

ORIGINAL

Decision No. 87223

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of MOBILE RADIO
SYSTEM OF SAN JOSE, INC., and
PENINSULA RADIO SECRETARIAL SERVICE,
INC.,

Complainants,

v

INTRASTATE RADIO TELEPHONE, INC. OF
SAN FRANCISCO and TEL-PAGE, INC.,

Defendants.

Case No. 9664
(Filed February 14, 1974)

Ronald L. Bauer and Carl B. Hilliard, Jr.,
Attorneys at Law, for Mobile Radio
System of San Jose, Inc. and Peninsula
Radio Secretarial Service, Inc.,
complainants.

Dinkelspiel, Pelavin, Steefel & Levitt,
by Claude N. Rosenberg and David M.
Wilson, Attorneys at Law, for Tel-Page,
Inc.; and Philip B. Patton, Attorney
at Law, for Intrastate Radio Telephone
Inc. of San Francisco; defendants.

Warren A. Palmer, Attorney at Law, for
Joseph Smiley, dba Central Radio
Telephone; and Angelo Turrini, for
United Radiophone System; intervenors.

Peter Arth, Jr., Attorney at Law, and
Roger Johnson, for the Commission
staff.

O P I N I O N

Background

The Federal Communications Commission (FCC) Guardband Decision of 1968^{1/} allocated radio channel frequencies 152.24 MHz and 158.70 MHz for use by radiotelephone utilities (RTU) offering personal paging service.

Following the Guardband allocation, the six RTU's then operating in the San Francisco metropolitan area sought to achieve a plan for the mutual shared use of these two frequencies by all six RTU's. Initial efforts by the six RTU's to develop a time-sharing plan for the simultaneous use of both Guardbands by all six RTU's (with frequency 152.24 used for tone and voice-message paging service and 158.70 used for tone-only service with both operator access and direct-dial access) proved impractical and beyond the capability of available equipment and manpower.

The six RTU's thereupon instituted a plan for the joint use of 158.70 by Mobile Radio System of San Jose (Mobile), Peninsula Radio Secretarial Service, Inc. (Peninsula), and Joseph A. Smiley, doing business as Central Exchange Mobile Radio Company (Central), all operating south of the city of San Francisco and of San Francisco Bay and the joint use of 152.24 by Intrastate Radio Telephone, Inc. of San Francisco (Intrastate), Tel-Page, Inc. (Tel-Page), and Redwood Radiotelephone Corp., all operating north and east of the territory served by Mobile, Peninsula, and Central.

^{1/} 12 FCC 2d 841.

The Complaint

According to complainants, the joint use plan went into effect in 1969 and ever since then has been in full force and effect and has been observed and adhered to in its entirety at all times by Mobile and Peninsula. Central has not, during the period of this agreement, engaged in any paging service on either of the subject Guardband frequencies. Contrary to the express agreement of these parties, Intrastate and Tel-Page have, on a date unknown to complainants, commenced use of 158.70 for tone-only paging service. Complainants first learned of this violation in the fall of 1973 when interference was then encountered during complainants' use of their frequency for paging service. This interference was subsequently traced to the infringing use of that frequency by Intrastate and Tel-Page.

Complainants state that continued use by Intrastate and Tel-Page of the frequency allocated to complainants (158.70) by agreement of all parties constitutes an unfair, unlawful, and fraudulent interference with the complainants' radiotelephone utilities. Further, such use will inevitably increase the incidence and intensity of interference and will thereby disrupt the public service now being provided by them under mandate of this Commission and the FCC.

Complainants request that this Commission:

1. Issue its ex parte temporary restraining order forbidding Intrastate and Tel-Page from adding any more customers to any service they purport to provide on 158.70.
2. Order that Intrastate and Tel-Page institute a plan for the continuous reduction of its use and interference on 158.70 by transferring customers presently served thereon to defendants' proper frequency of 152.24, or any other of the several frequencies assigned by defendants.

3. Issue to Intrastate and Tel-Page its Order to Show Cause why said defendants should not be ordered to cease use of 158.70.

4. After a full hearing of the merits of this complaint, order defendants Intrastate and Tel-Page to cease use of 158.70.

5. Grant such other and further relief as this Commission may deem just and proper.

The Answer

Defendants answered, alleging that legally the complaint is defective and should be dismissed for failure to state a cause of action within the jurisdiction of the Commission. Moreover and alternatively, the public interest would not be served by granting any of the prayers of the complainants.

The Hearing

By notice dated June 17, 1974 the matter was set for hearing commencing on August 1, 1974.

On July 19, 1974 defendants filed a joint motion requesting a prehearing conference to determine the issues properly to be heard by this Commission and for abeyance of proceedings pending resolution of parallel proceedings before the FCC and the Superior Court of the State of California.

Hearing was held on August 1, 1974 at San Francisco before Examiner Gillanders. The examiner stated that in his opinion the hearing was an in-hearing conference. After much off the record discussion between the parties during which time the parties could not resolve their differences the examiner went back on the record and stated that in his opinion the only issue facing this Commission was the problem caused by the parties not working out a time-sharing arrangement even when all parties agreed that it was technically feasible. The examiner therefore directed the parties to prepare a time-sharing agreement and adjourned the matter to a date to be set.

On March 4, 1975 the Legal Division of the Commission received a letter from the attorney for Intrastate stating:

"I am enclosing for your information a copy of a Stipulation and Order of Dismissal with Prejudice in Santa Clara County Superior Court Case Number 304952 wherein Mobile Radio System of San Jose, Inc. and Peninsula Radio Secretarial Service, Inc. sued Intrastate Radio Telephone, Inc. of San Francisco and Tel-Page, Inc. concerning use of the guardband paging frequency 158.70 MHz. This is sent to you inasmuch as you represented the Commission in originating a letter to the Santa Clara County Court with respect to this particular lawsuit.

"If my expectations are fulfilled, this settlement terminates all disputes between Mobile and Peninsula and Intrastate and Tel-Page with respect to all frequency assignments or license renewals at the Federal Communications Commission. This agreement also eliminates conflicts at the FCC between applications filed by United Radio Telephone System, Central Radio Telephone System and Delta Valley Radio Telephone Company, Inc.

"If the FCC is agreeable to the issuance of construction permits as contemplated in the Memorandum of Agreement and Letter of Intent, which all parties believe it will be, California PUC Complaint Case Number 9664 also should terminate within about 120 days.

"Thank you for the cooperation the Commission gave us in this matter."

We take official notice of Order No. 304-952 in the Superior Court of the State of California in and for the county of Santa Clara.

As 120 days have long since passed, we wrote the parties stating the matter would be dismissed if we did not hear from them requesting that the matter remain open. Only Mr. Hilliard replied requesting dismissal without prejudice.

O R D E R

IT IS ORDERED that Case No. 9664 is dismissed without prejudice.

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

Dated at San Francisco, California, this 19th day of APRIL 4, 1977.

President

William J. Lyons

Vernon L. Sturgeon

Commissioners

Commissioner Robert Batimovich, being necessarily absent, did not participate in the disposition of this proceeding.