

ORIGINAL

Decision No. 44855

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
 Vallejo by Ordinance No. 89 NC on the
 29th day of May, 1950.

Application No. 31650

Dudley A. Zinke, for applicant.

O P I N I O N

The Pacific Telephone and Telegraph Company, by the above-entitled application filed August 4, 1950, requests a certificate of public convenience and necessity authorizing it to exercise the rights and privileges conferred upon it by a franchise adopted May 29, 1950, by the City Council of the City of Vallejo as Ordinance No. 89 N.C. Said franchise was granted under provisions of the Broughton Act.

A public hearing in this proceeding was held before Examiner Emerson at Vallejo on September 22, 1950. At this hearing, no one entered an objection to the granting of applicant's request. 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 Vallejo. Applicant, or its predecessor, has for many years served said City.

A certified copy of said Ordinance No. 89 N.C. was introduced as an exhibit at the hearing. The term of the franchise therein granted is 20 years from and after the effective date of the ordinance.

Under the ordinance, applicant will pay a fee to the City equivalent to 2% of the gross annual receipts arising from the use, operation or possession of the franchise. Ralph J. Jones, witness for applicant, testified that said fee payments are computed in accordance with principles set forth by the Supreme Court in the so-called Dinuba decision. Under present conditions and such above method of computation, the annual payment to the City will approximate \$3,750.

The costs incurred by applicant in obtaining the franchise are stated to have been \$285.43, exclusive of the filing fee of \$50 required by Section 57½ of the Public Utilities Act. Applicant has stipulated that it, its successors or assigns will never claim before this Commission or before any court or public body any value for the aforesaid franchise in excess of the actual cost thereof.

Applicant's witness testified that a telephone exchange was established in Vallejo in 1887 by the Sunset Telephone and Telegraph Company and that as of January 1, 1888, four telephones were in service. On January 2, 1907, certain properties of Sunset, including those in Vallejo, were leased to applicant; and on April 12, 1917, Sunset transferred all of its Vallejo properties to applicant by deed. As of August 31, 1950, there were 19,763 telephone stations in the Vallejo exchange.

The City of Vallejo granted applicant a 25-year franchise by Ordinance No. 229 N.S., effective August 23, 1916, which franchise expired on August 22, 1941. From the date of expiration to June 28, 1950, the effective date of the new franchise granted by Ordinance No. 89 N.C., the applicant apparently operated without a Vallejo franchise. Applicant's witness testified, however, that for the period January 1, 1946, to June 30, 1950, payments totaling \$15,183 were made to the City of Vallejo. The 1916 franchise contained a

provision for the accommodation of police and fire alarm circuits of the City on poles and in the underground conduit system of applicant without charge to the City. The new franchise does not contain such a provision. However, as shown by a letter dated April 14, 1950, signed by Glen Ireland as vice president and general manager of applicant, copy of which was introduced as Exhibit No. 3 in this proceeding, applicant has informed the Vallejo City Council that it will continue such free accommodation throughout the life of the new franchise. This letter agreement provides, in part, that "the City may place on the poles of the company a fixture to which may be attached not more than six wires." In response to questioning, applicant's witness indicated that it is the intent of his company not to restrict the City's fixture to wholly owned company poles but to permit such attachment to any pole in which the company may have an interest as part owner.

From the evidence of record, it appears that public convenience and necessity require and will require that applicant be granted a certificate as requested. Said certificate 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

The above-entitled application having been considered, a public hearing thereon having been held, the matter having been submitted and now being ready for decision,

IT IS HEREBY FOUND AS A FACT 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. 89 N.C. of the City Council of the City of Vallejo; therefore,

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. 89 N.C., adopted May 29, 1950, by the City Council of the City of Vallejo, State of California.

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

Dated at San Francisco, California, this 31st day of October, 1950.

R. E. Anderson
Justus F. Garner
Edward H. Howell
Harold P. Hills
Resemeth Potter
 Commissioners.