

ORIGINAL

Decision No. 73998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DONNA BUCKMASTER,	ANNA M. ROGERS,
LORRAINE SECADA,	JOANNE C. GARDNER,
MARY C. GLENDINNING,	PATRICIA S. TOSCHAK,
R. HOLLENBECK,	SANTA CAMBRA,
MRS. FRANKLIN GORDON,	WALTER E. MEYER, JR.,
JANICE A. HOLLENBECK,	RONALD J. ROGERS,
BARBARA J. BERTETTA,	JAMES E. BUCKMASTER,
PATRICIA K. WOOTTON,	KATHERINE L. LECHMAN,
HARRIET D. FRITTS,	FINIS E. GLENDINNING,
DONNA D. WARNER,	ROBERTA L. ANDERSON,
DORAN E. NIELSON,	HAROLD B. MURPHY,
MARK A. GARDNER,	EDWARD J. SECADA,
BEVERLY STURGES,	

Case No. 8527
(Filed September 16, 1966)

Complainants,

vs.

PACIFIC TELEPHONE & TELEGRAPH COMPANY,
Defendant.

Gene Rhodes, for complainants.
Arthur T. George, Del Fuller, Jr. and
Dennis Bromley, for The Pacific
Telephone and Telegraph Company,
defendant.
Ernet J. Macario, for the Commission
staff.

O P I N I O N

This is a complaint against The Pacific Telephone and Telegraph Company (hereinafter referred to as PT&T) by twenty-five of its customers (hereinafter referred to as complainants) who reside in Fremont, California. Complainants seek an order requiring PT&T to provide, at present rates, a toll-free dialing area encompassing all of Alameda County and toll-free dialing to State and Federal Government offices located in the San Francisco Bay Area (hereinafter

referred to as the Bay Area). Complainants also seek an order requiring PT&T to provide as an optional service, at a reasonable rate, toll-free dialing among all Bay Area points.

A duly noticed public hearing was held in this matter before Examiner Emerson at Hayward on January 25, 1967 and before Examiner Jarvis at Fremont on July 31 and August 1, 1967. The matter was submitted on August 23, 1967.

We commence our consideration of this matter with the recitation of two pertinent truisms. Customers like to receive greater service at current rates. Customers like to receive presently provided service at lower rates. Historically, this Commission has exercised its jurisdiction to provide customers of California utilities with the greatest possible service at the lowest possible rates, keeping in mind that regulated utilities are entitled to a reasonable rate of return. Where customers desire additional services which cannot be provided at present rates, and the customers seeking the additional services are themselves willing to pay the additional charges involved, few problems are generally presented. It is where customers seek additional services which cannot be provided at current rates, and the customers seeking the additional service seek to shift to others all or part of the additional charges, that complex issues are presented to the Commission for resolution. We have before us this type of situation.

Before considering the various contentions raised by the parties, we comment on one preliminary point. Complainants allege that various rates charged by PT&T are "excessive to the point of being a penalty." The record discloses, and we take official notice, that the rates here involved were found by the Commission to be reasonable in Decision No. 71575 (Case No. 7409). Even if it be assumed for purposes of discussion only, that these allegations are

correct, the Commission cannot grant any retrospective relief in this proceeding. (Pub. Util. Code § 734; Pacific Telephone & Tel. Co. v Public Utilities Com'n, 62 Cal. 2d 634.)

The Commission, of course, can and will hereinafter consider whether the rates are presently reasonable, and make any necessary prospective orders in connection therewith. (Pub. Util. Code § 729; Pacific Telephone & Tel. Co. v. Public Utilities Com'n, supra.)

One contention put forth by complainants is that there should be a standard charge for telephone service in the San Francisco Bay Area which would permit area-wide calling at the basic rate. It is argued that southern Alameda County is part of the Bay Area, and the residents of southern Alameda County should be able to telephone anywhere in that area without toll charges.^{1/} (At times, complainants argued for a standard charge throughout all of Alameda County for toll-free dialing throughout the whole County.) Complainants concede that implementation of this proposal will necessitate an increase in the basic telephone rate for the entire Bay Area. They contend, without any supporting data, that such increase would be "reasonable". This contention must fail for two reasons: 1. This proceeding involves essentially two-party litigation, the complainants versus PT&T. The complaint was only served upon PT&T. The Commission served notice of the hearing in this matter on various persons including the City Attorneys of Fremont and Newark and various officials of Alameda County. None of the cities in the Bay Area was made a party to the proceeding. Subscribers in other parts of the Bay Area, or groups representing them, who would be called upon to pay greater rates under complainants' proposal were not afforded notice or the

^{1/} The term "toll charges" as used in this decision includes multiple message units.

opportunity to participate in the proceeding. The Commission takes official notice that in Case No. 7409, PT&T presented, and later withdrew, a proposal similar to the contention of complainants here under consideration. The Commission, commenting on this proposal in Decision No. 71575, indicated that:

"At the hearings held in San Francisco members of the public generally spoke in favor of Pacific's proposal, but in Los Angeles and in San Diego the greater number of people opposed the plans for expanded calling. It can be generalized that those in favor of expanded calling represented commercial or industrial interests or had a special communication problem, the cost of which would be reduced by sharing costs through an expanded calling area plan. Most of those opposed to Pacific's plans were in low or fixed-income groups, asserted their need for less expensive telephone service, and indicated lack of need for a wider calling range."

That decision also indicates that the City and County of San Francisco (and the City of Los Angeles) attacked one of the basic premises of the PT&T proposal. (P. 54.) As indicated, the Commission did not pass upon the merits of PT&T's proposal in Decision No. 71575. However, in the light of the controversy generated and the opposition to such proposal already noted, it would be manifestly unfair, unjust and arbitrary for the Commission to order higher basic telephone rates in the Bay Area without affording those who would be affected their day in court. 2. Complainants had the burden of proof on their contention that non-toll Bay Area wide telephone service could be provided at a reasonable rate. (Evidence Code §§ 500,550; Shivill v. Hurd, 129 Cal. App. 2d 320, 324; Ellenberger v. City of Oakland, 59 Cal. App. 2d 337.) Complainants did not meet this burden. This record has no evidence which could sustain a finding that toll-free Bay Area wide telephone service could be provided at any stated amount.

