10

SAVING DUAL SERVICE? THE KINGSBURY COMMITMENT

BY THE END OF 1913, Vail's attempt to unify the telephone system had reaped a whirlwind of controversy. AT&T was mired in lawsuits regarding rates or antitrust issues in almost every state. The federal government, too, had initiated antitrust litigation against Bell in the Pacific Northwest. A stockholder of the Central Union company was suing AT&T for conspiring to bankrupt the licensee company in order to subject it to an inexpensive takeover by AT&T. More threatening still, AT&T's pursuit of a single system had fueled agitation for government ownership of the telephone system. Postmaster General Burleson's annual report for 1912 had advocated government ownership of all forms of interstate communication. Burleson was cooperating with two powerful congressmen, Representative Moon of Tennessee, Chairman of the House Committee on Post Offices and Post Roads, and Representative David J. Lewis of Maryland, in the drafting of a bill to nationalize long-distance telephone lines.

Bell's attempt to acquire and consolidate the Morgan-owned independent properties in Ohio brought matters to a head. After extensive negotiations with state and federal authorities, it learned that the consolidations would be considered a violation of the Sherman Act. In order to extract itself from litigation and abate the threat of government ownership, Bell was forced to back away from its pursuit of a unified system. Its vehicle for doing so was the "Kingsbury commitment" of December 19, 1913, so named because it was expressed in a letter from AT&T Vice President Nathan C. Kingsbury to Attorney General McReynolds and Assistant Attorney General G. Carroll Todd of the Department of Justice. The letter eliminated, for the time being, the threat of federal antitrust prosecution and stilled some of the demands for government ownership.

The Kingsbury letter committed AT&T to three things:

1) AT&T agreed to divest itself of its controlling stock holdings in its Western Union telegraph company, despite the important economies of scope gained from joint operation of telephone and telegraph lines;

2) AT&T agreed to stop acquiring competing independent exchanges, thus preserving dual service in the 1,234 cities and towns where Bell and an independent divided the market;

3) AT&T offered to open up its long-distance lines to independent exchanges under certain conditions. The interconnection provisions of the commitment only applied to exchanges that were more than fifty miles apart. Thus, the agreement appeared to preserve a divided, competitive service at the local level while depriving AT&T of the competitive advantage it obtained by tying long-distance access to local exchange service.[313]

Contemporaries viewed the Kingsbury commitment as a near-complete victory for the view that competition rather than monopoly should be the norm in the telephone industry. The independents referred to the commitment as a "gift from Santa Claus Bell"[314] and congratulated themselves on what seemed to be "the acceptance of the principle of competition in the conduct of [the telephone] business."[315] Indeed, to this day the Kingsbury commitment is reknowned within the telecommunications industry as a historical milestone. But it is hard to understand why. The agreement proved to be completely ineffectual at preserving a competitive market structure. Although the spinoff of Western Union was accomplished, the commitment had no impact whatsoever on toll interconnection. Within three years of its ban on acquisitions, Bell, the independents, and state and federal governments were engaged in a mutually agreeable process of consolidating their properties. Only seven years later, its restrictions on buyouts were officially eliminated by a new federal law. The Kingsbury commitment was neither a milestone nor a turning point but a brief pause on the road to regulated monopoly.

The Kingsbury Commitment and Toll Interconnection

The Kingsbury commitment is often misinterpreted as a sweeping interconnection agreement that effectively ended the fragmentation brought about by Bell and independent competition. It was nothing of the kind. Its primary intention was to leave dual service competition intact at the exchange level. Thus, it did not permit connection of Bell and independent exchanges that were sited within a fifty mile radius of each other. As noted before, 95 percent of all telephone calls at that time were to points within fifty miles. More importantly, there is no evidence that any sizable independent company availed itself of the opportunity to establish long-distance connections with AT&T under its terms. Bell's own statistics on the number of telephone subscribers connected to itself through independent companies show no quantum leaps in 1914 or 1915. On the contrary, the rate of increase in the number of connecting stations, which advanced rapidly during Vail's sublicensing craze of 1908 to 1912, declined steadily from 1913 to 1916. The

[313] The complete text of the Kingsbury commitment is published in the 1913 AT&T ANNUAL REPORT 24-26.

[314] 65 TELEPHONY 1 (Dec. 27, 1913).

