

Decision No. 86230**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mobile Radio System of San Jose,)
Inc.,)

Complainant,)

vs.)

Intrastate Radiotelephone, Inc.)
of San Francisco, Action-Phone)
Answering Service, Blossom)
Valley Answering Bureau, Tel-Page)
Answering Service, and Mission)
Telephone Answering Bureau,)

Defendants.)

Case No. 9871
(Filed February 13, 1975)

Hilliard, McGuire, & Bauer, by Carl Hilliard,
Attorney at Law, for Mobile Radio Systems
of San Jose, Inc., complainant.
Vaughan, Paul & Lyons, by John G. Lyons,
Attorney at Law, for Intrastate Radio
Telephone, Inc. of San Francisco, Action-Phone
Answering Service, Blossom Valley Answering
Bureau, Tel-Page Answering Service, and Mission
Telephone Answering Bureau, and Joseph A.
Smiley, for Intrastate Radio Telephone Inc.
of San Francisco, defendants.
Roger Johnson, for the Commission staff.

O P I N I O N

Complainant Mobile Radio System of San Jose, Inc. (Mobile)
and defendant Intrastate Radiotelephone, Inc. (Intrastate) are
public utility telephone corporations authorized to operate as
radiotelephone utilities (RTU) pursuant to Decision No. 62156.

(1961) 58 CPUC 757. Defendants Action-Phone Answering Service, Blossom Valley Answering Bureau, Tel-Page Answering Service, and Mission Telephone Answering Bureau operate telephone answering services in Santa Clara County, none of which has authority to conduct public utility telephone service.

Mobile alleges that Intrastate,^{1/} in concert with the other defendants, has unlawfully invaded Mobile's service area by (1) establishing message centers outside Intrastate's service area, (2) having foreign exchange lines extending outside Intrastate's service area, (3) advertising outside its service area, (4) representing to potential customers that it provides reliable service in areas beyond its service area, and (5) requiring the use of a commercial answering service as a condition of the receipt of utility service. According to the complaint defendant's conduct constitutes an unfair, unlawful, and fraudulent interference with complainant's radiotelephone utility.

Complainant requested an immediate temporary restraining order forbidding defendants from engaging in the practices complained of, ordering each of the defendants to show cause why a preliminary injunction should not be entered in the form of the requested temporary restraining order, and permanently enjoining all defendants from the course of conduct complained of. By Decision No. 84161 dated March 4, 1975, the request for interim relief was denied.

Public hearing was held before Examiner Main on April 24 and 25, 1975 in San Francisco. The matter was submitted on the filing of briefs. On April 29, 1975, counsel for defendant Intrastate requested that the matter be reopened for further evidence.

^{1/} The Intrastate authority in issue (Station KMA 833) was originally held by Walter Corbin and acquired by Intrastate from ITT Mobile Telephone in 1967.

The request was granted by Examiner Main on May 9, 1975. Further hearing was held before Examiner Tanner on October 29 and 30, 1975 in Mountain View. The case was submitted on March 15, 1976 upon the filing of concurrent briefs and is now ready for decision.

Issues

The following must be established if this complaint is to be sustained:

1. That the 37 dbu contour delineates the service area within which Intrastate may conduct public utility service.
2. That the telephone answering service (TAS) defendants are message centers as defined in Section 21.1 of the Federal Communications Commission (FCC) Rules and Regulations, Part 21.
3. That the TAS defendants are located outside the service area of Intrastate.
4. That Intrastate has installed a paging terminal outside its authorized service area.
5. That Intrastate has solicited business representing that reliable service is provided outside of its service area.

The fundamental issue is the geographical area included in the service area of Intrastate.

Discussion

The determination of the service area for RTUs has never been precisely resolved. In Decision No. 62156, supra, we 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 contour of 37 decibels above one microvolt per meter for stations engaged in two-way communications service with mobile stations engaged in one-way signaling service. Service within that area is generally expected to have an average reliability of not less than 90%."

If one could omit the last sentence, the FCC standard is a reasonably precise statement. Neither the FCC nor this Commission, however, has adopted a standard method of calculating service area contours. Sheet No. 32-T of Intrastate's tariff is a map on which the 37 dbu contour is set forth for the area involved here. That map includes the following disclaimer:

This map shall not be considered by the Public Utilities Commission of the State of California or any other public body as a final or conclusive determination or establishment of the dedicated area of service, or any portion thereof.^{2/}

From the foregoing it is clear that no line exists from which an accurate determination may be made of the service area as such area relates to facilities on the ground. The dbu contour is quite satisfactory for establishing estimated radiation patterns from an antenna. Such data are quite useful to determine the effectiveness and range of radio signals, but are far too variable to be useful in determining the location of a boundary on the ground. The staff's Exhibit 49 delineates the 37 and 39 dbu contours calculated according to the Boese and Carey reports.^{3/} The Boese contour is depicted as the "grandfather"^{4/} contour, but no indication is

^{2/} Sheet 25-T of complainant's tariff includes the same disclaimer.

