

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

S. O. FESLER, et al.,

Complainants,

vs.

Case No. 515.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY,

Defendant.

Decision No. 1419

Appearances

Joseph M. Cross, Attorney for Complainants.

James T. Shaw, representing The Pacific Telephone
and Telegraph Company.O P I N I O N

GORDON, Commissioner.

The complainants in this case are patrons of The Pacific Telephone and Telegraph Company at its exchange in Modesto, California. They are classified by the telephone company as farmer line subscribers. The complaint alleges discrimination in the rates charged its different patrons by the telephone company and points out in support of this allegation that some of these patrons are charged but \$3.00 per year while others are charged \$7.20 per year for similar service. It is further alleged by the complainants that the telephone company owns no interest in the lines and telephones comprising the equipment necessary in rendering this service, in view of which they believe that \$3.00 per telephone per year would be ample compensation to the telephone company for this class of service. The Commission is, therefore, asked to investigate the tolls, rates and charges for the service rendered to farmer line patrons and to determine reasonable charges therefor.

This case was heard in the city of Modesto on January 16, 1914. The testimony shows that for a number of years the defendant company has been rendering service to its patrons in the rural

districts adjacent to its various exchanges under various conditions and at varying rates. As rural service conditions changed with the various stages of development in this branch of the telephone company's business, the rates for this class of service underwent various changes. Eventually a schedule of rates for rural service was adopted and became effective on July 1, 1909, under which rates the telephone company on its part agrees to furnish switchboard connection, necessary circuit to the town limits for not less than five subscribers per circuit, central office service, which includes unlimited switching with all exchange subscribers connected with the exchange with which the rural line connects, maintenance of the equipment which it provides, listing in directory and code ring card. The subscribers on their part are required to furnish necessary circuit from their premises to the town limits for connection at that point with the circuit provided by the telephone company, complete telephone and necessary batteries, substation protection and maintenance of same. The rates for this class of service are fixed by a sliding scale having as its basis the total number of subscribers' stations connected with the exchange with which the rural lines are connected. This schedule is as follows:

<u>Connecting with Exchanges of</u>	<u>Switching Rate Per Year</u>
300 stations or less	\$ 3.00
300 to 500 stations	3.60
500 to 750 stations	4.20
750 to 1,000 stations	5.40
1,000 to 2,000 stations	7.20
2,000 to 4,000 stations	8.40
4,000 to 6,000 stations	9.60
6,000 to 8,000 stations	10.80
8,000 to 12,000 stations	12.00
12,000 and over	15.00

These rates apply for residence stations; business stations connected on farmer lines are charged double these rates, and in either case the rates are subject to a discount of 10% if paid during the first month of the year for which bill is rendered, or in the case of new subscribers, during the month when service is connected.

This complaint was filed during the month of December, 1913. At that time and for a number of years previously, the total number of stations connected with the Modesto exchange was between one and two thousand so that during that period the standard rate under this schedule would be \$7.20 per year. Those patrons who are now paying \$3.00 per year became subscribers when that rate was regularly in effect and whose rates, for one reason or another, the telephone company has not advanced. Those who are paying \$7.20 per year are those who have become subscribers since that rate was adopted as the standard rate on July 1, 1909, and those whose rates the telephone company has advanced since that date and prior to the effective date of the Public Utilities Act.

Testimony of the complainants' witnesses was chiefly in support of their claim that discrimination does exist. With respect to the element of reasonableness involved in the rates for rural service, it was frankly admitted by the complainants' counsel that their idea of reasonableness is based generally on what they understand the rates to be in other states for similar service and that they were not prepared to maintain any definite position with reference to any definite rate.

With reference to the ownership of equipment necessary in rendering farmer line service, it will be seen by reference to the above schedule and conditions under which the rates therein listed apply that the telephone company furnishes a portion of the equipment which includes necessary circuits from the exchange to the town limits and necessary central office equipment. On the other hand, the subscribers themselves provide at their expense necessary telephones and necessary circuits from their premises to the exchange limits. On this basis, the telephone company disputes the allegation of the complainants with reference to their interest in farmer line equipment and has presented data showing that the average length of lines necessary in rendering farmer line service is one and one-quarter miles as compared with an average

of one-quarter mile of circuit necessary for other classes of exchange service and, on the basis of these averages, its investment in circuits necessary in rendering farmer line service is actually greater than the investment required in rendering other classes of service.

Section 19 of the Public Utilities Act provides that no public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any person or corporation or subject any corporation or person to any prejudice or disadvantage. The purpose of this section is clearly to prevent discrimination. Section 14(b) of the Public Utilities Act provides that all public utilities other than common carriers shall file with the Commission their schedules of rates, rules and regulations, etc., which were in effect on October 10, 1911, but provides that the Commission may from time to time determine rates in excess of or less than those shown by said schedules. Section 17(b) of the Public Utilities Act provides that no public utility shall charge, demand, collect or receive any greater or less or different compensation than that included in its schedules on file which are to be the rates, etc., actually in effect on October 10, 1911, but provides that the Commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility. Section 63(a) of the Public Utilities Act provides that no public utility shall raise any of its rates, fares, tolls, rentals or charges except upon a showing before the Commission and a finding by the Commission that such increase is justified.

