

ORIGINAL

Decision No. 3740

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 THE PACIFIC TELEPHONE AND TELEGRAPH)
 COMPANY for an order extending time)
 for compliance with Chapter 499, Laws)
 of 1911, as amended by Chapter 600,)
 Laws of 1915, and exempting petition-)
 er, with reference to telephone toll)
 lines, from compliance with Section)
 1(a) of the statute.)
 Application No. 2109.

In the Matter of the Application of)
 IMPERIAL TELEPHONE COMPANY for an)
 order extending time for compliance)
 with Chapter 499, Laws of 1911, as)
 amended by Chapter 600, Laws of 1915.)
 Application No. 2510.

In the Matter of the Application of)
 SACRAMENTO VALLEY TELEPHONE COMPANY)
 for an order extending time for com-)
 pliance with Chapter 499, Laws of)
 1911, as amended by Chapter 600, Laws)
 of 1915.)
 Application No. 2511.

In the Matter of the Application of)
 ONTARIO AND UPLAND TELEPHONE COMPANY)
 for an order extending time for com-)
 pliance with Chapter 499, Laws of 1911,)
 as amended by Chapter 600, Laws of 1915.)
 Application No. 2521.

In the Matter of the Application of)
 HOME TELEPHONE AND TELEGRAPH COMPANY)
 OF PASADENA for an order extending time)
 for compliance with Chapter 499, Laws)
 of 1911, as amended by Chapter 600,)
 Laws of 1915.)
 Application No. 2522.

Pillsbury, Madison & Sutro, by E. D. Pillsbury and
 James T. Shaw, for petitioners.
 J. Morgenthaler and William Rhys for Electrical Workers.

THELEN and DEVLIN, Commissioners.

O P I N I O N

These are petitions for orders extending the time for
 compliance with the provisions of Chapter 499, Laws of 1911, as
 amended by Chapter 600, Laws of 1915, referring to the construction,
 reconstruction, maintenance and use of electric poles, wires, cables

and appliances. In addition to asking for an extension of time, The Pacific Telephone and Telegraph Company, hereinafter referred to as Pacific Company, petitioner in Application No. 2109, asks for an order exempting the company from compliance, in so far as its telephone ^{toll} lines are concerned, from the provisions of Section 1(a) of the statute.

A public hearing in Application No. 2109 was held in San Francisco on July 13, 1916. An adjourned hearing in said application was held in San Francisco on September 22, 1916. On the latter date, Applications Nos. 2510, 2511, 2521 and 2522, being applications by telephone companies owned or controlled by Pacific Company, were consolidated with Application No. 2109 for hearing and decision. The above entitled proceedings were submitted on September 22, 1916.

For a statement of the law governing proceedings of this character and of the principles guiding the Railroad Commission in its decisions therein, apart from the matter of exemption of telephone toll lines from compliance with the statute, reference is hereby made to the decision rendered on September 26, 1916, in Application No. 2222, Los Angeles Gas and Electric Corporation, et al.

Pacific Company, petitioner in Application No. 2109, is engaged in a general telephone and telegraph business throughout California, including both local and long distance telephone service.

Imperial Telephone Company, petitioner in Application No. 2510, is engaged in a general telephone and telegraph business in the City of Imperial, Imperial County, and thereabouts.

Sacramento Valley Telephone Company, petitioner in Application No. 2511, is engaged in a general telephone and telegraph business in the counties of Glenn and Tehama.

Ontario and Upland Telephone Company, petitioner in

Application No. 2521, is engaged in a general telephone and telegraph business in the City of Ontario, San Bernardino County, and thereabouts.

Home Telephone and Telegraph Company of Pasadena, petitioner in Application No. 2522, is engaged in a general telephone and telegraph business in the City of Pasadena, and thereabouts.

The record does not show the exact extent to which, on the effective date of Chapter 499, Laws of 1911, the property of petitioners herein failed to comply with the statute. The testimony, however, shows that between said date and the present time approximately 60 per cent of the violations of the statute have been removed in the course of reconstruction work. Petitioners claim that all new construction work has complied fully with the provisions of the statute, with the exception of the horizontal spacing between telephone toll lines, more particularly referred to hereinafter.

