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ORIGINAL

Decision No. 83158

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE PACIFIC TELEPHONE
AND TELEGRAPH COMPANY, a corporation,
for authority to carry out the terms
and conditions of agreements with
certain customers covering the offer-
ing of 770A Dial Private Branch
Exchange Service.

Application No. 54881
(Filed May 16, 1974)

Roger P. Downes, Attorney at Law, for The Pacific
Telephone and Telegraph Company, applicant.

David L. Wilner, for Rayne Communications,
protestant.

John Bakalian and David L. Wilner, for the Consumers
Lobby Against Monopolies, interested party.

Ermet J. Macario, for the Commission staff.

INTERIM OPINION AND ORDER

Applicant initiated 770A PBX service under contracts filed with the Commission (pursuant to General Order No. 96-A, § X.A.) in February 1972. Applicant on September 20, 1972 filed an advice letter proposing rates for this service. The matter was protested and after hearing the tariff was permanently suspended on July 9, 1974. (Decision No. 83125 in Case No. 9469.) A tentative new proposal has been formulated.

Pending final order in that proceeding, applicant continued to render service pursuant to individual contracts. It attempted to complete all of its negotiations and file all individual contracts with the Commission prior to May 1, 1974 for approval by Commission resolution. The contracts with 36 customers could not be completed by the deadline, and, consequently, this application was filed. Pending approval of the contracts, each of the 36 customers is without PBX service.

On April 24, 1974, the Commission received a telegram of protest from David Wilner of Rayne Communications which is quoted in full as follows:

"Commissioner William Symons
California Public Utilities Commission
405 Golden Gate Ave.
San Francisco, CA 94102

"We have learned that Pacific Telephone Company intends [sic] to submit an advise [sic] letter that would provide tariffs for the #770A dial P.B.X. The 770A equipped with 300 Series features is presently provided under special offering contracts on file with the Commission. It seems to us that if Pacific Telephone plans to file a tariff for this equipment and this filing would increase the cost each customer should be so advised. We have talk [sic] with Mr. Cahill of your staff regarding the 812A matter. This situation is similar nature [sic], and is a clear cut case where the telephone company agreed to furnish equipment at prices that they could not meet. In this case the prices quoted were 300 Series tariff. When the advice letter was submitted to the Commission they excluded the 300 Series feature and used a new pricing concept. We would suggest the Commission accept no new contract for the above mentioned equipment in view of the facts we have outlined. Rayne Communications David Wilner."

It is protestant's claim that the applicant's use of special offering contracts to render service is inherently misleading if there is a substantial difference between the contract price and the proposed tariff price under which service will actually be rendered. Protestant claims that applicant has equipment already available under tariff which is a full and complete substitute for the 770A equipment. He claims that applicant's marketing personnel have unduly promoted the 770A because of the uncertainty over its price. Pacific denies these allegations.

A prehearing conference was held on July 3, 1974 before Examiner Gilman, at which time a stipulation was reached requiring notice of certain matters to the 36 customers affected. It was

agreed that if the Commission adopted the stipulated order set forth below, protestants would have no objection to an interim order authorizing applicant to perform its obligations under the 36 contracts involved herein.

We find that:

1. The notice stipulated herein will tend to counteract any material misinformation concerning future rates which may have influenced any of the 36 customers to contract for a 770A PBX concerned by this proceeding.

2. Ordering Paragraph 5 is necessary to preserve the rights of the parties herein.

We conclude that, subject to the conditions stated in the ordering paragraphs below, applicant should be authorized to effectuate the 36 contracts referred to in Exhibit B of the application.

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company shall, on or before July 19, 1974, notify, in writing, each person mentioned in Appendix B to the application of the following matters:

- a. A comparative pricing of that person's installation under the contract offering and under the tariff proposal now intended by applicant.
- b. That applicant offers other 300 Series PBX devices available under tariff rates; that the rates for such devices are now subject to a proceeding pending before this Commission; and that applicant has asked for a 15 percent increase in such rates.
- c. If, in the opinion of applicant, these alternative devices or any of them do not fit the needs of the individual customer, applicant shall so inform that customer.

2. Copies of each such writing shall be provided to protestants and to the staff representative herein.

3. If protestants elect to reply to any communications to any individual customer, they shall supply copies of such replies to applicant and to the staff representative.

4. Ten days after mailing or five days after delivery of the notice required herein to a specified customer, whichever occurs first, applicant may perform the obligations of its contract with that customer.

5. Applicant shall notify protestant and the staff of this Commission, in writing, at least twenty days before assessing any termination charge pursuant to paragraph 3(b) of said contract against any of the customers listed in Appendix B of the application.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th
day of JULY 7, 1974.

James L. Stanger
President
William J. Simon
John J. Stanger
James L. Stanger
Commissioners