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Decision No. 90927 OCT 23 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

INDUSTRIAL COMMUNICATIONS, INC.,  
California corporation,

Complainant,

vs.

MOBILFONE, INC., FIRST DOE  
through FIFTH DOE,

Defendant.

Case No. 9906  
(Filed April 28, 1975)

Warren A. Palmer, Attorney at Law, for  
complainant.  
Silver, Rosen, Fischer & Stecher, by  
John Paul Fischer, Attorney at Law,  
and Robert B. Lisker, Attorney at Law,  
for defendant.  
Roger Johnson, for the Commission staff.

ORDER OF DISMISSAL

By its complaint, Industrial Communications Systems, Inc. (ICS), a California corporation, sought an order directing Mobilfone, Inc. (Mobilfone) to cease and desist from representing to the Federal Communications Commission (FCC) that no certificate of public convenience and necessity is required from this Commission for it to serve the area encompassed by proposed additional frequencies 454.15 MHz, 454.175 MHz, 454.20 MHz, and 454.30 MHz at its existing and proposed locations and an order directing Mobilfone to cease and desist from constructing the plant and

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facilities required to provide service by means of the proposed additional frequencies without first obtaining authorization from this Commission to do so, and an order finding and adjudging Mobilfone in contempt of this Commission by reason of the representations, acts, operations, and conduct of the defendant, and an imposition of proper fines by reason of such contempt.

After notice, a public hearing was held before Administrative Law Judge James D. Tante in Los Angeles on October 9 and 10, 1975, and the matter was submitted subject to the parties filing concurrent briefs on or before November 4, 1975.

By Decision No. 85345 dated January 13, 1976, the relief requested by ICS was denied. On January 19, 1976, ICS filed a "Petition for Rehearing and Reconsideration of Decision No. 85345". On February 4, 1976 Mobilfone filed its reply. On February 17, 1976 ICS filed its response to Mobilfone's reply. On February 25, 1976 Mobilfone filed a motion to strike ICS' response. By Decision No. 85593 dated March 16, 1976, rehearing was granted limited to the question of whether the areas to be served by means of Mobilfone's proposed additional frequencies fall within the service area of Mobilfone as it existed in 1961 at the time of Decision No. 62156.

Further hearings were held pursuant to Decision No. 85593 on April 6 through April 9, 1976 before ALJ Gillanders, and on the latter date, the proceeding was continued to a date to be set in order that Mobilfone could file a petition to modify Decision No. 85593, to disqualify the ALJ, and define issues. On April 14, 1976 Mobilfone filed such a petition. On May 17, 1976 ICS filed its answer to the petition. No further proceedings, hearings, or rulings were held or issued in Case No. 9906 due to the moratorium caused by the Commission's Case No. 10210, an order instituting investigation to determine if it should end its regulation of radiotelephone utilities.

On February 22, 1978 the Commission, by its Decision No. 88513,<sup>1/</sup> found and concluded that it would be in the public interest to continue its regulation of radiotelephone utilities. The Commission further found, concluded, and ordered that the service areas of radiotelephone utilities (RTUs) should be determined in accordance with the Carey Report found in FCC Rules, Section 21.504, and that within six months of March 24, 1978 all RTUs should file service area maps with the Commission drawn in conformity with the provisions of FCC Rule 21.504, the Carey Report.

By Decision No. 88513, the Commission also revised its Rules of Practice and Procedure to provide that any RTU applying to the FCC for a construction permit or change in its base station transmitters or frequencies, shall at the same time submit all necessary engineering data to the Commission and obtain a staff letter of approval thereof (Rule 18(O)). The effect of such proposed new or changed facilities on the RTUs' existing service area and that of adjacent RTUs is also to be shown on an engineered service area contour map.

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<sup>1/</sup> Decision No. 88513 became the subject of various petitions for writ of review before the Supreme Court, Docket No. SF 23886. The Supreme Court denied review on December 20, 1978.

On January 4, 1979 ICS filed a Motion to Set Hearings in which it stated that; (1) Mobilfone, on or about December 1, 1978, filed an application with the FCC for a construction permit to add a transmitter to Box Springs Mountain and at Newport Beach to provide paging service on frequency 43.58 (P-4) MHz; (2) in its application to the FCC, Mobilfone represented that the proposed site would enable it to improve the quality and reliability of Mobilfone's signal to its present service area and will extend service to adjacent communities; (3) Mobilfone has failed to file with this Commission its service area map drawn in accordance with the provisions of FCC Rule 21.504, the Carey Report; and (4) Mobilfone has further failed to comply with the requirements of Revised Rule 18(0).

ICS alleges that Mobilfone is proposing to expand its service area substantially in excess of 10 percent of its authorized service area and, additionally, proposes to provide substantial coverage of additional major communities, all without prior certification by this Commission, in violation of Section 1001 of the California Public Utilities Code.

ICS requested that the Commission schedule and set further hearings to determine the authorized and certificated service area of Mobilfone, and to issue any required or desirable cease and desist order or other proper order. On January 22, 1979 Mobilfone filed its Reply to Motion to Set Hearings and Motion to Dismiss. In its reply, Mobilfone discussed the particular facets of Case No. 9906 and the current aspects of RTUs regulation. It concluded that:

"The California radio/telephone utility industry has been in disarray for some time. Case No. 10210 and Decision No. 88513 were the results of an attempt to bring some kind of order to this area of regulation. The decision has essentially established new ground rules for radio/telephone utilities as of November 23, 1976. In addition, it appears that these new rules have not been effective until December 24, 1978. Under these circumstances, it is respectfully submitted that the ICS Motion to Set Hearings should be denied, and, in fact, Case No. 9906 should be dismissed as moot."

On September 12, 1979 counsel for ICS filed a written request that Case No. 9906 be dismissed as moot.

Finding of Fact and Conclusion of Law

The passage of time and changed circumstances has rendered the complaint moot. All motions and pleadings not ruled upon are denied. The matter should be dismissed.

IT IS ORDERED that Case No. 9906 is dismissed.

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

Dated OCT 23 1979, at San Francisco, California.

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

John E. Byrne  
President

Richard D. Howell

Clare T. ...

... Commissioners