[315] Comments of E. B. Fisher, President. Independent Telephone Association of America, 65 TELEPHONY 20 (Dec. 27, 1913).

number of independent stations connected to the Bell system increased by 8 percent from 1912 to 1913, by 4 percent from 1914 to 1915, and by only 3 percent from 1915 to 1916.[316] Additional sublicensing of small exchanges in outlying areas, rather than the Kingsbury commitment, accounts for that growth.

The reason for the commitment's lack of impact on interconnection becomes apparent as soon as its actual provisions are examined. The commitment was carefully crafted to preserve Bell's competitive advantage, and its terms were far from generous. To make long-distance connections over the Bell system, an independent had to build its own lines to the nearest Bell exchange and pay the regular toll charges, plus a ten cent fee for every call handled. The idea of imposing a surcharge on the exchange of traffic between competing systems had been employed by many utility commissions as a way around the appropriability argument and court restrictions on confiscation. But the physical connection agreements ordered by utility commissions usually established a surcharge *one-half to one-third* that size! The agreement also stipulated that the entire toll circuit should be over Bell facilities and under the control of Bell operators. Independent long-distance lines, in other words, could not be used to make up any part of the circuit, except to get the call to the nearest Bell switchboard in cases where there were no Bell lines. That excluded independent long-distance companies from the entire market for long-distance traffic flowing from independent to Bell telephones. More restrictive still, the agreement only permitted independent subscribers to terminate calls in Bell exchanges; it did not allow Bell subscribers to place calls to users on independent systems.

Those terms of trade benefitted only Bell. The terms of the commitment were so disadvantageous to the independents that they were immediately dismissed by them as "absurd" and "insane."[317] Most independents still viewed the commitment as a victory, however, because they thought the Kingsbury commitment would be the first step in a bargaining process that would eventually lead to acceptable terms. But there were a few dissenting voices.

J.C. Kelsey, a columnist in *Telephony*, correctly characterized the commitment as the last in a series of three steps taken by Bell to deprive the independents of their exclusive control of portions of the telephone business. The sublicensing contracts had opened up a significant number of independent exchanges to Bell connections without allowing competing independents access to Bell exchanges. The decision to sell Bell-manufactured telephones to independent companies had eroded the independent manufacturers' exclusive control of independent operating company purchases without permitting any Bell companies to buy independently-manufactured equipment. Now the Kingsbury commitment opened up to Bell parts of the long-distance business heretofore exclusively controlled by independents, without any reciprocal concessions:

> The Bell company throws open its long-distance lines... Does it involve any loss to Bell? Does it involve any gain to you? ... [Bell] retains its long-distance business. You can't get any of that. But it puts the large independent centers on the clock. It

[316] FCC TELEPHONE INVESTIGATION (GPO, 1939) Table 32, 129.
[317] 66 TELEPHONY 29-30 (Jan. 17, 1914).

has offered to share your exclusive customers' business with you. Surely, another typically generous act.[318]

In a letter to Assistant Attorney General G. Carroll Todd, Kingsbury made clear the non-reciprocal nature of the commitment: "the Bell system cannot, under the terms of that contract, open up an independent system to its subscribers."[319]

The independent's optimism about improving the toll interconnection arrangements was dashed when major independents entered into post-Kingsbury negotiations. In October 1914 President Hubbell of Buffalo's independent Federal Telephone Co. made an inquiry about interconnecting with Bell toll lines. In his correspondence with AT&T Vice President Kingsbury, he quickly discovered that AT&T would make no concessions to reciprocity.[320] Hubbell complained to the Department of Justice to no avail. Late in 1916 the Independent's national association charged that Bell had failed to live up to the spirit of the interconnection agreement.[321] The protests had no effect.

The Ban on Acquisitions

The Kingsbury commitment's moratorium on acquisitions was far more important than its lopsided, ineffectual interconnection proposal. Hundreds of ongoing negotiations for Bell purchases of major independent properties were suddenly suspended. The suspension left intact many large independent operating companies, rooted in major cities and possessed of significant levels of toll interconnection. At the time of the agreement, there were 1,234 communities in which Bell competed with an independent exchange and 630 communities in which a Bell-connecting independent competed with other independent exchanges. Dual service thus remained in 1,864 places, 13 percent of the total number of communities with exchanges in the United States.[322]

The moratorium on consolidations, however, was at odds with other forces propelling the telephone system towards monopoly. The growing desire of users for universal access, state utility commissions' determination to supplant competition with regulation, and World War I-induced centralization all pointed towards the unification of the network. The Kingsbury commitment thus created a temporary hiatus in the march toward monopoly rather than a victory for the competitive principle. For the next five years, the commitment impeded consolidations while the political, economic, and social forces favoring them continued to build.

