

Decision No. 37802

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 granting it a certificate that public convenience and necessity require the exercise by it of the rights and privileges conferred upon it under the franchise granted it by the Commission of the City of Fresno by Ordinance No. 2833 of March 18, 1943.

ORIGINAL

Application No. 25693

Felix T. Smith and Arthur T. George for the Applicant;
C. M. Ozias, City Attorney, Arthur L. Hilderbrand,
Commissioner of Finance and Fred M. Ashley, Commissioner
of Public Works, for the City of Fresno;
John M. Gregory, Assistant Counsel, Legal Department,
of the Commission's staff.

CLARK, COMMISSIONER:

O P I N I O N

In this application The Pacific Telephone and Telegraph Company seeks authority, under Section 50(b) of the Public Utilities Act, to exercise rights and privileges conferred by the City of Fresno by Ordinance No. 2833, adopted March 18, 1943, permitting the installation and maintenance of telephone facilities upon the streets of that city for a period of five years.

A public hearing was held at Fresno on September 14, 1944, evidence was received, the matter submitted, and it is now ready for decision. No one appeared in opposition to the granting of the requested authority.

Mr. Arthur T. George, testifying for the Applicant, related the history of telephone service in the City of Fresno since its inauguration by the Fresno Telephone Company in 1882. On December 17, 1887, Mr. H. C. Eggers, owner of the Fresno Telephone Company, obtained a franchise from the County of Fresno. Thereafter, in October, 1890, the Sunset Telephone and Telegraph Company,

Applicant's predecessor, acquired the Eggers' properties. On November 3, 1890, by Ordinance No. 216, the City of Fresno granted a 25-year franchise to the Sunset Company. On January 2, 1907, The Pacific Telephone and Telegraph Company assumed operation of the Sunset Company's properties under a lease agreement, and continued on that basis until formal title was acquired in accordance with the Commission's order in Decision No. 3959, issued December 29, 1916, in Application No. 2304 (12 CRC 115). On January 17, 1916, by Ordinance No. 780, the city granted the Pacific Company a 25-year franchise and operations thereunder were authorized by the Commission by Decision No. 4070 of January 31, 1917, in Application No. 2716 (12 CRC 420). Following the expiration of that franchise on January 16, 1941, the company carried on its operations in the city without a franchise until March 18, 1943, when the present grant, effective April 17, 1943, was conferred by Ordinance No. 2833.

Prior to the expiration of Ordinance No. 780 in January, 1941, the company filed an application with the city for a new franchise. Negotiations were then commenced which extended over a period in excess of two years. During that time various proposals and counterproposals were exchanged between the parties. Differences of opinion arose with respect to their respective legal rights on such matters as the territory to be covered by the franchise, the basis of computing annual payments to the city, the inclusion of a minimum annual payment, and other questions relating to the consideration for the rights to be conferred. The final agreement incorporated in Ordinance No. 2833, the record shows, was a compromise of those differences in the interest of avoiding time-consuming and expensive litigation, especially during the prevailing war conditions.

Comparison of the situation under Ordinance No. 780 with that resulting from Ordinance No. 2833 will serve to illustrate the nature and extent of Applicant's obligations to the city under the two franchises. The former grant, besides containing terms relative to overhead and underground construction, provided for an annual cash payment to the city of two per cent of the gross revenue derived by the company from operations under the franchise. Also, the

company furnished the city with twenty free telephones, limited pole and duct space for municipal fire and police purposes, and certain free use of certain fire and police telephones in operation prior to the adoption of Ordinance No. 780.

The last payment under Ordinance No. 780 for the year ending January 16, 1941, amounted to \$16,329.35. This amount was computed by applying 2% to the local service revenues, together with 20% of the originating message toll, less uncollectibles, from telephones within the city limits, and the rent revenues (Account 524) received from telephone plant within the city limits.

