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Paul M. Hogan

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COMMENTS
UTILITY, THE STATE, AND THE PUBLIC INTEREST
By Paul M. Hogan*

Introduction

Regulation of public utilities by governmental agencies has long presented the courts with many vexing problems of law. Regardless of the specific issues litigated, the fundamental question to be resolved is whether the state, in furtherance of the general welfare, shall undertake to control industries owned and operated by private citizens thereby depriving them of a measure of freedom in their business dealings.

In this field the theory underlying state control of private business is that certain public service enterprises must be protected from competition so that the public may be assured of efficient service at a reasonable cost. Telephone companies because of the complexity of their operations, and gas, electric and water companies because of the undesirability of wasteful and expensive duplication of service are natural monopolies. Companies which provide services of this type are clearly of value and use to the community. They ought not to be limited in their operations by destructive competition. Because of their nature it is impossible for these services to be performed efficiently by numerous small competing concerns. Since corporations of this kind are usually the only ones operating in their field in a community, it is imperative that the consumer be protected against arbitrarily enhanced rates and discrimination on the part of the utilities.

Development of Regulation in California

This problem has been met by state control. In 1911, California by amending its constitution created the Railroad Commission and conferred upon the legislature extraordinary plenary power in all matters pertaining to regulation of public utilities.

This amendment empowered the legislature to regulate and supervise public utilities and to confer upon the Railroad Commission powers additional to those conferred upon the Commission by the constitution. The amendment designated several industries, including telephone corporations, as public utilities and subjected such industries to the regulation and control of the Railroad Commission. Finally, it provided that no other pro-

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* Member, Second-Year Class.
1 Richardson v. Railroad Comm'n, 191 Cal. 717, 218 Pac. 418 (1923); In re Martinez, 56 Cal. App. 2d 473, 132 P.2d 901 (1942).
2 Eshleman, Control of Public Utilities in California, 2 CALIF. L. REV. 104, 108-9, (1914).
3 Munn v. Illinois, 94 U.S. 113 (1877).
4 CAL. CONST. art. XII, §§ 22, 23 (§ 22 as amended November 5, 1946, renamed the Railroad Commission the Public Utilities Commission).
5 CAL. CONST. art. XII § 23.
vision of the constitution might be construed to be a limitation upon the 
power and functions of the legislature in this respect. So sweeping and all-
clusive were the powers thus granted that the California Supreme Court 
was impelled to liken the power of the legislature over public utilities to 
that of the English Parliament, whose voice, unhampered by the restric-
tions of a written constitution, was the law of the land.

Commission Powers and Limitations

Subsequent enactments of the legislature, utilizing the constitutional 
powers vested in it together with liberal judicial construction of these wide 
grants, have tended to bear out the correctness of this view. In California, 
the Commission's authority to regulate extends to every corporation design-
ated by the constitution or the legislature as a public utility. The Com-
misson, not purely a judicial body, may act upon its own motion to inves-
tigate the operations of any person or corporation functioning as a public 
utility. Once the Commission has acted, it has exclusive jurisdiction over 
subject matter properly before it, and the superior court has no power to 
interfere with its orders or decisions. It may set aside any prior order or 
determination of the courts in a matter coming under its exclusive juris-
diction.

Orders and decisions of the Commission are reviewable only in the Cali-
ifornia Supreme Court. The jurisdiction of that court is limited to a deter-
mination of the regularity of the Commission's proceedings and the validity 
of any claims made by a petitioner as to an alleged violation of his rights 
under the federal Constitution. The Commission's findings of fact and of 
ultimate facts in issue are conclusive and not subject to review. Therefore 
decisions of the Commission may be attacked only by way of challenging 
its jurisdiction.

A casual reading of the applicable constitutional and code provisions 
would suggest that the legislature and the Commission are omnipotent in 
the area of public utility regulation. Undoubtedly the powers granted them 
are very broad but neither body may, by its declaration alone, determine 
what is and what is not a public utility. Although the constitution has 
expressly designated certain kinds of businesses as public utilities, this is

6 Cal. Const. art. XII § 22.
7 Pacific Tel. & Tel. Co. v. Eshleman, 166 Cal. 640, 658, 137 Pac. 1119, 1127 (1913).
10 Id. at 197, 70 P.2d at 168.
(1954).
16 Allen v. Railroad Comm'n, 179 Cal. 68, 175 Pac. 466 (1918), cert. denied, 249 U.S. 601 
(1919); Associated Pipe Line Co. v. Railroad Comm'n, 176 Cal. 518, 169 Pac. 62 (1917).
not to say that all enterprises within the prescribed classes are such. Nor is it within the power of the state to declare businesses which are essentially private enterprises to be public utilities merely by legislative fiat.

