

Decision No. 6896

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
EMPIRE TELEPHONE COMPANY, a corpora-  
tion, and THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY, for an order auth-  
orizing EMPIRE TELEPHONE COMPANY to  
sell to THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY all of its tele-  
phone property in and adjacent to  
Empire, Stanislaus County, California,  
and THE PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY to purchase and acquire the same.

Application No. 5095.

W. J. Brown for Empire Telephone Company  
James T. Shaw for Pacific Telephone and  
Telegraph Company.

Martin, Commissioner.

O P I N I O N

This is an application by the Empire Telephone Company for authority to sell to The Pacific Telephone and Telegraph Company and of the latter to purchase the telephone system of the former, serving the unincorporated town of Empire and vicinity, in Stanislaus County, for the agreed price of \$5,400.00.

The Empire Telephone Company, hereinafter referred to as the Empire Company, was incorporated on January 18, 1913, under the laws of the State of California, with a capital stock of \$14,000.00, divided into 400 shares of the par value of \$35.00 per share.

On November 10, 1913, the Empire Company filed a petition, Application No. 823, for a certificate of public convenience and necessity for permission to transact a general telephone business in the above territory. At the hearing held in that petition on December 4, 1913, at Empire, The Pacific Telephone and Telegraph Company, hereinafter referred to as The Pacific Company, objected to the extent of the territory which the Empire Company desired to serve. It was shown that the certificate, if granted, would per-

mit the Empire Company to encroach upon certain territory already served by The Pacific Company. It was stipulated in that proceeding (Page 80, Transcript of Record, herein quoted) that, in view of the above objections, the Empire Company would confine its territory to limits which would be mutually agreeable:

"COMMISSIONER GORDON: ' \* \* \* Now do I understand that the attorneys on both sides have agreed to stipulate that the present application will be withdrawn, that they will get together now upon an agreement on a certain prescribed territory as outlined on this map, with a view to putting in a joint application to the Commission, the one to withdraw and the other to serve this territory?'

"MR. SHAW: 'I do, sir.'

"MR. DENNETT: 'That is the understanding.'"

This stipulation resulted in the dismissal, upon request of the Empire Company, of Application No. 823, in Decision No. 1119, on December 6, 1913.

The present proceeding herein, Application No. 5095, is the direct result of the above stipulation.

During the early part of the year 1915, it was disclosed by the Commission that the Empire Company has issued a number of shares of stock without first securing the necessary authority of the Railroad Commission as provided in Section 52 of the Public Utilities Act. This disclosure finally resulted in an application being filed by that company on January 24, 1916, assigned number 2058, in which authority was sought to issue a certain number of shares of its capital (common) stock in lieu of those heretofore unlawfully issued. I wish to quote a portion of said petition:

"That the cost and expense of erecting and installing said system and the cost of the materials used for said purpose was defrayed by the payment of the sum of \$35.00 by each of thirty-eight persons with the understanding that each of said persons so contributing said sum should be a stockholder of said corporation, and certificates were accordingly issued to each of said persons so contributing said sum, but as said stock was not issued in accordance with the requirements of the laws of the State of California, in that relation, said applicant now asks permission to issue to said persons each one share of common stock of said corporation of the par value of \$35.00."

At the hearing on said petition, other matters were brought to light which should have had the Commission's sanction, and accordingly the Empire Company requested a dismissal in order that a new application might be filed embodying all matters discussed at said hearing. Application No. 2058 was dismissed on February 21, 1916, in Decision No. 3110.

No further petition has been presented to the Commission by the Empire Company for the sole purpose of straightening out its violations of the provisions of the Public Utilities Act.

The reason assigned for the present transfer is the desire to retire from the telephone business. The Pacific Company proposes to operate the plant in connection with and as part of its system.

The applicants, according to the petition, have made an appraisal of the property to be transferred, and, based on said appraisal, estimate that the cost of construction thereof as of December 31, 1917, was the sum of \$6,883.78, and that cost of construction less deterioration, as of the same date, was the sum of \$5,449.20. The appraisement was not offered in evidence. The Commission's engineers have not checked the estimate nor appraised the property as it is not necessary in this proceeding.

A public hearing was held at Empire on November 7, 1919. No one opposed this proposed transfer.

The Commission called to applicant's attention the fact that a certain proportion of the investment in this plant, sought to be transferred, is represented by money secured through the sale of stock illegally issued; also it was testified that certain notes have been issued and renewed without the sanction of this Commission. The proceeds from the issuance of these notes have also been used to provide part of the construction of this plant.

The officers of the Empire Company have testified in former proceedings, supra, that the above violations have not been intentional. It is not the purpose of the Commission at this time to unduly delay this transfer for the reason that the public convenience and necessity is the paramount issue. The question of the Empire Company appearing before the Commission with "clean hands" can be disposed of by a supplemental order in this proceeding. It is the position of The Pacific Company, as testified to at the hearing, that these negotiations are based on the assumption that the Empire Company can convey a good title and that it will obviously protect itself in seeing that a good title is conveyed.

Prompt action must be taken by the Empire Company to clear up these violations, otherwise it will be incumbent upon this Commission to enforce the penalties as provided in the Public Utilities Act.

The empire Company is furnishing exchange and toll service, said exchange service being furnished by means of a switchboard located in Empire, and the said toll service being furnished by means of a connection with The Pacific Company's toll lines. If this transfer is granted, The Pacific Company asks authority to remove the present rate inconsistencies and to place in effect its standard minimum exchange rate schedule for the service and conditions thereafter pertaining, and the standard toll rates now in effect throughout the State of California under authority of General Order No. 57 of the Railroad Commission.

