

ORIGINAL

Decision No. 75668

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SILVER BEEHIVE
TELEPHONE CO., INC. for a Certifi-
cate of Convenience and Necessity
to provide telephone service to
San Clemente and Santa Cruz Islands
and the water area surrounding; to
establish rates; to issue notes;
and sell stock.

Application No. 50413
(Filed July 19, 1968)

Arthur W. Brothers, for applicant.
Pillsbury, Madison & Sutro and Dudley A. Zinke,
for The Pacific Telephone and Telegraph
Company; A. M. Hart and H. Ralph Snyder, Jr.,
by H. Ralph Snyder, Jr., for General Telephone
Company of California; Dr. Carey Stanton, in
propria persona; Tom Halde and Sylvan B. Malis,
for Coast Mobilphone Service; Pier Gherini,
for Pier Gherini, Francis Gherini, Marie
Ringrose, Ilda McGinnes; G. B. Peterson, for
Radio Communications Service, Inc., protestants.
Captain R. A. Ratti, for the United States Coast
Guard; Captain H. J. Bergman, USN, for
Commander Pacific Missile Range, interested
parties.
Gordon A. Johnson, Counsel, John Gibbons, Roger
Johnson and John D. Quinley, for the Commission
staff.

INTERIM OPINION

In this proceeding, Silver Beehive Telephone Co., Inc.
requests a certificate of public convenience and necessity to provide
telephone service to San Clemente and Santa Cruz Islands and the
water area surrounding the islands as well as authority to establish
rates, to issue notes, and to sell stock.

Ten days of hearing were held at San Francisco before
Examiner Gillanders during the period September 16, 1968 and
December 4, 1968. Copies of the application and notices of hearing
were served in accordance with the Commission's procedural rules.

Applicant presented 11 exhibits and testimony by three witnesses in support of its application. Testimony was presented by protestants Stanton and Cherini. Testimony was presented by the United States Navy and the United States Coast Guard.

On the afternoon of the tenth day of hearing, during cross-examination of applicant's president, staff counsel moved that the application be dismissed. He based his motion on the following:

"The applicant states he does not want the certificate unless he gets landline toll settlements based on costs. And potential customers on Santa Cruz and San Clemente Islands have testified that they do not need landline telephone service. Such testimony indicates that there is no public need for telephone service at this time. Lacking a landline telephone operation, there is no precedent for going to a cost basis on a purely radiotelephone operation."

Protestant, The Pacific Telephone and Telegraph Company (Pacific), joined in the motion. Pacific added the following to the staff's motion:

"..., that the applicant has not made a prima facie case for either the granting of a certificate of public convenience and necessity, nor for authority to issue securities, nor for the approval of rates as requested in his application."

General Telephone Company of California, Dr. Stanton and Mr. Malis also joined in the staff's motion.

Applicant requested that the motion be denied. Applicant based its request, among others, on its belief that the statement by the staff that there is no requirement for cost settlement was premature, especially as its president had testified that he did not insist on a cost-type settlement.

After hearing argument for and against the staff's motion, the examiner took the motion under submission after stating he would recommend to the Commission that the application be dismissed without prejudice.

On February 13, 1969, applicant filed a "Motion to Open Case in Chief". In the motion, applicant requests that we consider the items set forth in the motion; that we issue an order to deny the staff's motion to dismiss; that we define the issues of the application; that we set a date for further hearings on this matter; and that we issue a formal interim order approving its proposed method of securing pledges for its securities.

From our review of applicant's motion it is apparent that, in essence, it is an amended pleading designed to overcome the objections raised by the staff's motion to dismiss as well as the further objections raised by those parties joining with the staff. We shall so treat it in accordance with Rule 8 of our Rules of Practice and Procedure. By so doing, we obviate the issuing of an order of dismissal in this application, the filing of another application by applicant and the time and effort required in setting and processing a new application.

The staff's motion will be denied.

The issues in this case need no further definition. They are well-established in the record made thus far. We place applicant on notice that his requests must stand or fall on what he has now filed and what we consider to be an amended application.

We have no objection to applicant's proposed method of securing pledges for its securities.

Findings of Fact

1. Staff counsel, on the tenth day of hearing in this matter moved that the application be dismissed.
2. Subsequently applicant filed a "Motion to Open Case in Chief".

Conclusions of Law

1. Applicant's "Motion to Open Case in Chief" can and will be considered as an amended application.
2. Applicant is entitled to present evidence on his amended application and all parties are entitled to cross-examination and to present such relevant testimony or evidence as they desire.
3. Staff's motion to dismiss should be denied since it applies to the application as originally filed.

INTERIM ORDER

IT IS ORDERED that:

1. Staff's motion to dismiss is denied.
2. Hearings on the amended application will be held before Examiner Gillanders in the Commission Courtroom, State Building, San Francisco, commencing June 11, 1969 at 10:00 a.m.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 20th
day of MAY, 1969.

William J. Lyons
President
Arthur
Michael R. Morawitz
1711 D. BARK
Commissioners