

Decision No. 26093 .

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PETITION OF A. J. GUGLIELMETTI,
IN RE: GUGLIELMETTI TELEPHONE
CO., ALSO CALLED GUGLIELMETTI
RURAL TELEPHONE CO., A PUBLIC
UTILITY.

Application No. 18564

PETITION FOR PERMISSION OF CO-
PARTNER TO ASSIGN HIS INTER-
EST IN A PUBLIC UTILITY.

Geary and Geary and C. J. Tauzer,
for A. J. Guglielmetti, petitioner.

Lounibos, Schwobeda and McGoldrick,
by Chas. J. McGoldrick, for W. J.
Guglielmetti and Robert Guglielmetti,
protestants.

BY THE COMMISSION:

O P I N I O N

In this proceeding the Commission is asked to enter its order authorizing A. J. Guglielmetti to assign his interest in the profits and in the proceeds in dissolution of the Guglielmetti Telephone Company, also sometimes called Guglielmetti Rural Telephone Company, a public utility, to W. Finlaw Geary and C. J. Tauzer.

The Guglielmetti Telephone Company is a co-partnership composed of W. J. Guglielmetti, R. P. Guglielmetti and A. J. Guglielmetti. The partnership is engaged in operating a telephone system in certain territory in Sonoma County, and in Marin County, California, located to the north, east and west of the City of Petaluma. The communities known as Penn Grove and Cotati are in the area served by the telephone company. For 1932 the telephone company reports operating revenues of \$8,168.15.

There has been filed in this proceeding a copy of an agreement designated "An assignment and power of attorney". The first paragraph of this agreement recites that A. J. Guglielmetti sells, assigns, transfers and sets over and quit claims unto W. Finlaw Geary and C. J. Tauzer all of his right, title, interest and assets in and to Guglielmetti Rural Telephone Company, a co-partnership, composed of A. J. Guglielmetti, W. J. Guglielmetti and R. P. Guglielmetti. Under another paragraph A. J. Guglielmetti nominates, constitutes and appoints W. Finlaw Geary and C. J. Tauzer as his attorneys-in-fact irrevocable, to act in the premises, and with full power and authority to proceed and manage, conduct, control and/or file any suit or action or defend the same in the matter of the conduct of the interest and affairs of the assignor in the aforesaid Guglielmetti Rural Telephone Company, demand accountings, receive any and all profit and profits, and/or proceeds from operations and/or proceeds in dissolution, and in all manner without limit or restriction empowers the aforesaid attorneys-in-fact to act in the name of the assignor, or otherwise, as said attorneys-in-fact may be advised, fully and completely in all respects in the same manner as assignor would and could act in the premises if this transfer and assignment had not been made.

The agreement further recites that the Guglielmetti Rural Telephone Company is a public utility and is not in debt and owes no money except small current bills. At the hearing had in this proceeding Mr. McGoldrick requested the Commission to deny the application, for the reason that the agreement involves the transfer of an interest in the partnership properties.

Marcus L. Samuels appeared at the hearing and asked leave to file a petition in intervention. He was given to and including June 19 to file the same. The petition was not received by the Commission.

During the course of the hearing, the question arose as to whether the agreement involved the transfer of A. J. Guglielmetti's interest in the partnership properties. On this point Mr. Tauzer made the following statement:-

"Examiner Fankhauser: I think you stated it(the agreement) does not contemplate the transfer of any property.

Mr. Tauzer: It does not, absolutely not.

Examiner Fankhauser: Or the dissolution of the partnership?

Mr. Tauzer: No, it does not. Our position, if I may state it briefly, as near as I can, is this: That there is a certain net income from the Guglielmetti Rural Telephone Company, and this gentleman on the stand, A. J. Guglielmetti, is a co-partner, one of three, in the Guglielmetti Rural Telephone Company. He has made an assignment to us, which you have in your possession, of his interest insofar as the net profit of the Guglielmetti Rural Telephone Company is concerned, that is to say, his one third interest. We appreciate we can have no more than that. We have absolutely no interest in the physical property of the Guglielmetti Rural Telephone Company. We have no ability to dictate in regard to its policy, although I can assure the Commissioner at this time that if we can be of any benefit to the telephone company in rendering a better service to the public, that will be our interest, and that we assure the remaining co-partners of our cooperation in every way, shape and form; that we appreciate that there can be no interference whatever on our part, absolutely none. We are entitled solely, exclusively and absolutely to nothing further than an interest in the net profits. We are not transferring any physical property. This is no sale, this is no dissolution of the copartnership. How there can be any objection on the part of counsel is more than I can understand. Nothing in the Code that prevents it; Section 2421 positively permits it, absolutely permits this very thing."

For the purpose of this proceeding we will accept Mr. Tauzer's construction of the agreement. Interpreting the agreement as he does, we believe that this Commission has no jurisdiction over the execution of an agreement such as is presented in this proceeding, and therefore feel that this application should be dismissed without prejudice.

ORDER

The Commission having been asked to enter its order authorizing A. J. Guglielmetti to assign his interest in the net profits in the partnership known as the Guglielmetti Telephone Company, sometimes also called the Guglielmetti Rural Telephone Company, to W. Finlaw Geary and C. J. Tauzer, a public hearing having been held in this matter before Examiner Fankhauser, the Commission having considered the record in this proceeding and being of the opinion that this application should be dismissed without prejudice, therefore,

IT IS HEREBY ORDERED, that this application be, and the same is hereby, dismissed without prejudice.

DATED at San Francisco, California, this 26th day of June, 1933.

C. C. Seavey
L. W. ...
W. H. ...
W. B. ...
W. H. ...

Commissioners.