

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

In the Matter of LORAIN COUNTY RADIO CORPORATION, LORAIN, OHIO. For Construction Permits. Coastal Harbor Stations (Public Coastal Service).	}	DOCKETS Nos. 4880 and 4881.
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Decided September 20, 1938

Frank C. Dunbar on behalf of the applicant; *Ben S. Fisher* and *Charles V. Wayland* on behalf of Thorne Donnelley, respondent; *William H. Bauer* and *Basil P. Cooper* on behalf of the Federal Communications Commission.

STATEMENT OF FACTS, GROUNDS FOR DECISION, AND ORDER

By the Commission:

STATEMENT OF FACTS

This proceeding arises upon the applications of Lorain County Radio Corporation for permits to construct coastal harbor stations at Duluth, Minnesota, and Port Washington, Wisconsin, to be operated in the public coastal service with a power of 500 watts for each station. Frequencies requested for the Port Washington station are 2514 kilocycles and 2550 kilocycles. The frequency requested for the Duluth station is 2550 kilocycles. Hearing was held before an examiner on January 10, 1938, and on March 22, 1938, the examiner released his report recommending that both applications be granted subject to certain conditions with respect to joint use of the frequency 2514 kilocycles with Thorne Donnelley.

Thorne Donnelley appeared at the hearing on the applications and opposed the granting of the application for the station at Port Washington, Wisconsin, and, subsequent to release of the examiner's report, filed exceptions to such report. In lieu of oral argument briefs have been filed by the applicant and Thorne Donnelley, hereinafter called respondent.

Lorain County Radio Corporation is a corporation organized under the laws of the State of Ohio, and is at present the licensee of the coastal harbor station WMI at Lorain, Ohio. At the time of

the hearing the applicant was also the licensee of 56 radiotelephone ship stations located on vessels navigating the Great Lakes, out of a total of 63 United States vessels so equipped. Station WMI is authorized to transmit on the frequencies 2550, 6470, and 11370 kilocycles. The applicant is primarily concerned in the development of radiotelephone communication service to serve heavy commercial traffic on the Great Lakes generally. All of the United States stations presently equipped to communicate with Station WMI are heavy cargo vessels with the exception of one. It is stated that the same ship stations as are served by Station WMI will be served by the stations which it is proposed to construct at Duluth and Port Washington and that the effect of granting the applications and operating the stations as proposed will be to lower the cost of the land-line tolls involved in calls between vessels and land-line telephone stations with the most substantial reductions occurring for calls to and from points in the vicinity of Duluth and Port Washington. The equipment installed by the applicant on the ship stations above referred to is costly from the viewpoint of small pleasure craft and commercial vessels whose operations are confined within a relatively small area on one of the Great Lakes, since in the latter case it is presumed that the equipment would be used only occasionally and primarily for safety purposes.

On April 6, 1938, this Commission granted the application of the respondent for authority to construct a coastal harbor station at Lake Bluff, Illinois, which is about 30 miles north of Chicago on Lake Michigan. The respondent at that time was primarily concerned with rendering a local radiotelephone communication service to vessels operating in the lower end of Lake Michigan. It is estimated that the station at Lake Bluff will render satisfactory service to ships in the lower end of Lake Michigan within a distance of 100 miles north of the City of Chicago. The respondent in making application to the Commission stated that he was primarily interested in the station at Lake Bluff "from a safety point of view."

It is clear that the respondent and the applicant herein are interested in the development of two distinct and different types of business. The applicant hopes to develop a comprehensive service for the heavy commercial traffic on the Great Lakes generally, while the respondent seeks primarily to establish a local service for the area more or less immediately adjacent to Chicago.

FINANCIAL QUALIFICATIONS OF APPLICANT

The respondent directs our attention to the discrepancy between the answer to question No. 8 (f) in the applications here under consideration and the statement of a witness for the applicant on page 6 F. C. C.

