thus, the so-called holding must be simply viewed at the most as an advisory or declaratory opinion of the Commission limited strictly to the limited, incomplete, and highly contingent facts presented in the Smith case. In other words, the Smith case must be strictly limited to its facts. By contrast, of course, the Commission in the instant proceeding has before it hundreds of pages of factual, highly detailed testimony and numerous exhibits which painstakingly cover every facet of General's and Pacific's proposed service. These volumes of detailed testimony may not be lightly brushed aside in a casual fashion by simply stating that the factual matters would be decided or all settled for all times in Re George Smith."

We have reviewed the record in George W. Smith and note that General did make a factual showing concerning public interest. There can be no doubt that Decision No. 72165 was issued on the merits.

Since Decision No. 77591 in Case No. 8880 was issued, scores of applications and/or complaints have been filed by the RTUs and the landline companies. Thousands of man days have been expended by staff and parties in prosecuting such matters, many hundreds of exhibits have been received into evidence (many exhibits were offered but not received), and tens of thousands of pages of transcript have been recorded.

Of the nine areas listed in Case No. 8880 we have established policy for Items 4, 5, and 8. Presently under submission are matters that should establish policy for Item 6.

It appears that our method of resolving RTU matters as enunciated in Decision No. 77591 is working, albeit slowly, and we see no reason to change. Therefore, the relief requested by Pacific will be denied. Service and rates will be discussed in Case No. 9395.

Case No. 9395 et al.

Summary of Positions

Complainants argue that:

1. Each of the four complainants is lawfully providing one-way signaling service in the LAEA.
2. Defendants must secure certificates of public convenience and necessity before they can provide one-way signaling service in the LAEA.
3. Certificates should not be granted to defendants in these proceedings.
4. The method of operation proposed by Pacific and General is per se a violation of antitrust laws and is not in the public interest.

Defendants argue that:

1. Each holds a statewide franchise permitting it to render radio paging service outside of its own wire line service area but within the radiotelephone service areas of competitive PUC-certificated radiotelephone utilities; and that such franchise is beyond the reach of Sections 701, 1001, or 1002 of the Public Utilities Code, and is beyond the jurisdiction of this Commission to control.
2. Pacific and General may institute radio paging service in any location which falls within its statewide two-way radio contours at its option under separate, alternative, or additional authority established by the Loperena Decision. (Jack Loperena (Radio Dispatch Fresno) v Fresno Mobile Radio, Inc. (1970) 71 CPUC 645, 654.)
3. Their proposed service is not anticompetitive and is in the public interest.

The staff argues that:

1. Pacific and General hold no statewide franchise rights which exempt them from the certification requirements of Sections 1001 and 1002.
2. Pacific and General need no additional Section 1001 authority to provide one-way tone signaling service within the confines of their two-way mobile telephone dbu service area contours.
3. Section 1002 does not require Pacific and General to obtain additional authority.
4. The public interest could be served by institution of the proposed service.
5. The sharing of facilities by General and Pacific is not anticompetitive.

Chalfont argues that:

1. Defendants' other authorized services and their certification have no relationship to paging service as here proposed. Any illusion of there being an umbilical cord was cut when Pacific abandoned its 1949 paging operation in the Los Angeles area.
2. There is no demonstrated need for the service. In fact, with the showing that one present operator, on one channel, can care for the need of 200,000 people, it is clear that the present RTU suppliers have thousands of percents more capacity than even the highest projected need.
3. Defendants have not proposed any new or novel offerings.
4. Defendants' conglomerate operations (AT&T and GTE), each of frightening proportions, would be brought together by the subject proposal to create a consortium of mind-boggling size, obviously beyond regulation by anything but divine power.

5. Each defendant, and most particularly General, has alarming histories of antitrust activities in competitive situations, such as here proposed, where they are suppliers to the competition. Handing defendants the proposed opportunity to extend these activities would adversely impact upon the public served by the RTUs.

6. Permitting defendants the proposed operations would only invite expanded raids on the pocketbooks of the captive wire line ratepayers for the purpose of suppressing RTU competition.

7. Under examination, defendants' methodology for establishing demand and rates proved to be mythology, leaving no practical proposal for the Commission to consider.

Discussion^{7/}

General stated in its opening brief:

"The primary issue in this case is the public interest, convenience and necessity. Secondary issues were:

- "1. Are the parties authorized to provide present and proposed personal signaling or paging service subject only to tariffs being accepted for filing and being permitted to go into effect?
- "2. Would it be in the public interest to permit the proposed tariffs filed by Pacific and General to become effective, public interest being deemed to include but not limited to relevant consideration, of alleged anticompetitive impact of such action?

^{7/} All the testimony in this discussion refers to operations in 1972 and prior years, and forecast operations for 1973, unless otherwise noted.

"PUBLIC INTEREST,
CONVENIENCE AND NECESSITY

"These proceedings may be in the proper prospective only by a continual realization that the primary interest is the public interest, convenience and necessity. Voluminous evidence and seemingly endless arguments in the record must be tested against the standard of relevancy to the public interest. When this is done, the matter is relatively simple."

We agree with General that the public interest is the primary issue. In the beginning of our regulation of RTUs,^{8/} we laid down certain guidelines for granting a certificate of public convenience and necessity to RTUs.

In the application of William K. Harper, No. 43704, we issued Decision No. 63147 dated January 3, 1962, wherein we found: "An applicant for a certificate, such as is here involved, has the burden of establishing that public convenience and necessity require the proposed service and as incident thereto, that the present service is unsatisfactory and that the proposed operation will be technically and economically feasible. Absent such evidence, the operations of existing radiotelephone utilities should not be diluted."

The following constitute important factors which we consider relative to granting or denying a certificate of public convenience and necessity for a radiotelephone utility wherein potential competition does exist:

- A. Public requirement for the service.
- B. Adequacy of the existing service.
- C. Adequacy of the proposed service.
- D. Quality of the proposed service.
- E. Revenue requirements and rates.
- F. Technical feasibility of the proposed system.

^{8/} We assumed jurisdiction over RTUs by Decision No. 62156 dated June 20, 1961 in Application No. 42456 and Case No. 6945 (1961) 58 CPUC 756.

G. Technical competence of the operator.

H. Financial integrity of the operator.

(A) Public Requirement for the Service

On the first day of hearing conducted by Examiner Gillanders, he pointed out to the parties that the Commission, by Decision No. 81220,^{9/} had denied a request for a certificate of public convenience and necessity because the applicant did not present any public witnesses nor did he present a competent market survey of need.

General and Pacific claim that, subsequently, they "produced relevant, competent and credible evidence of currently unfulfilled public demand for the service. This was done both by direct testimony concerning market potential and market development figures and by the appearance of numerous public witnesses. The public witnesses, who were potential customers to the service both of General and of Pacific, testified as to their need for the service, their interest in subscribing, and in some cases expressed their opinion that comparable and adequate service was not available elsewhere.

"A number of witnesses constituted a different class of customers having unique needs which are not now and will not be served by complainants."

The record shows that Pacific produced eight public witnesses and that General produced four public witnesses or a total of twelve.

^{9/} Decision No. 81220 dated April 3, 1973 in Application No. 52649, A. W. Brothens dba Lake Tahoe Marine Telephone Co.

According to complainants, these witnesses testified generally that if Pacific or General offered one-way personal paging service they would be interested in it. None of the twelve had tried the service of each of the RTUs now offering paging service in the LAEA. Some of the witnesses did not even know of any RTU offering such service. None of the witnesses gave any substantial reasons for needing a service provided specifically by the defendants, although several such witnesses indicated that they would prefer to deal with the local wire line company, because they assumed that the paging service would be superior. Only two or three of the public witnesses brought in by the defendants expressed any unkind thoughts about the service of any of the RTU complainants. Considering the seven million person population claimed for the LAEA by Pacific, and the 7,000 subscriber units expected to be placed in service by the end of the first year by Pacific and General, the public need, or even interest, demonstrated was completely inadequate according to complainants.

(B) Adequacy of the Existing Service

Ten public witnesses were called by complainants. They testified that service was generally good; that when they had some difficulty with one RTU, they could switch to another; and that they had no serious complaints.^{10/}

Personal paging service was first introduced into the Los Angeles area in 1954 by R. C. Crabb, now president of complainant Mobilfone, operating initially under another business name. Either Mr. Crabb or Mobilfone has rendered the service continuously since 1954. Other complainants have offered the service in the area for various shorter periods; however, all four complainants have offered paging service in this area continuously for approximately the past five years.

^{10/} Commission records show that since 1973 three formal and one informal complaint was filed against Mobilfone and four informal complaints were filed against Radio Page.

The complainants, all of whom offer and provide personal paging service throughout the LAEA, served 4,750 pagers as of January 1, 1972. The total for January 1, 1973 was 8,093. Each of the complainants testified that there is no unfilled need for paging service in the LAEA.

A witness from Motorola testified that the presently installed RTU systems using the Motorola computer could provide paging service to approximately 200,000 paging users in the LAEA. The record shows that, in addition to the four complainants (all of whom serve the entire LAEA), personal paging service also is provided in various parts of the LAEA by four smaller RTUs.

Mobilfone, Inc.

Mobilfone is the largest single RTU, from point of view of revenues, in the United States. It has 35 employees. It has been an FCC radio common carrier (RCC) licensee since September 1947.

It has been providing radiotelephone utility service in the Los Angeles area ever since that time. It serves more than twice as many subscribers by radio in the LAEA than Pacific and General combined.^{11/}

Mobilfone was incorporated in 1960, but its predecessor company commenced paging in the Los Angeles area in 1954. It was authorized and directed to continue its RCC operations, including paging operations, by the RTU "Grandfather" Decision No. 62156, June 20, 1961.

| | | |
|--------------------------|------------|-------------------------------|
| ^{11/} Mobilfone | 5,739 | |
| Pacific) | 1,846 | (200 are on company vehicles) |
| General) | <u>378</u> | (84 are on company vehicles) |
| | 2,224 | |

From 1954 to 1968, it offered two types of paging. Both were voice paging systems requiring the services of a manual operator. One system broadcast code numbers only, frequently repeating broadcasts of the list or string of codes. This was a nonselective service and the only way a user would know whether he was being paged was to listen carefully to the string of codes to see if his number was included. The second system would broadcast address codes plus short voice messages. This system also was manual and non-selective and was a relatively expensive service to provide. It required the user to pay attention to the stream of pages being broadcast to recognize those which were directed to him.

