

Decision No. 13123

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of E. H. COOKINGHAM operating under the name and style of "Laguna Beach Telephone Company" for a certificate of public convenience and necessity for the acquiring and construction of a telephone system and of telephone lines, rights-of-way, necessary lands and offices throughout the vicinity known as Laguna Beach and Arch Beach, California.

ORIGINAL

Application No. 9264

Scarborough, Forgy and Reinhaus, by S. M. Reinhaus,
for Applicant.

Agnes Yoch West, for The Yoch Company.

J. L. Adams, for The Pacific Telephone and Tele-
graph Company.

BY THE COMMISSION:

O P I N I O N

This is an application for a certificate of public convenience and necessity authorizing the acquisition and operation of a telephone system at Laguna Beach and vicinity in connection with a toll system operated by The Yoch Company between Laguna Beach and the town of Tustin in Orange County. In view of certain complications which have arisen, it is desirable that the facts pertaining to the application be briefly reviewed.

The toll line operated by The Yoch Company between Laguna Beach and Tustin was constructed primarily for the use of a hotel located at Laguna Beach and for the personal use of Mr. Yoch. In 1916 rates were filed with this Commission for toll

service over this line, and the property has ever since been operated as a public utility toll line. Sometime prior to July, 1923, Mr. Cookingham, the applicant herein, negotiated with The Yoch Company for the purchase of this toll line, it being his intention after the acquisition of this line to construct a local exchange at Laguna Beach which, operated in connection with the toll line, would give a regular business and residence telephone service at Laguna Beach which had not theretofore been rendered. Pursuant to this plan, an application was filed with this Commission on July 25, 1923, by Mr. Cookingham for a certificate of public convenience and necessity authorizing the acquisition and operation of the proposed system, including the toll line owned by The Yoch Company. The Yoch Company did not join in this application, and since the authority requested was for a transfer of the property owned by The Yoch Company, the applicant was advised that it would be necessary to file an amended application in which The Yoch Company should join. Accordingly, a joint application was filed on October 9, 1923, by E. H. Cookingham, applicant herein, and The Yoch Company for authorization to transfer the toll line from The Yoch Company to Cookingham and for the construction and operation by the latter of a local telephone exchange at Laguna Beach under certain schedules, rules and regulations set forth in the application, or under such rates, rules, and regulations as the Commission might prescribe.

A hearing was held in this matter before Examiner Williams on November 14, 1923, at Laguna Beach, at which time and place evidence was taken and the matter submitted.

It appears that Laguna Beach, a town with a population of approximately 1,000 permanent residents, located some 20 miles southeast of Santa Ana, is a summer resort of growing popularity, having a population during the summer months of four or five thousand people. As above set forth, the only telephone service

heretofore rendered at Laguna Beach was that furnished by the toll station of The Yoch Company. An investigation in connection with this proceeding leads to the conclusion that there is a public need for the establishment of a local exchange at this place. The operation of such an exchange in connection with the toll line proposed to be transferred, for the price stated in the application, is, in our opinion, a matter which should be approved in the interest of public convenience and necessity and the Commission will, therefore, authorize the transfer and the establishment of the exchange service proposed by the applicant, subject, however, to certain conditions which appear to be proper.

This case is complicated, however, by the fact that subsequent to the hearing in this matter, it has come to the attention of the Commission that Mr. Cookingham has, without awaiting any authorization from this Commission so to do, actually taken over the operation of the toll line and attempted to take a transfer thereof from The Yoch Company to himself. Moreover, it has further come to our attention that Mr. Cookingham has actually constructed and placed in operation the local telephone exchange for which the construction and operation was requested in this application, and that he has installed, connected and rendered service to a number of telephones for residence and business use, and has charged and collected rates for this unauthorized service.

Section 51 (a) of the Public Utilities Act provides, among other things, that no telephone corporation "shall henceforth sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its * * * line, plant or system necessary or useful in the performance of its duties to the public * * * without first having secured from the Commission an order authorizing it to do so. Every such sale, lease, assignment, mortgage, disposition, encumbrance * * * made other than in accordance with the order of the Commission authorizing the same shall be void."

