



CITY OF CAMBRIDGE
INTEROFFICE CORRESPONDENCE

To Mr. Robert Healy
Russell B. Higley, Esq.

From Birge Albright, Esq. *BA*

Subject MOBILE RADIO UTILITY SYSTEM

Date October 14, 1983

Reference

On October 14, 1983, I talked by phone with Shawn Nestor, Esq., who will be the D P U Hearing Officer on the application of Advance Mobile Phone Service, Inc. for a certificate as a radio utility for the operation of a Mobile Radio Utility System. See the two attached hearing notices and copy of G.L.c.159, §§12A-12D.

Based on my conversation with Mr. Nestor, it appears that the two applicants want to expand their mobile radio telephone service, i.e. telephones in cars. He said that this would not involve any construction of facilities in Cambridge, and that, if there were such construction, the applicants would have to get permission from our Board of Zoning Appeals. I am left with the impression that the only impact on Cambridge would be the increased numbers of cars with telephones in them.

BA:cp

§ 12. Services supervised and regulated by department

Notes of Decisions

11. Common carriers

Tower of a barge is not a common carrier, or an insurer of the barge and safety of the tow, nor is

he required to exercise the highest degree of skill in making the tow. *Joseph Amara & Sons, Inc. v. Providence Steamboat Co.* (1970) 45 Mass.App. Dec. 147, affirmed 274 N.E.2d 344.

§ 12A. Definitions applicable to sections 12B to 12D

The following words, when used in sections twelve B to twelve D, inclusive, shall have the following meanings unless the context otherwise requires:

"Authorized service area" or "service area", the area defined in section 21.504 of the United States Federal Communications Commission's Domestic Public Radio Service Rules, describing the limits of the reliable service area of the base station of a mobile radio utility system;

"Certificate", a certificate issued an applicant by the department, after hearing and proof of public convenience and necessity, for the construction, operation or extension of a proposed or existing mobile radio utility system, and the designation of the authorized service area for such system.

"Facility", all real property, stations, antennae, radios, receivers, transmitters, instruments, appliances, fixtures and other personal property used by a radio utility in providing service to its subscribers;

"Mobile radio utility system", any facility within the commonwealth which provides mobile radio telephone service, including one-way mobile radio telephone service, on a for-hire basis to the public, whether or not such mobile radio telephone service is provided on frequencies allocated to the Domestic Public Land Mobile Radio Services and whether or not such facility is interconnected with a public land-line telephone exchange network.

"Radio utility", any person or organization which owns, controls, operates or manages a mobile radio telephone utility system, except a land-line telephone utility or land-line telegraph utility regulated by the United States Federal Communications Commission.

Added by St.1973, c. 936, § 1.

1973 Enactment. St.1973, c. 936, § 1, adding this section and §§ 12B to 12D of this chapter, was approved Oct. 19, 1973.

§ 12B. Mobile radio telephone service; certification; exemptions

No person offering or proposing to offer mobile radio telephone service to the public within the commonwealth shall begin or continue the construction or operation of any mobile radio utility system, or any extension thereof, either directly or indirectly, without a certificate issued by the department which indicates that the public convenience and necessity require such construction, operation or extension. Separate applications and certificates shall be required for each construction, operation or extension in an area not already served by the applicant. Each application shall be accompanied by a nonrefundable filing fee to be determined annually by the commissioner of administration under the provision of section three B of chapter seven. The department shall issue rules and regulations governing the issuance of such certificates.

This section shall not be deemed to require a certificate for any of the following:
(a) an extension of a system within any authorized service area within which a radio utility has theretofore lawfully operated;

159 § 12B

CORPORATIONS

(b) an extension within or to an authorized service area already served by the radio utility, necessary in the ordinary course of business;

(c) the replacement of facilities within or to any authorized service area already served by a utility;

(d) an extension into an area contiguous to that already served by a radio utility which is not the recipient of mobile radio telephone service from another radio utility, if no certificate for service in such contiguous area has been issued to or applied for by any other radio utility;

(e) the acquisition and operation of any mobile radio utility system for which a certificate had been issued for previous construction and operation by a radio utility.

Added by St.1973, c. 936, § 1. Amended by St.1980, c. 572, § 328.

