

ORIGINAL

Decision No. 79790

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PERCY E. WHITTEN, THOMAS J. WHITTEN,)
et al.,)

Complainants,)

vs.)

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,)

Defendant.)

Case No. 9057
(Filed May 6, 1970)

Thomas J. Whitten, Attorney at Law, Percy E.
Whitten, M. M. Newmark, Attorney at Law,
and Robert Kahn, for complainants.
Richard Siegfried, Attorney at Law, for
defendant.
Ermet Macario, for the Commission staff.

O P I N I O N

Complainants allege that the local calling area for the Lafayette Exchange is much smaller, both in area and total number of telephones, when compared to the adjacent neighboring exchanges as shown by a table labeled "Exhibit A" attached to the complaint (Exhibit 2). Since subscribers in the Lafayette Exchange pay the same rate as those in neighboring exchanges and are provided with less calling area for this charge, complainants allege that the subscribers in the Lafayette Exchange are being discriminated against as to their local calling area service. Complainants believe that there is a community of interest between Lafayette and its neighbors and that this discrimination is unfair to the subscribers in the Lafayette Exchange. Complainants request that they, at no additional cost, be allowed to call the Piedmont, Berkeley, Fruitvale and Alameda Exchanges in the East Bay Exchange, as well as the Martinez Exchange and the Danville Main Exchange.

The Pacific Telephone and Telegraph Company (Pacific), in its answer to the complaint, admits that its Lafayette Exchange has a smaller local calling area than the exchanges shown on Exhibit A to the complaint, but denies that this constitutes unfair discrimination to its subscribers in the Lafayette Exchange.

Public hearing was held at Lafayette on July 28, 1970, before Examiner Gillanders and the matter was submitted.

In an Interim Opinion in this matter - Decision No. 77823, dated October 14, 1970 - the Commission said:

"We find that this record does not contain sufficient detailed evidence to support a decision either for complainants or defendant and thus conclude that we should have defendant make further studies as detailed in the order which follows."

Pacific, by a petition dated November 2, 1970, requested that ordering paragraphs 4 and 5 of Decision No. 77823 in which Pacific was ordered to make a customer survey be vacated. The Commission denied said petition by Decision No. 78004, dated December 1, 1970. Pacific, by petition filed December 23, 1970, requested an order modifying Decision No. 77823 in the above matter to extend the time for completing the studies and surveys ordered therein. By Decision No. 78261, dated February 2, 1971, the time limit for compliance with the ordering paragraphs of Decision No. 77823 was extended to and including March 31, 1971.

Further hearing was held on October 15, 1971, at Lafayette before Examiner Gillanders.

At this hearing, defendant presented testimony and two exhibits which were received into evidence. A late-filed exhibit was presented on December 8, 1971.

Complainants presented 12 exhibits, among which was a customer survey which they had taken (Exhibit 16). Ten of the exhibits were offered and received into evidence. Two of the

exhibits were identified for the record and served as a basis for complainants' motion that defendant's customer survey not be received.

After argument by counsel, the presiding examiner granted complainants' motion and continued the matter to a date to be set in order to afford defendant time to appeal the examiner's ruling.

On October 29, 1971 Pacific filed a "Petition of The Pacific Telephone and Telegraph Company Appealing The Ruling of The Hearing Examiner Denying The Admissibility Of A Customer Opinion Survey".

On November 11, 1971 complainants filed an "Answer of Complainants To Appeal By Defendant To Ruling Of Hearing Examiner Denying The Admissibility Of Subscriber Survey".

We have reviewed the arguments of both parties regarding the examiner's ruling re the customer survey and find that the examiner's ruling was proper. Therefore, there is no need for further hearing.

Exhibit 8 presented by defendant is a document entitled "Analysis of Telephone Usage of Lafayette Customers for the Month of October, 1970".

Pacific's witness summarized the results shown in the exhibit as follows:

"Well, overall the study shows that a rather small minority, that is, about 20 percent of the subscribers, placed approximately 85 percent of the calls over the routes requested by the complainant.

"Another way of saying that is that on an average 80 percent of the subscribers in Lafayette placed only 15 percent of the messages over these particular routes, this includes 63 percent residence and 46 percent of the business who had no usage at all over these routes."

At the July 28, 1970 hearing, Pacific presented testimony that its proposed Optional Residential Telephone Service (ORTS)

for Lafayette would be offered by the end of 1972. It is Pacific's contention that ORTS would meet the complainants' calling requirements.

Counsel for complainants stated that the provision of ORTS would not satisfy the complaint as ORTS is not what they were seeking nor would ORTS supply any relief for the businessman.

