

CHAPTER 237

TELEPHONE AND TELEGRAPH COMPANIES

237.01 TELEPHONE COMPANY.

By L. 1915, c. 152, ss. 1, 2, the railroad and warehouse commission is given jurisdiction and supervisory powers over telephone companies the same as it has over railroad and express companies, and such jurisdiction extends to all companies engaged in furnishing telephone service regardless of the character of their organization. The powers conferred upon the commission are administrative and legislative in character and are not judicial. The reasonableness of its orders is a judicial question reviewable on an appeal to the district court for which provision is made by the statute. *State ex rel v Four Lakes Telephone Co.* 141 M 124, 169 NW 480.

Control of public utilities. 16 MLR 457.

237.02 UNDER RAILROAD AND WAREHOUSE COMMISSION.

Rate-making for the future is an inherently legislative act, whether by the legislature directly or by an administrative body to which is delegated the duty of fixing rates in detail, and the orders of such tribunals are subject to the same tests and command the same regard as enactments of the legislature. The powers of the reviewing court are purely judicial and lack legislative attributes. Its function is to protect constitutional rights and not to set as a board of revision with appellate legislative authority to substitute its own judgment for that of the commission. Where the legislature fixes rates using legislative discretion, its determinations are conclusive. Where a rate-fixing body is created by the legislature it may endow such body with power to make finding of facts which are conclusive, provided the requirements of due process are met by according a fair hearing and acting upon the evidence and not arbitrarily. *State v Tri-State Telephone Co.* 204 M 516, 284 NW 294.

237.06 RATES TO BE FAIR AND REASONABLE.

Public utility's duty to serve without discrimination. 13 MLR 104.
Discontinuance of service by public utilities. 13 MLR 181, 325.

237.08 COMMISSION TO FIX REASONABLE RATES.

Private contracts fixing rates must yield to the public welfare when determined in an appropriate manner by authority of the state. *Goodrich v Northwestern Telephone*, 161 M 106, 201 NW 290.

Reasonable compensation must be paid for switching services. Any rate insufficient to constitute a reasonable return on the value of the property used and the services required is confiscatory. A sound method of apportionment of property jointly used in such switching services is to base the apportionment upon use, which includes volume of traffic. Any rate is to be based upon present value and not upon the company's investment. Rate-making, with which the commission is concerned, is a legislative function and implies a range of legislative discretion. *Western Buse Telephone Co. v Northwestern Bell Telephone Co.* 188 M 524, 248 NW 220.

The constitution limits the rate-making power by prohibiting deprivation of property without due process of law or the taking of private property for public use without just compensation. Reasonable return on the value of the property at the time it was used in the public service is just compensation. Rates which do not afford such return are confiscatory. A company whose rates are being fixed is entitled to a return on any increment to value of the plant since installation. *State v Tri-State Telephone Co.* 204 M 516, 284 NW 294.

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While a proceeding instituted by the commission to determine reasonable rates for the defendant was pending in court, the company and the commission together with the attorney general agreed to end the litigation by substituting for the schedule of rates established by the order of the commission a new schedule. This was a valid arrangement under the provisions of section 237.08. *Lenihan v Tri-State Telephone Co.* 208 M 172, 293 NW 601.

Where a state railroad and warehouse commission commenced an investigation of telephone rates on its own initiative, pending which telephone companies made application for temporary increases in rates, which were denied by the commission, the telephone companies could sue in a federal court to enjoin enforcement of the order denying the temporary increases, though the main proceeding was still pending before the commission, where it was likely to continue for a very considerable time. *Northwestern Bell Co. v Hilton*, 274 F. 384.

The present value of telephone company's plant for purpose of fixing telephone rates may be indicated in some degree by increment to value of the plant since installation, where cause of components could be found with reasonable certainty. For property of utility to be included in the rate base it must be used to render a useful public service in the same class as it is in which the rates are under consideration. *Northwestern Bell Co. v Hilton*, 274 F. 384.

Rate-making by agreement of the public utility with the commission. 25 MLR 233.

237.10 COMMISSION TO PRESCRIBE UNIFORM RULES.

Rate making for the future is an inherently legislative act whether done by the legislature directly or by an administrative body to which is delegated the duty of fixing rates in detail, and the orders of such tribunals are subject to the same tests and command the same regard as enactments of the legislature. *State v Tri-State Telephone Co.* 204 M 516, 284 NW 294.

237.13 TELEPHONE COMPANIES REQUIRED TO PERMIT PHYSICAL CONNECTION.

Constitutionality of an enforced connection of telephone lines. 1 MLR 466.

237.15 COMMISSION GIVEN POWER TO DELEGATE AUTHORITY TO EMPLOYEES.

"Fair return" is computed with reference to "fair value." In fixing "fair value" it is proper to consider historical cost, provided consideration is given to changes in the price level; reproduction cost at the time of the inquiry; the financial history of the company and all other relevant facts. Annual depreciation may be determined by comparing and appraising the losses from depreciation and synchronizing the appraisal in relation to the depreciation reserve fund. *State v Tri-State Telephone Co.* 204 M 516, 284 NW 294.

Section 237.08 impliedly authorizes the commission to sanction new rates proposed by a telephone company without formal notice of hearings and taking of testimony, if satisfied the rates are just and reasonable. *Lenihan v Tri-State Telephone Co.* 208 M 174, 293 M 601.

