

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Siskiyou Telephone Company,
Complainant,

vs.

Case No. 1427.

Festus N. Payne and The Plow-
man Valley Telephone Association,
Defendants.

Taylor and Tebbe, by Geo. A. Tebbe, for Complainant.
Horace V. Ley, for Defendants.

By the Commission,

O P I N I O N

Complainant in this proceeding is a public utility owning and operating a telephone system throughout portions of Siskiyou County. Its principal telephone exchange is in the town of Etna Mills from which point it owns and operates a toll line extending to the town of Callahan, a distance of approximately 13 miles. It also operates subscribers lines extending in the general direction of Callahan serving subscribers between the two towns from its Etna Mills exchange. Subscribers who are served by the latter lines from Etna Mills pay defendant's established rate which, at the time of this proceeding is \$1.00 per month, for service at Etna Mills. Defendant, Festus N. Payne, is one of these subscribers. Defendant, Plowman Valley Telephone Association, also known as Callahan Farmers Telephone Asso-

ciation, owns a telephone line which it constructed during or about the year 1912. Its line extends from the town of Gazelle to Etna Mills by way of Callahan and intermediate territory. Between Etna Mills and Callahan it extends through the same general territory in which complainant's subscribers lines above referred to are operated. Although it makes no charge for the use of its line, except to the extent hereafter referred to, it permits its use by the public.

The complaint sets forth in effect that defendant Payne maintains in his residence, about eight miles from Etna Mills, telephone connection with the Etna Mills exchange for which he pays complainant's established subscribers rate; that this connection is over complainant's line known as the Scott Valley line; that complainant's line known as the French Creek line is also connected into defendant's residence; that the line owned by defendant, Plowman Valley Telephone Association, is also connected into the residence of defendant Payne; that there is also maintained in the residence of said defendant Payne a switch by the operation of which the line owned by defendant, Plowman Valley Telephone Association, may be connected with complainant's lines in defendant Paynes' residence and through them with complainant's entire telephone system; that by the use of said switch the defendant, Plowman Valley Telephone Association and its various members are in a position to make use of complainant's lines and system without payment therefor; that the line of defendant, Plowman Valley Telephone Association, has one station in Etna Mills and several stations at Callahan connected to it, that it is available for use without charge to the general public and that it destroys the business of the general public that complainant would otherwise obtain. The complaint prays that the Payne switch be abolished and that the Plowman Valley Telephone Association be denied the right to maintain any station or telephone within one mile of Etna, Callahan or Gazelle. Each of the defendants has filed formal answer entering general denial of some of the

allegations set forth in the complaint and admitting others of the allegations.

A public hearing was held in Yreka on October 4, 1921, before Examiner Satterwhite.

From the testimony it appears to have been the intent of defendant Callahan Farmers Telephone Association, referred to in this complaint as Plowman Valley Telephone Association, when it was organized and at the time when its telephone line was constructed, that it should operate as a mutual association rather than as a public utility and that it does not now desire to operate as a public utility. If it is in fact a mutual association it is not within the jurisdiction of the Railroad Commission. If such is the fact however it has not the right to demand connection or to maintain any means by which connection may be had with any lines connecting with complainant's system except upon compliance with such reasonable rules and regulations as may be established governing such connection and upon the payment of complainant's established rates for the service thus provided over complainant's system. The testimony shows that the organizers of this Association were offered connection with complainant's system at the time when their line was constructed, upon condition that they pay the rate applicable thereto, but that they refused to pay the rate. It shows further not only that it is possible by the use of the switch located in the residence of defendant Payne to connect the Association's line with complainant's lines but that the switch was installed for the specific purpose of enabling its members to communicate with persons connected with the two lines herein referred to as the Scott Valley and French Creek lines, both of which connect with complainant's Etna Mills exchange.

