

Decision No. 52488**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Archie Couch, Kermit Noble,
 L. D. Matthiesen, Everett F. Goins,
 Frank Carpenter, Russell Strickland,
 Charles F. B. Price, Jr., Ralph C.
 Olberg, James L. Kenney, Harry A.
 Touros, Roland Davies, Donald E.
 Salisbury, J. G. Knowlton, J. E.
 Danton, Fred Udall, George H. Stein,
 Paul Lane,

Complainants,

Spanish Mountain Television Corpo-
 ration, a corporation,

Intervenor,

vs.

Television Transmission, Inc., a
 corporation,

Defendant,

National Community Television
 Association, Inc., a corporation,

Intervenor.

Case No. 5594

Harold E. Mutnick, for Archie Couch, et al.,
 complainants.

Heller, Ehrman, White and McAuliffe by

Robert J. White, for Spanish Mountain
 Television Corporation, intervenor.

Sam W. Hall, for Television Transmission, Inc.,

defendant, and E. Stratford Smith, for
 Television Transmission, Inc., defendant,
 and National Community Television Association,
 Inc., intervenor.

Harold J. McCarthy and W. W. Dunlop, for the
 Commission staff.

O P I N I O N

On November 12, 1954, complainants, all of whom are alleged
 to be residents of the unincorporated Arlene Gardens area of Walnut

Creek, filed this complaint against the defendant Television Transmission, Inc. In the complaint the complainants alleged service deficiencies and requested (1) that the Commission issue an order instituting its investigation for the purpose of determining standards of reasonable and adequate service, instrumentalities, equipment and facilities to be required of a public utility engaged in the business of furnishing cabled television antennae service; (2) that the Commission make all necessary orders and rules governing the conduct of such a public utility; (3) that the Commission make an order requiring the defendant to install new and additional electronic equipment, instrumentalities and facilities which will remedy the defects and inadequacies of the cabled television antennae service complained of and which will adhere to the standard of reasonable and adequate service set up by the Commission; and (4) that, if the defendant fails to comply with due diligence with the requested order, that the Commission issue an order requiring defendant to cease and desist operating as a public utility.

The defendant filed an answer denying the alleged service deficiencies and denying that it is a public utility subject to the jurisdiction of this Commission.

On March 28, 1955, the Spanish Mountain Television Corporation filed a petition to intervene in support of the relief sought by the complainants, and on April 19, 1955, the Commission issued its order allowing such intervention.

On June 16, 1955, the National Community Television Association, Inc., filed a petition to intervene in support of the position of defendant that it is not a public utility subject to the jurisdiction of this Commission. An order allowing such intervention was issued June 21, 1955.

A public hearing was held on the matter before Examiner W. E. Cline in Martinez on June 22, 1955. At the opening of the hearing the defendant and the intervenor National Community Television Association, Inc., moved that the complaint be dismissed on the ground that this Commission has no jurisdiction over the defendant. At the close of the hearing these parties renewed the motions to dismiss both on the jurisdictional ground and on the ground of failure of proof of complainants to substantiate their claims of inadequate service. The motions to dismiss were taken under submission and will be disposed of in this decision.

Opening briefs were filed by all parties, and the matter was taken under submission on August 23, 1955, the day following the last day on which concurrent reply briefs could have been filed.

On January 9, 1956, intervenor Spanish Mountain Television Corporation filed a petition requesting withdrawal of its appearance and that its pleadings and testimony not be considered as part of the record in this proceeding.

Description of Operations of Defendant

Complainants called the president and owner of defendant corporation as an adverse witness.

This witness testified that the defendant corporation furnishes coaxial cable television antenna service to approximately 950 television sets in the Walnut Creek, Lafayette and Martinez areas in Contra Costa County. Of the 950 television sets approximately 700 are within the city limits of Martinez.

To operate this service the defendant places a high gain antenna array on a higher terrain area than the area to be served. From this advantageous point the antenna receives signals

from whatever sources are available within the limitations of the location of the antenna. The signals are taken into individual antenna strips for each channel, automatically amplified according to the rise and fall of the signals, sent down through coaxial cable passing progressively through spaced amplifiers to lift the level of the signals, and then distributed off the cable to the subscribers' television sets by tapoff devices. The tapoff is a condenser wire connection which takes a certain percentage of the signal off the main cable and feeds it into the dwelling for the individual television set.

Although there are four commercial television antenna systems in Martinez alone, the defendant has the only system in Martinez which uses utility poles to provide service. Defendant has entered into a tri-party agreement with the Pacific Gas and Electric Company and The Pacific Telephone and Telegraph Company under which poles owned either jointly or individually by these two utility companies may be used by defendant upon payment of certain fixed charges per pole per year.

