

Decision No. 23833

RECORDED  
 11 11 1933

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 ASSOCIATED TELEPHONE COMPANY, LTD., ONTARIO AND )  
 UPLAND TELEPHONE COMPANY, POMONA VALLEY TELE- )  
 PHONE AND TELEGRAPH UNION and HOME TELEPHONE )  
 AND TELEGRAPH COMPANY OF CHINO for an order of )  
 the Commission (a) authorizing Associated )  
 Telephone Company, Ltd. to acquire all the out- )  
 standing capital stock of each of the other )  
 said Applicants; (b) authorizing each of said )  
 other Applicants to transfer and convey all )  
 its property and assets to Associated Tele- )  
 phone Company, Ltd.; (c) authorizing Associated )  
 Telephone Company, Ltd. to enter and engage )  
 in the telephone business in the territories )  
 affected and authorizing each of said other )  
 Applicants to withdraw from its respective )  
 territory and to cease public utility opera- )  
 tions; and (d) authorizing Associated Telephone )  
 Company, Ltd. to issue common stock for the )  
 purpose of acquiring the stock and properties )  
 of said other Applicants and to assume the )  
 liabilities of said other corporations existing )  
 at the date of their acquisition, and to issue )  
 common stock for the purpose of discharging or )  
 refunding certain of such liabilities. )

Application No. 17291

C. F. Mason and Ernest Irwin for Applicants.

BY THE COMMISSION:

O P I N I O N

In this application the Railroad Commission is asked to make its order as follows:

1. Authorizing Associated Telephone Company, Ltd., hereinafter sometimes referred to as Associated Company, to acquire all of the outstanding stocks of Ontario and Upland Telephone Company, hereinafter sometimes referred to as the Ontario Company; of Pomona Valley Telephone and Telegraph Union,

hereinafter sometimes referred to as the Pomona Company;  
and of Home Telephone and Telegraph Company of Chino,  
hereinafter sometimes referred to as the Chino Company; and

2. Authorizing the Ontario, Pomona and Chino Companies to transfer all of their properties to Associated Company after said Associated Company has acquired the stocks of said Ontario, Pomona and Chino Companies, and authorizing said Ontario, Pomona and Chino Companies to withdraw from their territories and to cease public utility operations; and

3. Authorizing Associated Company to enter into the territories now served by the vendor companies and to engage in the telephone business therein; and

4. Authorizing Associated Company to assume all the liabilities of the Ontario, Pomona and Chino Companies; and

5. Authorizing Associated Company to issue 68,000 shares of its no par value common stock at \$25.00 a share to finance the cost of acquiring the stocks and properties and of paying indebtedness of the vendor companies as follows:

For stock and properties - 40,000 shares at \$25.00 per share.....	\$1,000,000.00
For payment of indebtedness of vendor companies - 28,000 shares at \$25.00 per share.....	<u>700,000.00</u>
Total.....	<u>\$1,700,000.00</u>

The Associated Telephone Company, Ltd. is a corporation duly organized and existing under and by virtue of the laws of the State of California. It owns and operates telephone systems in numerous cities and towns and territories contiguous thereto in the Counties of Los Angeles, Orange and San Bernardino.

The Ontario and Upland Telephone Company is a corporation duly organized and existing under and by virtue of the laws of the State of California and owns and operates a telephone system serving the Cities of Ontario and Upland and territory contiguous thereto in the County of San Bernardino.

The Pomona Valley Telephone and Telegraph Union is a corporation duly organized and existing under and by virtue of the laws of the State of California and owns and operates a telephone system in the Cities of Pomona, La Verne and Claremont and the unincorporated Town of San Dimas and territory contiguous thereto in Los Angeles and San Bernardino Counties. It also leases and operates the properties of the Home Telephone and Telegraph Company of Chino situate in the City of Chino and surrounding territory in San Bernardino County. It appears that all of the outstanding stock of the Chino Company is owned by the Pomona Company and that the Pomona Company has since July 27, 1910 operated the properties of the Chino Company under lease.

