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Decision 83 11 067 NOV 22 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of HENDRIX ELECTRONICS, dba CAL-COM RADIO TELEPHONE SERVICE, a California corporation, for a Certificate of Public Convenience and Necessity to Add New Facilities and Serve Additional Territory.	Application 61026 (Filed November 2, 1981)

Petty, Andrews, Tufts & Jackson, by Allan J. Thompson and Dennis V. Swanson, Attorneys at Law, for Hendrix Electronics, applicant.
Dinkelspiel, Donovan & Reder, by David M. Wilson, Attorney at Law, for Gencom, protestant.
Michael F. Willoughby, Attorney at Law, for Industrial Communications Systems, Inc., interested party.

O P I N I O N

Hendrix Electronics, dba Cal-Com Radio Telephone Service (applicant) seeks a certificate of public convenience and necessity (CPCN) to provide automatic two-way mobile telephone IMTS [1] service in the San Diego area on frequencies 454.075 MHz and 454.125 MHz (megahertz). A proposed transmitting antenna would be located at Mt. San Miguel with line control from the offices of Accurate Communications, a division of applicant located in San Diego.

[1] IMTS is the acronym used throughout the radiotelephone industry to designate Improved Mobile Telephone Service. This type of service provides automatic access to the system as distinct from manual access.

Radiotelephone service in the proposed service area is presently provided by Gencom, Incorporated (Gencom) and The Pacific Telephone and Telegraph Company (Pacific).

Timely protest to the application was filed by Gencom requesting that the application be denied.

Duly noticed public hearing was held at San Francisco on April 5, 6, and 12, 1982 at which time the matter was submitted subject to the filing of opening briefs on June 14, 1982 and reply briefs on June 22, 1982. Sixty-nine exhibits were introduced with testimony from five witnesses.

Applicant, a California corporation, presently provides two-way mobile telephone service and one-way paging in and around El Centro, California. Its present operations include communications maintenance and service shops in Blythe, Imperial, Brawley, and San Diego, California and Lake Havasu City, Arizona. In 1981 its gross revenue from common carrier activity was approximately $402,640. It has approximately 56 employees located at the various repair and service shops. Overall corporate administration is conducted from headquarters in Imperial, California.

Of the 700 two-way mobile radio service customers receiving service in and around El Centro, 75 subscribe to automatic IMTS on two channels and 625 subscribe to manual service on five channels.

Application

The application states applicant is licensed by the Federal Communication Commission (FCC) to use frequencies 152.12 MHz, 152.24 MHz, 454.050 MHz, 454.150 MHz, 454.20 MHz, 454.325 MHz, 152.03 MHz and 152.09 MHz to provide two-way mobile telephone and one-way paging service in and around El Centro, California. The 454.150 MHz and 454.050 MHz frequencies are presently dedicated to IMTS.

Applicant seeks to establish automatic two-way mobile IMTS in San Diego on frequencies 454.075 MHz and 454.125 MHz. The proposed service is to be compatible with applicant's present IMTS in El Centro as well as Industrial Communications Systems, Inc.'s (ICS)[2] service in Palm Desert and Los Angeles, and Mobilfone, Inc.'s service in Los Angeles. Direct dial automatic service would be provided on a 24-hour basis with message holding and forwarding service available from 8:00 a.m. to 5:00 p.m., Monday through Friday.

Applicant's transmitting antenna is to be located at Mt. San Miguel (elevation 2,565 feet; locations 32° 41' 47" N, 116° 56' 06 W), with line control from the offices of its San Diego division, Accurate Communications.

The application states that the proposed new facilities are essential if the public is to receive satisfactory service because of the need for wide area automatic radiotelephone service and the lack of compatibility between the automatic services presently available in San Diego and the automatic services available in adjoining areas.

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[2] The name of this carrier has subsequently been changed to ICS Communications.

The application states that the IMTS radiotelephone services provided in the adjoining areas of Palm Springs and Los Angeles are compatible with applicant's IMTS in the El Centro area and IMTS subscribers may travel to these areas making use of their mobile telephones. It states this is not true in San Diego. It states San Diego residents cannot purchase automatic radiotelephone service allowing them to travel to adjoining areas and use their equipment.

Because of the heavy commercial traffic between Imperial County and San Diego, applicant alleges there is a substantial public need for compatible automatic service not being met by the service presently available.

