

ORIGINAL

Decision No. 93038 MAY 19 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application )  
of Orange County Radiotelephone )  
Service, Inc., for authority to )  
extend its service area. )

Application No. 56615  
(Filed July 12, 1976;  
amended February 26, 1979)

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by Warren A. Palmer, Attorney at Law, for  
Industrial Communications Systems, Inc.  
and Intrastate Radiotelephone, Inc. of  
Los Angeles, protestants.

O P I N I O N

Summary of Application

Orange County Radiotelephone Service, Inc. (OC), a California corporation, seeks authority under Section 1001 of the Public Utilities Code to establish additional transmitter facilities on Sierra Peak to extend its radiotelephone utility (RTU) service area. OC provides two-way mobile, tone-and-voice, and tone-only services. Its principal place of business is at 401 South Santa Fe Avenue, in the city of Santa Ana.

OC proposes to use its existing airwave channels to broadcast signals from Sierra Peak. A microwave link would connect OC's operators in Santa Ana to its proposed Sierra Peak transmitters. OC owns the transmitter site. There is an electronic equipment building and radio tower on the site. The estimated cost of additional facilities needed to provide the service is \$47,400. OC would pay for the proposed construction from its existing capital.

OC's proposed service area partially overlaps service areas of other RTUs including those of protestants<sup>1/</sup> Industrial Communications Systems, Inc. (ICS) and Intrastate Radiotelephone, Inc. of Los Angeles (IRT), and the proposed service area totally overlaps the service area of Radio Dispatch Corporation (RDC).<sup>2/</sup>

OC estimates that the addition of a nominal 20 paying customers per year due to expanding its service area would yield net operating losses of \$6,345 and \$2,125 in the first and third years of operation and a profit of \$1,612 in the fifth year of operation.<sup>3/</sup> The comparable estimates of combined net income from all of OC's operations are \$191,376, \$463,986, and \$765,566 in the first, third, and fifth year of operations.

OC contends that there is public convenience and necessity for its proposed expansion because there has been (1) substantial growth and development of the communities within its service

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- 1/ Intrastate Radiotelephone, Inc. of San Bernardino (IRT-SB), General Telephone Company of California, and Radio Relay Corporation of California withdrew their protests.
  - 2/ On August 5, 1976 RDC filed a written protest alleging that OC had not laid a proper foundation for a granting of certificate of public convenience and necessity and that OC had filed incomplete maps with its application. RDC was served with the amended application.
  - 3/ OC also estimates that the expansion of its service area would yield additional revenues from calls to or from its mobile customers above the 75 one-minute message allowance included in its existing \$18 per month minimum charge. If all of the 14,000 transient calls made by OC's mobile customers were billed by OC at its existing additional message rate of \$0.15 per minute, OC could realize theoretical revenues of \$10,080 per year. OC's vice president believed the increase in its revenues would be less than this amount.

area, (2) greater mobility of its subscribers due to the construction of a freeway system in the Los Angeles-Orange County basin area, and (3) an increased demand from its subscribers for coverage into its proposed service area<sup>4/</sup> in portions of Los Angeles, San Bernardino, and Riverside counties. OC also contends it offers the only complete sales, service, dispatching, and business office facilities in Orange County to permit expeditious resolution of service and billing problems and to repair or replace equipment. OC contends that obtaining service from protesting RTUs could require traveling 40 or more miles and/or placement of long-distance telephone calls.<sup>5/</sup>

Hearings

After notice, hearings were held in the city of Los Angeles on August 27, 28, and 29, 1979 before Administrative Law Judge Levander and the matter was submitted subject to the receipt of a late-filed exhibit and opening and closing briefs, which have been received. Constructive notice of these hearings was made through publication in the Commission's Daily Calendar from June 22, 1979 through August 29, 1979.

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4/ Exhibit F to the application contains statements by OC subscribers aware of other RTU services who desire OC service in the expanded area.

5/ An ICS mobile subscriber can call ICS' Anaheim office to schedule an equipment repair. ICS would send a repairperson from another ICS facility to make the repair.

Testimony for OC was presented by Mr. Hull, OC's vice president; Mr. Silver, a private investigator; Mr. Lewis, the vice president of an industrial park building company; Miss Duncombe, a real estate agent; and by Mr. Dow, a co-owner of a consulting firm specializing in economic research. Testimony for protestant, ICS, was presented by Mr. Harris, its president and chief operating officer. Members of the Harris family own all of ICS' stock.

