Decision No. 1837

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the matter of the complaint of A. J. Guglielmetti, W. J. Guglielmetti, and R. P. Guglielmetti, co-partners, doing business under the firm name and style of Guglielmetti Telephone Company,

Complainants,

Vs.

Chileno Valley Telephone Company, a corporation,

Defendant.

Case No. 530.

Appearances

W. H. Early, Attorney for Complainants.

Chas. F. Fury, of Lippitt, Lippitt & Fury, Attorneys for Defendant.

T. F. Delury, for The Pacific Telephone and Telegraph Company.

O P I N I O N

GORDON, Commissioner.

The complainant and defendant in this case each owns and operates a system of rural or farmer telephone lines in certain rural districts contiguous to the city of Petaluma, Sonoma County, California. Neither the complainant nor defendant company operates a central exchange, but provides and maintains its main or connecting lines over the various public highways and connects its main lines at the city limits with connecting lines which are provided by The Pacific Telephone and Telegraph Company for local exchange and long distance toll service through the latter company's exchange in Petaluma. The subscribers or patrons of each company provide their own telephones and the necessary drops or branch lines from their premises to the various points on the public highways where they connect with the main lines owned by these companies. For the service which The Pacific Telephone and Telegraph Company furnishes, each company pays to The Pacific Company for each of its patrons the rates establish-

ed by that company for farmer line stations and for such long distance messages as may be charged to these stations. In addition to The Pacific Company's rates, these companies have established certain other rates which they charge their patrons for profit. Thus they have become public utilities subject to the jurisdiction, control and regulation of this Commission and to the provisions of the Public Utilities Act.

The complaint alleges, among other things, that the defendant, Chileno Valley Telephone Company, has unlawfully invaded certain territory previously served by the complainant's lines and is about to extend its lines into certain other territory now served by the complainant company. For relief it prays that the defendant be required to remove its lines from and to cease to operate in the invaded territory, that it be enjoined from entering the other certain territory which it is about to enter, and that the Commission fix and declare a reasonable rate to be charged for telephone service in the invaded territory. For answer the defendant enters a general denial of all of the allegtions set forth in the complaint and has filed a cross complaint alleging that the complainant has unlawfully invaded a portion of the defendant's territory.

This case came to formal hearing in Petaluma on May 22, 1914. Testimony was introduced going to show that the defendant company commenced its operations during the early part of the year 1908 and that about a year later the complainants completed their first lines. During the first years of their operation before the present powers of control over public utilities were vested in the Commission, it appears that the complainant company built its lines into territory which had been previously served by the defendant company's lines, but this occurred as a result of certain litigation between the parties to this complaint in which the Commission is in no wise involved. In this the Commission, therefore, is not concerned. It appears , however, according to the testimony, that the defendant has since the effective date of the Act extended its lines into territory along a certain

road known as Chapman Lane, which was originally served by the complainant's lines, without an order of the Commission authorizing the extension. The record shows that this extension was originally planned to provide service over the defendant's lines for one M. De Martin, president of the company, who was one of its original promotors and who had moved to a farm which is located on this road and desired to continue service over those lines because of his interest in that company. It was not, however, intended to serve other patrons in that particular section.

The defendant company's rates, however, are lower than those of the complainant and as this fact became known to certain of the complainant's patrons who are located along Chapman Lane arrangements were completed between them and the defendant company to discontinue service from the complainants and to connect their premises with the defendant company's lines. The complainants accordingly claim that, under Section 50(a) of the Public Utilities Act, this extension was unlawfully made and is now asking an order of the Commission requiring the withdrawal of the defendant's lines from this road.

With reference to the complainant's allegation that the defendant is about to extend its lines into other territory now served by complainaint's lines and to the complainant's prayer for a restraining order enjoining the defendant from making such extension: The territory involved is along what is known as Cleveland Lane. According to the testimony the defendant company has not arranged to build along this lane, and since all parties concerned as a result of this complaint have been made fully aware of their rights as provided by the Public Utilities Act with respect to the extension of lines, I do not consider that an order of the Commission appertaining to this particular point in this complaint is at this time necessary.

