

jmd

ORIGINAL

Decision No. 78474

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

Investigation on the Commission's own motion into the rates, tolls, rules, charges, operations, separations, practices, contracts, service and facilities of the telephone operations of all the telephone corporations listed in Appendix A, attached hereto.

Case No. 9045
(Filed April 7, 1970)

And Related Matters.

Application No. 51774
(Filed March 17, 1970)

Case No. 9036
(Filed April 17, 1970)

Case No. 9042
(Filed April 2, 1970)

Case No. 9043
(Filed April 6, 1970)

(See Appendix A, Decision No. 77984, for Appearances)

INTERIM OPINION

There are three matters which should be disposed of before submission of these consolidated proceedings: (1) Provision for adequate time for all interested parties to present evidence on the Data Exchange Service tariff recommended by the Commission

staff, (2) a pending motion by Pacific to quash subpoenas for the appearance of three of its officers, and (3) provision for the filing of concurrent briefs in these proceedings.

Data Exchange Service Tariff

In Exhibit No. 69 in these consolidated proceedings, the Commission staff concluded that the present business message rates charged by Pacific do not result in reasonable charges to cover the use of the exchange service made by certain computer services. The staff recommended that Pacific be directed to establish a special timed rate applicable to users who make calls of extremely long duration of a non-voice character. Under the staff proposal, the new tariff would not become effective until eighteen months after the effective date of the Commission's order in these consolidated proceedings.

The staff points out that several areas of computer operations can use the telephone network. These include such uses as remote batch processing, time sharing, computer-aided instruction, information storage and retrieval, and transaction systems. The growth of computer and other data communications has imposed service problems on some telephone systems.

The deferred effective date proposed by the staff would provide some time for development work which may be required to prepare necessary measuring equipment. It would also give customers an opportunity to review the potential impact of such a rate on their business telephone bills before the rate actually goes into effect.

We concur with the staff's view that the reasonableness of rates for non-voice calls should be investigated. Further, this is a matter that should have reasonably uniform statewide treatment

by all California telephone utilities. Interested parties should, however, be given a reasonable opportunity to prepare and present additional information and recommendations regarding this type of service before, not after, a tariff has been prescribed. Under these circumstances, Cases Nos. 9044 and 9045 will be held open after submission of all aspects of these consolidated proceedings other than the proposed tariff for non-voice transactions. We will arrange for reasonably widespread publicity of this decision so that potentially interested parties can commence promptly to prepare evidence for later hearings and can advise this Commission of their intended participation in those hearings. In this regard, data on average holding time for both toll and exchange data calls would be helpful.

Motion to Quash Subpoenas

On March 2, 1971, William M. Bennett, an appearance herein, requested subpoenas for the appearance of three of Pacific's officers at 9:30 a.m. on March 17, 1971, in San Francisco. The requested subpoenas were prepared immediately by the Commission's Secretary and made available to Mr. Bennett. The subpoenas were not served, however, until March 16, 1971, and even then, not on the individuals, but on another corporate officer. A motion to quash these subpoenas was filed by Pacific on March 16, 1971. Oral argument on the motion to quash was held in San Francisco on March 17, 1971.

Inasmuch as the subpoenas were not delivered to Pacific's offices until the day before they were returnable, and the motion to quash therefore was not filed until the return date, all parties were given five days within which to file responses to the motion. A reply to Pacific's motion was filed by Bennett and Consumers Arise Now on March 22, 1971.

Pacific contends that the subpoenas for the appearance of the three individuals have not been properly served, inasmuch as they were not served directly on those individuals. We so find, but, rather than to decide the questions solely on technical procedural aspects, we deem it appropriate also to consider the pending motion on its merits. That is, we will also rule on broader issues which would apply to the specific subpoenas or any others which might be requested for the later appearance of the three individuals.

Pacific further contends that Bennett has not followed the procedures prescribed by the presiding examiner pursuant to the Commission's Rules of Practice and Procedure. Pacific points out that, on January 8, 1971, a separate letter was sent to each party to these proceedings, including Bennett and each of seven other individuals who entered an appearance on behalf of Consumers Arise Now (CAN), directing them to notify the Commission by January 18, 1971, of the following so that an orderly schedule could be established for presentation of the final evidence in these proceedings:

- "1. Number of witnesses you plan to call.
- "2. Brief statement of scope of evidence.
- "3. Estimated minutes or hours of direct testimony.
- "4. Hearing site preferred (San Francisco or Los Angeles).
- "5. Telephone number where you can be advised of hearing time reserved for you."

