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Decision No. 14353.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application of)
SANTA MONICA BAY TELEPHONE COMPANY)
for authority to create a bonded in-)
debtedness of \$10,000,000.00 to ex-)
ecute a deed of trust to secure the)
same, to purchase property, to issue)
stock and bonds for cash and property,)
and to operate under various fran-)
chises; of SANTA MONICA BAY HOME TEL-)
EPHONE COMPANY for authority to sell)
its property for stock of SANTA MON-)
ICA BAY TELEPHONE COMPANY.)

Application Number 10412

BY THE COMMISSION:

FIRST SUPPLEMENTAL ORDER

The Railroad Commission by Decision Number 14258 dated November 14, 1924, authorized Santa Monica Bay Telephone Company to issue \$836,000.00 of bonds, and further ordered that

"The authority granted to issue bonds will not become effective until Santa Monica Bay Telephone Company has paid the fee prescribed by Section 57 of the Public Utilities Act, nor until the Commission has authorized the Santa Monica Bay Telephone Company to execute a mortgage or deed of trust to secure the payment of such bonds, nor until the Commission has been advised that Santa Monica Bay Home Telephone Company has complied with the sinking fund provisions of its mortgage or deed of trust."

The company has paid the fee. On November 26th it filed a copy of its proposed mortgage or deed of trust and on December 10th an affidavit signed by E. L. Clymer, assistant trust officer of Title Insurance and Trust Company, showing that Santa Monica Bay Home Telephone Company has complied with the sinking fund provisions of its mortgage or deed of trust.

The Commission has considered the proposed mortgage or deed of trust of the Santa Monica Bay Telephone Company. Section eleven of Article seven of the proposed mortgage or deed of trust reads as follows:-

"No holder of any bond or coupon hereby secured shall have any right as such holder to institute any suit, action or proceeding in equity or at law, on account of any such bond or coupon, or for the foreclosure of this indenture or for the execution of any trust hereof, or for the appointment of a receiver, or for any other remedy hereunder, or by reason hereof, all rights of action hereunder and on account of the bonds and coupons hereby secured being vested exclusively in the trustee."

We do not believe that all rights of action should necessarily be vested in the trustee and are of the opinion that Section eleven of Article seven should be modified so as to read as follows:-

"Section 11. No holder of any bond shall have the right to institute any suit, action or proceeding at law or in equity upon or in respect of this Trust Indenture, or for the execution of any trust or power hereof, or for any other remedy under or upon this Trust Indenture, or of the bonds or interest coupons, unless such holder shall previously have given to the Trustee written notice of an existing default; nor unless, also, such holder or holders shall have tendered to the Trustee reasonable security and indemnity against all costs, expenses and liabilities which might be incurred in or by reason of such action, suit or proceeding; nor unless, also, the holders of at least twenty-five (25) per cent in aggregate principal amount of all the bonds then outstanding shall have requested the Trustee in writing, to take action in respect of such default and the Trustee shall have declined to take such action or shall have failed so to do within thirty (30) days thereafter; it being understood and intended that no holder of any bond or interest coupon shall have any right in any manner whatever to affect, disturb or prejudice the lien of this Trust Indenture by his action, or to enforce any right hereunder, except in the manner herein provided, or under or in respect of any of the bonds, and that all proceedings hereunder shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of outstanding bonds.

Nothing in this section contained shall be construed to deprive any bondholder of any remedy which he might otherwise have arising out of fraud, collusion, willful misconduct or gross negligence."

Any provisions of the proposed mortgage or deed of trust that may be inconsistent with Section eleven of Article seven, as modified herein, should be amended so as to be consistent with said Section

eleven of Article seven.

IT IS HEREBY ORDERED that Santa Monica Bay Telephone Company be, and it is hereby, authorized to execute a mortgage or deed of trust substantially in the same form as the mortgage or deed of trust filed with this Commission in the above entitled matter on November 26, 1924, provided such mortgage or deed of trust is modified, as indicated in this order; and provided further, that the authority herein granted to execute said mortgage or deed of trust is for the purpose of this proceeding only and is granted in so far as the Commission has jurisdiction under the terms of the Public Utilities Act and is not intended as an approval of such mortgage or deed of trust as to such other legal requirements to which said mortgage or deed of trust may be subject.

IT IS HEREBY FURTHER ORDERED that within thirty days after said mortgage or deed of trust is executed, Santa Monica Bay Telephone Company shall file with the Railroad Commission two certified copies of said mortgage or deed of trust, as executed.

IT IS HEREBY FURTHER ORDERED that the order in Decision Number 14258 dated November 14, 1924, shall remain in full force and effect, except as modified by this First Supplemental Order.

DATED at San Francisco, California, this 12th day of December, 1924.

O. Shady

Irving Martin
Ernest Shore

Commissioners.