

RE/ltc *

ORIGINAL

Decision No. 85739

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GAETANO (DAN) SALVO,
Complainant,

vs.

PACIFIC TELEPHONE COMPANY,
Defendant.

Case No. 9981
(Filed September 26, 1975;
amended November 26, 1975)

Gaetano (Dan) Salvo, for himself,
complainant.
Michael Ritter, Attorney at Law,
for The Pacific Telephone and
Telegraph Company, defendant.

O P I N I O N

On March 24, 1974 complainant (Salvo) obtained new residential phone service from defendant (Pacific) at his new residence at 1228 North La Cienega Boulevard, Los Angeles. He had just moved from the South Bay Area. His new residence is outside the city limits of Los Angeles (LA) and Beverly Hills (BH) and is under the jurisdiction of the county of Los Angeles; Salvo's residence fronts on the east side of the street and is on the eastern border of Pacific's BH exchange approximately 40 feet west of the western border of the LA exchange. It is approximately centrally located in the BH exchange local calling area. Upon Salvo's request for service, Pacific, in compliance with its tariffs assigned his service to the BH exchange. The local calling area of this exchange covers seven of

the 14 districts in the LA exchange though it covers less than half of the LA exchange area, and does not extend to the downtown area. Salvo was unaware of this at the time service began and did not inquire of Pacific regarding his local calling area at the time he requested service. Nor did Pacific then advise Salvo that he could receive LA area service covering all 14 districts at foreign exchange rates (which are higher than basic rates). Had Salvo known of this service at the beginning, he would have selected it. About one year later after receiving larger bills than at his prior address without any major change in calling patterns, Salvo was advised by Pacific that changing from unlimited flat rate service to 30-call measured rate service might reduce his bills. This change was made though the desired effect was not realized. Salvo then analyzed his service and determined that the large bills were caused by frequent calls (about 25 percent of the total) to the LA exchange outside his local calling area. In August 1975 Salvo first learned that he could be provided with LA service at foreign exchange rates, and with the payment of the \$24.00 service connection charge in Pacific's tariffs. Salvo refused this service and brought this formal complaint.

Public hearing on this complaint was held on March 9, 1976 before Examiner Phillip E. Blecher. At the hearing, Pacific adduced the following pertinent facts:

Basic exchange rates are the same in the entire LA metropolitan area.

Square mileage is not a factor in determining calling areas for the purpose of setting rates.

For the period of April through September 1975, had Salvo been on foreign exchange rates, he would have had a maximum total saving of \$5.11 compared to the 30-call message rate service. Since

there is no record of calls within the local calling area, there is no way of determining if any of the local calls made then would be outside the LA exchange local calling area. If this were the case, his bill might have been higher under the LA foreign exchange rates since the LA exchange does not include within its local area various areas within the BH exchange.

Salvo refused to discuss this matter with Pacific unless Pacific agreed it would furnish LA exchange service at BH exchange rates. This would have been a violation of Pacific's existing tariffs.

Discussion

Salvo maintains:

1. The existing zone rate structure is disadvantageous, discriminatory, and disparate under Section 45 and 728 of the Public Utilities Code. It should be changed to a flat rate time and distance formula, adjusted for population density similar to that used for long distance phoning.

Since the basic rates are the same within the entire area for like service, they are not discriminatory. Because there was no evidence adduced to support or implement these proposals, Salvo has not sustained his burden of proof and this will not be considered further.

2. The rate at the exchange border is discriminatory in comparison to LA exchange subscribers 40 feet east.

This is not the fact since the basic rates for each exchange are the same. Additionally, there must necessarily be a border area in any zoning system. If the LA exchange subscribers 40 feet east of Salvo want the same treatment though in the opposite direction and it were granted to all, it would mark the end of any comprehensive plan of phone rate regulation since the tariffs would be meaningless.

3. Pacific should allow him the option of selecting the service most suitable for him.

Salvo has that option, though at the higher foreign exchange rate. This is his primary objection. Mere dissatisfaction with the existing tariff structure does not mean discrimination. Any reasonable subscriber should inquire as to all available services at the inception. Salvo did not. Pacific has the duty to advise customers of all available services, particularly in the case of customers on exchange borders. It did not. But the fact that neither party fulfilled its duty does not make the rates or structure unreasonable or discriminatory. Conversely, granting Salvo's request for foreign exchange service at local rates might discriminate in Salvo's favor against the other exchange border customers. In any event, a difference in rates charged by a public utility is not unlawful, if reasonable. (Live Oak Water Users' Association v Railroad Commission (1923) 192 C 132.) Since there is no evidence of unreasonableness, the rates in question are lawful. However, since there would have been no service connection charge for the LA exchange at the inception of service had Salvo known of its availability then and since Pacific did not advise Salvo of its availability, we shall require Pacific to switch Salvo to the LA exchange, at foreign exchange rates, without any service connection charge. All other requests for relief shall be denied.

Findings

1. Pacific's existing zoning structure is not discriminatory nor unreasonable.

2. To grant the relief requested by Salvo would require Pacific to violate its tariffs.

3. To grant the relief requested would discriminate in favor of Salvo against other exchange border customers.

4. Customers obtaining phone service in new, unfamiliar areas should inquire as to all services and areas available. Salvo failed to do so.

5. Pacific should advise exchange border customers of the alternative exchanges available to them at the inception of service but failed to so advise Salvo.

6. Since Pacific knew that Salvo was an exchange border customer at the inception of service and failed to advise him of the alternate service which would have been available then without any connection charge, it should provide the LA exchange service at foreign exchange rates without any service charge.

Conclusions

1. Pacific should be ordered to provide the LA exchange in accord with Finding 6 above and the ensuing order.

2. Since the rates and zoning structure of Pacific are neither discriminatory nor unreasonable, all other relief requested should be denied.

O R D E R

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company shall convert the existing service of complainant, without any service connection charge, to Los Angeles foreign exchange service, if so requested by complainant while residing at his current address of 1228 North La Cienega Boulevard, Los Angeles.

2. All other relief requested is denied.

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

Dated at San Francisco, California, this 27th
day of APRIL, 1976.

[Signature] President
William Aguirre
[Signature]
[Signature]
Robert Bateman
Commissioners