

Decision No. 86716

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FRANCES A. GRUNDY, individually)
and doing business as Bakersfield)
Telephone Exchange,)

Complainant,

vs.

PACIFIC TELEPHONE & TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 10102
(Filed May 24, 1976)

Jere N. Sullivan, Attorney
at Law, for complainant.
Norah S. Freitas, Attorney
at Law, for defendant.

O P I N I O N

Complainant Frances A. Grundy, dba Bakersfield Telephone Exchange, seeks an order requiring defendant The Pacific Telephone and Telegraph Company (Pacific) to reimburse her \$13,312 with interest thereon from date of payment and her attorney's fees and costs for monies paid in excess of Pacific's estimate of approximately \$5,000 to move her telephone service from the Avacon Building at Meadows Field, Bakersfield, to the Meadows Field Airport Tower.

Public hearing was held before Examiner Johnson at Bakersfield on September 23, 1976 and the matter was submitted. Testimony was presented on behalf of complainant by herself and

in accordance with the provisions of Section 776 of the Evidence Code, by one of Pacific's communications consultant, and by one of its business office service representatives. Testimony was presented on behalf of Pacific by one of its district managers.

Physical Facilities

The record shows that Bakersfield Telephone Exchange (Exchange) was originally located in the Avacon Building at Meadows Field, Bakersfield; that the Exchange was located in a room approximately 10 feet by 12 feet in size; and that the Exchange served approximately 90 to 95 accounts utilizing approximately 140 to 150 lines. The record further shows that the Exchange is presently located in the old FAA control tower at Meadows Field; that the space presently leased is approximately 375 square feet; and that at the present time the Exchange serves approximately 160 accounts utilizing approximately 200 lines.

The controversy in this matter centers around approximately 400 feet of four-inch conduit running underneath the airline terminal parking lot and housing a 600-pair cable. The record shows that complainant paid a contractor \$13,312 to install this facility and the cost of the conduit by itself was estimated by Pacific to be \$1,800.

Stipulations

Complainant and Pacific stipulated that:

- (1) On or about November 14, 1974 complainant asked Pacific's employee Mike D. McArdle for an estimate of the cost to move the telephone service to Meadows Field and was quoted a "ball park" figure of \$5,000.

- (2) At the time, Pacific failed to recognize that a facilities problem existed so this aspect of the matter was not discussed.
- (3) On or about September 15, 1975 complainant entered into a lease with Kern County for space in the old control tower and the lease provided that as between the parties all utility modifications would be at the expense of the lessee.
- (4) On or about September 30, 1975 complainant placed a firm order to move telephone service from the Avacon Building to the FAA control tower at Meadows Field.
- (5) On or about October 15, 1975 Mike D. McArdle contacted complainant and advised her for the first time that she would be required to provide 400 feet of conduit at her expense before Pacific could provide service connection facilities at the new location.

Complainant's Position

In addition to confirming the stipulations and describing her operations complainant, testifying on her own behalf, stated that:

- (1) The cost of relocating the facilities was a matter of prime concern to her and that Pacific was contacted about this before she started negotiations with the county of Kern to lease the old FAA control tower.
- (2) The installation cost of the 400 feet of conduit that Pacific required to be installed was \$13,312 in addition to the originally quoted amount of \$5,000.
- (3) Upon receipt of the information on the magnitude of the additional charges, she unsuccessfully attempted to obtain an alternate location for the Exchange that would cost less.

- (4) That had she been correctly informed as to the cost of relocating her telephone facilities, she would not have entered into a lease with the county of Kern.

During examination of Pacific's communication consultant and business office service representative, in accordance with the provisions of Section 776 of the Evidence Code, complainant's attorney developed on the record the following:

- (1) The original "ball park" quote of \$5,000 for the location of complainant's facilities was estimated by Pacific's communication consultant after a line assigner had informed him that existing cable facilities were adequate for the additional requirement to be imposed by complainant's facilities.
- (2) Complainant first requested an estimate of the cost of relocating the facilities on November 14, 1974. Complainant met with Pacific's communication consultant on April 16, 1975 to again discuss the matter. The order to proceed with the relocation was given on September 30, 1975 and complainant was informed of the necessity of the conduit installation on October 14, 1975.
- (3) Kern County paid for the original underground conduit under the parking lot when the line was initially placed underground.

Through cross-examination of Pacific's district manager, complainant's attorney attempted to establish the following position:

- (1) By definition complainant is the applicant^{1/} in this matter.
- (2) Continuous property^{1/} is property wholly owned or leased by an applicant or customer.
- (3) A service connection^{1/} serves only continuous property on which it is located.

1/ Rule No. 1 - Definitions

(a) "Applicant:

An individual or concern making application to the utility for telephone service or installation of facilities."

(b) "Continuous Property:

A property wholly owned or leased by an applicant or customer where all portions may be served without crossing a public thoroughfare or the property of another. The property of an applicant or customer when divided by a public thoroughfare is considered continuous, provided the applicant or customer furnishes at his expense an underground or enclosed overhead passageway suitable for the running of telephone circuits between the portions of the property separated by the public thoroughfare."

(c) "Service Connection Facility:

Wire or cable, and associated underground supporting structure where used, from the point of connection with the Utility's distribution facilities to the point of connection with the interior wiring at the building served. A service connection serves only continuous property on which it is located. An incidental segment may be located in the adjacent dedicated street or utility easement. (See also Distribution Facilities, Line Extension and Interior Wiring.)"