In 1967, Mobilfone instituted selective signaling, tone-only paging, which is the same system now proposed to be introduced by Pacific and General. In the five years during which it has been giving this type of service, it has grown to its present size of 3,500 tone-only units in the LAEA. During most of this time, a manual operator has been required to take the desired number from the calling party and send the selective tones over the air. That is not nearly as attractive a service to the using public or to the public utility as the all-dial system now being placed in service and replacing the manual operator. It expects to add 500 pagers to its system during the last quarter of 1972.

Mobilfone's present tariffs provide for a \$20 tone-only paging charge, which includes paging service, pager unit rental, and maintenance.^{12/}

^{12/} It does have a provision that subscribers who own their own pager, or rent it from someone else, and who were on its service on or before December 3, 1970 can subscribe to service only at \$8 per month. Practically no one falls into that category.

Mobilfone, in addition to using the Motorola computer, also being used by the other RTUs on the guard band frequencies in the Los Angeles area, has its own computer for automating its paging and two-way radiotelephone traffic on other frequencies and for billing and other administrative uses.

According to Mobilfone, there are many optimistic statements about how fast the paging business is going to grow in the Los Angeles area. These statements seem to be based on the proposition that manufacturers can and will produce all of the high-speed paging receivers which common carriers want as fast as they want them. That is not the situation today, nor is it likely to be during 1973. Today, the controlling overall limitation on expansion of the RTU Los Angeles paging systems is the number of paging receivers which can be secured from manufacturers. According to Mobilfone, every paging receiver now in service in Los Angeles is obsolete. Paging receivers now being delivered by manufacturers to RTUs also are obsolete. For example, Motorola is today delivering receivers for use in Los Angeles subject to full replacement when their high-speed receiver is in full scale production.

The most modern, widely used signaling system for paging is a two-tone sequential system about five years old, which is relatively slow speed, and which does not utilize a radio frequency channel efficiently by today's "standards". The idea that one guard band radio channel devoted exclusively to paging can serve 100,000 or more paging subscribers in the LAEA is based upon use of high-speed signaling, of which there are two emerging types. The Motorola high-speed system just started in production is a five tone sequential system. Paging receivers for use on that system are being shipped in small quantities by Motorola, but it is estimated that it will be sometime late in 1973 before the production level on

the high speed unit is fully adequate to keep pace with demand. Meantime, Motorola is producing and renting low speed pagers to Los Angeles RTUs and is committed to replacing them with high speed receivers during 1973.

Cook is starting the manufacture of a high speed pager receiver, but production quantities are not yet available to RTUs. The Cook receiver is said to be able to operate either on the Motorola five tone signaling system or on the Martin Marietta digital signaling system, depending upon plug-in logic installed.

Martin Marietta has a high speed digital signaling pager receiver in limited production. That is the pager Pacific and General plan to use on their LAEA system.^{13/} Martin Marietta is just starting production on this new digital signaling system; there are a number of operating problems still to be worked out in the two cities where such systems have been installed; and production of the paging receiver units is well behind schedule.

Mobilfone now pages on three frequencies. Two of them are low-band paging frequencies, i.e., 43.22 and 43.58 MHz, and one of them is a new guard band frequency, 152.24 MHz. On these existing channels, using present computer facilities and present low speed pagers, it has a capacity for 8,800 tone-only pagers, which means it has a capacity to add 5,300 tone-only subscribers right now, if it could get the subscribers and the pagers. By the time high speed pagers are easily available, and if it is in a position to retire all its low speed equipment, it could serve 200,000 or more pagers with its present facilities. It could not initiate direct dial service as of October 1, 1972 due to the difficulty in obtaining lines from Pacific and to Pacific's inability to maintain installed lines between Mobilfone's office and the Motorola computer on a reliable basis.

^{13/} Pacific believes that this equipment is about as refined as it will be for some time.

Mobilfone advertises paging service using radio commercials on three radio stations, in the Yellow Pages, and by direct mail. Its paging business was growing in the last quarter of 1972 at a rate of about 165 units per month. This is in competition with three other wide-area RTUs and with four other small RTUs each of whom serve a part of the LAEA wide area.

Mobilfone usually places a new subscriber in service within five days or less from the time it receives his application. It runs a credit check and has a certain amount of administrative paper work to accomplish. Occasionally, there is a few days wait for new paging equipment to be received from the factory as scheduled.

Mobilfone has spent a great deal of money on guard band transmitters and control equipment, on its computer system, and on expanding its organization to take care of its growing business. All of its pagers, 4,000 of them, are essentially obsolete and must be replaced in the next few years. It must spend millions of dollars to purchase new pagers for expansion as well as replacement. It must be prepared within about three years to start into a new multi-channel, dial in, automated two-way system, if it is to bring to Los Angeles the advantages of modernization to the two-way field as it has to the paging business.

Industrial Communications Systems, Inc.

Homer N. Harris, president of Industrial, has been in the radiotelephone utility business in the Los Angeles area for 14 years.

Industrial was in the radio common carrier business also known as the RTU business prior to issuance of the Commission's RTU "Grandfather" Decision No. 62156, on June 20, 1961. In that decision Industrial was specifically named and was authorized and directed to continue its intrastate communications service at the rates and charges and under the conditions authorized by the Federal

Communications Commission (FCC) then in effect. Industrial was at that time authorized by the FCC to provide two-way and one-way radiotelephone service on frequencies then licensed and still licensed to Industrial.

On December 6, 1968 Industrial filed one-way paging rates with the Commission by its Advice Letter No. 14. The rates became effective on statutory notice and Industrial has, since early January 1969, offered and furnished personal paging service throughout the LAEA.

Industrial has 25 employees and is a very rapidly growing radiotelephone utility at this time. Paging is the largest part of its business. At the end of 1971, it was serving 355 paging units as compared to 247 two-way units. Sixty-nine percent of its public utility revenues in 1971 came from two-way services. It now has guard band exclusive paging service transmitters; now has direct dial, fully automated computer controlled, tone-only paging service available to the public; and expected to end the year 1972 with about 1,100 paging units, compared to around 300 two-way units. It anticipated that for the year 1972 more than half of its revenues will come from paging services. It has made large capital expenditures to provide the enlarged and improved paging service, and it has spent relatively large amounts of money to advertise the service.

Industrials' capacity for tone-only pagers on the 158.70 MHz guard band frequency is about 25,000--with each of the other seven LAEA RTUs having a similar capacity on guard band frequencies. Thus, the present capacity for the LAEA is 200,000 units.

Using radio broadcasting, direct mail advertising, and newspaper advertising as prime tools, Industrial has been able to book orders for paging service as fast as pagers can be delivered to it by manufacturers. Industrial, with its wide area coverage and with an aggressive sales campaign, should have been able to add 1,000 to 2,000 pagers during 1973 in competition with the other RTUs and at tariff rates which approximate present RTU rates for present areas of coverage. If Industrial was able to expand the personal paging service in that fashion, it would then be in a position to offer lower paging rates as well as to modernize, expand, and automate the two-way mobile radiotelephone service.

Intrastate Radiotelephone, Inc. of Los Angeles

Jack G. Hofeld, vice president and general manager of Intrastate, has been in the RTU business in the Los Angeles area for about ten years.

Intrastate has ten full-time employees engaged in radiotelephone public utility activities.

Intrastate was previously known as ITT Mobile Telephone, Inc. (ITT). Before that it was known as Farrell A. McKean, dba Business and Professional Telephone Exchange. McKean was authorized to do business in California as a radiotelephone utility by Decision No. 62165, the so-called RCC or RTU "Grandfather" decision. Therein McKean was "authorized and directed to continue its California intrastate public utility communications service at the rates and charges and under the conditions authorized by the FCC in effect on the effective date of that decision, which was June 20, 1961".

On June 20, 1961, McKean was authorized by the FCC to render two-way mobile telephone service and one-way signaling and one-way paging services over common carrier frequencies licensed to McKean for that purpose.

The property, rights, privileges, and obligations of McKean were transferred to ITT with the sanction of this Commission (Decision No. 64703, Application No. 44891). Thereafter, the property, rights, privileges, and obligations of ITT were transferred to Intrastate (Decision No. 72543 of June 6, 1967, Application No. 49269). By reason of these transfers, Intrastate now holds the same authorization as McKean did under the RTU "Grandfather" decision, but these rights have been reconfirmed and enlarged by the subsequent Commission decisions.

ITT was engaged in the personal paging business in Intrastate's present service area prior to the Commission's decision approving transfer of ITT's assets, rights, privileges, and obligations to Intrastate. Application No. 49269 specifically mentioned paging operations, and Decision No. 72543 included mandatory instructions to Intrastate to furnish the same services, including paging services. Commission authority for Intrastate to engage in the personal paging business within its contours is expressed and specified in Commission's decisions applicable to Intrastate.

The personal paging portion of Intrastate's RTU business is the largest portion of the business. At the end of 1971, it had 936 paging subscribers and 457 two-way subscribers. At that time, over 53 percent of its revenue came from paging subscribers.

At the present time, Intrastate serves approximately 1,000 paging subscribers with approximately 1,100 paging units. It has been providing paging service for more than five years. Of its present units, approximately 100 units are tone-only; the balance are tone and voice. It does not expect to see very much expansion in tone and voice paging because it does not have frequency space available to expand that business greatly. However, it expects to

have rapid growth in tone-only paging, especially now that it has the computer service on contract and has a guard band channel available for paging service as a primary, rather than a secondary service.

Intrastate can expand its tone-only paging service by 800 subscribers on its present two-way frequency 152.150 MHz before it starts to use the guard band paging channel. Since it now has air time available to handle the calls for 800 new subscribers automatically, it is working hard to get new customers. It expects to start using the guard band channel only after the first of 1973. In the meantime, that is during 1972, it hopes to add at least 300 tone-only, computer controlled, personal signaling receivers to its system. This will operate sub-audible on its existing two-way channel 152.150 MHz.

Intrastate worked hard for more than five years to secure the 1,000 paging subscribers it now has. It advertises its paging service in the Yellow Pages, by direct mail, in various periodicals, and on radio and TV. It has no held orders and is almost always able to provide service the same day it receives an application. Its system works well and it gets many new subscribers through the recommendations its present subscribers make to their friends.

Radio Page Communications, Inc.

Radio Page was the first to introduce tone-only personal paging in the Los Angeles area. It did so in 1964 and has been providing such service under duly filed PUC tariffs since that time.

The system it installed in 1964 was an AM system operating at 35 MHz paging frequencies. The AM, low band system does not give the quality of service possible with an FM system operating in the 150 MHz band. Therefore, in June 1972 Radio Page installed the FM 152 MHz band tone-only system service on a guard band frequency.