The Associated Company, as of April 1, 1931, had issued and outstanding 126,638 shares of common stock and 106,312 shares of preferred stock, which stock was issued under authority granted by the Railroad Commission. The shares of stock have no par value. The preferred stock carries a cumulative dividend payable at the rate of, but never in excess of \$1.50 per share per annum before any dividends may be paid on the common stock. In case of liquidation, the holders of the preferred stock are entitled to a prior distribution of assets up to \$25.00 per share, plus accrued and unpaid dividends. The preferred stock is callable at \$26.25 per share at any time.

The Associated Company had on April 1, 1931, outstanding

\$6,000,000.00 five percent bonds payable March 1, 1965.

The Pomona Company as of April 1, 1931 had outstanding 30,000 shares (par value \$150,000) of stock, the Ontario Company 1,000 shares (par value \$100,000.00) and Chino Company 2,000 shares (par value \$10,000.00).

In addition to the outstanding stocks of the vendor companies, the Pomona Company had outstanding \$200,000.00 of six percent bonds due March 1, 1938. The Ontario Company had outstanding a \$500,000.00 note due October 1, 1929, payable to The Pacific Telephone and Telegraph Company, and a \$25,000.00 six and one-half percent demand note, payable to the Associated Telephone Utilities Company.

It is of record in this proceeding that the Associated Telephone Utilities Company during August 1929 acquired all of the outstanding stock of the Ontario and Pomona Companies. Since about October 1, 1929 the management of the properties of the two companies has been the same as of the Associated Company. The Associated Telephone Utilities Company now proposes to sell the stock of the Ontario and Pomona Companies to the Associated Company for \$1,000,000. It further appears that all except \$10,000.00 or \$11,000.00 face value of Pomona Company's bonds have been acquired by the Associated Telephone Utilities Company. These bonds are not callable and it is therefore proposed, if it is not possible to acquire the remaining \$10,000.00 or \$11,000.00 of bonds, to deposit with the trustee under the mortgage of the Pomona Company a sum sufficient to pay the \$10,000.00 or \$11,000.00 of bonds at maturity plus the interest on such bonds from now to the date of the payment of the bonds. By this procedure and through the payment of the bonds acquired by Associated Telephone Utilities Company, the trustee under the Pomona

Company's mortgage can release the properties of the Pomona Company from the lien of said mortgage. It is the plan of applicant Associated Telephone Company, Ltd. to issue and sell sufficient common stock to pay the \$500,000.00 note due The Pacific Telephone and Telegraph Company and to pay the \$200,000.00 of bonds of the Pomona Company.

The Commission has heretofore had occasion to consider the properties of the Pomona and Ontario Companies in rate proceedings. By Decision No. 19028, dated November 10, 1927, in Application No. 12863, the Commission fixed the rates for exchange telephone service of the Pomona Company (Vol. 30 Opinions and Orders of the Railroad Commission, page 606). By Decision No. 23028, dated November 14, 1930, in Application No. 16470, the Commission fixed the rates for exchange telephone service rendered by the Ontario Company.

In Decision No. 19028, dated November 10, 1927, the Commission <sup>found</sup> \$695,000.00 to be a reasonable rate base. In determining this rate base, it refers to the historical reproduction cost of the Pomona Company properties as of January 1, 1924, submitted by the Pomona Company at \$571,977.81. This appraisal, the decision recites, was checked by the Commission's Engineers who submitted a modified appraisal of the properties on the historical reproduction cost basis undepreciated at a later hearing, amounting to \$524,310.00, less materials and supplies. It further appears from said Decision No. 19028, that the Pomona Company contended that the present fair value of its properties as of September 1, 1926 was \$729,231.78, which included \$70,166.15 for going value, which was purported to be made up of organization, cost of securing new subscribers and interest during preliminary construction. This appraisal is based largely upon hypothetical assumptions which the record fails to

adequately justify. One of the elements in the said \$695,000.00 rate base for the Pomona Company was a historical cost of the properties as of December 31, 1926, which cost amounted to \$645,750.00. Since December 31, 1926, the Pomona Company has in its annual reports shown the increase in its fixed capital accounts as follows:

1927.....	\$ 93,318.70
1928.....	48,947.24
1929.....	52,246.04
1930.....	70,999.71
Construction Work in Progress December 31, 1930.	<u>5,350.79</u>
Total.....	<u>\$270,862.48</u>

Adding the \$270,862.48 to the \$645,750.00 makes a total historical cost of \$916,612.48. To this should be added \$13,567.50 representing the reported increase in the value of the company's lands between the time the rate base was determined and the present. Adding the \$13,567.50 to the \$916,612.48 makes a grand total of \$930,179.98.