Pacific Company claims that in connection with reconstruction work necessary for purposes apart from the statute, and as incidental thereto, considerable reconstruction work has been done for the specific purpose of complying with the statute. At the same time, no work has been done, apart from reconstruction for other purposes, in order to comply with the statute. The instructions/^{of Pacific Company}to all employees engaged in construction and reconstruction work, dated June 1, 1911, and introduced herein as Pacific Company's Exhibit No. 6, state that all new construction or reconstruction work subsequent to October 22, 1911, shall conform to the requirements of the instructions, covering the requirements of the statute. With reference to construction work existing prior to April 22, 1911, the instructions state that "this law does not become effective until April 22, 1916," and continue as follows:

"It is believed that due to the extensive rearrangements, reconstruction and dismantling of the outside plant, the greater portion of our existing construction will have to be changed so as to conform with this law prior to the time

at which it becomes effective, and consequently no reconstruction shall be done for the sole purpose of making it conform with this appendix. In April, 1913, this matter will be reviewed, at which time it will be determined if it is necessary to take any further steps in connection with the work which existed prior to the time this law became effective."

We draw attention particularly to that portion of the instructions to the effect that "no reconstruction work shall be done for the sole purpose of making it conform with this appendix", meaning thereby with the provisions of the statute. Pacific Company has acted on the theory that all its violations of the statute may be removed in the ordinary course of reconstruction for other purposes and that it is not necessary to take special steps, apart from other work, to remove the violations of the statute. In our opinion, this view is entirely inconsistent with the provisions of the statute. As pointed out in the decision rendered in Application No. 2222, Los Angeles Gas and Electric Corporation, et al., if this had been the intention of the Legislature, the statute would have been made applicable only to future construction and reconstruction. The statute was not so limited. It was made applicable to all construction, whether done before or after April 22, 1911, and the Legislature specifically provided, not that "this law does not become effective until April 22, 1916," but that all violations of the statute should be removed by April 22, 1916. Of course, it cannot for a moment be successfully contended that failure to take any special steps to comply with the provisions of the statute, with a resultant comparatively large expenditure now still to be incurred, can result in a relatively long further extension of time for complete compliance with the statute. We do not mean to suggest that Pacific Company has been more remiss than other utilities in the State in failure to remove violations of the statute. The testimony in the other proceedings of this character, however, shows that quite a number of smaller utilities which are not unduly prosperous, have made considerable special effort to remove the violations of the statute and are now asking for very moderate extensions of time within which to remove the

remaining violations. The matters to which we have adverted must be taken into consideration in determining whether the request of petitioners for an extension of time of between four and six years should be granted.

At the hearing on September 22nd, 1916, petitioners presented an estimate of the cost of removing all the violations of the statute.

Petitioners' estimate that to remove the violations in so far as the exchange plant is concerned will cost \$216,900.00 for the Central Division, being that portion of California which lies north of Tehachapi, and \$166,470.00 to remove the violations in the Southern Division, being the remaining portion of California. Petitioners thus estimate that in so far as their exchange plant is concerned, the total cost of removing all the violations of the statute, if the work is started immediately and rushed to completion, will be \$383,370.00. If a reasonable extension of time is granted, this expenditure will be materially diminished.

In so far as toll plant is concerned, petitioners estimate that in order to rearrange this plant within incorporated towns, an expenditure of \$84,800.00 will be necessary in the Central Division and \$80,490.00 in the Southern Division, being a total estimated expenditure, in so far as incorporated towns are concerned, of \$175,290.00. Of the expenditures thus to be incurred in connection with toll lines within incorporated towns, a total of \$150,040.00 is for rearranging the horizontal clearances of telephone toll lines. If the exemption claimed by Pacific Company in this respect is granted, an expenditure of only \$25,250.00 will be necessary to remove all violations of the statute in so far as toll plant is concerned.

Petitioners claim that if it is necessary to comply with the provisions of the statute in so far as the horizontal clearances of toll lines within incorporated towns are concerned, it will also be necessary to make extensive rearrangements of

toll lines in unincorporated territory. Petitioners claim that these rearrangements would mean the retransposition of the greater portion of their open wire plant, the change of transposition and loading section and points, the change of design of certain loading equipment, a change in toll terminal equipment and cables, and a change in some instances of wire spacing on cross-arms outside of incorporated towns. Petitioners presented testimony to show that if it is necessary for them to comply with the provisions of the statute with reference to horizontal clearances between toll lines in incorporated cities, it will be necessary for them to expend the sum of \$400,000.00 in unincorporated territory in addition to the expenditure of \$175,290.00 in incorporated towns hereinbefore referred to.

