

ORIGINAL

Decision No. 85719

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Thomas W. Irwin (dba
Henness Pass Telephone Company) for
a certificate of public convenience
and necessity to establish a new
Telephone Exchange to be known as the
Graniteville Exchange, Nevada County,
California.

Application No. 55280
(Filed October 30, 1974)

Application of THE PACIFIC TELEPHONE
AND TELEGRAPH COMPANY, a corporation,
for authority to expand its Nevada
City, Emigrant Gap, Truckee,
Alleghany, and Downieville Exchanges.

Application No. 55463
(Filed January 30, 1975)

Thomas W. Irwin, for himself, applicant
in A.55280.
William B. Rowland, Attorney at Law, for
The Pacific Telephone and Telegraph
Company, applicant in A.55463 and
protestant in A.55280.

O P I N I O NProceedings

By Application No. 55280, filed October 30, 1974, Thomas W. Irwin (Irwin), doing business as Hennes Pass Telephone Company, requests authority to provide telephone service to approximately 182 square miles of unfiled and unassigned territory in Sierra and Nevada Counties.

Irwin subsequently verbally amended his application to request that parts of territories presently included in Pacific's Truckee and Emigrant Gap exchanges be reassigned to Irwin for the provision of telephone service and that 20 square miles of non-adjacent unfiled territory on Highway 20 encompassing the Alpha-Omega overlook near Emigrant Gap be included in his service area.

On January 30, 1975, Pacific filed a protest to Application No. 55280 and also filed Application No. 55463 to serve the disputed territory and certain other contiguous but unassigned territory. The area covered by Pacific's Application No. 55463 constitutes approximately 292 square miles of unassigned territory.^{1/}

Consolidated hearings on these matters were held before Examiner Coffey in San Francisco on March 31, April 1, May 12 and 13, and November 10, 1975. Testimony in support of Application No. 55280 was given by Irwin. Pacific presented two witnesses in support of its Application No. 55463. A public witness representing the Mount Lola Development Company appeared in support of Pacific's application. Finally, a representative of the United States Forest Service testified. These matters were submitted upon the receipt of briefs on December 4, 1975.

Service Areas

The disputed territory is located in the Sierra-Nevada mountains between State Highway 49 to the north and Interstate Highway 80 to the south. The common boundary of Sierra and Nevada Counties bisects the area. It is almost entirely surrounded by Pacific's existing telephone exchanges of Downieville, Alleghany, Nevada City, Emigrant Gap, Soda Springs, Truckee, and Sierraville.

The middle fork of the Yuba River divides the north side of the area from the south side, especially in the western section. The western section is very rugged, consisting of successively rising ridges and gorges. The highest peaks are in the eastern section, but they are separated from each other by large, flat

^{1/} The relationship of the territory covered by Application No. 55280 to the territory covered by Application No. 55463 is shown by comparing Exhibits 17 and 27.

meadow areas. With one exception, all of the roads into the area are dirt. A paved road enters the area out of Sierraville and terminates at Jackson Meadows Campground. The area is snowbound in the winter, and no attempt is made to keep any roads open. A few families remain isolated in the area during the winter. The rugged area to the south was "gold country", and a few large ranches have grazed cattle in the eastern meadows. The area today is populated in the summer mainly for recreational purposes, such as hiking, fishing, and camping.

Both Disneyland, Inc. and the Mount Lola Development Company are studying the feasibility of large scale development of the Mount Lola area in the southeastern corner of the unassigned territory.

In the past, Pacific has provided toll station telephone service to the disputed territory by an aerial wire running from North Bloomfield to the Jackson Meadows area. In more recent years, this line has been maintained by the English Mountain Ranch. The line has been inactive since 1972. Pacific is presently providing semipublic toll station service to the Grass Valley Sportsman's Club at Weaver Lake from a 25-pair cable terminating at Bowman Lake. Pacific also provides a toll station at Webber Lake.

Service Proposals

Pacific's Proposal

Pacific plans to give service to the territory in two stages. Toll stations in areas which have a demand for such service will first be established and then exchange service will be furnished as the area develops and communities of interest can be more clearly defined. Pacific is committed to establishing exchange service no later than 1978.

In the first stage, toll station service, Pacific would establish three public toll stations by burying a 25-pair cable west from Bowman Lake in its Emigrant Gap exchange to Graniteville. Pacific would bury another 25-pair cable east from Bowman Lake to Jackson Meadows through the Prairie Creek and Jackson Creek areas. This would be done immediately.