With reference to the defendant's cross complaint alleging that this complainant has since March 23, 1912 extended its lines into territory previously served by defendant's lines without the Commission's authorization: The testimony shows that the

particular extensions complained of were not constructed for and are not the property of this complainant or of any of its patrons.

With reference to the petition of the complainants that the Railroad Commission fix and declare a reasonable rate to be charged for telephone service in the invaded territory: It has been previously observed that the rates charged its patrons by the defendant, Chileno Valley Telephone Company, are lower than the rates of the complainant, Guglielmetti Telephone Company. It is apparent, aside from any desire on the part of the complainants for the Commission to establish a reasonable rate for telephone service, that the complainants, not knowing whether the Commission will order withdrawal of the defendant from the disputed territory, desire (in the event that the defendant be permitted to continue to operate in that territory) that the defendant shall not be allowed to exercise the advantage which it would have if the rates of both companies were not the same.

Prior to filing this complaint, Guglielmetti Telephone Company had not filed its tariffs with the Commission as required by General Order No.15 and by the Public Utilities Act, but as shown by the testimony it charges each of its patrons $17.00 per year, out of which amount it pays to The Pacific Telephone and Telegraph Company $7.20, less a specified cash discount for prompt payment for each of its patrons. Chileno Valley Telephone Company pays a similar rate to The Pacific Company for each of its patrons and in addition, according to the testimony, charges certain of its patrons, except stockholders, who have signed five year contracts and paid in advance for that period, $5.00 per year. For patrons not stockholders and signing one year contracts, a rate of $6.00 per year is charged. Stockholders pay only The Pacific Company's rate or, in other words, so far as the defendant's rate is concerned, pay nothing whatever for their service.

So far as the difference between the $5.00 and $6.00 rate of the Chileno Valley Telephone Company is concerned, while

I do not agree that this practice is reasonable, I am not at this time disposed to deny the right of the defendant to discount accounts paid in advance if the same privilege in this respect is held out to all of its patrons alike. However, as to preferential rates being held out to stockholders, I am of the opinion and this Commission has heretofore taken the position that similar rates for similar service should be open to all patrons alike whether they be stockholders or non-stockholders and those desiring to purchase stock should be paid dividends in such amount as their investment may be able to properly earn. I shall accordingly recommend that the rates to stockholders and those not owning stock be made the same.

The chief source of complaint is apparently involved in the feature of invasion of territory, and so far as other changes in rates are concerned, since the disposition of the difficulty relative to the invasion of territory is not necessarily dependent upon a readjustment of rates and since the determination of any rate for the class involved in this case, namely, farmer or rural line service, will be dependent upon the Commission's later findings in matters now before it in other proceedings and in matters yet to come before it, I shall for the present withhold further recommendations with reference to further changes in the rates of either of these companies.

Referring now to the extension of this defendant's lines along Chapman Lane which has resulted in a loss of patronage by the complainants to the defendant company: It has been already pointed out that this extension was primarily designed to provide service over the defendant's lines for Mr. De Martin and that the subsequent taking over of the complainant's patrons by the defendant was not contemplated in the defendant's original plans. It is shown by the record that the complainant did not oppose the extension of defendant's lines for the purpose of serving Mr. De Martin, and at the suggestion of the Commission the complainant and defendant each agreed at this hearing to arrange a mutually satisfactory compromise contemplating the withdrawal of the defend

ant from Chapman Lane except that it should continue to serve Mr. De Martin. Ample time has been allowed by the Commission to all parties concerned to arrange a satisfactory adjustment of their difficulties, but although it is plain that this extension was made in violation of the provisions of the Public Utilities Act, such adjustment has not yet been effected. In view of this fact and all of the circumstances involved, the duty of this Commission appears to demand the exercise of its powers to require due observance of those provisions, and I shall recommend that the defendant, Chileno Valley Telephone Company, except that it be permitted to continue to serve Mr. De Martin, whose present place of residence is located on Chapman Lane, over the defendant's lines, be required to remove or otherwise dispose of its lines along said Chapman Lane and to discontinue serving any and all other patrons located in this particular locality until the further order of this Commission.