131 on the transcript of testimony. The answer to question No. 8 (f) is to the effect that capital stock will not be issued to finance the construction of the station if the application is granted. At page 131 of the transcript, the Treasurer and Manager of the applicant stated: "We will sell additional stock eventually and we may borrow temporarily, until we know where we can get the money." The statement just quoted is immediately preceded by another statement of the same witness, as follows: "We arranged the financing before we made the application. The money has all been provided to build the station." The first statement quoted is also a direct contradiction of the answer of the applicant to question No. 8 (f) in the application, which was made by the same person who testified as above stated. The respondent contends that the record establishes that the applicant must augment its finances through the sale of additional stock since it does not have sufficient liquid assets to finance the construction proposed, and that the application must be denied since the Commission has held that when an applicant must depend upon public subscriptions to finance the construction of a radio station, such an applicant is not financially qualified. It is also contended that this Commission should not establish a precedent whereby applicants for all classes of construction permits may be declared financially qualified if they state they are going to finance the venture by the sale of stock. The respondent cites *Matthews*, 2 F. C. C. 576.

It is difficult to understand the failure of the applicant to make clear upon the record the method of financing to be followed in the event the applications should be granted. However, if we take the position least favorable to the applicant, i. e., that stock will be issued and sold to finance the construction of the proposed stations, this is not sufficient to justify denial on the ground that the applicant is not financially qualified. The case cited by the respondent involved the application of an individual for a broadcast station in a town already enjoying substantial service from other stations. He had no record of experience with the operation of this or any other station and the venture was entirely speculative. In the instant case we have a common carrier operating a service pursuant to authorization from this Commission and seeking an extension of that service to render additional and better service to customers presently served. This situation might better be compared with that discussed in *Doughty & Welch Electric Co., Inc.*, 2 F. C. C. 243, wherein the Commission said:

The applicant proposed to expend a sum of approximately \$5,000 for changes in the transmitter and antenna in the event that the application is granted. The station realized a net profit from its operation in 1934 of \$9,000. While

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there are some large outstanding obligations of the station, yet the profits realized from this station in the past and the unencumbered assets which it has would tend to establish the fact that the applicant is able financially to make the improvements contemplated in the application and to operate the station in accordance therewith.

Further, the proposal of the applicant to construct additional stations to serve heavy commercial traffic on the Great Lakes might also be compared with applications of railroads under the Interstate Commerce Act for authority to construct extensions to existing lines. The Interstate Commerce Commission has approved the issuance and sale of securities to finance, in part at least, the construction of an extension covered by a certificate of public convenience and necessity issued by the same Commission. We have no jurisdiction over the issuance and sale of securities by common carriers in the communication service, but it is not irrelevant to state that, on the record before us, we would have no difficulty in approving the issuance and sale of securities by this applicant sufficient to finance the construction of the proposed stations. To illustrate the attitude of the Interstate Commerce Commission regarding the financing of construction of extensions to railroads, attention is directed to the case of *Great Northern Ry. Co. Construction*, 166 I. C. C. 3, 33, where the Commission stated frankly in its decision that the Western Pacific Railway Company expected to partially finance its part of the authorized construction through the sale of bonds and notes. The Commission later authorized the issuance and sale of securities for this purpose.

The Commission finds that the applicant is financially and technically qualified, and has the legal capacity to construct and operate the proposed station.

THE DULUTH STATION

No person appeared in opposition to the granting of the application for authority to construct a coastal harbor station at Duluth and the record contains substantial evidence of the public need for the proposed station there. During the year there were 5,063 vessels of the bulk cargo type that entered the Duluth-Superior harbor; 615 made port at Ashland harbor; 878 docked at Two Harbors; 127 entered Marquette; and 440 docked at Presque Isle. Shipping represents Duluth's largest single industry. It is the port on the Great Lakes from which originates a majority of the iron-ore traffic, and to which is destined a majority of the coal traffic on the Great Lakes. Officials of shipping companies and captains of Lake boats testified regarding the convenience to them of a radiotelephone station at Duluth. At the present time arrangements for docking vessels ap-

proaching Duluth harbor are telephoned from Duluth to Lorain, and from Station WMI at Lorain to the vessel on Lake Superior. If the instructions could be obtained by the vessel directly from a Duluth station, a substantial saving in time and expense would be effected. A number of the shipping companies have operating offices in Duluth and in Cleveland. It is anticipated that the station at Duluth will develop business not now available on account of what is stated to be the prohibitive cost of the land line portion of telephone service via WMI, Lorain, Ohio.