The station development, as of November 1, 1919, for the Empire Company, as shown in Exhibit No. 3 of The Pacific Company, is as follows:

<u>Class of Service</u>	<u>Number</u>	<u>Monthly Rate</u>
Individual Business	9	\$2.00
Party Line Residence	<u>52</u>	1.50
Total,	61	

A comparison of the present and proposed exchange rates is shown in Exhibit No. 4 of The Pacific Company:

<u>Class of Service</u>	RATE PER MONTH			
	Present		Proposed	
	<u>Wall</u>	<u>Desk</u>	<u>Wall</u>	<u>Desk</u>
<u>Business - Unlimited Service</u>				
Individual Line	2.00	2.00	2.50	2.75
Two-party Line	-	-	2.00	2.25
Party Line	1.50	1.50	-	-
Suburban	-	-	3.50	3.75
Extension	-	-	1.00	1.00
Farmer Line	-	-	6.00	per yr.
<u>Residence - Unlimited Service</u>				
Individual Line	2.00	2.00	2.00	2.25
Two-party Line	-	-	1.75	2.00
Four-party Line	-	-	1.50	1.75
Party Line	1.50	1.50	-	-
Suburban	-	-	3.00	3.25
Extension	-	-	.50	.75
			.65	1.00
Farmer Line			3.00	per yr.

The revenues and expenses for the year 1920 for the Empire exchange, under the proposed conditions, is estimated by The Pacific Company in its Exhibit No. 5 as follows:

Exchange Service Revenue,	\$ 2,500.00
Toll Service Revenue,	260.00
Miscellaneous Operating Revenue,	15.00
Licensee Revenue, Dr.,	120.00
<b>Total,</b>	<b>\$ 2,655.00</b>
Ordinary Repairs,	\$ 350.00
Station Removals and Changes,	150.00
Depreciation,	700.00
<b>Total Maintenance</b>	<b>1,200.00</b>
Traffic Expense	1,000.00
Commercial Expense	
General Expense	85.00
Uncollectible Expense	15.00
Taxes	140.00
Rent Deductions Tel. Ofc.	300.00
Rent Deductions C.P. & O.S.	-
<b>Total,</b>	<b>\$ 2,740.00</b>
<b><u>BALANCE NET REVENUE</u></b>	<b>\$ 85.00</b>

O R D E R

The Empire Telephone Company, a corporation, and The Pacific Telephone and Telegraph Company having applied for an order authorizing Empire Telephone Company to sell to The Pacific Telephone and Telegraph Company all of its telephone property in and adjacent to Empire, Stanislaus County, California, and The Pacific Telephone and Telegraph Company to purchase and acquire the same, and a public hearing having been held thereon,

IT IS HEREBY ORDERED that the Empire Telephone Company be and it is hereby authorized to sell, and The Pacific Telephone and Telegraph Company be and it is hereby authorized to purchase for the sum of \$5,400.00, all of the property comprising the telephone system owned and operated by said Empire Telephone Company in and about the town of Empire, Stanislaus County, and any and all of its permits, privileges or franchises to use the streets, alleys and highways for its purposes.

The authority hereby granted is upon the following conditions and not otherwise, to wit:

1. The authority hereby granted shall not be considered before this Commission or any other tribunal as determining the value of the said property for the purpose of fixing rates or for any other purpose than that of the present application.
2. The Pacific Telephone and Telegraph Company is hereby authorized to make effective the rates, rules and regulations heretofore filed by said company with the Railroad Commission in this proceeding, until the further order of the Railroad Commission, provided that the conditions herein set forth shall have been complied with.
3. The Pacific Telephone and Telegraph Company is hereby authorized to make effective its standard toll rates now in effect generally throughout the State of California under authority of the

Railroad Commission's General Order No. 57, which order, in so far as applicable, is made a part of this order.

4. The authority herein granted shall not become effective until The Pacific Telephone and Telegraph Company shall first have filed with the Railroad Commission a stipulation duly authorized by its board of directors declaring that The Pacific Telephone and Telegraph Company, its successors and assigns, will never claim before the Railroad Commission or any court or other public body a value for the rights, permits, privileges and franchises to use the streets, alleys and highways in and around the town of Empire, whether claimed under permit issued to the Empire Telephone Company by the board of supervisors of Stanislaus County or claimed under Section 536 of the Civil Code of California, or otherwise, in excess of the actual cost to the Empire Telephone Company of acquiring said rights, permits, privileges and franchises, which said cost is to be stated in said stipulation; nor until The Pacific Telephone and Telegraph Company shall have received from the Railroad Commission a supplemental order declaring that such stipulation, in form satisfactory to the Railroad Commission, has been filed with the Railroad Commission.

5. The authority herein granted shall not become effective until the Empire Telephone Company shall first have filed with the Railroad Commission a supplemental application in this proceeding, specifically setting forth its violations of the provisions of Section 52 of the Public Utilities Act, and asking that the Railroad Commission authorize the issuance of shares of stock and notes in lieu of the shares of stock and notes heretofore unlawfully issued; nor until the Empire Telephone Company shall have received from the Railroad Commission a supplemental order approving the said issue.

6. The authority hereby granted shall apply only to such property as shall have been hereafter conveyed on or before

December 31, 1919.

7. Within ten days after receiving conveyance of said property, The Pacific Telephone and Telegraph Company shall file with the Railroad Commission a copy of said deed, together with a statement of the consideration actually paid by it for the property and rights conveyed to it.

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 18<sup>th</sup> day of November, 1919.

Edwin C. Edgerton  
H. L. Loveland  
H. B. Brundage  
Erving Martin  
Commissioners.