

Decision No. 50227**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 applicable to telephone
service furnished within the State
of California.

Application No. 33935

In the Matter of the Investigation on
the Commission's own motion of the
reasonableness, lawfulness, propriety,
adequacy and sufficiency of the rates,
service, operations, contracts and
other matters and things, as specified
in the order, herein, of The Pacific
Telephone and Telegraph Company.

Case No. 5570

OPINION AND ORDER

By its Petition for Rehearing respecting Decision No. 50258 of July 6, 1954, The Pacific Telephone and Telegraph Company attacked those portions of that decision which relate to special contract services. By its Opinion and Order Granting Rehearing dated August 31, 1954, the Commission, while adhering to the view that no substantive or procedural error had been shown in the decision attacked, nevertheless, granted rehearing in order to give petitioner every reasonable opportunity to show by evidence and argument that the special contracts in question are not subject to the Commission's jurisdiction. The operative effect of ordering paragraph (6) of said Decision No. 50258 was accordingly stayed. In addition, the Commission declared that it would issue an Order Instituting Investigation contemporaneously with the issuance of the Opinion and Order Granting Rehearing, in order that all phases of the subject matter of the special contracts could be gone into, together with all related matters. It was expressly provided that both matters would

be consolidated for hearing and decision, but that a condition to the setting of hearing would be that petitioner file with the Commission, in such form and in such number of copies as the Commission might direct, all special contracts referred to in Exhibit 121 in Application No. 33935, or such copies or exemplars thereof as the Commission should direct, together with all such types of contracts entered into by petitioner in addition to those referred to in said exhibit. In ordering such filing, the Commission directed petitioner to describe the plant used in performing such contracts and to set out the approximate investment therein and also to show the operating results flowing from said contracts, on an annual basis, for each year of a five-year period immediately prior to the year 1954, including an estimate, if actual results are not available, of such results for 1954, such filing to be made within 90 days from August 31, 1954.

The Order Instituting Investigation hereinabove referred to was issued contemporaneously on August 31, 1954 and provided for an investigation into "the reasonableness, lawfulness, propriety, adequacy and sufficiency of the rates, service, contracts of whatsoever nature and kind, operations, practices (including depreciation practices), accounts and accounting practices, affiliated interests, facilities and instrumentalities, and any other related matter or thing of The Pacific Telephone and Telegraph Company for the purpose of determining the reasonableness, lawfulness, propriety, adequacy and sufficiency of the foregoing enumerated matters and things and fixing the same by order herein."

In the interim since August 31, 1954, representatives of The Pacific Telephone and Telegraph Company have conferred with the Commission staff respecting ways and means by which the objectives of ordering paragraph No. (6) in Decision No. 50258 and the purposes of the Order Granting Rehearing, together with the Order Instituting Investigation, might be satisfied. On November 23, 1954, the Company

filed a document entitled Proposed Disposition of Orders Relating to Contracts. It appears from the body of such document that the proposals therein represent an endeavor on the part of the Company to comply in most essential respects with the provisions of ordering paragraph No. (6) in Decision No. 50258. The Company proposes as follows:

1. To file immediately tariff schedules and contract forms covering the services and/or facilities furnished for metering, supervisory control and miscellaneous signaling purposes.
2. To file immediately tariff schedules showing the charges, terms and conditions under which each issue of each separate street address directory issued by the Telephone Company is furnished, such charges, terms and conditions to apply for the period of the corresponding alphabetical directory.
3. At all times in the future, subsequent to such initial filings as set forth in paragraphs 1 and 2 above, to pursue the procedures and requirements of General Order No. 96 respecting any changes, modifications, additions or deletions of rates or charges relating to the subject matter of said paragraphs 1 and 2.
4. To file as soon as practicable and not later than February 1, 1955, three copies of all contracts covering services and/or facilities furnished by the Company at other than filed tariffs, including (a) contracts for the joint occupancy of individually owned poles; (b) contracts providing for underground duct space; (c) contracts with the United States Armed Forces providing for service at other than filed tariffs; where such contracts contain classified matter, such classified matters may be omitted; (d) contracts

with The Western Union Telegraph Company, including Contracts No. 1, No. 2, and the billing and collecting contract with that Company, together with amendments to said contracts; (e) all other contracts covering services and/or facilities furnished at other than filed tariffs.

5. To file copies of all contracts of the character referred to in Item 4 above which may hereafter be entered into, and all future changes, modifications, additions, or deletions to such existing or future contracts, such filings to be made in accordance with the procedures of General Order No. 96. All filings made under Items 4 and 5 to be made with the express understanding that the Company's action does not constitute and will not be construed in any way to imply or indicate a public service offering respecting the subject matter of such contracts. In this connection the Company proposes to have a paragraph inserted in future contracts different from the jurisdictional clause provided in General Order No. 96, paragraph X-A, and stating substantially as follows:

"The parties hereto agree that this contract shall be subject to such changes or modifications as may be required or authorized by any regulatory commission in the exercise of its lawful jurisdiction, and any modification, revision, renewal or extension of this contract shall so state."

