

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of ¹ RADIOMARINE CORPORATION OF AMERICA, For coastal harbor stations at: WEST DOVER, OHIO, Construction Permit. WEST DOVER, OHIO, Construction Permit. BUFFALO, N. Y., Construction Permit. WEST DOVER, OHIO, Temporary Authority.</p>	}	<p>DOCKET NOS. 5447, 5547, 5675, 5674</p>
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March 5, 1941

Manton Davis, Frank W. Wozencraft, and Wilson Hurt on behalf of the applicant; *Gilbert R. Johnson* on behalf of Lake Carriers' Association; *Lee C. Hinslea* and *John T. Haswell* on behalf of Central Radio Telegraph Co.; *Horace L. Lohnes* and *Joseph E. Keller* on behalf of Donnelley Radiotelephone Co.; *Frank C. Dunbar* and *Frank C. Dunbar, Jr.*, on behalf of Lorain County Radio Corporation; *Marshall S. Orr* on behalf of the Commission.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

FINDINGS OF FACT

1. These matters were heard in a single proceeding before an employee of the Commission. Dockets 5547 and 5447 relate to one application for a coastal harbor radiotelephone station at West Dover, Ohio. Docket 5675 relates to an application for coastal harbor radiotelephone station at Buffalo, N. Y. Docket 5674 was concerned with certain temporary authority which was granted applicant to operate a coastal harbor station at West Dover, Ohio, under special temporary rules of the Commission. Since both the temporary authority and the temporary rules under which it was granted expired prior to the hearing, the applicant moved that it be allowed to take a default.

¹ Petition for rehearing filed by applicant denied on July 9, 1941.

2. The West Dover application requested, in addition to frequencies provided by the rules, certain frequencies above 3000 kilocycles then available only for a different type of coastal service in connection with ocean-going vessels. On March 27, 1939, the Commission ordered that the issues presented by all such applications be separated. Accordingly, the West Dover application was docketed for two proceedings, namely, Docket 5447 relating to frequencies then allocated under the rules, and Docket 5547 relating to the request for frequencies above 3000 kilocycles. Upon the completion of public hearings preceding the Commission's report to Congress with respect to radio requirements necessary or desirable for safety purposes for vessels operating on the Great Lakes, and because of representations made at such hearings, the Commission, upon its own motion, ordered a general public hearing for the purpose of determining whether the rules should be amended to make high frequencies (between 3000 and 30000 kilocycles) available for supplementary use by coastal harbor telephone stations in the Great Lakes area. This hearing (Docket 5816) was held in Cleveland, Ohio, March 4 to 8, 1940, and the Commission's decision was issued April 13, 1940. In accordance with the decision, the rules were amended to make certain frequencies between 3000 and 9000 kilocycles available for use by Great Lakes coastal harbor stations on a restricted and conditional basis. The applicant was allowed to amend its applications so that they now conform to the rules of the Commission with respect to available frequencies.

3. The applicant was incorporated under the laws of the State of Delaware in December of 1927. It was organized for the purpose of taking over the marine operations of Radio Corporation of America and is a wholly-owned subsidiary of that company. Of the States bordering the Great Lakes, it is authorized to do business in Ohio, New York, Illinois, and Minnesota. All officers and directors of the applicant and of Radio Corporation of America are citizens of the United States. As of March 1, 1940, less than 6 percent of the common stock of Radio Corporation of America and less than 5 percent of its first preferred stock was held by foreigners. Not more than one-fifth of the capital stock of either of such companies is owned or voted by aliens or their representatives, or by a foreign government or representatives thereof, or by any corporation organized under the laws of a foreign country.

4. As of March 31, 1940, the total assets of the applicant were \$1,759,324.86 and the total current liabilities were \$363,873.44. The balance of assets is represented by \$500,000 of capital stock, capital surplus in the amount of \$500,000, and \$395,451.42 designated as earned surplus. None of the assets are pledged for collateral loans or otherwise hypothecated. The position as to cash and current inventories

is such that applicant could construct, maintain, and operate the stations for which application is made without seeking cash or disposing of, or pledging, any of its assets.

