

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

WASHINGTON, D. C.

<p>In the Matter of Rates of the LORAIN COUNTY RADIO CORPORATION for radiotelephone service, Radiotelephone Service between ships on the Great Lakes and land radiotelephone stations provided by the Lorain County Radio Corpora- tion, and Thorne Donnelley, doing business as Donnelley Radio Telephone Co., and Rates of THORNE DONNELLEY, doing business as DONNELLEY RADIO TELEPHONE Co., for Radio- telephone Service.</p>	}	<p>DOCKET No. 5658 DOCKET No. 5659 DOCKET No. 5671</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---	----------------------------------------------------------------

October 9, 1940

Frank C. Dunbar and *Frank C. Dunbar, Jr.*, on behalf of the Lorain County Radio Corporation; *Joseph E. Keller* on behalf of Thorne Donnelley; *S. Whitney Landon* on behalf of American Telephone and Telegraph Co., Illinois Bell Telephone Co., Northwestern Bell Telephone Co., Ohio Bell Telephone Co., and Wisconsin Telephone Co.; *Manton Davis*, *Frank W. Wozencraft* and *Willson Hurt* on behalf of Radiomarine Corporation of America; and *Eugene L. Burke* on behalf of the Commission.

PROPOSED REPORT OF THE COMMISSION

FINDINGS OF FACT

1. These proceedings arose upon orders adopted by the Commission on its own motion as follows:

(a) In Docket No. 5658 the Commission suspended until September 30, 1939, tariffs filed by Lorain County Radio Corporation, hereinafter referred to as Lorain, proposing an optional rate of \$1.50 per message which could be chosen by users of the company's service in lieu of the

8 F. C. C.

ready-to-serve charge of \$25 a month plus a message rate of 75 cents¹ or 85 cents² for station-to-station calls, and 90 cents¹ or \$1² for person-to-person calls.

(b) In Docket No. 5671 the Commission suspended until September 30, 1939, tariffs filed by Thorne Donnelley, doing business as Donnelley Radio Telephone Co., hereinafter referred to as Donnelley, proposing to increase his message charge from 75 cents to \$1 for station-to-station calls and 90 cents to \$1.25 for person-to-person calls, and to eliminate his readiness-to-serve charge of \$5 per month.

(c) In Docket No. 5659 an investigation was ordered into the lawfulness of the maximum, minimum, and precise basis of all charges and of the classifications, regulations, and practices relating thereto, applicable to radiotelephone communication service furnished by Lorain and Donnelley between ships on the Great Lakes and their respective coastal harbor stations.

2. Radiomarine Corporation of America, hereinafter referred to as Radiomarine, was authorized to intervene. These proceedings were heard before a properly designated employee of the Commission on July 24 to July 27, inclusive, and August 16 and 17, 1939. Proposed findings of fact and conclusions have been filed on behalf of Lorain, Donnelley, and Radiomarine. The periods of suspension have expired and the suspended rates have been put into effect by both Lorain and Donnelley. Rates refer to radiotelephone charges for calls of 3 minutes or less, unless otherwise stated; land-line telephone and telegraph charges, if any, and taxes are extra. Reference to Lorain stations means Lorain's coastal harbor stations as distinguished from ship stations licensed to it. Reference to the Lorain, Ohio, station means Lorain's station (WMI) at Lorain, Ohio. A "subscribing ship" means a ship for which the Lorain ready-to-serve charge of \$25 a month is paid.

3. Lorain undertakes to furnish two-way radiotelephone communication service 24 hours a day during the navigation season, which begins in April and ends in December, between its coastal harbor stations and ships on the Great Lakes, Lake St. Clair, Georgian Bay,

¹ For calls (1) between ships on the Great Lakes and the company's coastal radiotelephone station located at Lorain, Ohio, (2) between ships on the Great Lakes and telephones within the local service area of the Lorain Exchange of The Lorain Telephone Co. (when transmitted via the Company's coastal radiotelephone station at Lorain), (3) between ships on the Great Lakes and the company's coastal radiotelephone station located at Duluth, Minn., and (4) between ships on the Great Lakes and the company's coastal radiotelephone station at Port Washington, Wis. (Lorain Tariff F. C. C. No. 2, III-A, 4th revised, p. 7).

