Decision No. 26865

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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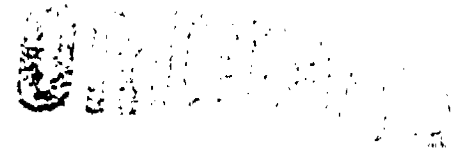

THE CITY OF LOS ANGELES, a municipal corporation,

Complainant,

vs.

SOUTHERN CALIFORNIA TELEPHONE COMPANY, a corporation,

Defendant.

Case No. 3435

Ray L. Chesebro, City Attorney, and Frederick von Schrader, Assistant City Attorney, and Fred F. Ball, for the Complainant.

C. E. Fleager and Oscar Lawler, for the Defendant.

BY THE COMMISSION:

OPINION

In this complaint the City of Los Angeles alleges that as a subscriber for telephone service from the defendant Southern California Telephone Company, its various departments of city government are provided with 2877 telephone instruments, 24 private branch exchange switchboards, and 316 trunk lines, and that it pays to the defendant a total average monthly charge of $17,402 for telephone service received. It is alleged that the City contemplates installing and operating its own inter-communicating telephone facilities. Therefore, it prays as follows: "That if and when The City of Los Angeles

(and its departments) installs, constructs, owns and operates its own intercommunicating telephone system, equipment and service, it desires and requests physical connections between the facilities of its system and those of the system owned and operated by the Southern California Telephone Company which will provide for and allow said city and its departments unlimited and unrestricted exchange, message and toll telephone services through and over the facilities of the system operated by said company, at fair and reasonable rates to be established and ordered by, and placed on file with, this Commission."

Before approaching the questions here presented, it may first be observed that the motive which seemingly actuates the City in its plan to acquire and maintain its own telephone facilities is to obtain a reduction in the cost of its telephone service. No criticism is made in respect to the adequacy or quality of the service being rendered by the defendant company. Nor is any question presented in this proceeding as to the reasonableness of the rates being charged.

The plan presented to the City by its engineers contemplates apparently a new installation of practically the same telephone equipment as that now being supplied by the company, it being assumed that since the company would then furnish only a trunk line service connecting with the privately owned and managed facilities of the City, the charges now exacted by the company under its regularly published rates will automatically be reduced to the extent that those charges are based upon the use of equipment supplied. Thus, of the alleged average monthly charge of $17,402 made by the company for service rendered, the City considers only $6,682 to be

assigned to local and long distance message charges and central trunk line service. The balance is taken to be a "rental" for the private exchange switchboards, telephone instruments, wires, cables, and other miscellaneous appliances installed and maintained by the company. It is assumed, therefore, that after the acquisition by the City of its own intercommunicating system, a monthly saving of the difference between $17,402 and $6,682, less the cost of maintenance and carrying charges on the new City owned equipment, may be effected.

The record herein contains considerable testimony of a conflicting nature on the cost to the City of installing and operating the proposed facilities. But such evidence is immaterial to the real question presented for our consideration. If the City is entitled to the limited telephone service demanded of the defendant, the Commission's function in this case is merely to fix a reasonable rate for that type of service. We need not consider the expediency of the City's plan nor the extent to which it may effect a reduction in its telephone expense should the plan be consummated.

The objections presented by the company are both legal and practical. It claims that the Commission is without authority to require the rendition of such a telephone service so materially different from that which it has offered to render. It claims also that a compliance with the City's demand would be destructive of efficient telephone service to its patrons at large.

In their respective briefs the parties refer to a number of court decisions both affirming and denying the authority of a state regulatory body to order a telephone utility to make a physical connection with the facilities of

another. We are unable to see the applicability of such decisions to the case at hand. Here the question, as we see it, is merely whether the company should be required to afford telephone service to a subscriber which insists upon owning and maintaining the instruments and other facilities located on its premises. Although the City proposes to operate an extensive inter-communicating telephone service for the convenience of its numerous departmental employees, the users of those stations will remain collectively the patrons of the company. The City does not propose to render an exchange service permitting of a telephone connection with any outside station except through the central exchange of the defendant company. Hence no question as to the duty of a telephone utility to physically connect its facilities with those of another utility is involved.

