Decision No. 425

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BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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ORIGINAL

TEHAMA COUNTY TELEPHONE COMPANY, Plaintiff, - vs. - THE PACIFIC TELEPHONE & TELEGRAPH COMPANY, Defendant.	Case No. 271.
GLENN COUNTY TELEPHONE COMPANY, Plaintiff, - vs. - THE PACIFIC TELEPHONE & TELEGRAPH COMPANY, Defendant.	Case No. 272.

H.P. Andrews for complainants.
Hunt Chipley and H.D. Pillsbury for defendant.

ESHLEMAN and THELEN, Commissioners.

O P I N I O N.

In these cases complainants ask for a physical connection between their telephone systems and the system of defendant. The complaints in these cases were filed on April 30, 1912, and are substantially in the same form in both cases. The complaint in Case No. 271 alleges in effect that complainant is a public utility owning and operating a telephone system in Tehama County, California, and having connected with its system in actual use and service 698 stations; that defendant is a public utility corporation doing a general telephone business in California and owning long distance toll lines throughout the State, one of its exchanges being situated in Red Bluff, Tehama County; that complainant has requested the defendant to establish a long distance connection between the exchanges of the parties at Red Bluff, but that defendant has refused to comply with the request; that the telephone lines of the parties

can be made to form a continuous line of connection and that the physical connection between the exchanges of the parties can reasonably be made by the construction of a trunk line between the exchanges of the parties at Red Bluff and that public convenience and necessity will be subserved by such connection; that the portion of the expense of making the connection to be borne by defendant will not exceed $50.00 and that the amount of business which will be transacted through such connection cannot be accurately estimated; that 457 of complainant's telephone stations are held by subscribers who do not have telephones belonging to defendant or connected with defendant's system and that the persons using these 457 telephones are without long distance service; that the service of complainant's telephone system is far superior to that of defendant and that it would be a hardship upon the subscribers of complainant's system to be compelled to use defendant's telephones in order to secure long distance connection.

The complaint in Case No. 272 is practically identical with that in Case No. 271, except that complainant's property is situated in Glenn County and consists of some 889 telephones, of which 570 are held by subscribers who do not have telephones belonging to defendant.

On June 3, 1912, the defendant in each of these cases filed its answers, which answers are almost identical in form, and deny most of the material allegations of the complaints.

The two cases came on for hearing on June 14, 1912, at which time they were consolidated for hearing. At the close of the hearing, both parties requested permission to file briefs, which permission was granted. The briefs have been filed and the cases are now ready for decision.

Tehama County Telephone Company operates a telephone business within the County of Tehama, consisting both of local exchange business and of toll business within the county. Glenn County Telephone Company operates a telephone system within Glenn

47

County and a toll business within that county. Each of these companies also does a long distance business with the other county by means of a toll wire circuit running between Red Bluff and Willows on the poles of the Postal Telegraph Company.

The Tehama County Company has two exchanges and the Pacific Telephone and Telegraph Company has three exchanges in Tehama County. The Glenn County Telephone Company has four exchanges and the Pacific Telephone and Telegraph Company operates seven exchanges in Glenn County, including some magneto exchanges at Fruto, Winslow and Elk Creek.

On April 29, 1912, the Tehama County Telephone Company had 698 subscribers, of whom 457 did not have one of defendant's telephones. On the same day the Glenn County Telephone Company had 889 subscribers, of whom 570 were not duplicated by defendant. On March 31, 1912, defendant operated some 870 telephones in Glenn County, of which something over 600 were owned by defendant and the remainder were owned by farmers and were connected with what is known as Farmers' Lines. On the same day defendant operated in Tehama County 1003 telephones, including a considerable number of farmers' phones. Of all the rural telephones in these two counties operated by defendant, 70% are owned by farmers and only 30% by defendant. In other words, defendant's exchange development has been largely confined to the towns and cities, while the telephone lines in the country operated by defendant have been constructed and are owned by the farmers themselves.

As stated by complainants, the value of the plant of the Tehama County Telephone Company is something over $60,000 and that of the Glenn County Telephone Company something over $73,000. On January 1st, 1912, the value of defendant's exchange plant in Glenn County, as stated by defendant, was $66,000 and of its toll plant $34,150, making a total of $100,150. On March 23, 1912, the value of defendant's exchange plant in Glenn County had increased from $66,000 to $76,000. On January 1st, 1912, the value of defendant's exchange plant in Tehama County, as stated by defendant, was $75,000 and of its

toll plant $60,000, making a total of $135,000. On March 23, 1912, the value of defendant's exchange plant in Tehama County had increased from $75,000 to $88,300.