Neither Bennett nor the other CAN appearances responded. Bennett apparently considers that his March 2, 1971 request for subpoenas was an adequate response. Based upon the responses of other parties, a specific schedule was established which should result in the completion of the evidential portion of these proceedings by March 26, 1971.

The third argument offered by Pacific in support of its motion is that the parties subpoenaed are not necessary to the proceeding. Pacific cites the fact that many of its key officers have been cross-examined by other parties during more than 30 hearing days in great detail and that Bennett could have attended the hearings on those days and could have cross-examined those witnesses. Except for the cross-examination of one of Pacific's officers, Bennett did not avail himself of the opportunity afforded him.

Other arguments by Pacific are that testimony of the three subpoenaed officers would be cumulative to the existing record, that compliance with the subpoena for Pacific's president would be oppressive and burdensome, and that the other two parties could not add any relevant testimony to that already in the record.

Bennett contends that the proximity of Pacific's office to the Commission's hearing room mitigates any burden on the proposed witnesses. He further contends that the proposed testimony would show that a "Good-Government Fund" purportedly organized independently by Pacific's employees is actually run by Pacific, that officers of Pacific have discussed proceedings, including the current ones, with Commissioners while those proceedings were pending, and that there are policy questions which only Pacific's president can answer.

From a review of the record, we find that Bennett has not participated in the cross-examination of most of Pacific's witnesses, has failed to respond to the presiding examiner's request for reasonable advance notice of the extent, if any, of proposed direct testimony, has waited until scheduling of the final days of hearing was completed before requesting subpoenas for the three additional witnesses, and has declined to give even a rough estimate

of the amount of additional hearing time he desires. Under these circumstances, it would be unreasonable to delay submission of these matters for an indeterminate time to accommodate Bennett. The motion to quash will be granted.

Filing of Briefs

Application No. 51774 was filed by Pacific over a year ago. After more than 77 days of hearing, the position of all parties is quite well set forth in the record. It would be reasonable, however, to provide an opportunity for any parties who so desire to summarize their positions in opening briefs to be filed concurrently within thirty days after submission of these proceedings (excluding the Data Exchange Service matter) and to file reply briefs within 15 days after the established filing date of the opening briefs. Inasmuch as many of the parties have not been attending all of the hearings, it is deemed appropriate to announce this provision for filing of briefs in the order herein, which will be sent to all appearances and respondents. Parties not in attendance at the final days of hearing should check with the Commission's office in San Francisco or Los Angeles to determine the exact dates established for filing of briefs.

Findings and Conclusions

The Commission finds that:

1. Consideration of the staff recommendation for a new tariff covering Data Exchange Service, as set forth in Chapter 8 of Exhibit No. 69, and the possible applicability of such a tariff to all California telephone utilities, requires further evidence.

2. Pacific has shown good cause on both procedural grounds and the merits of the issue for quashing subpoenas issued by this Commission March 2, 1971, which would have required three additional officers of Pacific to testify in these proceedings.

3. It is reasonable to provide for filing of concurrent opening briefs approximately thirty days after submission of all matters excluding Data Exchange Service, and the filing of reply briefs approximately fifteen days after filing of opening briefs.

The Commission concludes that consideration of a special tariff for Data Exchange Service should be deferred, that the subpoenas issued March 2, 1971 should be quashed and that provision should be made for filing of briefs.

INTERIM ORDER

IT IS ORDERED that:

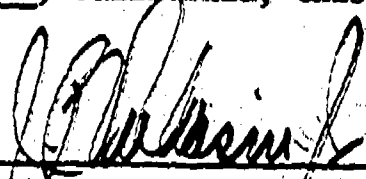
1. Cases Nos. 9044 and 9045 will be continued after submission of all other matters in these consolidated proceedings, for the purpose of determining whether a special tariff covering intrastate Data Exchange Service should be prescribed for any or all telephone utilities in California. Hearings and, if appropriate, a prehearing conference, will be at times and places to be set.

2. The subpoenas issued herein on March 2, 1971, for three of Pacific's officers are hereby quashed.


3. The filing date for opening briefs will be approximately thirty days after submission of all but the Data Exchange Service phase of these proceedings, and the filing date for reply briefs will be approximately fifteen days after filing of opening briefs.

The effective date of this order is ten days after the date hereof.

Dated at San Francisco, California, this 24th
day of MARCH, 1971.



Chairman



Vernon L. Sturgeon

Commissioners

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

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