

Decision 82 01 09 JAN 5 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of R. L. Mohr, dba RADIOCALL )  
CORPORATION, for a Certificate )  
of Public Convenience and Necessity )  
pursuant to CPUC Section 1001 to )  
enlarge its authorized service area.)

Application 59456  
(Filed February 13, 1980)

Philips B. Patton, Attorney at Law, for  
R. L. Mohr, applicant.  
Warren A. Palmer and Michael F. Willoughby,  
by Warren A. Palmer, Attorney at Law,  
for Industrial Communications Systems,  
Inc., protestant.  
David Berg for American Mobile Radio  
Incorporated, interested party.

O P I N I O N

By this application, R. L. Mohr (applicant), dba Radiocall Corporation,<sup>1/</sup> requests a certificate of public convenience and necessity under Public Utilities (PU) Code Section 1001, to enlarge his radio telephone utility (RTU) service area in Los Angeles County. Applicant presently provides two-way mobile and one-way tone and voice paging service on frequency 454.025 MHz and one-way tone only paging on frequency 158.70 MHz from transmitters located at San Pedro Hill.<sup>2/</sup>

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- 1/ By Decision (D.)75278 dated February 4, 1969 Mohr, dba Advanced Electronics, was denied authority to sell and transfer his radio-telephone utility properties to Radiocall Corporation.
  - 2/ By D.85141 dated November 18, 1975, applicant was authorized to relocate his transmitters from his residence in Palos Verdes Estates to San Pedro Hill but the service area boundaries were to remain the same.

Applicant's authorized service area is confined to the communities of Rolling Hills Estates, Rolling Hills, Palos Verdes Estates, Torrance, Redondo Beach, Hermosa Beach, Manhattan Beach, El Segundo, Hawthorne, Gardena, Inglewood, and the unincorporated areas of the County of Los Angeles intermixed with such communities.

On June 30, 1980, a protest to the application was filed by Industrial Communications Systems, Inc., (ICS). The protest alleges that the proposed expanded service area is served in whole and in part by Intrastate Radiotelephone Incorporated of Los Angeles, Mobile Phone Incorporated, Intrastate Radiotelephone Incorporated of San Bernardino, Radio Dispatch, Orange County Radiotelephone, and General Telephone Company of California in addition to protestant, ICS. It also alleges that applicant has not attempted to reach an intercarrier agreement with the RTUs serving the proposed expanded service area and that if the application were granted it would result in a wasteful duplication of facilities.

Hearing was held at Los Angeles, December 1 through 4, 1980, before Administrative Law Judge Burt E. Banks. The matter was submitted subject to the filing of concurrent briefs 40 days after receipt of the transcript. By agreement of the parties, briefs were filed April 3, 1981.

Application

The application states applicant is a Federal Communications Commission (FCC) common carrier licensed by the FCC for the exclusive use of domestic public land mobile radiotelephone service (DPLMRS) two-way Channel 21 on UHF frequency 454.025 MHz in the Greater Los Angeles Area. It states that applicant is equally eligible at the FCC with other Los Angeles RTUs for licensing additional DPLMRS channels that will become available for RTU use in the Los Angeles Area from time to time in the future, and applicant will be entitled to be licensed for a reasonable share of such channels. It is alleged that applicant is one of the RTU stockholders of Common Carrier

Communications, Incorporated (CCCI)<sup>3/</sup>; it is anticipated that CCCI will soon be licensed by the FCC to utilize all 24 new UHF channels from FCC Docket No. 18261 in the DPLMRS and that the half-million people residing in applicant's marketing area will be as equitably entitled to the benefits of this new FCC channel release as are the residents of the serving areas of the other Greater Los Angeles Area RTUs.

The application states that applicant desires to expand his service area but not his marketing area. It is alleged the expansion site is fully developed, is used for several radio transmitters in noncommon carrier services, and is ready to accept a new radio transmitter.

The application states that the potential communication capacity to serve up to 100 or more two-way telephone subscribers on applicant's Channel 21 cannot be realized because the strength of the radio signals from its single existing authorized transmitter site is not sufficient to reach many of the areas that South Bay<sup>4/</sup> subscribers must regularly travel, and that accordingly the channel capacity is being wasted. It is alleged that the other two-way RTU channels serving the Greater Los Angeles Area are fully loaded and that potential South Bay subscribers cannot secure radiotelephone service.