The Glenn and Tehama County Telephone Companies own all the plant which they operate except what is known as "Swanson's Line," extending from Red Bluff northeasterly and operating somewhat in excess of 60 telephones. Defendant owns the toll plant which it operates and the exchange plant within the cities and towns, but, as has been said, at least 70% of the exchange phones operated by defendant within the country districts are owned by the farmers.

Glenn County Telephone Company started operations in 1908 and Tehama County Telephone Company in 1911. In 1908, at the time when the Glenn County Company commenced its operations, the defendant confined its operations principally to the cities and towns. It did not build into the outlying districts and the farmers were obliged to build their own lines. At that time the service of the defendant was very much poorer than it is at present. The defendant company at that time operated what is known as the magneto or "coffee grinder" system. In order to get Central by this system it is necessary to ring a crank and when Central desires to reach a subscriber on the line, Central rings a crank, which rings the bell on each of the telephones on the line. This system permits of what is known as "rubbering" by each of the other subscribers on the line taking down their telephone in order to hear what is being said, and the noise of the ringing of other subscribers' telephones is undesirable. During the same period, defendant refused to go out and repair the Farmers' Lines for the farmers, with the result that the farmers had to do the repairing themselves. The poor quality of the service and the failure of defendant to build into the country districts resulted in the formation of the two independent companies.

The defendant Company was the first in the field and built a toll line running north and south through Glenn and Tehama Counties to the present exchanges at Willows and Red Bluff. When the inde-

pendent companies started their operations they duplicated this portion of defendant's system. The independent companies then began building out into the country in both sides of these counties and developing territory which had not been developed by defendant. During the early portion of 1912 the defendant company began to build out into the country districts and to duplicate a very large portion of the lines of the independent companies. In all cases except the toll lines heretofore specified and the exchanges connected therewith in cities and towns along the line, the independent companies were in the field first. After January, 1912, in Tehama County, the defendant duplicated the line running southwest from Red Bluff to Paskenta, which was formerly an independent line and had been purchased by the Tehama County Company. The defendant also duplicated Swanson's Line, running northeast of Red Bluff, these two lines being the two chief lines running into the country from Red Bluff. The defendant Company also duplicated various other lines which had been built by the Tehama County Company.

After January, 1912, and particularly after March 23, 1912, defendant duplicated the lines of the Glenn County Telephone Company to the north, east and south of Orland, in the vicinity of Willows, particularly east to Glenn and south into what is known as the Packer Tract. The result of these duplications in these two counties has been that at the present time most of the lines of the independent companies have been duplicated by the defendant company. It is clear from the evidence that the purpose of this duplication is to drive the independent companies out of business. Another device used to this same end was to give free exchange service between towns which had not theretofore had such service, such as between Willows and Butte City and Red Bluff and Los Molinos.

After the advent of the independent companies the defendant company materially improved its service within the cities and towns. It now largely has installed what is known as the common battery system, which is a considerable improvement on the old magneto or

"coffee grinder" system. The latter system, however, is still in use by defendant throughout the country districts of these two counties.

The independent companies operate throughout their entire territory what is known as the Dean or Home or Harmonic system. This is a system whereby the bells are tuned to respond only to certain currents, so that only one bell on the line rings at a time. The ring of the bell is considerably louder than that of the ordinary coffee grinder system, so that people outside of the house can more readily hear it. It is also possible to secure Central and the party at the other end of the line more speedily by use of the Dean system and the sound is considerably clearer than is the case with either the coffee grinder system or the common battery system.

The uncontradicted testimony in this case is, that the present system of the independent telephone companies is very much preferable to that of the defendant company. This was the testimony both of men who used only the phones of the independent companies and of others who used the phones of both the independent companies and of defendant company. During the course of the trial, after the independent companies had introduced a number of witnesses, all of whom testified that the service of the independent companies was superior to that of defendant company, the defendant stipulated that the users in Tehama and Glenn Counties of the service of the independent companies would all testify that the service of the independent companies is superior to that of the defendant company. In view of this stipulation it became unnecessary for the complainants to introduce further testimony on this point.X

WE FIND AS A FACT from the evidence in these cases that the present service of the independent companies is superior to that of the defendant company with reference to speed in reaching the party at the other end, the clearness of the sound and quality of the service.

A portion of the territory in Tehama and Glenn Counties is at present served by the independent companies but not by the defendant company. Among these points are Paynes Creek Postoffice

and Inskip, which are exclusively served by Swanson's line (Transcript p. 134); Battle Creek Bottom (Transcript p.156), as to which the facts are the same; the Bayless district in Glenn County, exclusively served by the Glenn County Company (Transcript p.135); the district south and east of Willows (Transcript p.136), which is exclusively served by the Glenn County Company; and also a number of other lines out from Proberta and Corning.