Complainant has in effect a 10¢ local switching rate for local calls placed at its local offices by non-subscribers. Defendant, Plowman Valley Telephone Association, while it has refused to pay com-

plainant's established rate applicable in such cases for connection of its line with complainant's lines, states that it has offered to pay the local switching rate for such connection, but that complainant is unwilling to agree to this method of payment. Complainant's subscribers pay flat monthly rates for local exchange service limited to the exchange with which their lines connect. For all messages to points outside the local exchange toll rates are collected. Defendant's line extends to Etna Mills, Callahan and Gazelle, and its members are able to call any or all of these points directly. The connection of defendant's line, subject to the collection of this 10¢ switching charge, unless similar service and rates were made effective for all of complainant's subscribers, would result in discrimination and complainant's toll line between Etna Mills and Callahan would be rendered useless for toll business. Furthermore, complainant's lines do not now extend to Gazelle, this point now being served by the lines of another utility of like character. A connection of complainant's lines with defendant's line, unless defendant's connection at Gazelle were discontinued, would in effect constitute an extension of service into territory already served by another public utility of like character. Before this may be done it will be necessary that complainant apply for and obtain from the Railroad Commission a certificate declaring that public convenience and necessity require it.

With reference to complainant's claim that the Association's line is available for public use without charge, resulting in damage to complainant's business: Defendants admit that the use of this line by the public is permitted but urge that business comes to complainant's lines as a result of such use which complainant would not obtain were the line not in existence and, that complainant's business is not injured but is rather benefited thereby. It is no doubt a fact, as appears from the testimony, that messages requiring the use of complain-

ant's toll lines for which use complainant's toll charges have been collected, have been transmitted by means of the Payne switch or repeated to and from complainant's lines. It is also no doubt a fact, as further appears from the testimony, that messages between Etna Mills and Callahan, which otherwise would of necessity pass over complainant's toll line between these points and for which complainant would collect a toll charge, now pass over the Association's line between the Payne residence and Callahan. In this respect and to this extent it is obvious that complainant's business is injured.

With respect to the question as to whether the line of Callahan Farmers Telephone Association is operating as a public utility, while the testimony shows that certain fixed charges are uniformly collected from its members to pay the expense of operating one of its switching stations, it appears that no charge is collected for the use of the line by the public except that certain charges for such use have been collected at Gazelle. The charges thus collected at Gazelle however appear not to have been authorized by the Association. As previously stated it was not the intent, when the Association was organized, and it is not now its desire to operate its line as a public utility. It does not appear to be necessary, in order to dispose of this case, to determine this question. It is of course true that if, in the event of this question being determined, it were found that the Association is operating as a mutual association, the Commission could not require the removal of its stations from Etna Mills, Callahan and Gazelle. In that event however the Commission could and it will insist that any and all means by which its line can or may be connected with the lines or system operated by complainant be discontinued except upon condition that the Association or its members pay to complainant its established rates for the service thus provided.

According to the testimony complainant has billed defendant Payne for certain calls to Etna Mills originated at stations on

the Plowman Valley line and transferred through the Payne switching station at the rate applicable to Etna Mills-Callahan toll calls. This appears to have been done to prevent the unauthorized free use of complainant's lines by non-subscribers and on the theory that its Etna Mills-Callahan toll line should have been used for the purpose. Any claim which complainant may have against the unlawful use of its lines in such cases is not within the jurisdiction of this Commission to determine. The toll rates which it is authorized under the provisions of the Public Utilities Act and the orders of this Commission to charge and collect apply only to the actual use of its toll lines. Since its toll lines were not used in this case and since there has been no rate authorized by this Commission for the use of complainant's local lines in such cases the Commission can not take cognizance of the matter.

Not only should the switching device now in use in defendant's residence for the purpose of transferring calls between complainant's lines and the line of defendant, Callahan Farmers Telephone Association and by means of which the said lines may be physically interconnected, be removed and permanently discontinued, but interconnection between the two lines referred to as the Scott Valley and French Creek lines should also be discontinued. In the event of the failure or refusal of defendants to remove and discontinue it complainant should be authorized and directed to disconnect any and all lines having connection therewith from its system.