The City grounds its complaint upon the theory that the defendant is now regularly offering full telephone exchange service to various private concerns, and to one department of the City itself, without insisting upon company ownership and maintenance of station facilities. It is argued, therefore, that there has been a holding out to render such a service to all, and that the company's refusal to afford similar exchange service to the City upon its acquisition of suitable station instruments and equipment constitutes unlawful discrimination. We are asked by the City to find that the defendant has dedicated its central office plant and trunk line facilities to the use of all telephone subscribers, whether or not the subscriber has equipped himself with and elects to maintain his own station equipment.

We are firmly of the opinion that such a retrogressive

step in telephone utility regulation should not be taken. The Commission has frequently expressed the opinion that a divided ownership of telephone equipment and responsibility for its maintenance is not compatible with efficient telephone service. It has frequently been declared that a telephone utility must own and maintain all facilities required for the transmission of messages from one subscriber to another. Almost without exception a similar view has been expressed by the regulatory commissions of other states[1].

A detailed statement of the evidence upon which the City bases its claim of discrimination need not be made. It is alleged that the company occasinnally connects its trunk lines to the private facilities of steamships upon their arrival in port. Such a temporary yet possibly essential telephone service obviously does not permit of the company's installation and control of the instruments and other telephone equipment on board the vessel. Such an occasional service rendered under special contract in each instance does not indicate an intention on the part of the company to relinquish ownership and control of subscribers' equipment throughout its service area.

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(1) _Re Robert L. Swanson_ (Cal.) 19 C.R.C. 672, P. U. R. 1920E, 633; _re Tognini, etc. Tel. Co._ (Cal. 19 C.R.C. 305, P. U. R. 1921C, 72; _re Gugliemetti Tel. Co._ (Cal.) 28 C.R.C 523; _re Bluffs & Winchester Tel. Co._ (Ill.) P. U. R. 1915A, 928; _re Social Tel. Co._ (S.D.) P. U. R. 1915C, 106; _Hotel Sherman_ v. _Chicago Tel. Co._ (Ill.) P. U. R. 1915F, 776; _Quick Action Agency_ v. _New York Tel. Co._ (N. J.) P. U. R. 1920D,137; _re Peoples Tel. Co._ (Wis.) P. U. R. 1923C, 374; _43 Puloski Merchants Tel. Co._ (Wis.) P.U.R. 1925E, 674; _Dept. Pub. Works_ v. _Montesano Tel. Co._ (Wash.) P. U. R. 1925A, 676; _Gelsam Co._ v. _N. Y. Tel. Co._ (N. Y.) P.U.R. 1929A, 224; _New England Tel. Co._ v. _Dept._ (Mass. Sup. Ct.) 159 N. E. 743, P. U. R. 1928E, 396.

It is next alleged that the company renders telephone service to the United States Government at certain military reservations where all facilities and equipment are privately owned. Notice may be taken of the fact that for purposes deemed essential to the national defense the government has always insisted upon its ownership and control of all public utility services. Whether or not telephone utilities may refuse to accord that privilege without violating certain conditions prescribed in their national grant for the use of post roads, their custom in this respect cannot seriously be questioned as long as the government deems its ownership of telephone equipment to be a military necessity.

Evidence of dedication to render a telephone exchange service in connection with privately owned intercommunicating facilities is claimed to be found also in the company's own published rate schedules. It is true that when in June 1930 the defendant acquired the small utility system serving the communities of Compton, Gardena and Hynes, it did not seek to obtain a revision of the existing rate schedules which permitted private branch exchange service at special rates to patrons owning their own equipment. This situation is one which should be corrected as soon as possible. But we cannot hold that the failure of the defendant to seek a revision of such rate schedule since succeeding to the obligations of its predecessor may be taken as an offer of a corresponding privilege to all subscribers within its service area.

