

ORIGINAL

Decision No. 86352

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE PACIFIC TELEPHONE
AND TELEGRAPH COMPANY, a corporation,
for a tariff covering the offering
of the DIMENSION PBX System Service.

Application No. 55723
(Filed June 6, 1975)

William B. Rowland, Attorney at Law, for The
Pacific Telephone and Telegraph Company,
applicant.

Bruce P. Saypol and Edwin B. Spievack, Attorneys
at Law; for North American Telephone Association,
Rolm Corporation, and Compath, Inc;
Joel Effron, for Scott-Buttner Communications, Inc;
Roger L. Mosher, Attorney at Law, for Rolm
Corporation; and Otha P. Rice, Jr., for
O'Brien, Rice, Quam & Associates; interested
parties.

Peter Arth, Attorney at Law, and Paul Popenoe,
for the Commission staff.

INTERIM OPINION

Procedural Background

The Pacific Telephone and Telegraph Company (Pacific) requests the Commission to authorize tariffs for a new private branch exchange service that it designated "Dimension PBX". Dimension PBX is an electronic switching system incorporating recent developments in switching technology. It comes with a new electronic attendant console and offers a variety of new features.

Written protests to the application were received from the North American Telephone Association, Rolm Corporation, Scott-Buttner Communications, Inc., Executone of Northern California, Inc., and California Interconnect Association. The protestants were either manufacturers or purveyors of similar equipment and associations

representing such manufacturers or purveyors. They alleged that the tariff would be noncompensatory and anticompetitive because:

- (a) The costs to Pacific to provide Dimension PBX service are not adequately reflected in the proposed rates;
- (b) Pacific has failed to include in its rates additional contribution to the Company to deter the premature displacement of other revenue producing vehicles which could be churned out as a result of the introduction of Dimension PBX in the California marketplace; and
- (c) The two-tier pricing plan ^{1/} is inherently anticompetitive.

Pacific's application was assigned to Commissioner Symons and referred to Examiner Boneysteele for hearing. Hearings on the application were commenced on February 2, 1976 and between that date and May 10, 1976, 13 days of hearing were held. The hearings were complicated by discovery motions by Rolm Corporation (Rolm) and the Compath Division of Scott-Buttner Communications, Inc. (Compath) for cost data from Pacific and also by a counter motion (not granted) by Pacific for in camera hearings and a sealed record.

In the meantime the Commission had received numerous letters from prospective Dimension customers inquiring about and protesting the delay in authorizing the service. At the twelfth day of hearing, on May 10, 1976, Pacific having by that time supplied detailed cost data on an open public record, the examiner suggested that Rolm and Compath propose an interim provisional rate that they believed would be compensatory, pending final resolution of the proceeding.

^{1/} The two-tier payment plan was authorized by, and is explained in Decision No. 83958 dated January 7, 1975 in Application No. 55242. Briefly, it provides for a contract wherein the customer is charged for capital recovery plus an additional monthly charge. The capital recovery portion is not subject to change unless specifically ordered by the Commission.

Pacific completed its direct showing at the thirteenth day of hearing, May 13, 1976, and on June 3, 1976 filed a petition for interim provisional rates proposing a surcharge of 5 percent over the rates originally proposed in Pacific's Application No. 55723. On June 15, 1976 the Commission staff filed its response to Pacific's petition. On June 30, 1976 Rolm and Compath filed their proposed interim tariff for the Dimension PBX, in response to the examiner's request for proposed interim rates.

On July 27, 1976 Pacific filed a second petition in which it requested the Commission to approve interim rates for the Dimension PBX at the levels and under the conditions recommended by the Commission staff in its June 15, 1976 response. In addition Pacific requested the Commission to issue expeditiously a final order at the conclusion of the hearings, such order to authorize both a two-tier payment plan and a companion tariff (monthly rate).

Ten days of additional hearings had been scheduled for the period July 26 through August 6, 1976, for the purpose of completing the showing contemplated by Rolm and Compath and submitting the proceeding for final decision. On June 11, 1976, however, Pacific directed sets of documents to Rolm, Compath, and North American Telephone Association (NATA) entitled "First Interrogatories".

Counsel for the protestants, by telephone on July 6, 1976 and by letter of July 12, 1976, requested a delay in the mailing date of protestants' prepared direct testimony from July 13, 1976 to September 23, 1976 and of the initial resumed hearing date from July 26, 1976 to October 4, 1976. Counsel declared that the delay was necessary to respond to Pacific's first interrogatories.

