

Decision No. 18287

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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CALIFORNIA INDEPENDENT TELEPHONE ASSOCIATION,)	
)	
Complainant,)	Case No. 2322
vs.)	
)	
POSTAL TELEGRAPH-CABLE COMPANY,)	
a corporation,)	
)	
Defendant.)	
)	

Ernest Irwin, and Devlin & Brookman
by Douglas Brookman, for the
Complainant.

Max Thelen and Willard P. Smith for the
Defendant.

BRUNDIGE, Commissioner:

O P I N I O N

The complaint in this matter alleges that the California Independent Telephone Association is a commercial association organized to safeguard the interests of its members (being telephone utility companies) in this State. It charges the defendant, Postal Telegraph-Cable Company, with maintaining telephone toll lines in this State and particularly with maintaining telephone offices at Victorville and Hesperia, in San Bernardino County, and with the construction of a telephone exchange plant in the City of Redlands, and telephone toll stations in certain of defendant's telegraph offices in the Imperial Valley. It is alleged that these extensions to defendant's telephone system have been constructed by defendant without legal authority and that in rendering telephone service over said

extensions defendant is violating Section 50 of the Public Utilities Act of this State to the detriment, by reason of loss of revenue, of the members of the complaining association. It is stated that no complaint is made with reference to any interstate telephone communication, and the prayer of the complaint is that this Commission order defendant to cease and desist from constructing telephone lines or transmitting telephone communications in the manner alleged unless and until it shall have obtained from this Commission a certificate of public convenience and necessity authorizing it to engage in such telephone operations.

In its Answer Postal Telegraph-Cable Company sets up a number of defenses, the gist of which is that complainant has no sufficient interest to enable it to maintain this complaint and particularly that the operations therein specified did not and will not result in depriving complainant's members of revenue which they would otherwise receive for rendering telephone service between their several exchanges and other points in the State of California. Defendant further alleges that it constructed certain telephone lines over roads or highways of this State and operated the same for telephone business prior to March 23, 1912, the date on which the Public Utilities Act of this State became effective. It alleges that under the provisions of Section 536 of the Civil Code, it possesses a state-wide franchise which, by reason of such construction, became a vested right of which it cannot be deprived by action of this Commission. It further alleges that subsequent to said March 23, 1912, it continued the work of transposing its existing telegraph lines in order to enable it to handle telephone business thereover and that it has constructed a number of additional lines, properly transposed, for such telephone service subsequent to said date. It is not necessary here to recount the details of defendant's other alleged defenses.

A public hearing upon this matter was held in San Francisco on April 26, 1927. The testimony taken at said hearing discloses that Postal Telegraph-Cable Company was, in fact, operating certain lines of telephone in this State on March 23, 1912; that it has continued to construct lines, which were properly transposed for telephone service, subsequent to that date, and that it has opened a number of offices for telephone service in this State during the intervening years. While service has been rendered from Hesperia and Victorville, and particularly from a cement plant, which is a subscriber to the service at Victorville, for a number of years, no service is now being rendered from the telephone station of defendant at Redlands nor from the telephone booths which it has installed in its telegraph offices at Brawley, El Centro and Calexico. Rates purporting to cover and provide for telephone service from the last mentioned four points have been filed with this Commission, but have not yet gone into effect.

It is our opinion that under Section 536 of the Civil Code of this State as particularly construed by the Supreme Court of this State in the case of Postal Telegraph-Cable Company v. Railroad Commission, 73 Cal. Decs. 254, decided February 10, 1927, this Company, because of its actual construction and telephone operation prior to March 23, 1912, possesses a franchise, state-wide in character, to construct and operate telephone lines within this State. It is our further opinion that this franchise cannot be forfeited on the part of the State save by quo warranto proceedings brought by the Attorney General in the name of the people of the State for good cause. This is not such a proceeding in quo warranto. Although it is disclosed by the testimony herein that rates for this telephone service by defendant were not filed with this Commission prior to October 2nd, 1917, nevertheless, they were accepted by the Commission at that time and no penalties have

invoked against this Company under the provisions of the Public Utilities Act. We do not believe that this failure to file rates has of itself worked a forfeiture of the franchise granted this Company under the provisions of Section 536 Civil Code. We are, therefore, of the opinion that this complaint must be dismissed. We do not wish to be understood as holding that any public utility telephone corporation which commenced its construction or operation either but under circumstances and conditions different from those present in this case, prior or subsequent to March 23, 1912, may now engage in new operations without complying with the provisions of Section 50 of the Public Utilities Act.


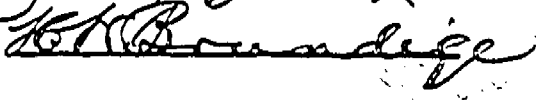
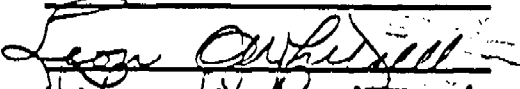

O R D E R

Complaint having been made by the California Independent Telephone Association against Postal Telegraph-Cable Company, a corporation, hearing having been held, and the Commission being now fully advised in the premises,

IT IS HEREBY ORDERED that the complaint herein be and the same is hereby dismissed.

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 27 day of April, 1927.





Commissioners