The value of free telephone service provided as of January 1, 1941, amounted to approximately \$4,040 annually on the basis of filed rates. In addition, the company has estimated the annual value of pole and conduit space provided for fire and police purposes to be approximately \$5,400. Thus, the total annual equivalent compensation to the City of Fresno under the old franchise was approximately \$25,770 for the year ending January 16, 1941.

The new ordinance (No. 2833) provides for a minimum payment of \$15,000 per year when two per cent of the gross annual receipts arising from the use, operation, and possession of the rights and privileges granted by the franchise is less than that amount. The amount of gross receipts to which the two per cent is applicable includes the following revenues:

1. That proportion of the gross receipts from the local service of the Fresno exchange, that the amount of exchange plant on the streets of the City of Fresno bears to the total plant used in rendering Fresno local exchange service.
2. That portion of gross receipts arising from the rendering of toll service attributable to the State of California, that the amount of toll plant located on the streets of the City of Fresno bears to the total toll plant of the company in the State of California.

This method of determining the gross annual receipts is based upon the company's interpretation of the principles as announced by the Supreme Court of California in the case of County of Tulare v. City of Dinuba et al.,

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(188 Cal. ~~Stat.~~⁶⁶⁴). Company's Exhibit No. 19 illustrates the application of this method to the year 1943 and shows that two per cent of the gross annual receipts would have amounted to the sum of \$7,209.61, if the franchise had been in effect for the full year. The company estimates the annual value of pole and conduit space provided for fire and police purposes to be approximately the same as under the former franchise or approximately \$5,500. No concession telephone service is required to be furnished to the city under the terms of the new franchise. Thus, the total annual equivalent compensation to the City of Fresno under the new franchise is about \$20,400 or \$5,370 a year less than under the former franchise.

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In the interim between the expiration of Ordinance No. 780 and the effective date of Ordinance No. 2833, the company continued to occupy the city's streets and rendered service. Its annual report for 1943, filed with the Commission, shows a payment made that year to the City of Fresno in the sum of \$33,657.53. In explanation of that payment, Mr. George stated that the company undertook as part of the negotiations for the new franchise to pay to the city \$15,000 a year for the intervening period, which ran from January 18, 1941, to April 16, 1943. The payment of \$33,657.53, as well as a payment of \$10,643.84 covering the period from April 17, 1943, when Ordinance No. ~~2835~~²⁸³³ took effect, to the end of that year, was charged by the company on its books to Account 305, Operating Taxes. The amount of \$29,301.37 of the \$33,657.53 represents payments for 1941 and 1942. If the 1943 payment as recorded on the company's books becomes an issue before us, we reserve the right to exclude therefrom the \$29,301.37 as not applicable to operations of the year 1943.

Applicant has rendered service in the City of Fresno for many years and we find that public convenience and necessity require its continuance. No other company renders a general telephone service in the community. Nor will the granting of the requested authority result in any change in rates or service to subscribers within the city.

The record shows that Applicant has paid \$18.32 as the publication cost of acquiring the new franchise and \$50 to the State of California for the certificate herein sought.

The certificate of public convenience and necessity granted herein is subject to the provision of law that the Commission shall have no power to authorize the capitalization of the franchise involved herein or this certificate of public convenience and necessity or the right to own, operate or enjoy such franchise or certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, certificate of public convenience and necessity or right.

I recommend the following form of Order:

ORDER

A public hearing having been held upon the application of The Pacific Telephone and Telegraph Company for authority to exercise the rights and privileges granted by the City of Fresno pursuant to Ordinance No. 2833, adopted March 18, 1943, and it being found that public convenience and necessity so require,

IT IS HEREBY ORDERED that The Pacific Telephone and Telegraph Company be and it is hereby granted a certificate of public convenience and necessity to exercise the rights and privileges granted by the City of Fresno pursuant to Ordinance No. 2833, adopted on March 18, 1943.

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.

The effective date of this Order shall be twenty (20) days from
and after the date hereof.

Dated at San Francisco, California, this 17th day of
April, 1945.

Harold Anderson
Justus F. Casper
Richard S. Chase
Thomas G. Clark
Frank J. Dwyer
Commissioners