

Decision No. 86437

ORIGINAL

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)  
 INTRASTATE RADIO TELEPHONE, INC. OF)  
 SAN FRANCISCO for better definition)  
 of its authorized service area, and)  
 for authority to activate a new  
 radio transmitting site.

Application No. 54542  
 (Filed December 28, 1973;  
 amended July 1, 1974, October 1,  
 1975, and May 26, 1976)

Philips B. Patton and John G. Lyons, Attorneys at Law, and Tommy L. Cook, for applicant.  
Carl Hilliard, Attorney at Law, for Airsignal of California, Inc.; and Lester W. Spillane and Wayne Cooper, Attorneys at Law, for Delta Valley Radiotelephone Co., Inc., Knox LaRue dba Atlas Radiophone, and Stockton Mobilphone, Inc.; protestants.  
Silver, Rosen, Fischer & Stecher, by John J. Hollenback, Jr., Attorney at Law, for Mobilfone, Inc.; Joseph A. Smiley, for Central Radio Telephone; and Jerry Grotsky, for Peninsula Radio; interested parties.  
Janice E. Kerr, Attorney at Law, and R. Roger Johnson, for the Commission staff.

INTERIM OPINION

On December 28, 1973, Intrastate Radio Telephone, Inc. of San Francisco (Intrastate) filed Application No. 54542 with this Commission, wherein Intrastate requested a better definition of its authorized service area and authority to activate a new radio transmitting site on Mt. Allison, located northeast of Milpitas, California. On October 1, 1975, Intrastate filed an amendment to Application No. 54542 withdrawing its request to utilize Mt. Allison, but maintaining its request for a definition of service area. An alternate transmitting site on Sumol Ridge, near Pleasanton, California, had been chosen and engineered so that operation from the

Sunol Ridge site would fall within Intrastate's claimed "grandfather" service area. On May 26, 1976, Intrastate again amended its application to include a new transmitting site on "TV Hill" near Concord.

Intrastate's operating authority flows from Commission Decision No. 62156 dated June 21, 1961, the so-called "Grandfather Decision", and Decision No. 80098 dated May 31, 1972 (73 CPUC 442). The grandfathered service areas of Intrastate are contained within two VHF, 37 dbu contours: San Bruno Mountain and East Bay Hills. Both contours were computed in accordance with the Boise report, a method devised by the staff of the Federal Communications Commission (FCC) for computing RTU contours in 1961. Both contours are currently shown in Intrastate's filed tariff as illustrating its service area.

Decision No. 80098 authorized Intrastate to establish facilities at Round Top Mountain identical to those operated by Redwood Radio Telephone (Redwood) at the time of its demise. Redwood operated two UHF frequencies on Round Top Mountain with effective radiated powers of 500 and 476 watts. In addition, Redwood operated one VHF frequency with an effective radiated power of 425.5 watts. Upon receiving authority from this Commission in Decision No. 80098, Intrastate filed applications with the FCC for authority to reconstruct the former Redwood facilities in exactly the same manner as previously operated by Redwood. The FCC found the VHF portion of the application mutually exclusive for reasons of interference with that of Knox LaRue who, although not a participant in the PUC proceedings, had filed an application with the FCC on the former Redwood VHF channel that resulted in the FCC's withholding the grant of all three Intrastate frequencies as well as LaRue's application. As an accommodation to obtain a grant of the much needed frequencies, Intrastate agreed to amend its VHF application and reduce power from 425.5 watts to 43.5 watts. However, Intrastate maintains it has

authority from this Commission to operate on other frequencies and place additional transmitting facilities within the 37 dbu contour derived from a VHF transmitter on Round Top Mountain operating at 425.5 watts. Thus, Intrastate maintains that its authorized service area is the summation of the service areas obtained in Decision No. 62156 and Decision No. 80098. Without a clear delineation of service area, Intrastate claims it cannot improve service within its service area by adding gap filler transmitters whose contours are engineered to fall totally within its authorized area. Furthermore, according to Intrastate, the FCC rules provide for a number of service area contours including a 31 dbu, 37 dbu, 39 dbu, 43 dbu, and proposed 41 dbu (900 MHz). Intrastate believes that it should not be required to file applications with this Commission every time a new type contour is conceived, or an additional gap filler station is required to improve service to the public. It seeks a defined area within which it is free to expand present and future radio-telephone service without the necessity of going through a formal hearing proceeding.

Fifteen days of hearings were held before Examiner Gillanders at Livermore, Walnut Creek, San Francisco, and San Jose, California, during the period April 29, 1974 to May 26, 1976. A number of public witnesses appeared in support of Intrastate's application, particularly as it related to improving radiotelephone service in the San Ramon--Livermore Valley areas, along Highway 680 into the upper Santa Clara County area. According to Intrastate the record clearly shows that in some of these areas public radiotelephone service is unavailable, inadequate, or marginal, and it is the intent of Intrastate to improve radiotelephone service in these areas by adding transmitter facilities on Sunol Ridge.

