

Decision No. 7650

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Nevada, California and Oregon Telegraph
and Telephone Company, a corporation,

Complainant,

Vs.

The Red River Lumber Company,

Defendant.

Case No. 1223.

G. P. Johnson for Complainant.

A. E. Bolton for Defendant.

BY THE COMMISSION.

O P I N I O N

Complainant herein is a public utility doing a general telegraph and telephone business throughout the counties of Lassen, Modoc and a part of Plumas, California.

Defendant is the owner of a large lumber industry, the mills of which are located at the town of Westwood, Lassen County.

The complaint alleges that the defendant did, during the year 1914, construct a telephone exchange and a system of wires, cables, crossarms, etc., and since that time has conducted and now is, without any authorization of this Commission, conducting a commercial telephone business in and about Westwood which is a part of the territory within which the complainant does and holds itself out to do a general telephone business. The complainant prays that the Railroad Commission order the defendant

company to desist from furnishing the telephone service complained of which, in its opinion, is an invasion of the territory served by complainant.

Defendant in its answer sets up that for many years it has been engaged in the manufacture of lumber and lumber products; that in connection therewith it acquired a large tract of land in the counties of Lassen and Plumas; that in 1912 it constructed a plant at Westwood; that a railroad was extended thereto; that a milling plant, with a capacity of 700,000 feet per day, was erected; that logging roads were built; that to house its employes it constructed four hundred houses; built boarding houses, hotels, stores, theatres, a church, a school, - all owned by defendant; and that now the town of Westwood has 3500 inhabitants, all employes of the defendant company.

Defendant further alleges that for the purpose of carrying on the business of said plant it was necessary to have communication between the various mills, the store, offices and many of the residences of the employes; that a telephone was necessary as a part of a fire alarm system, as a facility in connection with logging, as an adjunct of its hospital, camps, railroad offices and various departments of said plant.

And further that said telephonic system of said defendant company is wholly used by the said company and its employes and such persons as come to said plant for the purpose of doing business with said company, and that in some houses telephones have been installed and that the installation of the same necessarily made the use of the house cost to the person occupying the same from \$1.25 to \$1.75 per month more than houses in which no telephones were installed.

Defendant alleges that the system so run and operated does not conflict in any manner with the telephonic system of

said complainant; that the service is not competitive; that no public interest would be better served by a combination of the two systems, and if complainant installed a system in Westwood it would still be necessary for defendant to maintain the present system.

A public hearing was held at Westwood before Examiner Encell.

The defendant admitted that its operation of telephones was without any authority of the Commission because it was not operating as a public service corporation or public utility, and the Commission was, therefore, without jurisdiction.

The testimony offered by the parties was substantially the same as the allegations of the complaint and answer. In addition thereto, the following facts were adduced at the hearing:

First:- That the defendant company supplied two-party line telephone service to any residence in Westwood for \$1.25 per month, and single party line for \$1.75 per month. The payment of this charge entitled the users to an unlimited number of switches between their respective residences and any other phone in Westwood, be that telephone in a residence, store, or mill.

Second:- That defendant company, in addition to local service, connected its users with the lines of the Nevada, California and Oregon Telegraph and Telephone Company, complainant herein, for long distance service and received from complainant as compensation therefor the sum of 30% of all long distance tolls originating in Westwood.

Third:- That in the store, pool hall, etc., at Westwood telephones were open to the public generally and any person, be he employe or resident of Westwood, or not, is privileged to use the telephone for local or long distance purposes upon payment of the toll.

Fourth:- The telephone system is used by residents of

other places, the town of Chester being specified, for the purpose of placing orders for merchandise at the store at Westwood.

Defendant in its brief contends that it has never held itself out or expressed its readiness to serve the public generally; that its operations are not affected by a public interest; that it benefits only a particular class, namely, its employes, and finally that the telephone system at Westwood is only a plant facility.

From the facts hereinabove set forth in this opinion, we are unable to distinguish the operation of this company from the operation of any other small telephone company. It is undoubtedly true that the sole purpose of the Red River Lumber Company in establishing its elaborate and splendid city was to confine all its activities to the lumber industry, but whether intentionally or otherwise we believe its dedication of its facilities to the public must be implied from the general course of the business in question (Wyman, Sec. 200, P. 168).

As counsel for complainant very truly (we think) says in his brief:

"It matters not that the Red River Lumber Company, who built the line involved in this case, had no thought of engaging in a public utility business. When they connected their line with a public utility and consented to the use of their line for the transmission of long distance messages, their business rose from 'private to be of public concern.'"

The defendant further claimed that the telephone service herein rendered was merely a plant facility. Unquestionably the telephone service was inaugurated for that purpose, but it outgrew the limitations of that term when it became used for communication between the members of the families of the various employes, when it became used by its employes for purposes not connected with the company, such as for communication with the grocery store, the hospital, etc., when it became used by the residents of the city for long distance service and when it became used by the residents

of other cities and towns for purely commercial purposes.