The Company also proposes to include in future special service contracts the following paragraph:

"The Company declares that the filing of the contract herein with the Public Utilities Commission

pursuant to the procedural requirements of General Order No. 96 is not to be construed as a public offering by the Company of the services or facilities hereinabove referred to."

The Commission has carefully considered the scope of The Pacific Telephone and Telegraph Company's proposals as above set forth and is of the opinion that their adoption would constitute compliance in essential respects with the objectives and purposes of the several Commission orders previously referred to. It is to be noted that compliance with paragraphs 1, 2 and 3 of the proposal will effectively bring under the Commission's rate regulatory jurisdiction the services provided under the great bulk of the existing special contracts. The proposals of the Company respecting the other special contracts, set forth in Items 4 and 5 above will effectively bring to the knowledge of the Commission the nature and extent of such contracts. Filing by the Company as proposed in Items 4 and 5 above will not be construed by the Commission as a public holding out. Such filing will not be construed by the Commission as constituting evidence on that subject.

In view of the foregoing, we are of the opinion that it is not necessary to go to hearing as contemplated by the Order Granting Rehearing and the Order Instituting Investigation. The following order will supersede and take the place of ordering paragraph (6) of Decision No. 50258. In addition it will discontinue further proceedings pursuant to the Opinion and Order Granting Rehearing of Decision No. 50258 and the Order Instituting Investigation, Case No. 5570.

The order herein is not intended to and does not apply to inter-company traffic agreements nor does it modify in any way the Commission's position with respect to its jurisdiction over such agreements. Until otherwise directed the company will continue to file such contracts in accordance with the procedure set forth in the Commission's letter to the company of August 5, 1953.

ORDER

The Pacific Telephone and Telegraph Company is hereby ordered:

1. To file in quadruplicate within 30 days after the effective date hereof and to make effective on not less than five days' notice to the Commission and to the public, tariff schedules and contract forms covering the services and/or facilities furnished for metering, supervisory control and miscellaneous signaling purposes.
2. To file in quadruplicate within 30 days after the effective date hereof and to make effective on not less than five days' notice to the Commission and to the public, tariff schedules showing the charges, terms and conditions under which each issue of each separate street address directory issued by the Telephone Company is furnished, such charges, terms and conditions to apply for the period of the corresponding alphabetical directory.
3. At all times in the future, subsequent to such initial filings as set forth in paragraphs 1 and 2 above, to pursue the procedures and requirements of General Order No. 96 respecting any changes, modifications, additions or deletions of rates or tariffs relating to the subject matter of said paragraphs 1 and 2.
4. To file as soon as practicable and not later than February 1, 1955, three copies of all contracts covering services and/or facilities furnished by the Company at other than filed tariffs, including (a) contracts for the joint occupancy of individually owned poles; (b) contracts providing for underground duct space; (c) contracts with the United States Armed Forces providing for service at other than filed tariffs;

where such contracts contain classified matters, such classified matters may be omitted; (d) contracts with The Western Union Telegraph Company, including Contracts No. 1, No. 2, and the billing and collecting contract with that Company, together with amendments to said contracts; (e) all other contracts covering services and/or facilities furnished by the Company at other than filed tariffs.

5. To file copies of all contracts of the character referred to in Item 4 above which may hereafter be entered into, and all future changes, modifications, additions, or deletions to such existing or future contracts, such filings to be made in accordance with the procedures of General Order No. 96 with, however, a jurisdictional provision, in lieu of the jurisdictional clause set forth in paragraph X-A of said General Order, substantially as follows:

"The parties hereto agree that this contract shall be subject to such changes or modifications as may be required or authorized by any regulatory commission in the exercise of its lawful jurisdiction, and any modification, revision, renewal or extension of this contract shall so state."

The Company is hereby authorized to include in all such future contracts the following paragraph:

"The Company declares that the filing of the contract herein with the Public Utilities Commission pursuant to the procedural requirements of General Order No. 96 is not to be construed as a public offering by the Company of the services or facilities hereinabove referred to."

IT IS ORDERED that the foregoing supersedes and takes the place of ordering paragraph (6) of Decision No. 50258.

IT IS FURTHER ORDERED that further proceedings are hereby discontinued in connection with the Opinion and Order Granting Rehearing of Decision No. 50258, and the Order Instituting Investigation, Case No. 5570, is hereby dismissed.

The effective date of this Order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 7th day of DECEMBER, 1954.

John E. Mitchell
 President
MATHEW F. C. ...
Kenneth ...
James ...
Ray ...
 Commissioners