The rate for the 35 MHz AM system is \$7 per month for paging service plus \$10.50 for pager rental and maintenance. The rate for the 152 MHz FM system is \$10 per month for unlimited calling service and \$10 per month for rental and maintenance of a paging unit. Subscribers are permitted to secure pagers from nonutility sources, if they so choose.

Present operations are carried on in accordance with certificates of convenience and necessity issued by this Commission in Decisions Nos. 72165 and 75080 (Application No. 47772) and Decision No. 74370 (Application No. 49926).

Radio Page is filing an application with the FCC to convert the low-band AM system to FM operation. The AM system has a capacity of 970 units and it is full. An FM system on the 35 MHz frequency would enable it to serve 6,700 units with slow speed pagers, or up to 100,000 if it went to high speed pagers and terminals.

Radio Page is not in the two-way radiotelephone business. It is in the paging business only, and has been for more than eight years. It has no other revenues whatsoever to fall back on.

Radio Page advertises its paging services in newspapers, the Yellow Pages, and in handout and mail out brochures. On the basis of this sort of advertising and the present competitive situation, it expected to have added about 1,000 units to its system during the year 1972. It hoped to add between one and two thousand units in 1973, assuming a similar competitive situation existed.

Radio Page has established an elaborate agency arrangement whereby its customers can get batteries, exchange pagers, rent pagers, etc., at convenient locations through the IAEA.

(C) Adequacy of the Proposed Service

Defendants, Pacific and General, are wire line common carriers. Pacific has long provided public utility communications services, including two-way mobile radio service, in the LAEA. According to Pacific, in the years immediately prior to the May 8, 1968 FCC guard band decision (12 FCC 2d 841), there were no non-interfering or unused frequencies^{14/} available to wire line carriers in the LAEA on which one-way paging service could effectively be rendered. Pacific's proposed tariffs would offer one-way signaling service in the LAEA by the use of one of the guard band frequencies allocated to wire line carriers by the FCC in the guard band decision.

In accordance with the guard band decision, Pacific on May 5, 1970, and General on June 1, 1970, applied to the FCC for construction permits to build radio transmitters for their one-way tone signaling services in the LAEA. On November 1, 1971, the FCC granted construction permits to both Pacific and General to build such radio transmitters. These permits were granted for operation of the radio transmitters involved, on the same frequency, with the requirement that the transmitters "be operated in coordination" with one another. Pacific's Station License indicates also that the FCC

^{14/} The record shows that Pacific first offered one-way signaling service by means of radio in 1946. The first use was experimental and related to vehicular use only. The FCC grant to Pacific was on an experimental basis authorizing stations to use the frequencies in the 35 to 49 MHz frequency band (Pacific made no attempt to provide signaling service on its existing two-way channels).

In 1949 the service was changed from experimental to a general offering or commonly called regular service. Pacific has had one-way signaling service in its tariffs continuously from 1949 to the present time (limited use since 1968 except in San Diego).

requires coordinated operation of the Pacific station with the General station so as to eliminate co-channel interference. Pacific's primary purpose in jointly using one of the two guard band frequencies with General was to preserve the second guard band frequency for subsequent use.

On June 23, 1972, General and Pacific each applied to the FCC for a radio license to operate the transmitters each had built pursuant to the construction permits issued on November 1, 1971. On June 21, 1972, ICS requested the FCC to withhold any action on the radio license applications, and on June 26, 1972, the complaint in Case No. 9395 was filed.

The area proposed to be served consists primarily of the Los Angeles basin area which has an estimated population of seven million people. It is estimated that there will be a demand for 5,000 units by the end of the first year of operation.

Field strength surveys which have been conducted indicate that a multiple transmitter system can serve best to obtain satisfactory coverage of the entire Los Angeles and surrounding areas, considering the types of buildings to be penetrated in each section of the area. The frequency of the proposed transmitters is internally controlled in such a way that no interfering beat tones are expected to occur.

The proposed area wide system will have an initial capacity (including General) for handling 10,000 pocket receivers and could be equipped in the future for an ultimate capacity of 20,000 pocket receivers.

In response to provisions of Section 21.502(d)(2) of the FCC's Rules and Regulations, the proposed signaling service is unable to be connected with the existing mobile telephone base station facilities. Heavy traffic on the existing base station would interfere with proper operation of the personal paging system, because expected heavy traffic or the personal paging system would coincide in time with the radio telephone traffic, thus degrading service of both.

(D) Quality of the Proposed Service

There is no question but that the service, if installed, could render satisfactory service for it is nothing more than a duplicate of the service now being furnished by complainants.

(E) Revenue Requirements and Rates

Revenue Requirements

During the course of this proceeding, Pacific requested the examiner to order the complainant RTUs to submit results of operation studies.^{15/} The examiner granted the request for the studies and, in addition, required Pacific and General to submit results of operation studies for their paging operations. The results of operations studies were to be mailed simultaneously by the parties on October 1, 1973, with hearings being scheduled for cross-examination Monday and Tuesday of each week for five weeks, commencing October 29, 1973.

^{15/} Results of operations studies showing separately the results for tone-only paging operations within their respective operating areas.

The complainant RTUs had never before been required to prepare studies of this type. They therefore employed Mr. Ernest W. Watson, who is well experienced in such matters to supervise and coordinate the preparation of the exhibits. It was initially anticipated by Mr. Watson that he would be able to complete the necessary work to permit distribution of the results of operations studies on Monday, October 1st, as agreed and ordered.

As Mr. Watson proceeded with his work, he found that the RTUs did not have existing information of work time coefficients for operators which permit the necessary prorations of expenses to be developed. Therefore, the carriers had to develop work coefficients as well as the results of operations studies and the progress on these studies was not as rapid as he had anticipated.

The Commission therefore reset the date for simultaneous distribution of results of operations studies to Thursday, November 1, 1973, and reset the date for recommencement of hearings to November 26, 1973.

Mr. Watson's testimony regarding his studies was as follows:

- "Q. Did you prepare studies for the purpose of showing the cost of furnishing paging service for the four radio-telephone utilities involved in Case No. 9395?
- "A. Yes and copies of these studies were mailed to the interested parties in this Case on November 1, 1973. On November 3, 1973 a complete new set of studies was mailed to reflect certain corrections which were of no consequence in the end results.
- "Q. In this work what was the basic principle followed by you?
- "A. To the extent feasible I used the principles of full allocation of costs except where some departure was reasonable and proper.
- "Q. What do you mean by full allocation?
- "A. By this I mean that for a minute of use of a facility or of an employee on behalf of a specific service the cost assigned would be in direct proportion to the relationship of that specific usage to the total usage. This is the principle used by independent telephone companies in determining the costs assignable to the use of facilities and of people on behalf of interchanged toll business.
- "Q. Were these studies made by you?
- "A. Yes they were. In each case I had the assistance of personnel of the utility. I also worked very closely with the accountants of Mobilfone and Industrial in collaborating on the use of allocation factors. Personnel of the utilities did the time studies for operator-time and air-time allocations under instructions I had prepared.
- "Q. Were the expense and investment amounts used by you those as carried on the books and records of the utilities?
- "A. Each utility supplied me with statements of such accounts. In the cases of Radio Page, Mobilfone and Industrial I combined the basic amounts of expense and investment with those of affiliate companies in order to clearly show the basic costs assignable to paging service without becoming involved in intercompany transactions.

- "Q. Are amounts other than those on the books of the utility reflected in any of the studies?
- "A. Yes. In the Industrial study, at my suggestion, adjustments are shown in the plant account on sheets D and G so that the exhibit might more clearly reflect the historical costs of the plant and of the business.
- "Q. Were your studies for the purpose of determining the total cost of furnishing paging service?
- "A. Yes. I developed the full cost of providing paging service, not including the receiver unit.
- "Q. Why did you exclude the receiver unit in determining the cost of the service?
- "A. I did this for two reasons. The first is that the customer has the option of whether or not he rents a receiver from the utility which provides the service. Secondly, each one of the four utilities had different practices about the provision of receivers. These varied from a utility which encouraged customers to subscribe for the receiver along with the service to the case where the utility preferred to provide only the service and to make arrangements whereby the customer to service might secure the receiver from another source which might be an affiliate or a completely unrelated source.
- "Q. Please explain the contents of the exhibits.
- "A. Each exhibit starts with a text which describes the methods used starting with the amounts of expense and plant as reported by the utility extending through the allocation process in the determination of the amounts assigned to paging service, including the receivers, then the further allocation to determine the amounts assigned to the paging service segment. This text includes the description of the processes used to develop the allocation factors and it shows the factors which were used.
- "The text is followed by Sheet A which shows the financial results of the utility from the paging service segment of its business.

"Following Sheet A are several sheets of working papers which furnish the supporting detail for the amounts which are summarized as Sheet A. These working papers show the results of the computations made in the process by which the amounts assignable to paging service were derived. The working papers from which the expenses assignable to paging service were derived start with the total amounts in the expense accounts on the left and the final allocation amounts on the right.

"The working papers from which the plant assignable to paging service were developed start with the total amounts in the accounts and show the various steps by which the amounts assignable to paging service were developed.

"Q. Do you wish to expand upon the text which is a part of each exhibit?

"A. Yes. I do in reference to the Industrial Exhibit. In this exhibit Sheet B column (6) is headed 'Non-Utility Operations'. The material in this column relates to the business of Peak-Rental which sells or rents paging receivers and two-way mobile units to ICS customers and to other persons and maintains the radiotelephone system of ICS.

"In reference to account 600.1 the text does not show that of the total amount there was a 30% assignment to ICS. This factor was based upon a determination that the personnel involved in maintenance work for ICS and PR devoted about 30% of their time on behalf of ICS.

"The amount shown for account 601.2 column (7) is ICS rental payment to PR for the use of that part of the radiotelephone system which is owned by PR.

"The amount shown for account 604.4, interconnection chargers, in column (6) is for toll and other calls made by and which are billed to customers of ICS.

"Q. Does the information on Sheet A for each Utility correctly reflect the financial results of the Utility in its paging service operations for the years indicated?

"A. Yes. It does in my opinion."

The information on Sheet A for each utility is shown below:

MOBILPHONE, INC.

Results of Operations
Of the
Paging Service Segment
Of the Business
Years 1971 and 1972
(Revised)

| | <u>Year 1971</u> | <u>Year 1972</u> |
|-----------------------------------|----------------------------------|----------------------------------|
| Revenue | \$252,036 | \$340,529(3) 309,909 |
| Expenses | <u>281,195(1)</u> <u>262,268</u> | <u>332,754(2)</u> <u>317,762</u> |
| Net Operating Revenue (Loss) | (29,159) (10,232) | 7,775(3) (7,853) |
| Radiotelephone Plant Net | 86,155 | 109,837 |
| Goodwill and Research Development | 103,095 | 103,095 |

Note. Due to the absence of substantial net operating revenue the net has not been related to any base or related to ratios such as operating ratio.

