

Decision No. 15305

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Establishing  
Increased Classification Ratings on  
Radio Receiving Sets and Talking  
Machines and Radio Sets Combined, as  
set forth in the column captioned  
"Western" of Consolidated Classification  
No. 4, C.R.C. 347, F.W.Gomph, Agent.

CASE NO. 2097.

Parker McCollester, J.E.Lyons, H.C.Bush, Robert W. Fyfe,  
and E.K.Voorhees, for Respondents;  
W.P.Geary, for Railroad Commission of the State of California;  
Joseph C. Colquitt for Radio Manufacturers Association,  
Music Industries Chamber of Commerce, Incorporated, and others;  
I.E.Lambert, for Radio Corporation of America;  
Seth Mann, for San Francisco Chamber of Commerce; and others;  
E.W.Hollingsworth, for Oakland Chamber of Commerce, Protestants;  
H.M.Remington, A.G.Farquharson, Heckert L. Parker, W.H.Lockwood,  
H.F.Gittings, Jr., George A. Culbert, George J. Olsen and  
Frank E. Bates, for various other Protestants.

SQUIRES, COMMISSIONER:

O P I N I O N

This case involves the propriety of the California  
intrastate classification ratings, both carload and less than car-  
load, applying to radio receiving sets and talking machines and  
radio sets combined, as set forth on page 163, item 19, and  
page 414, item 8, in the column captioned "Western" of Consolidated  
Classification No. 4, C.R.C. 347, F.W.Gomph, Agent.

By the publication of these items in the Classification made to become effective February 10, 1925 there are proposed ratings of one and one-half times first class for radio receiving sets and talking machines and radio sets combined, in less carload, and second class, minimum weight 20000 pounds, subject to Rule 34, for those articles in carload.

Radio receiving sets and talking machines and radio receiving sets combined have not heretofore been specifically provided for in the Classification.

Upon complaint of various Chambers of Commerce, radio manufacturers and trade associations, this Commission suspended until August 25, 1925 the effective date of the proposed increased ratings. The Interstate Commerce Commission took similar action in connection with interstate traffic on their Investigation and Suspension Docket No. 2336.

Joint hearings were held with the Interstate Commerce Commission at San Francisco March 4, 1925, and adjourned hearings at Washington, D.C. on April 7, 8 and 9, 1925. This Commission could not appear at the Washington hearings, but was furnished with copies of the transcripts and exhibits. The proceeding having been briefed and duly submitted is now ready for an opinion and order.

Both protestants and respondents agree that, under the classification now in effect, radio sets are ratable as electrical appliances not otherwise indexed by name, as per item 18, carried on page 164 of the Classification; less carload taking first class, and carloads, minimum 20000 pounds, third class. Respondents maintain that the present classification of electrical appliances is not applicable when the radio sets are equipped with tubes and loud speakers, for the reason that radio tubes are specifically

rated in the Classification at double first class less carload and first class, minimum 14000 pounds, carloads, and the loud speakers one and one-half times first class less carloads, and second class, minimum weight 16000 pounds carloads. They claim this contention is supported by section 3, rule 12, of the Classification, which reads, in part:

"The charge for a package containing freight of more than one class shall be at the rating provided for the highest classed freight contained in the package. \* \* \* \* \*".

Protestants' position is that rule 12 is not applicable and that the ratings for electrical appliances n.o.i.b.n. should apply and they make reference to the fact that organs and pianos with attachments consisting of drums, violins, etc. are given the organ and piano ratings of first class, notwithstanding that the attachments included in the same package carry specific ratings higher than first class.

If radio receiving sets are electrical appliances, and it happens they are so constructed that their function depends upon tubes and loud speakers, and the latter articles are shipped with the radio receiving sets, either installed or separately packed, the separate parts then lose their identity and cannot be considered as anything but an integral part of the set; therefore, in line with the practice of the carriers in the handling of such articles as pianos and their attachments we find substantial reasons for being in accord with protestants' interpretation of the existing less carload classification rating of first class for the combined radio sets.

Talking machines (phonographs) are rated first class

less carload and second class, minimum weight 16000 pounds, carloads. The less carload rating is the same as for electrical appliances not otherwise indexed by name, but the carload rating for talking machines is second class, minimum weight 16000 pounds, and is higher than the carload rating for electrical appliances, which is third class, minimum weight 30000 pounds. Hence, the existing ratings on talking machines and radio sets combined, with or without tubes or loud speakers, is first class in less carload, and second class, minimum weight 16000 pounds, in carload; this under the provisions of rule 18 of the Classification, which reads:

" When not specifically classified, combination articles, such as a Combination Ironing Board and Step Ladder, will be charged at the rating for the highest classed article of the combination."

First class less carload also applies to talking machine turn tables, talking machine record-carrying cases, talking machine cabinets and talking machine parts n.o.i.b.n. The talking machines are in competition to a greater or less extent with the radio receiving sets and with talking machines and radio sets combined. The combined radio sets are constructed in very much the same manner as the regular talking machine, and under the present classification are rated less carload, the same as talking machines.