By Decision No. 23082, dated November 14, 1930, the Commission found as a rate base for the Ontario Company \$660,000.00. This rate base was for the period July 1, 1930 to June 30, 1931. It included \$19,200.00 for materials and supplies and working cash capital. Deducting the \$19,200.00 leaves \$640,800.00 for the fixed capital.

In Exhibit "C", Ernest Irwin reports the historical cost new of the Ontario Company properties on December 31, 1930 at \$701,152.06 and of the Pomona-Chino Companies properties at \$949,443.27. The aggregate of the two figures is \$1,650,595.33. This is \$79,615.35 more than the aforementioned rate base of the Ontario Company and the historical cost used in the Pomona-Chino Companies rate base, plus the cost of additions and betterments since the determination of said rate base. This difference is

caused by Ernest Irwin including figures which the Commission did not approve in the rate decisions and by a re-appraisal of some of the properties of the Pomona-Chino Companies. For the purpose of this proceeding we find \$1,570,979.98 to be the historical cost new of the properties of the Ontario, Pomona and Chino Companies.

In Exhibit No. 1 prepared by Ernest Irwin, the reserve for accrued depreciation on December 31, 1930 is reported as follows:

Pomona Company-calculated reserve	\$172,729.18	
Less adjustment to provide for realized depreciation not covered by reserves	17,272.92	
Net		\$155,456.26
Ontario Company-calculated reserve	\$150,431.21	
Less amount which was not earned but which was set up on books as depreciation reserve	64,743.53	
Net		85,687.68
Grand Total		<u>\$241,143.94</u>

These figures are based on the historical cost of the properties as reported in Exhibit "C". It is our opinion that the accrued depreciation measures a liability which the purchasing company must meet when the replacement of the properties becomes necessary. The fact that the Ontario Company may not have earned the depreciation reserve which it has or should have set up, does not relieve the purchasing company of the liability to eventually provide funds for the replacement of properties. In determining the amount of stock which the purchasing company should be permitted to issue, we believe that the reported accrued depreciation of \$155,456.26 for the Pomona Company and \$150,431.21 for the Ontario Company should be deducted from the historical cost of the properties. It may be that some adjustment should be made in these figures on account of our not accepting for the purpose of this proceeding the historical cost of the properties as reported in Exhibit "C". If such an adjustment is necessary, the

matter can be taken care of by a supplemental order.

Deducting the accrued depreciation of \$305,887.47 from the aforesaid historical cost of \$1,570,979.98, leaves a balance of \$1,265,092.51. The liabilities which the Associated Company asks permission to assume and later pay through the issue and sale of stock amount to \$700,000.00. Deducting the \$700,000.00 from the \$1,265,092.51 results in an equity of \$565,092.51 as a basis for the issue of stock at this time.

If the Ontario Company had realized the return (\$46,200.) estimated by the Commission in Decision No. 23082, dated November 14, 1930 and if there be added thereto the 1930 net earnings (\$65,644.00) of the Pomona Company, the Associated Company's net earnings, had it owned the aforesaid properties, would have been increased by \$111,844. Out of this there should be set aside interest at the rate of five percent on a depreciation reserve of about \$300,000.00, or \$15,000.00, leaving \$96,844.00 available for the payment of interest on debt, dividends on stock and for surplus.

As stated in this application, Associated Company asks that it be permitted to purchase the stocks of the Ontario and Pomona Companies at a cost of \$1,000,000.00 and thereafter acquire all the properties of said companies, as well as those of the Chino Company, and assume all of their liabilities. It then proposes to sell 28,000 shares of stock at \$25.00 per share, which will net it \$700,000.00 and use said \$700,000.00 to pay indebtedness assumed.

We have considered the record in this proceeding and have concluded that the Associated Company should not be permitted to acquire the stocks of the Ontario and Pomona Companies under the terms set forth in this application. We believe that the payment of \$1,000,000.00 for such stocks is not in the public interest, nor in



the interest of the holders of the stock of the Associated Company. The request for permission to purchase the stock will therefore be denied.

