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ORIGINAL

Decision 83 11 092 NOV 22 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of)
INDUSTRIAL COMMUNICATIONS SYSTEMS, INC.,)
a California Corporation, for a Certi-)
ficate of Public Convenience and)
Necessity to Provide Paging Service)
in Ventura County, California.)

Application 60194
(Filed January 15, 1981;
amended April 21, 1981)

Mobile Radio System of Ventura, Inc.,)
Complainant,)
vs.)
Industrial Communications Systems, Inc.,)
Defendant.)

Case 10964
(Filed March 16, 1981)

In the Matter of the Application of)
INDUSTRIAL COMMUNICATIONS SYSTEMS, INC.,)
a California corporation, for a Certi-)
ficate of Public Convenience and)
Necessity to Provide Automatic Two-Way)
Mobile telephone service in Ventura)
County, California.)

Application 60574
(Filed May 19, 1981)

Industrial Communications Systems, Inc.,)
a California corporation,)
Complainant,)
vs.)
Mobile Radio System of Ventura, Inc.,)
Defendant.)

Case 11030
(Filed September 11, 1981)

ORDER MODIFYING DECISION 83-10-012

ICS Communications (ICS), formerly Industrial Communications Systems, Inc., and Mobile Radio System of Ventura, Inc. (MRSV) jointly seek an order modifying Decision (D.) 83-10-012, issued October 5, 1983. D.83-10-012 resolves four longstanding disputes between MRSV and ICS:

1. It grants MRSV's complaint (Case (C.) 10964) by directing ICS to withdraw the service area contours of its Oat Mountains and Saddle Peak transmitters from the eastern segment of MRSV's service area.
2. It grants ICS' complaint (C.11030) by requiring MRSV to withdraw its service area contours from the ICS service point of Simi Valley.
3. It grants Application (A.) 60194, certifying ICS to provide paging service in MRSV's service area in Ventura County.
4. It grants A.60574, certifying ICS to provide mobile telephone service in MRSV's service area in Ventura County.

The joint petition seeks an order suspending indefinitely Ordering Paragraphs 1, 2, 3, 4, 5, and 9, the paragraphs of D.82-10-012 dealing with the two complaint cases. MRSV and ICS allege in support of their request that changed circumstances and the resolution of all outstanding disputes between them by written agreement require the action they request.

The changed circumstances ICS and MRSV cite are as follows:

1. Since these proceedings were filed in 1981, ICS has become a subsidiary of a larger radio telephone utility (RTU).
2. MRSV has come under new management.

3. A majority of the shareholders of MRSV have agreed to sell their shares to Mobile Communications Corporation of America, which now operates in the Los Angeles area through its subsidiary, Mobilecomm, Inc., a RTU providing service in Simi Valley.
4. The Federal Communications Commission (FCC) has recently released 60 new paging channels and a number of channels which will enable two competitive cellular mobile telephone systems to be established in both the Ventura and greater Los Angeles areas.
5. D.83-08-059 has greatly relaxed administrative barriers to extension of RTU service areas.

Because of these changed circumstances MRSV and ICS have entered into a written agreement which resolves all their disputes, a copy of which is attached to the petition. The agreement provides that neither party shall prevent the other from taking whatever action is required to restore it to the position it occupied before D.83-10-012 was issued. It further provides that MRSV shall not seek to overturn the grant of ICS' applications.

Since the parties have resolved their disputes, they seek to be relieved of the duty to comply with Ordering Paragraphs 1, 2, 3, 4, 5, and 9 of D.83-10-012 (see Appendix A for a copy of the order in D.83-10-012). If their request is granted, they will seek authority from the Commission to continue to operate the facilities ordered to be modified.

MRSV and ICS argue that in view of the resolution of their disputes, it would not be in the public interest to reduce the territorial coverage historically enjoyed by the customers of

these RTUs by requiring the reduction of their contours nor to require these RTUs to apply to the FCC for authority to reduce their contours. Accordingly, ICS and MRSV seek an order suspending Ordering Paragraphs 1, 2, 3, 4, 5, and 9 of D.83-10-012 until ICS and MRSV shall, by application, petition, or otherwise, obtain authority from the Commission to provide the services required by D.83-10-012 to be withdrawn.