The subscribers to defendant's television antenna service have the option paying an initial connect fee of \$25 and a continuing charge of \$6.75 per month or an initial connect fee of \$160 and a continuing charge of \$3 per month. The connect fee for a commercial building is different because of the difficulty of entering the building but the same monthly service fee applies.

Defendant is operating under nonexclusive permits issued by the City of Martinez and the County of Contra Costa which provide that defendant shall collect taxes from the subscribers in the amount of 2% of the monthly service charges. The taxes collected from subscribers within the city limits of Martinez are paid to the

City of Martinez and the taxes collected from subscribers in unincorporated areas of the County of Contra Costa are paid to the County of Contra Costa. The taxes are in addition to the monthly service charges.

Defendant's president estimated that there are probably about 40 television antenna systems such as defendant's operating within the State of California with the number of subscribers to the various systems varying from 5 to 1,000 or possibly even more.

Description of Operations of Intervenor
Spanish Mountain Television Corporation

The general manager of the intervenor Spanish Mountain Television Corporation described the operations of that company.

This intervenor is engaged in the business of picking off television signals from the air and transmitting them at a charge through antennae, amplifiers, converters, and coaxial cables to subscribers' television sets.

It has conducted its television antenna service in and adjacent to the City of Ukiah since December of 1952, pursuant to a franchise from the City of Ukiah and a resolution from the Board of Supervisors of the County of Mendocino.

Its master antennae are located on Beacon Hill at an elevation of 2,050 feet above sea level, one of the highest elevations in the area. The antennae at this elevation have almost a straight shot to the San Francisco television broadcasting stations. As Ukiah is situated on the floor of a valley having an elevation of 610 feet and is surrounded by mountains 1,800 feet high, and as the nearest television broadcasting station is 11 1/4 airline miles away, reception on receivers connected to privately owned antennae is

bad. The signals supplied by Spanish Mountain Television Corporation according to its manager are clear on all channels 98 per cent of the time.

The cables which carry the signals are placed on poles owned solely by the Pacific Gas and Electric Company, The Pacific Telephone and Telegraph Company, or the City of Ukiah, or on poles owned jointly by the Pacific Gas and Electric Company and The Pacific Telephone and Telegraph Company. The cables are constructed in accordance with the provisions of General Order No. 95 of this Commission and are located in the communication space, as a rule, one foot above the telephone cables. The construction work is performed by telephone men of The Pacific Telephone and Telegraph Company during their time off from their regular employment. The system employs about 53 miles of cable in transmitting the sound and picture television signals from the antennae to the receiving sets. The witness stated that the system transmits no electricity or power to its subscribers.

Jurisdiction of this Commission:

The complainants contend that the operation of the cabled antenna television service by the defendant corporation constitutes the defendant a telephone corporation, a telegraph corporation, or an electrical corporation, and therefore a public utility, within the purview and language of the State Constitution and the Public Utilities Code. The intervenor Spanish Mountain Television Corporation asserts that the defendant corporation is engaged in the transmission of telephone or telegraph messages and by reason thereof it is a public utility subject to the jurisdiction of this Commission.

The defendant and the intervenor National Community Television Association, Inc., contend that as defendant's television

antenna system does not furnish electricity for light, heat or power in any manner whatsoever, it is not an "electric plant" within the meaning of Section 217 of the Public Utilities Code. They further contend that the transmission of pictures and sounds by means of a cabled antenna system connected to individual television sets does not constitute communication by telephone or telegraph. The defendant and the intervenor National Community Television Association, Inc., therefore submit that the defendant is not a public utility under the provisions of the Public Utilities Code, or under any other law or laws of the State of California.

There is nothing in the record to show that defendant's cabled antenna television system is used "in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat or power, . . ." The Commission therefore can make no finding that the system is an "electric plant" under the provisions of Section 217 of the Public Utilities Code or that defendant is an "electrical corporation" under the provisions of Section 218 of the Public Utilities Code.

Sections 216, 233, 234 and 7901 of the Public Utilities Code read as follows:

"216.(a) 'Public utility' includes every . . . telephone corporation, telegraph corporation, . . . , where the service is performed for or the commodity delivered to the public or any portion thereof.

"233. 'Telephone line' includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.

"234. 'Telephone corporation' includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this State.

"7901. Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters."

