Decision No. 77526

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, for authority to increase certain intrastate rates and charges applicable to telephone services furnished within the State of California.	Application No. 51774 (Filed March 17, 1970)
WILLIAM M. BENNETT, Consumer Spokesman, and Consumers Arise Now, an association, Complainants, vs. Western Electric Company, joining Pacific Telephone and Telegraph Company and American Telephone and Telegraph Company as Interested Parties, Defendants.	Case No. 9043 (Filed April 6, 1970)
Investigation on the Commission's own motion into the rates, tolls, rules, charges, operations, separations, practices, contracts, service and facilities of The Pacific Telephone and Telegraph Company.	Case No. 9044 (Filed April 7, 1970)
And Related Matters.	Case No. 9036 (Filed April 13, 1970) Case No. 9042 (Filed April 2, 1970) Case No. 9045 (Filed April 7, 1970)

(See Appendix A for Appearances)

INTERIM OPINION

Four motions have been filed in these consolidated proceedings which appropriately can be ruled upon by interim order. Two of the motions relate to final determination of two of the proceedings and thus, under Rule 63 of the Commission's Rules of Practice and Procedure, may not be ruled upon by the presiding hearing officer. The third motion, if granted, would require prompt action by the Commission staff or The Pacific Telephone and Telegraph Company (Pacific) so the ruling thereon has been included in this interim decision. The fourth motion requests, among other things, reversal of two of the presiding examiner's previous rulings.

After due notice, oral argument on the first three motions was held before Commissioners Gatov, Moran, Sturgeon, Symons and Vukasin and Examiner Catey in San Francisco on June 29, 1970. Those motions were taken under submission on that date. The fourth motion is directed to services requested to be supplied by the Commission, has no known opponents who wish to argue the motion, and therefore may be ruled upon without argument.

Motions to Dismiss

On April 30, 1970, Pacific filed a motion to dismiss Case No. 9043.

On May 5, 1970, William M. Bennett and an association known as Consumers Arise Now (CAN) filed a motion to dismiss Application No. 51774. The prayer therein also covered certain procedural matters, such as availability to the Commission of Pacific's records; investigation by the Commission of Pacific's expenditures and accounting practices; reassignment and/or affirmation of competency, experience and knowledge of the presently assigned Commissioner,

examiner, counsel and accounting witness; disavowal of ex parte contacts between Pacific and the Commission or its personnel; and identification of any negotiations, agreements and contacts between Commissioners and Pacific.

In regard to the motions to dismiss Case No. 9043 and Application No. 51774, we have reviewed the petitions themselves, any answers thereto filed in these proceedings, the points and authorities cited by the parties, and the oral arguments presented.

Complainants in Case No. 9043 argue that dismissal of their complaint without giving them an opportunity to present evidence in support of their allegations would not constitute due process. They point out that, if they do not prove their contentions, then would be the appropriate time to consider dismissal. They expressed confidence, however, that they could prove their points.

Complainants' basic argument on this issue has merit. The moving parties in Case No. 9043 should be given the opportunity to present evidence in support of their allegations. Similarly, Pacific should be given the opportunity to present evidence in support of its allegations in Application No. 51774. Both motions to dismiss will be denied.

In regard to the availability to the Commission of Pacific's records, there is no indication that Pacific has declined to disclose its records to the Commission or the Commission staff.

In regard to investigation by the Commission of Pacific's expenditures and accounting practices, this is within the scope of Application No. 51774 and Case No. 9044.

In regard to the Commission personnel assigned to these proceedings, we are of the opinion that each is qualified to carry out his assignment.

In regard to ex parte or other contacts, negotiations or agreements between the Commission and Pacific relative to issues in these proceedings, there have been none nor will there be any. The decision or decisions rendered will be based upon the presentations, on the record, made by the various parties to the proceedings.

Motion for Public Opinion Survey

On June 12, 1970, San Francisco Neighborhood Legal Assistance Foundation (SFNLAF) filed a motion that the Commission staff or Pacific be required to conduct a public opinion survey by mail. The purpose of the proposed survey is to determine whether the public is in favor of or opposed to Pacific's proposed rate increases, is in favor of additional expenditures for new improved services, and any other questions deemed by the Commission staff to be necessary for a complete survey of ratepayers' opinions. SFNLAF proposes that the results of the survey be compiled, entered into the record in these proceedings and be regarded as evidence.

The Commission staff argued that such a survey would not be helpful in resolving the many issues in these proceedings. The staff points out that any rational man would say he prefers to pay a lower rather than higher amount for service. On the other hand, even in an unlikely situation where customers were overwhelmingly in favor of increased rates, any increase in rates would have to be justified by relevant evidence and factual testimony presented under oath and subject to cross-examination.

The voluminous public correspondence in these proceedings is available to the staff in determining potential areas of service deficiencies. The staff can investigate and evaluate possible service problems and has indicated that it would present evidence on this important aspect of the proceedings. Further, hearings have

been scheduled in locations ranging from Eureka on the north to San Diego on the south for the express purpose of receiving the testimony of public witnesses. This should produce more reliable and meaningful evidence than would be produced by an opinion survey. The motion for a public opinion survey will be denied.

