

Decision No. 42596

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY,
a corporation, for authority to increase
certain intrastate rates and charges appli-
cable to telephone service furnished within
the State of California.

Application No. 29854

OPINION AND ORDER DENYING REHEARING

Applicant has filed its petition for rehearing directed only to the condition in Decision No. 42530, heretofore issued in this proceeding on February 23, 1949, which condition relates to the license contract existing between Applicant and the American Telephone and Telegraph Company and is embodied in the last three paragraphs of the order contained in said Decision immediately preceding the prescription of the effective date thereof.

We have carefully considered all the allegations of said petition for rehearing and the supporting argument and points and authorities but find nothing new advanced therein. All points here made were made by Applicant in the order to show cause proceeding in Application No. 28211, which involved said license contract, and were fully considered by this Commission and resolved adversely to the position taken by Applicant there and here. Therefore, we find nothing in Applicant's petition for rehearing, herein, that would justify the granting of the same and for said reasons said petition is hereby denied.

In denying said petition for rehearing, we wish to make it clear

that the Commission, in issuing Decision No. 42530, herein, intended that the portion of the order contained in said Decision granting to Applicant the interim rate increase and the portion thereof prescribing the condition relating to the said license contract, against which said condition the petition for rehearing, herein, is directed, be separate and severable so that the validity of one would not depend upon the validity of the other. The Commission hereby states that it would have granted to Applicant said interim increase of rates, irrespective of the validity of the said condition referred to. While we are firmly of the opinion that said condition is constitutional and valid, we desire it clearly understood that it was not and is not the intent of the Commission in rendering Decision No. 42530 that Applicant be denied the benefit of said interim rate increase, unless it should agree to be bound by said condition in said order of said Decision. It was and is the intent of the Commission that Applicant be afforded every opportunity to seek review, in accordance with law, of that part of the order of said Decision prescribing said condition. This view is fully supported by well-recognized principles of law. (U.S. v. Chicago, Milwaukee, St. Paul & Pac. Railroad Co., 282 U.S. 311, 328; 75 L. ed. 359, 366. Williams v. Standard Oil Co., 278 U.S. 235, 241; 73 L. ed. 287, 309. Wold v. League of the Cross, 107 Cal. App. 344, 347. Guho v. City of San Diego, 124 Cal. App. 680, 682.) The foregoing cited authorities were considered and followed by the Commission in rendering Decision No. 42530, herein.

This interpretation of Decision No. 42530 is issued because of the apparent fears and misgivings voiced by Applicant in its petition for rehearing as to the intent and meaning of said Decision.

We, therefore, hold that, under the authority contained in said Decision, Applicant may file and make effective, in accordance therewith, the increase of rates authorized therein without jeopardizing or prejudicing in any way its right to seek review, in accordance with law, of that part of the order of said Decision prescribing said condition relating to said license contract.

Dated at San Francisco, California, this 14th day of March, 1949.

A. J. ...

Harold P. Kule

Benjamin ...

Commissioners