

ORIGINALDecision No. 67931

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE PACIFIC
 TELEPHONE AND TELEGRAPH COMPANY,
 a corporation, for authority
 to carry out the terms of agree-
 ments covering leasing of chan-
 nels and drops to OMNI-VIDEO
 INCORPORATED.

Application No. 45957
 (Filed November 13, 1963)

A. T. George and G. H. Eckhardt, Jr., by
 G. H. Eckhardt, Jr., for applicant.
Edwin L. Miller, Jr., for the City of
 San Diego; Carstens and Todd, by
 William W. Carstens, for Omni-Video,
 Incorporated; Russell G. Taliaferro, for
 the City of Escondido; Cromwell Warner
 and John S. Muir, Jr., for California
 Community Television Association;
Leon N. Papernow, for H & B Communica-
 tions Corporation; and H. Lee Druckman
 and Harry Hargreaves, for Area Television
 Antenna, Inc.; interested parties.
Elmer Sjostrom and James Shields, for the
 Commission staff.

O P I N I O N

Applicant The Pacific Telephone and Telegraph Company (Pacific) seeks authority to carry out the terms of two agreements covering leasing of channels and service drops to Omni-Video Incorporated (Omni-Video) so as to enable the latter company to distribute to its subscribers in two specified areas in the City of San Diego television signals received by off-the-air pick up from broadcasting stations. The matter was heard before Examiner Patterson in San Diego on March 11, 1964, and was submitted upon receipt of two late-filed exhibits on March 24, 1964.

Service in the Point Loma area is covered in the agreement attached as Exhibit A to the application and as delineated on the map received as Exhibit 2. Under this agreement Pacific would provide 85 quarter route miles of distribution facilities with channels capable of transmitting composite RF television signals (audio and video), including Channels 2, 4, 5, 6, 8, 10 and 13. Omni-Video would deposit the amount of \$110,500 as security for the performance of all its obligations under the contract. This deposit, bearing the designation "termination charge", would be returned to Omni-Video at the rate of one one-hundred-twentieth (1/120) of the deposit balance per month, applied as a deduction against current monthly charges. The contract provides that the balance of the deposit may be refunded by Pacific in its discretion, in whole or in any part, at any time. The monthly charge for the distribution facilities would be \$3,017.50. Service drops from the distribution facilities to Omni-Video subscribers would be provided by Pacific, as required, for an installation charge of \$14 per drop and a monthly charge of 40 cents per drop.

Service in the Mission Valley area is covered in the agreement attached as Exhibit B to the application and as delineated on the map received as Exhibit 3. Under this agreement Pacific would provide six quarter route miles of distribution facilities. The deposit would be \$6,600, refundable in the same manner as in the contract for the Point Loma area. The monthly charge for the distribution facilities would be \$183 and for service drops \$1.40 each. The installation charge for each service drop would be \$40.

The Point Loma system would be located in a residential area which would provide service to many individual residential subscribers. The Mission Valley system would differ from the Point Loma system as it would serve six motels only. A single buried drop cable would be placed at each motel by Pacific, and Omni-Video would provide facilities from the ends of the drop cables to the numerous TV set locations within each motel.

Both agreements contain identical provisions concerning technical features of the service, maintenance of facilities, and liability of the respective parties. Under the liability provision, Section 11, Pacific would be responsible for impairment or interruption of the channels furnished, caused by its own act or omission, but its liability in such instances would be limited to an amount not to exceed the amount of its prorated monthly charges during the period of impairment or interruption, and in no event would Pacific have any liability for any period of impairment or interruption of less than two hours on distribution cable facilities and 24 hours on service drops.

Both agreements also provide that in addition to the off-the-air pickup from television broadcasting stations, Omni-Video could also make incidental use of channels for distribution to its subscribers of FM music or for occasional transmission of other television signals for educational or entertainment purposes.

Testimony in opposition to authorization of the agreements was presented by spokesmen from the community antenna television industry: Companies engaged in this business are referred to as

CATV companies. Such companies normally provide improved television service to subscribers over cable facilities owned by the companies and supported on utility poles under attachment agreements with the utilities.

The executive vice president of H & B Communications Corporation, a firm engaged solely in the CATV industry in California and in ten or twelve other states, testified that if the provisions of the agreements herein being considered are approved and become a matter of common practice, it would preclude the CATV companies, operating under attachment agreements, from engaging in the business, as it is impossible, for economic reasons, to accommodate more than one antenna company system in a community. He also testified that in his opinion the arrangements contemplated by the Omni-Video contracts would be impractical from a service standpoint because of the divided responsibility and from a rate standpoint because of the high charges which would be required.

