

ORIGINAL

Decision No. 2119

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

HOME TELEPHONE AND TELEGRAPH  
COMPANY OF SANTA BARBARA,

Complainant,

vs.

THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY,

Defendant.

Case No. 522.

Richards & Carrier for complainant.  
H. D. Pillsbury, James T. Shaw and  
Felix T. Smith for defendant.  
W. P. Butcher, City Attorney, for  
City of Santa Barbara.

THREEEN, Commissioner.

O P I N I O N.

This case involves the rates charged by The Pacific Telephone and Telegraph Company for telephone service in the City of Santa Barbara.

The complaint alleges, in effect, that complainant and defendant is each a telephone corporation engaged in conducting a general telephone business in the City of Santa Barbara and the territory adjacent thereto; that subscribers to defendant's telephone exchange in the City of Santa Barbara may converse not only with persons resident in the City of Santa Barbara, but also with two exchanges known as the Montecito and the Carpinteria exchanges and with persons living in the Santa Barbara exchange outside the city limits; that complainant maintains a central exchange in the City of Santa Barbara and that its telephones are connected with certain territory lying outside the city limits of Santa Barbara, including the Montecito exchange and the Goleta exchange; that

prior to August, 1908, defendant's predecessor charged as monthly rentals for business telephones in the City of Santa Barbara the sum of \$4.00 for main line telephones and \$3.00 for two party line telephones and for residence telephones the sum of \$3.00 for main line telephones and \$2.00 for two party line telephones, but that since said date, defendant's predecessor and defendant itself have been reducing the monthly rentals for residence telephones, so that since August, 1908, the monthly rental for main line residence telephones has been reduced to \$1.00 and for two party line residence telephones to 75 cents; that on October 1, 1913, defendant had connected with its central exchange in the City of Santa Barbara 1936 telephones; that in certain other designated exchanges in California defendant is charging for telephone service monthly rates for both business and residence telephones in excess of those charged in Santa Barbara; that plaintiff has 2920 telephones connected with its central exchange in the City of Santa Barbara and that its monthly rental for business telephones is \$3.00 for main line telephones and \$2.25 for two party line telephones and its monthly rental charge for residence telephones is \$2.00 for main line telephones and \$1.50 for two party line telephones; that ever since 1903 plaintiff has in good faith been engaged in the general telephone business in the City of Santa Barbara; that the expense of maintenance and operation of defendant's telephone exchanges specifically mentioned in the complaint are not greater than similar expenses in connection with defendant's Santa Barbara exchange; that the rates charged by defendant are unreasonable, injurious and discriminatory as against the complainant, and do not yield an income to the defendant sufficient for the maintenance and carrying on of its business in the City of Santa Barbara but have been fixed for the purpose of and with the intention to destroy complainant's business, and by unfair and injurious competition to compel complainant to abandon the telephone business in the City of Santa

Barbara and vicinity, and with the intent to destroy competition with itself in the City of Santa Barbara. Complainant asks that defendant be cited to appear before the Railroad Commission and "that the rates of the defendant to be charged in the City of Santa Barbara be fixed by this Commission, and that the discriminatory rates of the defendant in the City of Santa Barbara be prohibited."

The defendant, in its answer, challenges the jurisdiction of the Railroad Commission to entertain the complaint on the ground that this is not a complaint on the Commission's own motion, nor is it signed by the Mayor or President or Chairman of the Board of Trustees or a majority of the Council, Commission or other legislative body of Santa Barbara or by twenty-five consumers or purchasers or prospective consumers of purchasers of telephone service, as provided in Section 60 of the Public Utilities Act, referring to complaints as to the reasonableness of public utility rates.

Defendant further denies that its rates are unreasonable, injurious and discriminatory, or unreasonable or injurious or discriminatory as against complainant, or at all; admits, in effect, that its rates do not yield a sufficient income for carrying on its business in Santa Barbara, but contends that complainant can not raise this point; denies that its rates in Santa Barbara and vicinity have been fixed for the purpose of destroying complainant's business, but alleges that they have been reduced for the purpose of protecting its property and business in the City of Santa Barbara and vicinity from the competition of complainant; alleges that this Commission's jurisdiction to establish telephone rates in Santa Barbara is confined to rates for service between points within the incorporated City of Santa Barbara and points outside said limits, or between two or more points both of which are outside the city limits, and that the rate fixing power invoked by the complainant's

prayer rests with the governing body of the City of Santa Barbara; denies that discriminatory rates exist in the City of Santa Barbara; and avers that in so far as differences in rates between Santa Barbara and other points may be concerned, these differences rest on differences in circumstances involved in this case, entirely traceable to complainant and complainant's own acts, in particular complainant's invasion of a field already served by defendant's predecessor. Defendant asks that the complaint be dismissed.