The legislature and the Commission are bound to act within the limits of the federal Constitution. It has been held that the jurisdiction of the Commission, constituting as it does an exercise of the police power of the state, must be exercised reasonably. Peter E. Mitchell, president of the California Public Utilities Commission, wrote recently:

Thus reasonableness becomes the most important single standard in utility regulation. It is in this zone that the Commission must exercise its discretion after the facts have been presented for its consideration. In that manner only can the public interest be served.

Failure to act reasonably in imposing public regulation upon private industry would constitute an impairment of obligation of contract and a taking of private property for public use without compensation in violation of the federal Constitution.

Jurisdictional Criteria: What is a Public Utility?

What, then, is a reasonable exercise of jurisdiction? It is well settled that the regulatory powers of the Commission are cognate and germane only to the regulation of public utilities. Conversely it would seem that regulation of an enterprise not properly a public utility would be an abuse of jurisdiction and hence an unconstitutional exercise of the police power. It is necessary therefore to determine what is a public utility. The California Constitution, as implemented by the Public Utility Code, does not define the term "public utility" but merely designates specific industries as such. Therefore one must turn to the common law to understand the nature and characteristics of a public utility business.

Common Law Concept

The basic approach of the courts in determining this question is clearly summarized in a quotation from Lord Hale's treatise *De Portibus Maris* cited in the landmark case of *Munn v. Illinois*:

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17 Story v. Richardson, 186 Cal. 162, 198 Pac. 1057 (1921).
18 Sequoia Nat'l Park Stages Co. v. Sequoia & Gen. Grant Nat'l Park Co., 210 Cal. 156, 291 Pac. 208 (1930); Allen v. Railroad Comm'n, 179 Cal. 68, 175 Pac. 466 (1918).
19 Pacific Tel. & Tel. Co. v. Eshleman, 166 Cal. 640, 137 Pac. 1119 (1913).
20 Munn v. Illinois, 94 U.S. 113 (1877); Del Mar Water Co. v. Eshleman, 167 Cal. 666, 680, 140 Pac. 591, 597 (1914).
23 Morel v. Railroad Comm'n, 11 Cal. 2d 488, 81 P.2d 144 (1938); City of Pasadena v. Railroad Comm'n, 183 Cal. 526, 192 Pac. 25 (1920); Pacific Tel. & Tel. Co. v. Eshleman, 166 Cal. 640, 137 Pac. 1119 (1913).
24 Ibid.
25 94 U.S. 113 (1877).
A man, for his own private advantage, may, in a port or town, set up a wharf or crane, and may take what rates he and his customers can agree for he doth no more than is lawful for any man to do, viz., make the most of his own. If the King or subject have a public wharf, unto which all persons who come to that port must come because they are the wharf's only licensed by the Queen or because there are no other wharfs only licensed by the Queen or because there is no other wharf in the port in that case there cannot be taken arbitrary or excessive duties neither can they be enhanced to an immoderate rate; but the duties must be reasonable and moderate. For now the wharf and crane and other conveniences are affected with a public interest, and they cease to be juris privati only.

The problem is: At what point may the state regulate in order to secure reasonably efficient service at fair rates? While it is desirable that services offered by these monopolies be rendered to the public, the public must be protected against the tendency of monopolies to establish arbitrary and capricious rates for their services and to discriminate between customers.

The Dedication Cases

In making this determination the California courts have indicated a preoccupation with the element of dedication to public use. It would appear that the element of a genuine public need of protection against monopolistic abuse has often been assumed without discussion in the opinions. Possibly this is because of the obvious public service character of the enterprises.

Because of the emphasis laid by the courts upon the attribute of a dedication of property to the public at large this doctrine of dedication has been gradually broadened. The first step in this direction was the imposition of public regulation over enterprises which offered their commodities or services to the public generally, rather than to a particular, limited class of contract customers. Thus, one must have dedicated his property or services to all comers, indiscriminately and without limitation. The theory underlying this test is that dedication of the business vests in each member of the public who desires the use of such commodities or services a right that they shall be continued under reasonable rates.