It also appears from the testimony that the independent companies have over 1000 subscribers who do not have telephones of the defendant company and that these people would like to have long distance service. It appears further that these people are confronted with the alternative of continuing their present superior local service without the advantage of long distance service, or of being compelled to take an inferior local service so that they may be able to avail themselves of the defendant company's long distance service.

On the question of public convenience and necessity, all witnesses who were asked the question testified that in their opinion, public convenience and necessity demanded the connection asked for. This was the testimony both of witnesses who used the phones of the independent companies exclusively and of those who used both phones, and from all the evidence on this point we believe that public convenience and necessity does demand the connection, and

WE FIND AS A FACT that the public convenience and necessity require the making of the connections as prayed for.

While defendant argued that there were difficulties in making the connections desired and also in transmitting calls from the system of the independent companies to points on the defendant company's lines, it appears from the testimony that in a large number of cases defendant does have physical connections with other independent companies which are not subject to its control. The defendant company has held and now maintains connections for long distance business with telephone plants located in the following cities in California:

Los Gatos, Gilroy, Morgan Hill, Sanger, Reedley, Healdsburg, Roseville, Colusa County, Corcoran, Redlands, Ferndale, Corona, Whittier, Calistoga, Guerneville, Sonoma, Lakeport, Lindsay, Exeter, Lemon Cove and Weed.

In quite a number of cases the defendant company maintains physical connection with a telephone system not using the Bell telephone. At the hearing defendant admitted that a physical connection between its system and that of the independent companies, which use the Dean or Home telephone, is practicable and that there is no insuperable operating difficulty connected therewith. The defendant company at present has connections with the following exchanges in California, using at least in part instruments other than the Bell telephone:

Colusa County, Healdsburg, Lindsay, Los Gatos, Morgan Hill, Roseville, Gilroy, Sanger, Corcoran, Lemon Cove and Reedley. In addition to these places, the defendant company, under permission asked for by that company and granted by this Commission, has installed a physical connection between its plant in the City of Pasadena and the plant in said city formerly owned by the Home Telephone Company of Pasadena, using the Home Phone, and as the result of that connection, subscribers having the Home phones are conversing without apparent difficulty over long distance with points on the lines of the defendant company and vice versa.

In this connection we would draw attention also to the fact that Swanson's line running from Red Bluff northeast in Tehama County, which line uses the Dean phones, was for a time connected with the defendant company with apparently no complaint as to operating difficulties on the part of his patrons desiring to secure long distance connections with points on the lines of defendant company.

Mr. Burkett, defendant's engineer, testified that connection could be made between the lines of the Tehama County Company and the defendant company in Red Bluff, and the lines of the Glenn County Company and the defendant company in Willows by stringing

between the offices at 25-pair No.19 gauge cable (Transcript p.190) and that it would be necessary to set aside one operating position in each of these offices. He estimated the cost for the Red Bluff connections as $500.00 and for the Willows connection as $450.00, not counting the operating positions. He stated that the operating position in Red Bluff would cost approximately $350.00 and that in Willows approximately $500.00. Mr. Lindstrom, the independent companies' engineer testified that connection could be made by the use of a pair or two pairs of 22 gauge cable wires in Red Bluff, with the necessary appurtenances and that the cost of the connection would be between $20.00 and $25.00. He stated also that the Tehama County Company now has on hand a cable which may be used for this purpose. He testified that $35.00 would cover the entire connection, with necessary labor and material. He testified that the cable itself was worth about $500.00. He testified (Transcript p.379) that the present operators of the defendant company's switchboard could handle the toll business between the two telephone companies, and that $15.00 would cover the cost of extra equipment in the office of the defendant company at Red Bluff to prepare itself for the additional business. He further testified that the cost of connection would be about $35.00 at Willows, and that the defendant company has just installed a new switchboard there.

There was considerable testimony, both direct and by analogy, bearing on the amount and revenue of increased toll business coming to the defendant company in case the connection should be ordered.

Defendant with its 870 subscribers in Glenn County received from inter-county toll business in that county for the first three months of 1912---------- $2395.52

For the same period the company received from its inter-county toll business in Tehama County---------- $2158.15.

By applying these returns to the 1000 phones now served exclusively by the independent companies, a fairly accurate estimate could be secured as to the amount of business which may reasonably be

expected from those 1000 phones if connected with the defendant company.

