

Decision No. 87029**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Complaint of Intrastate Radio Telephone, Inc. of San Francisco and Salinas Valley Radio Telephone Company against Mobile Radio System of San Jose, Inc. for interference with complainants' public utility radiotelephone operations.

Case No. 9615
(Filed September 19, 1973;
amended May 15, 1974
and October 1, 1976)

In the Matter of the Application of MOBILE RADIO SYSTEM OF SAN JOSE, INC., for authority, if required, to construct additional radiotelephone facilities.

Application No. 54538
(Filed December 26, 1973;
amended August 25, 1976)

Tom L. Cook, for Intrastate Radio Telephone, Inc. of San Francisco, complainant in C.9615 and interested party in A.54538.
Phillips Wyman, for Salinas Valley Radio Telephone Company, complainant in C.9615 and protestant in A.54538.
Joseph A. Smiley, for Central Radio Telephone, Inc., interested party.
Carl Hilliard, Attorney at Law, for applicant in A.54538 and defendant in C.9615.
R. Roger Johnson, for the Commission staff.

O P I N I O N

On August 6, 1973, Mobile Radio System of San Jose, Inc. (Mobile) filed applications with the Federal Communications Commission (FCC) seeking assignment of two 450 MHz channels, one to be operated from a transmitter site on Loma Prieta Mountain and the other to be operated from a site on Mt. Allison.

On September 19, 1973, Intrastate Radio Telephone, Inc. of San Francisco (Intrastate), Joseph A. Smiley, dba Central Exchange

Mobile Radio Co. (Central), and Salinas Valley Radio Telephone (Salinas)^{1/} filed C.9615 alleging that the applications placed on file at the FCC by Mobile for assignment of additional 450 MHz frequencies for use from Mt. Allison and Loma Prieta Peak, if granted, would result in an unlawful extension of Mobile's service area and that defendant has represented to the FCC that no additional authority is required from the California Public Utilities Commission.

Complainants' request that this Commission issue its order requiring defendant to cease and desist from representing to the FCC that it does not require additional authority to establish radio transmitters on Loma Prieta Mountain and on Allison Peak.

On December 26, 1973, Mobile filed A.54538.^{2/} In the application, Mobile alleges that no further authority is required from this Commission to carry out the construction authorization requested from the FCC. Mobile requested an order as follows:

- "1. This Application be dismissed on the grounds that Mobile Radio System Of San Jose, Inc., already possesses the requested authority; or, in the alternative,
- "2. The Commission grant a Certificate of Public Convenience and Necessity to construct the facilities herein described; and,
- "3. For such other and further relief as to the Commission seems just and proper in the premises."

^{1/} On May 15, 1974, Joseph A. Smiley and Salinas requested leave to withdraw as complainants in C.9615. Such request was granted. Subsequently on October 1, 1976 Salinas, at its request, was reinstated as a complainant and participated in the final day of hearing.

^{2/} On August 25, 1976 applicant requested that the application be amended by the substitution of the map shown on the last page of Exhibit No. 3 as the map showing applicant's service area. The examiner permitted the amendment.

After many delays and much legal maneuvering by all parties, the staff, on April 27, 1976, submitted an opinion letter to the presiding examiner which said, in pertinent part, "The Staff has no objection to Mobile's proposal to establish 450 MHz facilities on Loma Prieta and to file a service area map for such transmitter location provided that such contour, as set forth in Exhibit 'C' to the Motion, falls wholly within that shown on Mobile's filed tariff sheet No. 25-T." The staff went on to recommend that the establishment of the Mt. Allison facility "should be determined after hearing."

Hearing was held at San Francisco before Examiner Gillanders on August 23 and 25 and October 1, 1976. The matters were submitted for decision November 26, 1976, upon receipt of applicant's late-filed affidavit.

The position of the parties at submission is as follows:

Staff

The staff's position is that the filed service area map of a radiotelephone utility constitutes its authority until the Commission decides otherwise.

