Decision No. 4391

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

CHARLES E. SUMNER and JOHN A. MAY, doing business under the firm name and style of SUMNER and MAY, a co-partnership,
Complainants,
vs.
SAN DIEGO HOME TELEPHONE COMPANY, a corporation,
Defendant.

Case No. 1050.

Chas. E. Sumner and John A. May for complainants.
Sweet, Stearns and Forward, by A. H. Sweet, for defendant.

THELEN, Commissioner.

O P I N I O N.

Complainants are a co-partnership engaged in the practice of law in the City of San Diego. Defendant is a corporation engaged in the local exchange telephone business in the City of San Diego and adjacent communities in San Diego County, California.

The complaint alleges, in effect, that for several months defendant has been furnishing free telephone service to many of its patrons and that in the case of such patrons, as well as many others, defendant has been waiving the installation deposit of $3.50 provided for in Rule 14 of defendant's rules and regulations on file with the Railroad Commission. The answer denies these allegations.

Rule 14 of defendant's rules and regulations as filed with the Railroad Commission on January 31, 1916, reads as follows:

> "Rule 14: A charge of $3.50 shall be made to all applicants for establishment of service, provided that no charge shall be made applicants who sign for service to be rendered by the use of telephone instruments as then in place.

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"If a charge of $3.50 has been made for the establishment of service, this amount without interest shall be returned to the subscriber in equal monthly installments, such installments to be equal to the monthly rental charged for the service so established, the first installment to be returned within forty-five days from the date of the commencement of the service; provided, if the subscriber discontinues the service at the same address prior to the return of the last installment, then the Company shall retain the unreturned portion of such charge; provided further, that the amount of such charge shall in any event be returned to the subscriber at the expiration of twelve months continuous service at the same address.

"A charge of $1.00 will be made for restoration of service when service has been temporarily disconnected on account of non-payment, subscriber's temporary absence, or for any other reason for which the subscriber is responsible, except a change in class of service or location of facilities.

"1. SUPERSEDURES.

"A superseding subscriber shall be subrogated to the rights of the subscriber superseded.

"2. CHANGE IN CLASS OF SERVICE, FACILITIES, OR CHANGE IN LOCATION OF INSTRUMENT.

"Any superseding subscriber requiring a change in class of service, facilities or change in location of instrument, is subject to the authorized charges for such changes. Any subscriber requiring a change of location (inside move) is subject to the authorized charges for such changes at any time such changes are made.

"3. OUTSIDE MOVING CHARGES.

"The application of this revised Rule 14 nullifies the present outside moving charge, which is hereby abolished, except in cases of Private Branch Exchanges, which charges are to be made in accordance with the established rate schedules at any time such moves are made."

The testimony, in so far as material, shows substantially as follows: that defendant is engaged in the local exchange telephone business in the City of San Diego and adjacent communities, largely in competition with The Pacific Telephone and Telegraph Company; that on or about November 1, 1916, defendant employed a woman solicitor at a salary of $80.00 per month, to which salary was to be added a commission of $4.50 for each new subscriber, for the purpose of securing new subscribers for defendant; that the solicitor's method of securing new subscribers for defendant was to go to a prospective subscriber and to make an arrangement under which the prospective subscriber might have a telephone on defendant's system installed free of charge and retained rent free until the solicitor should have secured as patrons of the defendant such friends of such prospective subscrib-

er as the subscriber might designate; that the solicitor herself paid to defendant the installation fee of $3.50 in the case of each such subscriber and also, in most instances, the monthly telephone rental to the date of the hearing herein; that under this arrangement the solicitor secured over 20 subscribers to defendant's system and that approximately 20 such subscribers are still receiving service free, the monthly rental being paid by the solicitor to the defendant; that a number of the responsible officials of the defendant knew of this arrangement and of the steps which were being taken by the solicitor thereunder, but that the defendant permitted the arrangement to continue until about three months ago, subsequent to the filing of the complaint herein, when the defendant ordered the solicitor to discontinue the practice for the future.

Complainants aver that the arrangement hereinbefore set forth constitutes a discrimination against them and other subscribers of defendant who have paid the installation charge of $3.50 set forth in defendant's Rule 14, and who also pay each month the telephone rental applicable to their particular class of telephone service as prescribed by defendant's rates on file with the Railroad Commission.

I am satisfied from the testimony herein that the arrangement hereinbefore set forth was clearly a device employed by the defendant and its solicitor for the purpose of securing new subscribers who would not be obliged to pay the installation charge of $3.50 prescribed by defendant's rules and regulations and who also, during at least a number of months, would escape the payment of defendant's established local exchange telephone rates. I find as a fact that this arrangement constituted a preference or advantage to the subscribers who secured the benefit of the arrangement and a prejudice or disadvantage to the other subscribers of defendant who paid the installation fee and the rates prescribed in

defendant's rules and regulations and rate schedules, and hence violated Section 19 of the Public Utilities Act, which 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 shallestablish 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."

All or practically all the persons who took telephone service from defendant under the arrangement hereinbefore set forth have now been subscribers of defendant for such a period of time that the installation charge of $3.50 would have been returned to them if they had originally paid the charge. These persons, however, are still receiving telephone service without payment by them of the regular monthly rate prescribed by defendant's rate schedule. These persons should henceforth pay the established rates which are being paid by all other subscribers of defendant who are receiving the same class of telephone service.

The parties did not seek competent advice and acted in apparent ignorance of the provisions of the Public Utilities Act. As hereinbefore stated, defendant discontinued the objectionable practice some three months ago.

I submit the following form of order:

O R D E R

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

THE RAILROAD COMMISSION FINDS AS A FACT that the practices described in the opinion which precedes this order constitute a preference or advantage to the subscribers of defendant who received the benefit thereof and subjected to prejudice and disadvantage the other subscribers of defendant who paid the regularly established installation charge and the established rates of defendant.

Basing its order on the foregoing finding of fact and on the other findings of fact which are contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant henceforth cease and desist from the practices set forth in the opinion which precedes this order and that henceforth defendant charge and collect from all its subscribers the rates for their respective classes of service set forth in defendant's rate schedule on file with the Railroad Commission.

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 14th day of June, 1917.

Max Thelen

Alex Gordon

Edwin O. Edgerton

Wm. R. Durbrow

Commissioners.