In other words, if petitioners must comply with all the provisions of the statute and if no exemption is granted, they estimate that it will be necessary for them, if the work is commenced at once and rushed to completion, to incur a total expenditure of \$958,660.00; but if the exemption asked in connection with telephone toll lines is granted, this expenditure will be reduced in the sum of \$550,040.00, leaving a total expenditure of \$408,620.00. In connection with this figure, attention should be drawn to the fact that it contemplates immediate construction as a rush job and also that a considerable portion of this money would necessarily be expended, in any event, in the near future, to replace portions of the plant which have depreciated by reason of wear and tear, obsolescence and inadequacy.

We shall now address ourselves specifically to the claim of Pacific Company for an exemption, in so far as telephone toll lines are concerned, from compliance with the provisions of Section 1(a) of the statute.

Section 1(a) of the statute provides, in part, that no person, firm or corporation shall "run, place, erect or maintain any wire or cable used to carry or conduct electricity, on

any pole, or any cross-arm, bracket or other appliance, attached to such pole, within a distance of 13 inches from the center line of said pole; provided, that the foregoing provisions of this paragraph (a) shall be held not to apply to telephone, telegraph or other 'signal' wires or cables which are attached to a pole to which is attached no wire or cable other than telephone, telegraph or other 'signal' wire or cable, except within the corporate limits of any city or town which shall have been incorporated as a municipality."

Under the terms of the statute, the provisions for a horizontal clearance of 13 inches applies only to construction within the corporate limits of a city or town.

Section 1(a) contains a number of provisos, including the following proviso, under which Pacific Company asks for an exemption:

"And further provided, that telephone toll lines may be exempt from the provisions of this paragraph (a) provided proper evidence introduced before the Railroad Commission of the State of California proves to the satisfaction of said Railroad Commission that compliance with the provisions of this paragraph (a) would seriously interfere with long distance telephone transmission."

Pacific Company draws attention to the large expenditure, amounting, as estimated by it, to approximately \$550,040.00, to be incurred for compliance with the horizontal clearance provision of the statute as applied to telephone toll lines. It also draws attention to the fact that the low voltage of telephone toll lines is such that no material hazard to life or limb occurs, that the company does not allow power circuits on the same poles which carry its telephone toll lines, and that such danger as exists in connection with telephone toll lines results only from foreign power lines in proximity to the telephone toll lines of Pacific Company. Pacific Company further presented evidence to show that to the best of its knowledge, no loss of life had resulted from

the fact that the present horizontal clearance between the pole-pair telephone toll lines is generally 16 inches instead of 26 inches contemplated by the statute.

We understand, however, that under the terms of the statute, we have no authority to grant an exemption by reason of any of these matters. Under the specific language of the statute, our authority to grant an exemption in so far as telephone toll lines are concerned, may be exercised only if proper evidence proves to our satisfaction that compliance with the provisions of Section 1(a) of the statute "would seriously interfere with long distance telephone transmission." In other words, no exemption can be granted to Pacific Company unless it shows affirmatively that compliance with the provisions of Section 1(a) of the statute would "seriously interfere with long distance telephone transmission."

Pacific Company undertook to make such showing by presenting the testimony of Mr. A. E. Griswold, its plant engineer, and Mr. R. W. Mastick, transmission and protection agent. The claims of Pacific Company in this respect are also set forth in its Exhibit No. 5 herein.

The testimony shows that at the present time, Pacific Company normally constructs its telephone toll lines on 10-foot cross-arms; that the distance between the pole-pair conductors is 16 inches; and that the distance between all other adjacent conductors is 12 inches. Pacific Company claims that its right of way measurements are such that it cannot increase the length of its cross-arms. If the provisions of Section 1(a) of the statute are complied with, the horizontal clearance between the pole-pair conductors will be increased from 16 inches to 26 inches and the distance between the other adjacent conductors will be decreased from 12 inches to 11 inches. Pacific Company contends that these changes will cause an increase in cross-talk and inductive interference and a decrease in transmission efficiency

and that all its telephone toll lines will be effected.

The testimony presented by Pacific Company shows that construction and reconstruction in strict compliance with the provisions of Section 1(a) of the statute will result in an increase in cross-talk and in material resulting interference with long distance telephone transmission. In so far as inductive interference is concerned, while it is true that there will be an increase of 62 per cent on the pole-pairs where such interference exists, there will be a decrease of 17 per cent in so far as other adjacent conductors are concerned. It should be said, however, that the item of inductive interference is not an important one in this proceeding, for the reason that it occurs only where a parallel exists.