The only other instance of claimed discrimination which need be mentioned is that found in certain telephone service agreements made by the company with the City's own department of Water and Power. This department maintains extensive telephone communication facilities connecting its general offices in Los Angeles with various points on the line of the Owens Valley aqueduct. Such facilities are for the use of the department's employees. At the urgent request of the department and upon

the plea that the public safety required, the defendant company in 1914 entered into a private leased wire agreement with the Department of Water and Power which permitted the connection of that private telephone line to the company's private branch exchange board located in the department's Los Angeles offices. However, it was expressly provided therein that such telephone connection should be conditioned upon its use solely for the transmission of messages between employees within that branch of the City government and not for calls through the company's central exchange to or from its general telephone subscribers.

This contract remains in force to the present day. The defendant company might properly assume that this express covenant in the contract would be respected. The contract was not unlike those frequently made by telephone utilities when it is necessary to guard against the use of the utility system for general exchange service in connection with telephone facilities privately owned. If the contracting party does not respect the terms of the agreement and permits calls originating on its private facilities to be connected through the utility's exchange, the utility has no means of ascertaining the source of the call except by unusual policing methods. The city now contends that the defendant company has for the past several years been aware that the Department of Water and Power has made numerous telephone calls through such joint facilities. The record indicates to us some doubt as to whether the department has realized that such telephone communications have been made in violation of the contract which it executed. Whatever the facts may be, they may not equitably be urged by the City in support of its claim of discrimination. If any discrimination exists, it is in favor of the City, not against it.

Other alleged instances of telephone exchange service rendered by defendant to subscribers owning their own equipment are likewise based either upon a misconception of the facts or have been occasioned by the misuse of a privilege accorded a regular subscriber. From such evidence the conclusion may not be drawn that the company has offered full telephone exchange service to subscribers proposing to utilize their private facilities in connection with the public facilities of the company.

Nor may the conclusion be reached that the proposed joint use of the private facilities of the City and those of the utility will not result eventually in less efficient service rendered to defendant's patrons generally. No matter how efficient the plant first installed by the City, the responsibility for adequate exchange service to and from other subscribers' stations throughout the company's service area would then be a divided responsibility such as the Commission has frequently condemned. The responsibility would be divided in respect to the design, installation, maintenance and repair of the instrumentalities required for telephone communication. The adequacy of telephone service rendered to one subscriber depends of necessity upon adequate service to all. If the responsibility now imposed upon the utility in respect to these essentials of adequate telephone communication were eliminated as to one subscriber, obviously it could be enforced as to none. Were the utility's duty limited only to the furnishing of adequate central office equipment and trunk line wires leading to private installations not of its selection or under its control, a deteriorated telephone service to all subscribers would inevitably result.

We are of the opinion, therefore, that no order should be issued directing the defendant to continue the rendition of telephone exchange service to the City when no longer permitted the ownership and control of all facilities essential for complete telephonic communication from one instrument to another. It is unnecessary, then, to prescribe a future schedule of rates for such a service. It may be observed merely that should we have arrived at a contrary conclusion on the principal question presented, the rates then to be fixed would be based upon the cost and value of the service rendered by the defendant utility, not upon a "rental" of equipment used in the rendition of that service. Its existing rate schedules are not so designed as to permit one part of a subscriber's charge to be termed a "rental" for facilities supplied, and the other part assigned as the cost of telephone exchange service.

We are of the opinion that the order desired by the City of Los Angeles should not be issued.

ORDER

A hearing having been held in the above entitled matter before Examiner Rowell and the matter submitted on briefs filed, and the Commission having carefully considered the evidence presented, and concluding that the relief sought by complainant should not be granted, therefore,

IT IS ORDERED that the complaint herein of the City of Los Angeles against the Southern California Telephone Company be and the same is hereby dismissed.

Dated at San Francisco, California, this 18th day of December 1933.

[signatures]

Commissioners