Background

In D.88513 dated February 22, 1978 in C.10210, an investigation on the Commission's own motion to determine if the Commission should end its regulation of radiotelephone utilities, the Commission concluded that (a) RTUs and wireline telephone companies offering two-way radio and one-way paging services are public utilities subject to the jurisdiction of this Commission; (b) the Public Utilities Code requires the Commission to regulate RTUs and wireline telephone companies with respect to their providing two-way radio and one-way paging services to the public; and (c) such regulation is in the public interest. A summary of pertinent judicial and Commission litigation is set forth on mimeo. pages 5 and 6 of D.88513. During the pendency of

C.10210, the processing of RTU certificate filings was suspended. D.88513 required wireline companies and RTUs to refile their service area maps drawn in conformity with the provisions of Federal Communications Commission (FCC) Rule No. 21.504, the Carey Report, to reflect their authorized power and antennae characteristics as of November 23, 1976. These revised service area maps superseded the prior service area boundaries established by following the FCC's prior Rule No. 21.504, based on the Boese Report. The Commission also adopted revisions to its Rules of Practice and Procedure governing complaints filed by one RTU against another (Rule No. 10.1) and added the following requirements for RTU applications<sup>6/</sup> for certificates of public convenience and necessity to avoid unnecessary RTU litigation:

"18. (Rule 18)

"(o) In the case of a radiotelephone utility, proposing to expand its existing facilities add new facilities or file to serve additional territory.

"(1) When a radiotelephone utility applies to the FCC for a construction permit or change in its base station transmitters, antennae or frequencies, it shall at the same time submit all necessary engineering data to this Commission and obtain a staff letter of approval thereof. The effect of the proposed new or changed facilities on the utility's existing service area and that of adjacent RTUs will be shown on an engineered service area contour map.

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<sup>6/</sup> The amended application was designed to meet these requirements.

"(2) When the proposed expansion by the radiotelephone utility extends into the certified area of another radiotelephone utility and is contested by the latter, the applicant shall show:

"(i) That the present service is unsatisfactory and the proposed operation will be technically and economically feasible, adequate and of good quality.

"(ii) A statement that the radiotelephone utility attempted to reach an intercarrier agreement whereby traffic can be suitably interchanged to meet the public convenience and necessity. If agreement cannot be reached, both the applying radiotelephone utility and the complainant radiotelephone utility are hereby duly notified that this Commission, after hearing, may issue a mandatory intercarrier agreement or other suitable instrument pursuant to parts 766 and 767 of the Public Utilities Code as this Commission deems necessary to meet the public convenience and necessity.

~~"(iii) Minor extensions of service area are excluded from these requirements where the overlap does not exceed 10% of either utility's service area and where the extension does not provide substantial coverage of additional major communities.~~

~~"(p) -~~ Such additional information and data as may be necessary to a full understanding of the situation."

OC's Evidence

Mr. Hull testified that (a) OC's mobile, tone-and-voice-paging, and tone-paging customers need expanded RTU service to send or receive messages between OC's existing and proposed service area; (b) the Riverside Freeway is the principal highway transportation artery connecting OC's existing service area with the portion of its proposed service area in Riverside and San Bernardino counties; (c) a stretch of this freeway goes through Santa Ana Canyon; (d) none of the RTUs can provide voice transmissions within the canyon because the surrounding mountains block out their signals for about a 10-mile section of the freeway route;<sup>7/</sup> (e) this canyon section is undeveloped except for a golf course and for residential development in the "Anaheim Hills" area at the southern approach to the canyon; (f) OC's proposed transmitter overlooks the canyon and signals from it would provide voice and paging transmissions within the canyon and would enable OC to directly transmit voice messages and paging signals into the extended area; (g) equipment to provide for transient tone-and-voice paging had not been developed; (h) existing transient mobile service to OC's customers is unsatisfactory because a caller would have to know the location of the called mobile unit within the extended area and the mobile customer would need to have his receiver on the correct channel to receive the transient calls; (i) many OC customers would have to obtain additional expensive equipment to obtain transient service from other RTUs; and (j) there are

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<sup>7/</sup> Other freeways connecting OC's existing and proposed service areas also traverse hilly terrain.

extensive delays and inconveniences in receiving transient messages or in initiating transient calls from mobile equipment due to heavy loading on other mobile channels.