Complainants next contend that the rates which they are charged to call County, State and Federal Government offices are

excessive and that they are denied equal access to such offices and thus are denied the equal protection of the laws. While the contention is couched in constitutional terms it is devoid of any constitutional substance. PT&T is a private company which is regulated because it is a public utility. It does not offer any special telephone service between any subscriber and one or more governmental agencies. Governmental agencies are subscribers to telephone service as are complainants and other residential and business customers. The rate of a telephone call to a governmental agency is calculated on the same basis as a call to any other subscriber in the same exchange area. Absent a special direct telephone service to and from a governmental agency, PT&T has not, and should not have, any interest in the lawful use of its regular telephone service by subscribers with respect to persons called or the contents of messages between subscribers. (McDaniel v. P.T. & T. Co., 64 Cal. P.U.C. 707, 709; Penal Code §§ 630-637.2; cf., Sokol v. Public Utilities Comm., 65 Cal. 2d 247, 257.) Some citizens have more dealings with governmental agencies than do others. Some citizens may consider their private or business transactions more or as important as their dealings with governmental agencies. No justification has been shown why citizens who have frequent dealings with government should be entitled to preferential rates. By the foregoing the Commission does not mean to imply that citizens should not have easy access to governmental agencies. It was for that reason that the public hearings in this matter were held in Hayward and Fremont. Furthermore, the record shows that prior to the first day of hearing in this matter one of the complainants suggested to the County of Alameda that it should provide a toll-free phone number so that persons in the area could deal with the County by telephone without toll charges. During the

interval between the first day of hearing and the subsequent two days of hearing, the County of Alameda made arrangements with PT&T to provide toll-free telephone access for Hayward telephone subscribers and had appropriated money and was negotiating with PT&T to provide toll-free access for subscribers in the Fremont-Newark (changed from Dumbarton Oct. 2, 1967) Exchange (Oliver and Main District) and Pleasanton, Sunol and Livermore Exchanges.

Before considering the remaining points raised by complainants it is necessary to note that in November of 1966, PT&T instituted on an experimental basis, in a few selected areas, a system known as ORTS (Optional Residential Telephone Service). The portion of area here involved is one of the test areas. ORTS permits a telephone subscriber to select one or more of four options: 1. A subscriber may select service in a defined expanded calling area at a fixed rate. All calls made to points in the expanded area are local, toll-free calls. The ORTS option in a portion of the area here under consideration permits subscribers in the Main and Oliver District areas of the Fremont-Newark Exchange to dial all the prefixes in the Hayward Exchange and certain prefixes in the San Jose Exchange. 2. A subscriber may select service to one or more communities at a specified rate for each community selected. All calls made to points within the basic local dialing area and the selected communities are local, toll-free calls. In the area here under consideration, this ORTS option permits the selection of communities in the expanded San Francisco-East Bay Area.^{2/} 3. A subscriber may, for a fixed additional charge, call on an unlimited basis any exchange in an extended geographical area as a local, toll-free call. In the area here under

^{2/} This area is defined in PT&T's Tariff. The latest Commission authorization for rates in the defined area may be found at page 6 of Appendix A in Decision No. 71575.

consideration, this ORTS option permits calling anywhere in the expanded San Francisco-East Bay Area. 4. A subscriber may for a fixed rate calculated on an hourly use basis, call any exchange in an extended geographical area as a local, toll-free call. In the area here under consideration, this ORTS option permits calling anywhere in the expanded San Francisco-East Bay Area.

As indicated, ORTS was instituted in November of 1966. The first day of hearing in this matter was on January 25, 1967. At that time, it was agreed by the parties that the matter should be continued until July 31, 1967, for, among other reasons, the parties to have an opportunity to evaluate the impact of ORTS upon matters raised by the complaint. At the subsequent days of hearing evidence dealing with the operation of ORTS, with respect to a portion of the area in question, was received in evidence. The complainants make the following contentions respecting ORTS: 1. ORTS does not necessarily reduce a telephone subscriber's monthly bill, although his conversations may be of longer duration. 2. Even though ORTS may reduce a subscriber's monthly bill, complainants are discriminated against because they should have that service at a basic telephone rate, without additional charge. 3. ORTS only works in one direction. While a subscriber to ORTS may dial an extended area toll-free, many of the persons in that area cannot call him toll-free. 4. ORTS is an experimental program and there is no assurance it will be continued on a permanent basis. The relationship of ORTS to the matters here under consideration will be hereinafter considered.

The record discloses that there are three district areas in the Fremont-Newark Exchange: Greenleaf (prefix 471), Main (prefixes 792, 793 and 797) and Oliver (prefixes 656 and 657). Witnesses who live in the Oliver District of the Fremont-Newark Exchange testified that they could only dial the six prefixes within the exchange

toll-free at the basic rate for telephone service whereas subscribers in the Greenleaf District can dial more toll-free prefixes,^{3/} and that subscribers to the Elgin (351, 352 and 357) prefixes in the Trinidad District of the East Bay Exchange can dial 58 prefixes toll-free. Several witnesses who reside in Sunol testified in support of complainants. Their testimony, generally, was that telephone subscribers in Sunol can only dial Livermore and Pleasanton on a toll-free basis; that Sunol has almost no facilities for shopping or services, including physicians and repair services; that children from Sunol and Dublin go to the Amador Valley Joint Union High School, and it is often necessary to make toll calls to converse with classmates or make arrangements in connection with school activities; that Pleasanton is approximately six miles from Sunol; that the outskirts of Fremont are approximately six miles from Sunol and the center of Fremont is approximately nine miles; that many calls in connection with shopping and required services are made by Sunol customers to Fremont and that Sunol customers should be able to dial toll-free at least numbers in Fremont and Dublin as well as those presently permitted.

A witness who lives in San Ramon, and who is a director of the South San Ramon Home Owners Association, testified in behalf of complainants. He indicated that San Ramon was in the Valley District area of the Danville Exchange (prefix 828); that the San Ramon area encompasses a portion of Alameda County and a small portion of Contra Costa County; that, in addition to the prefix area, a subscriber can dial as a local, toll-free call from the 828 prefix, numbers in the

^{3/} Complainants presented conflicting testimony with respect to the number of prefixes which could be dialed toll-free from the Greenleaf (471) prefix. (Compare R.T. 14 with R. T. 41.) It is not necessary to resolve this conflict.

