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Decision No. 81011

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Complainants,)

vs.

Case No. 9057

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.)

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.
Cyril M. Saroyan, Attorney at Law, and Ermet Macario,
for the Commission staff.

O P I N I O N

This matter is on rehearing. It involves a complaint by subscribers or potential subscribers of telephone service in the Lafayette Exchange of The Pacific Telephone and Telegraph Company (Pacific). The Commission entered an interim order on October 14, 1970 (Decision No. 77823). A final order was entered on March 7, 1972 (Decision No. 79790). Rehearing was granted in Decision No. 79966, entered on April 18, 1972.

The rehearing was held before Examiner Donald B. Jarvis in Lafayette on September 20, 1972, and the matter was submitted on October 16, 1972.

The facts, chronology, and disposition of legal questions occurring prior to prehearing are properly set forth in Decision No. 79790 and need not be repeated. Complainants filed a petition seeking a Proposed Report on rehearing. The Commission is of the opinion and finds that a Proposed Report is not warranted at this juncture of the proceeding. The Petition for Proposed Report is denied.

At the rehearing, additional evidence was presented by complainants, Pacific, and the Commission staff (staff).

Complainants produced witnesses who testified, generally that Lafayette was substantially similar to the neighboring communities of Orinda and Moraga; that Orinda and Moraga telephone subscribers had access to more telephones at the same basic rate.

Pacific presented one witness who, primarily, updated statistics given at the previous hearings.

The staff, which had filed an appearance during the prior hearings but presented no evidence, called as a witness a staff senior utilities engineer. The staff engineer recommended that the Commission deny relief to the complainants. He gave four reasons for his recommendation: (1) Lafayette does not receive discriminatory rate treatment by Pacific. (2) Granting the requested relief would violate the uniform telephone rate and calling pattern in the Bay Area. (3) If the requested relief were granted the loss of revenue and additional construction costs which would be incurred by Pacific would have to be borne by other telephone customers. (4) Lafayette customers who have greater calling needs to communities beyond the present local calling area are adequately taken care of by ORTS, which provides for compensatory charges and does not shift the costs to other customers.

The staff engineer testified that in the Los Angeles extended area and the San Francisco-East Bay extended area each exchange has within its toll free calling area contiguous exchanges

within the extended area and noncontiguous exchanges within the extended area within eight toll miles. The staff engineer indicated that, while there might be an occasional variation in the uniform rate and calling area plan for the San Francisco-East Bay extended area,^{1/} he was of the opinion that no changes should be made without considering the impact on all of the exchanges in the area. The staff engineer also testified that, in his opinion, the number of telephones and area in square miles which Lafayette subscribers could dial at the basic rate was reasonable with respect to all of the exchanges within the San Francisco-East Bay extended area.

The Commission has considered the entire record in this proceeding in the light of the principles hereinafter set forth.

The toll-free dialing area for the Lafayette Exchange is part of the rate structure for the San Francisco-East Bay extended area which was found to be reasonable in previous decisions of the Commission. Therefore, if any relief is warranted herein it may be prospective only. (Fremont Customers v P. T. & T. Co., 68 CPUC 203, 204-05.)

Absent a showing of illegal discrimination or special circumstances, the Commission does not usually adjust exchange rates or dialing areas outside of general rate proceedings unless some provision is made to make up the loss in revenue occasioned by such action. (Fremont Customers v P. T. & T. Co., supra, 68 CPUC 203, 217;

^{1/} For example, in Pac. Tel. & Tel. Co., 58 CPUC 639, the Commission ordered extended service between Concord, Walnut Creek, and Martinez with an additional charge for basic service for customers in those exchanges. Concord and Walnut Creek are in the San Francisco-East Bay extended area. Thereafter, in a subsequent statewide rate proceeding, the basic rate for all exchanges in the San Francisco-East Bay extended area was standardized. Thus, customers in Concord and Walnut Creek may dial Martinez, which is in their extended calling area, at the basic rate. Customers in Martinez, which is outside the San Francisco-East Bay extended area, pay a different and higher rate to call within their extended service area.