² Between ships on the Great Lakes and telephones within the local service area of the Duluth, Minn., exchange of the Northwestern Bell Telephone Co., when calls transmitted via company's coastal radiotelephone station at Duluth, and between ships on the Great Lakes and telephones within the local service area of the Port Washington, Wis., exchange of the Wisconsin Telephone Co., when calls transmitted via company's coastal radiotelephone stations at Port Washington (Lorain Tariff F. C. C. No. 2, III-C, 4th revised, p. 8).

and the connecting rivers and channels. Since 1934, Lorain has operated a coastal harbor station at Lorain, Ohio (WMI), and since late in 1938 a coastal harbor station at Duluth, Minn. (WAS), and one at Port Washington, Wis. (WAD).

4. Donnelley undertakes to furnish two-way coastal and harbor radiotelephone service between his station and ships on Lake Michigan 24 hours a day throughout the year. Donnelley also furnishes frequency measurements for ship and other radio stations. Since May 1938, Donnelley has operated a coastal harbor station (WAY) at Lake Bluff, Ill.

DOCKET NO. 5658—LORAIN

5. The suspended optional rate schedule proposed by Lorain was designed principally for yacht owners, Canadian shipowners, and their seamen who use Lorain service intermittently. This schedule provides for a separate charge of an unspecified amount for inspecting ship station equipment, if inspection is requested.

6. Lorain's theory is that \$0.75 of the optional rate of \$1.50 represents a message charge and the remaining \$0.75 a ready-to-serve charge. On this basis the charge of \$0.50 for an extra minute is equal to one-third of the message charge plus one-third of the ready-to-serve charge. Under the present schedule, the rate for each extra minute is about one-third of the message charge only.

7. The charges for a month's service under the optional rate schedule compare with the charges based upon the ready-to-serve charge plus the related message rates as follows:

Class of service	Number of calls	Message rate	Message charge	Ready-to-serve charge	Total of charges	Total charges at optional rate of \$1.50
Station-to-station.....	34	\$0. 75	\$25. 50	\$25	\$50. 50	\$51
Do.....	40	. 85	34. 00	25	59. 00	60
Person-to-person.....	42	. 90	37. 80	25	62. 80	63
Do.....	50	1. 00	50. 00	25	75. 00	75

8. For a call by a seaman on a nonsubscribing ship, or for a call to a nonsubscribing ship the optional rate would be charged; while for a call by a seaman on a subscribing ship or for a call to a subscribing ship the charge may be only 75 cents. The charge for extra minutes would be 50 cents and 25 cents or 30 cents, respectively.

9. The same rate applies under the optional rate schedule to a person-to-person call as to a station-to-station call, although a person-to-person call involves approximately 15 cents greater expense to the carrier. A \$0.15 differential is made in other rates to cover the additional expense. The ratio of station-to-station calls (including tele-

grams and position reports) to person-to-person calls was more than 3 to 1 in 1938 and more than 2 to 1 in 1939 to June 30.

DOCKET NO. 5671—DONNELLEY

10. By the suspended tariff schedules, Donnelley proposed to drop his readiness-to-serve charge and increase his message rates to make the service available to a greater number of vessels on a more reasonable basis. Heretofore a ship calling Donnelley was required to pay a \$5 readiness-to-serve charge plus the message rate; the ship owner was then entitled to service the rest of the month on payment of only the message rate. This \$5 charge against the first message from a ship each month injured Donnelley's business because occasional users would refrain from placing a call on such a basis, and other ship owners having paid the Lorain ready-to-serve charge, found it more economical to send their messages through Lorain stations than to pay two such charges. The average charge for calls was \$2, including the readiness-to-serve charge. Donnelley furnished those who paid the readiness-to-serve charge with three frequency measurements per month free; the regular charge for such measurements is \$2 each. The cost of communication will be greater after a user makes 14 person-to-person or 20 station-to-station calls, at the proposed rates. Most of the calls are person-to-person.