A public hearing was held before Commissioner Eshleman in Santa Barbara on March 9, 1914. At this hearing certain evidence was introduced by complainant, but defendant rested its case without the introduction of any evidence, insisting that the Commission has no jurisdiction to grant the relief asked for in the complaint. The City of Santa Barbara appeared through its City Attorney and also urged that the Commission has no jurisdiction to grant the relief prayed for. The case was submitted on briefs, which have now been filed.

Under order of this Commission of January 2, 1915, and on written consent of all the parties on file herein, the preparation of the opinion and order herein was transferred from Commissioner Eshleman to myself.

As will be observed from the foregoing statement of facts, the complainant asks relief under two heads--(1) that the rates of defendant to be charged in the City of Santa Barbara shall be fixed by this Commission and (2) that the discriminatory rates of the defendant in the City of Santa Barbara be prohibited. The relief first asked involves the reasonableness of rates. The relief second asked involves the entirely different question of discrimination in rates. I shall consider these matters separately.

Complainant first asks this Commission to establish the rates charged by defendant for telephone service in the City of Santa Barbara. Defendant contends that the Commission has no

jurisdiction to proceed under this head, and in this connection relies on Section 60 of the Public Utilities Act, reading in part as follows:

"Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public utility including any rule, regulation or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation of any provision of law or of any order or rule of the commission; provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water or telephone corporation, unless the same be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city and county, or city or town, if any, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers or prospective consumers or purchasers, of such gas, electricity, water or telephone service."

Under this section, it would seem that defendant's point, in so far as it refers to the question of the reasonableness of the rates charged by defendant, is well taken. This complaint was not made by this Commission on its own motion nor was it signed by the Mayor of Santa Barbara or by a majority of the City Council or by twenty-five consumers or purchasers or prospective consumers or purchasers of telephone service. The complaint is signed solely by a rival telephone company which, in so far as the pleadings show, is not even a patron of the defendant. Complainant relies in this connection on Section 62 of the Act, providing, in effect, that "any public utility shall have a right to complain on any of the grounds upon which complaints are allowed to be filed by other parties." This provision, however, cannot be regarded as overruling the specific provisions of Section 60 with reference to complaints attacking the reasonableness of the rates of the classes of public utilities therein designated.

I am of the opinion, furthermore, that entirely independent of **GROUND** this/this Commission does not have jurisdiction to grant the relief

asked under the first head. The relief asked is that this Commission establish the rates to be charged by defendant in the City of Santa Barbara. The City of Santa Barbara has not voted to confer upon this Commission its powers over public utilities, and accordingly continues to have the right to establish the rate for telephone service rendered within its limits from and to points therein. While it may be a difficult matter to segregate the rates to be charged for service within the City of Santa Barbara as distinguished from the broader area of defendant's Santa Barbara exchange, the relief which complainant had in mind and which is asked in its complaint, is that this Commission establish the rates charged by defendant "in the City of Santa Barbara." Until the Legislature chooses, if it so desires, to enact additional legislation under the provisions of Section 23 of Article XII of the Constitution of this State, as amended on November 5, 1914, the Railroad Commission has no jurisdiction to grant this relief.

I turn now to a consideration of the second head of the complaint, referring to alleged discrimination in rates. Complainant asks under this head "that the discriminatory rates of the defendant in the City of Santa Barbara be prohibited." Section 60 of the Public Utilities Act does not apply to the complaint viewed in this aspect, for the reason that the provisions of Section 60 with reference to the number of <sup>complainants,</sup> ~~complainants~~ refer only to complaints against the reasonableness of rates and not to complaints based on alleged discrimination in rates.

