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"O wad some power the gifte gi'e us
To see oursel's as ithers see us."

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Result of Investigation by the Division of Franchises of the Application of the New York Cahill Telharmonic Company for a Franchise to Lay Wires in the Streets of New York for the Purpose of Distributing Music Electrically, with Suggestions as to the Proposed Form of Contract.

Board of Estimate and Apportionment,
Division of Franchises, Room 801, No. 277 Broadway,
May 31, 1907.

Mr. Nelson P. Lewis, Chief Engineer:

Sir: At the meeting of the Board of Estimate and Apportionment, held February 1, 1907, there was presented a communication from the New York Electric Music Co. stating that it was the intention of that company to apply for a franchise for the right to lay and string wires in the streets of the City of New York for the purpose of distributing music electrically. It was stated that the company had established a plant at 39th St. and Broadway, where such music was generated and from which it is proposed to distribute the same to subscribers by means of the aforesaid wires.

The communication requested that the matter be referred to an engineer for an examination, for the purpose of preparing a report and suggesting conditions for the franchise.

The matter was referred to the Bureau of Franchises, and since that time an examination has been made of the plant of the company and information obtained from representatives relative to the art of distributing music electrically for the purpose of presenting the facts to the Board, and proposing a form of contract for the franchise.

Under date of May 10, 1907, the formal application was made to the Board for the franchise by the New York Cahill Telharmonic Co. This company filed its certificate of incorporation in the office of the Secretary of State on May 8, 1907. * * *

The franchise applied for is for the purpose of distributing to all parts of the city music generated by a patented apparatus known as the "telharmonium" * * * The principles involved in the construction of the apparatus and the production of the music are purely scientific. The equipment of the company will consist of a distributing plant and a central station. The distributing plant, of course, will consist of cables or wires in the streets, either laid in conduits or strung on poles with house or building connections. This is the part for which the authority is asked in the city of New York. The central station contains the apparatus used to generate and control the music. This consists of, first, numerous alternating-current dynamos, so constructed that each produces a current of different frequency of pulsation or current waves; and second, keyboards sim-

ilar to that of a piano, upon which the musicians play in order to produce any class of music within the range of the apparatus. The keys are really electric switches, each controlling an electric circuit of one or more dynamos. The frequency of pulsation of the current produced by each dynamo is identical with the frequency of sound waves required to produce a certain musical tone. These electrical waves are changed into sound waves by means of the ordinary telephone receiver. Thus, when the player closes the electric circuit by operating the keys upon the keyboard, he completes an electric circuit which carries the electric waves produced by the dynamos to the point of music outlet, such as a dwelling, hotel, restaurant, music hall, etc. At the point of music outlet, a telephone receiver is attached; here the pulsation of the current is changed by means of the dia-

phragm in the telephone receiver into sound waves having the same frequency as that of the current in the wire. The music thus produced may be made to imitate closely other musical instruments, such as piano, flute, violin, etc. Representatives of the company state that when a more complete equipment is installed it will be quite possible to imitate a full orchestra.

The present plant at Broadway and 39th St. consists of 145 dynamos and one keyboard. The president of the company states that other keyboards are ordered, and it is expected that the same will be put in place within a few weeks. Ten or twelve places outside of the central station are now connected by means of the wires leased from the New York Telephone Co., but the company states there are a number of inconveniences involved in this arrangement. It is proposed by the company, should it get the franchise, to lay its own wires in the streets, which may be connected to subscribers' houses or places of business. Each subscriber will be provided with one or more outlets which may be governed by him as to the kind of music and volume of the same. He will be furnished with a switch by which he can regulate the music either soft or loud. Another switch will govern the class of music, that is, he may, by turning the switch in one direction, get the effect produced by the piano, or by turning the switch in another direction, he may get the effect produced by an orchestra, etc.

Peculiarities of the Franchise.

The application in question is unlike any which has heretofore come before the board. It is similar to a telephone application, in that the company asks for the privilege to lay or string wires in the streets of the city, but the commodity to be furnished is entirely dif-

ferent from that of a telephone company. The telephone has become a necessity in transacting business, and has, to many subscribers, an actual money value which can be approximately calculated by them. However, it is hard to imagine at the present time how the use of the telharmonic system can become a general necessity, or of a commercial value to the majority of its subscribers. It is to the public a method of amusement, and for that reason the income of the enterprise will depend almost entirely upon the approval by the public of that class of entertainment rather than upon any degree of necessity for the product caused by having a commercial value, as, for instance, telephones, railways, electric light, gas, etc.

