

ORIGINAL

Decision 89 12 040 DEC 18 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DAVID L. & MAMIE MILTON, ET AL., )

Complainants, )

vs. )

CONTINENTAL TELEPHONE COMPANY )  
(U 1003 C), )

Defendant. )

Case 88-05-041  
(Filed May 20, 1988)

David L. Milton and Mamie Milton, for  
themselves and other Hansen Ranch  
Property Owners, complainants.  
Orrick, Herrington & Sutcliffe, by Robert  
J. Gloistein, Attorney at Law, for  
Contel of California, Inc., defendant.

OPINION MODIFYING DECISION 89-01-042

Defendant's Request

On September 13, 1989 defendant, Contel of California, Inc. (Contel) (U-1003-C) filed a petition for modification (petition) of Decision (D.) 89-01-042 dated January 27, 1989. Contel, in its petition seeks modification to provide that ownership of materials and supplies furnished by Contel to complainants pursuant to Ordering Paragraph 3 of D.89-01-042, shall pass on delivery to complainants who elect to participate in the farmerline telephone service and that Contel be authorized to amortize the cost of such materials and supplies over a period equivalent to the average depreciation lives which would have been assigned to such property under the terms of the original order.

Contel also asks that it be allowed the option of using other comparable equipment to the DCM-24 carrier equipment described in the hearing record.

Complainants' Response

On September 28, 1989 David L. Milton (Milton) on behalf of complainants, filed an answer to the petition stating that he had no objection to the petition provided that there would be no "tax implications" from the proposed modification and that, regarding the DCM-24 carrier equipment, the change should read "or equal or better alternate equipment."

As to any tax implications, Milton asked the Commission to give its opinions on a statement made by counsel for Contel to Milton that the change "...would be no problem, and if anything it would help us [complainants]."

In his answer, Milton also included a statement to inform the Commission that installation (underground) of the farmerline materials and supplies provided by Contel is nearing completion, that over 19,000 feet of cable is in the ground and seven customers are being served. Milton stated that he felt a real sense of achievement having accomplished this installation, since he has done most of the work himself. He also expressed his thanks to the Commission and its staff for understanding his "...quest to provide telephone service to this rural area."

Correspondence Received

On October 11, 1989 Counsel for Contel wrote to the assigned Administrative Law Judge stating that Contel had no objection to Milton's suggestion to change the parenthetical clause regarding the DCM-24 carrier equipment to read "(or any comparable or better alternative equipment)."

Discussion

It now appears that construction of the farmerline within the Hansen Ranch is near completion and the bulk of the cable, service drops, pedestals, and other miscellaneous hardware provided by Contel to complainants is securely in place underground. Accordingly, there is reasonable cause to grant Contel's petition to modify D.89-01-042 to allow Contel to transfer ownership of the

above described materials and supplies to complainants. In doing so we will also note for the record that these materials and supplies are being provided to complainants, without direct cost or charges, for the sole purpose of rendering telephone service to them within the Hansen Ranch. Consequently, should Contel at an appropriate time in the future, exercise the option of purchasing complainants' interest in the farmline, as authorized by Ordering Paragraph 8 of D.89-01-042, it should assign the same zero dollar value for the materials and supplies heretofore provided by Contel to complainants.

Contel's second requested change to allow it to use other comparable carrier equipment than the type DCM-24 to serve complainants, which had been discussed in the hearing record, is also reasonable. This change will allow Contel to replace the DCM-24 when and as it sees fit to maintain, expand, and/or modernize its own telephone plant using its choice of equipment. Milton's requested clarification that such other alternative equipment be equal to or better than the DCM-24 in performance provides a better definition and is acceptable to Contel. Therefore, this request by Contel as clarified by Milton will also be adopted.

Milton also asks for our opinion on the tax implications of Contel's transfer of certain cable, service drops, pedestals, and other materials and supplies to complainants.