The application states further that it is applicant's understanding that the automatic radiotelephone service presently provided by Gencom is fully subscribed and a significant delay is required before a new subscriber may obtain service occasioning an immediate need for additional automatic radiotelephone service within San Diego. It also states that a telephone and mail market survey conducted by applicant established that there is an unmet service need in the area.

As a further reason to grant the requested certificate, the application states that protestant Gencom has FCC authority to use ten of the fourteen UHF channels available in San Diego for nonlandline carriers providing Domestic Public Land Mobile Radio Service (DPLMRS) and has an application pending before the FCC for the use of two additional channels. Applicant states it is seeking authorization to use the remaining two UHF channels for a service different from but competitive with that now available in San Diego and that the Commission should consider the benefits to be realized from additional competition.

The application estimates the total net cost of plant to be $40,634. Projected first year revenues are $3,439. Revenues are expected to reach this figure the first year and remain steady for five years. Estimated first year expenses are $78,143 escalating to $97,559 by the end of the fifth year of operations. Construction is to be financed from internally generated funds.

Applicant states it has long been engaged as a radiotelephone utility (RTU) and has the technical and financial ability to construct and operate the proposed facility.

Finally, the application states that because protestant Gencom has not installed an IMTS system but continues to operate its SMART system and because of the incompatibility of the two systems, an intercarrier agreement could not be reached.

Protestant

Gencom's protest states that except for inaccurate allegations concerning the compatibility of its signaling format, applicant has made no attempt to make the showing required by Rule 18(o)(2)(i)[3] of the Commission's Rules of Practice and Procedure that present service in the San Diego area is unsatisfactory. It states that present service is satisfactory and that there is competition between the two utilities now serving San Diego i.e., Gencom and Pacific. It further states both Gencom and Pacific in the recent past have substantially renewed their DPLMRS plants and facilities with plans to invest substantial sums in a fully automatic cellular radiotelephone system. It is hoped this new cellular service will provide a low-cost, mass communication alternative to the landline system. It states Gencom's San Diego operation is "state of the art" and indeed was the first automatic dial-access mobile telephone system to be installed in California by any utility, wireline or nonwireline. The protest states applicant has made no attempt to reach an intercarrier agreement with Gencom.

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[3] This reference is to Rule 18(o) prior to our issuance of Decision 83-08-59.

Rather, Gencom states it has at all times been willing to exchange one-way paging and two-way mobile telephone traffic with applicant. It has also taken steps necessary to provide IMTS compatibility within the next 4 to 6 months.

It states that applicant's proposal is not technically or financially feasible alleging that the proposed automatic system can accommodate no more than 75 local subscribers plus transients.

Finally, Gencom states that contrary to applicant's allegations concerning the benefits of competition the proposal will in fact lessen effective competition in the San Diego area.

Applicant's Showing

Testifying on behhalf of applicant was its accountant C.P. Stevenson, Jr., Tim Dudzik, manager of its San Diego division, and Shirley Ashworth, assistant vice-president and manager of its Cal-Com operation.

Stevenson sponsored the financial exhibits to support the application. He explained that the projected costs and expenses were determined after discussions with Shirley Ashworth and Tim Dudzik. The income projection was based on the revenue experience of applicant's El Centro operation for a similar number of units on a

two-channel IMTS system. He explained that expense projections are general allocations of expenses associated with applicant's other operations.[4]

Dudzik testified as to the technical feasibility of the proposed service. His testimony included exhibits showing a service area map, a contour map, and a simulation of the proposed service. He stated that applicant is a technical organization which provides maintenance, repairs, installation and technical support for a wide range of customers including the state and federal government, local police, fire departments and private businesses. He stated its San Diego shop, Accurate Communications, would be responsible for service and maintenance for the IMTS system with assistance when necessary from El Centro. He stated that a simulation test, made to obtain empirical data to verify the engineering, showed satisfactory operation would be attained over a wide area to the north and east of the City of San Diego as well as over the center of the city.