- (1) Remove amount not salary in 1971 \$ (6,028)
Change telephone service allocation factor \$(12,899)
- (2) Remove amount not salary in 1972 \$ (4,763)
Change telephone service allocation factor \$(10,229)
- (3) Remove from revenue the following items which had been erroneously included:

| | |
|------------------|--------------|
| Battery sales | \$ 25,052 |
| Parts sales | 1,500 |
| Delivery service | <u>4,068</u> |
| | \$ 30,620 |

INDUSTRIAL COMMUNICATIONS SYSTEMS, INC.

Results of Operations
For Paging Segment of the Business
Years 1971 & 1972

| | <u>Year 1971</u> | <u>Year 1972</u> |
|-------------------------------------|------------------|------------------|
| <u>Revenue</u> | | |
| Tone-Only | \$ 2,480 | \$ 37,880 |
| Tone/Voice | <u>25,947</u> | <u>80,320</u> |
| Total Revenue | 28,377 | 118,200 |
| <u>Expenses</u> | | |
| Tone-Only | 4,537 | 47,013 |
| Tone/Voice | <u>27,056</u> | <u>65,489</u> |
| Total Expenses | 31,593 | 112,502 |
| Revenue in Excess of Expense (Loss) | (3,216) | 5,698 |
| Radiotelephone Plant, Net | | |
| ICS Owned is as of 12/31/72 | | |
| PR Owned is as of 10/31/72 | | |
| Tone-Only | 7,306 | 47,992 |
| Tone/Voice | <u>59,476</u> | <u>78,462</u> |
| Total Radiotel Plant | 66,782 | 126,454 |
| <u>Materials & Supplies</u> | | |
| Tone-Only | 188 | 1,053 |
| Tone/Voice | <u>1,579</u> | <u>1,767</u> |
| Total M&S | 1,767 | 2,820 |
| Working Cash Requirement | 1,170 | 3,558 |
| Total Base, Lines 15, 19, & 20 | 69,719 | 132,832 |
| Ratio of Line 9 to Line 21 | Negative | 4.29% |

INTRASTATE RADIO TELEPHONE, INC. OF L.A.

Results of Operations
For the
Paging Service Segment of the Business
Years 1971 and 1972

| | <u>Year 1971</u> | <u>Year 1972</u> |
|--|------------------|------------------|
| Revenue | \$86,445 | \$113,998 |
| Expenses | <u>97,084</u> | <u>127,743</u> |
| Net Operating Revenue (Loss) | (10,639) | (13,745) |
| <u>Net Radiotelephone Plant Assigned to Paging</u> | | |
| Dec. 31, 1970 | \$61,890 | |
| Dec. 31, 1971 | 55,454 | |
| Dec. 31, 1972 | 49,308 | |
| Average for 1971 | 58,672 | |
| Average for 1972 | | 52,381 |

RADIO PAGE COMMUNICATIONS, INC.

Results of Operations of the
Radio Paging Service Segment
Of the Business
Year 1972

(See text regarding 1971)

| | |
|--------------------|----------------|
| Revenue | \$105,293 |
| Expenses | <u>128,252</u> |
| Net Operating Loss | \$ 22,959 |

The results being negative, they were not related to any base or tested on any "operating ratio" base.

Pacific and General presented their own results of operations study. Pacific's results are shown below:

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY

Results of Operation Study
San Diego Bellboy System
Year 1971

| | |
|---------------------------------------|---------------|
| Total Operating Revenues | \$ 79,130 |
| Total Expenses & Taxes | <u>78,755</u> |
| Balance Net Revenues | \$ 375 |
| Average Net Plant and Working Capital | \$148,170 |
| Rate of Return | .25% |

General's results are shown in the following table:

GENERAL TELEPHONE COMPANY OF CALIFORNIA

City-wide Personal Signaling Service
Results of Operations

| <u>Description</u> | <u>1971</u> | | | <u>1972</u> | | | <u>Pomona- Ontario</u> |
|---|-------------------------------|--------------------------|---------------|-------------------------------|--------------------------|---------------|----------------------------|
| | <u>Santa Maria Lompoc</u> | <u>Santa Barbara</u> | <u>Oxnard</u> | <u>Santa Maria Lompoc</u> | <u>Santa Barbara</u> | <u>Oxnard</u> | |
| Operating Revenues | \$ 16,149 | \$ 58,399 | \$ 27,016 | \$ 18,383 | \$ 70,325 | \$ 34,669 | \$ 11,234 |
| <u>Operating Expenses</u> | | | | | | | |
| Maintenance | \$ 7,652 | \$ 7,821 | \$ 8,994 | \$ 7,779 | \$ 8,492 | \$ 9,149 | \$ 7,912 |
| Commercial | 445 | 1,698 | 816 | 638 | 2,338 | 1,159 | 323 |
| General Ofc. Salaries & Expenses | 1,082 | 1,525 | 1,324 | 1,147 | 1,821 | 1,468 | 1,097 |
| Other General Expenses | 957 | 1,075 | 1,141 | 987 | 1,211 | 1,188 | 968 |
| Depreciation Expense | 8,216 | 15,489 | 10,891 | 8,732 | 18,108 | 12,347 | 9,478 |
| Taxes Other Than Income | 3,733 | 5,048 | 4,469 | 3,871 | 5,740 | 4,802 | 3,858 |
| State Corp. Franchise Tax | (866) | 1,901 | (443) | (773) | 2,462 | (4) | (1,453) |
| Federal Income Tax | (4,183) | 9,311 | (2,111) | (3,658) | 12,161 | 117 | (6,945) |
| Total Expenses and Taxes | \$ 17,036 | \$ 43,868 | \$ 25,081 | \$ 18,723 | \$ 52,333 | \$ 30,226 | \$ 15,238 |
| Net Operating Revenues | \$ (887) | \$ 14,531 | \$ 1,935 | \$ (340) | \$ 17,992 | \$ 4,443 | \$ (4,004) |
| <u>Average Net Plant and Working Cash</u> | | | | | | | |
| Telephone Plant In Service | \$121,201 | \$166,072 | \$144,945 | \$125,713 | \$188,919 | \$156,167 | \$125,343 |
| Property Held for Future Use | 285 | 392 | 342 | 296 | 446 | 368 | 295 |
| Depreciation Reserve | (24,101) | (38,768) | (30,154) | (25,292) | (44,794) | (33,378) | (26,168) |
| Materials and Supplies | 383 | 96 | 97 | 383 | 96 | 97 | 21 |
| Deferred Tax Liab. - Accel. Depr. | (335) | (459) | (400) | (1,157) | (1,738) | (1,437) | (1,153) |
| Working Cash | (30) | (35) | (36) | (30) | (40) | (37) | (30) |
| Total Rate Base | \$ 97,403 | \$127,298 | \$114,794 | \$ 99,913 | \$142,889 | \$121,780 | \$ 98,308 |
| Rate of Return | (.91)% | 11.41% | 1.69% | (.34)% | 12.59% | 3.65% | (4.07)% |
| | | | (Red Figure) | | | | |

C- 9395 et al. 1tc

*

Rates

Pacific and General propose to charge a monthly service rate of \$5.50 per month, a single-number receiver rate of \$12.75 per month, and two number-receiver rate of \$13.50 per month. Pacific and General's proposed rates are based on costs developed in accordance with the utilities' GE 100 forms. The estimated revenues, according to the staff, are based on a suspect "market study".

Staff witness Popenoe analyzed Pacific and General's presentation. He also made an independent estimate of expected revenue customers based on past experience in the LAEA as tested by information from other similar systems, and applied various cost analysis factors to the proposed service.

Mr. Popenoe recommended a service rate of \$8 per month, a single-number receiver equipment rate of \$12.50 per month, a two-number receiver equipment rate of \$13.25 per month, and a service establishment charge of \$20. If the Commission determines no service establishment charge should be adopted, Mr. Popenoe recommends the equipment rate be increased to \$13 per month and \$13.75, respectively.

Pacific and General's proposed service rate of \$5.50 per month is based on a customer estimate of 24,000 by 1976. Surprisingly, according to the staff, both Pacific and General arrived at the same figure based on their own independent "market study".

Mr. Popenoe pointed out that the term "study" is inappropriately used by defendants. Their estimates were not based on any methodology but rather represent pure judgment.

The "study" according to Mr. Popenoe is completely unreliable for it is defective in two very basic areas. In determining that there was a potential for 24,000 additional paying units in the LAEA by the fifth year of operation, there was no consideration given at all to any of that potential market being acquired by the

LAEA RTU's. Secondly, Pacific and General did not consider the historical growth of paging service in the LAEA.

Pacific's estimates were based mainly on the ratio of paging units to business main stations in Washington, D.C., and Seattle, Washington. As Mr. Popenoe pointed out, it is not clear whether the systems, equipment, and services are comparable. Moreover, Pacific's witness was not able to compare the service areas of those cities with the LAEA, nor the nature and impact of possible competition.

Mr. Popenoe's study, on the other hand, relied on known comparable factors--i.e., existing RTU's providing similar service in the LAEA as well as similar competitive situations in California subject to regulation by this Commission. Mr. Popenoe estimated that, based on average prior growth experience in the LAEA, we can expect 24,000 pagers in service by the end of year 1976. He further estimated, based on similar^{15/} competitive situations in California, that 50 percent of the market would choose the large landline companies and 50 percent the smaller RTU's.

Based on his development of the number of customers, Mr. Popenoe recommends a service rate of \$8 per month. This would recover defendants' costs and would also be competitive with existing rates of the complainants. The major reason for the difference between Mr. Popenoe's \$8 per month and defendants' \$5.50 per month is due to the estimates in average number of stations, discussed above. Inasmuch as defendants' estimates of those stations are clearly overstated, according to Mr. Popenoe a rate of \$5.50 would be noncompensatory.

^{15/} The record shows that there are no comparable competitive situations in California.

According to the staff, in addition to being based on a more sound financial analysis, Mr. Popenoe's recommended rate gives consideration to the existing rates of LAEA RTUs. Apparently, Pacific and General gave no consideration at all to the service rates for comparable service in the same, much less the adjacent, territory. (Public Utilities Code Section 728.) Consideration was only given to a comparison of the total service and equipment rate. That comparison is obviously meaningless. According to Mr. Popenoe a \$5.50 per month service rate by defendants, if authorized, could only lead to a hastened demise of complainants' paging services to the detriment of their customers and the general public.