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3/ CCCI is a California corporation organized by Los Angeles RTUs, including applicant, to engage in the ownership and operation of an automatic two-way mobile telephone service on frequencies allocated or to be allocated by the FCC in Docket No. 18261. D.86972 dated February 15, 1977 authorized CCCI to issue common stock. It is intended that CCCI will obtain the FCC permits and licenses to construct the necessary facilities to provide two-way mobile service throughout the combined service areas of the parties.

4/ Applicant's service area is generally referred to as the South Bay.

The application estimates total construction costs of approximately \$5,000 and annual operating expenses of \$2,660. Rates would be those presently on file with the Commission. It is estimated that with the expanded service area, applicant would be able to serve 50 customers in 1980, 100 in 1981, and 500 by 1985. Finally, the application alleges that applicant was unable to consummate an inter-carrier agreement with other Los Angeles area RTUs.

Protestant

In protesting the application, ICS alleges (1) the application fails to comply with Rule 18(o) of the Commission's Rules of Practice and Procedure by not showing that the present service in the proposed expanded service area is unsatisfactory; (2) the application fails to show that applicant endeavored to reach an intercarrier agreement with RTUs serving the expansion area; (3) granting the application would result in a wasteful duplication of facilities, a lack of conservation of radio spectrum, and excessive competition; and (4) it fails to detail the fact that applicant uses Channel 21 frequency, 454.025 MHz, for tone and voice pagers in addition to two-way mobile telephone service.

Testifying in behalf of applicant was general manager Eugene J. Harden, owner R. L. Mohr, and five public witnesses. Testifying for ICS was its president and chief executive officer, Homer Harris.

Applicant's Showing

Harden sponsored Exhibits 1 through 10 and explained how applicant operates. The exhibits introduced include applicant's service area map, in its tariff for station KLF515, a contour map showing the proposed service area, applicant's 1980 annual report to the FCC, statements of two customers on the quality of service, financial statements for the period ending August 31, 1980, and copies of nine letters to customers soliciting assistance in the application to the FCC. Harden stated that customers had reported to him that although they may be based in the South Bay, their business frequently

takes them into Los Angeles, Orange County, or the San Fernando Valley, where they cannot receive a signal and thus are essentially out of contact with applicant's station. Harden stated that as of October 31, 1980, applicant had 24 two-way mobile and 81 paging subscribers. He explained applicant's tariff for service stating that when it is necessary for a subscriber to use transient service, the cost is very high. He stated that a study of one of his customer's bills, Exhibit 7, disclosed that a subscriber with 102 minutes of transient traffic would be billed \$16.32 more than if all 102 minutes of service had been placed over applicant's system.

Mohr sponsored Exhibits 11 through 20. He stated that his activity with Radiocall Corporation is limited to policy and regulatory matters. He stated that due to the limited coverage from its present transmitter site, subscribers are limited in their ability to place or receive calls outside the present service area. He explained the protective zone as established by the FCC does not permit another channel on the same frequency to be used within approximately 75 miles of the Los Angeles Basin. Because of the FCC limitation, subscribers traveling outside of the service area are forced to pay high transient charges. He stated that he was attempting to provide a service to those in the South Bay who travel and need communication service outside that area. He stated although he never approached the maximum mobile units authorized by the FCC, if the application were granted, there would be no difficulty in getting the FCC to modify its limitation. He stated that FCC rules provide that all two-way radiotelephone channels may also be used for one-way paging on a secondary basis. He explained that applicant presently has an automatic paging terminal that has voice storage capability whereby the subscriber is allowed to direct dial into the terminal where paging tones are stored in his voice message store.

If the dialed channel is busy with a two-way call, up to 12 paging calls are stacked and put out automatically in the sequence received when the two-way call is completed.

