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Decision No. 19345

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of)
THE PACIFIC TELEPHONE AND TELEGRAPH)
COMPANY for increase of telephone) Application No. 13,795
rates.)

BY THE COMMISSION:

ORDER GRANTING MOTION FOR
INSPECTION OF BOOKS AND RECORDS AND APPOINTING
EXAMINER TO SUPERVISE SAID INSPECTION.

Applicant herein has filed numerous exhibits which may be described in general as summations of voluminous documents, accounts and records. The Cities of San Francisco, Oakland, Berkeley, Alameda, Piedmont and Albany, which have appeared herein and are responsible parties to this proceeding, request access to these documents, accounts and records with a view (1) properly to cross-examine in respect to the Company's exhibits; (2) to check said exhibits as to their accuracy, and (3), as occasion demands, to present their own independent summations of the facts disclosed by such inspection. The matter was argued before this Commission sitting en banc, on February 4, 1928, at which time the Applicant appeared to resist the granting of the motion.

In view of the importance of this proceeding and the vast amount of work involved in properly checking and examining the supporting data upon which the Applicant's exhibits are based, and to the end that the facts may be placed before us in such form that a final determination may be properly grounded,

it is our opinion that these responsible parties should be accorded every reasonable opportunity to make an independent check and investigation of all such supporting data. In passing on this motion we are acting in our judicial or quasi-judicial capacity, and it would seem to follow that we must look to the practices of the courts to discover the solution to this problem.

Before this Commission, as before courts of law and equity, witnesses are allowed to appear and present summations of voluminous accounts and records, and although these accounts and records themselves constitute the best evidence of the facts contained therein their summation is permitted, since otherwise hearings would have no end. The right to present evidence in this form is, however, subject to certain conditions and limitations. As declared in Wigmore on Evidence:

"Most courts require, as a condition, that the mass thus summarily testified to shall, if the books seem to require it, be placed at hand in court, or at least be made accessible to the opposing party, in order that the correctness of the evidence may be tested by inspection if desired, or that the material for cross-examination may be available."
(End Ed. (Sec. 1230, Vol. 2, p. 826)

"But in such cases, unless there is some legal excuse for not producing the books of account from which the witness has obtained the results testified to, they must be produced, if required by the opposing party, for examination, or to enable him to cross-examine the witness."

(Elmira Roofing Co. v. Gould (Conn. 1899), 42 Atl. 1002, 1006, citing Greenleaf on Evidence, pp. 115, 116.)

The same conclusion was expressed by the Supreme Court of this State in the recent case of People v. Doble, (1927) 53 C.A.D. 321; 257 Pac. 81. There a summation of voluminous accounts was held to be admissible, but the court was careful to say that:

"This summary was admissible under subdivision 5 of section 1855, Code of Civil Procedure. The books were proven to be voluminous, the record of sales going into the number of thousands. Wigmore on Evidence, Sec. 1230; McPherson v. Milling Co., 44 Cal. App. 491, at page 495; 185 Pac. 803; People v. Dole, 122 Cal. 486, at page 496, 55 Pac. 381, 68 Am. St. Rep. 50; San Pedro Lumber Co. v. Reynolds, 1212 Cal. 75, at page 86, 53 Pac. 410. It is not necessary that the books themselves be offered in evidence, but it is sufficient if they are available or produced in order to afford the

opposite party an opportunity to inspect, cross-examine, or make a similar summary. 16 Corpus Juris, 615, Sec. 1211."

A similar conclusion was declared in People v. Sawhill (1921) 299 Ill. 393; 132 N. E. 477, 481.

It would seem ridiculous to assume that this Commission, sitting in its judicial capacity to take the testimony desired to be presented in this proceeding, is so impotent as not to be able to provide appropriate machinery, consistent with constitutional safeguards, to meet the practical situation presented in the present instance, and in view of the law as expressed in the above decisions, we are of the opinion that we are empowered, under and by virtue of our judicial functions, to see to it that these parties be accorded full opportunity to examine and inspect the Applicant's accounts and records upon which its exhibits are based.

As to these supporting records it can hardly be asserted by the Applicant that they are immaterial or irrelevant. As to books and records of the Applicant not in the category referred to there may be a different situation. That problem will be met when the occasion demands.

The form of order which should be made requires some consideration. Books and records need not and should not be taken from the custody and control of the Applicant. They should not be subject to examination and inspection either at a time or in a manner which would unnecessarily interfere with the current business of the Applicant or with the investigation now being conducted by the Commission by virtue of its inquisitorial powers. The inspection and examination should be surrounded with appropriate safeguards. It may frequently happen that minor and detailed explanations of records and documents will facilitate the examination - explanations which need not encumber the record of our formal hearing but which, as/^aprecautionary matter, and for the protection of the parties,

should be made a matter of record.

It would seem appropriate, therefore, that the immediate supervision and control of the examination and inspection be referred to an Examiner of this Commission, and that, if suitable arrangements can be made, the inspection and examination be had at a place convenient and accessible to the place where the books and records are now kept. An appropriate order will be made along the lines indicated above. It should not be necessary to require the use of subpoenas in a matter of this kind, as a failure of the Applicant to produce the books and records of the category referred to would lay the foundation for motions to strike the exhibits from the record. To this end, good cause appearing:

IT IS HEREBY ORDERED:

(1) That the motion of the Cities of San Francisco, Oakland, Berkeley, Alameda, Piedmont and Albany for appropriate orders permitting inspection and examination of books and records of Applicant, so far as they constitute supporting data for exhibits on file herein, be granted.

(2) That said inspection and examination be had under the supervision of Lester S. Ready, who is hereby appointed an Examiner of this Commission for the purposes of this Order, and to whom this matter is hereby referred, and who is hereby authorized to fix the place of such examination and inspection.

(3) That request for books and records shall be made to said Examiner who may determine the time for their examination and inspection, which shall be made in the presence of an employee of this Commission who may be designated by said Examiner, and in the presence of a representative of the Company, if it so desires.

(4) Said Examiner shall keep a record of all books and records examined or inspected and shall report the same to this Commission.

(5) Further orders may be made from time to time to carry out the purpose and intent hereof.

(6) The Secretary of this Commission is hereby directed to place a copy of this order in the file of this proceeding and to serve copies thereof upon Applicant and upon the parties who have filed this motion.

Dated at San Francisco, California, this 6th day of February, 1928.

Leon Whittell
C. Seaver
Wm. J. St.
Wm. B. Roubert
W. J. Van
Commissioners