The forces undermining the commitment are evident in a host of Bell archives files pertaining to acquisitions of independents after 1912.[323] In many cases, the commitment was the

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[318] J. C. Kelsey, Some New Year Thoughts, 66 TELEPHONY (Jan. 10, 1914).

[319] N. C. Kingsbury to G. Carroll Todd, Oct. I, 1914, Section 7, Papers of the Attorney General, National Archives.

[320] N. C. Kingsbury to B.G. Hubbell, Oct. I, 1914. B.G. Hubbell to N.C. Kingsbury, Oct. 8, 1914. AT&T-L&R.

[321] MacMeal 221 (1934).

[322] MacMeal 208 (1934).

[323] N. C. Kingsbury, AT&T, to Geo. W. Wickersham, U.S. Attorney General, Mar. 3, 1913, Box 32, AT&T-BLA. Attached memo contains a list of 29 acquisitions in Nebraska, Iowa, and Minnesota which "have been postponed or abandoned on account of Mr. Vail's letter of August 6th [1912]." For other postponed acquisitions, see Continental,

only obstacle in the path of a proposed merger in which the independents were willing to sell, Bell wanted to buy, the city and state authorities approved of the deal, and voters had expressed their desire to unify the service by large majorities. Faced with that situation, the independent telephone interests and/or local government officials approached the federal government and asked the antitrust authorities to sanction the deal. In a delicate process of negotiations, the Attorney General's office let it be known that they would raise no objections to widely supported consolidations as long as dual service was eliminated by swapping territories rather than via simple takeovers. Although that option left Bell in exclusive control of one territory and the independent in exclusive control of the other (and thus eliminated competition) Bell and the independents stayed in control of roughly the same number of telephones as before. Invariably, the key argument used to justify the consolidation-not only by Bell, but by independents, government officials, and users-was that unification of the telephone service was more desirable than a divided service. Thus, within a few years of the Kingsbury Commitment a number of major consolidations of telephone service took place. Kansas City, Los Angeles, Memphis, and many smaller places traded dual service for universal service. Three of those consolidations are examined in detail in the next chapter.

The government's explicit acquiescence in the piecemeal elimination of dual service is a critical element in understanding why the United States ended up with a telephone monopoly. Historical interpretations which stress economic predation by the Bell system (and/or Bell-inspired manipulations of the political process) ignore the fact that at that critical juncture in telephone history, major independent operating companies had survived, and both federal and state governments possessed all the tools they needed to prevent monopolization of the industry. Antitrust laws, at both state and federal levels, could have prevented consolidation had they been applied. Opposition from any well-organized and reasonably influential interest group could have stopped the process of waiving the Kingsbury Commitment.[324] But that opposition rarely materialized. More often than not, voters, city councils, and statewide referenda weighed in on the side of universal service and consolidation.

The antitrust-inspired Kingsbury commitment was a shrewd tactical move by AT&T, in that it deflected antitrust pressures but did not undermine its superior position in the access competition. The erosion of the ban on acquisitions was the product of a legal and regulatory system that had not yet come to grips with the fact that its desire for an integrated telephone system was completely at odds with its commitment to the preservation of normal market competition. The only positive accomplishment of the Kingsbury commitment was to bring Bell's accelerating acquisition of independent systems to a halt for four years, giving the telephone companies, utility commissions, city and state governments, and federal antitrust officials the breathing room needed to work out a coherent policy regarding telephone monopoly, competition, and interconnection.

1910, Box 65, AT&T-BLA; Indianapolis, 1907-1915, Box 36, AT&T-BLA; St. Louis, Missouri, Box 16; Missouri and Kansas, 1909-1919, Boxes 17, 18.

[324] In Kansas City, for example, the newspapers waged a successful editorial campaign against consolidation in 1911, (Box 17, AT&T-BLA) while in Shreveport, Louisiana, labor interests coalesced to defeat a resolution favoring consolidation.