At Healdsburg, which is served by the California Telephone and Light Company, which has long distance connections with the defendant company, the average toll receipt per station per month is 46.8¢. In the Sacramento Valley district the average per year for each station owned by the defendant company in 1911 was $10.12 or 84.3¢ per month. During the same period the average for all stations in the Sacramento Valley, including connecting and sub-licensed stations, was $8.42 per year or 70.1¢ per station per month. The toll business originating from the Colusa County Company from May, 1911 to April, 1912, was $4112.34 for 759 telephones, being an average of $5.40 per phone per year or 45 cents per phone per month.

Mr. Prescott H. Coolidge, a witness called on behalf of defendant, testified that the effect of the proposed connection on defendant's local exchange business would be to "perpetuate an economic fallacy" by causing the useless duplication of plants. He stated that defendant would doubtlessly receive an increased toll revenue, but that this result would be produced at the expense of its exchange business. Mr. Lindstrom, the independent companies' engineer, testified (Transcript p.306) that in his judgment the question would resolve itself into the survival of the fittest and that the superior service would win out in the end. He would not commit himself as to the effect of such connection on the number of local telephones of the defendant company further than to say that the company which gave the best local service would secure the business.

Defendant has insisted that to make the connection would be to give the use of a portion of its system to the independent companies and to that extent would deprive the defendant of the control of its own property and of the use of its property without due process of law. We find that this point is not well taken. If the connection were made, the defendant's property would remain under the exclusive control of the defendant and its operators.

The operators of the independent companies would have no control over the defendant company's property. The defendant company would be interfered with in its operation only to the same extent as would be true in case of the receipt of so much new business from any other source. The result would be analogous to that if the defendant company bought some independent company and then received so much new business from that company.

The only important contention of the defendant herein is as set out in the testimony of Mr. Coolidge, a witness called in the defendant's behalf, that to grant the relief prayed for by complainants would perpetuate an economic fallacy because it would lead to duplication of facilities in the case of a natural monopoly. While we agree that as a general proposition the interest both of the public and of the consumers of a public utility, which is a natural monopoly, may be better served by one agency than by two, yet there are very important reservations which must be made from this statement. The only warrant for the existence of a monopoly of any sort must be found in the advantage to the consumers and patrons of such monopoly. The reason why it is ordinarily believed that competition between natural monopolies is advantageous for the patrons of such monopolies is the fact that following such competition there is usually a reduction of rates and an improvement of service. Whenever humanity finds that one experience is invariably followed chronologically by another, humanity is inclined to believe that the second experience is the result of the first. That such is not the fact may often be demonstrated. The lower rates and more adequate service which follow competition between natural monopolies are rates and service which demonstrably could have been afforded by the monopoly without competition, unless the lower rates and improved service which follow such competition are of a character which the agency according them cannot afford to give. In short, when we find that a power company, for instance, lowers a rate when a competitor comes into a field, or improves its service, we can readily see that such power company could have lowered its rate

before the competitor appeared, and it likewise appears that it could have legitimately made it even lower before the competitor appeared than it now voluntarily accords under competition. Before the competitor appeared it did not have to divide its consumers with anyone. A reduction of rates of a natural monopoly and improvement of service under competition is an indication of one of two things, either that the rates were too high and the service not good enough before the competition arose, or that the rates are made too low and the service too good for the price under the stress of the competition. The former result could and should have been brought about without competition; the second result cannot be permanently maintained even under competition unless the utility according too low a rate is charging too high a rate elsewhere. The common practice, of course, is to make the rate too low and drive out the competitor and after the competitor is eliminated or a combination effected, to raise the rate and recoup for losses attendant upon the rate war. We consider it bordering very much on effrontery for a public utility to urge that it is an economic fallacy to duplicate facilities, unless such utility has accorded to the public the advantage to which the elimination of duplication is supposed to entitle it. In this case it was testified by Mr. Coolidge, witness for the defendant, that when the company which he represents absorbed its opposing companies in Oakland and San Francisco, and thereby eliminated at least in part the economic fallacy, it actually reduced the number of employes used to serve the public of these cities while the competition existed. It is hard to persuade the public that an economic fallacy such as here under consideration is not as to it, the public, a good thing, when as a matter of fact when the economic fallacy was inflicted upon them their condition was better than either before or after the existence of such economic fallacy. No public utility, or no other monopoly as far as that is concerned, can ever justify, nor should it be able so to do, its existence as a monopoly on the theory of an advantage to its patrons which it does not accord.