Testimony in opposition to the agreements was also presented by the president of Area Television Antenna, Inc., a CATV company which has a nonexclusive franchise to lay and use lines, wires and coaxial cable and appurtenances for transmitting, distributing and supplying radio and television antenna service in a portion of the City of San Diego including the two areas in which Omni-Video proposes service. Said franchise was granted by City of San Diego Ordinance No. 8866 on August 1, 1963, Exhibit 4. He testified that his company has attachment agreements with Pacific and with the San Diego Gas and Electric Company authorizing attachment of the antenna company's facilities to the utilities' poles.

At the time of his testimony his company was serving several thousand subscribers in the City of El Cajon, and he anticipated that within a month subscribers in the City of San Diego would be connected to the system. He opposed authorization of the contracts being considered herein on two bases, first, that it is not economically feasible for two antenna companies to provide service in the same community and, second, that the type of arrangement contemplated by the contracts, in which no franchise has been secured from the City of San Diego, would circumvent the City's regulatory powers.

The president of the California Community Television Association, representing 43 independently owned CATV systems throughout California, testified in opposition to authorization of the agreements on two bases, first, that in all cases the CATV companies in the State had been required to obtain franchises from the cities or counties within which they operate, whereas, Omni-Video has not secured a franchise, and, second, that an existing franchised CATV company has an attachment agreement with Pacific covering the area and duplication of service or facilities is not economically practical.

It is the position of the Commission's staff that return of deposits under the contracts should not be subject to return in less than a ten-year period at the option of Pacific, and that the rate of refund of the deposit in the Point Loma contract should be adjusted downward approximately \$300 per month so as to be consonant with the 20-year life used for depreciation.

The position of the City of San Diego is that, as a condition precedent to Commission authorization of the contracts,

Omni-Video should be required to obtain a franchise from the City and, upon the basis that such franchise had not been obtained nor applied for, he moved that this application be dismissed. This motion was joined in by the California Community Television Association and by Area Television Antenna, Inc.

The California Supreme Court has held that this Commission has no jurisdiction over CATV operations.^{1/} The matter of whether or not a city franchise has been obtained, or is even required, by Omni-Video is likewise not controlling here. The protests of CATV operators (directed at the franchise situation and also at service and rates) are therefore irrelevant to our determination. The motion to dismiss will be denied.

The sole issue before us is whether or not the terms of the contracts are reasonable and specifically whether they might cast a burden upon Pacific's customers. The only questions in this regard were those raised by the staff concerning return of the deposits. We find that both contracts should be modified by elimination of the provisions permitting early refund of the deposits so that said deposits cannot be refunded in full in less than 10 years. Such modifications will provide ample protection to Pacific against possible losses in the event of early termination of service without the necessity of adjusting the rate of refund.

Since this is a new type of service being offered costs have been based on estimates. After Pacific has had a reasonable amount of experience in providing the new service it will be expected to regularize the charges by filing a tariff.

^{1/} Television Transmission, Inc., et al. v. Public Utilities Commission (1956), 47 Cal.2d 82, 301 Pac.2d 862.

Based upon the entire record we find that the terms of the contracts as modified are reasonable, that they will not cast a burden upon Pacific's customers and that authorization of the contracts will not be adverse to the public interest.

We conclude that Pacific should be authorized to carry out the terms of the agreements as modified by the following order.

O R D E R

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company is authorized to carry out the terms of the contracts attached to the application and marked Exhibit A and Exhibit B, with Omni-Video Incorporated, each dated September 6, 1963, subject to the elimination of the clause in Section 5 of each of said contracts permitting Pacific to refund the balance of the deposit in its discretion in whole or in part at any time.
2. After Pacific has experienced a full calendar year's operation under the contracts, it shall, within ninety days thereafter, submit to the Commission a results of operation report for such first calendar year for each contract.
3. After Pacific has had two full calendar years' operating experience under the contracts, it shall submit, within ninety days thereafter, a report setting forth the advisability of providing this service on a tariff schedule basis and, if appropriate, a proposed tariff schedule in definitive form.
4. Pacific shall notify the Commission when operations under this authority have begun and service is being rendered to subscribers as contemplated in each contract.

5. Upon termination of service under either contract Pacific shall notify the Commission promptly of the termination date.

6. The authority granted herein will lapse if not exercised within two years.

7. The motion to dismiss this application is denied.
The effective date of this order shall be twenty days after the date hereof.

Dated at Los Angeles, California, this 30th
day of SEPTEMBER, 1964.

Fredrick B. Holcroft
President
John A. DeLia
George E. Grover
William M. Seaver
Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.