Protestant Airsignal of California, Inc. (Airsignal) claims Intrastate is seeking to extend its service into parts of the same area served by Airsignal. According to Airsignal, Intrastate's claim of right to this area on the basis of the authority contained in Decision No. 80098 is misplaced. A review of that decision, according to Airsignal, shows that the Commission was primarily concerned with replacing the services abandoned by the Redwood companies. The Commission noted that the defunct Redwood companies were providing wide-area service from message centers in Santa Rosa, San Rafael, and Oakland. Since the wide-area service offered by Redwood was apparently economically unfeasible, three certificates to replace such service, instead of one, were granted for local service in Santa Rosa and San Rafael. Intrastate was granted the Oakland area as an addition to its metropolitan service. In making this grant, the Commission evidenced concern over the alleged need for channels in the metropolitan area and considered the fact that Intrastate's channels in San Francisco and Oakland were congested, while the Redwood/Oakland channels were lightly used. It is evident that the Commission did not intend or expect that such frequencies would be relocated by Intrastate outside of the San Francisco/Oakland metropolitan area on the pretext of some "authority" to serve outlying areas.

According to Airsignal the interpretation placed by Intrastate on its own authority is contrary to the public interest found to exist by this Commission in Decision No. 80098 and will result in wasteful duplication of service and injury to Airsignal and the public it serves.

According to protestants Delta Valley Radiotelephone Co. Inc., Atlas Radiophone, and Stockton Mobilphone, Inc., they currently operate in the East Bay and Central Valley (among other locations) in the VHF spectrum. These include facilities on 152.12 MHz, and 152.24 MHz. The terrain between the service areas of their

facilities, and the transmitter being proposed by Intrastate for Sunol Ridge is such that Intrastate would be putting an unobstructed line-of-sight signal directly into their service areas on the very frequencies now licensed to them. While the 37 dbu contour may not so extend, nevertheless the signal so propagated would be sufficiently strong to be a severe detriment to their subscribers.

They state that Section 21.503(a) of the Rules and Regulations of the FCC prohibits stations such as they operate, and Intrastate proposes to operate, from being within 78 miles of one another. The Sunol Ridge station would only be 42 and 44 1/2 miles, respectively, from two of their stations, and so would be clearly illegal. In the interest of maintaining uniformity in the regulation of this field, they request this Commission not even to consider an application which on its face is so violative of the applicable FCC rules.

According to the staff, grandfather contours should be constructed using the Carey report which was published in 1967. On that theory, a staff witness introduced Exhibits 68 and 68-A which show the staff's calculation of what it considers to be Intrastate's 1961 grandfathered service area supplemented by the area granted to Intrastate by Decision No. 80098. The Carey report gives smaller areas of coverage than the Boise report. Thus, the staff's calculated service area is less than that claimed by Intrastate. Intrastate's consulting engineer testified that he could engineer the antenna of the proposed transmitters so that the calculated contours would fall within the staff's calculated contour.

The equipment which Intrastate proposed to install in each instance will be located in existing buildings with the associated antenna mounted on existing towers. Therefore, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and hence, pursuant to Rules 17.1 (a)(2), no environmental impact report or negative declaration is required.

Part 21.504 of the FCC's rules in existence in 1961 did not set forth a method by which the 37 and 43 dbu contours should or could be calculated. We have in this proceeding the testimony of staff witness Johnson that 1967 standards should be applied to determine 1961 results and the testimony of Intrastate's witness Isberg that the procedures set forth by the FCC staff in 1961 should be followed.

We do not have to choose between the experts as our analysis of their exhibits shows that under either of the methods used by them the new contours fall within the smallest dbu contour which might be called the "grandfather contour". Based upon the above, it would serve no useful purpose to actually define how such grandfather contour should be determined.

It has long been our policy to allow filling in of dead spots in existing contours as long as the new contours do not exceed the old. Such is the case before us. It has always been our policy that the subject of interference is exclusively in the domain of the FCC.

#### Findings

1. Intrastate's service cannot at all times be received in the San Ramon--Livermore Valley areas along Highway 680.
2. Intrastate proposes to install base stations which will provide adequate service to the Highway 680 area.
3. By proper engineering, contours of the proposed base stations can lie within the service area of Intrastate as computed by Intrastate and as computed by the Commission staff.
4. There is a public need and desire for the improved service proposed by Intrastate from the proposed base stations.
5. Intrastate, both technically and financially, is qualified and capable of providing such improved service.
6. The competition provided by Intrastate to protestants is in the public interest.

7. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions

1. The proposed construction should be authorized.
2. Further hearing should be held on the question of Intrastate's authorized service area.

INTERIM ORDER

IT IS ORDERED that:

1. Intrastate Radio Telephone, Inc. of San Francisco is authorized to proceed with its planned gap-filling base stations.

2. Further public hearings shall be held regarding service areas at a time and place to be determined.

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

Dated at San Francisco, California, this 28<sup>th</sup> day of SEPTEMBER, 1976.

[Signature] President  
William Aguon Jr.  
Vernon P. Livingston  
[Signature]  
Robert B. [Signature]  
Commissioners