

**ORIGINAL**

Decision No. 23425.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of )  
 LOS GATOS TELEPHONE COMPANY, a cor- )  
 poration, for authority to file on )  
 unfiled territory adjoining appli- )  
 cant's territory on the South and )  
 East. )

Application No. 16771.

In the Matter of the Application of )  
 the SANTA CRUZ MOUNTAINS TELEPHONE )  
 ASSOCIATION for a certificate of )  
 public convenience and necessity )  
 covering the operation of a tele- )  
 phone and telegraph utility in cer- )  
 tain portions of Santa Clara and )  
 Santa Cruz Counties, California. )

Application No. 16916.

Howard Tyson, for Los Gatos Telephone  
 Company, Applicant.  
 J. J. Deuel and Edson Abel, for Cali-  
 fornia Farm Bureau Federation and  
 Santa Cruz Mountains Telephone  
 Association, Applicant.  
 C. G. Bolsdorf and Emil Meyer, for cer-  
 tain Protestants.

BY THE COMMISSION:

O P I N I O N

Applicant, Los Gatos Telephone Company, operating a telephone system in Los Gatos and surrounding territory, herein seeks authority to extend its service south and east into Wrights and adjacent territory. Santa Cruz Mountains Telephone Association requests a certificate of public convenience and necessity authorizing it to furnish public utility telephone service in the vicinity of Burrell and including the area referred to in the Los Gatos Telephone Company application.

A hearing in Application No. 16771 was held before

Examiner Satterwhite at Los Gatos on August 22, 1930. The matter was continued until October 3, 1930, when it was consolidated with Application No. 16916 for the purpose of receiving evidence and for decision. Subsequent hearings were held on December 2, 1930, and February 3, 1931, and the matters were submitted for decision.

The evidence received in these proceedings does not show the necessity of the extension of the service of the Los Gatos Company as requested, and the application will be dismissed without prejudice.

The record shows that applicant, Santa Cruz Mountains Telephone Association, was organized several years ago for the sole and only purpose of owning and operating a mutual telephone system for its members without profit within the territory described in the application, and, at the time of its organization, adopted articles of Association and by-laws under which its business was entrusted to the control and direction of a Board of Directors, elected annually.

The evidence shows that this proceeding to obtain from the Commission a certificate to operate a public utility telephone system, was commenced and is being conducted by the Board of Directors of said Association without any proper or lawful authority from the Association, and is opposed by a large number of its members.

It appears further, that no valid or legal steps have ever been taken by the Association as such, or by its Board of Directors under its authority, whereby its telephone business, properties or service is subject to the provisions of the Public Utilities Act and to the jurisdiction, control and regulation

of this Commission. It has repeatedly been held that this Commission has no jurisdiction over a mutual association not operated for profit. Until, therefore, the applicant effects a corporate organization for the purpose of operating a public utility telephone service, it is not a proper party applicant for a certificate to engage in such service.

We are of the opinion that the application of the Santa Cruz Mountains Telephone Association should be dismissed.

O R D E R

Applications having been made by Los Gatos Telephone Company for authority to extend service and by Santa Cruz Mountains Telephone Association for a certificate of public convenience and necessity, public hearings having been held, the matters having been taken under submission, careful consideration having been given to the matters and things involved, and basing its order on the conclusions set forth in the opinion which precedes this order;

IT IS HEREBY ORDERED that Application No. 16771 be and the same is hereby dismissed without prejudice.

IT IS HEREBY FURTHER ORDERED that Application No. 16916 be and it is hereby dismissed without prejudice.

Dated at San Francisco, California, this 24th day of February, 1931.

C. C. Wainwright  
Leon A. Whittell  
W. H. Linn  
W. B. Kinn  
Fred G. Stewart  
 Commissioners.