The frequency requested for the Duluth station is 2550 kilocycles, which frequency, under the working agreement between the appropriate administrative agencies of the United States and the Canadian Government, is assigned by both for radiotelephone service on Lakes Superior and Erie, with priority of use in the Canadian Government. Station VBB is licensed by the Canadian Government to operate at Sault Sainte Marie, Ontario, on the frequency 2550 kilocycles, with 1600 watts power, unlimited time, during the navigation season. The operation of the proposed Duluth station would cause interference to a certain portion of the service area of Station VBB when the latter station operates. Therefore if this application is to be granted, it will be necessary to provide that use of the frequency 2550 kilocycles be subject to prior use by the Canadian Government as provided for in the above-mentioned agreement.

The applicant will operate the proposed station at Duluth under an agreement with the City of Duluth, already executed, whereby the antenna of the station owned by the Duluth police will also be used for the proposed radiotelephone service, and the personnel employed by the Duluth police will be utilized to operate the station. The equipment proposed to be used in the station at Duluth is satisfactory and complies with the rules and regulations of the Commission. The proposed site for the transmitter, in the Duluth municipal police radio station, is satisfactory. The proposed charge for service between ships on the Great Lakes and the station at Duluth is the same as the existing charge for such service between ships and Station WMI at Lorain, Ohio.

The applicant requests authority to use 500 watts power at the proposed Duluth station. It has been the practice of this Commission to limit the power of coastal harbor stations to 400 watts, with one exception—Station WMI at Lorain—which has two transmitters with 500 watts power and one transmitter with 400 watts. The station at Duluth should, in view of the record, be limited to 400 watts, and the use of the frequency 2550 kilocycles made subject to the priority of the Canadian Government.

THE PORT WASHINGTON STATION

Port Washington is about 100 miles north of Chicago on the west shore of Lake Michigan. The cost of the station which the applicant proposes to construct at this point is approximately \$16,500. The station would be used primarily for communication with cargo vessels serving ports on Lake Michigan. There is testimony in the record that such a service would be a convenience to the operators of vessels owned by companies maintaining their principal offices in cities located on Lake Michigan. A substantial volume of commercial traffic enters and leaves Lake Michigan each year. A station at Port Washington would effect a considerable saving in land-line tolls on any messages between vessels on Lake Michigan and the ports on Lake Michigan since the land-line charges on such messages would be reduced substantially under those now effective via WMI at Lorain, Ohio. It is stated that the operation of the station at Port Washington would relieve present traffic congestion at Station WMI, and it is also anticipated that the station would develop some new business which is not now handled due to what is stated to be the excessive cost of communication to and from Lake Michigan ports via Lorain, Ohio.

The frequency 2550 kilocycles is not available for use on Lake Michigan in the coastal harbor service under the working agreement between representatives of the United States and Canadian Governments. One of the objects of this agreement is to minimize interference between radio stations of these countries. The frequency 2514 kilocycles has been licensed for use by Station WAY, owned by Thorne Donnelley, at Lake Bluff, Illinois. Satisfactory operation of the proposed station at Port Washington on the frequency 2514 kilocycles would necessitate some cooperative arrangement between Thorne Donnelley at Lake Bluff and the applicant at Port Washington whereby vessels so desiring could communicate with either station without causing interference and consequent delays. From the record, it appears that one frequency, 2514 kilocycles, should be sufficient, from the point of view of the number of anticipated telephone calls, for a considerable period of time to take care of the traffic through both the Thorne Donnelley station at Lake Bluff and the proposed station at Port Washington.

GROUNDS FOR DECISION

On the record in this case the Commission finds:

1. The applicant is legally, technically, financially, and otherwise qualified to construct and operate the stations as proposed herein.

2. There is a public need for coastal harbor telephone service at Duluth, Minnesota, and at Port Washington, Wisconsin, as proposed herein.

3. The granting of the application for a permit to construct a coastal harbor radiotelephone station at Duluth, Minnesota, subject to priority of the Canadian Government to the use of the frequency 2550 kilocycles, and limited to 400 watts power, will serve public interest, convenience, and necessity.

4. The granting of the application for a permit to construct a coastal harbor radiotelephone station at Port Washington, Wisconsin, for use of the frequency 2514 kilocycles limited to 400 watts power, and subject to the execution and filing of an agreement satisfactory to this Commission, between the applicant and Thorne Donnelley, covering the joint use of this frequency, will serve public interest, convenience, and necessity.

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