

1980

David R. Williams D/B/A Industrial
Communications v. Public Service Commission of
Utah, Milly O. Bernard, Brent H. Cameron and
David R. Irvine, Commissioners of the Public
Service Commission of Utah : Brief of Plaintiff-
Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

DAVID R. WILLIAMS d/b/a)
INDUSTRIAL COMMUNICATIONS,)
)
Plaintiff-Appellant,)

vs.)

PUBLIC SERVICE COMMISSION OF)
UTAH, MILLY O. BERNARD, BRENT)
H. CAMERON and DAVID R. IRVINE,)
COMMISSIONERS OF THE PUBLIC)
SERVICE COMMISSION OF UTAH,)

Defendants-Respondents.)

Case No. 17355

BRIEF OF PLAINTIFF-APPELLANT

APPEAL FROM THE ORDER OF THE
PUBLIC SERVICE COMMISSION OF UTAH

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TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF KIND OF CASE	1
DISPOSITION BEFORE THE PUBLIC SERVICE COMMISSION	2
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	5

POINT I

THE PUBLIC SERVICE COMMISSION ERRED IN DISMISSING INDUSTRIAL'S COMPLAINT BECAUSE THE COMPLAINT STATED ISSUES WHICH REQUIRED THE PUBLIC SERVICE COMMISSION TO HEAR THE CASE, RECEIVE EVIDENCE AND WHERE APPROPRIATE TO INVESTIGATE SUCH MATTERS	5
CONCLUSION	8

CASES CITED

<u>Commission v. D'Agata National Truck</u> , 360 A.2d 279 (Penn. 1976)	7
<u>Commission v. Construction Trucking Service</u> , 473 P.2d 824 (Arz. 1970)	7
<u>Dutchland Tours, Inc. v. Commission</u> , 337 A.2d 922 (Penn. 1975)	7
<u>Town of Fountain v. Commission</u> , 447 P.2d 527 (Colo. 1968)	8

STATUTES CITED

<u>Utah Code Ann. §§</u>	
13-5-8	8
13-5-14	8

<u>Utah Code Ann. §§</u>	<u>Page</u>
13-5-15	8
54-1-2	5,6
54-4-1	6
54-4-2	2,6
54-7-9	2,5,7,8
54-7-11	2,5,6,7,8
18 U.S.C. § 1001	8

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COMMISSIONERS OF THE PUBLIC)
SERVICE COMMISSION OF UTAH,)
)
Defendants-Respondents.)

BRIEF OF PLAINTIFF-APPELLANT

STATEMENT OF KIND OF CASE

This action arises from a complaint filed by Industrial Communications (Industrial) before the Public Service Commission (Commission) against defendants Mobile Telephone, Inc. (Mobile Telephone) and Mobile Telephone of Southern Utah, Inc. (Mobile Telephone Service). The three parties are radio common carriers holding certificates of public convenience and necessity from the Commission and Mobile Telephone and Mobile Telephone Service are affiliated radio common carriers holding separate certificates

of convenience and necessity from the Commission but operating as one common carrier. The complaint alleges violations by such defendants of Commission orders; misrepresentations to the public in Utah and the Federal Communications Commission (FCC); and unfair competition injuring both Industrial and the Utah public.

DISPOSITION BEFORE THE PUBLIC SERVICE COMMISSION

The Commission on its own motion and without hearing, dismissed Industrial's complaint and refused to investigate or allow evidence to be presented on the allegations contained in the complaint notwithstanding the statutory provisions of Utah Code Ann. §§ 54-4-2, 54-7-9 and 54-7-11 (1953 as amended) which provide Industrial the right to complain to the Commission and have such matters heard and investigated.

RELIEF SOUGHT ON APPEAL

Industrial seeks an order of this Court reversing the dismissal of Industrial's complaint by the Commission and ordering the Commission to hold a hearing on the matter, take evidence and investigate Industrial's allegations.

STATEMENT OF FACTS

1. Industrial is a radio common carrier authorized by several certificates of public convenience

and necessity in Salt Lake, Utah, Davis, Weber, and other various Counties in Utah.

2. Mobile Telephone Service is a radio common carrier authorized by a certificate of public convenience and necessity from the Public Service Commission of Utah to serve the public in Southern Utah in and around the cities of St. George and Cedar City. Mobile Telephone is authorized by certificates of public convenience and necessity to serve the public as a radio common carrier in and around Salt Lake, Utah, Davis, Weber, and other various Counties in Utah.

3. Radio common carriers are telephone utility companies which provide paging, dispatch, and mobile telephone service to subscribers in their authorized areas.

4. Mr. Max E. Bangerter is the president of both Mobile Telephone and Mobile Telephone Service. He owns or controls, directly or indirectly, both companies; operates both companies as one; and uses the advantages of the operations of Mobile Telephone Service of Southern Utah as an advantage to Mobile Telephone to compete with petitioner in the Salt Lake, Utah, Weber, and Davis Counties. (R. 28, paragraph 6).

5. On February 10, 1977, Mobile Telephone Service represented to the FCC through an application for license

that it had installed and made operational one UHF and two VHF channels in Cedar City, Utah. Said application is attached to petitioner's complaint which was filed below. (R. 32-35). Said application was signed by Duane Hall, who is an employee of both Mobile Telephone Service and Mobile Telephone.

