

ORIGINALDecision No. 71348

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
THE WESTERN TELEPHONE COMPANY, a
California corporation, for authority
to establish exchange telephone
service in applicant's New Thorn and
Shelter Cove toll station areas; the
new exchange to be known as the
Shelter Cove exchange.

Application No. 47685
(Filed June 21, 1965;
Amended December 21, 1965)

In the Matter of the Suspension and
Investigation on the Commission's
own motion of tariffs covering ex-
change area expansion in the Petrolia
exchange of the Petrolia Telephone
Company.

Case No. 8217
(Filed July 7, 1965)

THE WESTERN TELEPHONE COMPANY,

Complainant,

vs.

PETROLIA TELEPHONE COMPANY,

Defendant.

Case No. 8222
(Filed July 15, 1965)

Mazzera, Snyder & DeMartini, by J. Calvert Snyder,
and W. Gilman Snyder, for The Western Telephone
Company, applicant in A. 47685, complainant in
C. 8222.

Graham James & Rolph, by Boris E. Lakusta and
Richard A. Eastman, for Petrolia Telephone
Company, defendant in C. 8222, protestant in
A. 47685, respondent in C. 8217.

Neal C. Hasbrook, for California Independent
Telephone Association, interested party.

Ralph J. Harris, for Resort Improvement District #1
interested party.

E. Nowak, for the Commission staff.

O P I N I O N

By filing (Advice Letter No. 10) made on June 7, 1965,
Petrolia Telephone Company^{1/} sought to expand the boundaries of

1/ Sometimes hereinafter referred to as Petrolia.

its Petrolia exchange and to establish a Shelter Cove base rate area at the community of Shelter Cove within said exchange area expansion. This filing was suspended by the order of investigation herein.

By Application No. 47685, filed June 21, 1965, The Western Telephone Company^{2/} requests authority to establish, maintain, and operate a telephone exchange to be known as the Shelter Cove Exchange, to serve the communities of Whitehorn, Ettersburg and Shelter Cove, now being provided toll station service by it in its New Thorn and Shelter Cove Toll Station Areas.

By Decision No. 70490, dated March 29, 1966, the Commission permanently suspended Advice Letter No. 10 and suspended Advice Letter No. 11 (a substitute for Advice Letter No. 10) to and including August 15, 1966. By Decision No. 71111, dated August 15, 1966, Advice Letter No. 11 was suspended to and including February 15, 1967, unless otherwise ordered.

By Case No. 8217, filed July 7, 1965, the Commission issued its Order of Suspension and Investigation of tariffs covering exchange area expansion in the Petrolia exchange of the Petrolia Telephone Company.

By Case No. 8222, filed July 15, 1965, Western requested the Commission to issue its order permanently suspending Petrolia's Advice Letter No. 10 and related tariff schedules.

On October 21, 1965 copies of the "Notice of Hearing" were served upon the parties in accordance with the Commission's procedural rules.

On October 26, 1965, Petrolia filed a Petition for a Cease and Desist order alleging that Western began on or about

^{2/} Sometimes hereinafter referred to as Western.

October 21, 1965 to extend its lines into the area at issue by constructing an 8-mile underground cable between Shelter Cove and New Thorn.

On October 28, 1965 the Commission issued a temporary restraining order prohibiting Western, until further order, from constructing an 8-mile underground cable between Shelter Cove and New Thorn, and from any other construction in the Shelter Cove area.

By Decision No. 70348, dated February 15, 1966, the Commission ordered the dissolution of the temporary restraining order, subject to certain conditions.

Public hearings were held before Examiner Gillanders on November 15, 16 and 17, 1965, at Eureka and on December 6, 7, 21 and 22, 1965, at San Francisco. On February 25, 1966, concurrent briefs were filed by Petrolia and Western and the staff submitted a statement regarding toll-system service areas. Pursuant to a petition filed by Western, the Commission directed the examiner to issue his proposed report. The examiner filed his report on June 22, 1966. Exceptions were filed by Petrolia and Western and replies thereto by Petrolia, Western, and the Commission staff. The matters were submitted upon filing of the last reply on August 1, 1966.

In his proposed report, the examiner discussed the three issues presented by the evidence. These issues are:

1. Are toll service areas assigned territories of the company which has received Commission permission to establish such areas?
2. Is there a need for exchange service in the disputed area?

3. If there is a need for exchange service, by whom should such service be provided?

The examiner found that toll service areas are not assigned territories of the company which has received permission to establish such areas. The staff, in its statement, does not recommend the granting of exclusive serving rights in toll-station service areas. Petrolia vigorously endorses the examiner's finding on this issue. Western, in its exceptions, reiterates the position it took in its brief regarding this issue. It believes that toll-service areas are assigned territories. Petrolia, in its reply to the exceptions filed by Western stated Western had in no way refuted the findings of the examiner. Western, in its reply to Petrolia, submitted that the exceptions set forth by Petrolia were not factual. The Commission staff representative submitted a reply to the exceptions submitted by Western, in which he points out that certain assertions made by Western are not factual. A careful review of the record reveals that the examiner fully weighed and carefully evaluated the conflicting testimony and argument of the parties. The examiner's finding on this issue will be adopted.

The examiner found that there is no need for exchange telephone service in the Shelter Cove area. Both Petrolia and Western take exception to this finding. Both believe a need for exchange service now exists. However, both believe that they should be the utility authorized to supply such service. The staff is silent on this issue. On February 2, 1966, Western filed a petition to reopen the proceedings for the taking of additional evidence (concerning demand for telephone service). On February 11, 1966, Petrolia filed a memorandum in opposition

to the petition to reopen. This petition is denied. The record supports the examiner's finding. His finding will be adopted.

The examiner concluded that:

Advice Letter No. 11 should be permanently suspended;

Application No. 47685 should be denied;

Case No. 8217 should be discontinued;

and that Case No. 8222 should be dismissed.

We will adopt these conclusions.

O R D E R

IT IS ORDERED that:

1. Advice Letter No. 11 of Petrolia Telephone Company is permanently suspended.
2. Application No. 47685 is denied.
3. Case No. 8217 is discontinued.
4. Case No. 8222 is dismissed.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 4th day of OCTOBER, 1966.

[Signature]
President

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Commissioners