

Decision No. 85955

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Suspension and Investigation on the Commission's own motion of tariffs filed under Industrial Communications Systems, Inc. Advice Letter No. 60 establishing a new base station.

Case No. 9696
(Filed April 2, 1974)

Warren A. Palmer, Attorney at Law, for Industrial Communications Systems, Inc., respondent.
Carl Hilliard, Attorney at Law, for Intrastate Radiotelephone, Inc. of San Bernardino, protestant.
John Paul Fischer, Attorney at Law, for Mobilfone, Inc., interested party.
Timothy E. Treacy, Attorney at Law, and Roger Johnson, for the Commission staff.

OPINION ON REHEARING

On November 12, 1975 this Commission issued Decision No. 85086 in Case No. 9696. That decision authorized Industrial Communications Systems, Inc. (ICS) to construct a base station near Loma Linda and ordered further hearings regarding ICS' authorized service area. Subsequently, a Petition for Rehearing was filed by Intrastate Radiotelephone, Inc. of San Bernardino (Intrastate). By Decision No. 85353 dated January 13, 1976 rehearing, limited to the question of whether the proposed station of Loma Linda and its service area lie within ICS' original service area as it existed in 1961, was granted and Decision No. 85086 stayed.

Further hearing was held before Examiner Gillanders on April 6, 7, 8, and 9, 1976 at San Francisco. A petition for a proposed examiner's report was filed by Intrastate on April 9, 1976. The matter was submitted on the record on April 9.

Testimony and exhibits on behalf of ICS were presented by Mr. John E. Dettra, Jr., of the firm of Steel, Andrus & Adair, consulting radio engineers, of Washington, D.C. and Mr. Frank Palik, a consulting radio engineer from Kensington, Maryland.

Testimony and exhibits on behalf of Intrastate were presented by Mr. Mel Freedman, a consulting radio engineer from Hughson, California.

Testimony and exhibits were presented by supervising utilities engineer Paul Popenoe, Jr., and associate utilities engineer R. Roger Johnson of the Communications Branch of the Utilities Division of this Commission.

Introduction

The standard for the establishment of service areas for radiotelephone utilities (RTUs) was adopted by this Commission when it took jurisdiction over the RTU industry in 1961 (Investigation of Communications Common Carriers, Decision No. 62156,^{1/} Case No. 6945, 58 CPUC 756, June 20, 1961). At that time, the Commission stated, "While it is recognized that satisfactory communications may often be had beyond any arbitrary standard reference level of signal strength, it is, nevertheless, desirable to set forth some standard to provide a common basis of consideration. For this purpose we find reasonable the standards adopted by the FCC in Part 21.504 of its Rules, as follows: '(a) The limits of reliable service area of a base station are considered to be described by the field strength

^{1/} Decision No. 62156 is known as the "grandfather decision".

contour of 37 decibels above one microvolt per meter for stations engaged in two-way communications service with mobile stations and 43 decibels above one microvolt per meter for stations engaged in one-way signalling service. Service within that area is generally expected to have an average reliability of not less than 90%."

Discussion

At the rehearing, it was clearly stated by Intrastate that its position is "...that there were no standards that could be used to prepare a map other than those that were adopted by the Federal Communications Commission in 1967". Based on this position, its consulting engineer, Mr. Freedman, presented Exhibit 48 entitled "Service Area Contour of Santiago Peak Site (Loc. #1) of Industrial Systems, Incorporated, Los Angeles, California (DPLMRS KMD 990), Computed in Conformance with Section 21.504 of the Current F.C.C. Rules".

Mr. Dettra on behalf of ICS presented Exhibit No. 58 entitled "37 DBU Contour Based on UHF TV Curves with 6 DB Correction for 6' Receive Antenna as Standard Practice Before 1967". Mr. Dettra also presented Exhibit No. 59 which is Exhibit 58 with the Loma Linda 43 DBU contour constructed in accordance with today's FCC requirements shown thereon. Mr. Dettra testified that since 1956 he has been calculating RTU service areas in accordance with FCC Rules, regulations, and practices. Before 1967, he calculated service areas in accordance with the requirements of the staff of the FCC as Section 21.504 of the FCC rules did not set forth how the 37 and 43 dbu contours were to be calculated. According to ICS, Mr. Dettra's methods were also in accordance with the requirements of the FCC

itself as set forth in an order^{2/} released by that Commission September 9, 1957 in re applications of Docket Nos. 12155-12159, FCC 57-962 (Exhibit No. 51 in this proceeding).