11. In the 7-month period June–December 1938, Donnelley handled 2,052 calls of which 657 were paid calls. Of the paid calls, 474 were from ships and 183 to ships. Those from ships involved a readiness-to-serve charge, while those to ships did not. The station handled $1\frac{2}{3}$ paid calls per day.

12. For the 13-month period June 1, 1938 to June 30, 1939, the station's revenue from message charges was \$759, from readiness-to-serve charge, \$228.87, and from frequency measurements, \$1,893.51. Had the full \$5 readiness-to-serve charge been collected in each instance in 1938, the revenue would have been \$26.13 greater. The cost of operations for the period was \$28,079 for radiotelephone service, and \$7,156 for frequency measuring. The station experienced a loss of \$27,091 on radiotelephone operations, amounting to about \$41 a message, and a loss of \$5,263 on frequency measuring. The book cost of the plant at July 1, 1939, was \$79,131. Depreciation is not recorded on the books but a figure of \$11,933 was given as the amount of depreciation.

13. Lorain's ready-to-serve charge hinders Donnelley in securing traffic normally destined through his station because the collection of the charge has enabled Lorain to offer a lower message rate than it otherwise could and a rate lower than Donnelley can offer, and because

its rate structure is such that the user's cost per call decreases as the number of his calls through Lorain stations increases.

14. It is significant, in this respect, that in the 2 months' period preceding the hearing during which Donnelley was licensed to operate on 2550 kilocycles in common with Lorain, Donnelley did not receive a single call on that frequency, nor did he receive any paid calls from or for a Lorain-equipped ship.

15. Donnelley estimates that the station should normally handle 24,000 calls annually at the proposed rates with a revenue of \$30,000, at an expense of \$27,000, leaving a 5 percent return on his investment. The traffic estimate is based on estimates of the number of ships on Lake Michigan, and on river boats coming into Chicago, and the number of calls these vessels would make through the station. The estimate also considers traffic from car ferries that use radiotelegraph and communicate through affiliated stations and ignores the effect of a competing station on the Lake. Revenue from and expense of frequency measuring are not included in the estimate.

DOCKET NO. 5659—LORAIN AND DONNELLEY

LORAIN SERVICES

16. Besides the radiotelephone service, Lorain furnishes without separate charge:

(a) Weather reports twice daily at Lorain; once daily at Duluth; and once daily at Port Washington;

(b) Listing in a ship telephone directory; and

(c) Hydrographic reports.

The weather and hydrographic reports, or portions of them, are repeated upon request without charge.

17. At the end of the navigation season in 1938 there were 82 ships equipped with Lorain ship station equipment and at July 24, 1939, 128 ships were so equipped. The owners of these ships all subscribed to Lorain service during the entire navigation season except for periods during which the ships were not in service 14 or more consecutive days. At August 17 there were about 136 cargo ships for which the \$25 a month ready-to-serve charge was being paid. Lorain also handles calls from a large number of ships that are not subscribers; those ships are mostly yachts and Canadian vessels. There are 350 United States ships on the Lakes which are potential users.

18. During 1938 Lorain handled 18,699 calls. Of these calls, 10,799 were paid calls³ which averaged 43.3 calls per day handled by the

³ Those for which no charge was made were classified as demonstration, weather, and service calls.

station and approximately 33.3 calls per month per ship. The number of calls at Duluth and Port Washington was negligible in 1938. During the period April-June 1939, Lorain handled at the three stations 6,636 calls, of which 2,978 were paid calls. During the period April-June messages at Lorain in 1939 totaled 5,765, of which 2,687 were paid messages, and in 1938, 4,538, of which 1,975 were paid messages. The average number of paid messages per day at Lorain during the period April-June 1939, increased about 50 percent over the same period in 1938, while the average number per ship per month decreased about one-third.