I would suggest, therefore, in order that the franchise shall terminate unless used to some extent within a fixed period, that a clause be inserted requiring 4,000 music outlets installed within a period of three years from the time the franchise is signed by the Mayor. * * *

TIME REQUIRED TO INSTALL PLANT.—The value of the system to any subscriber will not be increased as the number of subscribers increases, as in the case of the telephone. And again, unlike the telephone, the system is not necessary for the welfare of the public, either generally or locally. It seems, therefore, unnecessary to impose a condition requiring a fixed amount of installation within a given time, in order to furnish necessary facilities for the public. However, I believe that any company receiving a franchise from the city authorities should be required to build a plant under its franchise within a fixed period, sufficient in size to show the good faith of the company, otherwise such rights should cease. Franchises without such conditions have in the past been held without use for many years, and have at the end of such period become very valuable and in some instances they have been used for entirely different purposes from that for which they were originally granted, although the city did not receive a revenue therefrom in proportion to the value of the right given. Naturally this company could not complete its entire construction at one time, but would increase its facilities under the franchise from time to time, as the number of subscribers increased. I would suggest, therefore, in

order that the franchise shall terminate unless used to some extent within a fixed period, that a clause be inserted requiring 4,000 music outlets installed within a period of three years from the time the franchise is signed by the Mayor. * * *

SUBWAYS.—As there are no public subways except in the Borough of Manhattan and part of the Borough of The Bronx, the granting of a franchise to this company, if it were to cover the entire city, would really mean the granting of two franchises: one for the right to conduct its business in the streets, which requires the use of the public subways, and the other the right to construct subways and erect poles to carry the necessary wires for such business. * * *

In view of the fact that subways must be constructed in other boroughs, I believe it better to limit this franchise at present, should the board grant the same, to the Boroughs of Manhattan and The Bronx, and the portion of Brooklyn known as Coney Island, for I do not consider that the right should be given to any more companies to tear up the pavements of the city, and certainly not in this case, where the commodity to be furnished is not a necessity. * * *

FREE SERVICE.—It is customary to recommend to the board that applications for franchises should, by the terms of the franchise, be required to furnish a certain amount of free service to the city. The service furnished by this company is not of such a character that money value to the city may be derived therefrom. However, music in free wards of hospitals would no doubt be of benefit to convalescent patients under the city's care. I would suggest that the franchise provide for the free installation of the apparatus and free service in such wards in Bellevue and Allied Hospitals in the city as may be required by the board. * * *

Should the Board of Education deem that such service as is to be furnished by the company would be of advantage in the assembly halls of the public schools, for

entertainment or instruction, I believe the city should be furnished with service at one-third the rates charged to the general consumer, and a clause has been inserted that the Board of Estimate and Apportionment may require the company, upon the application of the Board of Education, to install and supply service at such rates. In order, however, that the company may not be required to install its apparatus in all public schools at one time, and for that reason be obliged to extend its wires for great distances without receiving adequate revenue therefrom, I would suggest that the company be not required to install apparatus in a school where it is necessary to extend the wires a distance greater than 2,500 ft., and that the company be not required to install apparatus in more than ten schools per annum, where extension of wires is required. Where wires are in the streets adjacent to the block in which schools are situated, the company should be required to install their apparatus, and in addition to the ten schools per annum. * * *

Compensation.

As hereinbefore stated, the company will probably not require more than six or eight ducts in any street. Of course, there are many streets in which no wires will ever be laid, and there are sections in the city for which no wires will be needed for many years.

As to the probable income of the company, the only data obtainable is that furnished by the company. Under date of March 1, 1907, Mr. Crosby [President of the applying company] addressed a letter to me in which he gave figures showing the anticipated outlay to install the plant and the profits therefrom. The figures given are on a basis of 3,000 outlets installed. * * * The profits calculated would amount to a little less than 10% on the investment, after deducting all expenses of operation and a large item for depreciation.