Application of P.T.&T. Co., 63 CPUC 335, 342.) This is because of the way in which rates are established. "It appears that in telephone rate proceedings in California the general approach employed by the commission, and followed in the present case, is to determine with respect to a 'test period' (1) the rate base of the utility, i.e., value of the property devoted to public use, (2) gross operating revenues, and (3) costs and expenses allowed for rate-making purposes, resulting in (4) net revenues produced, sometimes termed 'results of operations.' Then, by determining the fair and reasonable rate of return to be fixed or allowed the utility upon its rate base, and comparing the net revenue which would be achieved at that rate with the net revenue of the test period, the commission determines whether and how much the utility's rates and charges should be raised or lowered." (Pacific Telephone & Tel. Co. v Public Utilities Comm., 62 Cal 2d 634, 644-45.) Complainants litigated this matter solely on the basis of unfair discrimination. They contend that, because of the alleged discrimination, they are entitled to a greater calling area at the basic rate for the San Francisco-East Bay extended area.

The material issue presented herein is whether Pacific unfairly discriminated against the customers in the Lafayette exchange by establishing and maintaining the present dialing area which those customers may call without extra charge.

Most of the controversy herein stems from the basis of comparison from which it is concluded that unfair discrimination does or does not exist. Complainants' case rests upon a comparison with the neighboring exchanges of Orinda and Moraga. Pacific and the staff take the position that to determine whether unfair discrimination exists it is necessary to look to the entire San Francisco-East Bay extended area. We find the basis of comparison urged by Pacific, and the staff to be the correct one. Pacific's rates are presently set by exchanges and extended areas because a significant element in fixing the rates is the cost of service within the area. (Pac. Tel. & Tel. Co., 66 CPUC 419, 461.) In establishing extended areas the

Commission considers "the various rate structures proposed, characteristics of the areas, indicated area earnings, the problem of cross-boundary rate disparity and other factors". (Pac. Tel. & Tel. Co., supra, 66 CPUC at p. 465.) Obviously, there must be differences within and among extended areas. (Wood v Public Utilities Commission, 4 Cal 3d 288, 295 fn. 2.) In resolving questions of alleged discrimination within an extended area we must consider not only specific other exchanges focused upon but the entire area.

"Whenever a line must be drawn, there is little that separates the cases closest to it on either side". (Wood v Public Utilities Commission, supra, at p. 296.) The Lafayette Exchange is on the perimeter of the San Francisco East Bay extended area. The Martinez Exchange which is adjacent to the north is outside the extended area. As indicated, the rate structure for the San Francisco-East Bay extended area provides for toll-free calling to contiguous exchanges within the extended area. The Orinda and Moraga Exchanges are west of the Lafayette Exchange and closer to the more populous exchanges in the extended area. Thus, Orinda and Moraga have more main telephones in their toll-free dialing areas. However, throughout the extended area the number of telephones within exchanges, the number of telephones which may be called toll free, and the square miles available for toll-free dialing varies. As of June 30, 1972, the range of variances was as follows:

	<u>High</u>		<u>Low</u>	
Main Telephones	San Francisco-Central	253,013	Woodside	3,367
Main Telephones Available	San Francisco-Central	609,548	Fremont-Main	53,670
Square Miles Available	San Jose-West	602	Millbrae	69

The Lafayette Exchange with 7,730 main telephones and 95,786 main telephones available, and 183 square miles available for toll-free calling is within the range of variance within the extended area.

As indicated, the rates and toll-free dialing areas in an extended area are based on various factors. "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 CPUC 333, 334.)" (Fremont Customers v P. T. & T. Co., supra, 68 CPUC at p. 212.) The Commission has authorized extended areas in an attempt to correct rates based on arbitrary boundaries and archaic rate-making concepts. (Pac. Tel. & Tel. Co., supra, 66 CPUC at pp. 461, 462.) If complainants are permitted to isolate and rely on some factors which they select to show alleged discrimination without regard to all of the factors actually used by the Commission, extended area rates would be destroyed. Since some similar characteristics can usually be found in contiguous exchanges, all the exchanges within an extended area could, by leapfrogging, compel service without regard to the cost thereof or the revenue impact on Pacific or customers in other exchanges or areas.