The staff asserts that Mr. Popenoe's recommended rate for equipment does not differ greatly from that proposed by defendants. After correcting General's computations, Mr. Popenoe finds the appropriate rate would be \$12.50. While Pacific's development would support a slightly lower rate Mr. Popenoe recommends that Pacific's rates be rounded up to the next higher 25 cent multiple to match General's rates.

Mr. Popenoe also recommends a service establishment charge of \$20. Pacific and General oppose such charge. A service establishment charge is based on the fact that costs associated with establishment and discontinuance of service should be borne by the incoming subscriber. If these costs are included in monthly rates, long-term subscribers would be paying the costs of establishing and discontinuing short-term customers. Moreover, a nonrecurring charge encourages long-term usage and discourages whimsy, according to Mr. Popenoe.

According to Mobilfone, Pacific's and General's proposed service offers nothing to the LAEA public which is not now available from Mobilfone, except a cheaper rate. The cheaper rate is based upon their overly optimistic estimate that 7,000 pagers from paying subscribers will be in service at the end of one year, an overly optimistic estimate that pagers will last for six years on an average, operations at a noncompensatory rate for the first year, General and Pacific forming a combination of franchised territories to compete with RTUs by giving away landline telephone service to get subscribers to use their service instead of the RTUs, and generally subsidizing their entry into the paging business using all of the resources of their large monopoly. The result, if the wire line companies were permitted to put into effect their various proposals, would be to strip Mobilfone of its ability to continue to grow and improve public service.

Another problem with Pacific and General's proposals, according to Mobilfone, is their failure to protect the utility sufficiently against loss or damage to the paging receiver. These receivers are about half the size of a pack of cigarettes, cost eight times as much as a home telephone instrument, and are not tied down like a telephone station is. Before a utility can afford to hand one of these expensive gadgets to a customer for him to put in his pocket and take out the door, the utility should have a contract of absolute responsibility from the customer, and should have enough of a deposit from the customer that he will be encouraged to bring the receiver back.

According to Industrial, the Commission should understand that the "service rate" is the important rate, not some mythical "overall cost". Industrial claims that Pacific's representatives told it that the overall cost of their paging service really will be \$20.50 consisting of \$5.50 for service, \$12.75 for a pocket receiver, and \$2.25 for a touch tone pad. But while those figures may add up to \$20.50, truthfully the cost of Bellboy paging service will not be \$20.50.

First, a touch tone pad may not be needed at all, and is not needed in exchanges where touch tone instruments are normal equipment. In any event, one touch tone pad can send calls to any number of pagers, so the figure would not add up in an "overall cost of service" per unit calculation. Then, of course, the touch tone capability also is needed to utilize the RTU paging system, so if RTU and wire line company areas are being compared, the touch tone pad should be left out of the calculations completely, or alternatively, should be added to both.

The second consideration according to Industrial is whether the \$5.50 common carrier service rate and the \$12.75 pocket receiver rental rate should be added so it could be reasoned that "Bellboy" service overall cost is really \$18.25. That is not a fair and truthful statement, according to Industrial, because the public is given a choice in the proposed tariffs to rent the pocket receiver from the wire line telephone company or to buy it or lease it from someone else. Because of the unusual rate structure, "Bellboy" users will be inclined to rent or purchase the pocket receivers elsewhere, and take the service only from the wire line company. Taking service only from the common carrier is a very prevalent practice in the paging field today.

Pricing pocket pager rental rates by nonregulated equipment suppliers under the prices offered by utilities, is a big business. All of the major equipment manufacturers offer their pagers for sale directly to users. Many RTUs have arranged with equipment leasing companies to facilitate the purchase or lease of equipment directly by the user. In the end, it is only the "service" portion of the overall cost that the PUC regulates, and it is the "service rate" that the RTU competes with.

Industrial claims that pagers to function on the proposed wire line carrier LAEA paging system will be available for rental from sources other than the wire line telephone companies at rates of \$10 or less per month within six months of the time those companies are permitted to make effective a \$5.50 service rate and a \$12.75 pager rental. The end result will be an effective "overall cost of service per unit" of less than \$15.50.

Intrastate requires each of its paging customers to make a deposit of \$50 on each paging receiver. This is only about 25 percent of the cost of a receiver, and it is a reasonable requirement which helps it retain control of its property, and a requirement to which its subscribers do not object. It holds the user strictly responsible for the return of the pager in good condition, which cuts down financial losses. Intrastate feels that the wire line companies should be required also to require such deposits and to hold customers absolutely responsible for damage to the unit, or its loss.

A factor which worries Radio Page, in addition to the free wire line service and unrealistic rates, is the matter of deposits on pagers. These 4-ounce compact pocket units worth \$200 each are a tremendous investment, and it is absolutely necessary for a utility to assure itself against loss of such units. Radio Page demands and receives a \$50 deposit for each pager and holds the user responsible for any injury to the receiver. There is no public resistance to these terms. Unless the wire line companies are required to follow similar procedures, according to Radio Page, they can "buy customers" by handing out these expensive items without security, and by absorbing the costs of repair or replacement when a unit is damaged or destroyed or not returned.

(F) Technical Feasibility of the Proposed System

According to Pacific's witness, in 1967, when the FCC guard band decision appeared imminent, he was assigned the responsibility to produce near-term and long-range plans to provide signaling service. Numerous alternative system concepts and configurations were studied and plans were developed. Since implementation of these plans required hardware and devices not available on the world market, he was assigned to oversee and coordinate efforts to encourage development of the needed devices and to engineer the system. Subsequent decisions directed that project management, through placing the system in service, also be his responsibility.

The wire line carriers waited until 1972 to offer personal signaling service in the Los Angeles area because prior to the FCC guard band decision in 1968, there were no noninterfering or unused frequencies available to wire line carriers in the Los Angeles area on which this service could be rendered. Thereafter, until November 1, 1971, and at the request of the radiotelephone utilities, the FCC required the wire line carriers to defer utilization of the

guard band frequencies to enable the radiotelephone utilities to make arrangements to offer guard band service concurrently with the wire line carriers by the FCC in its guard band decision. A total of four radio frequencies were allocated for assignment to common carriers. Two were assigned for exclusive use by the radiotelephone utilities and two were set aside for wire line carrier use. Three other frequencies were assigned for special and safety purposes.

Only one frequency allocated for the wire line carriers is utilized by General and Pacific in the LAEA tone signaling system because in 1967 when the FCC decision appeared imminent, he took a thorough look at the alternative methods of utilizing these new frequencies and concluded it would be wasteful for each company to take a frequency and build duplicate systems in the same geographic area since the technology was available for multiple carriers to provide service on one frequency and thereby to preserve the other frequency for adjacent geography. Later he discovered that General's engineers had independently gone through this same soul-searching, and arrived at a similar conclusion. As a consequence, Pacific met with General, beginning in late 1967, to explore the technical practicability of frequency sharing. They thought their way through the frequency sharing concepts and also identified the weak link. The weak link was then the available equipment for use between the landline telephone network and the radio transmitters. It was too limited in capacity, wasteful of telephone numbers, and expensive. Consequently, a decision was made to apply current computer technology to this intermediate equipment to accrue the advantages of superior service and lower cost, and to realize the efficiencies of automation by removing human operations from the process. They developed a bid specification. The winning bidder was the Canadian firm, Omicron Data Systems Limited. That was the beginning of a

close working relationship between Pacific, General, and Omicron, the result of which was a machine superior to the original specifications.

No other equipment development was required to complete a total working system.

The other major equipment items of the system are:

1. The telephone network itself.
2. The radio transmitters which are standard commercial units.
3. The radio receivers or pagers. Some companies had developed new state-of-the-art pagers for the 150 MHz frequencies. Each one was a very sophisticated, well manufactured, appealing package. However, the manner in which each accomplished its paging function was so different that Pacific's system had to be tailored to a given receiver¹⁷ to obtain lowest cost and system optimization.

The system consists of an input network of foreign exchange and local lines connecting the message telephone network, the Omicron computer terminal in downtown Los Angeles, and the radio transmitters which broadcast the signal messages. The computer terminal, which contains two computers for full redundancy, has a present memory capacity of 100,000 receiver numbers and an input capability of 10,200 signal messages per hour. This existing capacity will serve about 44,000 receivers. The computer terminal automatically evaluates and reports the status of system components by means of teletype machines. It also performs a continuous bookkeeping function, and every hour points out standard data for traffic engineering purposes. In order to gain access to the system, a customer dials, from any telephone, one of eleven normal 7-digit telephone numbers to reach the computer terminal. When the terminal,

¹⁷/ Martin-Marietta.

in effect, answers the call the customer provides it with five additional digits, which are distinctive to the receiver that the customer wishes to contact. These last five digits must be inputted by a push button multifrequency dialer (TOUCHE-TONE pad).^{18/} This is much faster than a rotary dial so relatively little computer terminal time is used in obtaining the receiver number. The receiver selected for the LAEA system is manufactured by the Martin-Marietta Corporation. It is one of only two production pagers in the world today that uses digital instead of analog data.^{19/} It is claimed that this receiver has a number of advantages for the user and for the carrier. There is circuitry in each receiver that continuously tests the accuracy of the incoming information. If the accuracy is not of a sufficiently high value, the receiver will not accept the series of numbers immediately following. The result is that each receiver number can be transmitted as many as eight times, using several transmitters. The receiver, therefore, has the ability and opportunity to select a strong, accurate radio signal. Another advantageous feature of the Martin Marietta receiver is its use of a system identification code, which is regularly interspersed in the information stream continuously broadcast by the radio transmitters. The identification code assigned to the LAEA system is unique - it is not assigned elsewhere in the nation. As an example, an individual with service in Pittsburgh, using a Martin Marietta receiver, cannot use it with the Los Angeles system, since that pager will not receive its own system identification code and its

^{18/} (R) Registered trademark.

^{19/} Digital data - data represented in discrete, discontinuous form, as contrasted with analog data represented in continuous form. Digital data are usually represented by seats of coded characters (e.g., numbers, signs, symbols, etc.).

nonlogic circuits will therefore become electrically dormant. This same arrangement makes it impossible to use a Los Angeles receiver elsewhere and can be expected to reduce or eliminate receiver losses. This dormancy feature is also used in conjunction with the other circuitry to greatly extend battery life in the receiver. A claimed advantage of the LAEA system is the multiple transmitter arrangement located within the Los Angeles area itself, which is superior to systems using one or two high elevation transmitters. To realize its potential, paging service must be able to penetrate the various big-building portions of the serving area with a strong, accurate radio signal. It is generally accepted that 20 to 40 dbu of signal will be expended in penetrating large buildings. In non-technical terms this means that over 99 percent of the signal available outside of the building will be consumed just in the penetration process. Transmitters should be within about 3 miles of heavy-structure buildings for reliable performance. Additionally, there are many ranges of hills in the Los Angeles area which create radio shadows without usable signal strength on the present one and two transmitter systems. These problems are mitigated by the transmitter arrangement in the LAEA system and the system as designed should furnish adequate service throughout the LAEA.