We have referred that question to the advisory section of our Legal Division, which will correspond directly with the parties. It should be understood that the Legal Division's interpretation of current tax provisions is non-binding on the tax collecting agencies.

Lastly, we applaud the cooperation between Contel and complainants and we also commend complainants for their hard work in constructing their own telephone lines within the Hansen Ranch. Through these significant efforts, and the overall cooperation

provided by Contel, complainants are now able to enjoy modern high quality single-party telephone service in their remote area; and this utility service has been provided in a way which does not impose an undue burden on Contel's other customers.

Findings of Fact

1. Contel has effectively implemented Ordering Paragraphs 3, 4, and 5 of D.89-01-042 in providing, without charge, the necessary cable, drop wire, pedestals, loading coils, protectors, and miscellaneous hardware to complainants for their farmerline, and by maintaining reasonable control over that property to assure that it would not be wasted, damaged, lost or placed into indefinite storage.

2. Now that these materials and supplies are effectively placed underground in easements within the Hansen Ranch, there is no continuing need for Contel to maintain title to this property.

3. It is reasonable and desirable for Contel to have the option to choose "comparable or better alternative equipment," to the Type DCM-24 carrier equipment for service to complainants' farmerline.

Conclusions of Law

1. Contel's petition for modification of D.89-01-042 dated September 13, 1989, as modified by complainant's September 26, 1989 response, is reasonable and should be adopted to the extent set forth in the following order.

O R D E R

IT IS ORDERED that:

1. D.89-01-042 dated January 27, 1989 is modified as follows:

- a. The last sentence on Page (P.) 21 (mimeo.) is changed to read:

Therefore, the cost of these materials and supplies and equipment are to be amortized

as part of Contel's expenses of service, and the cost of the DCM-24 carrier equipment (or any comparable or better alternative equipment) are to be included as part of Contel's utility plant in service.

- b. Finding of Fact 21 on P. 26 (mimeo.) is changed to state:

21. Contel would retain ownership of the DCM-24 digital carrier system (or any comparable or better alternative equipment); however, the cable, drop wire, pedestals, and other miscellaneous hardware provided by Contel for installation within the Hansen Ranch shall pass on delivery and installation to the complainants who elect to participate in the farmerline telephone service system. Thereafter, since that equipment and related material and supplies would, when installed, become used and useful in rendering telephone service, the expenses associated with it may be amortized for ratemaking purposes as authorized herein.

- c. Conclusion of Law 5 on P. 27 (mimeo.) is changed to state:

5. Contel should be permitted to amortize for ratemaking purposes the expense of cable, drop wire, pedestals, and miscellaneous materials furnished to the complainants for their telephone line extensions.

- d. Ordering Paragraph 5 is changed to state:

5. Title and ownership of the materials supplied to complainants shall pass on delivery by Contel and installation by complainants, to the complainants who elect to participate in the farmerline telephone service; and Contel is authorized to amortize the expense of such materials, for ratemaking purposes, over the average

depreciation lives which would have been assigned to such materials.

2. The ordering paragraphs and other requirements of D.89-01-042 dated January 27, 1989, except as expressly modified here, continue to apply to Contel after the effective date of this order. Appendix A to this order restates the currently applicable ordering paragraphs of D.89-01-042 as modified by this order.

This order is effective today.

Dated DEC 18 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

*Wesley Franklin*

WESLEY FRANKLIN, Acting Executive Director

*AS*

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DECISION 89-01-042 ORDERING PARAGRAPHS  
AS REVISED

IT IS ORDERED that:

1. Within 10 days after the effective date of this order Contel of California, Inc. (Contel) shall revise its MRTS Tariff Schedule No. L-1 to provide for MRTS without air-time charges to customers residing within the unfiled territory encompassed by the Garberville, Piercy, Leggett, and Laytonville Exchanges of Humboldt and Mendocino Counties. This special MRTS without air-time charges shall be confined, except for reporting fires and other life-threatening emergencies, to usage wholly within the specified unfiled service area. Contel may withdraw this free air-time service from any individual customer with reasonable notice after evidence of any unauthorized repeated use by that customer outside the narrowly defined unfiled area.