The doctrine of dedication to public use was next expanded by the holding that a service rendered to the public generally need not mean that it must be used by all who desire to use it, but only be available for use.
is no giant step from this proposition to the realization that it is sufficient that the commodity or service be offered only to a definable portion of the public on an equal, non-discriminatory and unrestricted basis.\footnote{31}{Pinney v. Los Angeles Gas Corp., 168 Cal. 12, 141 Pac. 620 (1915).}

Having gone that far, the courts sought to limit the doctrine of dedication. It was apparent that the butcher, the baker, and others in the common callings could not reasonably be subjected to public control as a public utility.\footnote{32}{See note 18 supra.} Therefore additional tests were needed before an enterprise might be designated as a public utility to prevent the requirement of reasonableness in the exercise of the police power from being severely stretched.

"Public Interest" Test

The United States Supreme Court decided in the case of \textit{Charles Wolff Packing Co. v. Court of Industrial Relations}\footnote{33}{262 U.S. 522 (1922).} that the test should be based upon the nature of the business, its relation to the public, and the abuses reasonably to be feared if the business remains unregulated.

The Court's use of the phrase "public interest" harks back to Lord Hale's description of natural monopolies as being those businesses "affected with a public interest." Further, the test of possible abuse to which the public may be submitted is reminiscent of Hale's example of natural monopolies.\footnote{34}{94 U.S. at 127.} In a general discussion of the problem the Court noted that two classes of businesses are utilities per se. These are enterprises given a franchise or other special power from the state and those which have been historically denominated as public utilities, such as grist mills, cabs and common carriers. All other businesses, the Court held, must meet certain criteria before being declared subject to state regulation as public utilities. The commodity sold or service rendered must be unequivocally dedicated to public use without distinction or discrimination. Further, the business must be "affected with a public interest"—that is, it must be in the public interest to regulate it so as to prevent the infliction of wrongs upon the public.\footnote{35}{262 U.S. at 539–40.}

\textbf{Voluntary Submission to Control as a Public Utility}

As has been noted, the California Supreme Court has placed increasing emphasis upon devotion to public use as a criterion of the Commission's jurisdiction over public service enterprises. How is the Commission's jurisdiction affected by voluntary submission to its control? This question has been presented to the court several times in the past. The answer may be obtained from a comparison of the facts underlying the decisions in a sampling of the cases.
In *Van Hoosear v. Railroad Commission*, a farmer undertook to supply water from his small well to four or five neighbors. He made oral agreements with each of them but never obtained a certificate of convenience and necessity from the Commission. Later, he voluntarily applied to the Commission for permission to discontinue his water-supply service. In reviewing a decision by the Commission adverse to the farmer, the court upheld the Commission's assertion and continuance of jurisdiction over this service on the ground that it had no power to review the facts as found by the Commission. Since the farmer had voluntarily surrendered to the Commission jurisdiction, there was no constitutional question raised and the court could not inquire further. However, the court noted that its decision was made reluctantly as the farmer's plant hardly seemed to constitute a business to which the obligations and responsibilities of a public utility would seem appropriate.

**Multipartite Agreements**

The court went even farther in *Franscioni v. Soledad* when it announced:

We see no substantial reason why a corporation owning a water supply and engaged in distributing it . . . upon a use which is private, not public or general, may not, with the consent of the owners, change the use from private to public so as to make the rates subject to public regulation.

In the *Franscioni* case the Soledad Land and Water Company had acquired a water irrigation business which it operated in accordance with private contract arrangements with its consumers. Pursuant to the provisions of a special statute relating only to water companies, the corporation joined with twenty-five taxpayers and inhabitants of the county in petitioning the County Board of Supervisors to set its rates. The Board did so. Later the company found this enterprise unprofitable and sought to have its status as a public utility terminated. It was held that it could not do so without the consent of the users.

In *Palermo Land and Water Co. v. Railroad Comm'n* the water company had provided in contracts with its consumers that the rates for service should be those established by law. Later the company voluntarily requested the Commission to establish its rates. It was held that submission to the control of the Commission, coupled with the understanding between the parties that the rates should be those established by law, clearly served as a dedication of its services to a public use.