Pleasanton, Livermore, Walnut Creek^{4/} Exchanges and the Main District area of the Darville Exchange. The witness also testified that one postal route served from the Hayward Post office goes through a portion of the 828 prefix area, and that it requires a long distance toll-call for patrons in that area to telephone their post office. He also objected to the fact that from the 828 prefix a customer could dial, toll-free twelve miles in one direction, twenty miles in another direction but less than one mile in the direction toward Hayward.

PT&T presented evidence which indicated that nowhere in the United States are telephone rates based on the number of prefixes or stations a subscriber can dial toll-free. PT&T took the position that it is entitled to generate sufficient gross revenues to permit it to earn the rate of return which it is authorized by the Commission; that if extended area dialing were authorized in the areas here under consideration its revenues, at present rates, would decrease; that in order to have extended area dialing it would be necessary to increase the basic rate in all of the extended area and that the majority of the customers in the areas here under consideration and in the areas to which extension is sought do not want to pay an increased rate for extended area dialing. This position was based on evidence which indicates that only 24 percent of the subscribers to whom ORTS is available subscribe whereas 76 percent do not; that in 1962 the average customer in the Main District area of the Fremont-Newark Exchange made 10.5 calls to Hayward whereas in 1966 he made only 6.8 calls monthly and at the time of hearing 6.7 calls; that the average Hayward customer makes only 1.8 calls a month to stations in the Main District area; that the average customer in the Oliver

^{4/} The Walnut Creek Exchange includes parts of Pleasant Hill and Concord.

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District area of the Fremont-Newark Exchange makes 7.0 calls a month to Hayward whereas the average Hayward customer makes only 1.3 calls a month to stations in the Oliver District area and that in the opinion of its Regional Rate Administrator for the Northern California Region, its present service arrangements meet the subscribers' needs in the areas in question.

PT&T introduced evidence indicating the development of the exchanges in the areas here under consideration. The Dumbarton Exchange evolved from what were, in 1953, eight separate exchanges. The present Greenleaf District area is comprised of the former Alvarado and Decoto Exchanges. The present Main District area is comprised of the former Newark, Centerville and Miles Exchanges. The present Oliver District area is comprised of the former Irvington, Warm Springs and Mission San Jose Exchanges. A witness for PT&T testified that the consolidations occurred between 1954 and 1958 and that the district areas were designed to continue the local calling areas of the subscribers which existed at that time. The witness also testified about the exchanges in the Amador Valley, in which he included the San Ramon Valley and the Livermore Valley. The Pleasanton Exchange was established in 1897. The Sunol Exchange was established in 1908. In January 1952 the Diablo Exchange was consolidated with the Danville Exchange. Sometime thereafter the San Ramon Village Exchange was included in the Danville Exchange. In December 1961 the Valley District area of the Danville Exchange was established. In July 1963 extended area service was extended to the Amador Valley. Subscribers can dial toll-free as follows: from Pleasanton to Sunol, Livermore and the Valley District of the Danville Exchange; from Sunol to Pleasanton and Livermore; from the Valley District of the Danville Exchange to Livermore and Pleasanton. Of the four exchanges in the Amador Valley area only Sunol and the Valley District of the Danville Exchange do not have toll-free service between them.

PT&T also introduced in evidence the results of a study it made in connection with this proceeding, of the cost to subscribers of extended area service of a lesser magnitude than that contended for by complainants. This limited extended area would, in addition to the present toll-free dialing area, permit subscribers to dial toll-free as follows:

<u>Exchange of Subscriber</u>	<u>Additional Toll-free Dialing Area</u>
Sunol	Fremont-Newark (Oliver District) Fremont-Newark (Main District) Hayward
Hayward	Sunol Pleasanton Danville (Valley District)
Fremont-Newark (Oliver District)	Sunol
Fremont-Newark (Main District)	Sunol
Pleasanton	Hayward
Danville (Valley District)	Hayward

In order to provide for the extended dialing area just indicated, PT&T calculated a set of rates which would be necessary to yield the same dollar revenue from the areas as it is receiving under its present authorized rate of return. The calculation included all rates. For illustrative purposes we set forth a comparison of present and proposed one-party residence and business rates:

<u>Exchange</u>	<u>Present Rate</u>	<u>Proposed Rate</u>	<u>Increase</u>
<u>Danville (Valley District)</u>			
Residence	\$ 3.90	\$ 5.65	\$ 1.75
Business (flat)	10.05	14.05	4.00
<u>Fremont-Newark (Main District)</u>			
Residence	3.90	3.90	0.00
Business (flat)	7.55	7.70	0.15
<u>Fremont-Newark (Oliver District)</u>			
Residence	3.90	3.90	0.00
Business (flat)	7.55	7.70	0.15
<u>Hayward Exchange</u>			
Residence	3.90	4.00	0.10
Business (measured)	4.10	4.40	0.30
<u>Pleasanton</u>			
Residence	4.70	6.70	2.00
Business	8.85	13.35	4.50
<u>Sunol</u>			
Residence	5.00	7.00	2.00
Business	9.40	13.90	4.50

In considering the remaining points raised by complainants we must keep in mind that "This Commission is obligated to view and protect the whole public interest statewide and without favor or discrimination between areas or classes of utility customers."

(Application of P. T. & T. Co., 63 Cal. P.U.C. 333,335.) We also must be mindful of the fact that there are many people in the state in low or fixed income groups who assert that their need is for less expensive telephone service and who object to proposals which would raise their rates for basic telephone service. (Investigation of P. T. & T. Co., Decision No. 71575 in Case No. 7409, p. 26.) Furthermore, unless unlawful discrimination or other illegality can be shown in the establishment of exchanges or areas used for rate fixing, "it is fair and reasonable to require that the recipients of extended

service provide revenues sufficient to leave . . . [PT&T's] earnings in no poorer condition than presently prevailing. To do otherwise would be unfair to telephone subscribers elsewhere who would receive no benefit from the new serving arrangement but who would necessarily carry the burden of making up the revenue deficiency. . ."