Motion to Reverse Examiner's Rulings

On June 29, 1970, Nancy Kogel filed a motion requesting the Commission to reverse the presiding examiner's June 15 (sic)[1/] rulings which denied her previous motions to (1) have the Commission provide bilingual interpreters of the proceedings for any persons not fluent in English, and (2) have the Commission supply free babysitting facilities for working men and women who wish to attend the proceedings. The motion also includes a request that the Commission order Pacific to provide its employees with certain fringe benefits, such as free child-care facilities with free health care at those facilities.

We have reviewed Miss Kogel's original motions, her supporting statements, the examiner's rulings, the motion for reversal of the rulings and its supporting statements. We do not find the examiner's rulings to have been improper, unreasonable or contrary to law. The motion for reversal of the previous rulings will be denied.

In regard to the fringe benefits discussed in Miss Kogel's motion, these are matters to be determined between employer and employees or the union representatives of the latter, not this Commission.

Findings and Conclusion

The Commission finds that:

1. Complainants in Case No. 9043 and applicant in Application No. 51774 should not be foreclosed from presenting evidence in support of their allegations and requests in those proceedings.

1/ June 16.

2. Testimony to be presented by public witnesses, together with the Commission staff's proposed presentation on service, will be more reliable evidence than could be obtained by a public opinion survey.

3. No cause has been shown to reverse the examiner's rulings in regard to (1) provision of interpreters for all persons not fluent in English and (2) provision of free babysitting facilities at hearings.

The Commission concludes that all four motions herein discussed should be denied.

INTERIM ORDER

IT IS ORDERED that the following motions are denied:

1. The motion filed April 30, 1970 by The Pacific Telephone and Telegraph Company, requesting dismissal of Case No. 9043.

2. The motion filed May 5, 1970 by William M. Bennett and Consumers Arise Now, requesting, among other things, dismissal of Application No. 51774.

3. The motion filed June 12, 1970 by San Francisco Neighborhood Legal Assistance Foundation, requesting a public opinion survey.

4. The motion filed June 29, 1970 by Nancy Kogel, requesting, among other things, reversal of two previous rulings of the presiding examiner.

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

Dated at San Francisco, California, this 21st day of JULY, 1970.

Chairman

Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

List of Appearances

PARTY	APPEARANCES	POSITION*					
		A.51774	C.9036	C.9042	C.9043	C.9044	C.9045
UTILITIES							
California-Pacific Utilities Company	Ross Workman	-	-	-	-	-	R
Continental Telephone Company of California	Robert C. Abrams	I	-	-	-	-	R
General Telephone Company of California	A. M. Hart and H. Ralph Snyder, Jr.	I	-	-	-	I	R
Golden West Telephone Company	(See Continental Telephone Co. of Calif.)	I	-	-	-	-	R
The Pacific Telephone and Telegraph Company	George H. Eckhardt and Richard W. Odgers	A	D	D	D	R	I
FEDERAL GOVERNMENT							
General Services Administration	Hart T. Mankin, Marvin H. Morse and Max M. Misener	I	I	I	I	I	I
STATE GOVERNMENT							
California Public Utilities Commission staff	Richard D. Gravelle and Leonard L. Snaider, staff counsel, John J. Gibbons and James G. Shields	-	-	-	-	-	-
State of California	Thomas C. Lynch by Donald B. Day	I	I	I	I	I	I
COUNTIES							
Alameda	Jacob Levitan	I	I	I	I	I	I
Marin	Douglas J. Maloney by Thomas G.Hendricks	I	I	I	I	I	I
Placer	Richard E. Saladana and Douglas A. Lewis	I	I	I	I	I	I
San Francisco	Thomas M. O'Connor, Milton Mares and Robert R. Laughead	I	I	I	I	I	I
CITIES							
Anaheim	Joseph B. Geisler and Alan R. Watts	I	I	I	I	I	I
Bellflower	Alexander Googooian	P&I	I	I	I	I	I
Benicia	L. S. Brady	I	I	I	I	I	I
Beverly Hills	George Slaff and Allen Grimes	P	I	I	I	I	I
Los Angeles	Roger Arnebergh, by Charles E. Mattson, Robert W. Russell and Manuel Kroman	I	I	I	I	I	I
Long Beach	Louis Possner	I	I	I	I	I	I
Pittsburg	Roger Colla	I	I	I	I	I	I
Sacramento	James P. Jackson	I	I	I	I	I	I
San Diego	John W. Witt by C. M. Fitzpatrick and William Kronberger	I	I	I	I	I	I
San Francisco	(See County of San Francisco)	I	I	I	I	I	I
Thousand Oaks	Raymond C. Clayton	P	I	I	I	I	I

* A = Applicant C = Complainant D = Defendant I = Interested Party P = Protestant R = Respondent