Mohr stated he directed his attorney to write all RTUs in the Los Angeles Basin to negotiate an intercarrier agreement and that only ICS responded but that no specific proposal was tendered. He stated that by letter dated May 7, 1980 his attorney submitted to ICS a proposed intercarrier agreement but that no response was received. He stated that his proposal to ICS was like paging intercarrier agreements where RTU subscribers would use another RTU's channel on an areawide basis at no exchange of revenues. He stated that it was his opinion that there is a demand for two-way mobile service for the Los Angeles Basin but that no RTU was accepting applications for new service. He stated there was no wasteful duplication of the facilities since no other local RTUs could operate on his Channel 21. Finally, he stated that since applicant does not, nor does it intend to, solicit business outside the South Bay, there would be no economic injury to other RTUs.

On cross-examination Mohr stated that even assuming his application to the FCC for a power waiver is rejected, he still requests that the application be granted because applicant could provide improved service to subscribers. He stated that while there is no intention to solicit outside the present service area, service would be granted to anyone who requested it. When asked to explain the difference between the situation in the present application and the Commission's findings in D.85141, in C.9373,<sup>5/</sup> Mohr stated:

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<sup>5/</sup> Findings 18-22 state that the relocation of Radiocalls' mobile and paging transmitters and increased power would increase its authorized service area by 100%, would allow service to communities not within Radiocalls' service area; the additional area was then adequately served by at least four competing RTUs; the relocation would be economically damaging to other RTUs, and restricting Radiocalls' operation to its presently authorized service area would not deprive existing subscribers of any needed or desired mobile or paging service.

"Well obviously time has changed that result completely, since our public witness stated today, there is no more channel availability in the Los Angeles area.

"And here, again, we are not attempting to increase our service area, to solicit business in the area defined by the map that we have applied for, but merely to be able to provide mobile telephone service outside of our existing service area, which is delineated in the original application.

"Therefore, the statement that Radiocall submits that no member of the public or competing carrier would be injured, certainly not economically since they are all full and in many cases do not even accept applications.

"Therefore, where would I injure the public, obviously, or any other competing carrier since none of them can take any more traffic on their mobile channels."

The public witnesses appearing on behalf of applicant, included a communications consultant, an electrical contractor, an insurance agent, a lawyer, and a refinery company executive. Four of the five public witnesses subscribe to two-mobile service from applicant. All five stated they travel extensively outside the South Bay Area and that the proposed service would better serve their individual requirements by giving them greater flexibility in their operation.

Protestant's Showing

Testifying for protestant, ICS, was its president and chief executive officer, Homer Harris. Harris sponsored Exhibits 21 through 70. These include contour maps of the service area of ICS and other RTUs, tariff sheets, total customers served paging, and mobile two way, ICS 1979 annual reports and financial statements ending September 30, 1980 and intercarrier agreements with other RTUs. Harris stated that the intercarrier agreements had been beneficial to all participants but that the real beneficiary has been the public.

He stated if it had not been for intercarrier agreements, other RTUs would be in a position similar to the applicant with but 20 to 30 units per channel on their UHF frequency.

Harris stated that in his opinion the present application would not be in the public interest because while applicant may get 50 to 80 mobiles in the area, what he really is attempting to do is put paging receivers into service. He stated that the public would be better served by automating applicant's channel along with other channels to enable customers to have access to all channels. He also stated that ICS does not have any waiting lists of applicants for two-way mobile service. He took exception to applicant's position that ICS' transient rates were high stating that its rate of 30 cents per message unit is a bargain considering it gives access to a service area of 11,000 square miles. He was of the opinion there ought to be intercarrier agreements among all RTUs in Los Angeles giving all customers access to all channels rather than have a single channel of operation as proposed by applicant.

On cross-examination Harris stated that he did not believe approval of the application would create an economic injury to ICS, but was opposed to the application in principle. He stated that ICS has two-way mobile intercarrier agreements with two Los Angeles Area RTUs. He admitted his transient rates are higher than others but argues that the intercarrier agreement allows subscribers a wider calling area. He also stated that he was not prepared to offer intercarrier agreements on two-way service that does not involve transient rates.



Discussion

The evidence in this proceeding is that present subscribers in the South Bay area need to travel and communicate in their vehicles beyond the limits of applicant's present service area. Five subscribers testified that a grant of the application would meet unfilled communication needs. Further, letters from potential subscribers indicated a need for wider area two-way radiotelephone coverage.