In a letter of July 21, 1976 Pacific's counsel questioned the need for additional time, reiterated that Pacific's direct showing was complete, and requested that the provisional rates be implemented. Also, on July 21, 1976 the examiner reset the hearing from July 26 to August 2, 1976 for the purpose of discussing Pacific's rate proposal.

None of the parties wished to discuss the matter, however, and it seemed from Pacific's first interrogatories that Pacific was contemplating additional discovery efforts and an extensive rebuttal showing, with resulting further postponement of the ultimate completion of the proceeding. The examiner therefore, on July 29, 1976, reset the date for protestants' showing to October 4, 1976.

Lastly, on August 3, 1976, Rolm and Compath filed a response to Pacific's July 23, 1976 petition.

It appearing from this chain of events that final submission of this application is far from imminent, we will proceed to consider the question of interim provisional rates for Dimension PBX.

Staff Response to Pacific's June Petition

In its response to Pacific's June 3 1976 petition, the staff noted that during the time that Application No. 55723 has been filed, the Dimension PBX has not been available to the public except for two trial installations furnished by Pacific under contract. The Dimension PBX is variously available in other state jurisdictions and has been the subject of national advertising by the Bell System. A number of prospective customers in California have become aware of the Dimension PBX and have indicated to the Commission their desire to obtain this system at the earliest possible date.

The staff is of the view that while there may still be some troublesome questions to be resolved with respect to the proposed tariff for the Dimension PBX, an interim tariff should be authorized at the earliest possible date to permit Pacific to furnish this service to the several prospective customers that now have expressed an urgent need for the service.

The staff proposes that because the most controversial area of the proposed tariff involves the competitive and compensatory aspects of the two-tier rate structure, interim rates be authorized solely upon the conventional, companion, tariff basis. Should the

Commission ultimately authorize the two-tier rate treatment for this particular service, then customers paying the interim conventional rate should later have the option to choose the two-tier plan and to have their bills recalculated as if the two-tier rates had been available from the time that service was installed.

The staff recommends that the interim provisional rates proposed in Pacific's petition, including the 5-percent surcharge, be authorized on the conventional tariff basis only. This is the so-called "companion tariff". In addition, the interim tariff filing should include special conditions and other provisions to reflect such tariff treatment and to place all customers using Dimension PBX service on notice as to the provisional nature of the tariff. Such notice should be given in writing to each applicant and also be stated in the tariff.

RoIm and Compath Proposal

RoIm and Compath originally proposed, in their June 30, 1976 filing, a complete and comprehensive set of Dimension rates for common equipment which were about 50 percent higher than the rates proposed by the staff. For other features of the Dimension system their rates ranged from 50 percent above to 5 percent below those of the staff.

In their August 3, 1976 response to Pacific's July 27, 1976 petition, however, RoIm and Compath agreed to the staff proposal, except that they proposed a 10-percent surcharge instead of 5 percent and they also requested that customers paying the interim conventional rate should not be permitted, in the event that the Commission ultimately should authorize a two-tier rate, to have their bills recalculated as if the two-tier rates had been available from the time that service was installed.

Discussion

The Commission is aware that there are serious issues yet to be resolved in this proceeding. At the same time we are concerned that members of the public have indicated an interest in receiving the Dimension PBX service proposed by Pacific. While there may be alternatives to Pacific's service, as provided by protestants and others, we are not unmindful of the fact that Pacific has a state-wide obligation to provide service anywhere within its service area. Protestants have no such obligation. Furthermore, there may be potential PBX customers who prefer Pacific's equipment or service over that of protestants on a basis other than price. They should have the opportunity to exercise that option. Accordingly, we are of the view that Dimension PBX service should be made available to the public on an interim basis pending final resolution of the issues in this proceeding.

In establishing interim rates it is necessary to provide flexibility and leave the door open for adjustment of final rates. Should the two-tier rate proposal be authorized, that flexibility would be limited. Under the two-tier plan, customers enter into a contractual arrangement with respect to the capital recovery portion of the rate. This arrangement would preclude any adjustments to that portion of the rates unless specifically ordered by the Commission.

The conventional tariff, on the other hand, does not have this defect. Rates can be increased up or down in the future.

We have before us two different levels of conventional tariff rates, the 5-percent surcharge proposed by the staff and accepted by Pacific and the 10 percent proposed by Rolm and Compath.

