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Silver Beehive Telephone Comp Any, Inc. v. Public Service Commission of Utah, Hal S. Bennett, Frank Warner, and Eugene S. Lambert, Commissioners of the Public Service Commission of Utah : Plaintiff's Brief

Utah Supreme Court

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**IN THE SUPREME COURT OF
THE STATE OF UTAH**

SILVER BEEHIVE TELEPHONE
COMPANY, INC.

Plaintiff

vs.

PUBLIC SERVICE COMMISSION
OF UTAH

Defendant

No. 12597

Plaintiff's
APPELLANT'S BRIEF

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APPELLANT'S BRIEF

STATEMENT OF CASE

This is an action for review by this Court of the Report and Order of the Public Service Commission dated May 26, 1971, revoking Certificate of Convenience and Necessity No. 1597 issued on May 3, 1967, to the Plaintiff, for the purpose of providing telephone communication in the Northwest portion of the State of Utah.

DISPOSITION BELOW

The Report and Order above referred to of May 26, 1971, came about as the result of at least three hearings before

the Public Service Commission, one conducted at Park Valley, Utah on the 9th day of February, 1970, a second hearing held at the Commission Offices in Salt Lake City on the 4th day of November, 1970, and a final hearing held on the 19th day of April, 1971, at the Commission Offices, in Salt Lake City, Utah, and Reports and Orders resulting respectively from such hearings dated February 26, 1970, January 12, 1971, and the said Report and Order of May 26, 1971.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the Order revoking the Certificate of Convenience and Necessity No. 1597.

STATEMENT OF FACTS

The public Service Commission issued its Certificate of Convenience and Necessity No. 1597 on May 3, 1967, authorizing Silver Beehive Telephone Inc., hereafter referred to as Silver Beehive to provide telephone service, radio and land lines to a large, sparsely settled area in the Northwest part of the State. This certificate was granted after several studies of existing Telephone Companies resulted in their declining to offer telephone service in the area, and the refusal of REA to provide financing for such service. Silver Beehive furnished the service to approximately 30 telephone users at Grouse Creek, interconnecting with the Bell System at Lucin, Utah and that system has been in operation to the apparent satisfaction of the Grouse Creek residents for about six years. Finance,

terrain, labor, and time problems acted to delay and postpone the completion of telephone service into the community of Park Valley with resultant complaints by a number of residents of Park Valley to the Public Service Commission which in turn gave rise to the Commission's Order to the Silver Beehive to appear and show cause for its failure to complete the services into Park Valley at a Commission Meeting to be held in Park Valley on the 9th day of February, 1970. The Public Service Commission thereafter on February 26, 1970, issued its Report and Order granting Silver Beehive 120 days to complete "proper installation of adequate overhead pole lines and related terminal equipment for Park Valley," Thereafter by Report and Order of January 12, 1971, the time for completing this work by Silver Beehive was extended to April 10, 1971. Whether or not compliance with the Commission's Order was completed by Silver Beehive is the basis for Silver Beehive's appeal to this Court.

Silver Beehive takes the position that effective or substantial compliance with the Commission Orders by the installation of a functional telephone system in Park Valley was accomplished by the Company, not denying that in some instances technical or absolute compliance with the specific wording of the Order of the Commission was not reached. On the 26th day of May, 1971, the Public Service Commission issued its Order to appear and show cause compelling the Utah Telephone Company and the Mountain Bell Telephone Company to show cause at a hearing to be held July 7, 1971 at 10:00 o'clock A.M., why such companies or either of them should not serve all or part of the territory heretofore certified to Silver Beehive,

and requesting such companies to file an application to serve such territory, not later than 10 days prior to the date set for such hearing. Both companies declined to voluntarily serve the territory or any part thereof. The Commission thereafter on the 17th day of August 1971, in a matter entitled Case No. 6399, Investigation Docket No. 124, Case No. 6419, ordered that a temporary or preliminary Certificate of Convenience and Necessity No. 1759 TA be issued to Silver Beehive, and by Order dated February 23, 1972, Silver Beehive was granted Certificate of Convenience and Necessity No. 1759, for the communities of Grouse Creek and Park Valley, but excluding a large portion of the areas covered by Certificate No. 1597.

ARGUMENT

Point 1. If an Order of a Public Service Commission is oppressive, unreasonable, or confiscatory, a judicial question is presented and the Court can properly review such Order, *Salt Lake City vs. Utah Light & Traction Company*, 52 Utah 210; 173 Pac 556. In our case, at the Park Valley hearing of February 9, 1970, it was developed that the Park Valley Telephone System was to be practically identical with the Grouse Creek System found by the Commission to be properly functioning and causing no concern. The same type equipment that was complained of by the Staff Engineer for installation in Park Valley was in fact used at Grouse Creek. The Staff Engineer testified at Page 48 of the Transcript "as far as the quality of the sound I know of no problem in the Grouse Creek. For operator operation I know of no problems." On Page 56,