On December 31, 1971, Pacific filed Advice Letter No. 10722 to provide ORTS in the Lafayette Exchange effective February 1, 1972. ORTS, therefore, is now available to Lafayette residential subscribers.

Based on the evidence adduced in this proceeding, it is apparent that ORTS gives those residential subscribers who utilize toll calling to nearby exchanges an opportunity to obtain a greater calling area by paying somewhat more on a flat rate basis than those subscribers who have no need for a greater calling area. Thus ORTS fairly places the burden of higher charges on those subscribers who avail themselves of this service with its greater calling area.

It is true, as contended by complainants, that ORTS does not provide relief for the business user. However, the record clearly reveals that some business users who have need for toll calling to the nearby exchanges have made use of Foreign Exchange Service (FEX) thus reducing their telephone bills. Again, like ORTS, FEX fairly places the burden of higher rates upon those who require additional service. The record also shows that numerous residential customers have availed themselves of FEX service.

This record shows that the presently existing exchange boundaries for the East Bay Area were established about 1920. Complainants argue that now some 50 years later it is time to "rethink" the archaic concepts surrounding the establishment of exchange boundaries.

This Commission has long been aware "...that an exchange is a relatively arbitrary territory defined for the purpose of rate application with little present day relationship to efficiency of operation, location of central offices, or measurement of toll distances." (Public Utilities Commission v. The Pacific Telephone and Telegraph Company, 66 CPUC 461.)

This record reveals that the present calling pattern of the Lafayette Exchange generally follows the rate plan in effect throughout the San Francisco-East Bay Extended Area. Each exchange within the area is able to call toll-free to adjacent exchanges plus those non-adjacent exchanges within eight toll rate miles.

Any other toll-free calling pattern would require a drastic overhaul of rates throughout the State. This record does not reveal a situation calling for such overhaul on a statewide basis.

Findings of Fact

The Commission finds that:

1. Pacific's Lafayette Exchange has a smaller local calling area than certain nearby exchanges shown in Exhibit 2.
2. The present calling pattern of the Lafayette Exchange generally follows the rate plan in effect throughout the San Francisco-East Bay Extended Area.
3. Optional Residential Telephone Service was not available in the Lafayette Exchange on May 6, 1970 when the complaint was filed.
4. Since February 1, 1972, ORTS has been available in the Lafayette Exchange.
5. Foreign Exchange Service is available to both residential and business subscribers.

Conclusions of Law

The Commission concludes that:

1. Lafayette's smaller local calling area does not constitute unfair discrimination.

2. Case No. 9057 should be dismissed as ORTS is now available to residential subscribers and FEX is available to both residential and business subscribers.

O R D E R

IT IS HEREBY ORDERED that the complaint in Case No. 9057 is dismissed without prejudice.

Dated at San Francisco, California, this 7th day of MARCH, 1972.

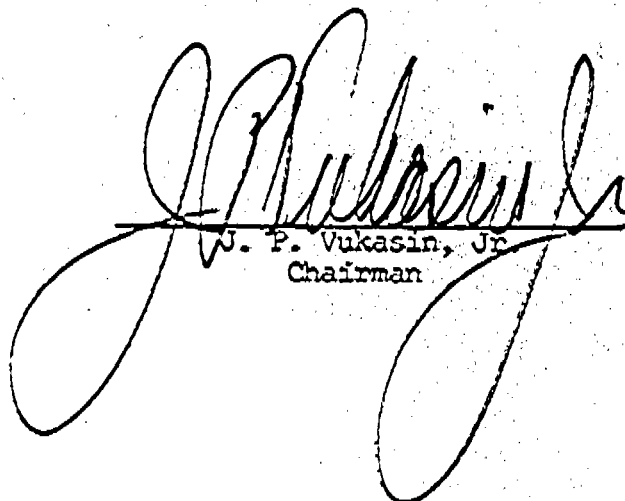
William J. ... Chairman
...
...
... Commissioners

I dissent
William J. ..., Chairman

J. P. VUKASIN, JR., CHAIRMAN, DISSENTING OPINION

I dissent.

I would authorize the extension of the local calling area for the Lafayette Exchange to include the Main Piedmont (Oakland area) and Alameda Exchanges. This would be consistent with the present calling pattern of subscribers in the Lafayette Exchange and would not do violence to the Bay Area rate plan. The establishment of telephone exchange boundaries should have a meaningful relationship to the community of interest of the subscribers.



J. P. Vukasin, Jr.
Chairman

San Francisco, California

March 7, 1972