OC presently provides mobile and tone-and-voice paging on very high frequencies (VHF), 152.120 megahertz (MHz) (Channel 7) and 152.210 MHz (Channel 13), and on ultra-high frequencies (UHF), 454.325 MHz (Channel 33) and 454.35 MHz (Channel 34). It also provides VHF tone-only paging at 152.24 MHz. The operating range (service area) of VHF signals is larger than for UHF signals. OC proposes to expand the service areas of all of those frequencies except for 454.35 MHz. This exclusion is necessary to avoid interference with RDC. OC has received FCC approval for the construction of the facilities needed to expand its service area.

Mr. Hull testified that (a) customers prefer VHF equipment to UHF equipment because VHF units cost less and have greater coverage (throughout the United States) than UHF; (b) VHF equipment was used before UHF equipment; (c) UHF frequencies were not used until VHF channels were fully loaded; (d) OC had a slowly moving waiting list for new VHF customers; (e) OC could accept additional customers on its UHF frequencies; and (f) OC did not anticipate any growth in mobile customers as a result of the proposed expansion. OC has intercarrier mobile service agreements with several carriers, including IGS and IRT.



Exhibit 5 is an RTU intercarrier traffic exchange agreement entered into between IRT, American Mobile Radio, Inc., OC, and IRT-SB to operate one-way signaling stations at a frequency of 152.24 MHz. The agreement requires (a) transmission of paging signals to all of the customers of the several RTUs (on the common frequency) from the transmitters of these RTUs, (b) construction of microwave interconnections to achieve common control of all of the paging transmitters, and (c) the filing of an FCC application to construct an additional transmitter on Oat Mountain by IRT, the system operator. The interchange was designed to make maximum use of the frequency, to minimize energy use, and to reduce costs.

Mr. Hull testified that none of the RTUs could provide tone-only paging service in the Santa Ana Canyon area with their existing equipment, but the new equipment installed pursuant to the intercarrier agreement would provide some coverage in the canyon. However, OC could provide a higher quality and more reliable coverage within the canyon and within the proposed service area from Sierra Peak to its own customers and to the customers of other RTUs sharing the 152.24 MHz channel.

Mr. Dow testified that the proposed OC service area is one of the most rapidly developing areas in southern California. Builders of new residential, commercial, and industrial subdivisions, land developers, building materials suppliers, real estate salespersons, and financial service-persons who are OC customers need service in the proposed area. He analyzed a questionnaire survey on the need for the

expanded service which was sent to OC's 356 mobile customers (operating 412 mobile telephone units) and 604 tone-and-voice paging customers (exclusive of mobile customers), as well as population data. Most of the responses, 125 of the 160 mobile customers (78 percent) and 135 of 251 tone-and-voice paging customers (54 percent), indicated a need for service in the proposed area.

A followup telephone survey of some of the customers needing service showed 67 to 86 percent of the people called wanted service in the vicinity of the cities of San Bernardino, Pomona, and/or Riverside. Over one-third of these people needed service in or near all three cities. In a nine-month period there were 70 transient calls made by 34 OC mobile customers through IRT-SB and 385 calls made by 25 customers through RDC. Mr. Dow testified that 34 of the 48 major real estate developments he identified, as they appeared in the Sunday real estate section of an edition of the widely circulated Los Angeles Times, were in or very close to the Riverside and San Bernardino County portions of the proposed area, and that Orange County-based firms were developing 16 of these projects. Three Orange County firms were developing two of the 14 projects in the Los Angeles expansion area. His review of past and projected population trends shows large increases in populations and in the rate of increases in the proposed Riverside and San Bernardino expansion areas and a substantial growth of population in the Los Angeles County area, but at a relatively lower percentage increase.

OC contends that as a party to an intercarrier agreement (Exhibit 5), it will directly compete for customers with ICS in providing wide area tone-only paging service, whether or not the certificate is granted.