It is difficult to propose adequate compensation for a privilege to a company to engage in a business which has not yet been tried out. * * * In view of the uncertainty of the success of the company and the apparent large outlay for installation and operation which is required, whether few or many subscribers are obtained, I believe a sliding scale of percentages of gross receipts to be the most equitable manner by which to fix the compensation.

It must be remembered, however, in fixing compensation for this service, that the company is not supplying a necessity, and its use of the streets is for the amusement and entertainment of the public, with profit to its stockholders. In other words, it is a public service corporation only incidentally.

It was suggested to the president of the company that \$25,000 was a fair amount to pay as an initial sum. Mr. Crosby practically agreed that this amount was fair, but requested that the company be allowed to pay one-half (\$12,500) within thirty days after the signing of the contract, and that a year be given to pay the remainder. There seems to be no objection to this arrangement.

I would suggest, therefore, the following amounts be required as compensation for the franchise:

\$12,500 within thirty (30) days after the signing of the contract.

\$12,500 within thirteen (13) months after the signing of the contract.

During the first five (5) years, 1% of the gross receipts, to be not less than \$5,000 per annum.

During the second five years, 2% of the gross receipts, to be not less than \$10,000 per annum.

During the third five years, 3% of the gross receipts, to be not less than \$20,000 per annum.

During the fourth five years, 4% of the gross receipts, to be not less than \$35,000 per annum; and

During the remaining five years, 5% of the gross receipts, to be not less than \$50,000 per annum.

Other Conditions.

The proposed contract is drawn for a 25-year term with a privilege of renewal for a further term of 25 years.

The other conditions which I have proposed are those which have already been discussed in reports upon applications for franchises which require the laying of wires in the streets. The proposed contract provides for the manner in which subways shall be constructed, the replacement of the pavement and the guarantee of the same.

The terms and conditions have been agreed to by Mr. Crosby, with the exception of the assignment clause, in which he asks a modification. As this clause was originally drawn by the Law Department, and the proposed form of contract will have to be submitted to the Corporation Counsel before being adopted by the board, I would suggest that any alteration in this clause be left to the Corporation Counsel.

Following I have given a summary of the conditions which show at a glance the conditions which have been suggested and which may be useful as ready reference for members of the board.

The board has already fixed Friday, June 7, 1907, as the date for the preliminary public hearing, and directed that the same be advertised as provided by law. If the board on that date is inclined to grant the franchise upon the terms submitted herewith in the proposed form of contract, I would suggest that the proposed form of contract be submitted to the Corporation Counsel for

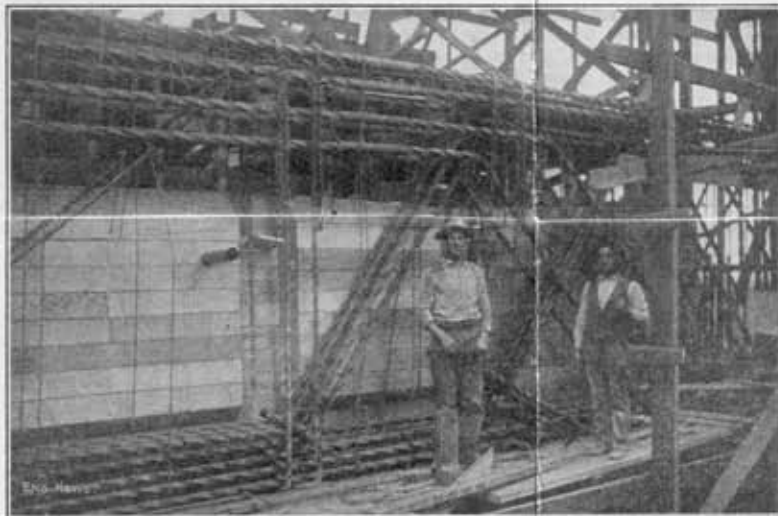


FIG. 6. VIEW OF CONSTRUCTION OF ROOF-BEAMS, SHOWING SIZE AND LAYOUT OF REINFORCEMENT, MAJESTIC THEATER, LOS ANGELES, CAL.

ferent from that of a telephone company. The telephone has become a necessity in transacting business, and has, to many subscribers, an actual money value which can be approximately calculated by them. However, it is hard to imagine at the present time how the use of the telharmonic system can become a general necessity, or of a commercial value to the majority of its subscribers. It is to the public a method of amusement, and for that reason the income of the enterprise will depend almost entirely upon the approval by the public of that class of entertainment rather than upon any degree of necessity for the product caused by having a commercial value, as, for instance, telephones, railways, electric light, gas, etc.