There was much testimony and many exhibits dealing with values per pound and the weight per cubic foot. The average value of the talking machine and radio set combined shipped from one of complainant's plants for a period of six months is \$10.31 per cubic foot, and \$1.21 per pound, with an average of 8.54 pounds per cubic foot. Talking machines, according to the exhibits, have an average value of \$4.80 per cubic foot, 64 cents per pound, and

an average weight of 7.48 pounds per cubic foot. Respondents maintain that the inclusion of a radio receiving set with a talking machine increases the value of the latter, although they admit that the articles combined do not exceed the value of the more expensive makes of talking machines. Protestants urge that the addition of the radio receiving set to the talking machine simply results in an added refinement to the latter and, as heretofore stated, stress the fact that the ratings on organs and pianos with drums, horns or violins attached are no higher than the ratings given to organs and pianos.

An exhibit was presented listing orchestral instruments (automatic bands or orchestras, including player pianos, electric pianos, theatre orchestras, unit pianos, etc., all taking first class less carload rating.

Reference is also made to an exhibit showing articles listed under the furniture groupings, first class less carload. This list includes such bulky articles as sideboards, buffets, chiffonettes, music cabinets, chiffoniers, bureaus, couches, day-ports, etc. The list might be extended, giving a vast number of analogous articles, but would add nothing to the fact, when consideration is given to the many light and bulky articles similar to radio sets taking less carload first class rates, that discrimination would be created by the granting of these proposed changes. The increase from first class to one and one-half times first class represents a fifty per cent added charge. A 100 pound shipment from San Francisco to Los Angeles would be increased from 84½ cents to \$1.27; to Sacramento the increase would be from 34 cents to 51 cents.

Since this case was heard respondents have established, to become effective August 15, 1925, in Trans-Continental Freight

Bureau Tariffs 1-X (Item 1331 of Supplement 4) and 4-U (Item 1331 of Supplement 3), westbound transcontinental less carload rates on radio receiving sets, in boxes, and loud speakers or talkers, radio or telephone, in boxes, based on the concurrently effective first class rates. This action of respondents would indicate, at least insofar as this particular traffic is concerned, that the first class less carload rating is not considered by them unreasonably low or unremunerative.

I am of the opinion and find that the proposed classification increases in the less carload rating applying to radio receiving sets and to talking machines and radio sets combined have not been justified.

The carload rating of radio sets under the present classification is third class, minimum 30000 pounds, not subject to rule 34; on talking machines and radio sets combined the present classification is second class, minimum 16000 pounds, subject to rule 34. The proposed classification provides second class, minimum 20000 pounds, subject to rule 34, for both the radio sets and the talking machines and radio sets combined. This change will be a reduction in the minimum weight from 30000 to 20000 pounds, and an increase in the rating from third to second class for the radio sets, and for the talking machines and radio sets combined there will be an increase in the minimum weight from 16000 to 20000 pounds, with no change in the rating.

The evidence indicates that insofar as radio receiving sets are concerned no difficulty has been experienced in loading the cars in excess of the prescribed minimum of 20000 pounds.

I am of the opinion, and so find, that the proposed rating for radio receiving sets, carload, of second class minimum weight 20000 pounds, subject to rule 34, has been justified.

The exhibits and testimony with reference to talking machines and radio sets combined clearly indicate that the proposed minimum of 20000 pounds cannot be loaded into the equipment under the provisions of rule 34. Respondents do not maintain that the minimum can actually be loaded, but take the position that the proposed second class rating is reasonable only when applied in connection with a minimum of 20000 pounds. This conclusion is untenable, for it is not proper or reasonable to publish a minimum weight impossible of loading.

Since talking machines in straight carloads are now rated second class, minimum 16000 pounds, which classification also applies under the present tariff to talking machines and radio sets combined, and since the testimony shows that for all practical purposes straight talking machines and talking machines and radio sets combined are analogous articles, when their use, value and packing characteristics are given consideration, they should have the same minimum weight and the same classification ratings.

I am of the opinion, and so find, that the proposed ratings on talking machines and radio sets combined, in carloads, have not been justified, and I recommend the adoption of the following form of order:

O R D E R

IT APPEARING, that by order dated February 5, 1925, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until June 4, 1925, and by

supplemental orders until August 25, 1925,

IT FURTHER APPEARING, that a full investigation of the matters and things involved has been had, and the Commission having, on the date hereof, made and filed its opinion containing its findings of fact and the conclusions thereon, which said opinion is hereby referred to and made a part hereof:

IT IS ORDERED, that the respondents herein be, and they are hereby, notified and required to cancel said schedules, insofar as they are not in accord with the opinion which precedes this order, on or before August 25, 1925 upon notice to this Commission and to the general public, by not less than one day's filing and posting, and that this proceeding be discontinued.

The foregoing opinion and order are 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 18<sup>th</sup> day of August, 1925.

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*C. A. Seaver*  

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*George D. Squires*  

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*Leon Whitell*  

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Commissioners.