To further substantiate its claim that Exhibit No. 58 is the proper 1961 contour, ICS presented Mr. Frank Palik. Among Mr. Palik's numerous qualifications are the following (Exhibit 60):

- "14. During the time of the International Radio Conference, I also became involved at the F.C.C. with the licensing of two-way and one-way (radio paging) systems of communications common carriers. I was the author of the rules and regulations, which were incorporated in Part 6 of the Commission's Rules for such systems.
- "15. In September 1949, in connection with a structural reorganization of the F.C.C., a new Common Carrier Bureau was created and the licensing and regulatory functions for such radio systems were assigned to its newly created Domestic Radio Services Branch, where I was the senior radio engineer. Here, I became the principal author of a new Part 21 of the Commission's Rules and Regulations governing all domestic common carrier mobile and fixed point-to-point radio operations. That Branch became the new Domestic Radio Division in 1956.
- "16. In 1962, I was appointed as Chief of the Domestic Radio Division and served in that capacity until 1967 when I became Chief of the Common Carrier Bureau's Domestic Facilities Division. I served in the latter capacity until July 1974. Following one year of absence on sick leave from the F.C.C., I retired on physical disability in June 1975."

2/ The order states:

"IT FURTHER APPEARING, That, by application of the procedures set forth in a Commission report, No. T.R.R. 4.3.8, entitled 'A Summary of the Technical Factors Affecting the Allocation of Land Mobile Facilities in the 152 to 158 Megacycle Band' and use of the F(50,50) and F(50,10) radio wave propagation charts for TV channel 14 (contained in Part 3 of the Commission's rules and in the Commission's Sixth Report and Order in Docket Nos. 8736 et al) adjusted downward in field strength by 6 db to compensate for the change in receiving antenna height to 6 feet in lieu of the 30 foot height for which the charts are drawn, ..."

Mr. Palik testified that he had participated in determining the procedures set forth in FCC 57-962 and that those procedures were the ones he approved as being acceptable to the FCC staff. Therefore, he testified that in his judgement Exhibit No. 58 correctly depicts ICS' 1961 contour.

It is Mr. Johnson's (as well as Mr. Popenoe's) position that "Until the date of the Carey Report, there was no standards that I can find that would permit me to construct a contour for them." He therefore submitted Exhibit No. 47 which shows upon its face ICS' 39 dbu contour which he testified was based on the 1967 FCC standard applied as if he were back in 1961. He called the resulting contour "ICS' grandfathered contour". He also depicted the Loma Linda 43 dbu contour constructed to current FCC standards. The 43 dbu contour extends just outside of the 39 dbu contour northeast of San Bernardino. It is the recommendation of both Mr. Popenoe and Mr. Johnson that as the area outside of the 39 dbu contour is mostly uninhabited area the Commission should not consider such area in determining whether or not ICS should be authorized to establish the Loma Linda transmitter. They both recommended granting ICS' application.

All parties to this proceeding agree that Part 21.504 of the FCC's rules in existence in 1961 did not set forth a method by which the ICS 37 and 43 dbu contours should or could be calculated. We have in this proceeding the testimony of three engineers (Freedman, Popenoe and Johnson) that 1967 standards should be applied to determine 1961 results and the testimony of two engineers (Dettra and Palik) that the procedures set forth in order FCC 57-962 should be followed.

We do not have to choose between the experts as our analysis of their exhibits shows that under any of the methods used by them the Loma Linda 43 dbu contour falls within the ICS contour (except for a nonessential portion). Based upon the above, it would serve no useful purpose to grant the request for a proposed report. Such request is denied.

It has long been our policy to allow filling in of dead spots in existing contours as long as the new contour does not exceed the old. Such is the case before us.

Findings

1. ICS' paging service cannot at all times be received in the Loma Linda-Redlands area.
2. ICS proposes to install a base station near Loma Linda which will provide adequate service to the Loma Linda-Redlands area.
3. The 43 dbu contour of the proposed base station lies within the authorized service area of ICS as computed by ICS, as computed by the Commission's staff, and as computed by Intrastate.

Conclusions

1. The proposed construction should be authorized.
2. The Commission order dated April 29, 1975 in Case No. 9696 suspending Advice Letter No. 60 should be set aside.
3. Decision No. 85086 should be affirmed.

ORDER ON REHEARING

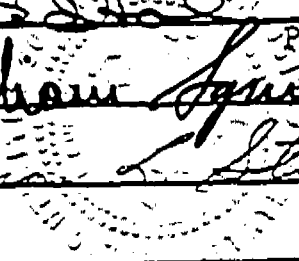
IT IS ORDERED that:

1. The Commission order dated April 29, 1975 in Case No. 9696 suspending Advice Letter No. 60 is hereby set aside and ICS may construct the proposed base station near Loma Linda in accordance with the requirements of General Order No. 96-A, Sections V-D.

2. Decision No. 85086 is affirmed.

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

Dated at San Francisco, California, this 15th day of JUNE, 1976.


William S. Gorman President
Robert B. Fennell Commissioners

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