Conditions for the Proposed Franchise.

By reason of the peculiar nature of the application, the question naturally arises as to what conditions should be imposed in the franchise to properly protect the interests of the city, and at the same time not impose unnecessary burdensome conditions upon the company. Naturally, compensation should be required for the use of the streets somewhat in proportion to the income of the company, such as a percentage of the gross receipts. The security fund should be required to insure the carrying out of the contract by the company. The conditions governing construction and use of the subways should be imposed, but how far should the city go in imposing conditions which will govern rates to charge for the rapidity of construction and efficiency of service, etc., of a company operating a purely amusement enterprise and requiring the use of the streets under a franchise for such operation?

RATES TO BE CHARGED BY COMPANY.—Representatives of the company state that they have absolutely no idea as to what would be a fair rate to charge subscribers for this music. This is due, in a measure, to the fact that the enterprise is entirely new, there being no similar plant in existence furnishing music to a large number of subscribers from which to obtain data as to

his approval as to form, and to incorporate therein such matter as he may deem necessary to fully protect the interests of the city.

Respectfully, Harry P. Nichols,
Engineer-in-Charge.

Synopsis of Provisions of Contract.

[Omitted here. Outlines provisions by sections.]

New York Cahill Telharmonic Co.

Proposed Form of Contract.

This contract, made this _____ day of _____, 1907, by and between the City of New York, party of the first part, by the Mayor of said city, acting for and in the name of said city, under and in pursuance of the authority of the Board of Estimate and Apportionment of said city (hereinafter called the board), and the New York Cahill Telharmonic Co., a domestic corporation of the State of New York (hereinafter called the company), party of the second part; witnesseth:

In consideration of the mutual covenants and agreements herein contained, the parties hereto do covenant and agree as follows:

Sec. 1. The city of New York hereby grants to the company, subject to the conditions and provisions hereinafter set forth, the right and privilege to lay, construct, maintain and operate suitable wires or other conductors in conduits under the streets, avenues and highways within the territory comprised in the Borough of Manhattan and that part of the Borough of The Bronx west of the Bronx River, and also to lay, erect, construct, maintain and operate wires or other conductors with the necessary poles and appliances in that part of the Borough of Brooklyn known as Coney Island, and lying south of Gravesend Bay, Coney Island Creek and Sheepshead Bay, and the further right to construct, maintain and operate one convenient line by either subway or pole line for the sole purpose of connecting the generating plant in the Borough of Manhattan with the aforesaid Coney Island district. The grant is for the sole object and purpose of constructing, maintaining and operating a telharmonic system within the said territory; that is, a system for the generation and distribution of music electrically.

Sec. 2. The grant of this privilege is subject to the following conditions:

First—The said right to lay [etc., etc., is granted for] 25 years from the date when this contract is signed by the Mayor, with the privilege of renewal of said contract for a further period of 25 years upon a fair revaluation of said right and privilege.

If the company shall determine to exercise its privilege of renewal it shall make application to the board or any authority which shall be authorized by law to act for the city in place of the board. Such application shall be made at any time not earlier than two years and not later than one year before the expiration of the original term of this contract. The determination of the revaluation shall be sufficient if agreed to in writing by the company and the board, but in no case shall the annual rate of compensation to the city be fixed at a less amount than that sum required to be paid during the year prior to the termination of the original term of this contract. If the company and the board shall not reach such agreement on or before the day one year before the expiration of the original term of this contract, then the annual rate of compensation for such succeeding 25 years shall be reasonable, and either the city (by the board) or the company shall be bound, upon request of the other, to enter into a written agreement with each other, fixing the rate of such compensation at such amount as shall be reasonable, but in no case shall the annual rate be fixed be less than the sum required to be paid for the last year prior to the termination of the original term of this contract, and if the parties shall not forthwith agree upon what is reasonable, then the parties shall enter into a written agreement, fixing such annual rate at such amount as shall be determined by three disinterested freeholders, selected in the following manner:

One disinterested freeholder shall be chosen by the board; one disinterested freeholder shall be chosen by the company. These two shall choose a third disinterested freeholder; and the three so chosen shall act as appraisers and shall make the revaluation aforesaid. Such appraisers shall be chosen at least six months prior to the expiration of the original contract, and their report shall be filed with the Board within three months after they are chosen. They shall act as appraisers and not as arbitrators. They base their judgment upon their own experience and upon such information as they may obtain by inquiries and investigations without the presence of either party. They shall have the right to examine the books of the company and its officers under oath. The valuation so ascertained, fixed and determined shall be conclusive upon both parties, but no annual sum shall in any event be less than the sum required to be paid for the last year prior to the termination of original term of this contract. If, in any case, the annual rate shall not be fixed prior to the termination of the original term of this contract, then the company shall pay the annual rate theretofore prevailing until the new rate shall be determined, and shall then make up to

the city the amount of any excess of the annual rate then determined over the previous annual rate. The compensation and expenses of the said appraisers shall be borne jointly by the city and the company, each paying one-half thereof.

Second—Upon the termination of this original contract or if the same be renewed then at the termination of the said renewal term, or upon the termination of the rights hereby granted for any other cause, or upon the dissolution of the company before such termination, the plant and property of the company used for the generation and distribution of music electrically within the streets and highways of the city shall become the property of the city of New York without cost, and the same may be used by the city for any purpose whatsoever. If, however, at the termination of this grant, as above, the city, by the board, shall so order by resolution, the company shall on thirty (30) days' notice from the board remove any and all of its wires, electrical conductors, pipes, conduits, subways and equipment, or any portion thereof, from any or all of the streets and public places within the limits of the city of New York.

Third—The company shall pay to the city for the said privilege, the following sums of money [as recommended in the main report, already given, with safeguards to prevent default on various accounts peculiar to New York statutes]:

Fifth—The right and privileges hereby granted shall not be assigned, either in whole or in part, or leased or sublet in any manner, either by the act of the company, its successors or assigns, or by operation of law, whether under the provisions of the statute relating to the consolidation or merger of corporations or otherwise, to any person or corporation whatsoever, nor shall the company, its successors or assigns, in any manner consolidate or pool its stock, business or interests or enter into any agreement for a division of business interest or territory, or to prevent competition or a reduction in rates, or acquire, own or make use of or in any manner exercise control over any of the rights, privileges, franchises or stock, or use, own, control or operate any of the property, works, plants or appliances of any such person or corporation without the consent of the city of New York, acting by the board, evidenced by an instrument under seal, anything herein contained to the contrary thereof in any wise notwithstanding, and the granting, giving or waiving of any one or more of such consents shall not render unnecessary any subsequent consent or consents.

Sixth—The board may by resolution direct the company to install free of charge music outlets [for free wards of certain hospitals and also music outlets at one-third rates in public schools, as and under conditions recommended in main report].

Seventh—The company shall [comply with city ordinances] now in force or which may be adopted, affecting telharmonic companies and companies operating electrical conductors in the city of New York.

Eighth—In the Boroughs of Manhattan and The Bronx all cables and wires of the company shall be placed in ducts, conduits or subways (referred to in this paragraph as subways). Such subways shall be leased from the company or companies having control thereof under the provisions of law, or from the city of New York, should it succeed to the rights of such company or companies, [or should the city build subways.] All, or such portions as the board may direct, of the wires and cables of the line leading from the Borough of Manhattan to Coney Island, in the Borough of Brooklyn, and in Coney Island shall be placed in subways. * * * If the company at any time during the term of this contract or its renewal shall construct subways for electrical conductors in any part of the Borough of Brooklyn in which the right is hereby given to place such conductors, it agrees to sell all or any part of them to the city of New York, upon the written demand of the board and upon payment by the city to the company a sum equal to their original cost, less depreciation up to the time of such purchase. The company shall file with the Board on the first day of November of each year a statement, in such detail as may be prescribed by the board, of the moneys actually spent for the construction of such subways. The company shall at all times keep accurate books of account of the money so spent, and authorized representatives of the board shall at any time have access to such books for the purpose of ascertaining the correctness of the company's statement.