We are not adverse to the transfer of the aforesaid properties to the Associated Company if they are transferred subject to the provisions of the order following. It is neither in the interest of the public nor the holders of securities issued by Associated Company, all of which securities have been issued under authority granted by the Commission, that the Associated Company should, in effect, pay \$1,700,000.00 for the properties of the aforesaid companies. We do not in any respect take it upon ourselves, nor attempt to fix the price which may be paid for the aforesaid properties by the purchaser. We feel, however, that we have authority to determine the amount which the purchaser may charge to fixed capital accounts, the manner in which any excess shall be accounted for and the amount of securities which the purchaser should be permitted to issue.

In the past where purchasers of public utility properties have desired or agreed to pay more for such properties than we have found it reasonable or proper to allow in the form of securities, we have required the purchasing companies to charge such overcost to surplus. (1)

We believe that the Associated Company should be permitted to issue not exceeding 50,604 shares of stock of which 22,624

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(1) See in re San Diego Consolidated Gas and Electric Company (1916) 10 C.R.C., 230, 236 and (1917) C.R.C., 481, 485; in re Tuolumne Electric Power and Light Company (1928) 31 C.R.C., 189; in re Southern California Edison Company (1928) 31 C.R.C., 262; in re California Water Service Company (1928) 31 C.R.C., 327; in re Pacific Gas and Electric Company, Decision No. 22583, dated June 25, 1930; in re San Diego Consolidated Gas and Electric Company, Decision No. 23028, dated October 31, 1930.

shares may be sold at \$25.00 per share to acquire the equities in the properties of the vendor companies, and 28,000 shares at \$25.00 per share for the purpose of paying the \$700,000.00 of indebtedness which the Associated Company proposes to assume. If the Associated Company pays for the properties of the vendor companies more than \$1,265,092.51, it must charge such excess cost to Account No. 417, "Other Deductions from Surplus." The order will provide through the filing of a stipulation that if more than \$1,265,092.51 will be paid for the aforesaid properties, as the same existed on December 31, 1930, that the excess be represented by a non-negotiable evidence of indebtedness which is junior to the rights of the holders of the preferred stock of Associated Company, and junior to the payment of annual dividends on said company's common stock at the rate of not less than \$1.50 per share and in the case of the liquidation or dissolution of said company to the payment of not less than \$25.00 per share to holders of said common stock.

#### ORDER

A public hearing having been held on this application before Examiner Fankhauser, the Commission having considered the testimony submitted and being of the opinion that Associated Telephone Company, Ltd. should not be permitted to acquire the stocks of Ontario and Upland Telephone Company, Pomona Valley Telephone and Telegraph Union and Home Telephone and Telegraph Company of Chino under the terms and conditions outlined in this application, and being further of the opinion that the transfer of the properties of said companies should be authorized subject to the provisions of this order, and not otherwise, and that in order to acquire said properties and to pay indebtedness of said companies Associated Telephone Company, Ltd. should be permitted to issue 50,604 shares of its capital stock at \$25.00 per share, that the money, property or labor to be procured or paid for by the issue of such stock

reasonably required by applicant Associated Telephone Company, Ltd. for the purposes herein authorized and that the expenditures for such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, and that this application insofar as it involves the issue of 17,396 shares of stock should be dismissed without prejudice, therefore,

IT IS HEREBY ORDERED as follows:

1. The request of the Associated Telephone Company, Ltd. for permission to purchase the outstanding stocks of Ontario and Upland Telephone Company, Pomona Valley Telephone and Telegraph Union and Home Telephone and Telegraph Company of Chino, be, and the same is hereby, denied without prejudice.

2. On and after the effective date hereof and prior to October 1, 1931, Ontario and Upland Telephone Company, Pomona Valley Telephone and Telegraph Union and Home Telephone and Telegraph Company of Chino may transfer and convey all, but not less than all, of their properties to Associated Telephone Company, Ltd. In the event said Associated Telephone Company, Ltd. acquires the aforesaid properties, it shall assume all of the liabilities of said Ontario and Upland Telephone Company, Pomona Valley Telephone and Telegraph Union and Home Telephone and Telegraph Company of Chino.