36 184 Cal. 553, 194 Pac. 1003 (1920).
37 Id. at 555, 194 Pac. at 1005.
38 Ibid.
40 Cal. Stat. ch. CXV, §§ 1, 2, at p. 95 (1885).
**Ex Parte Action**

In *Allen v. Railroad Comm'n* the petitioner had contracted to furnish water for irrigation purposes to various lots of land that it had sold. It had also embarked upon the business of furnishing water to a small village in which respect it was clearly a public utility subject to the Commission's jurisdiction. However, finding its contracts with the landowners unprofitable, it sought to have the Commission establish its rates with respect to its contract customers. The California Supreme Court held that the water company could not establish itself as a public utility merely by fixing the rates and charges for its services, declaring itself to be a public utility, and voluntarily offering to submit to the jurisdiction of the Commission.

With the exception of the *Van Hoosear* case, in which the court entertained much doubt, a comparison of the above cases would indicate that something more than a voluntary submission to the jurisdiction of the Commission as found in the *Allen* case is necessary before an enterprise may be declared a public utility. In *Palermo*, it was an agreement to abide by the rates fixed by law; in *Franscioni*, consent by the subscribers.

**The Commercial Communications Decision**

The question of the effect of voluntary filing upon Commission jurisdiction was recently brought before the California court in the case of *Commercial Communications v. PUC*. In 1948, the Pacific Telephone and Telegraph Company, a public utility telephone corporation, began leasing radio equipment on a lease-maintenance contract basis to private individuals and corporations. The radio equipment was to be used for two-way radiotelephone communication within each of the businesses for wholly private purposes. Before contracting with Pacific, each user was required to obtain an operator's license from the Federal Communications Commission. By the terms of the license, no licensee could tie in with Pacific's public mobile radiotelephone system, nor could any licensee communicate with any of the other nets so leased by Pacific. In April, 1956, Pacific voluntarily filed a tariff of rates with the California Public Utilities Commission (successor to the Railroad Commission) covering the services to the licensees which had hitherto been conducted on an individual contract basis. This move was resisted by several of the smaller competing organizations engaged in the business of leasing radio communication systems to private parties. These organizations challenged the Commission's power to accept such a tariff. Consequently an investigation and hearing was conducted by the Commission upon its own motion. Ultimately, the Commission found that the nature of the service offered by Pacific was that of a public utility. Pacific's voluntary filing of the tariff, the Commission held, was in effect a continuing offer by it to lease its equipment to all

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42 179 Cal. 68, 175 Pac. 466 (1918).
43 50 Cal. 2d........, 327 P.2d 515 (1958).
qualified customers, and so was a dedication of its services to a public use within the meaning of the constitutional and code provisions.\textsuperscript{44}

\textit{Radio Communication: A Telephone Business}

Upon the Commission's denial of a petition for rehearing, an application for a writ of review by the California Supreme Court was granted. The court upheld the Commission's jurisdiction in a four to three decision. In reaching this result, the majority relied principally upon the construction of Article XII, Section 23 of the California Constitution and applicable sections of the Public Utilities Code.

The constitutional provisions were made applicable to Pacific as \textit{lessor} of communications equipment by giving effect to the use of the disjunctive "or" therein:\textsuperscript{45}

\begin{quote}
... Every private corporation ... owning, operating, managing \textit{or} controlling any plant ... for the transmission of telephone ... messages ... is hereby declared to be a public utility.... (Emphasis added.)
\end{quote}

Pacific's ownership of \textit{radio} telephone systems leased to private parties was held to be within the jurisdiction of the Commission by a liberal interpretation of sections 216,\textsuperscript{46} 233\textsuperscript{47} and 234\textsuperscript{48} of the Public Utilities Code. The word "telephone," as used in these code sections, was held to be capable of a general definition as:\textsuperscript{49} "An instrument for producing sounds, especially articulate speech." It was held that this definition was applicable to a radiotelephone system as well as one making use of land wires. In this connection the court emphasized the wording of section 233 of the code which provides, in defining a telephone line, that the communication afforded thereby \textit{need not} be with the use of transmission wires.\textsuperscript{50} However, the court recognized that in order to constitute communication by telephone within the meaning of the code, the communication must necessarily be two way.\textsuperscript{51}