In order to demonstrate that granting the certificate to OC could have only a minor potential impact on ICS, Mr. Dow testified that ICS' 1974 and 1978 annual report data showed:

- a. ICS' gross income (excluding the operations of its rental equipment subsidiary) increased from 617 thousand dollars to 4-1/4 million dollars; its net income increased from about \$46,000 to \$637,000; its investment increased from about \$1,500,000 to \$4,700,000; and its return on investment increased from 4 percent to 22.5 percent.
- b. A greater relative growth occurred in ICS' paging operations as compared with its total operations, as indicated in the following tabulation:

<u>Item</u>	<u>1974</u>	<u>1978</u>	<u>Ratio 1978-1974</u>
<u>Number of Subscribers</u>			
Tone-only	1,389	5,777	416
Mobile and Tone-and-Voice	965	1,160	120
<u>Number of Units</u>			
Tone-only	3,518	24,130	686
Mobile and Tone-and-Voice	1,486	2,198	148

Mr. Silver obtains dual tone-paging service from OC. He desires mobile service in the proposed area. His business has time constraints. He loses money because he cannot quickly contact his callers. Sometimes his calls are delayed by vandalism of telephones. Mr. Silver was paid by OC for his March 10, 1979 investigation of the availability of mobile service from three RTUs. He requested mobile telephone service from ICS to provide coverage in the Riverside, San Bernardino, and Corona areas. An ICS representative said that (a) due to a lack of turnover ICS stopped adding names to its new mobile subscriber waiting list and to its equipment rental waiting list; (b) it could not handle more than its 300 mobile customers, and (c) new mobile customers were picked from its waiting list after a subscriber discontinued service. An IRT representative informed him that (a) only five slots reserved for emergency services were available out of their 245 mobile unit capacity; (b) it had little turnover of mobile customers; (c) it had a waiting list of 12 prospective customers, who owned their equipment; (d) it rented out 15 units; and (e) it did not sell mobile equipment. RDS informed him that (a) only one of RDS' three mobile units available for rental was operable and five people were on a list to rent the two units being repaired--if they ever became available; (b) its signal would not reach Riverside or San Bernardino; and (c) it had UHF equipment, but VHF equipment was needed for registration in San Bernardino.

Mr. Lewis is in charge of all field operations for his family's Orange County-based industrial park building company. The firm's building activity has shifted from Orange County to a number of locations throughout the proposed service area. The firm is a customer of OC. It uses three mobile units. Mr. Lewis' car is his mobile office. He uses his mobile equipment to speak to a very large number of people. He wants the expanded service because he cannot receive signals from OC in many locations in Los Angeles, Riverside, and San Bernardino counties at this time. He is not satisfied with incoming transient reception service, due in part to his not shifting the dial on his equipment to pick up another RTU's station, and to problems in giving out multiple telephone numbers to his many callers. He therefore uses OC's message holding service and, when necessary, uses transient service for making outgoing calls. He believes that missing calls<sup>8/</sup> have cost him many tens of thousands of dollars.

Miss Duncombe uses a mobile unit and a tone-and-voice pager in selling real estate. She works in various locations in the proposed service area two to three times per week and is in constant contact with clients, other agents, lenders, and escrow agents. She wants the expanded service because (a) the receipt of incoming calls is more important to her than outgoing calls, (b) the receipt of incoming transient calls involves the impossible task of monitoring

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<sup>8/</sup> A weak incoming signal not sufficient to provide voice transmission is sometimes not strong enough to operate a signal light advising him of a call.

the local channel, (c) her callers cannot call her back on transient service, and (d) there are unsatisfactory delays in waiting for openings to make outgoing transient calls.

Other Shared Channel Use

ICS desires the Commission to consider the potential of OC's meeting its mobile customers' needs through the shared use of UHF channels of 470-512 MHz. ICS contends that although actual use of these UHF channels was still uncertain,<sup>9/</sup> such use by OC, in lieu of the requested certificate, would tend to alleviate a common problem faced by all RTUs providing mobile service in the Los Angeles Basin area.

The FCC Memorandum Opinion and Order, released on October 16, 1978, in Docket No. 21039 (Reference Item A), set up a procedure for allocation of UHF television (TV) channels for shared use of authorized RTU licensees and TV licensees in 13 of the largest urbanized areas in the United States. In the Los Angeles area 10 RTUs<sup>10/</sup> (including OC and protestants herein) are located within the prescribed 50-mile radius from the designated central location. These RTUs may jointly use the 12 radio frequency pairs (of a potential 120 pairs) for each of the two TV channels made available. The joint use of automatically trunked frequencies would permit greater use of individual radio channels than exclusive rights for such channel use. An initial limitation of 40 mobile units per channel was imposed, or 960 units for the Los Angeles area. Further upward modifications in channel loading would be governed by an 85 percent average channel use during the busy hour.