In Sunset Telephone and Telegraph Co. v. Pasadena, 161

Cal. 265, (1911), the California Supreme Court at pages 276-277

pointed out the difference between the telegraph and the telephone

as follows:

". . . The difference between the telegraph and telephone in respect to matters affecting the question at bar is very pronounced. The telephone being a device by which the human voice is directly transmitted, all that is essential to the sending of a message thereby is the speaking of the same into a comparatively simple appliance connected with the wire along which the current is to go. Trained and skilled operators are necessary only at the central offices for the purpose of answering calls and making the necessary connections of wires. Skilled experts, only, can operate the telegraph, manipulate its instruments, and understand its signals. (See Telegraph Co. v. Nashville, 118 Tenn. 19, 101 S. W. 770.) This difference is accountable for the greatest conceivable difference in the extent of the burden on public streets and highways by the use by a telegraph company and a telephone company respectively of such streets and highways for the poles and wires of the system, especially in villages, towns, and cities. A telegraph line does no purely local business, but simply runs through a town or city, having therein one or more offices where messages are received and transmitted by trained operators. The result is that its use of public streets for the purposes of its poles and wires is limited to its main through line, and such branches as are essential to connect with its various offices, which are

necessarily very few in number. While the telephone is also used for long distance communication, its most common use is for communication among the people of a particular city or town. Any person being able to use the same in his home, office, or place of business, through a simple and inexpensive instrument placed therein and connected by wire with a central agency, the subscribers therefor in a city or town constitute a large proportion of the inhabitants, numbering in a city like Pasadena several thousand."

In the recent case of Pacific Telephone and Telegraph Company v. City of Los Angeles, 44 C. 2d. 272, (1955), the California Supreme Court at page 276 has pointed out that the privileges granted by Section 536 of the Civil Code (now Section 7901 of the Public Utilities Code which is quoted above), authorizing telephone companies to construct their lines along public highways, must be exercised in accordance with authority vested in the Public Utilities Commission by section 23 of article XII of the State Constitution and the statutes enacted pursuant thereto. The Supreme Court at page 282 further concludes that said section 536 (now Section 7901 of the Public Utilities Code), "which authorizes telephone companies to construct their lines along public highways, places no restrictions on what may be transmitted by means of electrical impulses over such lines," and telephone companies may use their lines interchangeably for transmitting telephone messages, telegraph messages, teletypewriter messages, telephotographs, program services (including radio and television broadcasts) and other communication service by means of electrical impulses. "If the state franchise granted to a telephone company were limited to the transmission of 'articulate speech', the company would be required to obtain numerous local franchises in order to give its subscribers the benefit of the many and varied

uses of telephone wires made possible by scientific development. Such a result would defeat the very purpose of section 536, as it would interfere substantially with the ability of telephone companies to provide adequate communication service to the people of the state."

A consideration of the foregoing statutes and cases and all other factors leads us to the conclusion and we hereby find that defendant operates as a telephone corporation and is subject to the jurisdiction of this Commission under the provisions of the Public Utilities Code and the Constitution of this State.

Defendant has made no showing that its service is subject to regulation by the Federal authority or that the Federal authority has acted to exclude State regulation. In the absence of action by the Federal authority the State may regulate not only the intra-state phases but also the interstate phases of defendant's service by reason of the local nature of its operations. Parker v. Brown, 317 U. S. 341 (1943); California v. Thompson, 313 U. S. 109 (1941); South Carolina v. Barnwell Brothers, 303 U. S. 177 (1938); Kelly v. Washington, 302 U. S. 1 (1937).

Evidence Regarding Defendant's
Service to Complainants

The defendant's standard service agreement provides that defendant "Company will install and maintain the master receiving and distribution system in good order and repair and in a manner calculated in accordance with good engineering practices, based upon existing accepted standards, to provide regular, uninterrupted television reception to its customers on at least three (3) channels operating in the Bay Area and capable of reception at the master antennae of Company."

Several of the complainants and wives of complainants testified regarding the service which they have been receiving from

defendant. None of these witnesses, however, possessed the technical knowledge and skills in the field of television reception which would qualify them as experts.

Their testimony shows that when the defendant's master antenna system was first installed in the unincorporated area of Arlene Gardens the only stations from which television reception could be had were Channels 4, 5 and 7 which is Channel 2 on defendant's system. On numerous occasions and for considerable periods of time the reception was unsatisfactory to the subscribers, as the pictures were hazy, snowy and blurry. On some occasions there was no service at all.

Some of the subscribers had their television sets tested by service men during periods of poor reception and were advised that nothing was wrong with their sets. Also some of the subscribers would call other subscribers to determine if the poor reception was general throughout the area, and, if so, they could confidently conclude that the difficulty was not caused by their own sets. They would then have one member of their group report the poor reception to defendant so that he could have his service men make the necessary repairs. The reception was particularly poor between the hours of five to seven in the evening.

