

ORIGINAL

Decision No. 72827

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE WESTERN TELEPHONE COMPANY,
Complainant,

vs.

HAPPY VALLEY TELEPHONE COMPANY,
Defendant.

Case No. 8462
(Filed July 7, 1966)

In the matter of the suspension and investigation on the Commission's own motion of Advice Letters Nos. 17 and 18 covering exchange area expansion and establishment of a base rate area within the expanded area of the Olinda exchange of the Happy Valley Telephone Company.

Case No. 8474
(Filed July 19, 1966)

Mazzera, Snyder & DeMartini, by J. Calvert Snyder, together with W. Gilman Snyder, for Western Telephone Company, complainant.
Graham, James & Rolph, by Boris H. Lakusta, for Happy Valley Telephone Company, defendant and respondent.
California Farm Bureau Federation, by W. Knecht, interested party.
Edwin E. Nowak, for the Commission staff.

O P I N I O N

On June 23 and June 27, 1966, Happy Valley Telephone Company (Happy Valley), filed with this Commission, under Advice Letters Nos. 17 and 18, respectively, tariff sheets for the purpose of expanding its Olinda exchange area and of establishing a base rate area at the community of Platina within said expanded exchange area.

On July 7, 1966, Western Telephone Company (Western),^{1/} filed its complaint in Case No. 8462, seeking a permanent suspension of said Advice Letters Nos. 17 and 18 on the grounds that the proposed enlarged exchange of Happy Valley would include territory already served by Western and that Happy Valley's performance of service therein would interfere with Western's facilities and system.

On July 19, 1966, the Commission issued its Order suspending the operation and effectiveness of the tariffs filed by Advice Letters Nos. 17 and 18 to and including November 20, 1966, and directing that an investigation be instituted, Case No. 8474, to determine whether said tariff sheets are unreasonable or unlawful in any particular and to determine what order should be issued in the exercise of the Commission's jurisdiction in the premises. Thereafter the two cases were consolidated for purposes of hearing, argument and decision, and by Order of October 18, 1966, the Commission's prior Order of Suspension was extended to and including May 19, 1967.

The matters were heard before Examiner Emerson on October 18, and 19, 1966, at Redding. At the conclusion of oral argument, the matters were submitted on October 19, 1966.

On October 26, 1966, Western petitioned that submission be set aside and the matters be reopened for the receipt of evidence which Western through inadvertence had failed to introduce. Such petition was granted by the Commission on December 6, 1966, and further hearing was held in San Francisco on March 20, 1967, as requested by Western. After receipt of additional evidence the

^{1/} As authorized by Decision No. 71700, Western Telephone Company was merged into the Golden West Telephone Company effective December 30, 1966.

matters were again submitted. At the direction of the Examiner, Western and Happy Valley each filed "proposed findings of fact and conclusions of law" on May 1, 1967.

On May 1, 1967, Happy Valley filed its Advice Letter No. 21 together with tariff sheets containing substantially the same provisions as set forth under Advice Letters Nos. 17 and 18, in order to permit continuation of the matters beyond the statutory limit of temporary suspension. By Order issued May 9, 1967, the tariffs accompanying Advice Letters Nos. 17 and 18 were permanently suspended and those accompanying Advice Letter No. 21 were temporarily suspended pending the issuance of a decision in these matters.

The matters are now ready for decision and the Commission, being fully informed in the premises and having given full consideration to the record herein, makes the following findings of fact:

1. Western is engaged in the business of providing telephone service to the public in portions of northern California, including a portion of Trinity County and portions of neighboring counties, with its center of operations at Weaverville.

2. Happy Valley is engaged in the business of providing telephone service to the public in a portion of Shasta County in northern California, its plant presently comprising a single exchange with operations centered in the unincorporated community of Olinda.

3. Happy Valley has proposed to provide exchange telephone service in an area contiguous to and westerly of its present Olinda exchange, consisting of approximately 325 square miles, as defined by the map submitted as part of its Advice Letter No. 17 filing.

4. Except for an unauthorized exchange telephone service established by Western for service to The U.S. Forest Service at Harrison Gulch during the course of this proceeding, exchange telephone service is not now, nor has it ever been, furnished within the area which Happy Valley proposes to serve.

5. Western has for some years provided and presently provides toll station service to an average of about 8 toll stations in or near what it terms its "Harrison Gulch Toll Station Service Area", including a seasonal toll service to Deerlick Springs resort, under a "toll guarantee" form of rate which is based upon a ten cents per call charge for messages within such area.

6. The so-called "Harrison Gulch Toll Station Service Area" of Western is not in fact a "service area" within which Western is obligated to provide telephone service.^{2/} Western's tariffs applicable thereto make it discretionary with Western both as to the establishment of any toll station and as to its discontinuance.

7. Happy Valley's proposed exchange service would be provided to those persons now receiving Western's toll station service as well as to other prospective subscribers now unserved. Happy Valley has received approximately 45 signed applications for exchange service within the proposed area and its survey indicates an immediate potential of ten additional subscribers.

8. Western claims that it is infeasible to provide exchange telephone service to fewer than 75 subscribers and foresees no more than 30 for the area in question. It has no intention of providing exchange service in the area.

^{2/} In this connection, also see Decision No. 71348 issued in Application No. 47685, Case No. 8217 and Case No. 8222 on October 4, 1966.