6. On October 10, 1978, Mobile Telephone Service represented to the FCC through an application for license that it had installed and had operational one UHF and one VHF channel in St. George, Utah. Said application is also attached to the complaint. (R. 36-39). Said application was signed by Max E. Bangarter.

7. Attached to the complaint are affidavits which show the Commission that the UHF and VHF radio channels thus represented as installed and operational in St. George and Cedar City, Utah were not in service until the spring of 1980. (R. 26-27, 30-31, 40-41).

8. Mobile Telephone and Mobile Telephone Service advertised during the years 1978 and 1979 that they offered mobile telephone service in St. George and Cedar City, have misrepresented the extent of such service to their customers and the general public in their certificated areas as well as noncertificated areas and by so doing have misrepresented their facilities and service. (R. 28, paragraph 11).

9. Industrial's complaint alleged that the defendant common carriers misrepresented their authority and facilities to the public, misrepresented their facilities to the FCC, were competing unfairly, and failed to comply with their certificates of convenience and necessity.

ARGUMENT

POINT I

THE PUBLIC SERVICE COMMISSION
ERRED IN DISMISSING INDUSTRIAL'S
COMPLAINT BECAUSE THE COMPLAINT
STATED ISSUES WHICH REQUIRED THE
PUBLIC SERVICE COMMISSION TO HEAR
THE CASE, RECEIVE EVIDENCE AND WHERE
APPROPRIATE TO INVESTIGATE SUCH
MATTERS.

The Commission has the duty to protect the public interest and regulate and supervise the acts and omissions of all public utilities in Utah. Utah Code Ann. §§ 54-1-2, 54-7-9 and 54-7-11 (1953 as amended).

Utah Code Ann. § 54-7-9 (1953 as amended) provides in pertinent part as follows:

Complaint may be made by the commission of its own motion, or by any corporation or person, chamber of commerce, board of trade, or by any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed to be in violation, of any provisions of law or of any order or rule of the commission . . . (emphasis added).

Utah Code Ann. § 54-7-11 (1953 as amended)

provides:

Any public utility shall have the right to complain to the commission on any of the grounds upon which complaints are allowed to be filed by other parties, including the fairness, reasonableness or adequacy of any schedule, classification, rate, price, charge, fare, toll, rental, rule, regulation, service or facility of such public utility, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard ex parte by the commission or may be first served upon any parties designated by the commission. (emphasis added).

The Commission has the responsibility, power and jurisdiction "to supervise and regulate every public utility", Utah Code Ann. § 54-4-1 (1979 Supp.), and jurisdiction to hear and investigate the actions or omissions of a public utility, Utah Code Ann. § 54-4-2 (1953).

It is hornbook law that for purposes of this appeal because Industrial's complaint has been dismissed, the allegations of the complaint and the facts of the uncontroverted affidavits of plaintiff must be taken as true.

The Order of Dismissal (R. 23) recognizes the Commission's jurisdiction over Mobile Telephone and Mobile Telephone Service.

The complaint alleges that Mobile Telephone and Mobile Telephone Service are operated in common with common officers and ownership.

Based on the facts alleged in the complaint and supporting affidavits, Industrial complains that Mobile Telephone and Mobile Telephone Service:

1. Misrepresented their service and facilities to the public in Utah (R. 28, paragraph 11),
2. Misrepresented their facilities to the FCC (R. 28, paragraph 11),
3. Were competing unfairly through such misrepresentations and advertising with Industrial (R. 28, paragraph 11), and
4. Were acting beyond the limits of their certificates of public convenience and necessity. (R. 28, paragraph 11).

The jurisdiction of the Commission may be invoked under Sections 54-7-9 and 54-7-11 for violations of law; violations of any order or rule of the Commission; and the fairness, reasonableness or adequacy of a rule, regulation, service or facility of a public utility. In addition, the fitness, willingness, and ability of a public utility is always at issue before the Commission. See Commission vs. D'Agata National Truck, 360 A.2d 279 (Penn. 1976); Commission v. Construction Trucking Service, 473 P.2d 824 (Arz. 1970); Dutchland Tours, Inc. v. Commission, 337 A.2d 922

(Penn. 1975); Town of Fountain v. Commission, 447 P.2d 527 (Colo. 1968).

It is unlawful for a business to advertise for sale something it is not prepared to supply. Utah Code Ann. § 13-5-8 (1953). Violation of Section 13-5-8 results in criminal and civil remedies. Utah Code Ann. §§ 13-5-14 and 13-5-15 (1953).

Willful, false statements on an application to the FCC are violations of 18 U.S.C. § 1001 (1979).

Industrial believes that the grounds set forth in its complaint come within one or several of the grounds listed in Sections 54-7-9 and 54-7-11 as violations of state or federal law; violations of Commission orders or unfair trade practises injuring the public and Industrial.

CONCLUSION

The Commission erred in dismissing Industrial's complaint and Industrial requests this Court reverse such Order and order the Public Service Commission to hear Industrial's complaint, receive evidence, and investigate the matters.

RESPECTFULLY SUBMITTED this 22nd day of
December, 1980.



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CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the
foregoing Brief of Plaintiff-Appellant to Kay M. Lewis,
320 South 300 East, Salt Lake City, Utah 84111 and the
Attorney General, 236 State Capitol Building, Salt Lake
City, Utah 84114, postage prepaid, this 22nd day of
December, 1980.