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<sup>9/</sup> Mr. Harris, testifying for ICS, believes that the system might go into operation "somewhere between two years and never" (RT 317).

<sup>10/</sup> Two of these RTUs are not certificated in California.

As of February 9, 1981, the FCC had not acted upon the individual applications of the 10 RTUs or on the application of Common Carrier Communications, Inc. (CCC), a "carrier's carrier", set up to provide service only to the participating RTUs.

Mr. Hull did not believe that allocation of the 470-512 MHz channels would meet OC's needs. He questioned whether all of the 10 affected RTUs could come to an agreement to participate in a frequency-sharing agreement operated by CCC. He further testified that: (a) the demand for mobile service in Los Angeles Basin is such that the proportional share allocated to each carrier would not come anywhere near to fulfilling the needs of the public; (b) operational costs for such a system would be two to three times as costly as providing service over existing manual service equipment; (c) the costs of the more sophisticated mobile units required would be about \$2,500 per unit versus \$1,800 to \$1,900 for the type of unit in use today; (d) the controlling computer and associated equipment would be considerably more expensive than the equipment currently in operation; (e) the more stringent loading limitation of 40 mobile units per channel compared to existing loadings would drive up unit costs; and (f) a great deal of existing equipment would have to be disposed of and new equipment purchased and/or leased to implement the proposal.

After the FCC issues a 470-512 MHz license(s), implementation would be time-consuming and costly. Equipment needed to jointly use 12 frequency pairs is not available. The basis for allocating channel slots to the 10 RTUs has not been established. A pro rata allocation may not be sufficient to meet OC's needs. There is no justification for delaying action on OC's proposal until there is a viable market on the 470-512 MHz channels.

ICS Testimony

Mr. Harris sponsored exhibits showing tariff service area maps, rate tariffs, annual reports showing customers and revenues, and intercarrier agreements of RTUs which may be affected by granting the proposed certificate. As of July 30, 1979, ICS served (a) 326 mobile telephones on the following frequencies: 454.15 MHz, 454.2 MHz, and 454.3 MHz; (b) 1,789 tone-and-voice pagers using the 454.175 frequency exclusively; (c) 544 tone-and-voice pagers sharing the 454.3 frequency with mobile telephones; and (d) 2,953 tone-only pagers using the 158.70 MHz frequency. ICS leases equipment and provides transient service, including service to a monthly average of 16 OC mobile units. ICS uses a number of foreign exchange lines to provide statewide and southern California service to its customers at local message unit rates. ICS' radiotelephone service rates to mobile units are:

	<u>Rate per Month</u>	<u>Message Allowance</u>	<u>Each Add- itional</u>
a. <u>Unlimited Hours Service</u>			
(1) Service availability basis	\$ 8.00	0	\$0.30
(2) Each special report call	0	0	0
(3) Minimum charge basis	15.00	75	0.12
b. <u>Transient Service</u>			
Each 30-second message			0.30



Objections of ICS

ICS objects to the expansion of OC's service area because it would overlap the service areas of ICS and of other RTUs (and of wireline carriers). ICS contends that (a) OC seeks to destroy or eliminate the service areas of other RTUs; (b) OC would not consider entering into an intercarrier agreement to eliminate inconveniences arising from interchanged traffic; (c) absent an intercarrier agreement, OC could have proceeded under Sections 766 and 767<sup>11/</sup> of the Public Utilities Code; (d) OC has failed to establish public convenience and necessity for the proposed expansion in conformity with the requirements of D.88513 and Rule 18(o) of the Commission's Rules of Practice and Procedure; and (e) OC failed to establish that transient service is unavailable and/or inadequate within the proposed area.

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11/ Section 766 permits the Commission to order "a physical connection...between the lines of two or more telephone corporations or...telegraph corporations...to form a continuous line of communication, ...and to establish joint rates, tolls, or charges" or to divide the costs of the connection. Section 767 permits the Commission to direct the "use by one public utility of all or any part of the conduits, subways, tracks, wires, poles, pipes, or other equipment, on, over, or under any street or highway, and belonging to another public utility, ... and prescribe a reasonable compensation and reasonable terms and conditions for joint use" upon the Commission's own motion, or upon the complaint of an affected public utility.

