

ORIGINAL

Decision No. 1136

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of the application :
of the BAY CITIES HOME TELEPHONE :
COMPANY, THE PACIFIC TELEPHONE AND :
TELEGRAPH COMPANY and the CITY OF :
OAKLAND, for an order authorizing : Application No. 1071.
the transfer and assignment of a :
certain franchise and for a certi- :
ficate that public convenience and :
necessity require the exercise of :
the rights granted by said franchise. :

- ✓ William Thomas, for Bay Cities Home Telephone Company;
- Horace D. Pillsbury, for The Pacific Telephone and Telegraph Company;
- Frank K. Mott, Mayor of Oakland; and
- Charles A. Beardsley, Assistant City Attorney of Oakland, for Oakland.

LOVELAND, Commissioner.

O P I N I O N

In this application, the Bay Cities Home Telephone Company, a corporation, and The Pacific Telephone and Telegraph Company, a corporation, ask this Commission to approve of the transfer and assignment of a franchise heretofore granted to the Home Telephone Company, by ordinance duly passed on February 2, 1906, and by that company assigned to the Bay Cities Home Telephone Company, to The Pacific Telephone and Telegraph Company, and to give The Pacific Telephone and Telegraph Company a certificate that public convenience and necessity require and will require the exercise of the rights granted by said franchise.

The City of Oakland, a municipal corporation, joined in the application and was represented at the hearing by its Mayor, Honorable Frank K. Mott, and its Assistant City Attorney, Mr. Charles A. Beardsley.

The franchise which it is herein sought to transfer from the Bay Cities Home Telephone Company to The Pacific Telephone and Telegraph Company is a franchise to maintain and operate a

telephone system in the City of Oakland granted by Ordinance No. 2430 by the City of Oakland, a copy of which franchise and ordinance were attached to the petition marked Exhibit "A" and to which reference is made for the conditions of the franchise as set forth in the ordinance.

From the testimony it appears that heretofore, to-wit: on the 15th day of March, 1912, previous to the effective date of the Public Utilities Act, the Bay Cities Home Telephone Company transferred all of its physical and tangible properties to the Home Long Distance Telephone Company and that upon the same date the Home Long Distance Telephone Company transferred all of said physical properties to The Pacific Telephone and Telegraph Company and that thereafter the Bay Cities Home Telephone Company no longer exercised the rights granted to it by the City of Oakland under the franchise, as above set forth, and that said Bay Cities Home Telephone Company now desires to transfer and assign said franchise to The Pacific Telephone and Telegraph Company.

This franchise was granted, as above stated, on the 2nd day of February, 1906, for the term of fifty years and has, therefore, forty-two years yet to run.

The Pacific Telephone and Telegraph Company is also operating in the City of Oakland under a franchise granted by said city on May 16, 1892 by Ordinance No. 1423, which ordinance will expire by limitation in 1942, having, therefore, but twenty-eight years yet to run.

It is the desire of The Pacific Telephone and Telegraph Company to surrender to the City of Oakland this franchise and hereafter to maintain and operate its system in said City of Oakland under the franchise now held by the Bay Cities Home Telephone Company, the transfer of which to The Pacific Telephone and Telegraph Company the Commission is herein asked to approve.

It was shown at the hearing that the franchise now held by The Pacific Telephone and Telegraph Company, which it desires to surrender to the City of Oakland, contains no provisions requiring the payment of any percentage of its gross receipts or any other payment to the City of Oakland. Neither does it require The Pacific Telephone and Telegraph Company to furnish the City of Oakland with any free telephones, or free telephone service.

It was further shown that there is litigation now pending in the Superior Court of Alameda County, California, between the City of Oakland and the Bay Cities Home Telephone Company, by which litigation the City of Oakland attempts to recover from the Bay Cities Home Telephone Company on the bond given by that company for non-compliance with the conditions of the ordinance and franchise under which said Bay Cities Home Telephone Company operated in said City of Oakland up to the time that it sold its physical properties to The Pacific Telephone and Telegraph Company.

That both the Bay Cities Home Telephone Company and the City of Oakland desire now to settle said litigation so that the sureties on said bond may be discharged from liability and that, in lieu thereof, said City of Oakland may receive the performance of certain obligations from and by The Pacific Telephone and Telegraph Company.

That the terms of said proposed compromise, as set forth in an ordinance proposed to be passed by the Council of the City of Oakland, are set forth in an Exhibit marked Exhibit "C" and filed with the petition.

In Ordinance No. 2430 (Exhibit "A" in these proceedings), by which the City of Oakland granted a franchise to the Home Telephone Company, appears the following condition:-

will receive two per cent of the gross receipts

Telephone and Telegraph Company in the City of Oakland, as provided by the Broughton Act, the estimate of such returns to the City of Oakland, during the period for which the franchise which it is now sought to have transferred has to run, being about One and one-quarter Million Dollars.

A protest against the granting of this application was filed by Mr. E. C. McDonough, formerly an employee of the Bay Cities Home Telephone Company, or its predecessor, in which protest certain statements are made as to certain acts of the Bay Cities Home Telephone Company with which Mr. McDonough thinks the Commission and the people of Oakland should be made aware of before this application is passed upon.