In the case before us, however, we do not admit that granting the relief which the complainants ask will produce an economic fallacy even under the defendant's theory. The major portion of the duplication which exists, and particularly that in the rural districts, was brought about by the failure of the defendant company adequately to serve the public. The duplication now exists, and the granting of the application, instead of bringing about duplication, will minimize the effect of it. In granting this application we desire to reassert the policy which was laid down in the case of Pacific Gas and Electric versus Great Western Power Company, decided by this Commission on June 16, 1912, to the effect that where a utility adequately serves the public at reasonable rates and the territory is completely served, this Commission's inclination will be to permit such utility, if it be a natural monopoly such as a telephone or lighting company, to hold its field free from competition, but that failure so to do will result in this Commission's permitting competition when a competitor applies. We find that the defendant herein has not adequately served the public in the territory in question, and that such failure on the part of the defendant has directly brought about and called into being the independent companies which now desire this connection. And we desire to warn the defendant that in order to maintain and justify a monopoly in any portion of the State it must accord as good, if not better, service when competition is not imminent as it can afford to furnish under competition. The reduction in the number of employes when competition is eliminated is the very opposite from what this company should do, and we believe that such a proceeding is absolutely unwarranted. We, therefore, are of the opinion that no duplication will be brought about by reason of this order, and hence no economic fallacy produced, and we are further of the opinion that the duplication that already exists is the direct result of the default on the part of the defendant in the adequate performance of its duty.

We submit the following form of order:

O R D E R .

TEHAMA COUNTY TELEPHONE COMPANY and GLENN COUNTY TELEPHONE COMPANY having filed with this Commission their respective complaints against The Pacific Telephone and Telegraph Company requesting an order of this Commission for a physical connection between the lines of complainant and defendant companies and for the establishment of through routes and joint rates, tolls and charges as specified in said complaints and said proceedings having been consolidated for hearing and a public hearing having been duly held thereon, and evidence having been introduced by all parties to said proceedings, and the Railroad Commission being fully advised in the premises,

We hereby, in reliance on the evidence in this case, make the following findings of fact:

1. WE FIND AS A FACT that a physical connection can reasonably be made between the lines of the defendant company and the lines of the complainant independent telephone companies, between their respective exchanges in Red Bluff and Willows, and that the lines of these companies can be made to form a continuous line of communication by the construction and maintenance between and in said respective exchanges of suitable connections for the transfer of messages or conversations.

2. WE FIND AS A FACT that public convenience and necessity will be subserved by such connections.

3. WE FIND AS A FACT that the companies parties to these proceedings have failed to establish joint rates, tolls or charges for service by or over their lines and that joint rates, tolls and charges ought to be established to the extent hereinafter indicated.

4. WE FIND AS A FACT that the purpose for which these connections are desired and herein ordered, is not primarily to secure the transmission of local messages or conversations between points within the same city and county, or city or town, but rather that the purpose is to secure the transmission of long distance or toll messages and conversations from a point in one city or town or

county to a point in another city or town or county to the extent hereinafter indicated.

Basing our order upon the foregoing findings and the further findings contained in the opinion which precedes this order,

IT IS HEREBY ORDERED AS FOLLOWS:

1. That a physical connection be established between the telephone exchanges of the Tehama County Telephone Company and The Pacific Telephone and Telegraph Company in the city of Red Bluff, California.

2. That a physical connection be established between the telephone exchanges of the Glenn County Telephone Company and The Pacific Telephone and Telegraph Company in the city of Willows, California.

3. That through routes be established over said connections for the purpose of conveying long distance or toll messages and conversations to and from the lines of complainants in Tehama and Glenn Counties, in California, from and to the lines of defendant in other counties in the State of California, not to cover the transmission of messages between points within Tehama County or points within Glenn County or between points in Glenn and Tehama Counties, and that this order shall apply only to California State business.

4. That joint rates, tolls and charges be made and used, observed and in force in the future over said trhough routes, these rates, tolls and charges to be the same as the rates, tolls and charges now or hereafter to be established between the points affected, respectively, in Tehama or Glenn Counties and other points, as affected, in the State of California, on the lines of defendant company. If the companies cannot agree upon a division between them of the joint rates, tolls or charges herein established, they shall so notify the Commission within twenty days of the date of this order, whereupon the Commission will proceed to establish such divisions by supplemental order.

5. That the cost of installing the physical connections shall be borne entirely by the complainant companies.

6. That the companies are directed to agree, if possible, upon the rules and regulations to govern the use of said physical connections and the transmission and transfer of messages and conversations over the same. If the companies cannot agree upon such rules and regulations, they shall notify the Commission within twenty days of the date of this order, whereupon the Commission will establish such rules and regulations by supplemental order.

7. This order shall be complied with within thirty (30) days from ~~xxxxxxxxx~~ its date.

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 20th day of January, 1913.

John M Eshleman

H L Loveland

Leo Gordon

Max Thelen

Commissioners.