9. The toll station service provided by Western has been inadequate over a considerable period of time. Outages have been frequent and lengthy, calls have been difficult to place, receive or complete, delivery and proper installation of telephone equipment has been unreasonably slow, interruptions and disconnects are frequent, weak reception has been customary, numerous complaints have been registered with Western and until the commencement of hearings in these matters, little attention to improvement of such conditions had been made by Western. There have been service difficulties due to major brush and forest fires, difficult terrain, heavy winter weather and power-line interference. Western, to a major extent, has relied on one-wire earth-return lines.

10. Contrary to Western's assertion, Western has no exclusive "rights" in the area by virtue of its tariffs applicable to toll stations therein.

11. Residents in the area within which Happy Valley proposes to provide exchange telephone service, including those using toll station service in Harrison Gulch, desire the service proposed by Happy Valley in preference to that now supplied by Western and have testified that they understand and accept the rates applicable to such exchange service. Indeed, the need for exchange service has been clearly established.

12. Western intends to improve the quality of its present service to the extent of attempting to ensure less frequent recurrences of past deficiencies, to replace magneto with dial telephones and eventually to make direct distance dialing (DDD) available to its toll stations. No corrective measures of any significance, however, were taken until Happy Valley's proposal was before the Commission. It still has no intention of supplying the residents of Harrison Gulch, Platina or Beegum with basic exchange telephone service.

13. Happy Valley proposes to provide the new exchange service by utilizing existing lines belonging to the California Division of Forestry Service within the proposed expanded area, under a dominant user agreement not yet finally arranged, but with respect to which local forest service personnel have provided certain oral assurances upon the basis of their experience with such arrangements. Such lines service the Pattymocus Lookout Station near Beegum, connecting it with the forest service headquarters at Baker, and there is an additional line servicing the Ogo Ranger Fire Station. Extensions of the line would be provided, and a dial plant at Platina would be installed. A cable would also be installed from Harrison Gulch to Knob by burying it in the ground to insure more reliable service. Permission to bury the cable may have to be sought from the Division of Highways.

14. The value of the central office equipment proposed to be installed by Happy Valley is \$13,400, based upon price quotations from a supplier and determinable cost of labor. Happy Valley's total investment would be \$34,360, against which it would anticipate receiving a net profit of \$3,367 before interest payments, and a net profit of \$962 after interest payments, based upon the number of applications for service already received from residents of the proposed exchange area. Proposed service could be rendered within six to nine months of Happy Valley's receipt of authorization.

15. Happy Valley is economically able to provide the service which the residents in its proposed extended exchange area desire. It proposes to finance its planned investment by means of a loan to be received from one of its equipment suppliers. This is commonly done in the independent telephone industry. Our authorization herein should be conditioned upon Happy Valley's obtaining such a loan or other suitable financing.

Conclusions of Law

1. Western is a public utility within the meaning of Section 216 of the California Public Utilities Code.

2. Happy Valley is a public utility within the meaning of Section 216 of the California Public Utilities Code.

3. Section 1001 of the California Public Utilities Code permits a telephone utility to expand its service into a territory which is contiguous to its own without having to obtain a certificate of public convenience and necessity therefor, where such service is not being provided in such contiguous territory by any other utility. The filing of an advice letter, such as has been done here, is an appropriate procedure for providing notice of such intended expansion. ✓

4. The filing of a "toll service area" map and the providing of toll service therein does not constitute such area as an assigned territory for exchange service; nor does the presence of a toll service being offered by one utility in a given area preclude another utility from offering an exchange service in the same area. The Commission will determine the need for exchange service upon the public's demand and willingness to support such a service and upon its economic feasibility at proposed rates, while considering the willingness of the company providing toll service to offer exchange service and the quality of existing toll service.

5. The public interest and convenience will best be served by the establishment of Happy Valley's proposed telephone exchange service in the area. In the principal portion of such area, telephone service will be afforded to residents who have hitherto had no benefit thereof, and in the smaller Harrison Gulch area an exchange service will be offered to the residents who have been served by an inadequate toll station service.

6. Happy Valley will be able and qualified to perform its intended service to the proposed exchange area upon its completion of formalities with governmental authorities and its successful completion of arrangements for financing.

7. The rates proposed by Happy Valley, being in conformity with those now on file for its existing exchange, are appropriate as initial rates for the expanded service.

8. The sums expended by Western for toll facilities in the exchange service area of Happy Valley, which is hereby authorized, are not of such magnitude, when weighed against the need for exchange service, as to warrant the withholding of such service until such time as it might be economically feasible for Western to provide it because Western has provided a less-than-satisfactory toll service and had not made significant improvement until after Happy Valley's advice letters were filed.

O R D E R

IT IS ORDERED that:

1. The complaint in Case No. 8462 is hereby dismissed with prejudice.

2. Tariff sheets filed under Happy Valley's Advice Letter No. 21 are hereby permanently suspended and the contents of said advice letter and its accompanying tariff sheets shall be refiled within 20 days after the effective date of this order and on not less than five days' notice to the public and the Commission in accordance with the procedures set forth in General Order No. 96-A.

3. Happy Valley is hereby authorized to operate an exchange telephone service in accordance with said tariffs.

4. The effective date of this order shall be that date, not to exceed 120 days after the date hereof, on which Happy Valley submits proof that it has secured written agreements with governmental authorities as to the use of existing lines or other property necessary to its proposed operation and proof that it has secured appropriate financing to accomplish the proposed construction.

5. If exchange service is not provided within 24 months of the effective date of this order, the above authorization will expire.

6. Golden West Telephone Company shall continue to provide toll station service until such time as exchange service is provided by Happy Valley Telephone Company.

Dated at San Francisco, California, this 1st day of AUGUST, 1967.

[Signature]
President

[Signature]

[Signature]

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Commissioners