3. Upon the transfer and conveyance of the properties herein authorized, Ontario and Upland Telephone Company, Pomona Valley Telephone and Telegraph Union and Home Telephone and Telegraph Company of Chino may cease public utility operations in their respective territories, and Associated Telephone Company, Ltd. may enter into said territories now served by said Ontario and Upland Telephone

Company, Pomona Valley Telephone and Telegraph Union and Home Telephone and Telegraph Company of Chino and engage in the telephone business therein.

4. On and after the effective date hereof and prior to October 1, 1931, Associated Telephone Company, Ltd. may issue, at not less than \$25.00 per share, net, 50,604 shares of its common capital stock and shall use the proceeds from the sale of 22,604 shares of said stock to pay in part for the aforesaid properties, and shall use the proceeds from 28,000 shares of said stock to pay \$700,000.00 of indebtedness of Ontario and Upland Telephone Company and of Pomona Valley Telephone and Telegraph Union, which indebtedness Associated Telephone Company, Ltd. is hereby authorized to assume.

5. This application insofar as it involves the issue of 17,396 shares of stock by Associated Telephone Company, Ltd. is hereby denied without prejudice.

6. The authority granted to transfer and convey properties and issue and sell stock will become effective when the aforesaid applicants have filed with the Commission a stipulation, duly authorized by their respective Boards of Directors and satisfactory to the Commission, which stipulation will show the amount for which Ontario and Upland Telephone Company, Pomona Valley Telephone and Telegraph Union and Home Telephone and Telegraph Company of Chino have agreed to sell their respective properties to the Associated Telephone Company, Ltd; and in which stipulation said Ontario and Upland Telephone Company agrees for itself, its successors and assigns that if it sells its properties referred to in this application for more than \$490,368.79, and in which stipulation Pomona Valley Telephone and Telegraph Union and Home Telephone and

Telegraph Company of Chino agree for themselves, their successors and assigns that if they sell their properties referred to in this application for more than \$774,723.72, said Ontario and Upland Telephone Company, Pomona Valley Telephone and Telegraph Union and Home Telephone and Telegraph Company of Chino will accept from said purchaser, Associated Telephone Company, Ltd., for the amount by which the selling prices exceed the said \$490,368.79 and \$774,723.72 respectively, a non-negotiable evidence of indebtedness which will rank junior to the rights of the holders of the preferred stock of Associated Telephone Company, Ltd. and junior to the payment of annual dividends on said company's common stock at the rate of not less than \$1.50 per share per annum and in the case of the liquidation or dissolution of said company to the payment of not less than \$25.00 per share to the holders of said common stock; and in which stipulation Associated Telephone Company, Ltd. agrees for itself, its successors and assigns, that if it pays for the aforesaid properties more than \$1,265,092.51, it will charge such excess cost to Account No. 417, "Other Deductions from Surplus," and that any liability which may be incurred by it in connection with the purchase of the aforesaid properties to represent such excess cost, if any, will be non-negotiable in character and rank junior to the rights of the holders of its preferred stock and junior to the payment of annual dividends on its common stock at the rate of not less than \$1.50 per share per annum, and in the case of the liquidation or dissolution of said Associated Telephone Company, Ltd. to the payment of not less than \$25.00 per share to the holders of its common stock.

7. Within sixty (60) days after the transfer of the properties herein authorized, Associated Telephone Company, Ltd.

shall file with the Commission a copy of each and every deed or other instrument under which it acquires and holds title to the properties which Ontario and Upland Telephone Company, Pomona Valley Telephone and Telegraph Union and Home Telephone and Telegraph Company of China are herein authorized to transfer to it.

8. The consideration which Associated Telephone Company, Ltd. may pay for the aforesaid properties shall not be considered as determining the value of said properties for any purpose except the transfer herein authorized.

9. Applicant Associated Telephone Company, Ltd. shall keep such record of the issue, sale and delivery of the stock herein authorized and of the disposition of the proceeds as will enable it to file, on or before the 25th day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.

DATED at San Francisco, California, this 29<sup>th</sup> day of June, 1931.

C. C. Seavey  
Leon Whitwell  
W. A. Van  
M. B. Harris

Commissioners.