Section 50 (a) of the Public Utilities Act contains the provision that no telephone corporation shall hereafter begin the construction of a line, plant or system or of any extension of such line, plant or system "without having first obtained from the Commission a certificate that present or future public convenience and necessity require or will require such construction."

In view of the foregoing, it is clear that the acquisition and operation of the toll line and the construction and operation of the local exchange by Mr. Cookingham as a public utility "for compensation" were contrary to the plain provisions of the law. This is a matter which cannot and will not be countenanced by this Commission. It is recognized, however, that there is a genuine need for telephone service in the community of Laguna Beach, and a denial of the application would result in undue hardship upon the residents thereof. If, therefore, E. H. Cookingham should within a reasonable time, not to exceed thirty (30) days after the effective date of this order,

1. refund to the parties who paid them, any and all moneys which he may have collected for this unauthorized local exchange service, and shall satisfy this Commission that he has so refunded all such moneys, or
2. in case of any persons who have paid him any such moneys and who cannot now be found, he should satisfy this Commission that he has deposited with some person or bank approved by this Commission a sum of money sufficient to cover their said payments, subject to repayment to them if and when located,

thereby freeing himself from any charge of having violated the law, either through lack of understanding of its provisions or otherwise, then it would seem that the public interests would best be served by granting this application. This may be done by the issuance of a supplemental order when the Commission has received satisfactory assurances that the applicant legally appears before the Commission otherwise than in the attitude of one who has been operating a utility for compensation without authorization by the Commission, as required by law.

As to the toll line, no authorization having been heretofore granted for its transfer by The Yoch Company, we must regard the operation of this property by Mr. Cookingham as that

of an agent or trustee for The Yeck Company. The disposition of collections heretofore made by him for toll service is, therefore, a matter for settlement between him and his principal.

The application also asks that the Commission either approve a schedule of rates, rules and regulations submitted by applicant, or that the Commission prescribe such rates, rules and regulations as it may find to be reasonable, and we deem it proper, at this time, to set forth our views as to these matters in order that all parties may be fully advised as to the present opinion of this Commission concerning the service here in question.

Exhibits "A", "B", and "C" attached to the application show an inventory and appraisal of the property involved in the transfer, together with the additions and betterments proposed for the immediate future. The following figures are shown:

Plant to be transferred - - - - - \$ 2,550.

Proposed additions and betterments:

Laguna Beach-Tustin Line - - - - - 3,066.

At Laguna Beach - - - - - 8,659.

Total - - - - - \$14,275.

The Commission, through its engineering department, has made a check of the properties involved in the transfer and finds that the sum of \$2,550.00 is a reasonable price to be paid therefor. It should be clearly understood, however, that this figure does not necessarily represent the value of the transferred property for rate-making purposes. In order to establish a proper value upon which reasonable rates may be prescribed, a figure representing the historical cost of the properties which will be in operation upon the completion of the construction work now in process must be determined.

The toll line between Tustin and Laguna Beach has been reconstructed. A 50-line magneto switchboard will be installed in Laguna Beach to take the place of the temporary board now in operation, and a distribution system is in process of construction.

A detailed survey and valuation of the properties and check of the figures and information submitted by Mr. Cookingham have been made by the Commission's engineering department and it appears that a reasonable rate base figure to use in this proceeding is \$13,980.00, segregated into its various accounts, as follows:

| | | | |
|---|----|-------------|-------------|
| Franchises | \$ | 529. | |
| Central Office Equipment | | 625. | |
| Station Apparatus and Installation and Telephone Booth | | 2,600. | |
| Exchange Pole Line, Cable and Wire | | 6,399. | |
| Toll Pole Line and Wire | | 2,602. | |
| Office Fixtures and General Equipment | | <u>600.</u> | |
| Total | | | \$13,355. |
| Materials and Supplies | \$ | 325. | |
| Working Cash Capital | | <u>300.</u> | <u>625.</u> |
| Total Rate Base | | | \$13,980. ✓ |

The plans now contemplated by Mr. Cookingham do not provide for a telephone booth for a public pay station in Laguna Beach and, as such a booth appears necessary, the cost of the same has been included in the rate base. The above figures are also based on the assumption that there will be connected, after operations are commenced, approximately forty subscribers, and that within the coming year, if proper service be rendered, this figure will be increased to at least ninety full-year subscribers. During the summer months this figure will probably be considerably increased.

