

ORIGINAL

Decision No. 77475

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SILVER BEEHIVE TELE-  
PHONE 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  
(Filed July 19, 1968; Amended  
February 13, 1969)

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.  
Gary L. Hall, Counsel, John Gibbons, Roger Johnson,  
and John D. Quinley, for the Commission staff.

O P I N I O N

Introduction

In this proceeding, Silver Beehive Telephone Co., Inc.<sup>1/</sup>  
requests a certificate of public convenience and necessity to provide  
landline telephone service to San Clemente and Santa Cruz Islands and  
maritime mobile telephone service to the water area surrounding the  
islands as well as authority to establish rates, to issue notes, and  
to sell stock.

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<sup>1/</sup> During the course of the proceeding applicant changed its corporate  
name to The Telephone Company, Inc. Because other telephone com-  
panies were parties herein, throughout the hearings applicant was  
referred to by its original corporate name in order to avoid con-  
fusion of reference between it and the other parties.

Thirty-two days of hearing were held at San Francisco before Commissioner Sturgeon and/or Examiner Gillanders during the period September 16, 1968 and December 17, 1969. Copies of the application and notices of hearing were served in accordance with the Commission's procedural rules.

Applicant presented exhibits and testimony by three witnesses in support of its application. Testimony was presented by protestants Stanton, Gherini, and General. Testimony was presented by the United States Navy and the United States Coast Guard. Testimony and exhibits were presented by protestant Pacific. Testimony and exhibits were presented by the Commission staff. Altogether, 123 exhibits were offered and 3,866 pages of transcript were recorded.

On the afternoon of the tenth day of hearing, during cross-examination of applicant's president, staff counsel moved that the application be dismissed.

The Pacific Telephone and Telegraph Company (Pacific), joined in the motion as did General Telephone Company of California, Dr. Stanton and Mr. Malis.

Applicant requested that the motion be denied.

By Decision No. 75668, dated May 20, 1969, the Commission denied the staff motion to dismiss. Two other staff motions to dismiss were denied by the examiner.

The matter was submitted on December 17, 1969, subject to the filing of briefs. Opening briefs were filed on February 2, 1970, and reply briefs were filed on February 17, 1970.

On February 10, 1970, the Commission by Decision No. 76778 reopened the proceeding for the purpose of taking official notice of an order of the Federal Communications Commission. The matter was resubmitted on the same day.

On May 12, 1970, the Commission by Decision No. 77206 ordered submission set aside for the purpose of ruling on numerous requests made by various parties. These requests were ruled on, the matter resubmitted and is now ready for decision.

Areas Proposed To Be Served And Existing Services

San Clemente Island is owned by the United States Government, and is an active military reservation, administered by the United States Navy. It is not open to the public and only Navy personnel and those contractors and other private persons doing business with the Navy who have Navy clearance are permitted on the island.

The Navy owns and operates its own telephone system for communications between points on the island. Pacific Telephone furnishes all public utility communications services between the island and the mainland; at the present time these consist of public and semi-public telephone toll station services and private-line telephone and teletypewriter services.

Santa Cruz Island is owned in its entirety by two private owners, Santa Cruz Island Company and the Gherini family. The island is undeveloped, being used by its owners for sheep and cattle ranching. It has an extremely small population consisting of Dr. Carey Stanton, president of Santa Cruz Island Company, about 10 ranch employees of that company, only one of whom uses a telephone, and an average of three employees on the Gherini Ranch. Santa Cruz Island Company leases three small parcels on the island to the Navy, a contractor of the Navy and a hunt club, respectively. The contractor's lease is about to expire and the hunt club's lease is terminable at the will of the lessor. There are no permanent residents on these leasehold parcels and the leases restrict the persons who may visit the island to personnel of the lessees. General Telephone Company of California provides toll station service to

Santa Cruz Island Company and land mobile radiotelephone service to the Navy contractor.

Applicant proposes to render maritime mobile service to ships in coastal waters that surround and lie within fifty-five to seventy-five miles of San Clemente Island and Santa Cruz Island, respectively, except for certain waters where radio signals would be blocked by high intervening land.