Complainant relies, in the first instance, on Chapter 276 of the Laws of 1913 (Statutes of 1913, p.508), generally referred to as the "Unfair Competition Statute." While this statute makes unlawful certain acts which are termed unfair competition and unfair discrimination, this Commission is not the proper forum within which to seek relief under this statute. The Act provides that the Attorney General of California may prosecute an action in the

name of the people of California to annul the charter or revoke the license of a corporation violating the statute, makes contracts in violation of the statute illegal, provides for actions at law to recover damages on behalf of persons, firms and corporations which may have suffered injury, and declares that persons who violate Section 1 of the Act shall be guilty of a misdemeanor and punishable by fine or imprisonment. While all these remedies are provided, no remedy before the Railroad Commission is provided and this Commission has no jurisdiction, ~~therefore~~ to entertain proceedings under this statute.

Complainant next relies on Sections 19 and 32 of the Public Utilities Act. Section 19 reads as follows:

"No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities or in any other respect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section."

Section 32 (a) reads as follows:

"Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices or contracts, or any of them, affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in anywise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges or classifications are insufficient, the commission shall determine the just, reasonable or sufficient rates, fares, tolls, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order as hereinafter provided."

Under these sections, this Commission is given jurisdiction to entertain complaints concerning discriminations of the character therein specified, including discriminations between localities. If the Commission finds that discrimination exists,

the appropriate relief is an order directing the utility to remove the discrimination. If the discrimination is one affecting rates, it can be removed either by increasing the lower or by decreasing the higher rate. If the localities between which the discrimination is alleged to exist are cities which have not relinquished to this Commission their power to establish utility rates of the character in question, it seems difficult to understand how this Commission can secure jurisdiction under the head of discrimination. If in a given city the Commission has no power to raise or lower a utility rate, the conclusion would seem inevitably to follow that it has no power to make an order which can be carried into effect only by increasing or lowering that rate. This conclusion was clearly intimated by this Commission in City of Pasadena vs. Southern California Edison Company (Vol. 1, Opinions and Orders of the Railroad Commission of California, p. 801). In the present case, the Commission has no power to establish rates in the City of Santa Barbara, one of the communities concerning which the comparison is made, nor does it have jurisdiction to establish telephone rates in most of the other cities which are referred to in the complaint herein.

Complainant urged at the hearing, and draws attention to the fact in its brief, that the area of defendant's Santa Barbara <sup>city</sup> exchange extends beyond the limits, so that with reference to conversations between points in the City of Santa Barbara and points in the territory in the exchange outside of the city limits, this Commission has jurisdiction to establish rates. However, this service is relatively unimportant as compared with the service between points within the city and the prayer of the complaint shows that the real relief which complainant had in mind was either the establishment of rates to be charged "in the City of Santa Barbara" or the indirect accomplishment of the same end by the removal of defendant's alleged discriminatory rates "in the City of Santa

Barbara." Until the Legislature enacts the necessary additional legislation, if it desires so to do, this Commission is without jurisdiction to grant the relief thus requested.

Certain propositions presented by complainant are clearly indisputable. One of these propositions is that defendant has no right to charge the people of Santa Barbara unreasonably low telephone rates and then recoup itself for its losses in the Santa Barbara territory by charging people in other communities unreasonably high telephone rates. It is also a well established principle in public utility regulation that if a utility voluntarily establishes a rate, this rate must be regarded as prima facie reasonable. These principles will undoubtedly have a vital bearing in proceedings which may hereafter be filed before this Commission but cannot be considered in the present case, for the reason that this Commission is without jurisdiction to give the relief asked.

I recommend that the complaint be dismissed, without prejudice to the right of <sup>a proper</sup> complainant <sup>or complainants</sup> to file a new complaint if this Commission should hereafter secure jurisdiction over telephone rates in the City of Santa Barbara.

I submit the following form of order:

#### O R D E R.

A public hearing having been held in the above entitled proceeding, and briefs having been filed and the case being now ready for decision,

IT IS HEREBY ORDERED that the complaint 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.

Deted at San Francisco, California, this 1st day  
of ~~January~~ <sup>February</sup>, 1915.

Max Thelen

W. H. Howard

Edwin O. Edgeston

Stan R. Durbin

Commissioners.