The evidence also shows that the other Los Angeles RTUs do not have the capacity to add the presently unserved South Bay public as subscribers. In addition, the present subscribers of applicant are required to pay high transient rates to other carriers when beyond applicant's service area, which would be eliminated if applicant's request is approved.

No evidence was adduced to show that a grant of the application would cause excessive competition resulting in economic injury. Indeed, Harris testified that he did not believe granting the application would create an economic hardship on ICS but was protesting the application because he was opposed to the principle of expansion. This is not sufficient to deny the application. Applicant's proposal will permit it to effectively meet the service requirements of its present and future customers with little, if any, revenue impact on other RTUs. It is debatable whether the intercarrier agreement ICS proposed to applicant is viable enough to eliminate any inconvenience that might arise from interchanged traffic. It would, however, increase the cost of providing expanded service to applicant's customers.

In a certification proceeding, our main concern should be for the public that will be consuming or needing a proposed new service. It has been shown that there is an existing and growing public need for applicant's proposed service and that approval will promote beneficial competition. There was no showing that competing providers of similar communication services will be adversely affected. The application should be granted.

Findings of Fact

1. R. L. Mohr, dba Radiocall Corporation, is a radiotelephone utility providing two-way mobile service and one-way tone and voice paging service on frequency 454.025 MHz and one-way tone-only paging on frequency 158.70 MHz from transmitters located at San Pedro Hill, Los Angeles County, within an area known as the South Bay adjacent to the City of Los Angeles.

2. Applicant proposes to add a transmitter and related equipment on Mt. Wilson and to obtain a power waiver from the FCC to expand its service area to provide service in the Greater Los Angeles Metropolitan Area.

3. Applicant does not intend to solicit, advertise, or market its radiotelephone mobile and paging service outside of the South Bay communities.

4. Applicant presently has 24 two-way mobile customers. The mobile transient service available from other RTUs in the Greater Los Angeles Metropolitan Area require subscribers to pay high transient rates.

5. Granting the application will not cause excessive competition resulting in economic injury to other RTUs.

6. The limited increase in competition will help provide improved public service in the South Bay.

7. Applicant has been unable to negotiate and execute an intercarrier agreement with other RTUs.

8. Public convenience and necessity require the issuance of the requested certificate.

Conclusion of Law

Granting a certificate of public convenience and necessity authorizing proposed expanded service area of applicant is in the public interest.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to R. L. Mohr, dba Radiocall Corporation (Radiocall), to expand its radiotelephone utility service area by adding a location 2 transmitter at Mount Wilson on its license KLF515 on frequency 454.025 MHz.
2. Radiocall is authorized to file, after the effective date of this order, tariffs applicable to the service authorized containing rates and charges otherwise applicable to its two-way radiotelephone services. Such filing shall comply with General Order 96-A. The tariffs shall become effective on not less than 10 days' notice.
3. Radiocall shall file, after the effective date of this order, as part of its tariff, an engineered service area map drawn in conformity with the provisions of Federal Communications Commission Rule 21.504, commonly known as the "Carey Report."
4. Radiocall shall notify this Commission in writing of the date service is first rendered to the public under the tariffs authorized within 30 days thereafter.

5. The certificate granted shall terminate if not exercised within one year after the effective date of this order, or such further period of time as may be authorized.

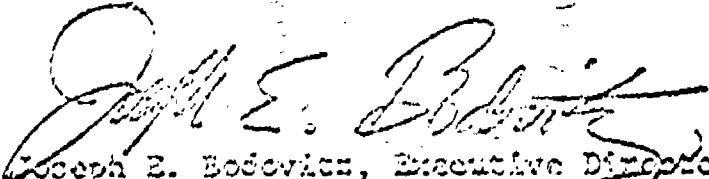
This order becomes effective 30 days from today.

Dated JAN 5 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
VICTOR CALVO  
MISCELLA C. GREW  
Commissioners

Commissioner Leonard M. Grimes, Jr.,  
was temporarily absent, did not  
participate.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovick, Executive Director