List of Appearances

PARTY	APPEARANCES	POSITION					
		A.51774	C.9036	C.9042	C.9043	C.9044	C.9045
ORGANIZATIONS and CORPORATIONS							
Allied Telephone Companies Association	Ernest W. Watson	I	-	-	-	-	-
American Taxpayers Union of California, Inc.(Unit 3)	Diamantes D. Katsikaris	P	-	-	-	-	-
Apex Janitor Supply	Nat Yanish	P	-	-	-	-	-
Association of California Consumers	Mrs. Sylvia Siegel	P	-	-	-	-	-
Business Communications	Lyle C. Brackney	I	-	-	-	-	-
California Farm Bureau Federation	W. L. Knecht and Ralph Hubbard	I	-	-	-	-	-
California Farmer-Consumer Information Committee	Mrs. Borghild Haugen	I	-	-	-	-	-
California Independent Telephone Association	Neal C. Hasbrook	I	-	-	-	I	I
California Labor Federation, AFL-CIO	Dennis T. Peacocke	P	-	-	-	-	-
Communications Workers of America	Stephen H. Confer and Edward Long	I	-	-	-	-	-
Consumers Arise Now	William M. Bennett, Lew Geiser, Garret P. Shean, Harold Sherwin Small and Edward Torrico	P	C	-	C	-	-
Chicano Law Students (Hastings)	Steven J. Ybarra	P	-	-	-	-	-
Consumers Cooperative of Berkeley	Don Rothenberg	P	-	-	-	-	-
Echo Answering Service	Clarence Ricks	I	-	-	-	-	-
I.B.E.W. Local Union No. 1011	M. W. McWhorter	I	-	-	-	-	-
Interracial House, Inc.	Marcus Harvey Wilcher	P	-	I	-	-	-
Mexican-American Legal Defense Fund	Robert Gnaizda and Elaine Climpson	P	-	I	-	-	-
Mexican-American Political Association	(See Mexican-American Legal Defense Fund)	P	-	C	-	-	-
NAACP Legal Defense	(See Mexican-American Legal Defense Fund)	P	-	I	-	-	-
National Businessman's Association	L. David Fox	P	-	-	-	-	-
Responsible Merchants, Property Owners & Tenants, Inc., San Francisco Neighborhood Legal Assistance Foundation	Jack Bartolini	I	-	-	-	-	-
Sears Roebuck and Company	Gilbert T. Graham	P	-	--	-	-	-
Spanish Speaking Subscribers (144)	Hope H. Camp, Jr.	I	-	-	-	-	-
Spanish-Speaking Surnamed Political Association	(See Mexican-American Legal Defense Fund)	P	-	C	-	-	-
Telephone Answering Services of California, Inc.	Ricardo A. Callejo (and see Mexican-American Legal Defense Fund)	P	-	C	-	-	-
United Auto Workers, Northern California	Bacigalupi, Elkus, Salinger & Rosenberg by Lucius P. Bernard	I	-	-	-	-	-
Windsor and Healdsburg Local Action Council	Salvador L. Tovares	P	-	I	-	-	-
	(See Mexican-American Legal Defense Fund)	P	-	C	-	-	-

List of Appearances

PARTY	APPEARANCES	POSITION					
		A.51774	C.9036	C.9042	C.9043	C.9044	C.9045
INDIVIDUALS							
Bennett, William M.	Self (See Consumers Arise Now)	P	C	-	C	-	-
Bone, Donald L.	Donald L. Bone	P	-	-	-	-	-
Brierly, Philip G.	Philip G. Bierly	P	-	-	-	-	-
Ciesielski, Wladislaw	Wladislaw Ciesielski	P	-	-	-	-	-
De Muttio, Douglas	Douglas De Muttio	P	-	-	-	-	-
Elder, Randy N.	Randy N. Elder	I	-	-	-	-	-
Ervin, Rebecca	Rebecca Ervin	P	-	-	-	-	-
Geiser, Lew	Self (See Consumers Arise Now)	P	-	-	-	-	-
Glass, Michael K.	Michael K. Glass	P	-	-	-	-	-
Hunter, Kenneth R.	Kenneth R. Hunter	I	-	-	-	-	-
Kirschner, Kim	Kim Kirschner	P	-	-	-	-	-
Kogel, Nancy	Nancy Kogel	P	-	-	-	-	-
Markel, Leon	Leon Markel	P	-	-	-	-	-
Mercier, Andre	Andre Mercier	P	-	-	-	-	-
Mercier, Cecile	Cecile Mercier	P	-	-	-	-	-
Pugh, David	David Pugh	P	-	-	-	-	-
Small, Harold Sherwin	Self (See Consumers Arise Now)	P	-	-	-	-	-
Small, Mr. and Mrs. James M.	Harold Sherwin Small (See Consumers Arise Now)	P	-	-	-	-	-
Stone, Janet	Janet Stone	P	-	-	-	-	-
Torrico, Edward	Self (See Consumers Arise Now)	I	-	-	-	-	-
Viviano, Victor	Victor Viviano	P	-	-	-	-	-
Winsor, Richard	Richard Winsor	I	-	-	-	-	-
Wright, Orville I.	Orville I. Wright						