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Decision No. 84296

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RAYNE COMMUNICATIONS
(David L. Wilner, Sole Proprietor),
Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a Corporation,
Defendant.

Case No. 9732
(Filed May 8, 1974)

LEVI STRAUSS & CO., a corporation,
vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation.

Case No. 9775
(Filed August 8, 1974)

Investigation on the Commission's
own motion into the rates, rules,
charges, operations, practices,
contracts, services and facilities
of the PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a California
corporation, as such relate to the
812A dial PBX System.

Case No. 9791
(Filed September 11, 1974)

James Murray, Attorney at Law, for Rayne
Communications, complainant in Case No. 9732.
Roger P. Downes, Attorney at Law, for The Pacific
Telephone and Telegraph Company, defendant in
Case No. 9732 and respondent in Case No. 9791.
Joel Efron, for Scott Buttner Communications, Inc.,
and Heller, Ehrman, White & McAuliffe, by Paul
Alexander, Attorney at Law, for Levi Strauss
& Company, interested parties.
James T. Quinn, Attorney at Law, and Ermet Macario,
for the Commission staff.

O P I N I O N

Hearing was held on these matters before Examiner Coffey on November 4 and 7, 1974 in San Francisco. The matters were submitted on January 15, 1975 upon the receipt of the transcripts. Cases Nos. 9732 and 9775, complaints against Pacific Telephone and Telegraph Company (Pacific) were consolidated for hearing with Case No. 9791.

Proceedings

On January 28, 1974, Pacific filed an advice letter regarding two new dial PBX systems, the 812A and the TE 400. On February 28, 1974 the tariff schedules filed in conjunction with the advice letter became effective. On May 8, 1974 Rayne Communications (Rayne) filed Case No. 9732 against Pacific regarding rates for the 812A. Rayne asserted that it is a consultant for several Pacific subscribers and is engaged in preparing systems to utilize the 812A. The complaint charged that prior to filing its advice letter, Pacific had misrepresented to Rayne and its clients the rates and charges applicable to the 812A, thereby inducing an end to negotiations with Pacific competitors regarding the same type of equipment. As ultimately filed with the advice letter, the 812A tariff was said to differ markedly from the prior Pacific representations. Subsequently, on August 8, 1974, Case No. 9775 was filed by Levi Strauss & Co. (Strauss), a large subscriber, charging similar misrepresentations of 812A rates.

Relief Requested

Rayne seeks an order suspending the application of the tariffs effective on February 28, 1974, regarding the 812A and the TE 400 dial PBX systems.

Strauss prays:

1. That consideration of tariffs governing the 812A PBX service and installation rates be reopened by this Commission and that hearings be set for further consideration of said tariff rates by this Commission;
2. That said tariffs governing the 812A PBX service and installation be amended in accordance with the evidence presented at said hearings;
3. For a refund of any amounts heretofore paid by Strauss to Pacific in excess of tariff rates which this Commission finds to be just and reasonable; and
4. For such other and further relief as the Commission may deem just and proper.

Commission Investigation

Since the above complaints relate to a competitive area of the telephone industry where significant advances in PBX dialing recently have taken place, the Commission instituted on its own motion an investigation into the rates, rules, charges, operations, practices, contracts, services, and facilities of Pacific relating to the 812A dial PBX system.

Staff Presentation

A staff witness presented the results of his investigation relating to the 812A dial PBX system, his conclusions, and his recommendations which are summarized hereafter.

General

The 812A dial PBX is a newly developed Western Electric manufactured PBX. It has cross-bar switching with solid state common control. It can be equipped for up to 2,000 customer station lines.

The tariff covering the offering of 812A service was filed on January 28, 1974 and became effective February 28, 1974. The tariff provides for so-called provisional rates and charges, i.e., the rates and charges expire on August 28, 1975, unless sooner cancelled, changed, or extended. Advice Letter No. 11240 under which this filing was made explains that the provisional time period will permit tracking of actual costs. Pacific states it will file permanent rates based on these actual costs.

Developments

The development, design, and fabrication of the 812A PBX by Pacific took place over a number of years prior to late 1973. Beginning in 1971 or 1972, Pacific personnel became sufficiently informed as to the 812A to discuss it as a possible serving vehicle with customers.

Up to January 1974, when the 812A tariff was filed, Pacific's field personnel had discussed with customers provision of this equipment for some 35 locations. Rate quotations were made to these customers on a number of different bases. These ranged from Series 100 PBX rates in Part I of Tariff Schedule 12-T to Customer Location, Centrex II rates, in Schedule No. 121-T. Generally the quotations were lower than the rates and charges applicable under the filed 812A tariff which became effective on February 28, 1974.

Customers Not Offered Contracts

Pacific discussed 812A service with 25 customers to whom it did not offer a contract. All but five customers have chosen other service arrangements. Four of the five now have 812A service and one is not due for service until late 1975.

Customers Offered Contracts

Pacific offered contracts for service to 10 potential 812A customers. It appears that it was Pacific's intention to submit accepted contracts to the Commission for authorization pursuant to General Order No. 96-A, Section X. However, none of the contracts were submitted to the Commission for approval. Of these 10, three customers have rejected 812A service, four now have service, and three are scheduled for service in January 1975 or later.

At some time after the contracts were offered to these customers they were informed by Pacific that the rates for 812A service would be different and higher than contemplated under the contracts. This notification took place between December 1973 and March 1974.

Some or all of these customers, as evidenced by the complaints in Cases Nos. 9732 and 9775, would then have sought alternate equipment either from Pacific or from private suppliers. However, because of their service needs and because of the many months lead time required to obtain and install a dial PBX, it appears necessary for most if not all of these customers to continue with the 812A installation.

