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Decision 90-12-099 December 19, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Department of Defense and the
other Federal Executive Agencies, on
behalf of Castle Air Force Base,
California,

Complainants,

vs.

Pacific Bell (U-1001-C),

Defendant.

ORIGINAL

Case 89-04-044
(Filed May 24, 1989)

O P I N I O N

Complaint

The Department of Defense and the other Federal Executive Agencies (DOD) filed this complaint against Pacific Bell (Pacific) on April 20, 1989.

DOD represents that Pacific owns and maintains most of the "black cable" serving residential, commercial, and governmental customers at Castle Air Force Base, and that until the divestiture of AT&T Information Services (AT&T), a 701 PBX switch (switch) located at the base was the responsibility of Pacific. As part of the divestiture settlement the switch became the responsibility of AT&T.

DOD wants the switch replaced with a newer model because the present one is old, parts are difficult to replace, and AT&T is having problems keeping personnel trained to maintain the out-of-stock switch.

AT&T has agreed to replace the pre-1965 analog leased switch with an upgraded state-of-the-art digital leased switch. DOD also explains that "AT&T has also agreed to pay for the costs of reterminating defendant's services to the new switch and any

additional costs that may arise." However, Pacific will require DOD to purchase all of the cable located behind the leased switch leading to DOD's individual station equipment, pursuant to Tariff A2, Section 2.1.16 (Rule 16). If the cable is not purchased, Pacific will disable the cable so that it is not usable.

DOD acknowledges that Rule 16 requires Pacific to offer for sale cable that it no longer needs to those customers who provide their own telecommunications facilities and systems. However, DOD asserts that the rule is not applicable because DOD will not own the switch, will not enter into a new lease agreement, or incur additional cost. AT&T is merely upgrading a hard to maintain switch to meet AT&T's obligation to furnish the government adequate service.

DOD seeks an order stating that Pacific's Rule 16 does not require DOD to purchase from Pacific cable serving the base if DOD allowed AT&T to replace a leased switch with an upgraded leased switch, and enjoining Pacific from asserting that DOD is required to purchase cable behind the leased AT&T switch.

Answer

Pacific filed a motion to dismiss the complaint and an answer to the complaint on May 24, 1989. Pacific acknowledges that it owns the "intrasystem wire"¹ located on the base, and that if the switch is replaced with a newer switch it will require DOD to purchase the intrasystem wire located beyond the demarcation point.²

1 Intrasystem wire is defined as all wire associated with complex terminal equipment on DOD's side of the demarcation point which connects the station equipment to each other and to the common control equipment.

2 The demarcation point is that point beyond which Pacific's responsibility for repairs and maintenance lies.

Pacific also explains that the switch scheduled to be replaced by AT&T was originally provided by Pacific Telephone and Telegraph Company, Pacific's predecessor, sometime prior to 1965 and is "hard-wired" to the public switch network. In 1976, the Federal Communications Commission (FCC) adopted rules defining standard plugs and jacks, or standard network interface (SNI), to be used to connect customer-provided equipment (CPE) to the public network. The SNI is a designated point at which the access line or private line channel terminates at a customer's premise. For the purpose of this decision the demarcation point is synonymous with SNI. All CPE provided by Pacific prior to June 1, 1978 was grandfathered by the FCC and was not required to conform to the FCC's interconnection rules.

Pacific also explains that the FCC detariffed and deregulated all CPE offered by AT&T and its operating companies in 1981. In 1983, the FCC ordered all embedded CPE³ transferred from AT&T's regulated companies to a fully separated subsidiary of AT&T, AT&T Information Systems, and detariffed the installation and maintenance of both simple and complex inside wire. Each of AT&T's regulated affiliates, including Pacific, retained their respective embedded intrasystem wire.

Although the present grandfathered switch is not connected to the public-switched network with a SNI the upgraded switch must conform to the FCC interconnection rules and must be connected to the public-switched network with a SNI.