(G) Technical Competence of the Operator
Pacific

Pacific is one of 21 telephone operating subsidiaries of the American Telephone and Telegraph Company (American). American also owns Western Electric Company which manufactures and installs equipment for the operating companies. American and Western Electric each owns 50 percent of the outstanding capital stock of the Bell Telephone Laboratories which is a research and development

organization. The operating companies, Western Electric, and the Bell Telephone Laboratories, together with American, form the Bell System.

As of December 31, 1972 American owned 89.72 percent of the voting securities of Pacific. The total voting power of all Pacific stockholders on that date was approximately 157 million votes, of which American had approximately 141 million votes.

Pacific operates throughout California. It is estimated that approximately 93,000 square miles of California's total area of 157,000 square miles are supplied with telephone service, and Pacific renders service in about 50,000 square miles of this area, with exchanges in 52 of the 58 counties in the State. The only counties not served by Pacific are: Mono, Alpine, Lassen, Modoc, Del Norte, and Santa Barbara. With approximately 11.3 million telephones out of the State with a total of about 14.3 million telephones at the end of 1972, it was estimated that Pacific served approximately 80 percent of the total population of the State. Pacific presently provides paging service in the San Diego area using the Bell Systems' automated 150 MHz FM paging, which was first offered April 10, 1972 in Pittsburgh, Pennsylvania, where the Bell Telephone Company of Pennsylvania installed and is operating such a system using Martin Marietta equipment of the type proposed to be used in Los Angeles by Pacific and General.

Pacific testified that it intended to purchase its Martin Marietta equipment from Western Electric at a price higher per receiver than it could purchase the identical receiver directly from Martin Marietta.

General

General is a member of the General System, of which the domestic telephone operating subsidiaries comprise the largest independent (non-Bell) telephone system in the United States. General Telephone and Electronics Corporation (GT&E) is the parent company with communications, manufacturing, and research subsidiaries.

General, which is by far GT&E's largest telephone subsidiary, operates in approximately a 10,000 square mile area in Central and Southern California, serving 250 communities in portions of 16 counties.

At present, General provides citywide personal signaling service in the following telephone exchanges: Lompoc, Oxnard, Santa Barbara, Santa Maria, and Ontario-Pomona.

General testified that it was going to purchase pagers for its proposed LAEA system directly from Martin Marietta instead of from one of its associated companies.

There is no doubt that Pacific and General could provide adequate service.

(H) Financial Integrity of the Operator

There can be no doubt that both Pacific and General could support the financial requirements of the proposed system.

We turn now to the issues as stated at the prehearing conference.

Issue No. 1

Are the parties authorized to provide present and proposed personal signaling or paging service subject only to tariff sheets being accepted for filing and being permitted to go into effect?

Among the many documents filed in these proceedings was a petition dated September 28, 1973 by which Pacific sought interim authority to institute the proposed signaling service pending final determination by the Commission. Complainants replied on November 23, 1973.^{20/} One of the major issues in these proceedings, whether Pacific (and General) require additional authority pursuant to Sections 1001 and/or 1002, was thoroughly argued by Pacific and complainants in said filings.^{21/}

According to the staff, in order to facilitate the Commission's consideration of this important issue, its opening brief analyzed the various arguments by reference to Pacific's petition and complainants' reply. It is the staff's conclusion that:

"Pacific and General hold no so-called statewide franchise rights which exempt them from the certification requirements of Sections 1001 and 1002.

"At pages 14-18 of its petition, Pacific argues that it needs no certification because it has a franchise to furnish telephone service on a statewide basis. Apparently Pacific claims it may provide telephone service of any kind whether by wireline, tone, signal, radio link, or etc., anywhere within California. The staff disagrees.

^{20/} General filed nothing. Pacific's petition was not acted upon by the Commission.

^{21/} Pacific's petition and supporting attachments consists of 48 pages. Complainants' reply consist of 49 pages of argument and 15 pages of attachments.

"Pacific cites as the leading authority for its position the decision in Postal Tel. Cable Co. v. R.R. Comm. 200 Cal.463 (1927). While Pacific accurately quotes from the decision, the language of the court must be considered in light of the facts of the case. Petitioner, Postal-Tel Cable Co. was continuing an orderly expansion of its telegraph service by construction of a line from Niland to Calexico. There were no protestants. There was no apparent encroachment on the service area of a competing utility. What the court essentially held was that Postal Tel. Co. Inc. did not need to acquire additional authority each time it constructed a new line.

"If Pacific's contention were correct, no RTU and, indeed, no landline utility in this state could be assured of protection from ruinous competition. General, because of the same 'statewide franchise rights' of its predecessors would merely have to construct additional lines to begin serving the entire LAEA and/or the entire state. Continental Telephone Co. could do the same. The chaos such expansion would cause is obvious. Yet, if Pacific's position were adopted the Commission would be helpless to prevent it. There is no indication by the Court in the Postal-Tel. Co. case that it understood its decision would be so interpreted.

"Furthermore, as pointed out by complainants in their reply to Pacific's petition, the decision must be considered in light of telephone and telegraph operations circa 1924. Microwave, radio-link, radiotelephone service etc., were unknown. The court was considering well defined expansion by construction of lines and wires. There is no indication the court intended to hold once and for all that every 'franchise holder' could provide telephone corporation service of whatever as yet undiscovered nature anywhere in the state on a willy-nilly basis. There is no indication that the court even considered such a proposition.

"Furthermore, to recognize statewide franchise rights of Pacific or General would be inconsistent with past Commission decisions precluding the expansion of said utilities to areas not already served. See, e.g., Sylvan B. Malis (Coast Mobil-phone Service) v. General Tel. Co., D. 62582, 59 CPUC 110 (1961)."

Indeed, in Malis, supra, p. 114, we did state that "Section 7901 of the Public Utilities Code is inapplicable to the facts in this proceeding. By that section the Legislature tendered a franchise to all telephone and telegraph companies to use streets, public highways and places for construction and operation of telephone or telegraph line." Malis applied Section 7901 to wire link, as opposed to radio link service. However, in Malis, the Commission did authorize the General Telephone Company to establish mobile telephone service without additional certification, categorizing the offering in the language of Section 1001 as a normal "...extension of telephone service within or to territory already served by it, necessary in the ordinary course of its business." Decision No. 72165 (Re George W. Smith (1967) 67 CPUC 16), though not on all fours with the facts in Malis, reiterates the inapplicability of Section 7901 for authority for radio paging service.

Complainants would go further with Smith than to just preclude reliance by Pacific and General on Section 7901. Complainants argue that Smith precludes reliance upon Section 1001 as well. However, because of the dissimilar factual situation before the Commission we do not view Smith as authority in the circumstances before us. Since Smith, the FCC has issued its Guardband decision (12 FCC 2d 841) May 8, 1968, providing for the assignment of separate guardband frequencies to the wireline carriers and the non-wireline carriers, and the Commission has considered the question of whether new certification is needed for radio paging service where two-way mobile radio telephone service is already provided. (Jack Loperena (Radio Dispatch Fresno) v Fresno Mobile Radio, Inc. (1970) 71 CPUC 645.)

In Loperena we held that an RTU lawfully providing two-way mobile telephone service "may, without additional certification, provide one-way service within a concentric service area as an extension necessary in the ordinary course of business".

Pacific, in its brief, argues that:

"Radiotelephone utilities, as well as Pacific, are 'telephone corporations' operating 'telephone lines' under the Public Utilities Code. The principles upon which Loperena is based are therefore as applicable to ICS as to Pacific. Since such 'an extension [is] necessary in the ordinary course of business' (71 Cal.P.U.C. at 654), no authorization is required by Section 1001 or 1002 for the provision of that service.

"The complainants in this proceeding would have the Commission narrowly and unlawfully apply the Loperena decision. The RTUs urge that form be given precedence over the substance of the Loperena decision. In form, the Commission referred to radiotelephone utilities in the provision of two-way service rather than telephone corporations generally. The RTU argument appears to be that although RTUs are telephone corporations, the Commission should apply blinders when applying the Loperena decision; applying it only in the case of RTUs not in the case of wireline telephone corporations. Such 'construction' would be unlawful. RTUs are telephone corporations as are wireline telephone companies.

"In the Loperena decision itself, the Commission applied a proper public interest construction when it ruled:

'Because of the reasoning stated above we should not require a certificate for any two-way operator who institutes concentric one-way service. The least confusing way to accommodate this necessity to the literal words of statute is to hold that any construction involved in such growth is "necessary in the ordinary course of business" (Section 1001, Public Utilities Code, Mimeo Opinion, pp. 7-8, emphasis added).'

It is contended that Loperena is distinguishable on its facts from the present case. For example, it is argued that in the present case a higher percentage of the existing mobile units are company owned. Even if this be true, the applicants also service the public at large. Such an attempt to distinguish the rule in Loperena is unconvincing. Nor do we accept the rationale which argues we drafted Loperena to apply to "RTUs" only. We broadly discussed the service in terms of its technology: "...it should be noted that any two-way system offers the potentiality for one-way use. . . . It does not appear that the California Commission has ever affirmatively determined that such a distinction is necessary for the accomplishment of our own regulatory objections..." (Loperena, supra, 71 CPUC 645, 647.)

In holding that a new certificate is not necessary to provide one-way service within a two-way service area, we said:

"Does Defendant's One-Way Service Require A Certificate?

[1] Certificates of public convenience and necessity issued under Section 1001 of the Public Utilities Code are, strictly speaking, authority to construct, rather than to operate. It is technically practicable for an RTU offering selective two-way mobile communication to add one-way paging service throughout its two-way service area without any necessary additions to its transmitting equipment, and consequently without any construction requiring a certificate.

"Thus we cannot rely on certification of construction as a uniformly useful tool to regulate the transition from two-way only to two-way plus paging operations within concentric service areas.

"To require a certificate in those instances where an RTU has chosen a form of paging requiring some construction would work an unreasonable discrimination based on accidental differences unrelated to any requirement of sound regulation. It might indeed lead an operator to select a paging system requiring no certification over alternatives offering better service to the public." (71 CPUC 645, 649.)

