

ORIGINAL

Decision No. 17946.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
NEVADA, CALIFORNIA AND OREGON TELE-
GRAPH AND TELEPHONE COMPANY for the
approval of a certain agreement.

Application No. 13,377.

Albert A. Rosenshine, for Nevada, California and
Oregon Telegraph and Telephone Company.

Harry A. Encell, for Red River Lumber Company.

J. G. Marshall, for The Pacific Telephone and
Telegraph Company.

BY THE COMMISSION:

O P I N I O N

The Nevada, California and Oregon Telegraph and Telephone Company asks the Railroad Commission to approve an agreement entered into between said Company and the Red River Lumber Company, under the terms of which the Red River Lumber Company will lease a telephone line to the Nevada, California and Oregon Telegraph and Telephone Company. A copy of the agreement is attached to the petition in this proceeding and marked "Exhibit A".

It is of record that the Red River Lumber Company owns a telephone line consisting of two No. 8 iron wires strung on suitable pole supports and extending from Westwood, Lassen County, California, to what is known as Hat Creek Power House No. 1, situated near Carbon, Shasta County, California, a distance of about fifty-four miles. From Hat Creek Power House No. 1 the

telephone line is extended on poles of the Pacific Gas and Electric Company via Hat Creek Power House No. 2 to a point of intersection, northerly from Carbon, with the route of the state highway running between Burney and Fall River Mills. The telephone line is now being used by the Lumber Company for the transmission of its private messages between Westwood and Carbon and, according to the testimony, is used primarily for power dispatching purposes.

Under the agreement filed in this proceeding as applicant's Exhibit "A", the Red River Lumber Company, hereinafter sometimes referred to as the "Lumber Company", grants to the Nevada, California and Oregon Telegraph and Telephone Company, hereinafter sometimes referred to as the "Telephone Company", for a period of five (5) years from the date of the agreement, unless the agreement is previously cancelled as provided in said agreement, the exclusive right to use the telephone line for the dispatch and receipt of all commercial telephone and telegraph business, subject to the terms of the agreement. The agreement further provides that the Lumber Company will maintain the line at its own expense and will switch telephone messages at Westwood to connect thereat with the lines of the Telephone Company and will operate the same in conformity with the rules, regulations and rates prescribed by the Telephone Company when dispatching and receiving said commercial telephone and telegraph business, as agent for, and without cost to the Telephone Company. The agreement further provides that all private messages of the Lumber Company between Westwood, Carbon and intermediate points, either verbal or written, shall not be classed as commercial business and shall not be subject to the tolls, tariffs and charges that the Telephone Company

prescribed for commercial business, unless said messages extend beyond Westwood or Carbon, respectively, to the lines of the Telephone Company or to those associated with the Telephone Company, in which case, the messages of the Lumber Company shall be handled and charged as commercial business. The Telephone Company agrees to pay the Lumber Company as rental for use of the line and in payment of all service rendered by the Lumber Company, Fifteen (\$15.00) dollars per month, plus a sum per month equivalent to one-half (1/2) of the total tolls charged by reason of the use of the line on commercial business, after deducting from such tolls the percentage thereof payable to the State of California as a franchise tax. The Telephone Company further agrees to present to the Railroad Commission of the State of California for its approval a schedule of rates based upon a telephone toll rate for the use of said line between the terminals thereof at Westwood, Lassen County and at Carbon, Shasta County, California of forty (40¢) cents for one minute and twenty (20¢) cents for each additional minute or fraction thereof with proportionately lesser rates applying for intermediate points, and further a telegraph rate for a ten (10) word day message of thirty (30¢) cents with two and one-half (2½¢) cents additional for each word over ten. Paragraph 10 of the agreement reads:

"Nothing in this agreement shall be construed as in any way conveying to Telephone Company any right of ownership or right of continuing use of said line except as to the uses herein provided for the period stated. It is understood by and between the parties hereto, (Red River Lumber Company and Nevada, California and Oregon Telegraph and Telephone Company) and is the intention of said parties that the uses of said line for commercial business as herein provided shall not be urged by either party as constituting a dedication thereof to public use."