Contel shall also include the offering of ULTS rates for eligible residential customers to this special MRTS.

Contel may, upon evidence of future channel crowding and/or other deterioration of MRTS service quality in its Garberville Exchange, impose a reduction to 120 minutes of monthly free air time for each subscriber to this special service, by further revision of its Tariff Schedule No. L-1.

This special service, as well as any rates, rules, and conditions therefor shall apply only to Contel and its customers in the area defined above, and is not intended to establish a precedent for similar services elsewhere, except as may apply upon separate review and further order of this Commission.

2. Contel shall, within 30 days after the effective date of this order, make available one-party farmerline service to

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complainants at a point of demarcation within the Hansen Ranch at the regular non-recurring charges and monthly rates (including ULTS to eligible residential customers) as apply to regular one-party exchange services within its Garberville Exchange. Each one-party service will be provided through a SNI connector block housed in a secure metal enclosure similar to those used in multi-tenant buildings.

3. Upon receipt of ten or more applications for service accompanied by payment for appropriate non-recurring charges for one-party telephone services from complainants together with copies of non-exclusive easements for placement of cable to complainants, Contel shall furnish, without charge, the necessary cable, drop wire, pedestals, loading coils, protectors, and other miscellaneous hardware to complainants for their installation of the telephone cable and drop wires to their premises.

4. Contel is further authorized to establish reasonable controls to insure that the materials and supplies furnished to complainants will be installed on a timely basis and not damaged, lost, or placed in indefinite storage by them. Such reasonable control may include but is not limited to the allocation of materials on an as-needed-basis for each week of work activity.

5. Title and ownership of the materials<sup>1</sup> supplied to complainants shall pass on delivery by Contel, and installation by complainants, to the complainants who elect to participate in the farmerline telephone service; and Contel is authorized to amortize the expense of such materials, for ratemaking purposes, over the

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<sup>1</sup> This ordering paragraph was modified in accordance with D. 89-12-040, effective DEC 18 1989, 1989.



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average depreciation lives which would have been assigned to such materials.

6. Contel may, as a condition to providing free materials and supplies for line extensions within Hansen Ranch, require a hold-harmless agreement from complainants to release it from any responsibility or liability for injury to them during the course of their installation efforts.

7. Contel shall not be required to provide any poles, anchors, messengers, lashing wire and clamps, or other hardware for overhead construction; or vaults, conduits, trenches, and back-fill material for underground construction of the line extensions within that portion of the Hansen Ranch which is outside of the Garberville Exchange. All labor and work equipment necessary for such line extensions shall be provided by complainants.

8. Contel shall not expand its Garberville Exchange to take in the entire Hansen Ranch for a period of three years following completion of the line-extension option authorized here. Thereafter, when Contel, at its discretion, determines that the farmerline facilities can be used to its advantage in serving new customer growth at costs similar to those then experienced in the Garberville Exchange, it may then negotiate to purchase the complainants' remaining interest therein at reasonable cost.

9. Complainants shall maintain the line extensions until Contel chooses to expand the Garberville Exchange to include the entire lands of the Hansen Ranch.

10. Complainants shall be liable for any unanticipated fees, taxes, or other costs that may be assessed by any governmental authority against them or Contel solely due to the installation or maintenance of these lines. The Commission's General Counsel shall inform complainants in writing of this requirement without delay.

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11. Contel shall provide up to ten hours of technical advice, including any necessary specifications and drawings, detailing proper practices for installation of cable, drop wires, loading coils, and other hardware for this line-extension option.

12. Except as set forth in Ordering Paragraphs 1 through 10 above, the complaint is denied.

(END OF APPENDIX A)