

Decision No. 86271

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of

ELECTROPAGE, INC., and DELTA VALLEY  
RADIOTELEPHONE COMPANY, INC.,

Complainants,

vs.

SACRAMENTO DOCTORS ANSWERING SERVICE,  
INC., SACRAMENTO DOCTORS SERVICE  
BUREAU, JAMES T. LUKENS, LONNIE MURPHY,  
DOROTHY MURPHY, DOE ONE THROUGH DOE  
FIFTY,

Defendants.

Case No. 10157  
(Filed August 6, 1976)

ORDER TO CEASE AND DESIST

The verified complaint alleges in part that:

"3. Defendant Sacramento Doctors Answering Service, Inc. (herein 'the Answering Service') is a corporation, the address of which is 3815 Marconi Avenue, Sacramento, California.

"4. Defendants Lonnie and Dorothy Murphy (collectively called 'Murphy' herein) are individuals whose address is 3815 Marconi Avenue, Sacramento, California, and who are managers of defendant Answering Service.

"5. Defendant James T. Lukens (herein 'Lukens') is an individual whose address is 6401 Coyle Avenue, Carmichael, California.

"6. Defendant Sacramento Doctors Service Bureau (herein 'the Bureau') is an association, which Complainants are informed and believe, and so allege, does not have an office for the transaction of business, but may be addressed in care of Lukens at the aforementioned address.

\* \* \*

"8. Each of the Defendants herein was and is the agent, servant, or employee, or was and is acting in concert with, the other Defendants, and all acts and omissions complained of herein have been within the course and scope of such relationship.

"9. Complainants are both radiotelephone utilities duly licensed by the Federal Communications Commission and certificated by this Commission to provide, among other services, one-way radio paging service in Sacramento and its environs, pursuant to tariffs on file with this Commission. Complainants' authority to provide the aforesaid public utility service derives from Decision 62156 of this Commission, and from such specific separate authorities as are of record with this Commission.

"10. None of Defendants has ever applied for or received any type of certificate from this Commission which would authorized them, or any of them, to engage in the business of providing radiotelephone utility service of any kind.

"11. Notwithstanding the absence of Commission Authority, Defendants and each of them have constructed, and since on or about June 1, 1976, have been and are now operating a radio common carrier paging service, in violation of Sections 453 et seq., 495 et seq., 707 et seq., and 1001 of the Public Utilities Code.

"12. Prior to the commencement of such unlawful paging service, Defendants conspired to obtain an F.C.C. Special Emergency Medical Service License. A copy of that license is attached hereto marked as Exhibit 'A' and incorporated herein. Thereafter, Defendant wilfully interfered with Complainant's long-established contractual relationships, and secretly persuaded at least 24 of Complainants' subscribers to suddenly and without warning or reason terminate their agreements with Complainants. See BAUER and SCHULTZ Declarations, attached hereto and incorporated herein by reference. Complainants had for many years provided these subscribers with standard common carrier

paging of a type not authorized to the special emergency medical service for which Defendants' license was issued. That notwithstanding, Complainants are informed and believe, and so allege, that Defendants are providing the same types of communications as had previously been provided by Complainants.

"13. Said paging service operates on a frequency of 163.250 MHz under Federal Communications Commission license KZR 612, issued in the name of LUKENS as an individual. (See Exhibit 'A').

"14. Said license indicates that LUKENS is the sole licensee and is to have complete control of the facility. Yet, LUKENS, upon being contacted by one of complainants, stated that he had no knowledge of the operation of the paging system, and that it had been organized and operated by the MURPHYS. See BAUER Declaration.

"15. The application for said license, a copy of which application is attached hereto marked as Exhibit '5' and incorporated herein by reference, states on page 2 that the paging equipment was to be jointly owned 'on a cooperative, cost sharing basis' by an 'association' called Sacramento Doctors Service Bureau (defendant Bureau herein) comprised of forty-five (45) persons (including LUKENS), and that 'all participants recognize and agree to accept [sic] abide by its (his) [sic] control of the facility.' Yet, doctors named in said application who had formerly been subscribers of complainant Electropage, stated that they had never heard of the BUREAU, and so far as they knew they were renting the pagers for a fixed sum just as they had rented Complainants'. See BAUER Declaration.

"16. Further, while LUKENS is named in the application (Exhibit 'B') as being 'the licensee and responsible for the station', LUKENS has stated that the MURPHYS have been and continue to exert all operational control over the system, and that he has no information either on the system or on the makeup or legal standing of the BUREAU (of which he is supposed to be the controlling person according to his representations under oath in Exhibit 'B').