Pacific's Tariff prohibits Pacific from providing complex intrasystem wire on a regulated or deregulated basis. Therefore, Pacific contends that upon the installation of a SNI to the upgraded switch all wire on DOD's side of the switch will no longer

3 Embedded CPE was defined by the FCC as CPE owned by AT&T and its affiliates prior to January 1, 1983.

be needed by Pacific. Pursuant to Rule 16, Pacific asserts that it must either sell the intrasystem wire located on DOD's side of the network interconnection or disable the intrasystem wires because the wire is not needed to provide its services.

Discussion

The dispute in this complaint is whether the replacement of a grandfathered embedded switch with an upgraded switch triggers Pacific's Rule 16. Since the complaint pertains to an interpretation of Pacific's Rule 16, the complaint can be resolved based on the filed pleadings. An evidentiary hearing is not necessary.

The salient tariff provisions to consider are Section 2.1.16(B)(4)(a) which requires Pacific to offer for sale cable that is no longer needed to provide utility service to its customers that provide their own authorized telecommunications facility and Section 2.1.16(B)(4)(c) which precludes Pacific from providing, owning or maintaining cable facilities for customer-provided switches. Both of these sections are impacted by the determination of where Pacific's demarcation point at the base lies.

Application (A.) 85-01-034 et al., a proceeding which, among other matters, examined the effects of detariffing the maintenance of inside wiring, considered new guidelines for demarcation points. The resolution of this complaint was put in abeyance pending a decision on the results of this investigation. Decision (D.) 90-06-069 of A.85-01-034 deferred issuing demarcation guidelines pending consideration of a recent FCC Docket.⁴ Subsequently, D.90-10-064 established a minimum demarcation point of presence for all new and fully renovated buildings, whether

⁴ FCC Docket No. 88-57, Report and Order and Further Notice of Proposed Decision, adopted June 8, 1990.

residential or commercial, shall be at the distribution terminal on each flow of any such multi-floor, single, and multi-tenant building for all services provided by local exchange companies, except as provided in other rules.

D.90-06-069 defined the demarcation point as the point beyond which the utility's responsibility for repairs and maintenance lies. Additionally, in D.86-07-049, we defined the demarcation point for the purpose of determining the subscriber's responsibility for maintaining and repairing inside wiring to be on the subscriber's side of the utility's protector or of the SNI, if a SNI, is installed.

Clearly, the new switch will need to be connected to the public network with a SNI to conform to FCC interconnection requirements because it is not a grandfathered switch. Once interconnected, Pacific's responsibility for maintaining the wire located on DOD's side of the switch stops, consistent with the definition of a demarcation point.

DOD incorrectly interprets Pacific's tariff to require Pacific to sell or disarm intrasystem wire to only those customers who "own" their own telecommunications facilities. Ownership of the switch is not the sole criteria.

The tariff is invoiced when customers provide their own authorized telecommunications facility. Although not defined, customer-provided telecommunications facility consists of all non-grandfathered telecommunications equipment located on the customer premise, whether owned, leased, or borrowed by the customer, which originates, routes, or terminates telecommunications. Such equipment is neither tariffed nor regulated by Pacific.

In this case, DOD entered into a lease with AT&T to provide a grandfathered switch installed by Pacific. Since the grandfathered switch is antiquated and obsolete DOD and its telecommunications vendor of choice, AT&T, agrees to have the pre-1965 analog switch replaced with a new state-of-the-art switch as

part of AT&T's, not Pacific's, responsibility to provide adequate service to DOD. Further, Pacific has no interest or control in the new switch.

We concur with Pacific that it must offer to sell the wire located on DOD's side of the SNI upon the replacement of the grandfathered switch. However, the price should be realistic.