237.16 COMMISSION TO GRANT AUTHORITY FOR CONSTRUCTING TELEPHONE LINES AND EXCHANGES.

Where the original franchise of a telephone company was conditioned upon its furnishing to the city free poles, wires, conductors, and conduits for the city's police and fire alarm systems, after expiration of the franchise the railroad and warehouse commission has no supervision over the conditions contained in the contract and are without power to compel the telephone company to furnish such facilities to the city. The service granted to the city by the terms of the conditions is not public use subject to commission supervision but is a strictly private use covered by voluntary contract. *City of St. Paul v Tri-State Telephone Co.* 194 M 484, 258 NW 822.

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Under section 237.12, where facts found by commission show, or in the absence of explicit finding the statutory presumption is, that public convenience will be promoted by the continuance of a physical connection between the lines of telephone companies, it is the mandatory duty of the commission to order the continuance of such connections. But, under the statute, the function of prescribing reasonable terms and conditions for such continuance of the connection is for the commission, and where that has not been done the case should be remanded to the commission for that purpose. *Tri-State Telephone Co. v Intercounty Telephone Co.*, 211 M 497, 1 NW(2d) 853.

L. 1899, c. 51, of itself, gave no right even to a corporation, but merely imposed a limitation on rights already supposed to exist; and hence after the passage of the account, neither telephone companies nor private persons could obtain any right to use the streets of a city without action by the city. *Tri-State Telephone Co. v Thief River Falls*, 183 F. 854.

237.18 SURRENDERING OF LICENSE AND SECURING OF NEW AUTHORITY.

L. 1915, c. 152, placed all telephone companies doing business in the state under the supervision and control of the railroad and warehouse commission, and any telephone company, holding a franchise from a municipality at the time the law took effect, was permitted to surrender such franchise and receive, in lieu thereof, from the commission an indeterminate permit to occupy the streets of the municipality with its poles and wires. No private property right vested in the village of Litchfield by the franchise issued by its council in 1905 was impaired or affected by the written declaration of surrender tendered by relator to the village clerk for filing pursuant to the statute. *State ex rel v Holm*, 138 M 281, 164 NW 989.

237.22 COMMISSION GIVEN RIGHT TO CHANGE ANNUAL DEPRECIATION CHARGE.

In determining "fair value" when fixing rates, annual depreciation charges may be determined by computing and weighing the losses from depreciation for each class of property, provided there is some relationship between the depreciation reserve fund and the amount of actual depreciation which has accrued. *State v Tri-State Telephone Co.* 204 M 518, 284 NW 294.

237.24 EXPENSE OF FURNISHING TRANSCRIBED COPY OF RECORD.

Section 237.08 impliedly authorizes the commission to sanction new rates proposed by a telephone company without formal notice of hearings and taking of testimony if satisfied the rates are just and reasonable. *Lenihan v Tri-State Telephone Co.* 208 M 172, 293 NW 601.

237.25 MODE OF PROCEDURE FOR APPEALS FROM DECISIONS OF COMMISSION.

Rates fixed by the commission for switching services between local telephone exchange and lines of rural companies are attacked as unreasonable and confiscatory. Reasonable compensation must be paid for switching services, and any rate insufficient to constitute a reasonable return on the value of the property used and services required is confiscatory. On appeal the district court, the question of confiscatory rates being involved, must make its determination upon its own independent judgment as to both the law and the facts and make its own findings as if it tried the case in the first instance. *Western Buse Telephone Co. v Northwestern Bell Telephone Co.* 188 M 524, 248 NW 220.

In considering telephone rates for exchange services, only property used solely for exchange services may be included in the rate base. Property exclusively used for toll must be excluded. Property used to render both services should be apportioned. *State v Tri-State Telephone Co.* 204 M 516, 284 NW 294.

Under the provisions of section 237.12, where facts found by commission show, or in the absence of explicit finding the statutory presumption is, that public con-

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237.27 ATTORNEY GENERAL TO APPLY FOR WRIT COMPELLING OBEDIENCE.

Where a state railroad and warehouse commission commenced an investigation of telephone rates on its own initiative, pending which the telephone companies made applications for temporary increases in rates, which were denied by the commission, the telephone companies could sue in a federal court to enjoin enforcement of the order denying the temporary increases. *Northwestern Bell Telephone Co. v Hilton*, 274 F. 384.

237.33 TOWN BOARDS MAY CONSTRUCT TELEPHONE SYSTEMS FOR FIRE PROTECTION.

A town through the town board may issue bonds for the purpose of maintaining a telephone system, but the town cannot exceed its debt limit, and the bond issue must be one authorized by law. OAG May 17, 1946 (43-B-5).

237.34 TOWN TELEPHONE LINES MAY EXTEND OUTSIDE CORPORATE LIMITS.

Control of public utilities. 16 MLR 457.

237.40 TOWN BOARDS TO MANAGE.

It is within the administrative functions of the town board of supervision to enter into a contract for the carrying of town telephone lines on the poles of another telephone company. OAG Nov. 26, 1943 (98-A-3).

237.44 LIABILITY FOR DAMAGES.

There can be no recovery for mental anguish caused by mere negligence in failing to deliver a telegram sent by plaintiff's agent, announcing the death of a relative, either at common law or under the Minnesota statute which limits recovery to actual damages. *Gahan v Western Union*, 59 F. 433.