Further OC Argument

ICS' service area overlaps the service areas of several RTUs with whom it shares paging frequency 154.70 MHz. ICS transmits the paging signals of these RTUs and bills them for the use of its facilities.

OC believes that ICS' proposal would require it to relinquish substantial control of its FCC station licenses and become more of a sales agent than an independent RTU. It does not want a relationship with ICS similar to the relationship of the RTUs sharing the 154.70 MHz frequency with ICS as illustrated by the testimony of Mr. Harris (RT 291, 292) in which he objects to calling those RTUs partners. He states: "So they are not partners in any sense of the word. . . . I said that if you were going to characterize them, you would characterize them as a customer."

OC argues that Mr. Harris' testimony shows that the cost of providing service would be greater under his proposed agreement than if OC obtained certification, and it reveals Mr. Harris' strategy for exploiting the dominant position ICS enjoys in the southern California RTU industry, in terms of number of customers, total revenue, and service area coverage, to extort unreasonable and unjustifiable concessions from potential competitors. OC cites the following cross-examination of ICS' Harris:

"Q. And essentially in the wide-area agreement that you propose to Orange County in connection with this proceeding, your proposal was essentially to make Orange County a customer of yours, too, wasn't it very much on the same basis?

"A. Well, not in that sense, no.

"Let me explain that.

"I have entered into another agreement and am about to enter into a second agreement where we will provide facilities and we will maintain equipment, or the licensee can maintain the equipment, but when they are crossing the borderline into our service territory, we want to be compensated.

"And my suggestion is that there is a way to do away with this entire hearing. It's that we will put the facilities up there, we will build it so they can use it.

"We won't touch it if they want to maintain it. They can maintain it.

"And there is some kind of way to exchange dollars with Orange County.

"We can lease them the equipment over a ten-year period.

"There are all kinds of ways to sit down and negotiate and end up with what they are about to do here at least.

"I think what they're trying to do is to jump boundaries.

"That is the effect of what they are doing.

"And I think it's wrong.

"Q: And so your proposal essentially to Orange County was that you would construct the facilities on Sierra Peak?

"A: Yes.

"Q: And that you would become a licensee on that facility?

"A: No. They would be the licensee.

"ALJ LEVANDER: 'They' being--

"THE WITNESS: They would be the licensee, or we would be the licensee."

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"Q: But they would pay you something by virtue of the fact that that signal went into your service area?

"A: That is true. That is my philosophy.

"Q: That of course would increase the cost of their operation; isn't that true?

"A: Just as what they are going to spend \$50,000 up there, it's going to increase the cost.

"Q: Okay.

"If they had agreed to your proposal, they would be spending the same \$50,000 putting in that transmitter up there on Sierra Peak that they are proposing here; isn't that correct?

"A: Yes.

"Q: And they would be paying additional money to you for the privilege of operating that frequency within your service territory; isn't that true?

"A: That would be my idea of it."

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"Q: So in that case it would increase the cost of their providing the service proposed in this application if they were to enter into the agreement that you propose?

"A: Any way they do it it's going to increase their cost.

"Q: But my question is it would be more expensive for them to provide that service if they agreed to your proposal than it would be if they simply built the transmitter and provided the service themselves if that area became part of their service area?

"A: I won't agree to that at all.

"Q: I thought you just said that their additional cost would be the price paid to you for the privilege of operating in your service territory?

"A: That is correct,--

"Q: Okay.

"A: --which might be less than what they are doing this way.

"Q: I see.

"Less than the cost of prosecuting the application?"

"A: Over a ten-year period it would probably be less when they get through paying your bill and the other bills. They're going to have 100 grand tied up there and I doubt that. I think it could be worked out where they could save money."

OC argues that antitrust considerations compel Commission rejection of ICS' proposals as an alternative to certification. (Industrial Communications Systems, Inc. v Public Utilities Commission (1978) 22 C3d 572, 582; Northern California Power Agency v Public Utilities Commission (1971) 5 C 3d 370, 380; and D.89815 dated December 22, 1978 in A.54997.)

OC concludes that (a) the record demonstrates that the proposed construction will facilitate a much needed wide area coverage; (b) existing and proposed intercarrier agreements are not desirable, practical, or adequate to meet this need; and (c) other carriers have inadequate area coverage and/or insufficient system capacity.

