APPENDIX No. 1

phone, by the necessities of commerce and public use, has become a public servant—a factor in the commerce of the nation and a great portion of the civilized world. It has, and must be held to have, taken the place by the side of the telegraph as a common carrier.

State *vs.* Neb. Telephone Co., 22 N. W., 237, 239.

See also Western Union Telegraph Co. *vs.* Call Pub. Co., 44 Neb., 326.

State ex rel. *vs.* Delaware Telephone Co., 47 Fed., 633.

Telegraph Co. *vs.* Tex., 105 U.S., 460.

A common carrier is bound to serve the public at reasonable rates and without unjust discrimination, either as to price or the manner of service.

Gardner *vs.* Telephone Co., 7 Am. Elec. Cases, 867.

Munn *vs.* Ill., 94 U.S., 113.

'A telephone system is simply a system for the transmission of intelligence and news. It is, perhaps, in a limited sense, and yet in a strict sense, a common carrier. . . . . The moment it establishes a telephonic system here it is bound to deal equally with all citizens in every department of business, and the moment it opens its telephonic system to one telegraph company, that moment it put itself in a position where it was bound to open its system to any other telegraph company tendering equal pay for equal service.'

State ex rel. *vs.* Delaware Telephone Co., 47 Fed., 633.

Under the form of regulation, however, the state cannot deprive a telephone company of a reasonable compensation for services performed.

Smith *vs.* Ames, 169 Wis., 466.

It follows, therefore, that if telephone companies are common carriers, they are subject to reasonable regulations and their charges may be controlled by the state. Indeed, the legislature of this state has already enacted statutes recognizing the right of supervision and control. Section 1791*a* was enacted to prevent discrimination in rates in certain cases. Section 1778, as amended by chapter 319, laws of 1901, grants to such corporations the right of eminent domain. It is claimed, however, that this Bill does not provide for such regulation as the legislature is authorized to impose. It has been argued against its validity that the Bill will result in class legislation, discriminating against some and favouring others; that it denies to some telephone companies the equal protection of the law guaranteed by the constitution; that it imposes burdens and liabilities upon some which are not cast upon others similarly situated.

It is a maxim of constitutional law that the legislature can not pick out one individual or one corporation and enact that one shall be subject to certain burdens, while others situated in the same circumstances are exempted from the operation of the law It must be admited that the legislature can make a classification of individuals or corporations and impose upon such class special burdens and liabilities; but it cannot make a selection obviously unreasonable and arbitrary if the discrimination is based upon matters which have no relation to the object sought to be accomplished.

If this Bill is subject to these criticisms, of course it would be void if it became a law. It is permissible to classify, but the classification must be founded on real differences. Our court has said:

'It is a trite expression that classification, in order to be legal, must be rational. It must be founded upon real differences of situation or condition which bear a just and proper relation to the attempted classification and reasonably justify a difference of relation.'

State *vs.* Black, 113 Wis., 205.

It is not proposed by this Bill to fix the rates which may be charged by telephone companies. It is a Bill to prevent discrimination in rates, not by all companies in all cities, but by telephone companies doing business in two or more cities. The rates which may be charged by any telephone company are not attempted to be fixed or regulated by this Bill. The Bill is designed to prevent:

1. A telephone company from discriminating in rates between cities of the same class.