\textsuperscript{45} CAL. CONST. art. XII, § 23.
\textsuperscript{46} CAL. PUB. UTI. CODE § 216:
\begin{quote}
"(a) Public utility includes every ... telephone corporation ... where the service is performed for or the commodity delivered to the public or any portion thereof. 
"(b) Whenever any ... telephone corporation ... performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such ... telephone corporation ... is a public utility subject to the jurisdiction, control and regulation of the commission and the provisions of this part."
\end{quote}
\textsuperscript{47} CAL. PUB. UTI. CODE § 233:
\begin{quote}
"Telephone line ... includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires."
\end{quote}
\textsuperscript{48} CAL. PUB. UTI. CODE § 234, defining a telephone corporation as every party owning, controlling, operating or managing any telephone line for compensation.
\textsuperscript{49} WEBSTER, NEW INTERNATIONAL DICTIONARY (2d ed., 1949).
\textsuperscript{50} 50 Cal. 2d at 327 P.2d at 516 (1958).
\textsuperscript{51} Television Transmission Inc. v. PUC, 47 Cal. 2d 89, 301 P.2d 862 (1956).
No fault can be found with this construction of the code. Among other things, the court took judicial notice of commonly used words in accordance with their dictionary meaning. Although words used in the code sections are to be interpreted in accordance with their meaning at the time of enactment, the meaning of generic terms can be extended to include objects later invented but within the class defined by the word.

**Applicability of the Public Interest Test**

Is it enough, then, to say that because a dedication to a public use is found and because the terms of the California Constitution and the code may be logically extended to cover the business, that it is per se a public utility? In answering this question it would be well to remember the criteria announced in the *Wolff* case. What is the nature of the business, the feature which touches the public, and what are the abuses reasonably to be feared?

The California court, in considering these problems, noted that without control by the government, radio-telephony might well "clutter" frequency channels. Factually, there is little basis for this conjecture because the licensing provisions of the Federal Communications Act of 1934 empower the Federal Communications Commission to prevent this dilemma by distributing radio frequencies to licensees.

The federal government has abstained from rate regulation in this field, so the states may, in a proper case, regulate rates charged for the transmission of radio communications. But what abuses are likely to be encouraged if the rates and charges for the leasing of inert radio equipment to industries for wholly private purposes are unregulated?

The court implied that the "telephone business" does tend to become a monopoly. This is true of public utility telephone service conducted over land lines and requiring the use of numerous switchboards, interchanges and relay stations. Is it true, however, of wholly private communications systems, not requiring connections to public telephone systems? It has been held that telephone systems utilizing land lines, but operated for the sole convenience of the members of mutual associations of farmers, are not public utilities. If this is so, why does not the same principle hold true for radio communications systems used entirely for private business purposes? It is difficult to see how a business, in which there are at present

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55 See note 33 supra and text following.
56 50 Cal. 2d at ....... , 327 P.2d at 518.
58 Pulitzer Publishing Co. v. FCC, 94 F.2d 249 (D.C. Cir. 1937).
59 50 Cal. 2d at ....... , 327 P.2d at 518; California Fireproof Storage Co. v. Brundage, 198 Cal. 185, 248 Pac. 669 (1926).
several healthy competitors, can be considered such a potential monopoly as to require public regulation. Competition is possible in this field because the nature of private radio communications systems does not require coordinated action among the several competitors to achieve efficient operation, as would be the case if there were many competing public utility telephone companies.

Incidental Public Interest

It was noted by the court that many of the customers requiring radio communication facilities were governmental agencies, such as fire and police departments, and other public utility corporations, such as trucking firms and water and irrigation companies. The Minnesota Supreme Court held on this point that telephone facilities offered by the telephone company to city police and fire departments, not being a part of the public telephone system, were not subject to public regulation. The United States Supreme Court (in exercise of its jurisdiction as court of last resort for the District of Columbia) ruled that the leasing of telephone equipment to be used for inter-office communication in private and government buildings was not a public utility service. And where a private telephone company had a franchise from the city to maintain its telephone lines and wires in the city streets, it was not held to be a public utility for this reason. As was stated by Justice Schauer in the dissenting opinion in the Commercial Communications case:

It was never contemplated that the definition of public service corporations as defined by our constitution be so elastic as to fan out and include businesses in which the public might be incidentally interested . . . .

The effect of Pacific's filing is readily distinguishable from the three voluntary submission cases in which the court upheld the Commission's jurisdiction. In none of those cases were business competitors involved. The customers there were completely dependent upon the irrigation companies for their water supply. Because this element of a monopolistic threat to the public has been assumed without discussion in the opinions, these cases are misleading as to the effect of voluntary filing.