O R D E R

Complaint in the above entitled proceeding having been filed with the Railroad Commission, a public hearing having been held, the case having been submitted and being now ready for decision,

IT IS HEREBY ORDERED that Defendant, Festus N. Payne shall at once disconnect and remove from any line or lines located in

or upon his premises in Siskiyou County and shall not hereafter connect thereto, any telephone, switch or switching device, by means of which telephone conversations or messages may be transmitted or repeated between the telephone lines or system of Siskiyou Telephone Company and any line or lines not connected therewith, or by means of which any line or lines so located and not connected with the telephone lines or system of Siskiyou Telephone Company may be interconnected therewith, or by means of which any line or lines which are or may be connected with the lines or system of Siskiyou Telephone Company may be interconnected with any other line or lines which are or may be connected with the lines or system of Siskiyou Telephone Company, and shall upon demand therefor furnish such evidence that the provisions hereof have been fully complied with as may from time to time be required by the Railroad Commission.

AND IT IS HEREBY FURTHER ORDERED, in the event that any of the provisions hereinbefore set forth shall not have been fully complied with, that Siskiyou Telephone Company be and it is hereby authorized and directed, within fifteen (15) days from the date of this Order, to serve written notice of its intention so to do to each of its subscribers connected with the line or lines to be affected thereby and after ten (10) days from the service of said notice to disconnect from its telephone system any line or lines to which any telephone, switch or switching device may be connected in violation of any of the provisions herein set forth; provided, that Siskiyou Telephone Company shall, within a reasonable time after application therefor, provide service to and for the said Festus N. Payne and Callahan Farmers Telephone Association and its members, Defendants herein, subject to the terms and conditions following, to wit:

1. Before the telephone line of Callahan Farmers Telephone Association shall be connected with the telephone lines or system of Siskiyou Telephone Company, it shall be cut or divided at

such point or points and in such manner that no portion or unit thereof shall have direct connection at more than one telephone exchange or other office or agency of Siskiyou Telephone, except that in any case in which continuous twenty-four (24) hour service is not maintained by Siskiyou Telephone Company at its telephone exchange or other office or agency with which the direct connection herein referred to may be made, a night connection with the toll lines of Siskiyou Telephone Company may be made for emergency service during the hours when its telephone exchange or other office or agency may be closed; provided however that separate portions or units of said telephone line may have direct connection at any single telephone exchange or other office or agency of Siskiyou Telephone Company adjacent or contiguous thereto. The point or points at which said telephone line shall be cut or divided shall be such that direct connection shall not be provided with any telephone exchange or other office or agency of Siskiyou Telephone Company or with any telephone exchange or other office or agency of any other telephone company operating as a public utility within the territory affected, when such direct connection, by reason of the location of the person or persons to be served thereby, should properly be provided from a different telephone exchange or other office or agency of Siskiyou Telephone Company or other telephone company.

2. No connection shall be made between the lines or system of Siskiyou Telephone Company and any line or lines of Callahan Farmers Telephone Association located within any territory theretofore served by a public utility of like character except as provided in Section 50(a) of the Public Utilities Act of this State.

3. Siskiyou Telephone Company shall not be required to provide connection between its lines or system and any line or lines of Callahan Farmers Telephone Association except under the rules and regulations and subject to the rates applicable in other cases for similar service.

4. In the event that any line or lines may be disconnected by Siskiyou Telephone Company from its telephone system for violation of any of the provisions of this Order, as hereinabove provided, it shall refund to such person or persons so disconnected, and from whom advance payments for service have been theretofore collected, an amount or amounts equal to the difference between the amount or amounts of such advance payments and the amount or amounts chargeable at duly authorized rates for the service actually rendered; and in the event of such disconnection of service Siskiyou Telephone Company shall not re-establish connection or restore service unless or until the provisions of this Order shall have been fully complied with and except under the rules and regulations and sub-

ject to the rates hereinabove provided for in paragraph three (3) hereof.

AND IT IS HEREBY FURTHER ORDERED that, except as to the matters hereinabove specifically provided for, the complaint herein be and it is hereby dismissed.

Dated at San Francisco, California, this 17th day of March, 1922.

H. B. Brundage

Livingston Masters

L. H. Lueders

Commissioners.