

Decision No. 4077

# ORIGINAL

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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 pub- )  
lic convenience and necessity re- )  
quire the exercise by it of the )  
rights and privileges conferred )  
upon it by a certain ordinance )  
passed by the Board of Trustees )  
of the City of Dinuba on June )  
23rd, 1915. )

Appl. No. 2708

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 that the Railroad Commission make its order declaring that public convenience and necessity require the exercise by applicant of the rights and privileges granted to it by an ordinance entitled "An Ordinance granting a franchise to The Pacific Telephone and Telegraph Company" passed by the Board of Trustees of the City of Dinuba, Tulare County on June 23rd, 1915.

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

It appears that applicant at the suggestion of the Board of Trustees of the City of Dinuba applied to that City for a franchise for the maintenance and operation of its telephone plant in said City, and that, in pursuance of said application, on June 23rd, 1915, the Board of Trustees of said City passed the ordinance above referred to.

Said Ordinance grants to The Pacific Telephone and Telegraph Company, for the term of twenty-five years, a franchise to do a general telephone and telegraph business within said City of Dinuba, and to place, erect, lay, maintain and operate in and under the streets, alleys, avenues, thoroughfares and public highways within the said City, poles, wires and other appliances and conductors for the transmission of electricity for telephone and telegraph messages, and for the transmission of messages, subject to certain restrictions and conditions, among which may be mentioned the following:

Applicant is given authority to make the necessary use of streets and other public places for placing, erecting and maintaining its poles or conductors for wires, while provision is made for the proper restoring and repairing of the streets as soon as practicable after they may be torn up, or otherwise disturbed by applicant. Provision is also made for protecting the City's rights in regard to sewerage, grading, planking, crocking, paving, repairing, altering or improving any of the streets or other public places within said City, and provides that the City shall have the right to place, free of charge, where aerial construction exists a fixture upon applicant's

poles to which may be attached wires, not exceeding four in number, and where underground conduits exist, the City shall be entitled, free of charge, to one duct in the underground system or two pairs of wires in the underground cable for police and fire alarm purposes.

The Ordinance also contains a provision for the payment annually by applicant to the City of Dinuba 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 and after the effective date of said franchise. In event the payment provided for is not made as the same falls due, it is further provided that said franchise shall be immediately forfeited.

It further appears that applicant has for some years past been operating a telephone exchange in the City of Dinuba. That is has at present 278 subscribers to said exchange; that there is no other telephone service or exchange operated in said territory, and that the failure of The Pacific Telephone and Telegraph Company 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:

O R D E R

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 the Ordinance passed by the Board of Trustees of the City of Dinuba, June 23rd, 1915, entitled "An Ordinance granting a franchise to The Pacific Telephone and Telegraph Company;" 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 the Ordinance of the City of Dinuba, above referred to, 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

1st day of February, 1917.

Man Thelen  
H. H. Toland  
W. E. Toland  
Frank R. Toland

Commissioners.