

ORIGINALDecision No. 42538

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 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 by the City of Napa by
 Ordinance No. 935 on the 4th day of April,
 1949.

Application No. 30569

Arthur T. George, James G. Marshall and
 Dudley A. Zinke, for applicant; Frank L.
 Dunlap by William L. Blankenberg, for the
 City of Napa.

O P I N I O N

The Pacific Telephone and Telegraph Company, by the above-entitled application requests a certificate of public convenience and necessity authorizing it to exercise the rights and privileges conferred by Ordinance No. 935, adopted April 4, 1949, by the City Council of the City of Napa, granting a franchise to construct, install, maintain and use telephone, telegraph and other communication facilities in the public streets, ways and places within the City of Napa. This franchise was granted under the provisions of the Broughton Act.

The term of the franchise is 50 years from and after the effective date of the ordinance. Under the ordinance, a fee is payable by the grantee to the city equivalent to 2% of the gross annual receipts of said grantee arising from the use, operation or possession of the franchise.

On the basis of the current level of business, and under the terms of Ordinance No. 935, the annual franchise payment to the city would be approximately \$1,500. The costs incurred by applicant in

obtaining the franchise are stated to have been \$794.50, exclusive of the \$50 filing fee required by Section 57 $\frac{1}{2}$ of the Public Utilities Act, and the applicant has stipulated that it, its successors or assigns will never claim before the Commission or before any court or public body any value for the aforesaid franchise in excess of the actual cost thereof.

Ralph J. Jones, witness for the applicant, testified that telephone service was first furnished in the community in 1887 by the Sunset Telephone and Telegraph Company. The Sunset Telephone and Telegraph Company was acquired by The Pacific Telephone and Telegraph Company, the applicant herein, in 1917. The Napa exchange was, until September 17, 1949, served by means of a common battery switchboard. On September 17, 1949 the exchange was converted to dial operation. As of January 1, 1949, 7,326 stations were served from the Napa central office, of which 5,053 were within the city limits.

Applicant's witness testified that the City of Napa, on January 20, 1896, granted a 25-year franchise to the Sunset Telephone and Telegraph Company under Ordinance No. 276. This franchise was assigned and transferred to the applicant in 1917. On December 27, 1920 the City of Napa passed Ordinance No. 607 granting to the applicant a 25-year franchise. Following the expiration of this franchise in 1945 the applicant carried on its operations in the City of Napa without a local franchise until April 4, 1949 when a new franchise to become effective May 8, 1949 and expire May 7, 1999, was granted to it by the City under Ordinance No. 935. During the period between the expiration of the old franchise and the granting of the new franchise, applicant paid \$4,489 to the city for the period December 28, 1945 to December 31, 1948 and \$480 for the period January 1, 1949 to May 7, 1949. These payments were computed at 2% of a portion of applicant's gross receipts from the Napa exchange in accordance with the so-called Dinuba principle. J

Under the old franchise, the city was permitted to place a fixture on pole tops to carry not more than four wires and was permitted to use one underground duct or two pairs of wires in underground cable, it being optional with applicant whether two pairs of wires or a duct be furnished, for police and fire circuits. While the new franchise does not require the applicant to furnish such services, applicant has agreed, by letter to the City Council of Napa, dated October 11, 1948, which was introduced as Exhibit No. 3 in this proceeding, to continue to furnish the same services in the future. No other services are required to be furnished to the city under the terms of the new franchise.

A hearing on the instant application was held before Examiner Kimball on October 24, 1949 at Napa. At this hearing no one entered any objection to the granting of this certificate and the representative of the City of Napa urged that the certificate be granted. From the testimony received, it appears that no person, firm, public or private corporation other than The Pacific Telephone and Telegraph Company is now engaged in the business of furnishing telephone service in the City of Napa, but that it or its predecessor for many years have so served the territory now comprising said city.

From the evidence of record the Commission finds that public convenience and necessity require the exercise by applicant of the right, privilege and franchise granted to The Pacific Telephone and Telegraph Company by Ordinance No. 935 of the City Council of the City of Napa.

The certificate of public convenience and necessity granted herein is subject to the following 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.

O R D E R

Public hearing having been held on the above-entitled application, the matter having been submitted, and the Commission being fully advised,

IT IS HEREBY ORDERED that The Pacific Telephone and Telegraph Company be and it is granted a certificate that public convenience and necessity require the exercise by it of the right, privilege and franchise granted to it by Ordinance No. 935, adopted April 4, 1949 by the City Council of the City of Napa, County of Napa, State of California.

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

Dated at San Francisco, California, this 22nd day of November, 1949.

R. E. Johnson
James F. Cramer
Frank J. Lawrence
Harold K. Kule
Herbert P. Potter
 Commissioners.