again on cross examination the staff engineer admits that his reason for objection to the carrier (wire) is that the particular manufacturer has withdrawn it from standard manufacture and marketing and acknowledges that that is not reflective of how modern or efficient the equipment is. The witness further acknowledged that North Switchboards similar to the one to be installed at Park Valley were presently in use by other independant Phone companies in the State of Utah and further, the Bell Telephone System had similar equipment presently in use. (Transcript Page 46). The witness further admitted that companies did stock both new and used parts for the North Switchboards used in Grouse Creek and contemplated for Park Valley. The record is replete with testimony by the Staff Engineer of inadaquacy of facilities and then on cross - examination the witness acknowleges that the stiuation objected to is either common place in the State or in use by the Bell Telephone System. That Arthur Brothers, President and Manager of Beehive made clear to the Commission and to the residents attending the Park Valley hearing of his methods of installation of wire, the type of switchboard, the fact that only two long distance trunks were available, although a third had been requested of Bell Telephone, of his philosophy of minimizing the expense of construction and then upgrading the system as time and revenue permit, the non-feasibility of the area to support a telephone system of a conventional type because of the high cost thereof, of the fact that the system was operating in the red, is made abundantly clear by the entire Park Valley Transcript. For the Commission to accept all of that testimony, grant extentions of time and order the

complete installation of a system at Park Valley similar to Grouse Creek, and then to revoke the certificate after the system was in and functioning, for inconsequential defects, was obviously capricious.

Point 2. Forfeitures are not favored by the law, *Murray City vs. Utah Light & Traction Company*, 56 Utah, 437, 191 Pac 421; *State vs. Janesville Water & Power Company*, (Wisconsin) 66 NW 512; *State vs. Sunset Telephone & Telegraph Co.*, (Washington) 150 Pac 427. In this case the forfeiture of the Certificate of Convenience and Necessity for technical non-compliance with the Commission Orders "to provide incoming toll selectors or the equivalent thereof "to the Park Valley switchboard and" the testing of facilities with the connecting company" were not of sufficient moment or significance when compared with the completion of a 42 mile pole line over two mountain passes in such a remote area and the actual establishment of a telephone exchange and service, to justify the forfeiture of the Certificate, particularly in view of the testimony of both Iven Cox (338-342) and Arthur Brothers 361-362 that the equipment was adequate. The Commission's Order to Beehive to continue service, and the subsequent finding of no other corporation or person willing to serve the area, and finally the recertification of Silver Beehive in the Park Valley and Grouse Creek areas, strongly indicate the Certificate should never have been forfeited.

Point 3. Substantial compliance with the spirit, intent, and purpose of the Commission Orders was complied with. Prior Orders and the Order of May 26, 1971, called for the establishment of an Operating Exchange at Park Valley.

The finding of February 26, 1970, reflected 37 of Beehive's Telephone subscribers, urged the Commission to do nothing to adversely affect the Grouse Creek System, and further found a number of witnesses testified that the service at Grouse Creek was satisfactory. A system comparable and equal to Grouse Creek was established and while some lines were strung on fence poles and some technical defects were present, the essentials of an operating system were complete by the time of the hearing on April 19, 1971 (See Record Page 318).

Point 4. To certificate Silver Beehive for the communities of Grouse Creek and Park Valley and at the same time withdraw the balance of the area unwanted by any other phone company, person or corporation, was capricious and unwarranted, and leaves the withdrawn area without prospects for telephone service and makes an economic hardship upon Silver Beehive by limiting its potential to provide service to 59 or 60 remote and widely separated phone subscribers in Park Valley and Grouse Creek only.

Point 5. The Commission acted capriciously and to asauge its own feelings, and not in the interest of subscribers or the public generally, when it made findings that Silver Beehive had no intention of complying with the Commission's Orders and when it came to the conclusion that Silver Beehive did not intend to comply with Commission Orders not in accord with the thinking of company management.

Silver Beehive's actions in laying out 42 miles of pole lines and installation of a switch board and exchange do not reflect willfull contempt, and the testimony of Arthur

Brothers, President and Manager of Silver Beehive was likewise, to the contrary (Record 356-359 and 363). Further an experienced Telephone Company proprietor, Iven Cox, (338 and 340) described and made clear the equipment and installation at Grouse and Park Valley was good and with a relay type Switchboard of the capacity of the one at Park Valley there would be no need for incoming toll selectors. In other words the Switchboard itself because of its capacity made it "equivalent" to a toll selector (340-342).

CONCLUSION

The defects or shortcomings in Silver Beehive's installation of a functioning Exchange and toll line system for Park Valley were not willful or significant and did not adversely affect the quality or capability of telephone service to such an extent that Silver Beehive's certificate should have been forfeited. That to grant a new certificate to the same company for only Grouse Creek and Park Valley, leaving out much of the former territory, was capricious, destroyed the prospects for such areas ever having phone service and jeopardized the economic viability of the company by limiting its area to Grouse Creek and Park Valley, and this Court can rectify both results by reversing the Commission Order of Revocation, and is respectfully urged to do.

Respectfully Submitted

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