As was said in the case of *Doxstader v. Southern Elkhorn Telephone Company*, P.U.R. 1919 F:

"The Nebraska Telephone Company is a common carrier. On that point there is no controversy. It furnishes local exchange service to several hundred subscribers at Norfolk, and undertakes to provide all of the local service required by that community. In addition its exchange is connected with its extensive toll system, reaching all sections of the United States. We are confronted, therefore, with the question: Can a private individual or a group of private individuals construct a telephone line, connect that line with a common carrier company engaged in the telephone business, and not become an integral part of the common carrier system, subject to all the obligations flowing from the public interest attaching thereto? If the intimate relationship established between the private individual and the common carrier does not have the effect of changing the essential character of the thing the private individual does, then that question can be answered in the affirmative, and our problem is solved. On the other hand, if the private individual establishes a relationship with a common carrier whereby there is a mutual interchange of service, the individual at the same time performing a duty that would otherwise devolve upon the common carrier, there is good reason to believe that the thing that was intended to be private has come to be of public interest, and is charged with all the obligations that attach to the common carrier."

and as was said in the case of *United States v. Louisiana & P.R. Co.*

234 U.S. page 1:

"Although a railroad may have originally been a mere plant facility, after it has been acquired by a common carrier duly organized under the law of the state and performing service as such and regulated and operated under competent authority, it is no longer a plant facility, but a public institution, even though the owner of the industry of which it formerly was an appendage is the principal shipper of freight thereover. The extent to which a railroad is in fact used does not determine whether it is or is not a common carrier, but the right of the public to demand service of it."

The defendant further lays stress upon the peculiar situation involved in this case, namely, that the land upon which the buildings are situated, all the buildings themselves, and in fact everything of every kind and nature is owned by the defendant company and that, therefore, this matter involves no public interest but is purely a private concern. In addition to the reasons above

given for holding that the defendant corporation has by its conduct become what is defined by the Public Utilities Act to be a telephone corporation and over which the Railroad Commission has undoubted jurisdiction, Subdivision (t) of Section 2 of the Public Utilities Act defines a telephone corporation to be:

"The term 'telephone corporation', when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever owning, controlling, operating or managing any telephone line for compensation within this state."

Nothing therein is said about a situation similar to that existing in this case. However, an examination of Subdivisions (p) and (r) of Section 2 of the Act, which define gas corporations and electrical corporations contain, in addition to the language above quoted from Subdivision (t), the following:

"Except where gas is made or produced on and distributed by the maker or producer through his tenants and not for sale to others," and "except where electricity is generated on or distributed by the producer through private property alone solely for his own use or the use of his tenants and not for sale to others."

The Legislature having made the special exception in the case of gas corporations and electrical corporations relative to use on private property or for tenants, evidently had the matter of such exception in mind and it was not the intent to allow telephone corporations to be exempted from the Public Utilities Act by reason of their serving their commodity only to tenants or upon private property, which situation in the main exists in this instance. For the reasons hereinabove set forth, we are of the opinion that defendant, The Red River Lumber Company, a corporation, has been and now is without any authority from this Commission conducting a public utility, namely, a telephone corporation, and we are further of the opinion that the public utility so conducted is within the territory sought to be served by the complainant herein, Nevada, California and Oregon Telegraph and Telephone Com-

pany, and that the said last named company is the only public utility which possesses the authority to render such service in the territory involved.

O R D E R

Complaint having been filed with the Railroad Commission by Nevada, California and Oregon Telegraph and Telephone Company, complainant, vs. The Red River Lumber Company, defendant, alleging that defendant is unlawfully operating a commercial telephone business as a public utility at Westwood, Lassen County, California, in territory within which complainant is lawfully operating a public utility of like character, and asking for an order of the Railroad Commission requiring defendant to desist from said operation and permitting complainant to provide telephone service without hindrance from defendant in said territory; a public hearing having been held, the matter having been submitted, briefs having been filed, and the matter now being ready for decision, the Railroad Commission hereby finds as a fact:

1. Defendant, The Red River Lumber Company, a corporation, is, without authority of this Commission, conducting a public utility, namely, a telephone corporation, at Westwood, Lassen County, California.

2. The public utility so conducted by defendant is conducted within territory within which complainant, Nevada, California and Oregon Telegraph and Telephone Company, was and is lawfully operating a public utility of like character.

AND BASING ITS CONCLUSIONS ON THE FOREGOING FINDINGS OF FACT:

IT IS HEREBY ORDERED that defendant, The Red River Lumber Company, shall within ninety (90) days of the date of this order discontinue the operation of its telephone system as a public utility-

ty in and in the vicinity of Westwood, Lassen County, California.

AND IT IS HEREBY FURTHER ORDERED that complainant, Nevada, California and Oregon Telegraph and Telephone Company, be and it is hereby authorized and directed within ninety (90) days of the date of this order to establish and provide local exchange telephone service in and in the vicinity of Westwood, Lassen County, California, provided that the authority herein granted to Nevada, California and Oregon Telegraph and Telephone Company to establish and provide local exchange telephone service may be exercised by it only after it shall have submitted to the Railroad Commission for its approval its plans for establishing and providing said service, together with its schedules of rates, rules and regulations for the operation thereof, and shall have obtained the approval of the Railroad Commission therefor.

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 1st day
of ^{June} ~~May~~ 1920.

Edwin O. Egypt

H. Loveland

J. W. Martin

Commissioners.