If the company shall construct subways of its own in any part of the Borough of Brooklyn, for which authority is hereby given, it shall provide free of charge two ducts, at least 3 ins. in diameter, in every subway for the exclusive use of the city of New York. Such subway, with the exception of the two for the exclusive use of the city, shall be used only by the company, and solely for the purpose of carrying such wires or conductors as are necessary for the operation of its telharmonic system hereby authorized by the city of New York.

Before the construction of such subways, or of any overhead lines, the company shall obtain permits to do the work from the President of the Borough in which such work is to be done and the Commissioner of Water

Supply, Gas and Electricity. The company shall perform all the duties which may be imposed upon the company by these officials as conditions upon which such permits are given, provided that such conditions are not inconsistent with the provisions of this contract. The company shall submit to these officials working plans which shall include and show in detail the method of construction of such subways and overhead lines, and the mode of protection and changes in all subsurface structures required by such construction.

The company shall bear the expense of keeping in repair for one year after it has been replaced all pavement which may at any time be removed by said company, either for the purpose of construction or repairing such subways or their appurtenances.

The company shall bear the expense of inspection of all work and construction or removal of such subways as herein provided and may be required by the President of the Borough. The company shall pay the entire cost of the protection and changes of all surface and subsurface structures which may in any way be disturbed by such construction. The privilege of constructing such subways and overhead lines shall be subject to whatever right, title or interest the owners of abutting property or others may have in and upon the streets, avenues and highways in which such subways or overhead lines are constructed.

Ninth—The company shall commence construction within six months from the date of the signing of this contract by the Mayor, and within three years thereafter shall have in operation at least 4,000 music outlets, otherwise this grant shall cease and determine.

Tenth—The company shall file with the Board, on the first day of November in each year, a map, plan or diagram upon which shall be plainly marked and designated the streets and public places in which are then laid and also those proposed to be laid, during the succeeding year, the several conduits and ducts necessary for the cables and wires used and to be used by the company, together with a statement showing the number of ducts in each street and wires in each duct occupied.

Eleventh—It is a condition of this contract that the company shall bear the entire expense of all work undertaken by reason of this grant.

Twelfth—During the term of this contract or its renewal the board shall have absolute power to regulate all rates or charges by the company to consumers, provided that such rates shall be reasonable and fair.

Thirteenth—The company shall not require nor receive from its subscribers any deposit or advance payment in excess of what is reasonably necessary to insure payment of current bills, and on such amounts so paid the company shall pay interest at the statutory rate whenever such money is held for more than one month. Unpaid bills, unless due from its owner, shall never be charged against property, and no person not himself in arrears shall be denied service because any previous occupant of the same premises is in arrears to the company for service.

Fourteenth—The wires of the company shall be employed for no other purposes than those explicitly set forth herein, except by consent of the Board, and the company binds itself not to lay, use, lease or operate wires for illegal purposes or to illegal places.

Fifteenth—The company shall assume all liability to persons or property by reason of the construction or operation of the system authorized by this contract, and it is a condition of this contract that the city of New York shall assume no liability whatsoever to either persons or property on account of the same, and the company hereby agrees to repay to the city any damage which the city shall be compelled to pay by reason of any acts or defaults of the company.

Sixteenth—If the said company, its successors or assigns, shall fail to maintain its structures in good condition throughout the full term of its occupancy of such streets the Board may give written notice to the said company specifying any default on the part of said company, and requiring said company to remedy the same within a reasonable time, and upon the failure of the company to remedy said default within a reasonable time the said company shall for each day thereafter during which the default or defect remains pay to the city of New York a sum of \$100 as fixed or liquidated damages, or the said city, in case such structures which may affect the surface of the streets, shall not be put in good condition within a reasonable time after notice by the board aforesaid, shall have the right to make all needed repairs at the expense of the company, in which case the said company shall pay to the city the amount of the cost of such repairs, with legal interest thereon, all of which sums may be deducted from the fund hereinafter provided.

If, for a period of three consecutive months, the telharmonic system of the company shall not be operated, or if the same shall not be operated for a period of six months out of any consecutive twelve months, the board may declare the right and franchise and this contract terminated without further proceedings in law or in equity.

Seventeenth—The company shall at all times keep ac-