In addition to the three public toll stations which would be located at Graniteville, Prairie Creek, and Jackson Meadows Ranger Station, Pacific would respond to individual requests for telephone service in cabins or homes on a semipublic toll station basis.

As a second stage, Pacific would implement exchange service by expanding the already existing exchanges which surround the disputed territory. Cable facilities which could be used to expand these surrounding exchanges are presently in place at various locations around the boundaries of the disputed territory. Pacific prefers to wait until 1978 to expand these exchanges because, as Pacific's witness testified:

"Exchanges are made to correspond to well-defined community of interests. We prefer to wait for more people to arrive on a permanent basis, roads to be paved, development to occur, and, in this case, recreational areas. We want to save customers and ourselves money.

"Exchange service includes a rate for local calling and toll, or long distance, is billed extra. We believe the bulk of customers calling from this area will be low volume long-distance calls not high volume exchange calls. There is no need for a local calling rate at this time." (Tr. 202-203.)

Pacific nonetheless submitted to the Commission Exhibit 31 showing how existing exchanges would most likely be expanded and explained why the exchange boundaries would probably be drawn as indicated on the exhibit. Pacific would establish exchange service immediately if the Commission deemed that a prerequisite for the assignment of the disputed territory to Pacific.

Irwin's Proposal

Irwin's proposal for service to the disputed territory changed several times during the course of the hearings. The specific manner in which service will be provided remains unclear. The major changes resulted from the fact that a representative of the Forest Service testified that the aerial line between Graniteville and Jackson Meadows would have to be buried where it crosses Forest Service land. Irwin had originally planned to leave these facilities aerial.

In general, however, Irwin's plan is to provide toll station service to the territory for the first two years of operation. During this time, those cable facilities between Graniteville and a point of connection with Pacific near Washington would be buried, but the portion of the line between Graniteville and Jackson Meadows would remain aerial. Toll stations would be provided at Graniteville, Jackson Meadows, and Jackson Creek with a private telephone at English Mountain Ranch. By 1978 the aerial line between Graniteville and Jackson Meadows would be buried.

According to Irwin, exchange service would commence in 1978. The entire disputed territory would constitute one exchange, designated the Graniteville exchange, divided into four zones for rating charges. Central office facilities would be located in Graniteville and consist of an unattended dial exchange, specifically a refurbished North Electric CX 30. Operator functions would be performed by Pacific.

Requirement for Service

All parties to this proceeding agree that the existing service is inadequate and that there is a public need for additional service.

Of 33 questionnaires initiated by Irwin to property owners in the service area only 14 responded. None of the owners listed addresses in the service area. Since the survey only inquired if the property owners were "interested in telephone service" there is no indication of the need for exchange service in contrast with toll station service. While several of the responses rejected the service suggestion, most of the comments appear to contemplate availability of public telephones for safety, medical, and fire emergencies.

Exhibit 37 sets forth six letters solicited by Pacific in support of its application. While all state that the individual prefers to have Pacific serve the area, only one now has Pacific service and none of the remaining five indicated they would become subscribers.

Ten subscribers of Pacific in the Town of Washington, Nevada County, by petition, Exhibit 42, complained of the poor quality of service and asked to be included in the service area of the Henness Pass Telephone Company. Irwin has not offered to serve the Town of Washington and Pacific has not agreed to transfer the area.

We are not impressed with the urgency of the need for substantial upgrading of service in the unassigned area here being considered.

Pacific's Argument

Pacific in its brief argues:

- A. Irwin does not have the necessary financial ability to establish and maintain adequate telephone service in the disputed territory. In contrast, Pacific's ability is uncontested.
 - 1. Irwin's financial presentation changed repeatedly.

2. The accuracy of the financial data provided by Mr. Irwin is doubtful.
 3. The question of where Mr. Irwin will get his capital requirement remains unanswered.
 4. The telephone settlement formula would be inappropriate for toll station service.
 5. Pacific's financial ability to provide service to the territory is uncontested.
- B. Irwin has failed to make the arrangements necessary to provide service of even minimal quality. Pacific has the necessary facilities, equipment, and trained personnel in the area to provide high quality service.
1. Irwin presented no definite plans for how his proposed telephone operation will be administered and maintained.
 2. Subscribers in the disputed territory would pay more for telephone service provided by Irwin than for Pacific's service.
- C. Irwin's proposal is technically inadequate; Pacific's plan is technically sound.
- D. Irwin has failed to demonstrate an ability to provide ongoing telephone service to the disputed territory in future years.
- E. People in the disputed territory would prefer to be served by Pacific.

