

**ORIGINAL**Decision No. 67694

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE PACIFIC  
 TELEPHONE AND TELEGRAPH COMPANY,  
 a corporation, for authority to  
 increase charges for pole  
 attachments under the terms of  
 agreements with certain community  
 antenna television companies.

Application No. 46066  
 (Filed December 30, 1963)

Arthur T. George and Maurice D. L. Fuller, Jr., for  
 applicant.

Norman H. Smedegaard and Cromwell Warner, for  
 California Community Television Association and  
 members thereof who rent pole space from  
 applicant, protestants.

Harold E. Throp, for California Interstate Telephone  
 Company, interested party.

Elmer Sjostrom and John E. Brown, for the Commission  
 staff.

O P I N I O N

Applicant seeks authority to increase charges for pole  
 attachments of community antenna television (CATV) companies.

A public hearing on this application was held before  
 Examiner Catey at San Francisco on April 21, 22 and 23, 1964, on  
 which latter date the matter was submitted. Copies of the appli-  
 cation and notice of hearing had been served in accordance with  
 this Commission's rules of procedure.

Testimony on behalf of applicant was presented by three  
 of its engineers. Protestants' presentation was made by six  
 owners, officers or employees of CATV systems and by a consulting  
 engineer.

### CATV Operations

The operation of typical CATV systems and the services they provide were described by several witnesses. The CATV systems generally involve sensitive master antennas with amplifiers and cable distribution facilities. The systems deliver television (and in some areas FM radio) signals to subscribers, for a fee, in areas where direct reception of such signals by the subscribers' own antennas would be poor or impossible. The distribution cables are attached to poles owned by public utilities, are attached to separate pole lines installed and owned by the CATV companies, are buried underground, or are installed by some combination of these methods.

### Pole Attachment Contracts

Applicant and 25 CATV companies have entered into 38 contracts which prescribe essentially uniform terms and conditions under which CATV cables and related equipment may be attached to applicant's utility poles in specific areas throughout California. Fifteen of those CATV companies are members of California Community Television Association, which members and association are protestants herein.

Applicant has not filed any tariffs covering CATV pole attachments because it contends that it does not hold itself out as offering pole attachment space to the public or even to CATV companies. In any instance where in its own discretion applicant permits such attachments, a contract is entered into with the CATV company. Applicant then files, with this Commission, copies of each such contract and seeks authority to carry out the terms thereof, in accordance with the provisions of Section X, Contracts

and Services at Other Than Filed Tariff Schedules, of General Order No. 96-A. The filing of such contracts in that manner was authorized and directed by Decision No. 50837, dated December 7, 1954, in Application No. 33935 and Case No. 5570.

#### Rates

A typical <sup>1/</sup> CATV pole attachment contract was introduced as Exhibit No. 5. Paragraph 15 thereof specifies semiannual charges of \$1.25 for each pole used by the CATV company and \$0.50 for each amplifier attached thereto. These charges are determined on June 30 and on December 31 of each calendar year. Although the agreement is silent as to whether each such payment covers the preceding or succeeding six-month period, one of protestants' witnesses indicated that, in practice, the payments are made in advance.

Applicant proposes to increase the semiannual charge for cable attachments to \$2.00 per pole and to discontinue the amplifier attachment charge, such changes to be effective as of January 1, 1964. Protestants do not object to the discontinuance of the amplifier attachment charge but request that the cable attachment semiannual rate be reduced to about \$0.75 per pole.

#### Other Provisions of Contracts

Many subjects other than rates are covered by additional provisions in the pole attachment contracts but applicant requests no changes in those other provisions. Protestants consider many of them to be onerous and ask that the Commission direct applicant

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<sup>1/</sup> Applicant also has entered into some contracts providing for payment, on an interim basis, of the charges requested herein. Those contracts provide that the interim charges will be superseded by whatever rates are authorized herein.

to eliminate or modify them. Although the contracts provide that they shall be subject to such changes or modifications as may be required or authorized by this Commission in the exercise of its lawful jurisdiction, such modifications are beyond the scope of the current proceeding. Protestants, should they be so advised, may file a complaint against applicant in accordance with law. Consideration must be given, however, to the entire contract in evaluating the reasonableness of applicant's proposed rate changes.

Several of the provisions of the contracts result in additional charges payable to applicant, additional costs payable to others, increased risk to a CATV company's investment in plant, or restrictions on the actions of the CATV company. For example: the CATV company must pay for any rearrangement of facilities on poles, replacement of poles, and addition of guys necessitated by the attachment of CATV equipment to applicant's poles or by interference of existing CATV attachments with additional space needed for applicant's own facilities; a CATV company may not erect its own pole in or near any location where applicant will accommodate the CATV equipment on its existing or future poles; there is no time limit for applicant's statements to a CATV company as to availability of pole space; applicant is not liable for any interruptions it may cause in a CATV company's service or operations; a CATV company's right to use any or all poles can be terminated by applicant upon thirty days' written notice; a CATV company must provide a bond to cover the faithful performance of its obligations to applicant, which bond protestants allege is far in excess of the amount reasonably required; and, applicant may confiscate CATV equipment which a CATV company is unable to remove within specified time limits after notification by applicant.