The essence of the complaint is that the basis for rate making in the San Francisco-East Bay extended area does not utilize factors which complainants deem to be most significant, thereby resulting in unfair discrimination. These factors are the number of telephones within the exchange, the number of telephones available for toll-free dialing, the geographical area available for toll-free dialing, and community of interest factors. Complainants ignore two factors used in rate making: Cost of service and revenue generated from the service to provide for Pacific's expenses in operating the service and a reasonable rate of return thereon. The toll-free dialing area for the Lafayette Exchange is part of the rate structure for the San Francisco-East Bay extended area. The Lafayette toll-free dialing area was delineated by using the general principles used for establishing toll-free dialing areas within the San Francisco-East Bay extended area.

The record indicates that Pacific, in Application No. 53587, a statewide rate increase application presently filed with the Commission, proposes to eliminate, statewide, certain multi-message unit and toll routes. The proposal, if authorized by the Commission, would have the effect of enlarging the Lafayette Exchange's toll-free dialing area to include the Martinez Exchange and the Berkeley and Piedmont Main Dialing Areas of the East Bay Exchange. However, if the proposal is authorized provision would have to be made for Pacific to recover the revenues lost thereunder. This proposal is not determinative of any issue in this proceeding. If illegal discrimination had been found to exist, complainants would be entitled to immediate relief herein.

No other points require discussion. Decision No. 79790 is modified by adding thereto the following additional findings of fact:

6. Pacific's rates are presently set by exchanges and extended areas. When the Commission authorizes the establishment of an extended area it considers the various rate structures of the proposed component exchanges, characteristics of the areas, indicated area earnings, problems of cross boundary rate disparity, and other relevant factors.

7. Two factors in rate making are cost of service and revenues to be generated from the area to which the rates are to be applied. These factors were among the factors considered when the Commission authorized the toll-free dialing areas for the San Francisco-East Bay extended area, which includes the Lafayette Exchange.

8. The basis for comparison for determining whether or not Lafayette customers suffer illegal discrimination with respect to their toll-free dialing area is the San Francisco-East Bay extended area.

9. The Lafayette Exchange is on the perimeter of the San Francisco-East Bay extended area. The Martinez Exchange which is adjacent to the north is outside the extended area. The rate structure

for the San Francisco-East Bay extended area provides for toll-free calling to contiguous exchanges and to noncontiguous areas within eight toll miles. The Orinda and Moraga Exchanges are west of the Lafayette Exchange and closer to the more populous exchanges in the extended area. Orinda and Moraga have more main telephones in their toll-free dialing areas than the Lafayette Exchange.

10. As of June 30, 1972, the range of variances for toll-free dialing available within the San Francisco-East Bay extended area was as follows:

	<u>High</u>		<u>Low</u>	
Main Telephones	San Francisco-Central	253,013	Woodside	3,367
Main Telephones Available	San Francisco-Central	609,548	Fremont-Main	53,670
Square Miles Available	San Jose-West	602	Millbrae	69

11. As of June 30, 1972, customers in the Lafayette Exchange had available to them for toll-free dialing 7,730 main telephones within the exchange, 95,726 main telephones, and 183 square miles.

12. The toll-free dialing area was delineated by using the general principles used for establishing toll-free dialing areas within the San Francisco-East Bay extended area.

13. The community of interest factor is one which is considered in determining toll-free dialing areas. This factor is derived in one direction as between two points by dividing the total number of calls for a given period by the total number of subscribers using the service. The result shows the average number of telephone calls for each subscriber for the time period considered over the route in the direction of the points involved. This average is called the community of interest factor.

Since the community of interest factor can be influenced by the activity of a minority of customers, the weight which may be given to it varies among proceedings.

14. In October 1970, the community of interest factor from the Lafayette Exchange to the Main-Piedmont Dialing Area of the East Bay Exchange was 4.5 for residence customers and 17.7 for business customers. During this period 21 percent of the residence subscribers placed 73 percent of the messages and accounted for 74 percent of the revenue spent. Thirty-three percent placed no messages. During said period 25 percent of the business subscribers placed 75 percent of the messages and accounted for 74 percent of the revenue spent. Nineteen percent placed no messages.