Reasonable operating expenses, including taxes, required in the operation of this system should not exceed \$3,998.00 per year. A segregation of this amount into the various accounts is as follows:

| | | |
|-------------------------|----|---------------|
| Maintenance and Traffic | \$ | 2,768. |
| Commercial and General | | 900. |
| Taxes | | 305. |
| Uncollectible bills | | <u>25.</u> |
| | \$ | <u>3,998.</u> |

A reasonable amount for depreciation for these properties is an amount of \$460.00 per year, and this added to the above allowance for operating expenses makes a total annual expense of \$4,458.00.

Under the existing conditions, we believe that if this application shall be granted by supplemental order herein as above mentioned, applicant would be entitled to earn eight per cent upon the rate base herein found. The total revenue which will be required to cover operating expenses, depreciation and this interest upon investment would then amount to \$5,576.00.

In his application, E. H. Cookingham proposed certain rates which he desired be made effective. These rates which applicant proposes are considerably in excess of the rates now in effect by other utilities serving towns similar in size to Laguna Beach and, if applied to the proposed business, would result in a return of approximately twelve per cent (12%).

At present, and in accordance with the toll rates of The Yoch Company now on file with this Commission, a charge of 25¢ is collected from any party in Laguna Beach for each incoming call received or outgoing call made. It is proposed that this rate be eliminated and that the toll rate between Laguna Beach and other points be based upon air line distance. This change is reasonable and, if made, will eliminate the difficulty now experienced and, in addition, will place the toll service to Laguna Beach on the same basis now in effect throughout practically the entire state.

The rates which will result in a reasonable return to the applicant and which, in our opinion, would be just and reasonable rates under the conditions and operations which appear will exist in Laguna Beach, are those as set forth in Exhibit "A" attached to the Order of this Decision. These rates will be slightly higher than rates of other utilities serving towns of approximately the same size as Laguna Beach, primarily, on account of the large amount of distribution system required in relation to the number of subscribers to be served.

O R D E R

E. H. Cookingham, doing business under the name and style of Laguna Beach Telephone Company, and The Yoch Company having requested this Commission for an order authorizing the transfer of the toll telephone system, as described in the application, from The Yoch Company to E. H. Cookingham, and E. H. Cookingham having requested an order granting him a certificate that public convenience and necessity require the establishment and operation of a local telephone exchange system in Laguna Beach and vicinity; the Board of Supervisors of Orange County having granted E. H. Cookingham the right and privilege of carrying on a general telephone business within Orange County; a public hearing having been held in the above entitled proceeding; the matter having been submitted and now being ready for decision,

IT IS HEREBY ORDERED that The Yoch Company be, and it is, hereby authorized to sell, and that E. H. Cookingham be, and he is, hereby authorized to purchase, for the price stated in the application, the toll telephone system of The Yoch Company, located in Laguna Beach and extending to the town of Tustin, more particularly described in the application in this proceeding; providing, that The Yoch Company and E. H. Cookingham file with this Commission on or before March 9, 1924,

1. A certified copy of all documents of transfer covering the property involved.
2. A stipulation declaring that E. H. Cookingham, his successors and assigns, will never, in any proceeding before the Railroad Commission or any other public authority, claim any value for any franchises or permits acquired from The Yoch Company in excess of the amount paid for such

franchises or permits to the public authority granting the same, which amount shall be specified in such stipulation.

3. A stipulation declaring that the consideration for which the public utility properties are herein authorized to be transferred need not be considered as a measure of the value of said properties for any purpose other than the transfer herein authorized; and

THE RAILROAD COMMISSION HEREBY DECLARES that it is its present opinion that public convenience and necessity require the construction and operation of a local exchange telephone system at Laguna Beach similar in type to the system described in the application herein, and the rendering therefrom of an adequate telephone service within the town of Laguna Beach and vicinity, and

THE RAILROAD COMMISSION FURTHER DECLARES that if, within thirty (30) days after the effective date of this order E. H. Cookingham shall satisfy this Commission that he has