Thus, in determining if a new certificate was needed, we looked at the service being performed. It is not necessary to look to whether the entity is an RTU or a wireline telephone corporation. We agree with the staff in its brief when it states:

"It is not disputed Pacific and General have been providing two-way mobile telephone service within the area proposed to be served herein by one-way tone signaling service. Pacific and General are telephone corporations within the meaning of Section 234 and are subject to the provisions of Section 1001 regarding extension as are 'grandfathered' RTU's. No reason can be found either in logic or in law for treating Pacific and General differently from RTU's with regard to provision of one-way service within an area already served by two-way."

Both landline companies and RTUs are "telephone corporations" within the purview of Public Utilities Code Section 234. As such they are equally entitled to assert the rights provided by Section 1001.

Complainants argue that Section 1002 applies and requires additional authority, regardless of the applicability of Section 1001. Section 1002 speaks in terms of unexercised franchises. Complainants present no court or Commission case in support of their contention. However, this Commission did not hold Section 1002 to be a bar in the Loperena case, finding the grandfathered RTU had a right to provide one-way service within its two-way service area even though the RTU had not been exercising its pre-existing right to provide this service. Similarly, Section 1002 presents no bar in this case and authority under Section 1001 is adequate.

Issue No. 2

Would it be in the public interest to permit the proposed tariffs filed by Pacific and General to become effective, public interest being deemed to include but not limited to relevant consideration of alleged anticompetitive impact of such action?

The 23 days of hearing in these proceedings allowed for a full development on the record of whether the public interest would be served by institution of the service as proposed. After having reviewed the evidence we conclude that the public interest would be served by allowing Pacific and General to compete in a fair manner with the RTUs presently providing one-way paging service in the LAEA.

The Commission is mindful that the decision to allow or disallow an applicant authority to compete, and the decision as to the conditions of operation, should be weighed for antitrust significance when determining which course lies in the public interest. (California Power Agency v Public Utilities Commission (1971) 5 Cal 3d 370.) The RTUs concern with competition from landline carriers is not taken lightly. We realize they pioneered one-way paging service in the LAEA, and now that the market looks attractive economically, competitors seek to enter.

On the other hand, we have held that a policy of fostering limited competition between the landline carriers and RTUs can have a beneficial effect on the development of the communications art and industry. (Sylvan B. Malis (Coast Mobilphone Service) v General Telephone Co. (1961) 59 CPUC 110.)

As we said in that case:

"Desirability of Competition

"As is the case with other types of communication utilities, both the FCC and this Commission have spheres of regulatory authority over the operations of radiotelephone utilities. [3] Where regulatory authority is so divided, the public interest demands that the policies of the two jurisdictions be sufficiently consistent to prevent an impasse under which business cannot be conducted because of one jurisdiction thwarting the mandates of the other.

"Brought to the fore by this proceeding is the question of the desirability of permitting competition between a radiotelephone utility of the miscellaneous common carrier class and a landline utility providing general telephone service. In all instances, the furnishing of mobile telephone service by either class of utility is possible only upon the issuance of a radio station license by the FCC. [4] As set forth in Exhibit No. 15 in this proceeding,⁸ the FCC has encouraged the development of competitive public radiotelephone systems through the provision of a family of frequencies within which the development of

"⁸ FCC Memorandum Opinion and Order, adopted December 21, 1960, in Docket No. 13900, in re Application of General Telephone Company of California for a construction permit to establish a new two-way common carrier station in the Domestic Public Land Mobile Radio Service at Santa Barbara, California (Station KME 440), in which Mobilphone appeared as a protestant."

common carrier mobile radio systems by enterprises other than existing telephone companies may take place. In establishing that policy, the FCC notes that its determinations have been effected advisedly, and with the stated purpose, among others, of fostering the development of competing systems, techniques and equipments. The FCC expresses the view that this purpose, in the light of experience since it was so stated in 1949, has proved to be salutary. This Commission expresses the concurring view that a policy of fostering limited competition has a beneficial effect on the development of the communications art and industry. The pursuance of such a policy by this Commission will, in a manner consistent with the established licensing policies of the FCC, go far toward assuring optimum utilization in California of the respective portions of the radio-frequency spectrum allocated by the FCC to telephone utilities as a class and to miscellaneous common carriers as a class."

Pacific and General propose a system designed by the Martin Marietta Corporation which transmits a high speed 1200 bit per second digital-type signal. The RTUs' Motorola designed system transmits an analog type signal. This diversity of systems, techniques, and equipment is precisely what the FCC hoped to foster when it established separate and distinct groups of radio frequencies for the RTUs (MCC) and landline carriers in the Guardband decision, 12 FCC 2d 841, 850.

The contention of the RTUs that they will suffer irreparable injury is not supported by the record. Pacific and General have operated two-way mobile systems in the LAEA in direct competition with the RTUs for years. There has been no evidence or claim of irreparable injury with regard to said service by any of the parties in this proceeding. To say that the same situation would not obtain in the rapidly expanding one-way market cannot be defended on this record.

Certainly the competition among the various RTUs in the LAEA resulting in aggressive promotional activities, and rapid development of improved equipment and facilities, has provided benefits not only to the public but to the RTUs. The evidence shows that a majority of the complainants are enjoying strong customer growth within the limits of their frequency capacities and an improving financial condition. (Exhibit 70, Attachments B and E.)

In 1967 there were 1,847 paying units in service in the LAEA, and in 1972, 8,960. Staff witness, Mr. Popenoe, estimates that at the past growth rate of approximately 33 percent per year there would be 24,000 paying units in service at the end of 1976. His estimate must be considered conservative for it does not take into account the effect of additional promotion and popularization were Pacific and General allowed to provide service. Furthermore, the 1973 annual reports of the LAEA RTUs filed with the Commission, of which the Commission may take judicial notice, show that the 1973 units in service totaled 13,697 or 3,197 more than Mr. Popenoe's conservative estimate of 10,500 based on the 33 percent growth rate (Exhibit 70, Attachment C).

Pacific and General presented 12 public witnesses who generally agreed that there was a need for alternative service and that competition would be beneficial. Obviously, additional witnesses could have been called, but the witnesses presented represented a good cross section of the business community. Another point to consider is that sales are often related to an effective program of promotion. Several of the public witnesses were unfamiliar with the complaining RTUs and their service. It is reasonable to expect that the entry of the landline companies into the high-speed paging arena with attendant advertising, promotion, and word of mouth communication will result in general public awareness of the nature of the service available, increasing the

number of subscribers for the landline services or their competitors. We are convinced that the opinion of the staff is correct, that the provision of service by Pacific and General will encourage the RTUs to continue their progressive marketing and to stay abreast of the state of the art, to the benefit of customers in the LAEA and the general public.

Of importance also are the recently affirmed policies of the FCC and this Commission of fostering competition among the various types of carriers. Pacific and General propose to provide a technically "new" service over guardband frequencies as do the RTUs. In allocating the guardband frequencies, the FCC stated it intended to foster fair competition between the RTUs and wireline carriers (12 FCC 2d 841, 850, Aff'd. 409 F 2d 322).

While this Commission is not bound by the policy determination of the FCC, certainly it should be fully considered. It is in the interest of all concerned, utilities, customers, and regulatory agencies, that coordination of federal and state regulatory policy be sought rather than avoided.

In recent actions it is clear that the FCC supports the undressing of policies which have restricted competition among the various classes of communication. (E.g., Carterphone, 13 FCC 2d 420, Telerent Leasing Corp., 43 FCC 2d 487, 45 FCC 2d 204, and the specialized common carrier cases discussed in MCI Communications Corp. v American Telephone & Telegraph Co., 369 F Supp 1004.)

This Commission recently joined in the movement toward increased competition. In Decision No. 84127 issued in PT&T v So. Pacific Co., etc., on March 4, 1975, the Commission held that it would be in the public interest to allow Southern Pacific to offer a point-to-point microwave service as an alternative to Pacific's traditional private line and MTS services. In doing so the Commission took note of the FCC's recent policy change.

"Additionally, while we are not bound to follow policies enunciated by the FCC, we should consider such policies carefully and take notice of major nationwide developments in the industry. Recent actions of the FCC show that that agency has relaxed the principle of regulated monopoly in favor of allowing limited competition. The FCC has found that the waste, if any, in duplication of facilities was found to be outweighed by the advantage of offering certain classes of consumers a choice. (Decision No. 84127, Mimeo. p. 19.)"

To be more precise, these most recent pronouncements of the FCC are merely further development of an expanding policy favoring competition, which had been tentatively set forth in the early consideration of miscellaneous common carriers (Docket No. 8658, 13 FCC 1190 (1949)).

The staff is very concerned, however, that Pacific and General should not, by reason of size and resources alone, be able to stifle the steady growth of the RTUs, thereby in effect reducing competition rather than fostering it. This is one reason why the staff recommends that Pacific's and General's rates be competitive with the RTUs rather than lower and that Pacific and General be required to periodically file reports which will enable the staff to assess on an ongoing basis the operating results and competitive impact of their provision of this advanced service.

We are concerned that the rates not be unfairly low so as to be uncompensatory and destructive of the RTU competitors. In this proceeding, for the first time, Pacific's and General's paging service rates were tested. The record shows that Pacific's San Diego Bellboy system showed a rate of return of .25 percent for the year 1971. This service is not recovering the full cost of service. The record shows that for the year 1971 General's three paging systems were producing (.91%), 11.41 percent, and 1.69 percent rates of return. For 1972, General's four paging systems produced rates of return of (.34%), 12.59 percent, 3.65 percent, and (4.07%). From this record it appears that only General's Santa Barbara system is producing its fair share of system revenue.

Such figures reveal a danger that the general body of ratepayers may subsidize the landline companies' radio communication services. Based on these facts, as well as the previously noted analysis and testimony of Mr. Popenoe, we will adopt the staff's recommendations as to rates, and further, require Pacific and General to report regularly on results of operations so that the staff may monitor the results in a timely fashion.

Complainants challenge the sharing by Pacific and General of the computer and certain transmitters. It is without question, however, that sharing makes sense from an economic standpoint. Moreover, complainants have apparently entered into the same kind of sharing arrangement. We see no anticompetitive problems when both the landline utilities and RTUs have entered into sensible sharing arrangements.

Under Pacific's and General's proposal, calls to the LAEA control center in order to access the system and reach a paging unit will be either toll-free or cost just one-message unit. This is obviously a highly marketable feature.