Irwin's Argument

Irwin submits that his application, as amended, should be granted for the following reasons:

1. Irwin took the initiative to serve the contested area.
2. The service plan proposed by Irwin requires the least investment and the least revenues.

3. The service plan of Irwin will provide for:
 - a. Higher grades of service at much lower costs.
 - b. Least costly arrangement of facilities for maintenance and operation of the system.
 - c. Future expansion capabilities at a lower cost.
 - d. Local service representative for more prompt and lower cost installation and repair.
4. Granting this application will "free" Pacific's capital for use elsewhere in its area and not add to an apparently overburdened operation and maintenance staff.
5. Irwin's proposed service plans will better serve the community of interests of the area.
6. Irwin's proposal is a viable one. It is anticipated that 100,000 persons will have visited the area during 1975. This can be expected to increase in 1976 to in excess of 110,000. It is anticipated that the total toll revenue generated for the first full year's operation will exceed \$25,000 with approximately \$4,500 to Irwin in settlements.
7. Irwin's proposal will have a lesser impact on the environment as it will remove the existing aerial wire line from North Bloomfield to Jackson Meadows and will enable Pacific to eventually remove a portion of its tree line to Bowman Lake and Weaver Lake.

Discussion

While Irwin's initiative is commendable, initiative is not the controlling factor in the determination of the award of a certificate of public convenience and necessity. On the other hand, Pacific's application can only be viewed as a reaction to Irwin's initiative and not as a reflection of present pressing public need for higher grades of service in the area. Pacific is seeking

to preserve its options of serving the area should substantial recreation area development materialize.

The lower cost of service to subscribers to Irwin's system allegedly demonstrated by Irwin's Exhibit 41 is not supported by analysis. Irwin's rates for exchange service are arbitrarily set lower than Pacific's since he relies on settlements from Pacific to largely fund his operation. The exhibit also does not correctly represent Pacific's mileage charge proposal. Because of toll charges to surrounding communities in Pacific's service area, customers' total bills for service may actually be higher under Irwin's proposal than under Pacific's. Without bill comparisons the costs to subscribers cannot be evaluated.

Irwin's plan of operation and maintenance does not give assurance of effective and continued service to subscribers. Irwin lives in Stockton, works full-time for REA, and plans to continue these arrangements. Arrangements for maintenance appear tenuous. Trouble reporting depends on arrangements and connections to be made with Pacific. A resident of Nevada City who has a full-time job and who has had no experience in telephone maintenance is proposed by Irwin as the local maintenance man. The record does not demonstrate that Irwin's cost estimates and statements of financial resources are sound. For instance, in these days of inflation, labor expense is calculated at \$5 per hour. The cost of modifying central office equipment is estimated by Irwin to be \$800 in contrast to \$5,700 estimated by an independent contractor. In view of the foregoing, it is not necessary to discuss further deficiencies in Irwin's proposal.

Considering the lack of pressing immediate need by the public for exchange service in the disputed area, and considering Pacific's announced financial inability or unwillingness to fill service orders in its present service area, it is not appropriate to generate further future commitments of Pacific's capital funds by permitting Pacific to expand its service area into the disputed

territory. This decision should not be interpreted that Pacific has established any rights to the disputed area or will be permitted to extend into the area merely because of its existing toll service should a substantial public need for service develop.

Findings

1. Pacific presently provides some toll station telephone service in the disputed territory.
2. The disputed territory is rugged, mountainous, sparsely populated, and snowbound in winter.
3. The territory is mainly used for ranching and summer vacations.
4. This record does not demonstrate an urgent present need for additional or upgraded telephone service in the area.
5. Irwin has not demonstrated:
 - a. Adequacy of his proposed services.
 - b. Public requirement of his proposed service.
 - c. Technical feasibility of proposed system.
 - d. Technical and financial adequacy of operator.
6. Pacific has publicly announced its financial inability to promptly fill service orders in its present service areas.

Conclusion

We conclude that the requests of Irwin and Pacific to serve the disputed territory should both be denied without prejudice.

O R D E R

IT IS ORDERED that:

1. Application No. 55280 of Thomas W. Irwin is denied without prejudice.

2. Application No. 55463 of The Pacific Telephone and Telegraph Company is denied without prejudice.

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

Dated at San Francisco, California, this 20th day of APRIL, 1976.

President
William J. Lyons

James P. Stinson

Ron

Robert Bateman
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.