1. Refunded all moneys which he may have collected for local exchange service at Laguna Beach, up to said effective date of this order, or
2. If any such moneys cannot be so refunded prior to that time on account of inability to find the person or persons who may have paid the same, that E. H. Cookingham has deposited any and all such moneys with some bank or individual, approved by this Commission, subject to payment to such persons if and when located, and, in that event,

this Commission will consider and determine, by supplemental order herein, what may be the proper disposition of this application of said E. H. Cookingham; and

THE RAILROAD COMMISSION HEREBY SPECIFICALLY RESERVES THE RIGHT AND AUTHORITY, by supplemental order herein, to reopen this proceeding and to make such other and further disposition thereof as may appear necessary or proper.

The effective date of this Order shall be February 25, 1924.

The foregoing Opinion and Order is hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of February, 1924.

C. Shaver
H. B. Bondage
Iving Martin
E. J. Shore

Commissioners.

E X H I B I T " A "

N.
22

DESCRIPTION OF
PRIMARY RATE AREA.

Beginning at a point on the shore line of the Pacific Ocean 150 feet southeast of the intersection of the center line of Euterpe Street produced with said shore line, thence along a line extending in a northeasterly direction parallel to the line of said Euterpe Street to the point of intersection with the westerly boundary of the E 1/2 of the NW 1/4 of Sec. 25, T 7 S R 9 W; thence due north to the northeast corner of the SW 1/4 of the SW 1/4 of Sec. 24, T.7 S. R.9 W.; thence due west to the point of intersection with a line drawn parallel to Third Street and 150 feet northeast of the center line of said Third Street; thence in a general northerly direction along a line parallel to Third Street and Laguna Road and 150 feet from the center line of same to a point 150 feet northeast of the intersection of the center lines of Laguna Road and Hill Street; thence along a curved line approximately 150 feet north of the center line of Hill Street in a westerly and southerly direction to the point of intersection with a line drawn parallel to High Drive and 150 feet northerly of the center line of said High Drive; thence along a line 150 feet from the center line of High Drive parallel with said High Drive to a point due west of the intersection of the center lines of High Drive and Cliff Drive; thence due south to the shore line of the Pacific Ocean, thence in a southeasterly direction along said shore line to the point of beginning.

SCHEDULE NO. A-1

EXCHANGE SERVICE

General Service.

Applicable to individual and party line flat rate service within the Primary Rate Area.

Rate

| <u>Grade of Service</u> | <u>Rate per Month per Station</u> | | | |
|----------------------------------|-----------------------------------|-----------------|--------------------------|-----------------|
| | <u>Business Service</u> | | <u>Residence Service</u> | |
| | <u>Wall Set</u> | <u>Desk Set</u> | <u>Wall Set</u> | <u>Desk Set</u> |
| Individual Line Station | \$ 3.25 | \$ 3.50 | \$ 2.75 | \$ 3.00 |
| Two-party Line Station | 2.75 | 3.00 | - | - |
| Four-party Line Station | - | - | 2.25 | 2.50 |
| Extension (with or without bell) | 1.00 | 1.25 | 1.00 | 1.25 |

Conditions

(1) For individual or party line service outside the Primary Rate Area - See Mileage Rates, Schedule No. A-4.

SCHEDULE NO. A-4

EXCHANGE SERVICE

Mileage Rates

Applicable to general service outside the
Primary Rate Area.

Rate

| <u>Business and Residence Service</u> | <u>Monthly Rate per 1/4 mile or frac- tion thereof (Air Line Distance)</u> |
|---------------------------------------|--|
| Individual Line Station | \$.50 per line |
| Two-party Line Station | .35 per station |
| Four-party Line Station | .25 per station |

Conditions

The charges for service given above are in addi-
tion to the regular flat rate charges.

SCHEDULE NO. A-5

EXCHANGE SERVICE

Suburban Service

Applicable to suburban party line service of not more than eight parties per circuit within the exchange area outside the Primary Rate Area.

Rate

| | <u>Rate per Month per Station</u> | | | |
|------------------|-----------------------------------|-----------------|--------------------------|-----------------|
| | <u>Business Service</u> | | <u>Residence Service</u> | |
| | <u>Wall Set</u> | <u>Desk Set</u> | <u>Wall Set</u> | <u>Desk Set</u> |
| Suburban Service | \$ 3.50 | \$ 3.75 | \$ 3.00 | \$ 3.25 |

Conditions

Suburban circuits will be installed, owned, and maintained entirely at the expense of the Company.