Complainants contend that the FCC's intent in the Guardband decision, 12 FCC 2d 841,^{22/} which allocated guardbands to wireline carriers for use in providing signaling service, was to require the same feature be provided to customers of the RTUs. We agree. In fact, a thorough reading of the Guardband decision indicates that the actual allocation of guardband frequencies to wireline carriers was conditioned on provision of said feature.

We are not convinced that provision of toll-free service to customers of RTUs is sound from a ratemaking point of view. Pending development of further cost information, however, we recognize the intent of the FCC and require that Pacific and General provide the same toll-free or one-message unit feature to customers of LAEA RTUs as would be provided to customers of Pacific and General.

^{22/} Exhibit 11.

Findings

1. One-way tone signaling service consists of a pocket radio receiver, carried by a person, to which a coded radio signal is transmitted which activates the receiver thus notifying the person to perform a predetermined action.

2. Pacific, General, ICS, Intrastate, Mobilfone, and Radio Page are telephone corporations within the meaning of Section 234 of the Public Utilities Code.

3. Pacific and General, or their predecessors, have continuously furnished public utility communications services in California since prior to the enactment of the Public Utilities Act in 1911.

4. Neither Pacific nor General has ever applied to this Commission for a certificate of public convenience and necessity to construct any facilities as both claim a statewide franchise pursuant to Section 7901 of the Public Utilities Code.

5. Pacific presently furnishes two-way mobile telephone services in the LAEA. The service area contours of its proposed one-way tone signaling service fall fully within the concentric service area of Pacific's existing two-way mobile telephone services.

6. General presently furnishes two-way mobile telephone service in LAEA. The two-way mobile telephone service area contours of General include generally the LAEA, except Pasadena-Monrovia.

7. ICS, Intrastate, Mobilfone, and Radio Page are each duly authorized to provide radio paging service within the LAEA in accordance with their respective tariffs on file with this Commission.

8. ICS, Intrastate, Mobilfone, and Radio Page are presently providing one-way tone signaling service in the full LAEA.

9. The LAEA RTUs share facilities.

10. The sharing of facilities by Pacific and General is economically sound.

11. The service proposed by Pacific and General is technically different from, and incompatible with, service now being provided by complainants or that being installed by complainants.

12. There is an unfulfilled demand for the type of personal signaling service proposed by General and Pacific.

13. Provision by Pacific and General of one-way tone signaling service will stimulate the growth of the market in the LAEA and provide desirous competition to the RTUs.

14. Pacific and General's proposed service will not significantly hinder the ability of the RTUs to provide similar service so long as the rates and competitive practices are fair and reasonable.

15. The rates for radio paging service proposed by Pacific and General would not provide an adequate rate of return and are thus noncompensatory and unreasonable.

16. Establishment of rates as proposed by Pacific and General would be destructive of competition by other public utilities which provide radio paging service in the Los Angeles area.

17. The rates as proposed by the Commission staff, and adopted herein, will be compensatory after several years when starting up costs are recovered.

18. The rates adopted herein are of a level comparable to the rate levels of utilities presently furnishing paging service and are adequate to the extent that Pacific and General will neither have a competitive advantage or disadvantage with respect to other carriers.

19. To assure that the radio paging service of Pacific and General is compensatory in the future these utilities should be required to file quarterly reports on the number of services provided and annual reports on earnings of the service.

20. Provision of an alternate service as provided herein by the landline carriers to that of the existing RTU service would be in the public interest.

21. In accordance with the FCC policy, Pacific and General should be required to permit toll-free message calls in the LAEA by customers of the RTUs, pending development of further information.

Conclusions

1. Neither Pacific nor General may institute paging service within an area wherein it does not already provide telephone service without first securing a certificate of public convenience and necessity from this Commission pursuant to the terms of Section 1001 of the Public Utilities Code of the State of California.

2. Pacific and General may newly institute personal paging service within an area wherein they already provide two-way mobile telephone service, without first securing a certificate of public convenience and necessity from this Commission, pursuant to the terms of Section 1001 of the Public Utilities Code.

3. The requirements of Section 1002 of the Public Utilities Code do not apply to this proceeding.

4. The public interest is to be served by institution of the proposed service.

5. The sharing of facilities by General and Pacific is not anticompetitive.

6. Pacific and General's proposed rates are not reasonable.

7. The staff's proposed rates are reasonable and should be adopted.

8. The staff's recommended conditions are reasonable and should be adopted.

9. Case No. 9450 should be dismissed.

10. The tariffs suspended and investigated in Cases Nos. 9396, 9397, 9715, and 9716 should be permanently suspended.

11. Cases Nos. 9396, 9397, 9715, and 9716 should be discontinued.

12. It is reasonable to require Pacific and General to permit toll-free or one-message calls in the LAEA by customers of the RTUs.

O R D E R

IT IS ORDERED that:

1. Respondents The Pacific Telephone and Telegraph Company (Pacific) and General Telephone Company of California (General) are authorized to construct and operate an automatic one-way radio paging service within the Los Angeles Extended Area and to provide service at the rates and under the conditions set forth in Appendix B attached hereto, after filing tariffs in accord with the provisions of General Order No. 96-A and making such tariffs effective on not less than five days' notice to the Commission and the public.
2. The tariffs suspended and investigated in Cases Nos. 9396, 9397, 9715, and 9716 are permanently suspended.
3. Respondents Pacific and General are directed to provide circuits which will permit customers of radiotelephone utilities in the Los Angeles Extended Area to place paging calls at a charge not to exceed charges to Pacific's or General's paging customers for similar service.
4. Respondents Pacific and General shall file quarterly reports showing by months inward movement, outward movement, paging services provided, and number of customer-owned and utility-provided single and multiple address paging units in service at the end of the month divided between units used by the utility and revenue producing units furnished to customers.
5. Respondents Pacific and General shall file annual earnings statements setting forth the revenues, expenses, plant, rate base, and return associated with the radio paging service authorized herein. Such statements shall include details of investment in paging equipment by types of equipment and the annual equivalent of trunk

costs priced at tariff rates. There shall also be included a statement of direct and overhead expenses showing the method of allocation. Included with the statement shall be details of marketing and promotional expenses incurred including those incurred indirectly through normal sales efforts.


6. Respondents Pacific and General shall file annual statements setting forth the costs of providing toll-free or one-message unit service to their paging customers, as well as to the radiotelephone utilities' customers, pursuant to Ordering Paragraph 3 above.

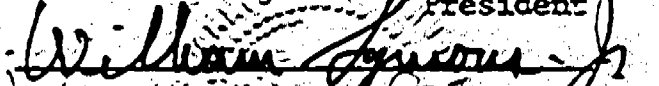
7. Cases Nos. 9395 and 9450 are dismissed.

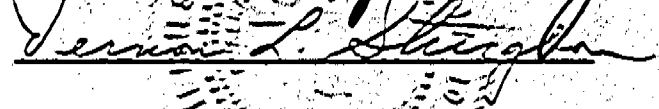
8. Cases Nos. 9396, 9397, 9715, and 9716 are discontinued.

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

Dated at San Francisco, California, this 20th
day of JANUARY, 1976.



President


Vernon L. Sturgeon


Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A
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LIST OF APPEARANCES

Prehearing Conference - September 19, 1972

Complainants: Phillips B. Patton and Warren A. Palmer, Attorneys at Law, for Industrial Communications Inc., Intrastate Radiotelephone, Inc. of Los Angeles, Mobilfone, Inc., and Radio Page Communications, Inc.,

Defendant in C.9395 and Respondent in C.9396: Milton J. Morris, Attorney at Law, for The Pacific Telephone and Telegraph Company.

Defendant in C.9395 and Respondent in C.9397: A. M. Hart, H. Ralph Snyder, Jr., and Dennis L. Delbert, by H. Ralph Snyder, Jr., Attorney at Law, for General Telephone Company of California.

Interested Parties: Robert E. Murphy, Attorney at Law, for Small Business Administration (U.S.); David G. Berg, for American Mobile Radio, Inc.; Carl Hilliard, Attorney at Law, for Radio Dispatch Corp. and R. L. Mohr dba Radio Call; Ben Warner, for Orange County Radiotelephone Service, Inc.; Patrick J. O'Shea, Attorney at Law, for Airsignal of California; and Joseph A. Smiley, for Central Exchange Radio/Telephone.

Commission staff: Janice E. Kerr, Attorney at Law, and Paul Popenoe, Jr.

Hearing - November 10, 1972

Interested Parties: Phillips Wyman, for Salinas Valley Radio Telephone Co.; Frank Chalfont, for Chalfont Communications; Robert L. Mohr, for R. L. Mohr dba Radio Call; Peter A. Nenzel, for Tel-Page, Inc.; and George L. Oakley, for Imperial Communications Corp.

Hearing - June 15, 1973

Protestant: Donald R. Cook, for Fresno Mobile Radio Inc.

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Hearing - November 26, 1973

Defendant in C.9450: Roger P. Downes, Attorney at Law, for
The Pacific Telephone and Telegraph Company.

Defendant in C.9395 and Respondent in C.9397: Donald J. Duckett,
Attorney at Law, for General Telephone and Telegraph Company
of California.

Interested Party: Glen E. Stephens, Attorney at Law, for Martin
Marietta Corporation.

APPENDIX B

RATES

The authorized rates for The Pacific Telephone and Telegraph Company and General Telephone Company of California for tone-only radio paging service in the Los Angeles extended area are:

RATES

| <u>Service</u> | <u>Non-Recurring Charge</u> | <u>Rate per Month</u> |
|---|-----------------------------|-----------------------|
| 1. Paging service | | |
| (a) First central office code number | \$20.00 | \$ 8.00 |
| (b) Each additional code subscribed to at the same time | - | 8.00 |
| 2. Paging receivers | | |
| (a) Each one-number receiver | - | 12.50 |
| (b) Each two-number receiver | - | 13.25 |

SPECIAL CONDITIONS

1. Service under the above schedule is offered only within the Los Angeles extended area.
2. Service under Rates 1 will be furnished to either customer-owned or utility-provided paging receivers.
3. Customer access to a paging code at the utility's central office requires use of a touch-tone telephone or an auxiliary tone-address pad at rates set forth in the Supplemental Equipment Schedule.
4. The minimum billing period is one month. For service furnished for periods in excess of one month the final bill will be adjusted for the proportional period for which service was rendered.
5. All charges for radio paging service are due and payable in advance.
6. Where a utility-provided paging receiver is used the applicant for paging service will establish his credit pursuant to Rule No. 6 (Rule No. 5 for General Telephone), Establishment and Reestablishment of Credit. Where a deposit is required the amount will be \$50, subject to refund, with interest, when the paging receiver is returned to the utility.