Discussion

The present volume of transient calls to or from OC customers in the proposed service area is not large. An ICS survey shows that two-thirds of mobile calls are from the mobile unit to a landline. ICS believes that OC has not established need for certification because the volume of transient calls from OC customers in the proposed area is small. ICS does not address whether receipt of an incoming call to a mobile unit generally results in the placement of one or more outgoing calls. While ICS belittles the delay and inconveniences to the public in using transient service, OC and its customers have demonstrated that the problem is a real one. OC established that there is a great deal of subdivision and building activity taking place in the proposed service area, and that many of OC's customers need a better method of receiving messages or paging signals in the expanded area and in Santa Ana Canyon to more effectively conduct their business activities. Where effective, transient service costs OC's mobile subscribers two to five times as much as OC's 15 cents per minute charge for calls in excess of the 75-message allowance. There was no dispute about the heavy mobile channel loading of the affected RTUs. If greater reliance were placed on transient service, it would increase channel loading because many incoming calls would be routed and transmitted to OC's transmitters and then to transmitters of other RTUs. Adoption of OC's proposal would improve service to its mobile customers in the expanded area and cut down on the channel loading of other RTUs.

The incremental revenue impact on OC's operations would be minor. OC's paging-only customer growth is far greater in magnitude than the nominal 20 customer per year growth attributed to the expansion of OC's service area. OC can absorb initial incremental losses, if any, attributable to providing the expanded service authorized herein (see Exhibit 4). OC will also obtain additional revenues from mobile customers operating in the expanded service area, who exceed the 75-message allowance and from tone-and-voice paging customers who exceed the 50-page allowance in its tariffs.

ICS is the largest RTU in southern California. The proportion of its paging-only operations has been increasing. Its annual service growth of tone-only pagers has increased from 5,000 in 1975 to an estimated 9,000 in 1979. Mr. Harris does not believe that ICS would be hurt economically by granting the certificate based on the past business practices of OC's management. He voices a vague fear that ICS might be hurt years in the future after control of OC is transferred.

ICS' proposal for OC to pay for broadcasting within ICS' existing territory provides no discernible public benefit. Its proposal for individual OC mobile customers to trade in their equipment and to sign up for service from ICS has no merit because ICS has a waiting list for new customers. Adding additional transmitters on other RTUs' towers capable of broadcasting on OC's frequencies would be costly and would create interference problems.

Implementation of the intercarrier agreement by the signatory RTUs, including construction of a transmitter on Oat Mountain, will provide paging-only competition to ICS throughout much of the Los Angeles Basin whether or not the requested certification is granted. The Oat Mountain facility would permit tone-only paging in the Santa Ana Canyon area. The addition of OC's transmitter on Sierra Peak would improve the strength and reliability of 152.24 MHz paging-only signals in the Santa Ana Canyon and in the extended area.

ICS has not demonstrated that the proposed expansion would destroy or eliminate its service area. OC's proposal would permit it to effectively meet the service requirements of its present customers with minor revenue impacts (due to the loss of some transient servicecalls) on other RTUs. Mr. Harris' testimony gives credence to OC's fears about having its interests subordinated by adopting ICS' proposals. ICS, the largest RTU in the Los Angeles area, has as its customer the second largest RTU in the area. Adoption of the above-quoted conceptual program proposed by ICS would restrain a desirable competition and affect the independence of OC. ICS has not submitted a viable intercarrier agreement to eliminate inconveniences arising from interchanged traffic. Its proposal would increase the cost of providing expanded service to OC's customers. OC will not use ICS' facilities or its frequencies in providing service. No determination based on Sections 766 and 767 of the Public Utilities Code is needed in this proceeding. OC's mobile and tone-and-voice paging customers could be expected to make increased use of OC's reliable service in the expanded area at reduced costs.



OC has established that service is not adequate in the expanded area. In this proceeding, authorization of overlapping service areas would be in the public interest.

Findings of Fact

1. OC is an RTU corporation providing two-way mobile, tone-and-voice, and tone-only service. Its principal place of business is in the city of Santa Ana in Orange County.