19. In 1938, 95.3 percent of shore-to-ship calls and 99.1 percent of ship-to-shore calls handled by Lorain were completed; in 1939, 94.1 percent and 98.9 percent, respectively, were completed.

20. Condensed balance sheet at May 31, 1939:

<i>Assets</i>		<i>Liabilities and capital</i>	
Plant.....	\$181,185	Current liabilities.....	\$62,871
Cash	1,015	Accrued taxes	516
Materials and supplies.....	24,575	Depreciation reserve.....	24,212
Other current assets.....	14,783	Capital stock.....	74,000
Prepaid rents and insurance	1,043	Donations	97,888
		Deficit.....	(36,886)
	<u>222,601</u>		<u>222,601</u>

These accounts include amounts for both shore and ship station equipment.

21. Income statements:

	<i>1938</i>	<i>To May 31, 1939</i>
Message toll revenue.....	\$8,508	\$936
Ready-to-serve charge revenue.....	8,237	982
	<u>16,745</u>	<u>1,918</u>
Operating expenses.....	31,779	12,688
	<u>15,034</u>	<u>10,770</u>
Loss from radiotelephone service.....	15,034	10,770
Profit from furnishing ship station equipment.....	16,021	1,135
	<u>987</u>	<u>¹(9,635)</u>
Profit.....	987	¹ (9,635)

¹ Loss.

22. When Lorain entered the radiotelephone service in 1934, it undertook to furnish ship station equipment to those who subscribed for service and who agreed to contribute specified amounts "to aid and induce the development of a coordinated telephone system on the Great Lakes."

23. There were 16 steamship companies that contributed \$97,888.50, for which they were furnished station equipment on 43 ships. One

8 F. C. C.

company contributed \$1,250 for substantially the same equipment as that for which another company contributed \$2,845.50. The contribution of others varied from \$2,200 to \$2,500 per ship.

24. In 1937 this method was abandoned and Lorain is now furnishing ship station equipment under a combination sales and service contract. The charge for equipment is uniform and is the same for one or a number of sets. Lorain also offers to lease ship station equipment but has not leased any.

25. Lorain's tariffs have provided, since November 5, 1936, for the ready-to-serve charge. Prior to that date the charge was made but no tariff was on file showing the charge. The tariff states that the charge is made to cover:

(a) Maintenance in readiness-to-serve of shore receiving and transmitting equipment;

(b) Ship-to-ship telephone service between subscribing ships on the Great Lakes; and

(c) Periodic inspections of the ships' radiotelephone apparatus when the ships reach Lake Erie ports.

26. The charge and the amount thereof was decided upon, after conferences with prospective subscribers, to enable Lorain to offer a lower message rate to reach the seamen on the Lakes. The owners of subscribing vessels pay the ready-to-serve charge and permit their seamen to talk at message rates. Seamen on nonsubscribing vessels have been charged a ready-to-serve charge of 83⅓ cents a day with a minimum of \$6.25 per month per ship. No ready-to-serve charge is made on shore-to-ship calls. In 1937, 1938, and 1939, about one-half of Lorain's gross revenue was derived from the ready-to-serve charge.

27. In 1938, Lorain's total expenses were \$31,779.25, including \$4,219.70 for inspection service, leaving \$27,559.55 for all other operating expenses. It collected \$8,237.37 as ready-to-serve charges which covered inspection service. Eliminating the cost of inspection service, the amount collected in 1938 to cover maintenance of the shore station equipment in readiness-to-serve was \$4,017.67, or an average of \$12.19 of each \$25 charge.

28. The average expense of handling messages exclusive of ship station inspection expense was \$2.55. The average message charge was 79 cents and that portion of the ready-to-serve charge allocable to shore station maintenance averaged 37 cents a message. Thus, the average amount collected for the transmission of messages costing Lorain \$2.55 was \$1.16.