(P. T. & T. Co., 63 Cal. P.U.C. 340, 342.) It is also necessary to keep in mind, and we take official notice, that there is presently pending before the Commission Application No. 49142 in which PT&T seeks a systemwide rate increase. To the extent the decision in Application No. 49142 may consider questions of rate-spread, types of service, exchange and other boundaries for rate making purposes, etc., it should be controlling. If the Commission passes upon any of these matters in Application No. 49142, it will do so on the basis of a record dealing with all of PT&T's subscribers and operations.

In general the charges which utility customers pay are based upon their use of the utility's service. Sometimes, there is a minimum charge or increment in a rate to insure that a utility has sufficient revenue to continue its operations. For example, in the transportation field a customer does not pay a privately owned common carrier anything unless he uses the service. If a person in San Francisco decides to go to Sacramento to conduct business with a governmental agency, or to conduct private business or for personal reasons he pays the authorized rate for the transportation. If he never goes to Sacramento he pays nothing. Most "so called" natural utilities (water, gas, electric, telephone, etc.) have a minimum charge which entitles a customer to a specified amount of service, but the charge must be paid whether or not the service is used. For residential telephone service the minimum charge is that which entitles a subscriber to a specified amount of message units per month

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(measured service) or that which entitles a subscriber to unlimited, toll-free calls within a specified area. A primary factor in determining the area in which toll-free calls may be made is the existence of in place telephone equipment to serve the area, and, if the requisite equipment is not presently installed, its cost and whether or not the revenues derived from the area after installing such equipment will yield to the utility sufficient revenues so that it will not be in a worse financial position with respect to its rate of return. The number of prefixes which may be dialed is not a significant factor in determining an unlimited, toll-free dialing area, because this in turn is dependent on variable factors which include density of population, geography, capacity of existing equipment, and present and potential customer use patterns. For example, a densely populated ten square-mile metropolitan area may have therein 30 prefixes which can be dialed toll-free, whereas a sparsely populated ten-square mile rural area may have 5 prefixes which can be dialed toll-free. The densely populated area with 30 prefixes may generate revenues to pay or more than pay its proportionate share of revenues to provide PT&T with its authorized rate of return. The rural area with 5 prefixes may generate sufficient revenues to pay its proportionate share with respect to the 5 prefixes, but it would be extremely unlikely that it would for 30 prefixes. Because of PT&T's complex, statewide rate structure some rural and suburban area exchanges operate at a loss which must be made up by customers in other areas. (E.g., Application of P. T. & T. Co., supra, 63 Cal. P.U.C. 333, 334.)

A rate structure which attempts to provide all customers throughout PT&T's service area with approximately the same number of prefixes which they can dial toll-free must either place a disproportionate revenue burden on the densely populated urban areas or

cause significantly higher rates in rural and suburban areas. Also, the effect of such a system would be to guarantee PT&T a higher additional minimum amount of revenue regardless of customer usage. In addition, any system of rates must give recognition to the needs and actual use of telephones by PT&T's customers. A small vocal minority should not be permitted to have the majority of customers pay for providing a service which only a minority of customers will use. PT&T's subscribers may presently call London, Rome and Hong Kong. Some subscribers may use this service frequently, but the majority of PT&T's customers do not. It would be manifestly unfair to do other than require the users of this service to pay substantially all of the costs thereof. Similarly, if a few people in Fremont have reasons to call Millbrae and desire to do so on a toll-free basis, and the overwhelming majority of Fremont customers have no desire and need for such service, the Commission would be remiss in its duties if it ordered extended service, requiring higher rates, for the benefit of the few.

At the first day of hearing, Examiner Emerson requested that PT&T prepare an itemization of the toll calls made by witnesses who had testified by that time in the proceeding for a one month period of time. PT&T prepared and presented such an itemization for December of 1966 and March of 1967. The itemization was subsequently received in evidence. The itemization indicates that these witnesses varied in the principal toll call points which they called. This is yet another indication that the telephone needs of subscribers vary, and that any limited extension of toll-free dialing would have the effect of benefitting some (not necessarily a majority) subscribers and that subscribers not receiving such benefits should not be required to help defray the extra expenses involved.

Before considering the points raised in connection with San Ramon and Sunol, the Commission takes official notice of Decision No. 62689, entered on October 17, 1961. The decision was entered after a public hearing in three consolidated matters: Case No. 7092, an investigation on the Commission's own motion into the reasonableness and sufficiency of PT&T's rates and service in San Ramon Village or its vicinity in Alameda or Contra Costa Counties; Case No. 7047, a complaint by the City of Pleasanton against PT&T; and Application No. 43151, an application by PT&T to establish two district areas and an additional toll rate center in the Danville Exchange. Decision No. 62689 indicates that by Resolution No. T-4603, dated November 7, 1960, the Commission authorized the transfer of the San Ramon Village area from the Pleasanton Exchange to the Danville Exchange. The Commission found, in Decision No. 62689, that the existing exchange boundaries should not be changed. Based upon appropriate findings, the Commission ordered that:

"1.

(a) On or before December 31, 1961, revised tariff sheets to reflect the establishment as proposed, of Main and Valley district areas, each with its own toll rate center, within Danville exchange, . . .

(b) On or before December 31, 1963, revised tariff sheets for extended telephone service in Valley district area of Danville exchange and in Pleasanton, Livermore and Sunol exchanges with rates as set forth in Exhibit No. 18, except that Danville Valley 2-party message rate service remain at \$3.00 per month, . . .

"2. . . .

(a) Cancel and withdraw message toll telephone service rates between the following: Danville Valley and Pleasanton; Danville Valley and Livermore; Pleasanton and Livermore; Pleasanton and Sunol; and Livermore and Sunol.

(b) Expand local service areas as follows: Danville Valley district area to include Pleasanton and Livermore exchanges; Pleasanton exchange to include Danville Valley district area and Livermore and Sunol exchanges; Livermore exchange to include Danville Valley district area and Pleasanton and Sunol exchanges; Sunol exchange to include Pleasanton and Livermore exchanges."