This position is set forth in the following staff letter dated July 30, 1975:

"TO ALL CALIFORNIA RADIOTELEPHONE UTILITIES:

"There is an increasing number of Federal Communications Commission filings being submitted by California RTU's for new or modified construction permits, which affect or change service contours, that have not been cleared in advance with the CPUC staff. Some of these contain statements by an attorney that in his 'expert' opinion such application needs no further CPUC authority. Others either thru ignorance or deceit falsify their answer to paragraph 42 of FCC Form 401. Such self-serving statements are in no way to be considered a valid substitute for the required staff letter.

"The above practice can only result in formal protests resulting in delays and costly hearings before the FCC and this Commission with no public benefit.

"Until now the staff has taken the position that such practices would be self-defeating; however, it appears such is not the case. Accordingly, all operators of California RTU's are placed on notice that FCC Form 401 applications, which alter in any way their service area as certificated or grandfathered, must first receive approval, in writing, from the Secretary of the California PUC. RTU's that are found to be operating base station facilities which are not in agreement with their filed tariffs can expect the staff to seek an order to show cause for the assessment of penalties as provided under Sections 2100 thru 2113 of the Public Utilities Code."

The staff believes that by its actions Mobile abandoned its service area based on a transmitter sited on Loma Prieta.

Mobile Radio of San Jose, Inc.

By reason of technical problems and other difficulties, Mobile was forced to relocate its existing VHF transmitter from Loma Prieta to Mt. Umunhum. This involuntary relocation somewhat lessened the signal strength in certain sparsely populated areas within its service area. Mobile did not receive any complaints from its subscribers by reason of the change in transmitter sites and has not received any applications for service which it has not been able to provide. Mobile alleges that it has, in fact, at all times been able to provide satisfactory service to its subscribers throughout its service area. Mobile concluded that it should place a transmitter on Loma Prieta due to the increase in traffic in the heretofore lightly used portions of its service area.

The growth throughout its entire service area has now developed to the point where it is required to add additional frequencies to its system. Furthermore, certain UHF frequencies have become available which can be used on Loma Prieta. Accordingly, Mobile filed the appropriate applications with the FCC in order to meet these needs. Mobile takes exception to the staff's position as stated in the staff letter of July 30, 1975.

Intrastate Radio Telephone, Inc. of San Francisco

The issue, according to Intrastate, is whether or not an old service area contour should be resurrected from the nonexistent transmitter or whether a like contour, based upon an existing station, namely, Loma Prieta Chi site, should be used as Mobile's authorized service area.

Salinas Valley Radio Telephone Company

The issue, according to Salinas is: What is the certificated service area of Mobile?

Discussion

It has long been our policy to allow filling in of dead spots in existing contours as long as the new contours calculated in accordance with current FCC standards do not exceed the old or grandfathered contour under which the utility is operating. When acknowledged errors in computing the old contour of Mobile are corrected, the new contours, except for de minimis amounts, fall within the dbu contour which might be called Mobile's "grandfathered contour". Based upon the above, it would serve no useful purpose to actually define how such grandfathered contour should be determined.

The record is clear that Mobile made the move from Loma Prieta in good faith - indeed with the tacit consent of a Commission staff engineer.

Findings

1. Mobile proposes to install base stations which will provide adequate service within its entire service area.
2. By proper engineering, contours of the proposed base stations can lie within the service area of Mobile as computed by San Jose and as accepted by the Commission staff.

3. There is a public need and desire for the improved service proposed by Mobile from the proposed base stations.

4. Mobile, both technically and financially, is qualified and capable of providing such improved service.

5. The map shown on the last page of Exhibit No. 3 depicts Mobile's service area.

6. 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 relief requested in C.9615 should be denied.

2. Mobile needs no further authorization from this Commission to construct its proposed base stations.

3. Mobile should file the map shown on the last page of Exhibit No. 3 as part of its tariff.

O R D E R

IT IS ORDERED that:

1. The relief requested in C.9615 is denied.

2. Mobile Radio System of San Jose, Inc. shall file, after the effective date of this order, the map shown on the last page of Exhibit No. 3 as part of its tariff in accordance with the provisions of General Order No. 96-A.

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

Dated at San Francisco, California, this 15th
day of MARCH, 1977.

Robert Bateman
President
William J. Quinn
Vernon L. Livingston
J. Roy
Charles A. Givalt
Commissioners