^{3/} FCC Report No. 4.3.8. by William C. Boese and FCC Report No. R-6406 by Roger B. Carey.

^{4/} This reference implies the certificated area pursuant to Decision No. 62156 commonly referred to as the grandfather decision.

included as to which of the two contours constitute the limits of the Intrastate authorized service area. The record in this matter is not adequate to make a determination of the limits of defendant Intrastate's service area.

Section 21.1 of Part 21 of the FCC Rules and Regulations defines message center as "the point at which messages from members of the public are accepted by the carrier for transmission to the addressee." A control point is defined as "an operating position at which an operator responsible for the operation of the transmitter is stationed and which is under the control and supervision of the licensee."

It is clear that the functions the TAS defendants performed for Intrastate included accepting messages from members of the public for transmission. The paging terminal operated by Intrastate performed the same function. It is questionable whether the FCC intended that the term message center include installations not under the control of the licensee or remote switching and control devices, such as automatic paging terminals operated by both complainant and defendant. In fact the latter appears to be a control point, except for the fact that no operator is required to be present. We must conclude that under existing rules, both TAS defendants and the paging terminal are message centers.

Inasmuch as the limits of the service area of Intrastate are uncertain, we cannot determine whether the TAS defendants and the paging terminal are in fact located outside that area. We are reluctant, however, to dismiss this point without some observations as to the practical effect of the notion that such facilities must be located within the service area of an RTU.

It must be recognized at the outset that the problem at hand involves the combination of land line facilities with radio facilities to effect a through communication service. The land line facilities are readily discernible; a signal transmitted by wire is limited to the physical location of the transmitter, the receiver, and the wire connecting them. A signal transmitted at radio

frequencies radiated from an antenna is limited to distances characterized as "reliable". The case at hand involves the placement of a telephone call through one of the TAS defendants for the purpose of generating a signal to be received by a subscriber of Intrastate. The caller, the TAS, the paging terminal, and the subscriber could be located at any point within or outside the service area and the result would be the same. The issue raised by the complainant that the TAS defendants and the paging terminal are located outside the service area of Intrastate is moot when the practical effect is considered.

Findings

1. Complainant Mobile Radio System of San Jose is a radiotelephone utility and as such provides radiotelephone service to areas which include portions of the cities of San Jose and Santa Clara.

2. Defendant Intrastate Radiotelephone, Inc. is a radiotelephone utility and as such provides radiotelephone service to areas which includes portions of the cities of San Jose and Santa Clara.

3. The field strength contour of 37 decibels above one microvolt per meter is the standard adopted for the purpose of determining the reliable service area within which a radiotelephone utility may provide public utility service.

4. The service areas of complainant and defendant Intrastate, determined pursuant to the standard described in Finding 3, overlaps to some extent in certain areas of the cities of San Jose and Santa Clara.

5. There is no evidence that the service area of complainant or defendant Intrastate has ever been precisely determined.

6. There is no evidence that a practical method exists for determining the limits of the service area of radiotelephone utilities insofar as such service area limits relate to ground facilities.

7. Until such time as precise service area boundaries have been established, it is not possible to precisely determine whether a facility located on the ground is within or without a service area.

8. There is no evidence which will permit a precise determination of the locations of the TAS defendants, as such locations relate to the authorized service area of defendant Intrastate.

9. There is no evidence which will permit a precise determination of the location of defendant Intrastate's paging terminal, as such location relates to the authorized service area of defendant Intrastate.

10. The physical location of a fixed ground facility, as such location relates to the reliable service area of a radiotelephone activity, which ground facility may, among other things, perform certain functions for a radiotelephone system, or be an integral part of such a system, is not relevant to the determination of whether a radiotelephone utility has or is providing or has offered to provide service outside the authorized reliable service area of a radiotelephone utility if such facility, or the location thereof, has no effect on the signal generated by the transmitter and radiated from the antenna pursuant to the radio station license issued by the FCC.

11. The TAS defendants are message centers as defined in Section 21.1 of Part 21 of the FCC Rules and Regulations.

12. The paging terminal operated by defendant Intrastate is a message center as defined in Section 21.1 of Part 21 of the FCC Rules and Regulations.

13. It has not been shown that defendant Intrastate solicited business representing that reliable service is provided outside its service area.

14. No unlawful act was shown to have been committed by defendants.

We conclude that the relief requested should be denied.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 10th day of AUGUST, 1976.

William J. Sproule President
Vernon L. Livingston
Flora

Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.