5. Radio Corporation of America first entered the marine communications business on the Great Lakes about 1922 through two subsidiaries which have since been dissolved. Their activities at first were confined to the sale and servicing of ship radio apparatus. In 1925 the present radiotelegraph station at Chicago was opened and a similar station in Cleveland followed in 1926. The radiotelegraph stations at Buffalo and Duluth were opened in 1927. The applicant operates a total of 16 coastal telegraph stations, 4 of which are in the Great Lakes region. It operates about 1,000 ship telegraph stations. For a very brief period in 1939, the applicant operated coastal harbor radiotelephone stations on the Great Lakes under special temporary rules adopted by the Commission for the purpose of obtaining information to serve as a basis for revision of the permanent rules. The applicant company also develops, designs, and manufactures radiotelephone and radiotelegraph transmitting and receiving equipment for marine service. It has manufactured in the past 5 years about 525 sets of radiotelephone apparatus of some 8 different types. In the same period it has developed a total of 40 new types of marine radio apparatus which have been manufactured in approximately 6,000 units.

6. The proposed West Dover station (Dockets 5447 and 5547) would be located about 12 miles west of Cleveland at the site of applicant's present coastal telegraph station near the town of West Dover, Ohio. This site is only 12 to 15 miles from an existing coastal harbor telephone station operated by The Lorain County Radio Corporation near Lorain, Ohio. Interference would result from simultaneous use of the same frequency. However, the Commission's existing rules recognize that all ship and shore radiotelephone stations in the Great Lakes region are in the same interference area and must coordinate their operations to give satisfactory service. The limited number of available frequencies does not permit the assignment of any frequency for the exclusive use of one station.

7. The applicant would construct the proposed Buffalo station (Docket 5675) at the site of its present coastal telegraph station at that point. Although there is no other United States coastal harbor telephone station within 100 miles, it would still be necessary to coordinate the operation with that of other stations on the Great Lakes, especially in connection with the use of frequencies within the band 4000 to 9000 kilocycles. The Commission's rule 7.36 requires that the coastal station, before beginning a transmission, shall monitor the

frequencies to be used to determine whether a communication is already in progress. The applicant would conduct its operations in accordance with the rule and also suggests the possible use of an automatic busy signal. It is agreeable to entering a specific time-sharing arrangement, although the applicant's traffic manager is of the opinion that such an arrangement would result in inefficient use of circuit time.

8. In support of the element of need for the proposed stations, the applicant dwelt at some length upon the matter of its inability to continue radiotelegraph service unless it also was permitted to operate a radiotelephone service. Over the years that it has operated coastal telegraph stations on the Great Lakes, the applicant has sustained a loss of around \$73,000. The company's original investment in the four Great Lakes telegraph stations was approximately \$42,819. A reserve of \$30,450 has been set aside, leaving an undepreciated investment of about \$12,369. In the opinion of applicant's traffic manager, the loss can never be recovered if Radiomarine is not permitted to operate radiotelephone stations. This is for the reason that the trend in the Great Lakes maritime service for the past year or two has been away from telegraph toward the use of telephone, so that there are now less than sixty United States vessels using the radiotelegraph. The Company would expect to recoup some of its loss from the profits on radiotelephone service and would thus be enabled to continue the radiotelegraph service, which service it believes to be in the public interest.

9. Much of the testimony offered by the applicant dealt with the development of ship radio sets and the necessity of providing a satisfactory shore station to work with the vessels equipped with such sets. However, there is testimony to indicate that the actual intention is to provide direct communication between all ships on the Great Lakes and all telephone subscribers ashore, irrespective of the type of vessel equipment. An arrangement would be made to connect with the Ohio Bell Telephone Co. at West Dover and with the New York Telephone Co. at Buffalo. A unit charge is proposed of \$1.25 for 3-minute calls to or from the local service areas of both Cleveland and Buffalo. For calls to or from points outside these areas the toll charges of the Bell Companies would be added in accordance with tariffs on file.

