

Decision No. 90923 OCT 23 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

David Webb,

Complainant,

vs.

Intrastate Radio Telephone,
Inc. of San Francisco,

Defendant.

Case No. 10756
(Filed June 14, 1979;
supplemented July 3, 1979)

O P I N I O N

David Webb (Webb) alleges that Intrastate Radio Telephone, Inc. of San Francisco (Intrastate) has refused to provide signaling service to him as a transient mobile radio-telephone user.^{1/} Webb contends that Intrastate will send a coded signal to its subscribers, which activates their equipment and informs them of incoming calls, but that it will not send such signals to transients such as himself. He argues that such practice is discriminatory.

In his supplementary complaint Webb alleges that he has been denied service as a regular subscriber of Intrastate and that he was required to pay unauthorized deposits to Intrastate with his application for service.

Intrastate filed its answer on July 23, 1979, and on August 6, 1979, filed an answer to the supplementary complaint. On August 29, 1979, a public hearing was held before Administrative Law Judge Robert T. Baer and the proceeding was submitted subject to the filing of four late-filed exhibits. They have now been filed and the matter is ready for decision.

^{1/} For the purposes of this decision a "transient user" is a subscriber of one radiotelephone utility (RTU) operating in the service area of another RTU of which he is not a subscriber.

Discussion

Webb has been a regular subscriber of Intrastate since July 5, 1979, and is no longer a subscriber to the service of another RTU in this State. Accordingly, he is no longer a transient user of Intrastate's service. In addition, he is no longer aggrieved by the brief delay^{2/} in affording him service. Finally, Webb concedes that the deposit required of him by Intrastate upon application for service was proper. Thus, as to himself, the complaint is entirely moot.

Webb, however, asserts that Intrastate requires unauthorized deposits from others and he further alleges that the Commission should order Intrastate to provide signaling service to transients, which service, he argues, is in the public interest, is feasible, and is required in order to avoid the discriminatory service Intrastate now provides.

As to the issue of unauthorized deposits, Webb produced no evidence to support his contention. As to the issue of service to transient users, Webb called Intrastate's president, Tom Cooke, as an adverse witness under Evidence Code Section 776. From his testimony it is clear that reliable signaling service to transients can only be provided where intercarrier agreements between RTU's exist, or where prior arrangements have been made between RTU's to accommodate the needs of particular transient mobile radio users. Mr. Cooke testified that several different signaling systems are employed by the various RTU's in California and that without intercarrier agreements or prior arrangements his operators would not know what signaling system to employ. He further stated that there are no industry or legal standards which require all RTU's to use a common signaling system. Finally, it would appear unfair and unreasonable to require Intrastate to provide increased service to transient users when other RTU's are not subject to the same burden. By the same

^{2/} Webb filed his application for service on June 27, 1979, and his supplemental complaint alleging denial of such service on July 3, 1979. Service was afforded on July 5, 1979. The delay was for eight days.

token, it would not be fair or reasonable to issue an industry-wide requirement in a complaint proceeding where the only RTU represented is the defendant and the Commission staff is not a party.

Findings of Fact

1. Webb is a customer of Intrastate and is no longer a transient user of Intrastate's service.
2. The deposits made by Webb were those authorized by Intrastate's tariffs.
3. As to Webb, the complaint is moot.
4. Webb has failed to carry his burden of proof on the issues of unauthorized deposits and discrimination.
5. Intrastate provides a higher level of service to transient users subject to intercarrier agreements or prior arrangements than to other transient users.

Conclusions of Law

1. The discrimination practiced by Intrastate with respect to transient users is based upon the operating characteristics of the various RTU's in California; such discrimination is not proscribed by any industry or legal standard; and such discrimination is reasonable given the current level of technology in the industry, the wide range of equipment types and signaling systems used in the industry, and the fragmentation of the industry.
2. It would be unreasonable to require a higher level of service of Intrastate than is required of the other RTU's in California.
3. This is an inappropriate proceeding for the creation of statewide rules for the RTU industry, since only a single RTU is represented and the Commission staff is not a party.
4. The complaint should be denied.

O R D E R

IT IS ORDERED that the complaint in Case No. T0756 is denied.

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

Dated OCT 23 1979, at San Francisco, California.

John E. Bayne
President

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Richard D. Good
Alvin T. Smith
James W. ...
Commissioners