29. A rate schedule that provides a flat charge plus a message charge inevitably produces a lesser charge per call to those who use the service more than others. The greater the flat charge the greater will be the difference in the charge per call. Thus, if we use the amount of \$12.19

as the true ready-to-serve charge and a 75-cent message rate the difference between the charge per call to the subscriber who uses 30 calls per month and the subscriber who uses 5 calls will be \$2.04 in favor of the larger user; using the full \$25 charge and a 75-cent message rate, the difference will be \$4.17.

30. Elimination of the ready-to-serve charge would not impair the quality and dependability of its service because Lorain could continue to render its inspection service, making a proper charge therefor to finance it.

31. Elimination of the ready-to-serve charge and a compensatory increase in the message rate should not disturb Lorain traffic except that it will probably lose some traffic to Donnelley that is destined to or originates in the Chicago area.

32. Lorain's theory is that the excess of (a) maintenance and depreciation expenses of shore stations, traffic expenses, rentals and insurance, and taxes, over (b) message toll revenues, represents (c) the cost of maintaining the stations in readiness-to-serve. It is evident that the charge is an arbitrary amount not based on the amount of plant or expense that can be allocated to a ship station through which little or no use is made of Lorain service.

33. Lorain is billing the ready-to-serve charge for the actual number of days the ships are in service at the rate of 83 $\frac{1}{3}$ cents a day with a minimum of \$6.25 per month per ship. This practice was started in 1938 and is admittedly a departure from the tariffs.

34. Lorain tariffs provide for inspection of subscribing ships' radiotelephone apparatus when the ships reach Lake Erie ports, as part of the service covered by the ready-to-serve charge. A separate charge is made for a spring inspection and cleanup, the amount depending upon the location of the ship and other factors. At the present time Lorain makes inspections not only at Lake Erie ports, but on Lake Michigan and at the Sault Ste. Marie locks. Ships for which the ready-to-serve charge is paid on a "daily basis" have been given no inspection service.

35. Some of the subscribing ships carry other than Lorain ship station equipment. The service contracts with owners of these ships contain a clause that Lorain "shall not be responsible for the care, custody, maintenance or performance of any equipment not furnished or owned by [Lorain]." Lorain has not inspected the station equipment on subscribing ships equipped with other than Lorain equipment but would have done so if the ship owners had requested it. Since the beginning of the hearing, Lorain instituted the practice of calling all subscribing ship owners to inquire whether Lorain inspection service is desired. However, Lorain's service men are not com-

petent to inspect the station equipment on some of the subscribing ships. As a result of the spring inspection, there is practically no trouble during the navigation season.

36. Direct ship-to-ship communication is effected by an operator on board ship dialing the signal of the called ship. The operator has no relationship to Lorain and his salary is paid and the power used to operate the ship station equipment is supplied by the ship owner.

37. Messages received from ships are forwarded, at the request of the sender by telegraph. This telegraph service is not provided for in filed tariffs. The charges made for the telegraph service are those of the telegraph company.

38. Lorain in 1938 transmitted free as "demonstration calls" 898 ship-to-shore messages and 133 shore-to-ship messages at the Lorain, Ohio, station. April 1 to July 17, 1939, it transmitted free 296 ship-to-shore messages and 37 shore-to-ship messages at Lorain; from April 20 to July 17, 1939, 15 ship-to-shore messages and one shore-to-ship message at the Port Washington station; and from May 1 to July 17, 1939, 16 ship-to-shore messages and one shore-to-ship message at the Duluth station. These free calls represented approximately 2 percent of the total calls in 1938 and 2 percent in 1939. These messages were designated "demonstration calls" and include a substantial number of calls made by captains on subscribing ships to their homes and other places in return for the captains agreeing to accept demonstration calls made from shore to their ships. The land-line charges on "demonstration calls" made by the ship captains were paid by them.

