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ORIGINAL

Decision No. 90054 MAR 13 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARC L. GOLDSTEIN,

Complainant,

vs.

INTRASTATE RADIO TELEPHONE,
INC. OF SAN FRANCISCO,

Defendant.

Case No. 10587
(Filed June 6, 1978)

Tom L. Cook, for defendant.

ORDER OF DISMISSAL

On June 6, 1978, complainant filed Case No. 10587 alleging that he had applied for radiotelephone service through defendant on several occasions within the past two years. He alleges that: (1) he had complied with all licensing requirements of the Federal Communications Commission (FCC) and had performed all acts required of him necessary to obtain service from defendant; (2) on or about October 1, 1977, he spoke with an employee of defendant and inquired as to why he had not been provided service by the defendant; (3) he was told by the employee that because of a lawsuit that had been filed against defendant several years before he would not be granted mobile telephone service; (4) Mr. Thomas Cook confirmed to him orally that this was in fact the reason that he had been denied service; (5) he filed an informal complaint with the FCC on or about November 1, 1977; (6) he was contacted in writing shortly thereafter by an attorney for defendant who assured him that the denial of service was simply an innocent error on the part of defendant and that service would be given to him forthwith; and (7)

to date, he has had seven telephone contacts with defendant and its employees in an effort to secure service as a subscriber, and has not been provided radiotelephone service.

Complainant also alleged that defendant unreasonably imposes different rules and regulations for subscribers of the same class of service, and that defendant does not require each of its subscribers to comply with the following rules that it has imposed upon him:

1. Annual FCC frequency checks of every transmitter;
2. Every unit must have a selective call decoder built into the unit;
3. The output power must be at least 25 watts; and
4. Every subscriber must post a cash security deposit.

Complainant requests an order of this Commission compelling defendant to provide him with radiotelephone service, enjoining defendant from engaging in unlawful conduct and requiring defendant to uniformly enforce all rules and regulations on all of its subscribers, and for such other and further relief as this Commission may deem just and proper.

Defendant filed its answer denying the allegations and summarized its position as follows:

"Defendant acknowledges complainant's request for VHF service and has placed his name on our waiting list behind similiar predated requests. Demand for VHF service far exceeds available channel space and service is provided to those on the list as openings occur. Intrastate has continually offered to provide immediate mobile service on our UHF channels which have identical coverage and rates to that of VHF. Complainant has refused to comply with our basic on-service requirements and demands exceptional and preferential treatment. Since defendant has not denied mobile service to complainant, and because complainant refuses to comply with defendant's standard on-service procedures, the complaint is without merit and should be dismissed."

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After due notice hearing was held at San Francisco on September 5, 1978 before Administrative Law Judge Gillanders.

Complainant, by telephone message received after the hour set for hearing, stated that he could not attend due to claimed illness. The matter, therefore, was adjourned to a date to be set.

By letter dated September 15, 1978, complainant requested "that this matter be reset for hearing within the next month or so."

The matter was set for hearing January 22, 1979, and the complainant was notified. Again, complainant did not appear.^{1/} Evidence was adduced from defendant (Exhibit 1) and the matter submitted at 9:45 a.m.

^{1/} On January 22, 1979, at 10:27 a.m., complainant filed a "Request of Complainant to Drop Case From Trial Calendar" dated January 19, 1979.

Exhibit 1 details correspondence between complainant and defendant. There is nothing in Exhibit 1 which even remotely sustains complainant's allegations.

Therefore, IT IS ORDERED that Case No. 10587 is dismissed, with prejudice.

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

Dated at San Francisco, California, this 13th day of MARCH, 1979.

John E. Boyan
President
Richard B. ...
Clair J. ...
Ernest M. ...
Commissioners