Allocated Costs vs. Incremental Costs  
and Comparative Rates

Applicant's Exhibit No. 1 derives a revenue requirement of \$6.39 per year for an average CATV pole attachment, based upon an allocation of estimated annual charges (including an 8 percent return on investment) related to the average pole now in applicant's plant. The allocation of 32.7 percent of an average pole to CATV is predicated upon the relative horizontal stresses created by CATV cables and an average size of applicant's aerial cable.

Applicant's Exhibit No. 11 indicates that the annual revenue of \$4.00 per pole it requests herein would produce a rate of return of only 1.3 percent on the depreciated investment allocated to CATV service. The same basis of allocating plant and related costs was used as in Exhibit No. 1.

Protestants contend that, because various provisions of the contract require direct payment by the CATV company of some costs, similar costs incurred by applicant should not also be partly allocated to the CATV operation. Further, protestants argue that other contract provisions so eliminate risk to applicant and reduce the value of the connection to the CATV operation that more weight should be given to incremental costs related to the CATV cable attachments in determining the rate to be charged by applicant for this service.

In Exhibit No. 10, one of protestants' witnesses recommended a charge of \$1.50 annually per pole. This recommendation is based upon the average of the rates which he estimated would be appropriate, using four different criteria:

<u>Criterion</u>	<u>Annual Charge</u>
Allocated Cost	\$ 2.30
Incremental Cost	.50
Comparable Rates:	
Other Utilities - Same Service	2.50
Same Utility - Similar Service	<u>.70</u>
Total	6.00
Average	1.50

Discussion

Applicant's method of allocating annual charges between its own operations and those of CATV companies would appear unreasonable, because:

- (1) Applicant and the CATV companies do not have reasonably equal rights to the continued use of pole space.
- (2) Some of the costs related to such things as rearrangements, replacements and guying are payable directly by the CATV companies rather than being included in overall costs to be allocated.
- (3) The rate of return assumed is not comparable to the composite return allowed applicant for its own operations which utilize the same poles as those used for CATV, but instead is the higher return sometimes used where special equipment is involved.

The allocated cost basis portion of protestants' Exhibit No. 10 compensates for some of the direct charges paid by the CATV companies by deducting similar charges from applicant's expenses and plant before allocation. In other respects, the allocated cost basis used in Exhibit No. 10 is somewhat of a hybrid in that it incorporates some aspects of an incremental cost basis. For example, negative salvage value of poles is ignored in determining depreciation expense. In addition, the method used in Exhibit No. 10 for determining depreciated investment departs from the

well-established concept of deducting actual depreciation reserve from actual original cost of plant.

In addition to the incremental cost aspects of the "allocated cost" determination in Exhibit No. 10, consideration of low incremental cost was duplicated by its being used as one of four criteria in arriving at an average of \$1.50 per year as protestants' rate recommendation. The validity of the other two factors used in Exhibit No. 10 is questionable because (1) it cannot be determined whether the service provided by other utilities is similar to that provided by applicant and whether the rates charged by other utilities for this service were determined on a reasonable basis and (2) the record shows that the rates for pole attachments provided to farmer lines and connecting telephone companies under applicant's filed tariffs reflect considerations not applicable to the service provided under the CATV pole connection contracts.

Applicant's stated objective of many of the contract provisions is to prevent the CATV operations from becoming a burden on applicant's telephone subscribers. This is commendable, but some of the provisions go far beyond what is necessary or desirable. For example, one of applicant's witnesses testified to the somewhat limited circumstances under which he thought a CATV company would be requested to remove its equipment from applicant's poles, which is only when applicant had a requirement for that space to meet its own obligations. Nevertheless, the contract places no such limitation on applicant. From the standpoint of the CATV company, its own investment in the CATV system is in constant jeopardy, subject to applicant's wishes. Such broad powers are of no benefit to

applicant if it has no need to invoke them, but are a definite limitation on the value of the service to the CATV company. Requirement of a performance bond in excess of actual need is another example of an item that does not benefit applicant yet lessens the value of the service to the CATV company.

In view of the various contract provisions discussed herein, applicant has not shown justification for a rate increase. On the other hand, as previously mentioned herein, there are infirmities in protestants' claim for a rate reduction. Applicant is strongly urged to meet with representatives of the CATV industry to determine what provisions of the present standard agreement can be eliminated or modified at nominal risk to applicant. This could inure to the benefit of applicant's telephone customers because a more liberal contract would enhance the value of the CATV pole connections and might well warrant a higher rate for such connections. Any higher revenue thus produced would, over the long term, reduce the revenue required from applicant's telephone subscribers.

#### Findings and Conclusion

The Commission finds that:

1. Various provisions of applicant's pole attachment contracts with CATV companies, as discussed herein, limit the value of the pole attachments to the CATV companies.
2. Considering all of the provisions of the typical pole attachment contract, Exhibit No. 1, the charges per pole and per CATV amplifier set forth therein are reasonable and an increase in those charges is not justified.

The Commission concludes that the application should be denied.



ORDER

IT IS ORDERED that:

1. Until further order of this Commission, applicant shall continue to charge, semiannually, \$1.25 for each of its poles used by a community antenna television (CATV) company and \$0.50 for each CATV amplifier attached to said poles.

2. Within thirty days after the effective date of this order, applicant shall send a copy of this order to each CATV company having a contract providing for interim rates differing from those prescribed herein.

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

Dated at San Francisco, California, this 11<sup>th</sup> day of AUGUST, 1964.

Frederick B. Hallock  
President

Robert A. [unclear]  
Robert A. [unclear]

George G. [unclear]

Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.