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ORIGINAL

Decision No. 75807

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

H. V. WELKER, INC., Complainant, vs. PACIFIC TELEPHONE & TELEGRAPH CO., a corporation, Defendant.	Case No. 8865 (Filed November 18, 1968)

Darrel K. Nelsen, for complainant.
Robert E. Michalski, for defendant.

O P I N I O N

By this complaint, H. V. Welker Co., Inc. (complainant), alleges that upon the advice of the Marketing Department of The Pacific Telephone and Telegraph Company (defendant) a new telephone system consisting of five flat rate lines and two dial select intercom lines on 6051 Key Strips was installed at its place of business; that defendant had assured complainant that this system would economically resolve its current communication needs; that within 30 days after installation, complainant contacted National Communications Planning Service, Inc. (National), an independent consultant, and was advised by it that there were five alternative systems to that recommended by defendant which would not only have solved complainant's communication problem but would have been more economical; that complainant was not informed of the various alternatives by defendant; that complainant had the system recommended by defendant removed after only 60 days of operation and replaced it with a new system. The complaint requests the Commission to issue an order relinquishing the obligation of complainant to pay $835 in installation costs to defendant for its recommended system.

In its answer to the complaint, defendant asserted that the recommended system was installed at complainant's request; that the charges therefor were in accordance with defendant's published tariff; and that no basis exists for any reduction of said charges. The answer prays that the complaint be dismissed.

Public hearing was held before Examiner Mooney in San Francisco on March 28, 1969, on which date the matter was submitted. Evidence was presented by the president, who is also the general manager, of complainant and by a communication consultant in the San Jose Marketing Department of defendant.

The evidence establishes and we find as follows:

1. Complainant's place of business is located at 970 South Bascom, San Jose. It is in the drapery, carpet and upholstery retail and wholesale business. The building has 9,000 square feet and includes various offices, a storage area, an upholstery shop and other areas.

2. Prior to the installation of the communication system recommended by defendant, complainant had a total of four telephone lines and one intercom line. Each telephone line handled both incoming and outgoing calls. There was a telephone located at 14 separate stations in the plant. Each instrument had six buttons, one for hold, one for intercom and the balance for the four in and out telephone lines.

3. The original system was not adequate to meet complainant's needs. Its salesmen and other personnel used the telephone lines

for outgoing calls. As a result, the four lines were constantly busy with both outgoing and incoming calls. Because of this, complainant could lose potential business if a customer attempting to reach it by telephone could not get through. Also, the one intercom line was regularly in use, and it was generally not possible for complainant's president to contact a particular employee over it when the need arose.

4. On May 8, 1968, complainant's president called defendant's San Jose Marketing Department and informed it that he required additional telephone lines.

5. On May 10, 1968, a communication consultant from defendant's Marketing Department called on complainant's president. He was informed by the president that the company was expanding; that it would most likely need a 12 key strip system to replace its present system; and that it required an efficient communication system that would provide the best possible service for its customers. The president had seen such a system in a neighboring business, but had not operated it. He was not aware that there were alternative systems also available. The consultant toured the plant with the president and discussed flat and measured monthly charges, foreign exchange line and wide area service with him. The evidence is not entirely clear regarding the amount of time the consultant spent at the premises. The consultant recommended the 6051 Key Strip system with five telephone and two intercom lines, a hold button and four blank buttons for additional lines, if required, plus a call director at the desk of the president's secretary. Each of the five telephone lines accommodated both incoming and outgoing calls. The consultant did consider various alternatives to the recommended system. However,

he was of the opinion that the recommended system would best serve complainant's needs and, therefore, did not consider it necessary to discuss the alternatives with the president. In answer to an inquiry by the president, the consultant informed him that defendant did not have a separate, independent intercom system.

6. The system recommended by defendant's consultant was installed on or about May 31, 1968. The system operated, but complainant was not satisfied that it solved its communication needs. It included a dial telephone and a separate key strip at each station. The five telephone lines were constantly tied up with outgoing as well as incoming calls and the two intercom lines were continually busy and frequently unavailable when needed. The installation charge was $835. Said charge was based on defendant's applicable tariff. It has not been paid by complainant.

7. Approximately 30 days after the recommended system was installed, a representative of National called on complainant's president. The representative had references from acquaintances of the president. He explained various alternative systems that could be installed. He suggested the current system as the most practical to solve complainant's communication problems. The president concurred.

8. A letter dated July 5, 1968, was sent by National to defendant informing it that complainant was not satisfied with defendant's recommended system; that it was to be replaced by the system suggested by National; that since the same service recommended by defendant could have been accomplished without resulting in such a high installation fee, complainant had no intention of paying said fee; and that any problems regarding the matter were to be taken up with National.

9. The current telephone system suggested by National consists of a six-button telephone at 14 separate stations. A total of four incoming and 10 outgoing telephone lines were installed. Each instrument has the same four incoming lines in rotary plus a hold button and a button for an outgoing line. Some of the telephones have a private outgoing line and some share the same outgoing line. An incoming call can be received on the outgoing line when its particular number has been dialed. Defendant charged approximately $200 for installing this system. The monthly charge for the current telephone system is approximately $60 less than the system recommended by defendant.

10. In addition to the current telephone system, National recommended a separate intercom system which the president purchased. The price was approximately $7,000, including installation. The savings in monthly telephone bills will contribute towards the cost thereof. The system includes an intercom console on the president's desk plus additional consoles at each of eight separate stations in the plant. It has 14 talking paths or lines. The original system had one, and the system recommended by defendant had two. Even had additional intercom lines been added to the four blank buttons on the key strip system, it would not have been sufficient.

11. The current system adequately meets complainant's requirements. The four incoming telephone lines are never tied up by outgoing telephone calls, and there are sufficient outgoing telephone lines. Also, the intercom system with 14 talking paths has remedied the problem of constantly busy intercom lines. The president now has no difficulty in reaching any of the stations throughout the plant. Although there is no room for expanding the number of lines

on the telephone at each station, complainant does not anticipate any such need in the foreseeable future.

12. In the complex field of communications, no layman can be expected to understand the innumerable offerings under defendant's filed tariffs. When defendant sends out one of its communication consultants to a customer's place of business for the explicit purpose of discussing telephone service, the consultant should point out all alternative communication systems available to meet the customer's needs. This is a duty owed by defendant to its customers. Here, this was not done. Although various bases of monthly charges (flat, measured, foreign exchange and wide area service) were explained, the consultant discussed the key strip system only with complainant's president.

13. The president would have selected an alternative to the key strip system installed by defendant had the various alternatives been brought to his attention.

14. Complainant should not be held responsible for the installation charges for the key strip system. While it is a general rule that a telephone company is required to collect the applicable charges set forth in its tariff for any and all services it performs for the public, it would be an idle act to require defendant to collect the charges in issue and then immediately refund them to complainant.

The Commission concludes that the complaint herein to absolve complainant of its obligation to pay $235 in installation charges for the key strip system in issue should be granted.

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ORDER

IT IS ORDERED that the complaint in Case No. 8865 is hereby granted and complainant is thereby absolved from its obligation to pay to defendant the $835 in installation charges referred to in said complaint.

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

Dated at San Francisco, California, this 24th day of JUNE, 1969.

William Symons Jr.
President

[illegible]

Fred P. Morrissey

Commissioners

I dissent
J P Vukasin Jr

I dissent.
Thomas Moran