15. In October 1970, the community of interest factor from the Lafayette Exchange to the Berkeley Dialing Area of the East Bay Exchange was 2.7 for residence customers and 6.4 for business customers. During this period 22 percent of the residence subscribers placed 83 percent of the messages and accounted for 84 percent of the revenue spent. Fifty-one percent placed no messages. During said period 21 percent of the business subscribers placed 78 percent of the messages and accounted for 78 percent of the revenue spent. Thirty-five percent placed no messages.

16. In October 1970, the community of interest factor from the Lafayette Exchange to the Fruitvale Dialing Area of the East Bay Exchange was .98 for residence customers and 3.0 for business customers. During this period 12 percent of the residence subscribers placed 77 percent of the messages and accounted for 79 percent of the revenue spent. Seventy-two percent placed no messages. During said period 22 percent of the business subscribers placed 85 percent of the messages and accounted for 86 percent of the revenue spent. Fifty-two percent placed no messages.

17. In October 1970, the community of interest factor from the Lafayette Exchange to the Alameda Dialing Area of the East Bay Exchange was .4 for residence customers and .86 for business customers. During this period 12 percent of the residence subscribers placed 100 percent of the messages and accounted for 100 percent of the revenue spent. Eighty-eight percent placed no messages. During said period

19.5 percent of the business subscribers placed 100 percent of the messages and accounted for 100 percent of the revenue spent. Eighty and one-half percent placed no messages.

18. In October 1970, the community of interest factor from the Lafayette Exchange to the Martinez Exchange was .7 for residence customers and 4.7 for business customers. During this period 27 percent of the residence subscribers placed 100 percent of the messages and accounted for 100 percent of the revenue spent. Seventy-three percent placed no messages. During said period 21 percent of the business subscribers placed 82 percent of the messages and accounted for 83 percent of the revenue spent. Forty-two percent placed no messages.

19. In October 1970, the community of interest factor from the Lafayette Exchange to the Concord Exchange was 4.5 for residence customers and 22.2 for business customers. During this period 22 percent of the residence subscribers placed 69 percent of the messages and accounted for 71 percent of the revenue spent. Twenty-seven percent placed no messages. During said period 20 percent of the business subscribers placed 70 percent of the messages and accounted for 70 percent of the revenue spent. Fourteen percent placed no messages.

20. There is nothing in the record relating to the component rate-making factor of community of interest which, alone or in combination with other evidence, would justify a finding that unfair or illegal discrimination resulted from the delineation of the Lafayette Exchange Toll-Free Dialing Area in applying the general principles used for establishing toll-free dialing areas within the San Francisco-East Bay extended area.

Except as modified herein, Decision No. 79790 is hereby affirmed.

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

Dated at San Francisco, California, this 30th day of JANUARY, 1973.

President

William J. Sturgeon

Commissioners

[Signature]
[Signature]

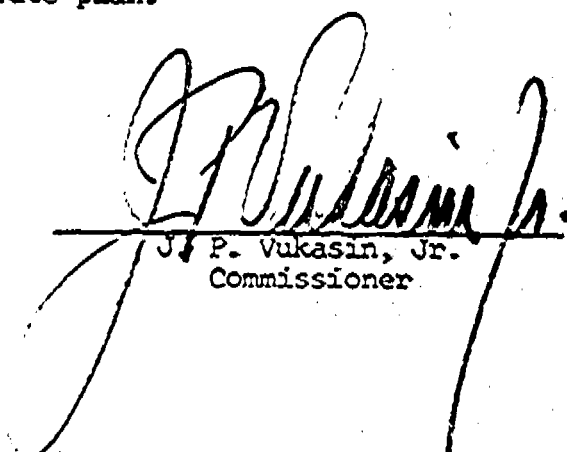
Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

I Instruct
[Signature], Commissioner

COMMISSIONER J. P. VUKASIN, JR., dissenting.

I dissent.

This opinion fails to cure the defects in Decision No. 79790 as set forth in my dissent to that decision. The telephone subscribers of the Lafayette Exchange should have the right to call Main-Piedmont (Oakland Area) and Alameda Exchanges as local calls. The establishment of such a local calling area for the Lafayette Exchange would be consistent with the calling pattern of these subscribers and would not do violence to the Bay Area rate plan.



J. P. Vukasin, Jr.
Commissioner

San Francisco, California
January 30, 1973