"17. Based upon the foregoing, Complainants are informed and believe, and so allege, that the Bureau was created as a front for the Defendants, in order to give the appearance of an association which could qualify for licensing by the Federal Communications Commission under the Special Emergency Services, but that in reality the BUREAU is no more than a facade for Defendants' carrying on of a common carrier service, as alleged hereinabove. The BUREAU has no listing in the Sacramento or Carmichael telephone directories, nor has it filed a Factitious Business Name Statement or Articles of Incorporation, either with the Secretary of State or with the Sacramento County Clerk.

"18. In addition to the numerous discrepancies alleged hereinabove between the facts as they actually exist, and the representations made by Defendants in their F.C.C. application, it should be noted as well that at least three of the persons listed in Exhibit 'B' as medical doctors (R. L. DRIGGS, KERRY HANSON and R. A. O'DAY) are not in fact medical doctors and the names of several other so-called members are not even spelled correctly. Further, Exhibit 'B' expressly omitted the fact that among the so-called members of the so-called medical doctors' cooperative association was and is a drugstore.

"19. In addition to already operating an unauthorized paging system, Defendants have embarked upon a program aimed at discouraging Complainants' customers from continuing to subscribe to Complainants' service, and instead to utilize Defendants' facilities for paging. This program has included solicitations among persons presently subscribing to Complainants' services. Further, persons who are presently subscribers of Electropage's services who utilize the Answering Service, have advised Complainants that the Answering Service has on numerous occasions failed to communicate messages received by it to Electropage for paging to Electropage's subscribers, in an effort to persuade such subscribers to terminate their agreements with Electropage, by creating the erroneous impression that Electropage's services are inadequate, when in fact the inadequacies are the result of Defendants' intentional acts.

"20. Unless they are immediately and permanently restrained and enjoined from continuing to commit the acts alleged herein above, Defendants will cause great and irreparable damage to these Complainants and to the Public...."

Declarations attached to the complaint support the allegations therein.

Part of the relief requested by complainant is that the Commission immediately issue an order prohibiting and enjoining defendants from providing or offering to provide radio-paging service without first securing from the Commission a certificate of public convenience and necessity authorizing such service. We are of the opinion and find that good cause has been shown for the issuance of such an order. (Public Utilities Code Section 1006.)

IT IS ORDERED that Sacramento Doctors Answering Service, Lonnie Murphy, Dorothy Murphy, James T. Lukens, and Sacramento Doctors Service Bureau and all persons acting as employees or agents of any and all of said named persons or entities shall cease and desist from holding out, constructing, providing, or offering to provide radio-paging service until further order of this Commission.

A hearing to inquire into whether this cease and desist order should be continued in effect or terminated shall be held before Examiner Weiss on Wednesday, September 1, 1976 at 10:00 a.m. in the Board Room (Room 4061), Employment Development Department Building, 722 Capitol Mall, Sacramento, California.


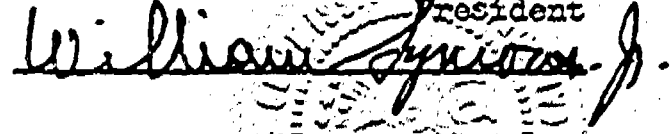
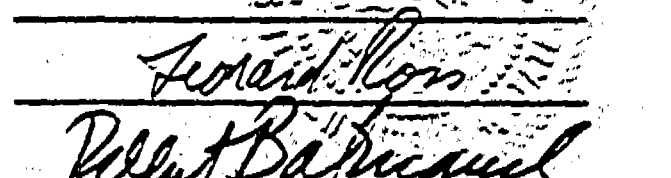
The Executive Director is directed to cause a certified copy of this order to be personally served on defendants Sacramento Doctors Answering Service, Lonnie Murphy, Dorothy Murphy, and James T. Lukens.

Complainant may cause copies of this order to be personally served on Sacramento Doctors Service Bureau; and in accordance with Section 474 of the Code of Civil Procedure on the fictitious name defendants set forth in paragraph 7 of the complaint. Complainants shall file with the Commission proof of any such personal service which may be made within three days of such service.

Service of this order on complainants may be made by mail.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 17<sup>th</sup>  
day of AUGUST, 1976.

  
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President  
  
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Edward K. ...  
  
\_\_\_\_\_  
Robert B. ...  
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.