Cost data supporting Pacific's rates as originally proposed were subject to a vigorous examination by Rolm and Compath. They were based on Pacific's Form GE 100 which has been used by Pacific and the staff in many proceedings before this Commission. The Western Electric catalog prices used in the GE 100's were explained in detail in which was, insofar as we are aware, an unprecedented open public hearing.

We do not have, as yet, Rolm and Compath's rebuttal, and we cannot, indeed it would be improper to, prognosticate whether the protestants can substantiate their claim that the rates as originally proposed by Pacific are noncompensatory.

We are mindful of the admonitions of the California Supreme Court to this Commission in the Northern California Power Agency case^{2/} concerning the consideration of antitrust implications of matters before us. A conscientious application of the Supreme Court's abstract admonition to the case at hand requires a weighing of interests and consideration of traditional ratemaking principles. Should the rate we prescribe on an interim basis be too low, competing suppliers will have been subjected to competitive injury. Should it be too high, consumers of the service will have been overcharged. Overcharges can be mitigated, however, by providing for refunds. Where consumers are fully advised of the situation, and are willing to purchase service with the knowledge that the rates may be higher than ultimately may be found to be reasonable on a public utility regulatory basis, we believe it is more prudent, in view of the anticompetitive issues raised herein and the Supreme Court's directions concerning such issues, to lean towards the high side insofar as temporary pricing is concerned. We will authorize rates based on the companion rate for Dimension PBX, as proposed by Pacific, plus 10 percent. We are satisfied that such rates are, under the circumstances, appropriate for

^{2/} No. Cal. Power Agency v PUC (1971) 5 C 3d 370.

interim provisional rates, subject to refund should lower rates ultimately be authorized.

We will not accept the protestants' request that customers paying the interim conventional, or companion rate, should not be permitted, should a two-tier rate ultimately be authorized, to have their rates recalculated on a two-tier basis. We have carefully considered the appropriateness of two-tier rates as a concept in Decision No. 83958 in Application No. 55242. In that decision we stated our intention to require full cost support in connection with any specific two-tier filing. Should Pacific ultimately be successful in the present proceeding in supporting its two-tier proposals, we see no reason why the customers should not benefit by such success.

Because of the customer requests for Dimension PBX service we will make the effective date of our order the date hereof.

Findings and Conclusion

The Commission finds that:

1. It is in the public interest to authorize Pacific to offer the Dimension PBX at interim provisional rates.
2. The companion rate for Dimension PBX as proposed by Pacific, plus 10 percent, represents a reasonable rate for interim authorization.
3. The conditions of service proposed by the staff and included in the order herein, provide reasonable protection to the public who may subscribe to the service at interim rates.
4. The effective date of this order should be the date hereof.

The Commission concludes that the following order is appropriate on an interim basis without prejudice to the Commission's final determination in this matter.

INTERIM ORDER

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company, on or after the effective date hereof, is hereby authorized to file, and place into effect on not less than five days' notice, a schedule of rates for Dimension PBX substantially as set forth in the application for the companion tariff plus 10 percent surcharge on each rate. Such filing shall be in the form specified in General Order No. 96-A.
2. The following statement shall be filed as part of the tariffs, and each applicant for service shall be furnished a copy of it in writing:

NOTICE

The Dimension PBX is being offered on an interim basis pursuant to authorization of the California Public Utilities Commission in Decision No. 85352. All customers are placed on notice that the tariff may be changed or withdrawn subject to further order of the Commission. The following conditions will apply:

- a. Should the tariff be withdrawn, customers receiving the service at the time of tariff cancellation will be permitted to continue receiving the service at the same location. Under such circumstances, Dimension PBX will not be available to new customers.
- b. Should the Commission's final order in Application No. 55723 establish installation charges and monthly rates at a higher level than those set forth in the interim tariff, customers will pay such higher monthly rates as may be determined. There will be no recalculation of the installation charge or monthly rate for service received under the interim tariff.
- c. Should the Commission establish a lower level of installation charges and monthly rates than those set forth in the interim tariff, customers will be refunded the difference between the charges and rates paid and the authorized charges and rates, with 7-percent interest, from the date service was first installed.

- d. Rates under the interim tariff are offered on a standard basis only involving installation charges and monthly rates. Should the Commission subsequently authorize the establishment of rates under a two-tier rate structure, as announced in Decision No. 83958, customers will have the option of having their charges and rates recomputed on a two-tier basis from the time service was first installed, and full charges and rates will be made under the two-tier rate.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 15th
day of SEPTEMBER, 1976.

I abstain
Robert Behrman
Commissioner

William J. Sullivan
President
Vernon L. Sturgeon
Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.