Discussion

The only parties involved in these consolidated proceedings are MRSV and ICS. As they have resolved their differences, it does not appear necessary to enforce those parts of the order in D.83-10-012 that pertain to the two complaint proceedings. The first of these four proceedings was filed January 15, 1981. It is now almost three years later, and in the interim major changes have occurred in the RTU business, and both MRSV and ICS have changed managements. It is, therefore, reasonable to grant their joint petition.

Findings of Fact

1. MRSV and ICS have changed their management.
2. MRSV and ICS have resolved their differences by written agreement.
3. Changed circumstances in the RTU business no longer require the enforcement of Ordering Paragraphs 1, 2, 3, 4, 5, and 9 of D.83-10-012.

Conclusions of Law

1. The joint petition should be granted.
2. Ordering Paragraphs 1, 2, 3, 4, 5, and 9 of D.83-10-012 should be suspended until further order of the Commission.

3. The following order should be effective immediately so that the requirements of Ordering Paragraphs 1, 2, 3, 4, 5, and 9 of D.83-10-012 will not become operative.

O R D E R

IT IS ORDERED that Ordering Paragraphs 1, 2, 3, 4, 5, and 9 of Decision 83-10-012 are suspended until further order of the Commission.

This order is effective today.

Dated NOV 22 1983, at San Francisco, California.

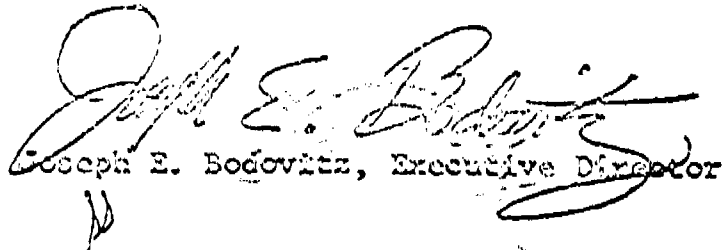
I abstain.

LEONARD M. GRIMES, JR., Commissioner

VICTOR CALVO
PRISCILLA C. CREW
WILLIAM T. SAGLEY
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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ORDERING PARAGRAPHS IN DECISION 83-10-012

1. Within 30 days Industrial Communications Systems, Inc. (ICS) shall apply for any FCC approval required to modify its transmitting facilities so that its signals do not intrude upon Mobile Radio System of Ventura, Inc.'s (MRSV) service area. Following receipt of any necessary authorization, ICS shall promptly implement these modifications and shall report the completion thereof to the Commission. Service area contour maps showing all changes shall be filed.

2. ICS shall neither provide service through subcontractors, nor market its service, within MRSV's service area until all appropriate FCC approvals have been secured.

3. Within 30 days ICS shall file a new service area map showing its contour as of November 23, 1976. Such contour shall not include the influence of the transmitters operated after that date.

4. Within 30 days MRSV shall apply for any FCC approval required to modify its transmitting facilities so that its signal does not intrude upon ICS's service area in Simi Valley. Following receipt of any necessary authorization, MRSV shall promptly implement these modifications and shall report the completion thereof to the Commission. Service area contour maps showing all changes shall be filed.

5. Within 30 days MRSV shall file a new Preliminary Statement omitting reference to Simi Valley.

6. This order is without prejudice to minor service area contour modifications filed by MRSV in accordance with Rule 18(o)(2)(iii) subsequent to February 22, 1982.

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7. The applications of ICS are granted, provided that ICS shall neither construct nor operate its proposed Red Mountain transmitter until it has obtained before April 30, 1984, the relevant FCC permits, and has filed a copy of its permits with the Commission within 30 days after it receives them.

8. If either of the time limits prescribed in Ordering Paragraph 7 are not met, the authority granted shall lapse and the applications may be dismissed without prejudice by order of the Executive Director.

9. The relief requested in C.10964 and C.11030 is granted to the extent set forth in Ordering Paragraphs 1 through 5.

This order becomes effective 30 days from today.

Dated October 5, 1983, at San Francisco, California.

(END OF APPENDIX A)