The witnesses stated that prior to their employing an attorney to represent them they obtained very little cooperation from the defendant when they reported their reception difficulties to the company. Some of the witnesses stated that subsequent to the filing of the complaint there has been a distinct improvement in the quality of the service and that even between the hours of five and seven in the evening the reception was satisfactory.

Other witnesses, however, testified that up to the time of the hearing the reception on occasion has continued to be unsatisfactory.

The president and owner of defendant stated that the antenna which serves Arlene Gardens is located on the Tice Valley Ranch which is approximately three miles west and north of Arlene Gardens. In excess of 18 amplifiers have been installed along the three-mile line which connects the master antenna to the individual sets. The amplifiers are checked about once a month.

This witness testified that the number of personnel on defendant's payroll has varied from seven to three and that at the time of the hearing it was four, consisting of the witness, two maintenance men and one office employee. Service calls are promptly answered within the physical limitations of the personnel employed. Usually service complaints made by a subscriber are checked with other subscribers to determine whether the complaint arises because of the fault of the system or the subscriber's own set. The witness stated that quite often service problems arise which can be corrected without making a call to the subscriber's home. If such is the case the service man may not visit the home of the subscriber who has reported the bad picture. The witness stated that he had met individually with a number of the complainants and also several subscribers who are not complainants to explain the technical difficulties affecting the system.

In response to the letter of complaint of July 6, 1954, from Mrs. Noble, which was introduced in evidence by Exhibit No. 2, defendant installed an additional amplifier. The witness also stated that the amplifiers were respaced. In order to compensate for the change in signal level on the extremely long stretch of cable on Newell Avenue between the hours of five and seven in the

evening, defendant changed the type and increased the number of amplifiers preceding this particular run of cable and added additional amplifiers at the far end of the run. The improvements which were made in the system between August of 1954 and January of 1955 according to the testimony of this witness have resulted in a distinct improvement to the service.

Conclusion

The present record shows that prior to the filing of this complaint defendant's service was distinctly deficient in certain respects and although improvements have been made in the system subsequent to August of 1954, all the complaints of defendant's subscribers have not been satisfied. The Commission will direct the defendant to make a detailed survey of its facilities and quality of its antennae service and, within ninety days after the effective date hereof, to submit to this Commission with a copy to each appearance a report setting forth criteria for establishing reasonable standards of service, together with a program for meeting such standards and for complete satisfaction of complaints where justified. Such report shall also include a map of defendant's service area showing the location of its facilities, a description of the facilities, and an outline of the method of operation and maintenance procedure and program. The motions of defendant and intervenor National Community Television Association, Inc., to dismiss this proceeding are hereby denied, and further hearings will be held upon the completion of defendant's survey and report to this Commission. Defendant will be ordered to comply with all laws of the State of California and all rules and regulations of this Commission pertaining to the operation of a telephone corporation as defined in the Public Utilities Code.

The petition of intervenor Spanish Mountain Television Corporation to withdraw its appearance will be granted only in so far as future proceedings in this matter are concerned. Its pleadings and testimony will remain a part of the record herein.

INTERIM ORDER

1. IT IS HEREBY ORDERED that defendant Television Transmission, Inc., having been found to be a telephone corporation subject to the jurisdiction of this Commission, comply with all applicable laws of the State of California pertaining to telephone corporations and with the rules and regulations issued by this Commission pursuant thereto.

2. IT IS FURTHER ORDERED that defendant Television Transmission, Inc., make a detailed survey of its facilities and quality of its antennae service and, within ninety days after the effective date hereof, submit to this Commission with a copy to each appearance a report setting forth criteria for establishing reasonable standards of service, together with a program for meeting such standards and for complete satisfaction of complaints where justified. Such report shall also include a map of defendant's service area showing the location of its facilities, a description of the facilities, and an outline of the method of operation and maintenance procedure and program.

3. IT IS FURTHER ORDERED that further hearings be held in this proceeding at such time and place as may hereafter be designated before Commissioner Dooley and Examiner Cline, or such commissioner and examiner as may hereafter be designated by the Commission, for the purpose of receiving further evidence relating to the adequacy of defendant's service.

4. IT IS FURTHER ORDERED that the appearance of intervenor Spanish Mountain Television Corporation be and it is hereby withdrawn in all future proceedings in this matter.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 16th day of September, 1956.

[Signature]
President

Justus J. Cooney

Ray E. Luterman

[Signature]

Commissioners

Commissioner Matthew J. Dooley, being necessarily absent, did not participate in the disposition of this proceeding.