

Decision No. 77206

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SILVER BEEHIVE TELEPHONE CO., INC. for a Certificate 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

SECOND ORDER REOPENING PROCEEDING AND RESUBMITTING MATTER

Applicant, on September 30, 1969, filed its petition for an Examiner's Proposed Report, stating that it believes a report is "material to the full public understanding of the issues and inter-related factors of this case," and that such report "will not cause unreasonable delay in the final determination of the proceeding."

Protestants, General Telephone Company of California, Sylvan Malis, dba Coast Mobilphone Service, Dr. Carey Stanton, Pier Gherini, and The Pacific Telephone and Telegraph Company (hereinafter called petitioners), petitioned that a proposed report be issued by the presiding officer. Petitioners believe that the issuance of a proposed report will promote the administration of justice and will not cause unreasonable delay in the final determination of the proceeding.

This application proceeding involves many issues, some factual, others legal, and others involving mixed questions of fact and law. Several issues are of considerable complexity.

The number and complexity of the issues is exemplified by the length of the record in this proceeding. As of December 17, 1969, there have been 32 days of hearings at which 3,866 pages of transcript were recorded and 123 exhibits offered.

Subsequent to the above requests for a proposed report, the newly assigned Commissioner stated that he desired that briefs be filed by the various parties. Accordingly, opening briefs were filed on February 2, 1970 and reply briefs were filed on February 17, 1970. A perusal of the various briefs showed that the parties have eloquently argued their respective positions. The issuance of a proposed report would only provide an opportunity for further argument. The issues are now clear. We will weigh the evidence in light of the arguments advanced by the parties. The petitions for a proposed report will be denied.

By notice filed on January 27, 1970, The Pacific Telephone and Telegraph Company (Pacific), a protestant in this matter, stated that it "... will request in its opening brief that the Commission take official notice of a Report, Order and Notice of Hearing dated January 15, 1970, of the Public Service Commission of Utah in 'In the Matter of the Investigation of SILVER BEEHIVE TELEPHONE COMPANY INC., as to its Utility Operations in Utah, Investigation Docket No. 124'".

In its opening brief filed February 2, 1970, Pacific requested (page 48) that we take official notice of the order described above.

As none of the parties to the proceeding have indicated an objection to Pacific's request, such will be the order.

By notice filed on February 16, 1970, General Telephone Company of California (General), a protestant in this matter, stated that it "... will request in its reply brief that the Commission take official notice of three documents entitled, respectively, 'Order Appointing Receiver', 'Statement of Affairs', and 'Order Fixing Date' of the United States District Court, Central District of California in 'In the Matter of Port Hueneme Industrial Service, Inc., In Bankruptcy, Case No. 64,533'".

General, in its reply brief filed February 18, 1970, did make such request. None of the parties to the proceeding have indicated an objection to General's request. The request will be granted.

In its opening brief (page 55) Pacific, a protestant in this matter, requested that we review and reverse the examiner's ruling on the admissibility of the deposition of Harrison Brothers.

The examiner ruled that Exhibits 29 and 74 were inadmissible holding that Code of Civil Procedure Section 2020 requires notice of the time and place of the interrogatories and that Code of Civil Procedure Section 2016 (d)(3) requires a finding that the witness in a deposition is unavailable as a witness within the meaning of Section 240 of the Evidence Code.

Counsel for Pacific is correct that Code of Civil Procedure Section 2020 does not require notice of the time and place for the taking of written interrogatories. However, since the record reveals that the Commission never found (never having been asked to find) that Mr. Harrison Brothers was unavailable as a witness within the meaning of Section 240 of the Evidence Code, we hold that the Examiner's ruling overall was correct and we will not reverse it.

By motion filed April 13, 1970, applicant requested that the matter be reopened for the purpose of receiving into the record information regarding the status of witness Brothers' FCC 2nd class radio-telephone permit.

Protestant Pacific, on April 22, 1970, filed a statement in opposition to the motion and requested that the motion be denied.

The staff, on April 22, 1970, filed a response to applicant's motion in which it stated:

"Subject motion of applicant is filed for the avowed purpose of having incorporated into the record the fact that its President, A. W. Brothers, has a second-class radio-telephone license. The existence of such license was the

center of considerable controversy during the hearing. It now appears from the motion and the attached letter that the failure to renew the license resulted from certain errors made by the FCC. The fact that the applicant's President does have a valid license is relevant to the proceeding as it pertains to the qualifications of the applicant to establish and operate a radiotelephone public coast station. Consequently, the staff has no objection per se to the receipt of such evidence into the record."

Protestant General, by letter dated April 23, requested that the motion be denied.

We agree with the staff that the license issue is relevant and, therefore, we will grant applicant's motion.

IT IS ORDERED that:

1. The submission of this matter undertaken on February 10, 1970 is hereby set aside.
2. Official notice is taken of the aforesaid requests.
3. The request of Pacific for reversal of the examiner's ruling is denied.
4. The requests for a proposed report are denied.
5. Applicant's motion, filed April 13, 1970, is granted.
6. The matter is hereby resubmitted for decision.

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

Dated at San Francisco, California, this 12<sup>th</sup> day of MAY 4, 1970.

William Sproule  
President

Augusta

[Signature]

[Signature]

James L. Sturgeon  
Commissioners