In looking at the question of the distance a subscriber may dial toll-free, we note that the analysis relating to prefixes is here applicable. Furthermore, as long as the basic unit of telephone service is the "exchange", boundaries must be established when a central office is established and equipment installed. If the boundaries are reasonable at the time the exchange is established, subsequent, unforeseen events should not be permitted to change the boundaries or rate structure until such time as general development in the area or normal replacement of equipment requires installation of new equipment, which may be installed with consideration given to new developments. For example: An exchange containing two cities (A and B) is established in a suburban or rural area. At the time it is established, the westerly portion of the exchange is sparsely populated. Persons residing in Cities A and B have business and social dealings primarily with persons in City C located to the north in a second exchange, and City D located to the east in a third exchange. The exchange containing Cities A and B is established and trunk lines are provided to the exchanges containing Cities C and D so that the toll-free dialing area from the exchange includes the exchanges containing Cities C and D. Thereafter, a subdivision, shopping center, resort, manufacturing plant, etc., are established in

the westerly portion of the exchange close to its boundary. The primary orientation of persons connected with the new development is to persons in exchanges further to the west rather than in Cities C and D. Until such time as the new development generates sufficient population to require additional exchange or plant facilities, it would be manifestly unfair to the existing customers in Cities A and B and the rest of the exchange to make them pay higher rates to provide different facilities for the new development.

The foregoing principles apply to the complaint about the distance a customer can dial from San Ramon. The complaint about being able to call toll-free 12 miles in one direction, 20 in another but only 1 mile in a third direction is based on the location of a tract of homes known as Briar Hill located near the western boundary of the Danville Exchange. As indicated, in 1952 the Diablo Exchange was consolidated with the then existing Danville Exchange. On November 7, 1960 the San Ramon Village area was transferred from the Pleasanton Exchange to the Danville Exchange. The toll-free dialing area of the Danville Exchange has been oriented toward the south (Pleasanton Exchange) and east (Livermore Exchange). The record indicates that between the area at the western boundary of the Danville Exchange and the City of Hayward (the first heavily populated portion of the Hayward Exchange) is mountainous terrain and very little residential or other development. It is not unreasonable to expect San Ramon to use the same toll-free dialing area as the rest of the Valley District of the Danville Exchange. Furthermore, there is no evidence that there has been any significant change in the area since Decision No. 62689. There is no evidence which would sustain a finding that the present boundaries of the Danville Exchange are arbitrary and unreasonable.

The record indicates with respect to the Sunol situation that Sunol is an unincorporated rural area; that there are approximately 800 subscribers to telephone service; that it has a very small business section which provides only limited day to day needs for its residents; that there are no doctors, dentists, drugstores, banks or department stores; that the residents of Sunol depend primarily on persons and businesses located in Pleasanton, Livermore, Fremont and Hayward for services and the purchase of major items and that subscribers in Sunol may now call toll-free to Livermore and Pleasanton. The Sunol subscribers would also like to call, toll-free, numbers in the Dumbarton and Hayward Exchanges. In order to provide this extended, toll-free telephone service for Sunol it would be necessary to utilize a plan which would generate sufficient revenues for PT&T so that it would be in no worse a revenue position than presently exists in the area encompassed. The only plan presented in this record is the one, heretofore discussed, in which extended service could be provided, at indicated rates, between the following exchanges: Fremont-Newark (Oliver and Main District areas), Sunol-Hayward, Pleasanton-Hayward and Danville (Valley District area) and Hayward. As heretofore indicated, the revenue estimates and projected rates are based on the proposed adoption of the entire plan. There are no separate figures or computations with respect to any segment thereof. If the Commission were to order the plan into effect, the basic rate for one party residence service, at present rates, would be increased \$2.00 (from \$5.00 to \$7.00) per month for Sunol subscribers, \$2.00 (from \$4.70 to \$6.70) per month for Pleasanton subscribers, \$1.75 (from \$3.90 to \$5.65) per month for subscribers in the Valley District area of the Danville Exchange and \$0.10 (\$3.90 to \$4.00) for subscribers in the Hayward Exchange. In

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considering the Sunol situation, we also note that in Decision No. 62689 toll-free service was ordered between Sunol and Pleasanton and Sunol and Livermore. There is no evidence in this record that there have been any significant changes in the Sunol area since Decision No. 62689. Furthermore, to implement the plan to give Sunol subscribers a greater toll-free dialing area it would be necessary to increase rates in the Pleasanton and Hayward Exchanges and the Valley District area of the Danville Exchange. As indicated, neither the Cities of Pleasanton and Hayward nor anyone representing subscribers therein participated in this proceeding. The only participation in the proceeding relating to the Valley District area of the Danville Exchange was the one witness from San Ramon whose contentions and testimony have previously been considered. There is nothing in the record which would compel a finding that a greater toll-free dialing area should be provided for Sunol. Furthermore, even if it be assumed, for the purpose of discussion only, that a greater toll-free dialing area is warranted, it would be manifestly unfair to subscribers in Pleasanton, Hayward and the Valley District of the Danville Exchange for the Commission to order into effect in this proceeding the plan previously considered resulting in higher rates for subscribers who had no notice or opportunity to participate herein.

In considering questions related to ORTS, we note that the objections to it are based on contentions that the same, or more extensive service, should be offered to complainants as a part of toll-free basic telephone service at a lower rate. These contentions have been previously considered herein and no further discussion is necessary. ORTS provides more telephone service at a rate lower than existed for the same service prior to its inception. Some witnesses who testified on behalf of complainants took the position that ORTS

was better than the situation previous thereto and expressed concern that it might be eliminated. At the hearing a witness for PT&T testified that it had no plans to withdraw ORTS service. We note, however, that ORTS not only applies to a portion of the area here under consideration (Fremont-Newark Exchange), but it is an experiment which also applies to other exchanges in the San Francisco Bay Area and the Los Angeles Area. The record indicates that, as of May 31, 1967, 23.6 percent of the subscribers in the Fremont-Newark Exchange subscribed to one or more options of ORTS service. There is no evidence in this record about the operation of ORTS in the other experimental exchanges. Furthermore, the record is devoid of any financial data relating to ORTS, including its impact on PT&T's revenues in the experimental exchanges. If ORTS has no substantial adverse effect on the revenues of PT&T, it could be continued or even expanded. However, if ORTS has a substantial adverse effect on PT&T's revenues, it would be unfair to PT&T's ratepayers in non-experimental exchanges, and those ratepayers in the experimental exchanges who do not subscribe to ORTS, to subsidize ORTS service. It might then be necessary for the Commission to determine whether ORTS charges should be increased or the service discontinued. The Commission is of the opinion that the ORTS experimental program should be allowed to continue until sufficient data, including financial data, has been presented to the Commission to make a proper evaluation of whether ORTS should be continued and, if so, at what rates. The Commission takes official notice that on November 1, 1966, in Resolution No. T-6140, it authorized PT&T to make tariff revisions which provided for instituting ORTS. That resolution authorized experimental ORTS service until November 16, 1967. ORTS was authorized in the following exchanges: Fremont-Newark, Los Altos, Mountain

View, Crescenta, Los Angeles District area 2 and North Hollywood. The Commission further takes official notice that on November 7, 1967, in Resolution No. T-6397, it authorized the continuation of ORTS until July 16, 1968. At this time, we cannot determine whether it will be necessary to again extend the experimental period or whether there will be sufficient data by July 16, 1968, to make a determination of the future of ORTS.