Pacific Telephone presently furnishes maritime mobile service throughout all the areas proposed to be served by applicant by means of its Medium Frequency public coast station KOU, located at San Pedro, California; this service has been furnished to the public since 1932. Pacific Telephone also furnishes maritime mobile service in portions of the areas proposed to be served by applicant by means of its VHF public coast stations KMB393 and KMB394 located at San Pedro and San Diego, respectively. Pacific has been operating those VHF stations since 1952. Radiotelephone service to ships is also furnished in the Santa Barbara area and in the waters around Santa Cruz Island by a radiotelephone utility, Sylvan Malis dba Coast Mobilphone Service.

#### Jurisdiction

There is no question that San Clemente and Santa Cruz Islands are part of the State of California and thus this Commission has jurisdiction over intrastate public utility operations conducted on the islands.

The question of whether or not we have jurisdiction over maritime mobile operations of the type with which we are concerned in this proceeding has not been before us previously.<sup>2/</sup>

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<sup>2/</sup> The matter of maritime mobile operations was a subject to be covered in Case No. 8880 which case has not resolved the matter of maritime mobile operations.

We have taken official notice of the Federal Communications Commission's Dockets Numbers 18652, 18653, 18654, 18655, 18656, 18657, 18658, 18660, 18661, 18662 and 18663. Ten of these Dockets involve mutually exclusive applications to establish new Class III-B coastal radio stations at diverse points on the California Coast and/or on the off-shore islands. Two of the applications involve Pacific's request to renew its license and relocate its station from San Pedro to Santa Catalina Island.

Of the eight<sup>3/</sup> separate entities involved in the twelve applications only Silver Beehive directly informed us of their plans.

General

In determining whether or not to grant a certificate of public convenience and necessity as herein requested, it has been our practice to consider, among others, the following factors:

1. The public requirement for the service;
2. Adequacy of existing service;
3. Adequacy of proposed service;
4. Quality of the proposed service;
5. Revenue requirements and rates;
6. Technical feasibility of the proposed system;
7. Technical competency of the operator;
8. Financial integrity of the operator;
9. Economic feasibility of the proposed utility;
10. Present operations.

Applicant, protestants and staff recognizing that we should have an adequate record upon which to base our decision exhaustively covered all ten of the above-listed factors.<sup>4/</sup>

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<sup>3/</sup> Includes two landline telephone corporations and three RTU's.

<sup>4/</sup> For reasons which appear in the following discussion we need only comment on factors 1 and 9.

Public Requirement for Proposed Service

Silver Beehive did not call a single public witness to testify that there was an unsatisfied requirement for its proposed landline services.<sup>5/</sup> The only public witness called by applicant to testify concerning landline services was the San Clemente Island manager of a Navy contractor. He testified that both the intra-island telephone service furnished by the Navy and the toll station service furnished by Pacific Telephone between the island and the mainland, were adequate and met his needs. Applicant called no other witnesses on this subject except its own president, A. W. Brothers, whose opinions that there was a need for his company's services on the two islands are unconvincing, particularly in view of the fact that almost all potential users of applicant's proposed landline services on both islands appeared at the hearings and testified that they did not need nor want applicant's services.

A public utilities specialist employed by and authorized to speak on behalf of the Department of the Navy with respect to San Clemente Island testified that there was no unfulfilled requirement for communications services, either for local calling between points on the island, or between the island and the mainland. He further testified that the Navy does not want the communications services now provided by itself and by Pacific Telephone to be replaced by services furnished by any other public utility telephone company.

As for Santa Cruz Island, both owners appeared as protestants and their representatives testified unequivocally that they neither needed nor wanted applicant's proposed services. Dr. Carey Stanton, president of Santa Cruz Island Company, was most vehement

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<sup>5/</sup> Dial exchange service on San Clemente and toll station service on Santa Cruz.

that he did not want Silver Beehive on his company's land or on the island. The United States Navy offered testimony through a communications officer that it has no requirement for applicant's proposed services on that island. Evidence was received that the other two lessees of Santa Cruz Island Company also do not want the proposed telephone service.