The following order is recommended.

O R D E R

Complaint having been made to this Commission by A. J., W. J., and R. P. Guglielmetti, co-partners, doing business under the firm name and style of Guglielmetti Telephone Company, complainants, vs. Chileno Valley Telephone Company, a corporation, defendant; the complainant and defendant companies each owning and operating a system of rural or farmer telephone lines as public utilities in territory adjacent to the city of Petaluma, Sonoma County, California, alleging among other things that the defendant, Chileno Valley Telephone Company, since the effective date of the Public Utilities Act without right or authority and without the prior permission of this Commission, has extended its lines along a certain public highway known as Chapman Lane in competition with the lines of the complainants, Guglielmetti Telephone Company; and praying in part that the defendant be required to remove its lines and to cease to operate in the territory invaded by it, as aforesaid; and that the Commission fix and

declare a reasonable rate to be charged for telephone service in said invaded territory; and a hearing having been held and the Commission having found as a fact,-

(1) That the defendant herein, Chileno Valley Telephone Company, did, since March 23, 1912 without the prior authorization of this Commission and in violation of the provisions of Section 50(a) of the Public Utilities Act, extend its lines along a certain public highway known as Chapman Lane into territory already served by lines of complainant, Guglielmetti Telephone Company;

(2) That, as more specifically referred to in the Opinion accompanying this Order, the rates charged its patrons for telephones by defendant, Chileno Valley Telephone Company, are not the same to its patrons who are stockholders as the rates charged its patrons who are not stockholders for similar service;

And basing its opinion on the foregoing findings of fact,

IT IS HEREBY ORDERED: First: That the defendant herein, Chileno Valley Telephone Company, be and it hereby is ordered within not to exceed sixty (60) days from the effective date of this order to remove all of its present lines from and to cease to operate in the territory along the said Chapman Lane, hereinbefore referred to, or within the said sixty (60) days herein specified to otherwise dispose of said lines to other parties and to cease to operate same in connection with its system and to make satisfactory showing to the Commission immediately thereafter that the provisions of this section have been fully complied with.

Second: That the defendant herein, Chileno Valley Telephone Company, be and it hereby is ordered to publish, file with this Commission and place in effect within thirty (30) days of the effective date of this order similar rates for similar service to all of its patrons alike, whether its patrons are stockholders or non-stockholders, in addition to the yearly switching charge collected by The Pacific Telephone and Telegraph Company for connection with its Petaluma exchange as follows:

(a) To patrons signing five year contracts and paying their accounts for the five year period in advance, $5.00 per year.

(b) To patrons signing one year contracts, $6.00 per year.

PROVIDED: That the said defendant, Chileno Valley Telephone Company, may be permitted to continue the operation of its line from Western Avenue along Chapman Lane to the premises owned and occupied by M. De Martin for the purpose of serving the said M. De Martin with telephone service over its lines but not for furnishing telephones or telephone service to any other party or parties along said Chapman Lane nor for any other purpose than herein specifically provided for until the further order of this Commission.

AND PROVIDED FURTHER that this order is not to be taken as approval of the rates of any or either of the companies involved in this proceeding since the Commission has not yet passed upon their reasonableness.

AND IT IS HEREBY FURTHER PROVIDED that the Commission does not waive any of its published rules relative to the sale or transfer of any portion of the property of the parties hereto nor any of the provisions of the Constitution of this State or the Public Utilities Act with reference to such sale or transfer.

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 3rd day of October, ~~September~~, 1914.

H. D. Loveland
Alex Gordon
Mark Fickert

Commissioners.