Expiration of St.1980, c. 572

St.1980, c. 572, § 417, as amended by St.1982, c. 602, § 2, provided:

"This act shall expire on December thirty-first, nineteen hundred and eighty-three."

St.1982, c. 602, was approved December 23, 1982. Emergency declaration by the Governor was filed December 29, 1982.

1973 Enactment. St.1973, c. 936, § 1, was approved Oct. 19, 1973.

Section 2 of St.1973, c. 936, provided:

"Any person requiring a certificate pursuant to section twelve B of chapter one hundred and fifty-nine of the General Laws, inserted by section one of this act, who is authorized by the United States Federal Communications Commission on the effective date of this act to engage in the operation of a mobile radio utility system, the base station transmitter or transmitters of which are located in the commonwealth, shall be issued a certificate from the department of public utilities, indicating that the public convenience and necessity requires the operation of said system in the area served by said person on the effective date of this act, and in an area proposed to be served under applications then pending before said Federal Communications Commission, if, within ninety days after said effective date, said person files with said department an application for said certificate, including therewith copies of any authorization issued by said Federal Communications Commission to said person, indicating the area served by said person, and copies of any application pending before said Federal Communications Commission."

1980 Amendment. St.1980, c. 572, § 328, approved July 16, 1980, substituted "to be determined annually by the commissioner of administration under the provision of section three B of chapter seven" for "of two hundred and fifty dollars" in the third sentence of the first paragraph.

Section 416 of St.1980, c. 572 provided:

"Notwithstanding any general or special law to the contrary, for the period beginning July first, nineteen hundred and eighty, and ending December thirty-first, nineteen hundred and eighty-two, the secretary of administration shall determine the amount to be charged for any service, registration, regulation, license, fee, permit or public function which is not provided for by any other section of this act provided, however, that said secretary shall not determine the rates of tuition at state colleges, state community colleges, state universities, and the Massachusetts Maritime Academy or any fees or charges relative to the administration and operation of the trial court, appeals court, supreme judicial court or any other department of the judiciary of the commonwealth;"

Section 417 of St.1980, c. 572, as amended by St.1982, c. 602, § 2, provided:

"This act shall expire on December thirty-first, nineteen hundred and eighty-three."

Section 417A of St.1980, c. 572, as added by St.1982, c. 602, § 3, provided:

"Sixty days prior to the increase of any fee, the secretary of administration and finance shall submit information relative to the purpose for a fee increase with the senate and house committees on ways and means; provided however, that no such notification shall be effective prior to March first, nineteen hundred and eighty-three."

St.1982, c. 602, was approved Dec. 23, 1982. Emergency declaration by the Governor was filed Dec. 29, 1982.

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Library Reference Telecommunications

§ 12C. Jurisdiction

Any radio utility to the jurisdiction of a common carrier

Added by St.1973

1973 Enactment. approved Oct. 19, 1973

§ 12D. Section

The provision of telephone or telegraph services of such

Added by St.1973

1973 Enactment. approved Oct. 19, 1973

§ 13. Inquiry

Law Review Commission. Future test year 52 Boston U.L.R.

§ 14. Rates, fees

Law Review Commission. Future test year 52 Boston U.L.R. Judicial determination William K. Jones

Factors considered. Notice to utility Review 8 Sufficiency of evidence

1. In general. Department of public utilities that propose branch exchange customers of telephone services and state positive incentive branch exchange

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572 provided:
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Library References

Telecommunications 385.

C.J.S. Telegraphs, Telephones, Radio and Tele-
vision §§ 302, 316.

159 § 14

Note 1

§ 12C. Jurisdiction of department over certified radio utilities

Any radio utility operating under a certificate issued by the department shall be subject to the jurisdiction of the department in the same manner and to the same extent as are common carriers.

Added by St.1973, c. 936, § 1.

1973 Enactment. St.1973, c. 936, § 1, was ap-
proved Oct. 19, 1973.

§ 12D. Sections 12A to 12C not applicable to telephone or telegraph utilities

The provisions of sections twelve A to twelve C, inclusive, are not applicable to any telephone or telegraph utility regulated by the department or to the facilities, systems or services of such utilities.

Added by St.1973, c. 936, § 1.

1973 Enactment. St.1973, c. 936, § 1, was ap-
proved Oct. 19, 1973.

§ 13. Inquiry into rates, etc.