Moreover, in the voluntary submission cases, each petitioner was trying to evade the control of the Commission. On the other hand, in the Commercial Communications case, Pacific was seeking Commission jurisdiction. In this respect, it is more like the Allen case where it was held that the Commission had no jurisdiction when the water company had done no more than to file its rates with the Commission. In any event,

61 50 Cal. 2d at ___, 327 P.2d at 520.
65 50 Cal. 2d at ___, 327 P.2d at 526.
66 See note 42 supra and text following.
in the voluntary submission cases considered above, more was found in the facts as a basis for jurisdiction than mere voluntary submission to commission regulation. In the opinion of this writer, something more must be found.

**Lack of Constitutional Rights**

It is important to note that certain provisions of the California Public Utilities Code placed the petitioners at a procedural disadvantage. Even though before the court, in their capacity as competitors of the telephone company the petitioners were not in a position to assert a lack of due process of law by reason of the Commission's proceedings nor a deprivation of property without due process, nor a denial of the equal protection of the laws. The Commission was asserting its jurisdiction over the telephone company, not over its competitors. No one, it has been held, has a legally enforceable right at common law to conduct his business free from the fair competition of others. Since the petitioners were unable to raise constitutional questions before the California Supreme Court, it must be as to them the court of last resort.

Their sole argument properly before the court went to the jurisdiction of the Commission. The Commission is empowered by law to entertain complaints from any and all parties who may have any pecuniary interest in its proceedings. This authority would seem to include business competitors. Once a party is before the Commission, he has standing before the California Supreme Court in any hearing upon review of the Commission's proceedings. But in order to challenge the Commission's authority as being a violation of the due process clause, a petitioner must show the Commission has taken action directly against him. And this, of course, a mere business competitor is powerless to do.

It is highly conjectural what the court would have done had the petitioners been protesting the assertion of Commission jurisdiction over their own businesses. It is felt that, in view of the criteria established in the *Wolff* case, a decision affirming the jurisdiction of the Commission, if reviewable by the United States Supreme Court, could not stand.

**Effect of the Commercial Communications Decision**

The practical effect of the *Commercial Communications* decision is profound. A revealing insight into the operations of the Commission is furnished in the case of *Samuelson v. PUC*. The point in issue was whether the Commission had exceeded its jurisdiction in declaring a firm, serving thirty-two customers on a private contract basis, to be a common carrier. The Commission stated emphatically that its distinction between

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private and public carriers was founded upon the number of persons served by the proposed utility. Thus, if a business within the constitutional designation of "utilities" did not restrict and limit its business operations to relatively few customers, it might more easily be designated a utility by the Commission. How many customers might exceed "relatively few" the Commission did not say.

In the Samuelson case the court expressly overruled the Commission's test of "substantial restrictiveness" as a basis for finding a dedication or holding out of service to the public. However this may be, it would seem that if a potential utility were carrying on extensive operations and serving a large number of customers, this might well be a decisive and influential makeweight upon the thinking of the Commission. It is worthwhile at this point to reiterate the finality and conclusiveness of the Commission's findings of fact, and to note that finding of a dedication to public use may be a finding of fact.

**Conclusion**

What, then, is the net effect of this decision? Pacific, protected by the state against destructive competition, has become a giant in the field of telephone communication. Because of its size and the wide scope of its facilities, it is now in a position to preempt the field of lease-maintenance of radio equipment to individual users for private purposes. Pacific's competitors, on the other hand, would do well to restrict their operations in order to avoid the liability of impliedly dedicating their property and services to the public use and so becoming public utility telephone companies.

Because Pacific is operating under regulated rates, the private competitors are to some degree forced to match their rates with Pacific's. Because of Pacific's size, this could preclude profitable operation by them. While true the Commission would probably prevent this, it is also true that the private entrepreneurs in this field will be substantially influenced in their dealings and in the development of their businesses by the future decisions of the Commission.

It may well be that the Commercial Communications case has created conditions conducive to the growth of an undesirable monopoly in this field. If this is the practical result, the state is in the anomalous position of creating the very thing which public utility regulation was originally established to control.

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74 See Sale v. Railroad Comm'n, 15 Cal. 2d 612, 104 P.2d 38 (1940) (Comm'n was created to protect the people of the state from the consequences of destructive competition and monopoly in the public service industries). Accord: California Motor Transp. v. Railroad Comm'n, 30 Cal. 2d 519, 159 P.2d 931 (1944).