

Opinion No. 72-18

April 19, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Thomas Patrick Whelan, Jr.,
Assistant Attorney General

TO: Mr. Columbus Ferguson, Chairman, State Corporation Commission, P.E.R.A.
Building, Santa Fe, New Mexico 87501

QUESTIONS

FACTS

The Penasco Valley Telephone Cooperative, Inc. is incorporated under New Mexico Laws governing cooperatives, Section 51-15-1, et seq. NMSA, 1953 Comp. The Cooperative has obtained from the State Corporation Commission a certificate of public convenience and necessity to operate a public utility telephone service pursuant to Section 69-10-1, et seq. NMSA, 1953 (P.S.). The Penasco Valley Cooperative and other telephone cooperatives similarly constituted borrow money from the Rural Electrification Administration of the U.S. Department of Agriculture. The REA will lend money only if the cooperative's revenues are sufficient to support the loan. The REA will recommend what rates will produce sufficient revenues if the cooperative is not earning enough money. In states where telephone cooperative rates are regulated by a state agency, the REA requires proof that new rates have been approved by the state agency before it will grant a loan.

QUESTIONS

Does the State Corporation Commission have jurisdiction to regulate the rates of telephone cooperatives like the Penasco Valley Telephone Cooperative, Inc?

CONCLUSION

Yes.

OPINION

{*32} ANALYSIS

The jurisdiction of the State Corporation Commission over telephone companies is defined by Article XI, Section 7 of the New Mexico Constitution. That Section provides:

The commission shall have power and be charged with the duty of fixing, determining, supervising, regulating and controlling all charges and rates of railway, express, telegraph, telephone, sleeping-car and other transportation and transmission companies

and common carriers within the state and of determining any matters of public convenience and necessity relating to such facilities as expressed herein in the manner which has been or shall be provided by law . . .

The commission shall have power to change or alter such rates, to change, alter or amend its orders, rules, regulations or determinations, and to enforce the same in the manner prescribed herein; provided, that in the matter of fixing rates of telephone and telegraph companies, due consideration shall be given to the earnings, investment and expenditure as a whole within the state. No general change in a rate, fare or charge shall be collected by any telephone or telegraph company or common carrier until such proposed increase is approved by the commission or, in the event of removal, until such proposed increase is approved by the Supreme Court except as otherwise provided in this Constitution . . .

Two questions arise in the interpretation of Article XI, Section 7. First, is a telephone cooperative a company within the meaning of that term in Article XI, Section 7? Second, does a telephone cooperative's relationship to the Rural Electrification Administration preempt the state from regulation? We conclude that a {33} telephone cooperative is a company within the meaning of Article XI, Section 7 and that no federal law preempts the state from regulation of telephone cooperative rates.

The word, "company" has often received a broad interpretation. A company has been defined as a number of persons united for performing or carrying on anything jointly. **In re Midwest Athlete Club**, 161 F.2 1005. In **Elfland v. Southern Ry. Co.**, 146 NC 135, 59 S.E. 355, the court interpreted the word, "company" in a statute forbidding transportation and telephone companies from charging any rates other than those of the approved tariffs. The court rejected an argument that use of the word "company" violated equal protection because it did not include everyone engaged in the business. The court said the focus of the law was on the occupation rather than on the agency engaged and that "company" referred to all corporations, firms and individuals. The Court added that, ". . . the interpretation has been frequently applied to the word company in statutes passed . . . in regulating the proper exercise of quasi-public franchises . . ." **Elfland v. Southern Ry. Co., supra**.

Section 51-15-1 (1), NMSA, 1953 Comp. defines a cooperative as a nonprofit corporation. A telephone cooperative is obviously a number of persons united for performing something jointly. See **In re Midwest Athlete Club, supra**. The language of Article XI, Section 7 itself suggests that the focus of the section is on regulating the business of common carriers and communications regardless of the particular legal entity which engages in the business. Any other interpretation would frustrate the obvious purpose of the section, which is to protect the public interest by regulation of quasi-public franchises. Interpretations frustrating the purpose of the section must of course be rejected. See **Martinez v. Research Park, Inc.**, 75 N.M. 672, 410 P.2d 200; **State ex rel. State Highway Commission v. City of Aztec**, 77 N.M. 524, 424 P.2d 801. The word "company" must, therefore, be interpreted to include all entities and individuals engaging in the telephone business, including telephone cooperatives.

It is also noteworthy that the Telephone and Telegraph Company Certification Act, Section 69-10-1, et seq., NMSA, 1953 Comp. (P.S.), defines "telephone company" as a

company, corporation, partnership, individual or others, not engaged solely in interstate business, furnishing public telephone or telegraph service contemplated by article XI, section 7 of the Constitution of the state of New Mexico, and includes telephone co-operatives operating in the state of New Mexico; Sec. 69-10-2B, **supra**. (Emphasis supplied)

The Telephone and Telegraph Company Certification Act was enacted pursuant to the provisions of Article XI, Section 7 charging the State Corporation Commission with the duty of "determining any matters of public convenience and necessity . . . in the manner which has been or shall be provided by law." New Mexico Constitution, Article XI, Section 7. The legislature's interpretation of the word "company" to include telephone cooperative for purposes of certification is a significant indication that "company" should be broadly construed for purposes of conferring jurisdiction over telephone rates as well.

No federal law bars this interpretation. The Rural Electrification Administration's chief function is to make loans for furnishing and improving electric energy and telephone service in rural areas. 7 USCA Section 902. The relationship between telephone cooperatives and the REA is one of borrower and lender. REA jurisdiction over telephone cooperatives is specifically disclaimed. 7 USCA Section 923 states:

Nothing contained in this chapter shall be construed to deprive any State commission, board or other agency of jurisdiction, under any State law, now or hereafter effective, to regulate telephone service which is not subject to regulation by the Federal Communications Commission, under the Communications Act of 1934, including the rates for such service.

There being no federal law preempting state jurisdiction, we conclude *{*34}* that the State Corporation Commission has jurisdiction to regulate the rates of the telephone cooperatives like Penasco Valley Telephone Cooperative, Inc.