

## Opinion No. 13-1035

May 6, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** State Corporation Commission, Santa Fe, New Mexico.

### TELEPHONE AND TELEGRAPH COMPANIES.

As to contracts between telephone and telegraph companies.

### OPINION

{\*200} I have received your letter of the 2nd inst. with which you enclosed a file of correspondence upon the subject of contract between the Mountain States Telephone & Telegraph Company and the various telegraph companies doing business in New Mexico.

You call attention to the fact that it appears by letter of Mr. McClintock, District Commercial Superintendent of the Western Union Telegraph Company, that his company has entered into an agreement with the Mountain States Telephone & Telegraph Company and are basing their toll charges upon the schedule provided for in the contract, while the Postal Telegraph Company has refused to enter into the agreement with the telephone company. You ask my advice as to whether or not the difference in the rates as charged on toll messages by telegraph and telephone, between the Westrn Union Company and the Postal Company, constitutes a discrimination under the statutes or laws of New Mexico.

I note the fact that the telephone company appears to be ready and offers to make, with any telegraph company, the same sort of contract that it has made with the Western Union Company, so that it would not appear that there is any discrimination attempted between the Western Union and the Postal Company. The telephone company offers to treat the Postal Company just the same as it does the Western Union Company. If there were nothing more to be considered, I would say that there appears to be nothing in the nature of prohibited discrimination.

The Postal Company sets up that the contract is unreasonable because it gives too large a proportion of the tolls to be divided, to the telephone company and asserts that there is a combination between the Bell Telephone Company and the Western Union Telegraph Company, so that the apparent division of tolls is no real division at all and the imposition of such a division upon other telegraph companies would be grossly unfair. If this is true, it is apparent that, under the guise of a contract offered by the telephone company to all telegraph companies, which, on its face seems unobjectionable, there is, in reality, a practical discrimination against any telegraph company other than the Western Union. You say in your letter to me that I doubtless

know that the telephone company is closely related to the Western Union Telegraph Company, but I only know that as a matter of common report; but you probably have better and more reliable information. My understanding has been that the companies were practically the same, one company holding so much of the stock of the other as to make their interests identical. If this is true, it does not appear to be permissible that, by masquerading under two different names, the same set of people should, by the form of making {\*201} contracts between themselves, be able to injure the business of a competitor.

I return herewith the correspondence transmitted with your letter.