10. Considerable testimony was given concerning the advantages of the selective tone calling system as now incorporated in the ship sets manufactured by the applicant. It appears that by the use of this device some time might be saved in establishing communication. However this may be, it is not relevant to the quality of service rendered by any particular shore station, since the Commission's rules, in effect, require all shore stations to be so equipped that, when calling a

ship station on certain frequencies that include the Great Lakes calling frequency, it must transmit the type of signal which will actuate the particular receiving equipment known to be installed on the ship. The details of equipment and antenna construction for the proposed coastal harbor stations have not been fully decided upon, but it is stated that adequate provision will be made to provide a high quality and "fully competitive" service.

11. The applicant encountered "sales resistance" in selling or renting Great Lakes ship radiotelephone apparatus, which resistance is attributed to a belief on the part of the prospective purchaser that the company selling ship apparatus should furnish complementary shore stations to guarantee a system of communication. The applicant, nevertheless, has obtained a number of orders for ship telephone apparatus for reasons stated by its traffic manager, as follows, "by furnishing superior equipment, by demonstrating its use through experimental shore stations and by agreeing or assuring the customers that Radiomarine would establish shore station facilities as soon as governmental authority to do so had been obtained." Ship stations using Radiomarine equipment have, at times, failed to establish communication through the shore stations of Lorain County Radio Corporation. However, the evidence is conflicting as to whether this failure is due to improper operation of the shore station, or to possible unreliable functioning of the selective ringing devices under all conditions. Some evidence was admitted concerning Lorain Corporation tariff inequities that were said to have operated to the disadvantage of shipowners using Radiomarine ship equipment. These matters were considered in other proceedings, which were still pending before the Commission at the time of this hearing, but have since been decided (Docket Nos. 5658 and 5659).

12. The Cleveland area, and to a lesser extent the Buffalo area, is now served by the Lorain County Radio Corporation station, WMI, located near the city of Lorain, Ohio, some 28 miles west of Cleveland. Such service as is afforded the Buffalo area involves the use of land lines over a distance of more than 150 miles. The person-to-person land-line telephone rate between Lorain and Buffalo is approximately \$1.10. Station WMI is presently licensed to operate on all of the frequencies below 3000 kilocycles provided in the rules for this service, and is also authorized, on a temporary basis, to use those frequencies within the band 4000 to 9000 kilocycles recently made available by the Commission for use under certain conditions and restrictions. An application for authority to use the higher frequencies on a regular basis was recently the subject of a hearing and is now pending before the Commission.

13. The Lorain station, WMI, has been in operation since 1934 and has been out of service only three times for a period of a few minutes. It is equipped with three transmitters which may be operated simultaneously, and frequently are so operated. An auxiliary transmitter may be immediately placed into service in the event of shut-down or failure of any one of the main transmitters. Duplicate receivers are available for each of the heavy traffic channels. Power is supplied by a commercial company and has not failed in the 6 years of operation, except in an aggregate of only a few minutes. However, the Lorain Corporation has planned for an auxiliary power supply to be provided in its new building now under construction. The new building is of fireproof construction and is large enough to house twice the present amount of equipment. Station WMI is equipped with numerous antennae of various kinds. Voice terminal equipment of special design is provided for four channels so that four calls may be handled simultaneously. The station uses all systems of calling that are in commercial use at the present time on the Great Lakes, namely, voice calling, tone-signal calling, and the "two-tone" selective ringing. Eight operators are employed with two or more on duty at all times during the season of navigation, except during the low-traffic period from 10:30 p. m. to 5 a. m.

14. With respect to available traffic, the applicant company contends that a second station in the Cleveland area would not necessarily decrease the present business of Lorain Corporation. The Radiomarine Co. believes it could create new business not now enjoyed by the Lorain Corporation and at the same time serve the "customers" who already have ships equipped with telephone apparatus manufactured and installed by the applicant. In support of this belief it was shown that the number of Great Lakes vessels of 1,000 gross registered tons and over is approximately 723, of which 485 are United States vessels and 238 are Canadian. As of June 8, 1938, some 123 of the United States vessels were equipped with wireless telegraph. Since that date, the Lorain County Radio Corporation has equipped about 49 of these vessels with radiotelephone apparatus, while the applicant has similarly equipped 17 of the vessels. There are now approximately 200 American lake vessels equipped with radiotelephone apparatus and it is estimated that of all Great Lakes vessels over 1,000 gross tons, both Canadian and United States, a total of about 600 will eventually be equipped with such apparatus. However, it was not shown that any of the prospective new business in the Cleveland area would result from a proposed coastal harbor service that cannot be rendered by the existing Lorain County station at Lorain, Ohio.