Law Review Commentaries

Future test year in utility rate-making. (1972)
52 Boston U.L.Rev. 791.

Judicial determination of public utility rates.
William K. Jones (1974) 54 Boston U.L.Rev. 873.

§ 14. Rates, fares or charges

Law Review Commentaries

Future test year in utility rate-making. (1972)
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Judicial determination of public utility rates.
William K. Jones (1974) 54 Boston U.L.Rev. 873.

competitive and discriminatory pricing practices,
included in its decision disapproving proposed
tariff revisions adequate statement of its reasons.
New England Tel. & Tel. Co. v. Department of
Public Utilities (1977) 363 N.E.2d 519, 372 Mass.
678.

Where Department of Public Utilities exten-
sively considered important issue of cross-subsidi-
zation as well as competition in reaching its deci-
sion and its reference to broad issues involved in
case did not refer only to issues of competition,
Department's decision disapproving proposed
rates for private branch exchange system that
involved payment of fixed amount for specified
period of time and payment of variable amount
for period when equipment was in service was not
based on error of law. Id.

Even though less restrictive alternatives might
exist to deal with discriminatory aspects of two-
tiered pricing, Department of Public Utilities was
not required to choose least restrictive price struc-
ture and its rejection of proposed price structure
for private branch exchange system involving pay-

Notes of Decisions

Factors considered 5.5

Notice to utility 3.5

Review 8

Sufficiency of evidence 7

1. In general

Department of Public Utilities, which conclud-
ed that proposed two-tiered rates for private
branch exchange system discriminated against
customers of telephone company's noncompetitive
services and stated that telephone company had
positive incentive in face of competition in private
branch exchange system market to engage in anti-



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES 727-3500

SEP 29 9 25 PM '83 September 15, 1983 Counsel

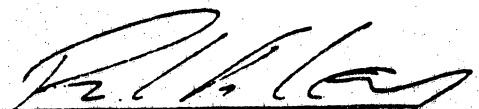
CAMBRIDGE, MASS.

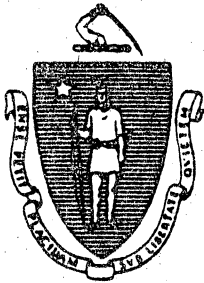
D.P.U. 1565

Application of ADVANCE MOBILE PHONE SERVICE, INC., on behalf of BOSTON CELLULAR GEOGRAPHIC SERVICE AREA, INC., (Boston CGSA, Inc.) under the provisions of Chapter 159, Section 12A through D, of the General Laws, as amended, for a Certificate as a Radio Utility, for the operation of a Mobile Radio Utility System for compensation within the Commonwealth of Massachusetts.

Upon the foregoing application, the Department of Public Utilities will conduct a public hearing at its hearing-room, #1210 Leverett Saltonstall Building, 100 Cambridge Street, Boston, Massachusetts on Monday, October 24, 1983 at 10:00 o'clock in the morning.

By Order of the Department,


PAUL F. LEVY, CHAIRMAN



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

SEP 28 3 29 PM '83

September 15, 1983

CAMBRIDGE, MASS.

D.P.U. 1621

Application of YANKEE CELLTELL COMPANY under the provisions of Chapter 159, Section 12A through D, of the General Laws, as amended, for a Certificate as a Radio Utility, for the operation of a Mobile Radio Utility System for compensation within the Commonwealth of Massachusetts.

Upon the foregoing application, the Department will conduct a public hearing at its hearing room, # 1210, Leverett Saltonstall Building, 100 Cambridge Street, Boston, Massachusetts on Monday, October 24, 1983 at 2:00 o'clock in the afternoon.

By Order of the Department,

A handwritten signature in cursive script, appearing to read "P. F. Levy".

PAUL F. LEVY, CHAIRMAN



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

October 24, 1983

To the Honorable, the City Council:

With respect to Awaiting Report Items No. 20 and 21 relative to applications pending before the D. P. U. for a certificate to operate a mobile utility system, enclosed please find copy of a report from Birge Albright, Esq. of the Law Department.

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf
Enc.

Agenda Item Number Two

S-591

Re: response to Awaiting Report Item Numbers
20 & 21 regarding two applications pending
before the DPU for certificates to operate
mobile utility systems.

In City Council,

October 24, 1983

10-24-1983

- Placed on File -