Paragraph 13 of the agreement reads in part as follows:

"It is hereby expressly understood by each of the parties hereto and by the Railroad Commission of the State of California, the approval of which to this agreement is necessary, that the property herein sought to be leased by Lumber Company is the private property of said Company and was constructed for its own uses only. Furthermore, in relation thereto, that in entering into this contract subject to the approval of the Railroad Commission, the Lumber Company is not by the leasing of the same, impressing upon said telephone facility a dedication to public use nor in any way is concerned as a telephone line or telephone corporation as the same are defined in subdivisions S and T, section 2 of the Public Utilities Act, but for the uses of Telephone Company, a telephone corporation as defined by subdivision T, section 2 of the Public Utilities Act, is entering into this contract subject to all of the terms and provisions thereof relative to cancellation with no intention on the part of Lumber Company to dedicate said telephone facility to public use."

The agreement contains other provisions but we do not feel that it is necessary to call attention to such provisions for the purpose of this decision.

In our opinion the agreement should be modified in two particulars; first, there should be eliminated from paragraph 13 the following language:

"and by the Railroad Commission of the State of California, the approval of which to this agreement is necessary, *****"

In the second place, the agreement should contain the clause prescribed in Commission's General Order No. 73, reading as follows:

"This contract shall at all times be subject to such changes or modifications by the Railroad Commission of the State of California as said Commission may from time to time direct in the exercise of its jurisdiction."

The testimony shows that the Telephone Company desires to rent the excess facility of the Red River Lumber Company line from Westwood to Carbon. If the application is granted, it is the intention of the Telephone Company to continue the line from Carbon to Fall River Mills at which point it will connect with the Bass Telephone system, the Fall River Valley Telephone Company, the Nevada, California and Oregon Telegraph and Telephone system and with the E. R. Feuz system. The leasing of this line and its extension will afford a practical and direct route between Big Valley (Bieber) and Fall River Valley and towns therein and Westwood and Susanville. Under existing conditions messages of residents of the two valleys are transmitted via Alturas, which is a round-about and unpractical route. The proposed route will give a more rapid service and ties in the lines of the Nevada, California and Oregon Telegraph and Telephone system as they operate

through the Westwood section and the north out of Fall River Mills. It is not the desire of the Telephone Company in any way to solicit or seek any business now flowing to any of the companies operating in the vicinity of Fall River Mills.

Counsel for applicant took the position at the hearing that in his opinion it was not necessary for the Nevada, California and Oregon Telegraph and Telephone Company to obtain a permit under Section 50 of the Public Utilities Act to operate the aforementioned telephone line. It is the intention of the Company, however, if this application is granted, to file with the Commission an application for permission to extend the line from Carbon to Fall River Mills and in such application also request permission to operate the line which it intends to lease from the Red River Lumber Company. The record shows that the Lumber Company now uses the line probably twice a day in regulating the flow of power generated at Hat Creek Power Plant No. 1 and Hat Creek Power Plant No. 2. Counsel for the Red River Lumber Company stated that it was his recollection that the Lumber Company does not use the line ten minutes per day. A. J. Mathews, Vice-President and General Manager of the Telephone Company, testified that because of the limited use the Lumber Company is making of the line, there will be little or no interference with the transmission of commercial business. He further testified that as soon as there is sufficient business to warrant the building of a line, his Company would do so. We believe that this application should be granted as provided in the following order.

O R D E R

Nevada, California and Oregon Telegraph and Telephone Company having requested the Commission to approve the agreement filed in this proceeding and marked Exhibit "A", a public hearing having been held before Examiner Fankhauser and the Railroad Commission being of the opinion that the Company should be permitted to execute an agreement substantially in the same form as Exhibit "A" provided said agreement is modified as indicated in the opinion which precedes this order, therefore,

IT IS HEREBY ORDERED that the Nevada, California and Oregon Telegraph and Telephone Company be, and it is hereby, authorized to execute an agreement substantially in the same form as the agreement filed in this proceeding and marked Exhibit "A", provided that such agreement be amended as indicated in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that within thirty (30) days after the execution of the agreement herein authorized Nevada, California and Oregon Telegraph and Telephone Company shall file with the Commission a certified copy of said agreement.

Dated at San Francisco, California, this 31st day of January, 1927.

Ernest J. ...
H. B. ...
C. ...
Thomas J. ...

Commissioners.