15. Some 5,000 yachts on the Great Lakes are of a size and ownership to make them potential users of radiotelephone service. The

applicant estimates that 10 percent might be considered "live" prospects for the purchase of ship equipment. It was not shown what proportion of the yachts are located in the Cleveland or Buffalo areas, although a survey conducted by the applicant indicated that considerable new business might be developed from this source.

16. Seventy-six percent of the total gross tonnage of United States commercial lake vessels of 1,000 gross tons and over is operated from offices in Cleveland, where the coal and ore exchange is located. Other shipowners maintain offices in Cleveland, although their boats are operated from different ports. Since the great majority of coastal harbor telephone traffic on the Great Lakes relates to vessel operation, it is evident that a large proportion of commercial messages will originate or terminate in Cleveland. However, another coastal harbor station in the Cleveland area would not increase the total traffic handling capacity, for the reason that the few available frequencies are not assigned on an exclusive basis but must be shared in common with all coastal harbor stations in the Great Lakes region. It is probable that there would be even some loss of "Channel time" in coordinating the service of two stations to avoid interference, as contrasted with the integrated operation of a single station. Thus, the public would be called upon to pay charges sufficient to support two stations rendering the same type of service over the same channels, and a service which could be provided just as well by one station.

17. Buffalo, N. Y., is a city of approximately 600,000 population. From the standpoint of shipment and receipt of goods and commodities the port of Buffalo ranks third on the Great Lakes with a total of 19,000,000 net tons. Of the 485 United States Great Lakes vessels of 1,000 gross tons and upward, 50 are operated out of Buffalo. Still other companies maintain offices there, although the vessel operation may be directed from other ports. Several large passenger vessels operate between Buffalo and Cleveland, Detroit, Chicago, and Duluth. In addition to lake cargoes, sea-borne commerce comes into Buffalo via the New York State Barge Canal and the Welland Canal. There are several local operations such as tugs and self-propelled gravel barges. Representatives of the various services have expressed an interest in obtaining direct marine radiotelephone communication to and from Buffalo.

CONCLUSIONS

1. The matters involved in Docket 5674 having become moot, the proceeding should be dismissed as requested by the applicant.

2. The applicant is legally, technically, and financially qualified to construct and operate the stations applied for.

3. The frequencies specified in the amended applications are available for assignment as requested.

4. Since all coastal harbor stations in the Great Lakes area must use the same frequencies, there is an unavoidable interference problem, and from this point of view the total number of stations should be kept to a minimum.

5. The Cleveland area is now served by coastal harbor station WMI of the Lorain County Radio Corporation. A second station in the Cleveland area using the same frequencies would not increase the total traffic capacity and might even reduce the channel time available for message traffic.

6. The showing that the proposed stations could be used to promote the sale of vessel equipment manufactured by the applicant is not a valid proof of need for the service. The rules of the Commission do not contemplate a coastal harbor telephone service that is dependent, for satisfactory results, upon a reciprocal operation between the coastal harbor station and vessels equipped with particular apparatus of a certain manufacturer.

7. Such improvement in service as might be expected from competition in the Cleveland area would relate principally to the development of ship apparatus, so that the benefits obtained would derive from competition between manufacturers of marine radio equipment rather than from competition between licensees of shore stations.

8. A second coastal harbor station in the Cleveland area duplicating the service of the existing station would not produce benefits to compensate for the probable disadvantages, and hence would not serve public interest, convenience, and necessity (Dockets 5447 and 5547).

9. There is a public need for the service of the proposed coastal harbor telephone station at Buffalo, N. Y. (Docket 5675).

10. Public interest, convenience, and necessity would be served by granting the Buffalo application (Docket 5676).

The proposed findings and conclusions of the Commission were adopted as the "Findings of Fact and Conclusions of the Commission" on May 28, 1941 (Fly, Chairman, not participating; Commissioner Craven dissenting in Dockets Nos. 5447 and 5547).