Finally, we again note the pendency of Application No. 49142 (which was consolidated for hearing with Cases Nos. 8606 and 8609) in which PT&T seeks a systemwide rate increase. If any adjustment in PT&T's rates or rate of return is warranted, a new or modified rate spread may be ordered. Generally, "telephone exchange rates which may be influenced by growth in exchange main stations have typically been changed only at the time of general rate adjustments." (Decision No. 71575, p. 57; see also P. T. & T. Co., 63 Cal. P.U.C. 340, 342.) In the Application No. 49142 proceeding, the Commission will consider PT&T's rate of return and rates as they affect all of PT&T's customers. If the record in that proceeding discloses that circumstances have changed to require rate adjustments in the areas covered by the complaint, such adjustments will be made.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. The complaint was served upon PT&T only. Notices of hearing in this matter were served upon the following: each complainant; PT&T; Chairman of the Board of Supervisors, Alameda County; City Attorney, City of Fremont; City Attorney, City of Newark; County Clerk, County of Alameda; District Attorney, County of Alameda; Mrs. J. Prince and Mrs. Burtie M. Rockwell.

2. There is no evidence in this record which could sustain a finding that toll-free telephone service can be provided in the Bay Area at any stated amount or at a reasonable rate.

3. PT&T does not offer any special telephone service between its subscribers and any one or more governmental agencies. The rate of a telephone call by a PT&T subscriber to a governmental agency is calculated on the same basis as a call to any other subscriber located in the same exchange.

4. No justification has been shown why PT&T telephone subscribers who have frequent dealings with governmental agencies should be given preferential rates over other subscribers.

5. In November of 1966, PT&T instituted an experimental service known as ORTS (Optional Residence Telephone Service). ORTS was offered in selected test exchanges. One of these exchanges was the Fremont-Newark Exchange. ORTS permits a telephone subscriber to select one or more of four options: 1. A subscriber may select service in a defined expanded calling area at a fixed rate. All calls made to points in the expanded area are local, toll-free calls. 2. A subscriber may select service to one or more communities at a specified rate for each community selected. All calls made to points within the basic local dialing area and the selected communities are local, toll-free calls. 3. A subscriber may, for a fixed additional charge, call on an unlimited basis any exchange in an extended geographical area as a local, toll-free call. 4. A subscriber may, for a fixed rate calculated on an hourly use basis, call any exchange in an extended geographical area as a local, toll-free call.

6. The Commission authorized PT&T to file revisions in tariff schedules to permit the instituting of ORTS in Resolution No. T-6140, dated November 1, 1966. That resolution authorized the experimental

ORTS service until November 16, 1967. On November 7, 1967, the Commission in Resolution No. T-6397 authorized the continuation of the experimental ORTS service until July 16, 1968.

7. Depending on individual telephone usage, ORTS may reduce a PT&T customer's monthly bill. Where ORTS does not cause a reduction in a customer's monthly bill, the customer receives a greater amount of telephone service for an amount equal to his monthly rate prior to ORTS, for comparable telephone usage.

8. On May 31, 1967, 23.6 percent of the telephone subscribers in the Fremont-Newark Exchange subscribed to one or more options of ORTS service.

9. There is no evidence in this record dealing with financial data relating to ORTS, including its impact on PT&T's revenues in the exchanges where its experimental use was authorized.

10. Nowhere in the United States are telephone rates based on the number of prefixes or stations a subscriber can dial toll-free.

11. Complainants have failed to establish that the presently used basis for establishing PT&T's telephone rates is unreasonable.

12. There is no evidence in this record which would warrant a finding that, regardless of existing telephone exchange boundaries, density of population, geographical factors, etc., a telephone subscriber should have the right to toll-free telephone service of approximately the same distance in all directions from the location of the telephone station where he receives service.

13. There is no evidence in this record which would warrant a finding that, short of toll-free dialing for the entire Bay Area, there is any limited plan for toll-free dialing which would be satisfactory to a majority of PT&T's subscribers in the Fremont-Newark Exchange.

14. There is no evidence in this record which would sustain a finding that a majority of PT&T's subscribers in the Fremont-Newark Exchange would be willing to pay higher telephone rates for any plan which would provide limited additional toll-free dialing as part of service provided at the basic minimum rate.

15. The Commission by Resolution No. T-4603, dated November 7, 1960, authorized the transfer of the San Ramon Village area from the Pleasanton Exchange to the Danville Exchange.

16. The Commission in Decision No. 62689, entered on October 17, 1961, found that the then existing exchange area boundaries for the Danville, Livermore, Pleasanton and Sunol Exchanges should not be changed. There have been no changes in the boundaries of said exchanges to date.

17. Complainants have failed to establish that the boundaries of the Danville Exchange or the Sunol Exchange were arbitrary or unreasonable when they were established or are presently arbitrary or unreasonable.

18. The Commission, in Decision No. 62689, ordered that:

"1. . . .

(a) On or before December 31, 1961, revised tariff sheets to reflect the establishment as proposed, of Main and Valley district areas, each with its own toll rate center, within Danville exchange, . . .

(b) On or before December 31, 1963, revised tariff sheets for extended telephone service in Valley district area of Danville exchange and in Pleasanton, Livermore and Sunol exchanges with rates as set forth in Exhibit No. 18, except that Danville Valley 2-party message rate service remain at \$3.00 per month, . . .

"2.