SCHEDULE NO. A-13

EXCHANGE SERVICE

Public Pay Station Service.

Service from Company's non-listed public telephone station.

Rate

| | |
|-----------------------|--------|
| Each Exchange Message | \$.05 |
|-----------------------|--------|

SCHEDULE NO. A-14

EXCHANGE SERVICE

Directory Listing

Charges for directory listing in addition to that to which subscriber is entitled under the regular rates for service.

Rate

- (1) Each subscriber is entitled, without charge, to one listing in the telephone directory.
- (2) Each listing in addition to that specified under (1) above shall be at the following rate:
 - (a) Member of same firm or business \$.25 per month
 - (b) Joint user 1.50 per month
 - (c) Individual residing at a residence listed at the residence .25 per month
 - (d) Listing for guest of hotel .50 per month

Conditions

- (1) Joint user means individual not connected with the firm or business who is the subscriber of record.
- (2) Requests for additional listing shall be made by the subscriber of record.

SCHEDULE NO. A-15

EXCHANGE SERVICE

Supplemental Equipment

Rates for extra equipment requested by subscriber.

Rate

| | <u>Installation Charge</u> | <u>Rate per Month</u> |
|--|--------------------------------|---------------------------|
| (1) Extension Bell - 2-1/2" | \$ 1.25 | \$.25 |
| (2) Extension Bell - 6" | 1.50 | .75 |
| (3) Installation or renewal of desk set cords exceeding 6 feet in length, but not more than 10 feet | 1.00 | - |

SCHEDULE NO. B-1

TOLL SERVICE

The following listed rates are applicable between Laguna Beach and Tustin, to Station-to-station, Person-to-person, and Appointment and Messenger, Interexchange Telephone Toll Service, over the lines of Laguna Beach Telephone Company, and are based on the distance, air line, from Post Office to Post Office between Laguna Beach and Tustin, in accordance with the terms and conditions of Order No. 2495, dated December 13, 1918, and Order No. 2797, dated February 17, 1919, amendatory thereto, of the Postmaster General of the United States.

The rates for any of the classes of Toll Service specified herein, between Laguna Beach and toll points on the lines of The Pacific Telephone and Telegraph Company and the United States Long Distance Telephone and Telegraph Company beyond Tustin, are the through rates quoted by The Pacific Telephone and Telegraph Company and the United States Long Distance Telephone and Telegraph Company, and as established under the terms and conditions of the Orders hereinabove referred to.

The air line distance from Post Office to Post Office between Laguna Beach and Tustin is approximately fifteen (15) miles.

| <u>Rate</u> | | | | |
|---------------------------|---------------------|----------------------------------|-----------------------|-----------------------------------|
| <u>Class of Service</u> | <u>Initial Rate</u> | <u>Initial Period in Minutes</u> | <u>Over-time Rate</u> | <u>Overtime Period in Minutes</u> |
| Station-to-Station | \$.15 | 5 | \$.05 | 2 |
| Person-to-Person | .20 | 3 | .05 | 1 |
| Appointment and Messenger | .25 | 3 | .05 | 1 |
| Report Charge | .10 | - | - | - |

20.
19

SCHEDULE NO. C-1

TELEGRAPH SERVICE

Telegraph service between Laguna Beach and Tustin is provided in the following classes and at the following rates:

Telegrams

30¢ for ten (10) words or less, 2-1/2¢ for each additional word.

Day Letters

45¢ for fifty (50) words, 9¢ for each additional ten (10) words or fraction.

Night Letters

30¢ for fifty (50) words, 6¢ for each additional ten (10) words or fraction.

Messages of the above specified classes will be accepted for transmission to points on the lines of The Pacific Telephone and Telegraph Company beyond Tustin. The rates applicable to such messages are the rates quoted by The Pacific Telephone and Telegraph Company from Tustin to such points in addition to the rates of the Laguna Beach Telephone Company, as shown in the preceding paragraphs.