Currently, the price of the wire is based on the estimated average fair value to the buyer. Pursuant to D.93728, Pacific is amortizing embedded customer premise wire, such as intrasystem wire, over a ten-year period that started on October 1, 1981. This means that the value of all embedded customer premise wire to Pacific will be zero at September 30, 1991.

Although Pacific may technically retain ownership to all embedded customer premise wire at the end of the amortization period, it will have no financial interest in the wire. This is because since the start of the amortization period, ratepayers, such as DOD, have been compensating Pacific for the amortization of its investment through increases in intrastate message toll rates. Also, the intent of the amortization period was to essentially make the subscribers responsible for maintaining the intrasystem wire. The practical result is that ratepayers have been buying this intrasystem wire on a ten-year layaway plan.

Irrespective of whether the switch is replaced, the value of the wire to Pacific has substantially diminished since the beginning of the amortization period and will be of no use to Pacific at the end of the amortization period. Pacific's tariffs pertaining to the sale of wire have remained relatively unchanged since 1985 and should be reviewed and revised by Pacific to reflect its true interest in customer premise wire and intrasystem wire. Absent revised tariffs, subscribers like DOD will be required to pay twice for their intrasystem wire, first through the amortization period and second at the time grandfathered CPE is replaced.

Findings of Fact

1. AT&T has agreed with DOD to replace a pre-1965 grandfathered analog switch with a new state-of-the-art digital switch at no cost to DOD.

2. Pacific owns the intrasystem wire located on DOD's side of the switch.

3. Rule 16 requires Pacific to offer for sale cable that it no longer needs to those customers who provide their own telecommunications facilities and systems.

4. DOD will not own the switch that AT&T plans to replace.

5. The pre-1965 switch is hard-wired to the public network.

6. All CPE provided by Pacific prior to June 1, 1978 was grandfathered by the FCC and was not required to conform to the FCC's interconnection rules.

7. The FCC detariffed and deregulated all CPE offered by AT&T and its operating companies.

8. The FCC detariffed the installation and maintenance of both simple and complex inside wire.

9. The upgraded switch must conform to the FCC interconnection rules and must be connected to the public-switched network with a SNI.

10. Pacific's tariff precludes it from providing complex intrasystem wire on a regulated basis and precludes it from providing such wire on a deregulated basis.

11. The demarcation point, or SNI, is that point beyond which Pacific's responsibility for repairs and maintenance lies.

12. Customer-provided telecommunications facility consists of all non-grandfathered telecommunications equipment located on the customer premise which originates, routes, or terminates telecommunications whether owned, leased, or borrowed by the customer.

13. Pacific's tariffs pertaining to the sale of wire have remained relatively unchanged since 1985.

14. Pacific is amortizing embedded customer premise wire over a ten-year period that started on October 1, 1981.

Conclusions of Law

1. Pacific should offer for sale to DOD all intrasystem wire located on DOD's side of the switch upon AT&T's replacement of the grandfathered switch with a new switch.

2. Pacific's tariff pertaining to the sale of wire should be updated to reflect the current amortization of embedded wire at the time of sale or transfer.

O R D E R

IT IS ORDERED that:

1. Pacific Bell shall review and revise its Rule 16 tariffs applicable to the sale of wire and shall submit revised tariffs consistent with conclusion of law 2 for approval within 90 days from the effective date of this order.

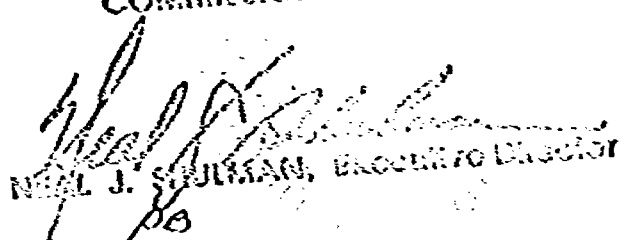
2. The complaint in Case 89-04-044 is dismissed.

This order is effective today.

Dated December 19, 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SULLIVAN, Executive Director