

ORIGINAL

Decision No. 4028

GEM

Decision No. _____

BEFORE THE RAILROAD COMMISSION OF THE
STATE OF CALIFORNIA.

In the Matter of the Application
of THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, A Corporation,
for an Order declaring that Public
Convenience and Necessity require
the exercise by it of the Rights
and Privileges conferred upon it
by Ordinance No. 81 of the City
of Los Banos.

Appl. No. 2707

Pillsbury, Madison & Sutro, and
James T. Shaw, for Applicant.

BY THE COMMISSION.

O P I N I O N

This is an application by The Pacific Telephone and Telegraph Company requesting the Railroad Commission to make its order declaring that public convenience and necessity require the exercise by applicant of the rights and privileges granted to it by Ordinance No. 81 of the City of Los Banos, Merced County, adopted July 7th, 1915.

A public hearing was held in San Francisco, January 20th, 1917, the testimony being taken by Examiner Bancroft.

From the evidence it appears that prior to the month of June, 1915, the Board of Trustees of the

City of Los Banos suggested to applicant that it procure a franchise for the maintenance and operation of its telephone plant in said City; that thereafter the Company made an oral application for such franchise, and in compliance with such application, on July 7th, 1915, the Board of Trustees of said City of Los Banos passed Ordinance No. 81, hereinafter more particularly described.

The Ordinance grants to The Pacific Telephone and Telegraph Company, its successors and assigns, for the term of twenty-five years, the right and privilege to do a general telephone and telegraph business within said City of Los Banos, and to place, erect, lay, maintain and operate in and under the streets, alleys, avenues, thoroughfares and public highways within said city, poles, wires and other appliances and conductors for the transmission of electricity for telephone and telegraph purposes. It is provided that such wires and other appliances and conductors may be strung on poles and other fixtures above ground at the option of said grantee, its successors or assigns, or may be laid underground in pipes or conduits, or otherwise protected, and such other apparatus may be used as may be necessary and proper to operate and maintain the same. The Ordinance provides for the proper restoration and repairing of the streets as soon as practicable after they may be disturbed by applicant, and gives the city the right to make such repairs at applicant's expense upon failure of the Company to make them.

The Ordinance also contains provisions protecting the city's rights in regard to sewerage, grading, planing, paving, repairing, altering or improving any of the streets or other public places within said city, and provides that during the life of the franchise the city shall have the right to place, where aerial construction exists, a fixture on the tops of poles erected and maintained under the franchise to which may be attached not exceeding four wires, and where underground conduits exist the city is to be furnished with one duct or two pairs of wires in the applicant's underground cable, free of charge, to be used for low tension police and fire alarm purposes, it being optional with applicant as to whether two pairs of wires or a duct shall be furnished.

The Ordinance also contains a provision for the payment annually by said applicant to the city of 2% of the gross receipts arising from the exercise of the franchise subject to the provision, however, that no percentage shall be paid for the first five years from the effective date of the Ordinance (August 6th, 1915).

The Ordinance contains certain other provisions, which we need not consider at this time.

It further appears that applicant for some years past has been operating a telephone exchange in the City of Los Banos, that it has at present 132 subscribers to said exchange, that there is no other telephone service or exchange operated in said territory, and that applicant's failure to make the necessary application to this Commission for a certificate of public convenience and necessity in connection with said territory was due

solely to the belief of applicant's officers that it was not necessary for it to obtain such authority.

The application should, in our opinion, be granted, subject to the conditions contained in the following order:

ORDER

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY having filed the above entitled application asking the Railroad Commission to make its order as specified in the opinion herein, and a public hearing having been held upon said application, 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 conferred by Ordinance No. 81 of the City of Los Banos, approved July 7th, 1915, provided that The Pacific Telephone and Telegraph Company shall first have filed with the Railroad Commission a stipulation duly authorized by its Board of Directors, agreeing for itself, its successors and assigns, that they will never claim before the Railroad Commission of the State of California or any other public authority any value for the rights and privileges conferred by said Ordinance No. 81 of the City of Los Banos in excess of the actual cost thereof to applicant, which cost shall be stated in said stipulation, and shall have secured from this Commission a supplemental order herein declaring that

such stipulation satisfactory to this Commission has
been filed.

Dated at San Francisco, California, this
31st day of January, 1917.

Max Thelen
H. H. Howard
W. L. Gordon
Frank R. Berlin

Commissioners.