

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Decision No. 2576

Geo. E. Small, et al.,

Complainants,

Vs.

Case No. 808.

The Pacific Telephone & Telegraph Company,

Defendant.

Geo. E. Small, in propria persona.

Jas. T. Shaw, for The Pacific Telephone and Telegraph Company.

GORDON, Commissioner.

O P I N I O N

This is a complaint brought by Geo. E. Small and five other parties who are residents of a certain section of Tulare County, California, situated between the town of Terra Bella and the city of Porterville, vs. The Pacific Telephone and Telegraph Company, alleging that the defendant company has, without due authority, denied them the right of telephone service through direct connection with the defendant's local telephone exchange located in Porterville, and asking that the Commission require the defendant to restore service through the connection at Porterville of a line over which they formerly had this service.

The defendant company has filed a formal answer to the complaint in which, among other things, it alleges that the complainants are within the exchange area of Terra Bella at which it has established a telephone exchange under authority conferred by this Commission, and that it is ready and willing to serve the defendants with telephone service at Terra Bella at rates on file with the Commission and in effect at that point. It is further alleged that the temporary service which these complainants had out of the Porterville exchange was obtained through certain

misrepresentations which were made with reference to their location.

The case was heard in Porterville on June 19th. ¹⁹¹⁵ Testimony was introduced to show that on or about February 10, 1915, the complainants purchased a portion of a line from other parties which formerly had been connected at Porterville with the defendant's exchange and at Ducor with an exchange which is owned by the Ducor-California Hot Springs Telephone Company, the portion of the line purchased being that end of it which was connected at Porterville. It was also shown that, prior to this purchase and until they connected telephones with the line thus acquired, the complainants have all been without telephone service at either of these points, and the defendant company has taken the position that it was only by reason of the fact that their several locations were represented to be within the Porterville exchange area that Porterville service was temporarily obtained. The complainants deny that misrepresentation was made and claim that they would not have purchased this line had they known that there would be any question as to their right to use it to obtain connection at Porterville, and that, having purchased it in good faith, they should have the desired service as otherwise their investment would represent a loss. Since the testimony of the various witnesses is contradictory in this particular respect, the question of deciding this point would resolve itself into one of determining the integrity of the witnesses. The merits of the case, however, do not hinge upon this point.

Upon the formal application of this defendant and others, and after a formal hearing by this Commission, an order was issued in January, 1914, permitting the defendant to establish an exchange at Terra Bella under certain specified conditions, and recognizing in effect the defendant's right to serve all of its patrons within certain territory, - excepting certain parties who were at that time served from Porterville, - from the exchange

which it was authorized to establish at Terra Bella. If these complainants are located within the recognized Terra Bella exchange area, and if they are new patrons without a prior claim to Porterville service, the Commission cannot grant that they now have such claim regardless of their present ownership of this line or of the circumstances which may have prompted its purchase.

The testimony shows, and the fact is admitted that they are located within this territory. It shows further that their line was acquired after the exchange was established at Terra Bella, and that, prior to its purchase, they were not patrons of the defendant and were without telephone service at their several locations. Furthermore it is admitted that their objection to being connected at Terra Bella is principally due to the necessity of paying toll charges for talking between that point and Porterville.

In view of these facts, the following order is submitted.

ORDER

Complaint having been made to this Commission by George E. Small, et al., complainants, residents of a certain territory situated between the City of Porterville, and the town of Terra Bella, in Tulare County, California, vs. The Pacific Telephone and Telegraph Company, defendant, alleging that defendant, The Pacific Telephone and Telegraph Company, has disconnected from its Porterville exchange a certain telephone line over which direct telephone service at Porterville has been heretofore furnished the complainants, and asking that said defendant be required to restore said connection and said telephone service, and a hearing having been had, and the Commission being fully apprised in the matter,-

This Commission hereby finds as a fact:

1. That the said complainants, George E. Small, et al.,

are located within territory which is properly tributary to defendant's Terra Bella exchange.

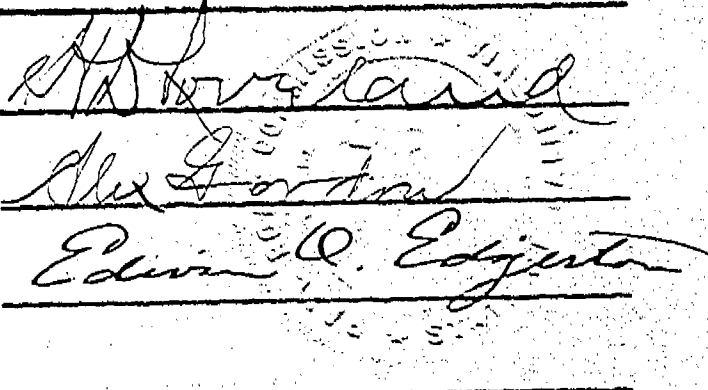
2. That the said complainants have no rightful present claim to exchange telephone service except through the defendant's Terra Bella Exchange.

And basing its conclusions on the foregoing findings of fact,-

IT IS HEREBY ORDERED that the complaint herein be and it is hereby dismissed without prejudice.

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 8th day of July, 1915.



Commissioners.