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[4] Applicant's operations include the following: (1) Blythe Communications, Blythe, California, a Motorola service shop serving the Blythe, Parker, and Palo Verde Valley areas of California; (2) Cal-Com Radio Telephone Service, a 24-hour telephone answering service, Western Union Agency, and RTU serving Blythe, California; (3) Hendrix Electronics, Inc., Imperial, California, and Lake Havasu City, Arizona, including Motorola Service shops, two-way radio equipment repair and leasing facilities, and community repeaters in the Imperial Valley and in Yuma and Mojave County, Arizona; (4) Valley Communications Company, Brawley, California, a General Electric service shop serving Brawley; (5) Cal-Com Radio Telephone Service, a RTU serving the entire Imperial Valley with telephone answering service, manual two-way radio, automatic car telephone and one-way paging services from El Centro; and (6) Accurate Communications, San Diego, California, a service shop providing two-way radio and paging repair and system and mountain site maintenance and repair.

He estimated that using published population figures the proposed service would cover roughly 70% of the population of San Diego County. From a technical aspect he concluded applicant would be able to provide excellent service in the San Diego area.

Finally he stated that the IMTS system Gencom is placing in San Diego will use an antenna with much different characteristics and at much higher power than requested by applicant. He stated he compared the Gencom system with applicant's proposal by plotting the calculated signal strength at various distances and angles from the antenna location as specified in Gencom's FCC filings. The result was that although the rated power output for the Gencom system is 216.3 watts maximum ERP when compared to the applicant's proposed 23.4 watts maximum ERP, most of Gencom's energy is radiated over sparsely populated areas of the south and west. Over the critical downtown and north county area, applicant's service will have equal or better coverage than will Gencom.

Ashworth testified as to the need for the proposed service, background information concerning applicant and why applicant made the decision to pursue entry into the San Diego market.

She explained that one of the attractive features of the proposed IMTS system is that a telephone number may be programmed into the telephone while one is driving and the number will be automatically dialed when a channel becomes available. She stated that applicant has several years experience operating an IMTS system in the Imperial Valley.

She also stated applicant is committed to providing high quality service and would limit the number of subscribers or limit the use per subscriber in order to ensure that all subscribers are provided good service. She stated service would be provided under rates, charges, and tariffs now on file with the Commission.

She stated that the system would be fully subscribed immediately based on the responses received from inquiries made to prospective customers regarding the proposal. On a need survey conducted prior to filing the application, the applicant concluded there was an unmet need for additional two-way mobile service in San Diego. She stated the survey was updated by contacting some of the original contacts and the conclusion again reached that there was a need for the service. She stated she was unaware whether the need was due to the present Gencom channels being totally filled or whether it was due to the quality of the present service.

Ashworth explained applicant's experience with protestant Gencom's plan to install an IMTS system in San Diego stating it was decided to enter that market when it appeared there would be no IMTS installation made. She stated it was felt that applicant could enter the market at a relatively low cost because of its existing facility in San Diego and because of its presently unused IMTS equipment.

She stated that applicant was not convinced that Gencom was committed to providing IMTS to San Diego. Gencom did not file with the FCC for channels to provide IMTS but elected to use channels already allocated to them so such service could be provided before a certificate could be obtained from this Commission. She said it was applicant's belief that Gencom was more interested in one-way paging than it was in two-way mobile telephone service. It was, she

alleged, Gencom's decision to install an IMTS system to protect its market in response to the filing of MCI Airsignal and applicant at the FCC for the two remaining San Diego frequencies.[5] She stated she did not believe that present cellular technology would cause replacement of two-way mobile service now being provided nor would it make it obsolete.

Finally, she stated that an intercarrier agreement with protestant is inappropriate because there is an unmet need for service which cannot be met through sharing of facilities. Further an intercarrier agreement is inappropriate when it would impede the competitive advantages of an independent service.

Protestant's Showing

Testifying for Gencom was William Simpson, regional systems engineer and Robert Meinzer, general manager of San Diego operations.

Simpson described Gencom's mobile telephone services in San Diego. He stated that it presently provides dial-access service on both VHF and UHF channels, which includes a three-channel IMTS system. He explained that from the viewpoint of a subscriber there is very little difference between the SMART and IMTS systems, both affording dial access with conversational privacy. He stated it is primarily in the signaling format that the two systems differ but that would go unnoticed by a subscriber unless he wished to roam outside an IMTS area into a SMART-served area or vice versa.

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[5] Applicant, MCI Airsignal, and ICS have all filed competing applications with the FCC for frequencies 454.075 and 454.125 in San Diego. By order issued January 7, 1983, the FCC approved an agreement between applicant, ICS, and MCI Airsignal of California Inc. where these three parties would share Channels 23 (454.075 MHz) and 25 (454.125 MHz) in San Diego. On the basis of the Settlement Agreement the application on file with the FCC were approved subject to the time sharing provisions.

