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Decision No. 85085

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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE PACIFIC TELEPHONE  
AND TELEGRAPH COMPANY, a corporation,  
for a tariff for 770 Package II Dial  
Private Branch Exchange Service.

Application No. 55276

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  
offering of 770A Dial Private Branch  
Exchange Service.

Application No. 54881

CONSUMERS LOBBY AGAINST MONOPOLIES,  
DAVID L. WILNER, In Pro Per,

Complainant,

vs.

THE PACIFIC TELEPHONE & TELEGRAPH  
COMPANY, a corporation,

Defendant.

Case No. 9794

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 770A dial PSX  
System.

Case No. 9838

Roger P. Downes, Attorney at Law, for The Pacific Telephone and Telegraph Company, applicant in A.55276 and A.54881, defendant in C.9794, and respondent in C.9838.

David L. Wilner and John Bakalian, Attorney at Law, for David L. Wilner, Consumers Lobby Against Monopolies, and Rayne Communications, protestants in A.55276 and A.54881, complainants in C.9794, and interested parties in C.9838.

Joel Effron, for Scott Buttner Communications, Inc., intervenor.

Richard B. Fuller, for Moore Business Forms, Inc., interested party.

Ira R. Alderson, Jr., Attorney at Law, and Ermet Macario, for the Commission staff.

#### O P I N I O N

Application No. 54881 filed May 16, 1974 concerns certain contracts for 770A<sup>1/</sup> service. A prehearing conference was held in that matter on July 3, 1974, and on July 16, 1974 we issued an interim opinion and order requiring the applicant, The Pacific Telephone and Telegraph Company (Pacific), to give certain notification to its customers, and further requiring Pacific to notify the protestant and the Commission staff, in writing, at least 20 days before assessing any termination charge pursuant to provisions in the contracts.

Application No. 55276 is Pacific's application for an initial tariff for the 770A service. Since that application, if granted, would result in a rate increase over existing contract rates, it was, by previous Commission order, consolidated with Application No. 55214 (requesting general offset relief because of increased wage, salary, and associated expenses) and Case No. 9832 (an order instituting investigation into Pacific's rates, tolls,

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<sup>1/</sup> The 770A is a type of PBX switchboard equipment supplied by Pacific.

rules, charges, operations, costs, separations, intercompany settlements, contracts, service, and facilities). Application No. 55276 was subsequently severed from those proceedings and joined to all other pending matters involving 770A service.

The complaint in Case No. 9794 asserts that there were several major defects in Pacific's Advice Letter 11372, filed to establish rates for 770A service. The principal defect asserted concerns the alleged failure to disclose a proposed increase in rates.

The investigation (Case No. 9838) was originally intended as a general inquiry into all matters concerning the 770A. The staff, however, decided to limit its efforts to one issue, the reliability and serviceability of the equipment in question. The staff has taken the position that the 770A is so unreliable that it should be taken off the market.

Complainant Wilner moved for extraordinary interim relief on behalf of one 770A user, the Novus Division of National Semiconductor Corporation (National); the material portion of the motion is quoted below:

"The Complainant hereby [sic] requests the Commission to issue an interim Opinion and Order requiring the defendant, the Pacific Telephone and Telegraph Company (Pacific), to terminate 770A PBX Telephone Service used by National Semiconductor Corporation (National), and in its place, allow National to receive service by means of new equipment now under construction at National, and due to be operational during October of this year. Such termination should be performed at no charge for the 770A PBX installation, basic termination, or other non-recurring charges."

On June 6, 1975 an expedited hearing was held before Examiner Gilman in San Francisco to take evidence on the motion. An officer of National was called by complainants. He testified and was cross-examined concerning National's acquisition and use of the 770A PBX and alleged capacity problems with the 812 PBX system.

Movant claimed that this motion was a matter of urgency; therefore, the matter was heard on an expedited basis. Because of the allegation of irreparable injury to a consumer and the interim nature of the relief sought, Pacific has not yet been afforded an opportunity to present evidence on its own behalf.

Discussion

The motion should be denied. There is no evidentiary basis for a claim of injury. The evidence indicates that National had, from the beginning, looked on its 770A installation as a temporary measure and that it had at all times material herein contemplated its removal and payment of termination charges. National has had an 812 PBX system on order since before the signing of the contract for the 770A; this 812 installation, which should be completed in the fall, will supplant both the 770A at Novus Division and the 701 PBX now installed at National's principal office. Both National and Pacific are committed to the 812 installation which will take place regardless of whether defendant is ordered to refrain from collecting termination charges for removal of the 770A system. ✓

The witness indicated that the 812 is in itself a temporary installation and that National has committed itself to a Centrex system whenever the serving central office is converted to E.S.S.

The record does not show that installation of the 812 could or would have been expedited even if National had been aware of its true capacity. The record does not show that the 701 system could have been modified to accommodate the needs of the Novus Division pending the 812 installation. In short, there has been no showing that National's interim communication needs could have been met without incurring a termination charge or that knowledge of the 812's capacity could have enabled National to avoid any costs.

Thus we cannot conclude that the question of the 812's capacity was material to National's decision to use the 770A on a temporary basis.

Finding and Conclusion

We cannot find that National Semiconductor Corporation would have been able to avoid termination charges if it had known the true capacity of the 812 PBX system. We conclude that any misunderstanding or misinformation on the subject of 812 capacity is not material to the question of whether National should pay termination charges for the removal of the 770A PBX and that National is not entitled to the relief requested.




A. 55276 et al. ltc

O R D E R

IT IS ORDERED that the motion requesting that National Semiconductor Corporation be excused from paying certain tariff charges is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 12<sup>th</sup> day of NOVEMBER, 1975.

  
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President  
  
  
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Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.