The most important of Mr. McDonough's statements is that, as a Director in the Bay Cities Home Telephone Company, he signed the transfer of the Bay Cities Home Telephone Company's properties to the Home Long Distance Telephone Company and from the latter company to The Pacific Telephone and Telegraph Company, thinking it was a contract for construction work; and that the ordinance passed by the City Council of Oakland granting the franchise to the Home Telephone Company provided that such franchise was forfeited if the grantee sold or transferred its property.

As to the first statement: Mr. William Thomas, attorney for the Bay Cities Home Telephone Company, stated positively, and offered to prove by two witnesses, that every paper signed by the Directors on the day that the transfer was made from the Bay Cities Home Telephone Company to the Home Long Distance Telephone Company and from that company to The Pacific Telephone and Telegraph Company was read aloud at the meeting of the Directors and discussed by said Directors before being signed. In any event, this was something which took place prior to the effective date of the Public Utilities Act and is, therefore, not before the Commission in this application.

As to the second statement, that the ordinance passed by the City of Oakland granting the franchise to the Home Telephone Company contained a forfeiture clause, attention has already been drawn to the fact that, while said ordinance contained a prohibition as to the transfer of its property by the grantee, it did not provide for a forfeiture.

The principles by which I believe the Commission should be guided in deciding this application are set forth in Application No. 54- In the matter of the application of The Pacific Telephone and Telegraph Company for authorization to purchase the capital stock of the Home Telephone and Telegraph Company of Pasadena-, although in the case at bar there seems even to be more reason for granting the application.

The transfer of the franchise in question from the Bay Cities Home Telephone Company to The Pacific Telephone and Telegraph Company is made as a gift, without consideration or cost to The Pacific Telephone and Telegraph Company. It is clear that the City of Oakland will be greatly benefited in a financial way and that the people will probably receive a better and more satisfactory service.

An ordinance which the Council of the City of Oakland proposes to pass, approving of the transfer of this franchise, was attached to the application and, as was decided in Application No. 54 (supra), I shall recommend that the Order under this application shall become effective only upon the passage of said ordinance or similar ordinance of approval by the City Council of the City of Oakland.

I find as a fact that public convenience and necessity require and will require that the Bay Cities Home Telephone Company be given permission to transfer its franchise heretofore granted to it by the City of Oakland, as above set forth, to The Pacific Telephone and Telegraph Company and that The Pacific Tele-

phone and Telegraph Company be granted a certificate that public convenience and necessity require and will require the exercise of the rights granted by said franchise to the Bay Cities Home Telephone Company and now transferred to The Pacific Telephone and Telegraph Company.

I recommend the following Order:-

ORDER

An application having been presented to this Commission by the Bay Cities Home Telephone Company, a corporation, to assign and transfer a certain franchise, of which it is the owner and holder, heretofore, to-wit: on February 2, 1906, granted by the City of Oakland to the Home Telephone Company by Ordinance No. 2430, a copy of which was filed with this application and to which reference is hereby made;

And The Pacific Telephone and Telegraph Company having joined in said application for permission to make said transfer and also for permission to exercise the rights and privileges granted by said franchise;

And the City of Oakland having also joined in the application for the transfer of said franchise and for the granting to The Pacific Telephone and Telegraph Company of permission to exercise the rights and privileges comprehended in said franchise;

And a hearing having been duly held and the matter of the transfer of said franchise thoroughly considered;

And the Commission having found as a fact that public convenience and necessity require and will require the granting of permission to the Bay Cities Home Telephone Company to transfer said franchise to The Pacific Telephone and Telegraph Company and to The Pacific Telephone and Telegraph Company of permission to accept such transfer and exercise the rights and privileges granted by said franchise, and that the City of Oakland will be great-

ly benefited financially by this transfer, as set forth in the Opinion preceding this Order;

IT IS HEREBY ORDERED: That the Bay Cities Home Telephone Company be and it is hereby granted permission to transfer said franchise and The Pacific Telephone and Telegraph Company is hereby granted permission to accept such transfer;

That The Pacific Telephone and Telegraph Company is hereby granted permission to exercise the rights and privileges granted by said franchise;

That this Order shall become effective only upon the passage by the City Council of Oakland of an ordinance similar to or identical with the copy of a proposed ordinance filed by the City with this application.

While the physical properties of the Bay Cities Home Telephone Company were transferred to The Pacific Telephone and Telegraph Company prior to the effective date of the Public Utilities Act, the decision in this case will be based in part upon an agreement by The Pacific Telephone and Telegraph Company that the amount paid by that company to the Bay Cities Home Telephone Company, at the time the physical assets of the latter were transferred to the former, shall not be considered binding upon the Commission, or other regulatory body, as the fair value of said physical properties for rate fixing purposes, and The Pacific Telephone and Telegraph Company is hereby required to file a written stipulation to that effect before the Order herein shall become effective.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th

day of April, 1914.

H. J. Loveland
Alex. A. Gordon
Edwin C. Edgerton

Commissioners.