He stated that applicant would not be able for many months or even years to construct facilities on either of the channels applied for because of mutually exclusive filings at the FCC made by ICS relating to Station KMD 990 covering both frequencies on Mt. Palomar. He sponsored exhibits (Ex. 42 and 43) to show that the interference contours of the proposed ICS stations bisect the effective service area of applicant's proposed transmitters.

With respect to technical feasibility, he stated an Orange County RTU has already constructed facilities on 454.075 MHz. He stated the interference contours for these facilities cut across northern San Diego County at Oceanside with harmful interference likely to occur much further south since signal propagation is much stronger over water than land surfaces. Further, ICS has constructed facilities on 454.125 MHz on Santiago Peak near Santa Ana and interference contours cut directly across downtown San Diego. Because of the height/power limits on the San Miguel site, he stated applicant's transmitters would have very limited coverage.

He stated Gencom's SMART and IMTS systems already cover the populated areas of both northern and southern San Diego County. Because of the height and power waivers from the FCC, the Gencom IMTS system is superior to the Cal-Com proposal and will remain so because FCC power waivers are no longer available.

He stated that it is generally accepted that the capacity of an automatic dial access system is significantly less than that of a manual system. Because Gencom's experience is that only 20-25 subscribers can be accommodated on each channel of a non-trunked automatic system, he stated it was hard to imagine how applicant's two channel proposal could accommodate more than 70 subscribers.

Finally, he stated Gencom has working intercarrier agreements with a variety of other utilities. These arrangements permit operator-assisted calls to be placed by roamers with co-channel capabilities on their equipment.

In explaining Gencom's activities, Meinzer stated that as of November 1981 it served 633 mobile units on 17 FCC licensed frequencies, slightly less than 50% of which are automatic and dial accessed. Two-way transmitters offer service throughout the populated parts of San Diego County and intercarrier agreements make it possible for many subscribers to be reached with operator assistance while traveling in other areas.

He stated that Gencom installed the first automatic, dial-accessed mobile telephone service, a SMART system, in California. At the time the first system was installed, there was no way to foresee which format, i.e., IMTS or SMART, other carriers would choose for dial-access service. In the interest of providing compatible automatic service for subscribers wishing service over a wider area, Gencom established a trunked IMTS system on three channels previously reserved for hand-held mobile units.

He stated that while Gencom's SMART I system is fully loaded (45 units on each of four trunked channels) its new IMTS system will at the outset have an additional capacity of 40 units on each of three channels. He stated four channels were obtained in 1979 for IMTS purposes but since IMTS was still questionable, the decision to use the frequencies for portable service was made. When this proved technically possible, in early 1981 Gencom decided to return to the IMTS concept with plans to construct a 6-channel trunked system.

Meinzer outlined an intercarrier agreement of other carriers for IMTS subscribers. He stated that these subscribers would pay the same flat service charge to their home carrier as specified in that carrier's tariffs for nonroaming units and the per-call charge determined by the tariffs of the carriers in whose territory the call was placed.

He stated three reasons why Gencom was opposing the application. First he alleged the proposed system would be technically inferior to Gencom's service, second the system as proposed could not be operated on a compensatory basis, and third a proliferation of radio common carriers in San Diego would prevent effective competition with Pacific.

He stated applicant's proposal is inferior to existing service since it involves only two channels and because of interference it would not be able to afford coverage beyond a short distance from downtown San Diego. He stated that because the two channels involved are already licensed to ICS in Los Angeles and Mobilfone Inc. in Orange County, the applicant could only construct a single transmitter on Mt. San Miguel. Further, the interference generated by the existing licensees would prevent construction on any other site and bar delivery of an effective signal in northern San Diego County. This he said is not true of the systems already constructed by Gencom.

As to the proposal being compensatory, he stated that the applicant's first and fifth year cost estimates were understated and the revenue estimates overstated.

With respect to competition, he stated that competition now exists between Gencom and Pacific which maintains both one-way and two-way capability in San Diego County. He stated Pacific has advantages that other mobile telephone operators do not enjoy such as statewide service offerings while controlling the terms of interconnection. He stated it was his view that the best competition with Pacific comes from a single RTU which is large enough to finance new technologies and offset Pacific's advantages. The worst thing for competition, he stated, would be a proliferation of small RTUs with each one able to serve only a fraction of the marketplace. He said there have been twelve companies seeking channel space from the FCC to provide radiotelephone service to San Diego County. He also said that Pacific now serves approximately 6,000 paging units and as many as 1,000 mobile telephones.

