

January 27th, 1907

Mr. Charles F. Cutler, President,

New York Telephone Company,

New York, N. Y.

Dear Sir:-

It is the intention of the New York Electric Music Company to endeavor to have an amendment passed by the Assembly of New York affecting the Telephone and Telegraph incorporation act. The object of the amendment will be to recognize the existence of the art of Telharmony as practiced by this company, at its Central Station, at 39th Street and Broadway. Effort will be made to have an independent reference to this art in a new section, which shall place under the operation of the existing act, without any change whatsoever in its substance, any company incorporated to do the business of Telharmony.

It is also intended to apply to the Board of Estimate and Apportionment of the City of New York for a franchise covering the right to do the business of Telharmony in Greater New York. This application will be limited strictly to a grant for the sole purposes just named. It is probable that, in explanation of the meaning of the Telharmonic art, the following expression will be used, namely "the generation and distribution of music electrically". This expression is one which has been used by Dr. Cahill in his patents and seems concisely to cover the thing which we are doing. As the grant, if made, will in no way interfere with activities of any existing electrical companies of whatever nature, it is presumed that no objection will be urged by any of those interested in such companies.

It is our desire that the efforts of the company should be fully understood by those who might be alarmed at the appearance of another industry requiring the use of

C. F. Cutler, No. 2

*Previous franchise
arrangements w/B.T*

electrical lines of transmission in this city; hence this explanation beforehand of the strictly limited grant which is to be applied for:

The application will probably be in the name of the New York Cahill Telharmonic Company, a corporation which will be controlled by the New York Electric Music Company.

It seems advisable that I should briefly review the relations between your company and the New York Electric Music Company. I enclose copy of letter addressed to Mr. F. P. Fish, which originated the negotiations between the two companies. The answer to this letter referred the whole matter to yourself so far as New York is concerned. With you the negotiations were taken up in person, and after some general agreement had been reached, the definite expression of this agreement was referred by you to Mr. Bethel and Mr. Thurber. The result was the contract of 4 - 21 - 1905, with which you are doubtless familiar. Under the operation of this contract something like two miles of cable have been drawn in for our service, and a number of connections have been made thereto, over which connections music is now being supplied to our customers. This service had been established for some time when about two months ago I was asked by Mr. Thurber to discuss the situation with Mr. Cahill, your Second Vice President. Mr. Cahill seemed only recently to have known of the contract between us. He pointed out the fact that in several particulars it might be made almost ineffective if your company chose to make it so.

My reply was that this was obvious, but that I had no reason to suppose anything but bona fides on the part of your company - otherwise we should not have made a very large investment in a distributing station before obtaining a grant running directly to ourselves, instead of depending on the contract which was made with your company. Mr. Cahill then raised some question as to whether or not your company was acting ultra vires in thus putting us in a position to do work through public streets. My reply was that all such questions had been raised by me in our earlier negotiations, and that I had been

C. F. Cutler, No. 3

informed that your legal department considered that Telharmony was but a particular form of telephony, and that hence you were fully in power under your charter to do this work. The fact that we were to really do it instead of your own company was due solely to the fact that we, and not you, control the patents, and were willing to invest our money in the enterprise. It will be noted that in my letter to Mr. Fish reference is made to the matter of your right to make such a contract as was made.

As a result of our conversation Mr. Cahill's uneasiness seemed to have somewhat disappeared. I assured him that it was our desire to obtain a direct grant of powers, and that we intended to make the application for such powers at an early date, but that in the meantime I desired, on the other hand, to be assured that no effort would be made on your part to embarrass us. In this connection let me add that we have received continuously from all of your operating departments most courteous treatment. Due to some unintentional delay in your office we did indeed lose some valuable house connections which had been arranged for with customers before the beginning of the cold weather prohibitive season as to street openings; but this wholly unintentional injury has been in some part compensated for by numerous kindly acts of lending your regular telephones connections to persons desiring to hear our music in their homes or halls.

These friendly relations continued to exist after my conversation with Mr. Cahill, although no further extensions of service have been possible on account of the cold weather season. I had left Mr. Cahill with the impression that he desired to consider with me such steps as we should take looking towards the obtaining of a grant from the city. It was not supposed by me that such conference was desired by him save out of consideration of three facts. First. Whether or not any contract relations existed between us, he would naturally desire to be informed as to any steps whatever connected with the grant of wire privileges in this city. Second. That although the contract with us is in its nature a profitable one to your company, circumstances seem to have

C. against B.T.

C. P. Cutler, No. 4

reasons for Franchise

arisen which, in Mr. Cahill's mind, rendered undesirable any considerable extensions of cable system supplied by you to us. Third. The desire of your company, if it exists, to arrest the further progress with us under the contract, without resorting to any merely willful or inequitable act, made it reasonable to suppose that some degree of co-operation in the matter of our application for a grant would be mutually beneficial.

About two weeks ago I asked Mr. Cahill to meet me on the subject, as we had then determined to make the application herein referred to. Mr. Cahill preferred, apparently, not to discuss the matter, but stated that such procedure as we intended to make might be explained in writing, and would in due time be considered by your legal department. I enclose the phraseology which we shall submit at Albany. If there is anyone there with whom you would care to have me confer, I shall be glad to be so informed. In this manner time might be saved. We should ask nothing of the legislature were it not that there is some slight doubt as to what subdivision of the code should be used by us for incorporation purposes. The very doubt expressed by Mr. Cahill as to whether the contract which we have with you is within your powers suggests to us the advisability of giving a definite status to the art of Telharmony. If it is not Telephony, as was assumed, then it should be given its separate legal existence.

It is possible that the matter herein contained might be more clearly elucidated in personal conference, but as that seems to be precluded, I have endeavored to make this statement sufficient to cover the ground. I, of course, do not feel bound to await the processes of your legal department in passing upon the steps we may take looking towards the accomplishment of our ends, but our mutual interests and the courteous treatment which we have received from you lead me to consider that it is best that our general efforts should be thoroughly understood before we take any active steps. I expect to be in Albany next week on this matter. I am sending copy of this letter to Mr. Fish.

Very truly yours,

OTC/JLL Enclosure.