In recognition of this problem Pacific made a "special offer" to these customers. The "special offers" differed somewhat depending on the customer's circumstance. In brief, if the customer wished to change to other equipment after an interim period of 812A service, Pacific would not charge installation or basic termination charges and would charge the contract monthly rates rather than tariff rates.

Staff Conclusions

Pacific's actions concerning the offering of 812A dial PBX service have been improper in the following respects:

1. Service and rate offers were made to customers without adequate basis, such as a filed tariff.
2. Contracts for service were offered to customers and not processed (i.e., the contracts were not submitted to the Commission for authorization per General Order No. 96-A).
3. Offers were made to charge other than filed rates and charges in violation of Code Section 453.
4. The Commission and its staff were not informed, at the time of or prior to the filing of Advice Letter No. 11240, of the extensive 812A history. Such information as was given to the staff was presented after the 812A tariff became effective on February 28, 1974.

Staff Recommendations

The staff recommends as follows:

1. That for those customers who ordered 812A service prior to February 28, 1974, and for whom the installation is either complete or is scheduled to be completed by the end of 1975, Pacific be ordered to charge the lesser installation charge and the lesser basic termination charge of:
 - a. Dial, Series 300, Cabinet Type PBX Service, in Schedule 12-T, Section I or Centrex II, Customer Location, Cabinet Type Service, in Schedule 121-T, whichever is appropriate for the particular customer, or
 - b. 812A Dial PBX Service of Schedule 12-T, Section XIV.
2. That filed 812A monthly rates of Schedule 12-T, Section XIV be ordered charged from the date of service establishment.

3. That if any of this group of customers, elects within 30 days after notification by Pacific to terminate 812A service by the end of 1975 and to obtain service by means of a different serving vehicle, the customer shall not be charged an installation or basic termination charge in connection with the 812A installation.
4. That for 812A installations, Pacific be ordered to record in its operating revenue accounts customer billing calculated on the basis of Schedule 12-T, Section XIV, (the effective 812A tariff), and with respect to the differences between such billing and the lesser amounts actually billed under the special arrangements, recommended in 1 and 3 above, such differences be charged to nonoperating accounts.

Acceptance of Staff Recommendations

Rayne requested that the Commission accept the staff's recommendations with reference to charging the lesser installation and basic termination charges.

Strauss, stating it believed the staff recommendations to be fair and reasonable, supported the staff recommendations.

Pacific stated that it was its intention to put customers who may have been misled in the same position they were in prior to ordering 812A service and that the staff's solution is a second chance for the customers to decide.

Findings

1. Before the tariff for the 812A dial PBX was filed, Pacific offered to provide 812A service to the customers listed in Attachments B and C of Exhibit No. 1 at rates or charges substantially less than those applicable under the ultimately filed tariff.
2. A number of the customers accepted Pacific's offer.

3. When the higher rates or charges became known to customers, some cancelled their orders for the 812A and some did not. The customers that did not cancel their orders did so because time did not permit them to obtain alternate equipment or because of other reasons.

4. Those customers that did not cancel their 812A orders should not be burdened with the additional charges that resulted because of the errors in Pacific's offers.

5. It is reasonable that those customers that did not cancel their 812A orders, insofar as possible, should now have a choice as to the equipment and related rates and charges that they prefer.

6. Cancelling 812A installation and basic termination charges for the customers that wish to change service is a reasonable way to permit a choice without undue penalty to customers.

7. Losses in revenue to Pacific that may result from the order herein should not be borne by ratepayers.

8. It is reasonable that Pacific be required to record operating revenues equal to those applicable under the 812A tariffs and to record in other than operating accounts any revenue deficiencies that may result as a reasonable method for accomplishing this result.

We conclude that complainants' request should be denied except Pacific should be required to charge for 812A dial PBX service as hereafter ordered.

O R D E R

IT IS ORDERED that:

1. The relief requested in Case No. 9732 and Case No. 9775 is denied except as hereafter provided.

2. The Pacific Telephone and Telegraph Company shall charge those customers who ordered 812A dial PBX service prior to February 28, 1974, and for whom the installation is either complete or is scheduled to be completed by the end of 1975, the lesser installation charge and the lesser basic termination charge of either (1) Schedule Cal. P.U.C. No. 12-T, Section I, Dial PBX Service, Series 300, Cabinet Type, if customer does not have centrex features, or Schedule Cal. P.U.C. No. 121-T, Centrex II Service, customer location, Cabinet Type, if customer does have centrex features, or (2) Schedule Cal. P.U.C. No. 12-T, Section XIV, 812A Dial PBX System Service.

3. The Pacific Telephone and Telegraph Company, within thirty days of the effective date of this order, shall notify each of those customers specified in Ordering Paragraph 2, that they may elect, in writing within ninety days after said notification, to terminate 812A dial PBX service no later than December 31, 1975, and obtain service by means of different equipment, at no charge to the customer for installation, basic termination, or other nonrecurring charges for the 812A dial PBX installation.

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4. The Pacific Telephone and Telegraph Company with respect to those customers specified in Ordering Paragraph 2 and for those customers who choose to make the election provided in Ordering Paragraph 3, shall record in its operating revenue accounts customer billing calculated in accordance with the tariffs in Schedule Cal. P.U.C. No. 12-T, Section XIV, 812A Dial PBX System. The differences between such accounting and the lesser amounts actually billed customers pursuant to the orders in Ordering Paragraphs 2 and 3, shall be recorded in other than operating accounts.

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

Dated at San Francisco, California, this 8th
day of APRIL, 1975.

Vernon L. L...
President
William J. ...
...
Leonard ...
Commissioners

Commissioner ROBERT BATNOVICH

Present but not participating.