(a) Cancel and withdraw message toll telephone service rates between the following: Danville Valley and Pleasanton; Danville Valley and Livermore; Pleasanton and Livermore; Pleasanton and Sunol; and Livermore and Sunol.

(b) Expand local service areas as follows: Danville Valley district area to include Pleasanton and Livermore exchanges; Pleasanton exchange to include Danville Valley district area and Livermore and Sunol exchanges; Livermore exchange to include Danville Valley district area and Pleasanton and Sunol exchanges; Sunol exchange to include Pleasanton and Livermore exchanges."

19. The community of Sunol is an unincorporated rural area. There are approximately 800 subscribers to PT&T telephone service in Sunol. Sunol has a small business section which provides limited day to day needs for its residents. There are no doctors, dentists, drugstores, banks or department stores located in Sunol. The residents of Sunol depend primarily on persons and businesses located in Pleasanton, Livermore, Fremont and Hayward for services and the purchase of major items.

20. PT&T subscribers in the Sunol Exchange may presently call toll-free to Livermore and Pleasanton.

21. There is no evidence in this record which would indicate that there have been any significant changes in the Sunol area since the entry of Decision No. 62689.

22. The only plan with supporting data for limited, extended toll-free dialing, which would apply to portions of the area here under consideration, is one presented by PT&T. Said plan would provide the following additional toll-free dialing:

<u>Exchange of Subscriber</u>	<u>Additional Toll-free Dialing Area</u>
Sunol	Fremont-Newark (Oliver District) Fremont-Newark (Main District) Hayward
Hayward	Sunol Pleasanton Danville (Valley District)
Fremont-Newark (Oliver District)	Sunol
Fremont-Newark (Main District)	Sunol
Pleasanton	Hayward
Danville (Valley District)	Hayward

Said plan was proposed as an entity. In order to put the plan into operation and provide that PT&T's revenues will be not significantly less than the revenues presently generated from the area involved, an increase in rates would be necessary. Said increase at presently authorized rates would be as follows:

DANVILLE-VALLEY D.A. EXCHANGE

<u>Service</u>	<u>Present Rates</u>	<u>Proposed Rates</u>	<u>Increase</u>
<u>Residence</u>			
One-Party	\$ 3.90	\$ 5.65	\$ 1.75
Two-Party Flat	3.20	4.95	1.75
Two-Party Measured	2.45	4.20	1.75
<u>Business</u>			
One-Party Flat	\$10.05	\$14.05	\$ 4.00
One-Party Measured	4.10	8.10	4.00
PBX Trunks Flat	15.00	21.00	6.00
PBX Trunks Measured 1st 2	4.10	8.10	4.00
Semipublic Coin	4.10	8.10	4.00

FREMONT-NEWARK-MAIN D.A. EXCHANGE

<u>Service</u>	<u>Present Rates</u>	<u>Proposed Rates</u>	<u>Increase</u>
<u>Residence</u>			
One-Party	\$ 3.90	\$ 3.90	\$ -
Two-Party Flat	3.20	3.20	-
Two-Party Measured	2.45	2.45	-
<u>Business</u>			
One-Party Flat	\$ 7.55	\$ 7.70	\$.15
One-Party Measured	4.10	4.25	.15
PBX Trunks Flat	11.25	11.50	.25
PBX Trunks Measured 1st 2	4.10	4.25	.15
Semipublic Coin	4.10	4.25	.15

FREMONT-NEWARK-OLIVER D.A. EXCHANGE

<u>Service</u>	<u>Present Rates</u>	<u>Proposed Rates</u>	<u>Increase</u>
<u>Residence</u>			
One-Party	\$ 3.90	\$ 3.90	\$ -
Two-Party Flat	3.20	3.20	-
Two-Party Measured	2.45	2.45	-
<u>Business</u>			
One-Party Flat	\$ 7.55	\$ 7.70	\$.15
One-Party Measured	4.10	4.25	.15
PBX Trunks Flat	11.25	11.50	.25
PBX Trunks Measured 1st 2	4.10	4.25	.15
Semipublic Coin	4.10	4.25	.15

HAYWARD EXCHANGE

<u>Service</u>	<u>Present Rates</u>	<u>Proposed Rates</u>	<u>Increase</u>
<u>Residence</u>			
One-Party	\$ 3.90	\$ 4.00	\$.10
Two-Party Flat	3.20	3.30	.10
Two-Party Measured	2.45	2.55	.10
<u>Business</u>			
One-Party Measured	\$ 4.10	\$ 4.40	\$.30
PBX Trunks - 1st 2	4.10	4.40	.30
Semipublic Coin	4.10	4.40	.30

PLEASANTON EXCHANGE

<u>Service</u>	<u>Present Rates</u>	<u>Proposed Rates</u>	<u>Increase</u>
<u>Residence</u>			
One-Party	\$ 4.70	\$ 6.70	\$ 2.00
Two-Party	3.90	5.90	2.00
Four-Party	3.35	5.35	2.00
Suburban	3.85	5.85	2.00
<u>Business</u>			
One-Party	\$ 8.85	\$13.35	\$ 4.50
Two-Party	7.10	11.60	4.50
PBX Trunks	13.25	20.00	6.75
Semipublic Coin	4.50	9.00	4.50
Suburban	6.10	10.60	4.50

SUNOL EXCHANGE

<u>Service</u>	<u>Present Rates</u>	<u>Proposed Rates</u>	<u>Increase</u>
<u>Residence</u>			
One-Party	\$ 5.00	\$ 7.00	\$ 2.00
Two-Party	4.00	6.00	2.00
Four-Party	3.40	5.40	2.00
Suburban	3.90	5.90	2.00
<u>Business</u>			
One-Party	\$ 9.40	\$13.90	\$ 4.50
Two-Party	7.65	12.15	4.50
PBX Trunks	14.00	20.75	6.75
Semipublic Coin	4.75	9.25	4.50
Suburban	6.65	11.15	4.50

23. Neither the Cities of Pleasanton and Hayward nor anyone representing PT&T subscribers therein participated in this proceeding. The only participation in this proceeding involving the Valley District area of the Danville Exchange was by one resident of San Ramon.

24. A greater toll-free dialing area for PT&T's Sunol Exchange subscribers is not warranted at this time.

25. A greater toll-free dialing area for the Valley District area of PT&T's Danville Exchange is not warranted at this time.