Economic Feasibility of the Proposed Utility

Silver Beehive proposes rates for its maritime mobile service of \$75.00 a month, with toll charges computed from a rate center in addition thereto. Both Pacific and Mailis, based on their experience in maritime mobile service, testified that boat owners would be unwilling to pay a rate so high. Furthermore, Silver Beehive's customers will need their own additional radio equipment to have access to the distress, safety and calling frequencies, and a ship-to-ship frequency. ✓

Silver Beehive estimated revenues on a yearly basis without making adjustments for daily or seasonal variations. Pacific's experience demonstrates such variations exist. If these adjustments are made, its revenues will be considerably less than those projected.

Silver Beehive, in Exhibit 37, estimated that shore-to-ship calling ratios would be identical to ship-to-shore calling ratios, and predicated total revenues on that basis. No factual testimony supports such a conclusion.

Silver Beehive's estimated revenues are predicated on joint through toll rates and a division of such revenues with Pacific. Pacific stated it would not agree to such an arrangement.

Silver Beehive's revenue estimates for Santa Cruz Island customers are based on four customers with calling volume equivalent to Dr. Stanton's, yet no island occupant will take the service nor

is there any evidence of calling habits, other than Dr. Stanton, of proposed customers.

Silver Beehive's first-year revenues are predicated on 30 maritime customers at each island, yet it produced only one witness indicating an interest in its proposed service.

An example of the methods used in Silver Beehive's cost analysis can be related to right-of-way costs on Santa Cruz Island. Dr. Stanton testified he would not willingly grant Silver Beehive rights-of-way and that Silver Beehive would have to condemn. Dr. Stanton stated, by way of comparison, that occupants of the island pay lease costs greatly in excess of those shown by Silver Beehive in its Exhibit 37, and their use is much less intrusive than would be Silver Beehive's.

Pacific's witness, Mr. Unnevehr, testified that applicant would have a net loss of over \$17,000 in the first year. Instead of an initial cost of \$200,000, was estimated by applicant, Mr. Unnevehr's bare bones estimate of the initial cost for equipment which applicant described, not including the cost to correct technical deficiencies, was \$273,000.

The staff witness testified that applicant's proposal was not economically feasible.

It is our duty to decide whose testimony to accept, and when the same witness has given conflicting testimony, to determine which statements we will accept as being in accordance with the facts. Numbers do not necessarily count in the case of expert witnesses as it is quality rather than quantity which the law regards so that the mere fact of numerical superiority of experts on one side is not determinative in and of itself.



The record so clearly reveals that there is a need for VHF maritime mobile radio service in the waters of Southern California that we need not set out in detail the evidence on this subject.

From our perusal of the entire record in this matter we find that applicant's proposal would not be economically feasible.

Findings and Conclusion

The Commission finds that:

1. There is no public need for applicant's proposed landline telephone service.
2. Applicant's proposed radio service is not economically feasible.

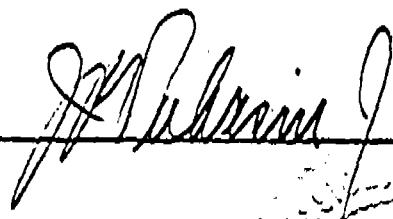
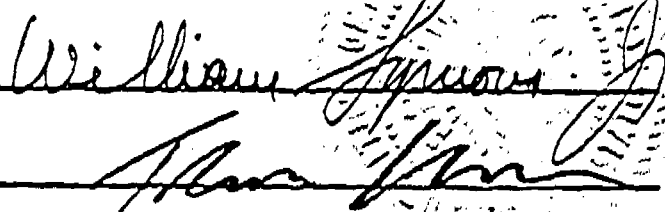
The Commission concludes that based upon the above findings the application should be denied and that no other issues raised during the course of this proceeding need be resolved.

O R D E R

IT IS ORDERED that Application No. 50413 is denied.

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

Dated at San Francisco, California, this 7<sup>th</sup> day of JULY, 1970.

  
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Chairman  
  
\_\_\_\_\_  
Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.  
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Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.