

ORIGINAL

Decision No. 58052

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation and Suspension on the )  
 Commission's own Motion of Schedule )  
 No. 108-T of THE PACIFIC TELEPHONE )  
 AND TELEGRAPH COMPANY filed by )  
 Advice Letter No. 6371. )

Case No. 5754

OPINION AND ORDER  
MAKING INTERIM DECISION NO. 54438 FINAL

The Commission rendered its Interim Decision No. 54438 in the above-entitled case on January 29, 1957. Rehearing of said interim decision was requested by several parties, but was denied by Decision No. 54600 on February 27, 1957.

Following issuance of Decision No. 54438 the Supreme Court of California granted a writ of review and reviewed the validity of Decision No. 54438. On June 27, 1958, the Supreme Court affirmed the order in every detail.<sup>1</sup>

On March 17, 1959, The Pacific Telephone and Telegraph Company filed Application No. 40934 requesting authority to cancel immediately Tariff Schedule No. 108-T and to withdraw from the furnishing of private mobile communication service on a lease-maintenance basis by January 24, 1961, except as to services that may be provided to the U. S. Government. Pacific represented therein that the Federal Communications Commission has not licensed any new customers seeking to obtain facilities from it under the tariff, and that it is not fair to its present customers to hold out hope of a continuing service in the future which, under the consent decree,

<sup>1</sup> Commercial Communications v. Public Utilities Commission,  
 50 Cal.(2d) 512.

will not be available after January 24, 1961, except as to services that may be provided to the United States Government.

Before the Commission had time to render a decision on Application No. 40934, it was advised that on April 27, 1959 the Supreme Court of the United States granted motions to dismiss an appeal from the decision of the California Supreme Court (3 L.ed. 2d 927).

On June 29, 1959, the Commission rendered Decision No. 58699 under Application No. 40934 wherein it did not agree with Pacific's proposal that cancellation of Schedule 108-T would aid in resolving the matter at the earliest practicable date in order to give the customers ample warning notice and sufficient time to make satisfactory arrangements to meet their private mobile communication needs, and wherein it made the following findings and conclusions:

1. That there is an increasing need for private mobile telephone service as performed by Pacific.

2. That Pacific has not shown that private mobile telephone service is being rendered at a loss.

3. That Pacific is physically able to perform its dedicated service.

4. That in the Commission's opinion Pacific legally is able to perform the service in question under the terms of the consent decree and under the rulings of the Federal Communications Commission.

5. That a premature abandonment of this service might result in an economic loss and burden on Pacific's other types of service and customers.

6. That Pacific has failed to sustain its burden of proving that public convenience and necessity do not require, between now and January 24, 1961, the common carrier services as provided by Schedule No. 108-T.

In view of the fact that the California Supreme Court has upheld Decision No. 54438, that the United States Supreme Court has denied an appeal, and that the Commission's recent findings and conclusions under Application No. 40934 in fact sustain and augment Decision No. 54438; therefore, the Commission finds and concludes that the interim opinion and interim order from Decision No. 54438, in Case No. 5754, should be considered definitive and final. Good cause appearing; therefore,

IT IS ORDERED that Decision No. 54438 in Case No. 5754 be and it is affirmed, augmented as above noted, and made final.

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

Dated at San Francisco, California, this 1st day of September, 1959.

Garrett R. Bays  
President  
John E. McLaughlin  
William F. Galin  
C. L. Fox  
Theodore Jenner  
Commissioners