It was called to the attention of the Commission that certain public utilities of the state, prior to March 23, 1912, the effective date of the Public Utilities Act, had increased some of their rates over the rates actually in effect on October 10, 1911, and accordingly on April 17, 1912, the Commission approved

its General Order No.17 requiring that such public utilities immediately restore the rates which were actually in effect on October 10, 1911, and continue those rates in effect until the further order of the Commission.

The telephone company maintains that it is only by reason of the fact that it cannot, under the provisions of the Public Utilities Act and of General Order No.17, referred to above, increase any of the rates heretofore charged without the Commission's authorization that discrimination has been permitted to continue, and in this it was sufficiently borne out by the testimony of the complainants to the effect that the telephone company had attempted to make all of its rates uniform by raising the lower rates. The telephone company admits there is discrimination between its patrons who are complainants herein and expresses a willingness to remove the discrimination by raising the lower rate.

In every case such as this, we are met with the same suggestion and it seems to be the position of the utilities that when discrimination is found to exist they shall be permitted to remove such discrimination by imposing an added burden upon those in whose favor the discrimination has been made instead of taking the burden off of those upon whom it has been imposed. In this position the utilities lose sight of the provisions of the Constitution of this State and of the Public Utilities Act to the effect that they must secure the permission of this Commission in order to raise a rate and also the universal rule that, where a privilege is requested, the one requesting such privilege from any tribunal has upon him the burden of justifying the granting of such request. Therefore, it is well to announce for the benefit of all public utilities the rule that in the future where discriminations are found to exist the utility maintaining such discriminations may be permitted to eliminate them by lowering the rate without further hearing and without further finding than that the discrimination exists. On the other hand, such discriminations may not be

eliminated by increasing the rate unless the utility has assumed and maintained the burden of showing to this Commission that the higher rate sought to be put in is justified. In other words, in the present case The Pacific Telephone and Telegraph Company may reduce all of its rates to the level of the lowest rate found to be in effect in this exchange, and if it will do so the Commission will consider that the cause of complaint is justified without further proceeding. If, on the other hand, the defendant desires to remove the discrimination by raising the lower rate, such defendant must indicate that desire to the Commission, file an application so to do and be prepared within a reasonable time to assume the burden of showing that the higher rate is justified or an order will be entered fixing the lower rate as the proper rate to be charged.

It seems to me that the telephone company has assumed an illogical position with reference to its entire scale of so-called farmer line rates. Its position is that the larger the number of patrons connected in the exchange with which the farmer's line is connected the higher the price shall be to the farmer's line subscriber. This position is correct if it be admitted that the value of the service to the patron is the only element to be considered in making rates. This doctrine when advanced by the railroads is known generally as the "what the traffic will bear" theory and has been entirely exploded with reference to railroads in this State except in those cases where what the traffic will bear, that is all the shipper can be induced to pay, is no higher than the railroad has a right to exact when considering its business and the cost of performing the service. The real controlling element is what it costs the utility to perform the service and, while this must be properly modified in particular cases, still when we view the entire business of a utility this is the rule which must be applied. It may well be that in the year 1914, under improved telephonic conditions and in contemplation of the much more universal use of the telephone, a farmer's line subscriber, even though he gets more service from the company than he secured in the year 1905, should

nevertheless be accorded a lesser rate. Therefore, it is not sufficient showing to permit the increase of these rates for this company to produce evidence to the effect that more people may be reached by the telephone of the farmer's line subscriber now than could be reached when the \$3.00 rate was in effect.

It is, therefore, my opinion and I find as a fact that discrimination exists between the farmer's line patrons of this defendant connected with its Modesto exchange, and if such discrimination is to be removed without further hearing it must be removed by applying to all farmer's line subscribers in this territory the \$3.00 rate.

I recommend the following order.

O R D E R

S. O. Fesler and others, patrons of The Pacific Telephone and Telegraph Company, a public utility corporation, having filed complaint that the rates charged its present patrons for farmer line service at its Modesto exchange by the said telephone company are exorbitant, unjust and discriminatory, and a hearing having been held, and being fully apprised in the premises, the Commission hereby finds as a fact that discrimination in rates for farmer line service does exist in this exchange and basing this order on the foregoing finding of fact,

IT IS HEREBY ORDERED that such discrimination be removed within thirty days from the date of this order by the application of a uniform \$3.00 rate to all of the patrons of this exchange or that, within such time, the defendant herein file an application applying for permission to present evidence with a view to justifying some higher rate than the lowest rate existent in this exchange for its farmer line subscribers, which rate shall be substituted uniformly for the existing rates.

AND IT IS FURTHER ORDERED that, on the filing of such application, the present rates be maintained in effect until the Commission determines the questions raised by said application, but in

the event that said application is not filed within the date specified, or thereafter in the event that said application for an increase is not justified, the present uniform \$3.00 rate must be maintained in effect.

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 10th day of April, 1914.

John M. E. Coleman
H. D. Loveland
Alfred Gordon

Commissioners.