39. Nonsubscribing ships are permitted to make test calls without separate charge on days for which they pay a ready-to-serve charge; at other times test calls are made, the charge would be 83⅓ cents a day as a ready-to-serve charge with a \$6.25 minimum. There is admittedly no provision in the tariff for such a charge.

40. Lorain's tariffs specify report charges on uncompleted station-to-station and person-to-person calls. In 1938, the Lorain, Ohio, station was unable to complete 268 calls; between April 1 and June 30, 1939, the three Lorain stations were unable to complete 134 calls. Report charges have been collected only on incomplete person-to-person calls.

41. Notwithstanding that the Lorain tariffs provide for station-to-station service at lower rates than for person-to-person service, it is the practice of Lorain to charge the person-to-person radio-link rate for all calls which, under American Telephone and Telegraph tariffs (F. C. C. No. 132), carry the person-to-person land line rate.

DONNELLEY SERVICES

42. Notwithstanding that the tariffs provide for station-to-station service at lower rates than for person-to-person service, Donnelley charges person-to-person rates on all calls which under other carriers' tariffs carry the person-to-person land line rate.

43. Donnelley has failed to complete calls, but has never collected a report charge although his tariffs provide for report charges on uncompleted calls.

44. The tariff provides that no report charge will be made when the caller is not notified within a specified period that Donnelley is unable to complete the call. Callers have always been notified within the period.

CONCLUSIONS

Upon the foregoing findings of fact, the Commission concludes that:

DOCKET NO. 5658—LORAIN

1. The relationship between Lorain and a ship station originating or terminating a call furnishes no justification for discrimination in rates and charges and the charging a higher rate for a call to or from a station on a nonsubscribing ship than for a like call to or from a station on a subscribing ship is an unjust and unreasonable discrimination against persons calling to or from ship stations on nonsubscribing ships. For these reasons the tariff schedule under suspension in this proceeding is unlawful, and an order will issue accordingly.

DOCKET NO. 5671—DONNELLEY

2. The tariff schedules suspended in this proceeding proposing to eliminate Donnelley's readiness-to-serve charge and increase the message rates provide a more equitable basis for charges for the service than previously. The proceeding herein will be dismissed.

DOCKET NO. 5659—LORAIN AND DONNELLEY

LORAIN

3. The ready-to-serve charge unjustly discriminates against the small user, against the user who has no need for Lorain inspection service, and against the user equipped with ship station equipment which Lorain is not competent to inspect, and is unjust and unreasonable and therefore unlawful.

4. The charging for the ready-to-serve charge at 83 $\frac{1}{3}$ cents a day, with a \$6.25 minimum per month, was in violation of Lorain tariffs then in effect, and in violation of section 203 (c) of the act.

5. The elimination of the ready-to-serve charge will require a revision of the rate structure so as to fix the charges upon a per-call basis.

6. The furnishing of communication service to certain ship captains in return for such captains agreeing to accept demonstration calls to their ships amounts to charging and collecting from such captains a different compensation for such communication than the charges specified in the tariff schedule in effect, in violation of Lorain tariffs and in violation of section 203 (c) of the act.

7. The charging of person-to-person rates for station-to-station calls is in violation of Lorain tariffs and in violation of section 203 (c) of the act.

8. The collection of charges for test calls, not shown in the tariff schedules in effect, is in violation of section 203 (c) of the act.

9. The failing to collect report charges on uncompleted calls is in violation of Lorain tariffs and in violation of section 203 (c) of the act.

DONNELLEY

10. The charging for the readiness-to-serve charge of amounts of less than \$5.00 a month was in violation of Donnelley tariffs then in effect and in violation of section 203 (c) of the act.

11. The charging of person-to-person rates for station-to-station calls is in violation of Donnelley tariffs and in violation of section 203 (c) of the act.

12. The failing to collect report charges on uncompleted person-to-person calls and collect station-to-station calls is in violation of Donnelley tariffs and in violation of section 203 (c) of the act.

The proposed report of the Commission was adopted as the "Report of the Commission" on November 20, 1940.

8 F. C. C.