2. OC proposes to construct certain facilities at an estimated cost of \$47,400 to expand its service area to provide service to its customers in portions of Riverside, San Bernardino, and Riverside counties and to provide service within a portion of the Riverside Freeway corridor in Santa Ana Canyon, between its existing service area and the portion of its proposed area in Riverside and San Bernardino counties.

3. OC provides mobile and tone-and-voice paging on VHF Channels 7 and 13 and on UHF Channels 33 and 34. It also provides VHF tone-only paging at 152.24 MHz. It proposes to transmit signals from a new tower on Sierra Peak on all of these frequencies except for Channel 34, to avoid interference with RDC, another RTU.

4. The FCC has authorized OC to construct the facilities and to use the frequencies, signal, strengths, and transmission site certificated herein.

5. There has been a substantial growth in population, subdivision activity, and building activity in the proposed service area. Many of OC's customers are conducting a major part of their business activities in the expanded area.

6. Local topography prevents the signals from OC's existing transmitters from reaching the proposed area and in Santa Ana Canyon.

7. Many of OC's customers need a better method of receiving messages or paging signals in the expanded area and in Santa Ana Canyon to more effectively conduct their business activities.

8. Providing transient mobile service to OC's customers is inconvenient and more costly than OC's proposal. Many messages are lost. No transient service is available for tone-and-voice paging customers.

9. Adoption of OC's proposal would improve service to its customers and cut down on the channel loading of other RTUs.

10. OC's conservative estimate of increased revenues attributable to expanding its service area shows a profit in the fifth year of operation.

11. OC's proposed service area overlaps the service areas of several RTUs.

12. Protestant ICS is the largest RTU in southern California. Its service area encompasses OC's present and proposed service areas. ICS would not be hurt economically by the granting of the certificate to OC.

13. ICS has a waiting list of customers desiring mobile service.

14. ICS cannot meet the needs of OC's mobile or tone-and-voice paging customers for expanded service.

15. Implementation of the intercarrier agreement, Exhibit 5, will permit OC to signal its paging-only customers in an expanded area which includes OC's proposed service area.

16. OC mobile and tone-and-voice customers could be expected to make increased use of OC's reliable service in the expanded area. This increased use could be made at lower cost than under any of ICS' proposals.

17. OC's proposed construction is feasible and practical from a technical and engineering standpoint.

18. OC has the ability to construct and to operate the facilities certificated herein.

19. OC does not propose any changes in its tariff rates attributable to the expansion of its service area.

20. Public convenience and necessity require the issuance of the certificate requested herein.

21. It can be seen with reasonable certainty that there is no possibility that the proposed service may have a significant effect on the environment.

#### Conclusions of Law

1. A.56615 should be granted to the extent set forth in the order which follows.

2. ICS' concern about possible future impacts on its operations due to the future transfer of control of OC does not provide a reasonable basis for denying the requested certificate.

3. ICS' alternate proposals provide no discernible benefits to the public.

4. The possible future availability to OC of additional voice transmission signals on the 470-512 MHz range does not justify deferral of action on this application.

The certificate hereinafter granted is subject to the provision of law that the Commission shall have no power to authorize the capitalization of this certificate of public convenience and necessity or the right to own, operate, or enjoy such certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the State as the consideration for the issuance of such certificate of public convenience and necessity or right.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Orange County Radiotelephone Service, Inc. (OC) to construct, operate, and maintain a one-way radiotelephone paging system and a two-way radiotelephone system from proposed base station facilities to be constructed and located at Sierra Peak, California.

2. OC is authorized to file, after the effective date of this order, tariffs applicable to the service authorized herein containing rates and charges otherwise applicable to its one-way paging and two-way radiotelephone services. Such filing shall comply with General Order No. 96-A. The tariffs shall become effective on not less than ten days' notice.

3. OC shall file, after the effective date of this order, as part of its tariff, an engineered service area map drawn in conformity with the provisions of Federal Communications Commission Rule 21.504, commonly known as the "Carey Report".

4. OC shall notify this Commission in writing of the date service is first rendered to the public under the tariffs herein authorized within thirty days thereafter.

5. The certificate herein granted shall terminate if not exercised within one year after the effective date of this order, or such further period of time as may be authorized.

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

Dated     MAY 19 1981    , at San Francisco, California.

John E. Boyer  
President  
William D. Stanley  
Donald W. King  
Walter Cabot  
Priscilla C. Meyer  
Commissioners