Finally he stated Gencom plans to install a cellular system to cover the populated area of San Diego County which would be compatible with Pacific's. The planned system would have an initial capacity of many thousands of customer units and be in operation by the end of 1983. It is expected that Pacific's cellular system will be similar and that the two may entirely supplant conventional mobile telephone offerings.

Discussion

The evidence in this proceeding is that there is a need for additional two-way automatic mobile service. The service proposed will be compatible with that provided subscribers in Los Angeles, Orange, and Imperial Counties. Surveys conducted by the applicant attest to the need and desire of the community for the service which applicant has the financial ability and resources to provide. While the projected revenues and apportioned expenses may be somewhat optimistic, applicant has shown to our satisfaction that the proposal is viable.

With respect to Gencom's concern with the terrain and consequent co-channel interference, we do not believe such a problem will exist. Applicant has conducted tests simulating actual operation which demonstrate to our satisfaction adequate signal strength throughout the 39 dbu contour area. Should a problem arise after service is inaugurated, as applicant states, it can be corrected. Further, as noted above, with only two frequencies available to applicant, it is difficult to imagine how the projected 75 subscribers could have any effect on Gencom's service or its operations.

An obvious concern of any protestant to a certification proceeding is the fear of a loss of market share. In this instance there should be little or no concern by protestant Gencom since (1) it has been operating in San Diego for some time, (2) it was the first RTU in the state to have automatic two-way mobile service, (3) it is now providing service on 10 frequencies with only two possible frequencies available to applicant, and (4) the population density of San Diego should support the entry of applicant and make a more competitive atmosphere.

It is debatable whether an intercarrier agreement as proposed by Gencom is viable enough to eliminate any inconvenience that might arise from interchanged traffic. It would, however, increase the cost of providing service to applicant's El Centro customers and impede any advantage of an independent service.

Finally we should point out that in a certificate proceeding, our main concern should be for the public that will be consuming or needing a proposed new service.[6] 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 services will be adversely affected. The application should be granted.

Findings of Fact

1. Applicant seeks a CPCN to provide automatic two-way mobile telephone service IMTS system in the greater San Diego area on frequencies 454.075 MHz and 454.125 MHz.

2. Applicant proposes to locate a transmitting antenna at Mt. San Miguel with line control from the Office of Accurate Communications, a division of applicant in San Diego.

3. Applicant presently provides two-way mobile telephone and one-way paging service in and around El Centro, California.

4. Radiotelephone service in the area applicant proposes to serve is presently provided by Gencom and Pacific.

5. Heavy traffic between the El Centro and San Diego areas, requires a compatible automatic two-way mobile radiotelephone service.

6. Gencom is presently providing radiotelephone service on 10 of the 14 frequencies available to nonlandline carriers that provide DPLMRS.

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[6] The subject application was processed under Rule 18(o) prior to changes to that rule by D.83-08-059 dated August 17, 1983 in OII 83-03-01. This applicant was named a respondent in the OII. The FCC approved a settlement agreement for use of the channels in January 1983 and issued a construction permit in February 1983.

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

8. The limited increase in competition will help provide improved public radiotelephone service in the San Diego area.

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

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

Conclusion of Law

Granting a CPCN authorizing the proposed service of applicant is in the public interest.

O R D E R

IT IS ORDERED that:

1. A CPCN is granted to Hendrix Electronics (Hendrix), dba Cal-Com Radio Telephone Service, to provide two-way mobile telephone service in San Diego on frequencies 454.075 MHz and 454.125 MHz from a transmitting antenna located at Mt. San Miguel.

2. Hendrix 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. Hendrix 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 FCC Rule 22,504, commonly known as the "Carey Report."

4. Hendrix 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 NOV 22 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
WILLIAM T. BAGLEY
Commissioners

Commissioner Donald Vial, being necessarily absent, did not participate.

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

Joseph E. Bodovitz, Executive Director

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Finally we should point out that in a certificate proceeding, our main concern should be for the public that will be consuming or needing a proposed new service.[6] 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 services will be adversely affected. The application should be granted.

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