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Decision No. 10905

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the matter of the application of
Kerman Telephone Company for a Cer-
tificate of Public Convenience and
Necessity.

Application No. 7807

Max E. Socha, for applicant.
F. L. Mc Nally, for The Pacific Telephone and Telegraph Company.
A. L. Baker, for various people of Biola and vicinity, prot-
estants.

BY THE COMMISSION:

O P I N I O N

Kerman Telephone Company, applicant in this proceeding owns and operates a telephone exchange in the town of Kerman, furnishing the town and adjacent territory with telephone service. It having come to the attention of the Commission that applicant has extended its lines to the town of Biola and vicinity, a territory theretofore served by another utility of like character and not theretofore served by it, without first having sought and obtained from the Commission a certificate declaring that public convenience and necessity require such extension of its service, its attention was directed to the necessity of obtaining such certificate. This application has accordingly been filed pursuant to the provisions of Section 50 of the Public Utilities Act, requiring such certificate and the matter was set down for hearing in the City of Fresno before Examiner Westover.

Biola is situate about $5\frac{1}{2}$ or 6 miles, airline, from the town of Kerman and about 14 miles from the City of Fresno. Service is provided in this territory by The Pacific Telephone and Telegraph Company from

its Fresno exchange, it having provided service prior to the entrance of applicant with its lines. It appears from the testimony of witnesses that applicant first extended service to Biola during or about the year 1915 after the alleged refusal of The Pacific Telephone and Telegraph Company to make further extensions of its service and that applicant has added to its service from time to time until, at the present time, it is serving about 12 patrons in Biola and contiguous territory. It appears further that on September 3, 1921, this Commission issued its Decision No. 9457, in Application No. 5793, requiring applicant to provide certain changes in its existing lines for the purpose of improving its service. A portion of the changes referred to affected its Biola service and, in proceeding to comply with the order of the Commission applicant also proceeded to provide additional lines to take on new business. It now urges that it proceeded in good faith to serve the Biola territory and that the Commission, by the issuance of its order requiring it to improve its service, recognized its right to occupy the territory in question.

The Commission's decision requiring the changes in existing lines here referred to was issued after a hearing held on January 14, 1921, upon the application of Kerman Telephone Company for authority to increase its then existing rates. The decision, after referring to complaint which was made at the hearing regarding overcrowded lines provides, among other things, for relieving the overload. The attention of the Commission was not called at the hearing in that proceeding to the fact that applicant was not then lawfully operating within the Biola territory and in the absence of such notice it was assumed that it was operating within the law. Before applicant con-

structed the additional lines which it has since provided to take on new business, however, a question arose regarding applicant's right to operate in this territory without a certificate of public convenience and necessity and prior to the issuance of the decision on which applicant now relies, applicant was advised to await the Commission's decision with reference to the entire situation before making further extensions into this particular territory. Decision No. 9457 of September 3, 1921, provided that the changes referred to should be completed within 90 days from the date thereof. Applicant admits that the work necessary to compliance with that provision was not started until the 90 days' time limit had expired and that it did not apply for an extension of time within which to complete the necessary work. It admits further that when the work was finally undertaken it proceeded to construct the further extensions previously referred to, after being advised on November 28, 1921, to defer the construction of further extensions until the Commission should have determined whether or not such construction should be authorized under Section 50 of the Public Utilities Act. Therefore, it cannot now be urged either that applicant was not aware, before the extensions were constructed, of the necessity of first obtaining the authorization of the Commission to make them, or that the Commission, by its order of September 3, 1921, recognized applicant's right to serve this territory.

The Pacific Telephone and Telegraph Company, which served this territory prior to the first extension of service by applicant, does not protest the issuance of a certificate to applicant permitting it to serve this territory. It does, however, deny that it has refused to make further extensions of

its service and states that it is willing to establish an exchange in Biola and, in that event, to reimburse applicant for such investment as it may have made in this territory. The issuance of such permit to applicant is protested, however, in a petition signed by 79 business firms and residents of Biola and vicinity in which petition The Pacific Telephone and Telegraph Company is asked to provide service through the establishment of a local exchange. It appears from the testimony of protestants that more adequate and satisfactory service can be provided by a local exchange established by The Pacific Telephone and Telegraph Company than is the present service of applicant or than the service which applicant proposes to provide would be, and that the cost of service provided by such local exchange of The Pacific Company will be less than the cost of the service which applicant proposes to provide.

If it were the plan of applicant to establish a local exchange in Biola at this time service could no doubt be provided by applicant at rates as low as those which might be offered by The Pacific Telephone and Telegraph Company. It is applicant's plan, however, to serve this territory by lines extending from its Kerman exchange. Under such plan applicant's rates, except for suburban service, to which protestants object as being inadequate and unsatisfactory, would be very considerably higher than The Pacific Company's rates. It is also urged by protestants, and it is perhaps a fact, that long distance toll service if provided from a local Pacific Company exchange, by reason of being more direct, would be more satisfactory than such service provided by applicant from a local exchange would be. Since it is not the plan of applicant, however, to establish a local exchange in Biola, its toll service would be provided from its Kerman exchange and there is no good reason why such service should not be as satis-

factory as similar service from a local Pacific Company exchange located in Biola.

While applicant may have extended service into this territory in the first instance during the year 1915 in ignorance of the law governing the construction of extensions by public utilities in such cases, it clearly appears that further extensions were constructed during the year 1922 without first having been authorized by the Commission and after it was notified that such authorization is necessary.

After a careful review of all of the evidence and circumstances in this case, the Commission has reached the following conclusions. The territory in question is within the district now partially served by The Pacific Company. The Kerman Company, on the other hand, has no certificate of public convenience and necessity permitting the extension of its lines into this territory. Such construction as it has already installed is unauthorized. Furthermore, it is apparent that public necessity and convenience requires that any extension of service required in this territory should be made by The Pacific Company which by reason of its larger facilities is able to render the adequate service to which the public is entitled.

We are of the opinion, therefore, that the Kerman Company should not be permitted to extend its lines into this territory but that The Pacific Company should be required to do so. The Pacific Company has not only expressed its willingness to extend its lines and to install a local exchange necessary to serve this community but has also expressed its willingness to reimburse the Kerman Company for expenditures already made by that company for the partial extension of its lines into the territory, in so far as these lines may be capable of being used by The Pacific Company. The Commission will expect this agreement to be carried out. If within a reasonable time not to exceed sixty days the Commission is not notified by The Pacific Company that

it is proceeding in good faith to take over the useable lines of the Kerman Company and to make the extensions contemplated a formal proceeding will be instituted on the Commission's own motion to require such extensions and improvements as may be necessary to render adequate service.

O R D E R

Application having been filed by Kerman Telephone Company for a certificate of public convenience and necessity authorizing the extension of service to the town of Biola and adjacent territory in Fresno County, a public hearing having been held and the matter being submitted,

THE RAILROAD COMMISSION HEREBY finds that public convenience and necessity do not require the establishment of service and the construction of extensions of lines to or within the town of Biola and territory contiguous thereto by the Kerman Telephone Company, and basing its order on said finding and upon further finding of facts and statements contained in the opinion preceding this order,

IT IS HEREBY ORDERED that the application of the Kerman Telephone Company herein for a certificate of public convenience and necessity be and the same is hereby denied.

IT IS HEREBY FURTHER ORDERED that Kerman Telephone Company shall not discontinue any service now provided by it within the territory herein involved until notified and authorized so to do

by Supplemental Order of the Commission in this proceeding.

Dated at San Francisco, California, this 24th day
of August, 1922.

H. P. ...
Irving Martin

J. P. ...

Commissioners.