26. A greater toll-free dialing area for PT&T's Fremont-Newark Exchange subscribers is not warranted at this time.

27. Complainants have failed to establish that any unlawful discrimination exists, with respect to rates or toll-free dialing areas between PT&T customers in the Fremont-Newark and Sunol Exchanges and the Valley District area of the Danville Exchange and other PT&T customers.

28. The presently authorized rates for the telephone service provided by PT&T in its Fremont-Newark and Sunol Exchanges and the Valley District area of the Danville Exchange are reasonable.

29. The presently authorized telephone service arrangements in PT&T's Fremont-Newark and Sunol Exchanges and Valley District area of the Danville Exchange are reasonable and are not unjust, unlawful or unwarranted.

Conclusions of Law

1. It would be unjust, arbitrary and an abuse of jurisdiction for the Commission herein to enter an order affecting the telephone rates of persons and entities residing in communities and areas which received no notice of this proceeding and that the relief sought by complainants might affect their telephone rates.

2. The Commission should not, in this proceeding, make any determination of whether ORTS should be continued on a permanent

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basis in the Fremont-Newark Exchange. Action on ORTS should only be taken after the Commission has been furnished results of the ORTS experimental service in all exchanges where it was authorized and sufficient financial data to evaluate its impact on the exchanges involved and PT&T's ratepayers generally.

3. PT&T's rates should not be based solely or primarily on the number of prefixes or stations a subscriber can dial toll-free.

4. No change should be made in this proceeding in PT&T's presently authorized rates or telephone service arrangements in the Fremont-Newark and Sunol Exchanges and the Valley District area of the Danville Exchange.

5. Complainants are not entitled to any relief in this proceeding.

O R D E R

IT IS ORDERED that complainants are entitled to no relief in this proceeding and the complaint is denied.

The effective date of this order shall be twenty-five days after the date hereof.

Dated at San Francisco, California, this 16th day of APRIL, 1968.

[Signature]
President

[Signature]
William Synovis, Jr.
Paul P. Monrosey
Commissioners

COMMISSIONER WILLIAM M. BENNETT DISSENTING:

I dissent to the cavalier treatment accorded 25 customers of The Pacific Telephone and Telegraph Company. It is quite plain that these individual complainants were seeking assistance from a tax supported public agency. They were seeking to develop the issues raised upon some semblance of equality by asking, perhaps naively, for assistance from a public agency. The staff, however, in the year 1968 and hereafter presumably for some time, is not about to engage in rate contests with California's public utilities.

Some of the language of the decision is striking indeed. The Commission finds, for example, that simply because the Commission determined the rates here involved to be reasonable in a past case that they are immune from question or attack. And beyond the bare statement that the Commission cannot give relief, nothing is given by way of explanation to a curious public. This Commission and the same majority permitted The Pacific Telephone and Telegraph Company to throw aside the regulatory principles approved by the California Supreme Court in P.T. & T. vs P.U.C. (62 Cal. 2nd 634). The majority had no hesitancy --indeed it rushed to a decision allowing Pacific to attempt to grab back for itself and its stockholders millions of dollars, which this Commission under a different climate had disallowed. Why is the California Supreme Court decision binding upon customers and not upon the P.T. & T?

It may be of some comfort to housewives to be met at the threshold of a fight for relief to be told that they failed to meet the burden of proof. Perhaps this can be of some comfort to alleged inferior service at alleged burdensome telephone rates, and by way of possible further comfort these complainants might take notice of the fact that they received telephone service in a state where the rates are comparatively low, but somehow the bills are exorbitantly high for the service.

This case is symptomatic of the Pacific Telephone and Telegraph System throughout California. Pacific is long overdue in presenting to its customers broader calling areas than its management thinks desirable. Whether from Redding to Hayward to San Diego,

Pacific should have no doubt but that Californians want a type of telephone service beyond the imagination of Pacific's management. That they are not going to get it, however, seems certain.

Today's decision is a curious product. Complainants are told on the one hand that they are not entitled to relief because the Commission and California Supreme Court fixed telephone rates several years ago. On the other hand, they are told that their action is premature because there is presently a rate case pending-- in which, by the way, Pacific seeks to increase charges by 181 millions of dollars. It is strange that these were not joined then as essential parties to the major rate application. The Commission goes out of its way to deny relief upon all manner of technicalities, none of which were intended to frustrate consumer relief as this Commission was originally created. For example, the Commission denies relief because all manner of specified or unspecified other parties were not joined. The failure of intervention by other parties is something beyond the control of these complainants, and, if other customers choose to remain silent as to telephone service no reason is created to deny relief if warranted, as here.

Perhaps there is no evidence in the record to grant the relief requested, but the real question which looms large would ask why the staff of the Commission failed to present any such evidence.

The Commission finds on page 24, finding #10, "Nowhere in the United States are telephone rates based on the number of prefixes or stations a subscriber can dial roll-free." This finding is erroneous and ignores the recent decision of this Commission--unanimous--in Case 7409 promulgated on November 23, 1966. In that decision, No. 71575 at page 44, is a discussion designated "EXTENDED SERVICE RATE PLAN." That plan was adopted by the Commission and is in fact based upon the number of main


stations even setting forth such stations in groups. The groupings are as follows:

- Group I 0 - 8,000 main stations
- Group II 8,000 - 20,000 main stations
- Group III 20,000 - 120,000 main stations
- Group IV 120,000 - 300,000 main stations

There is set forth at page 44 a listing of various types of business services with the attached rates as well as resident service with the attached rates.

It should be pointed out in 1968 that whether we are dealing with individual complainants, as here, or excessive overcharges by Pacific Gas and Electric Company and other gas and electric utilities or whether we are dispensing with an historic and necessary passenger train such as the Lark, now in California, in the permissive business climate which infects this Commission the utility customer should be prepared to fight for and defend his own interest --alone, or at least almost so. One vote and one dissent may be of some comfort, but that is all. I would, myself, reopen the proceedings --direct the tax supported staff to become vigorous and present a case and to take a position, and not to stand on the high safe ground of neutrality between the economically and politically powerful utility and the economically helpless individual telephone customer.

/s/ WILLIAM M. BENNETT


WILLIAM M. BENNETT
Commissioner

San Francisco, California

April 16, 1968