

AEF

Decision No. 

ORIGINAL

BEFORE THE RAILROAD COMMISSION  
OF THE STATE OF CALIFORNIA.

---oOo---

Decision No. 3743

In the Matter of the Application of	)	
THE PACIFIC TELEPHONE AND TELEGRAPH	)	
COMPANY for an order declaring that	)	
public convenience and necessity require	)	Application No. 2557.
the exercise by it of the rights and	)	
privileges conferred upon it by Ordinance	)	
No. 725 of the City of Santa Barbara,	)	
approved March 8, 1912.	)	

Pillsbury, Madison & Sutro and James T. Shaw  
for The Pacific Telephone and Telegraph  
Company.

WHEELER and GORDON, Commissioners.

O P I N I O N .

This is an application for an order declaring that public convenience and necessity require the exercise by The Pacific Telephone and Telegraph Company of the rights and privileges granted to it by Ordinance No. 725 of the City of Santa Barbara, approved March 8, 1912.

Ordinance No. 725 undertook to renew in favor of The Pacific Telephone and Telegraph Company a franchise granted by the City of Santa Barbara to Sunset Telephone and Telegraph Company by Ordinance No. 293, approved February 7, 1896. The term of the franchise granted by Ordinance No. 293 was ten years, which term expired in 1906. Apparently The Pacific Telephone and Telegraph Company operated in the City of Santa Barbara without a franchise from the City between 1906 and March 8, 1912.

Ordinance No. 725 undertook to grant to The Pacific Telephone and Telegraph Company, its successors and assigns,

"the right and privilege to do a telephone and telegraph business within the City of Santa Barbara, and to place, erect, lay, maintain, and operate in and under the streets, alleys, avenues, thoroughfares and public highways within said City of Santa Barbara poles, wires and other appliances and conductors for the transmission of electricity for telephone and telegraph purposes" upon the terms and conditions specified in the Ordinance.

The term of the franchise is twenty-five years from and after January 1, 1912.

The grantee of the franchise, its successors and assigns, is to pay to the City of Santa Barbara 2 per cent of the gross annual receipts arising from the use, operation and possession of the franchise.

The Ordinance contains other conditions to which it is not necessary here to refer. Some of these conditions, such as the purported reservation to the City of Santa Barbara of the power to establish the rates to be charged under the franchise granted, are clearly no longer operative.

Ordinance No. 725 was passed by the City Council on March 7, 1912, and approved by the acting mayor on March 8, 1912. Under the provisions of the City Charter of Santa Barbara then in effect, the Ordinance could not take effect until the expiration of 30 days from its passage. This Ordinance, accordingly, did not become effective until subsequent to March 23, 1912, the effective date of the Public Utilities Act.

Section 50b of the Public Utilities Act provides as follows:

"No public utility of a class specified in subsection (a) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or

the exercise of which has been suspended for more than one year, without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege; provided, that when the commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work, in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege; and provided, further, that this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state."

Notwithstanding the provisions of Section 50b of the Public Utilities Act, The Pacific Telephone and Telegraph Company has never applied to the Railroad Commission, prior to the filing of the petition herein, for a certificate of public convenience and necessity. At the hearing held in the City of Santa Barbara on September 12, 1916, in Application No. 2265, being the Santa Barbara telephone consolidation case, the representatives of The Pacific Telephone and Telegraph Company stated that the Company had never applied for a certificate of public convenience and necessity for the reason that they did not consider such application necessary.

Under the provisions of Section 50 of the Public Utilities Act and the decision of the Supreme Court of California in the Oro Electric case, 169 Cal. 466, we are satisfied that The Pacific Telephone and Telegraph Company can not lawfully exercise any of the rights and privileges granted by said Ordinance No. 725, unless the usual certificate of public convenience and necessity has first been secured from the Railroad Commission.

In view of the fact that The Pacific Telephone and Telegraph Company, by the filing of the petition herein, now recognizes the Railroad Commission's jurisdiction, it will not be necessary

to go into the matter further in this proceeding.

Petitioner alleges that if its prayer herein is granted it will transfer to Santa Barbara Telephone Company its rights under Ordinance No. 725, in accordance with the plan of telephone consolidation which is fully set forth in the decision this day rendered in Application No. 2265, Santa Barbara Telephone Company, et al.

We recommend that the petition herein be granted, and submit the following form of order:

O R D E R .

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY having applied to the Railroad Commission for a declaration that public convenience and necessity require the exercise by petitioner of the rights and privileges granted to it by Ordinance No. 725 of the City of Santa Barbara, approved March 8, 1912, and a public hearing having been held and the Railroad Commission being fully advised in the premises,

The Railroad Commission hereby declares that public convenience and necessity require the exercise by The Pacific Telephone and Telegraph Company, its successors and assigns, of the rights and privileges granted to The Pacific Telephone and Telegraph Company by Ordinance No. 725 of the City of Santa Barbara, approved March 8, 1912, provided that the Railroad Commission shall first have issued its supplemental order herein reciting that The Pacific Telephone and Telegraph Company has filed with the Railroad Commission a stipulation, duly authorized by its Board of Directors, in form satisfactory to the Railroad Commission, and declaring that The Pacific Telephone and Telegraph

Company, its successors and assigns, will never claim before the Railroad Commission, any court or other public authority in any proceeding of any character whatsoever any value for the rights and privileges granted by said Ordinance No. 725 of the City of Santa Barbara in excess of the compensation paid by The Pacific Telephone and Telegraph Company to the City of Santa Barbara at or about the time said Ordinance No. 725 was approved, for the rights and privileges thereby conferred, which compensation shall be set forth in said stipulation.

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 24th day  
October of ~~September~~, 1916.

Max Shuler

Max Gordon

Francis R. Wilson

Commissioners.