Pacific Company showed that it has spent large sums of money in the last few years in developing properly balanced and transposed circuits and that the present construction is the result of the best efforts of Pacific Company in getting efficient long distance service.

No evidence on the subject matter of claimed exemption was introduced by the representatives of the Electrical Workers. These representatives frankly stated that the matter was extremely technical and that they would be satisfied with such conclusion as the Railroad Commission might reach on the face of the record and on the advice of the Railroad Commission's telephone engineers. We have asked our telephone engineers to advise us on this point and there is on file herein a report. ~~CONFIDENTIAL~~ from Mr. A. L. Wilson, the Railroad Commission's telephone engineer, in which report Mr. Wilson reaches the conclusion that the construction and reconstruction of telephone toll lines contemplated by Section 1(a) of the statute would seriously interfere with long distance telephone transmission.

On the evidence presented in these proceedings and the advice of our telephone and telegraph engineer, we have reached the conclusion that Pacific Company should be granted the exemption which it desires in connection with the provisions of Section 1(a) of the statute in so far as they refer to telephone toll lines.

Petitioners ask that they be allowed to remove the remaining violations of the statute in the course of normal reconstruction, without special effort to remove such violations, and claim that if the violations are removed in this manner, an extension of between four and six years will be necessary. As already indicated herein, we are of the opinion that such method of procedure is not in accordance with the intention of the Legislature as expressed in the statute. While we do not desire to be unreasonable in giving too short an extension, necessitating unnecessarily large expenditures of money, we are of the opinion that the statute contemplates that special effort shall be made to remove its violations.

After careful consideration of all the factors entering into the problem, we have reached the conclusion that an exemption from the provisions of Section 1(a) of the statute should be granted to Pacific Company in so far as telephone toll lines are concerned and that an extension of time until June 30, 1919, should be granted to petitioners to remove all the remaining violations of the statute, on the conditions specified in the order herein.

We submit the following form of order:

O R D E R.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, IMPERIAL TELEPHONE COMPANY, SACRAMENTO VALLEY TELEPHONE COMPANY, ONTARIO AND UPLAND TELEPHONE COMPANY and HOME TELEPHONE AND TELEGRAPH COMPANY OF PASADENA having applied for an order extending time

within which to comply with the provisions of Chapter 499, Laws of 1911, as amended by Chapter 600, Laws of 1915, and The Pacific Telephone and Telegraph Company having applied for an order exempting said company from the provisions of Section 1(a) of the statute in so far as telephone toll lines are concerned, and public hearings having been held and the above entitled proceedings having been consolidated for hearing and decision,

IT IS HEREBY ORDERED as follows:

1. The Pacific Telephone and Telegraph Company is hereby granted an exemption from the provisions of Section 1(a) of Chapter 499, Laws of 1911, as amended by Chapter 600, Laws of 1915, in so far as telephone toll lines are concerned.

2. The time within which petitioners herein shall reconstruct their existing systems so as to comply completely with the provisions of Chapter 499, Laws of 1911, as amended by Chapter 600, Laws of 1915, apart from the matter of horizontal clearances in connection with telephone toll lines, is hereby extended to and including June 30, 1919, on condition that at least one-third of the reconstruction work necessary to be done shall be completed on or before June 30, 1917, at least two-thirds on or before June 30, 1918, and the entire work on or before June 30, 1919.

3. At the times herein directed, petitioners shall file with the Railroad Commission, on forms to be supplied by the Railroad Commission, progress reports showing, in such detail as will be prescribed by the Railroad Commission, the extent to which the necessary reconstruction work has been performed during the period covered by the report and also the extent to which reconstruction work remains to be done, in order that the property ~~may~~ will comply with the provisions of Chapter 499, Laws of 1911, as amended by Chapter 600, Laws of 1915, except in the matter of horizontal clearances of telephone toll lines. The first report shall cover the period ending December 31, 1916, and shall be

filed with the Railroad Commission within 15 days subsequent thereto. The succeeding reports shall cover the succeeding six months' periods, respectively, and shall be filed on or before the expiration of 15 days after the termination of each succeeding period of six months.

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 30th day of September.

Max Thelen

Max Gordon

Francis R. DeLui

Commissioners.