Complainant argues that since the service connection facilities in this case are not on the property served, it is obvious that the involved facilities are service connection facilities to the property served and in accordance with paragraph I.C.1.a.^{2/} of Rule No. 16 and Pacific should pay for the underground facilities.

Pacific's Position

Pacific's position was presented by its district manager who testified that in his opinion:

- (1) The basic difference between service connection and distribution facilities^{3/} is that distribution facilities are designed to serve more than one property while service connection facilities serve only the continuous property on which they are located.

2/ Rule No. 16 - Service Connections and Facilities on Customer's Premises, paragraph I.C.1.

"To the property to be served

- a. Where a service connection facility will be connected to underground distribution facilities, that portion of the service connection facility not on the property to be served will be constructed by the Utility without charge, provided: ..."

3/ Rule No. 1 - Definitions

(a) "Distribution Facilities:

The Utility's cables, wires and associated supporting structures and appurtenances, located in dedicated streets and utility easements, designed to serve more than one property and extending from the serving central office to the points of connection with service connection facilities. (See also Line Extension and Service Connection Facility.)"

(b) "Line Extension:

Line extension consists of overhead or underground extensions of existing distribution facilities to new service connection facilities, and exclude additions to plant along existing telephone facilities."

- (2) The facilities in question are not line extension facilities because they are additions to plant along existing telephone facilities and as such specifically excluded by the definition of line extensions.^{4/}
- (3) The applicable tariff section for this installation is paragraph I.C.2.a.(2) of Rule No. 16 (Exhibit 5) rather than paragraph I.C.2.b.(3) because, although these are "common portion"^{5/} facilities, an easement acceptable to Pacific is not obtainable. The facilities in question were installed with the permission of the county of Kern and no easement was required.
- (4) As a result of this complaint, the witness is attempting to verify the availability of an easement. If such an easement is granted, Pacific will refund the cost of the conduit in accordance with the provisions of the tariff.

Discussion

As previously stated, complainant seeks an order requiring Pacific to reimburse her \$13,312 plus interest and attorney's fees and costs. This Commission has consistently held that the awarding

^{4/} See footnote 3 on page 6 of this decision.

^{5/} Paragraph I.C.2. of Rule No. 16 states in part:

"For the purpose of this rule: (i) A service connection facility (or a branch thereof) intended to serve all or a portion of one building is denoted as being 'separate'. (ii) Where a single service connection facility is intended to serve two or more buildings on one continuous property, the section extending from the property line and excluding the 'separate' branches to individual buildings is denoted as the 'common portion'."

of legal damages as such are outside the jurisdiction of this Commission (Vila v Tahoe Southside Water Utility (1965) 233 CA 2d 469, 479). We will therefore limit our review of this matter to a determination of the propriety of the application of the relevant tariffs.

At this point, it would be helpful to briefly summarize the evolution of the line extension and service connection rules as they apply to underground extensions. On June 22, 1965 this Commission instituted an order of investigation (Case No. 8209) to determine what tariff changes would be necessary to promote the undergrounding of electric and communication facilities. Interim Decision No. 73078 dated September 19, 1967 required, among other things, each respondent providing communication service (including Pacific) to file a rule substantially as set forth in Appendix C to the decision. Appendix C defined "service connection", "trenching costs", "underground supporting structure", "line extension", and "tract or subdivision" and set forth a telephone service connection rule. This service connection rule differentiated between new underground service connection facilities to the property to be served and on the property to be served. The utility was to provide the underground facilities without charge to the property served provided right-of-way could be reasonably attained and the trenching costs did not materially exceed the company's average trenching costs. For underground facilities on the property served, the applicant or developer was to furnish, install, and maintain required conduit or, if buried cable was to be used, provide or pay for the cost of the trenching. In either case, the utility was to furnish, install, and maintain the service connection wire or cable.

Decision No. 78500 dated March 30, 1971 in Case No. 8993, an investigation on the Commission's own motion into undergrounding requirements for commercial and industrial developments, ordered respondent communication utilities to file extension rules substantially as set forth in Appendix C and to file revised service connection rules consistent with the provisions of the line extension rule prescribed in Appendix C. To effect compliance with the service connection rule requirement of Decision No. 78500, an ad hoc committee consisting of representatives of the Commission staff and various telephone companies was formed. By letter dated February 18, 1971 (Exhibit 21) Pacific transmitted to members of the ad hoc committee a draft of a portion of an underground service connection rule encompassing a new concept differentiating between service connection facilities serving more than one building (common portion) and those terminating at a single building (separate portion). The provisions relating to this new concept were included as a portion of an advance copy of Pacific's intended filing of the extension and service connection rules which was transmitted to the ad hoc committee members by letter dated April 20, 1971. The final filing was made by Pacific's Advice Letter No. 10542 dated May 28, 1971 and the tariffs became effective June 2, 1971. It will be noted that the basic goal was to conform the provisions of the service connection rule to the provisions of the line rule to the extent practicable. As a result, the provisions of Rule No. 15, Line Extensions, applicable for business

services where underground supporting structures^{6/} are required are essentially the same as the provisions of Rule No. 16, Service Connections and Facilities on Customer's Premises, applicable to the common portions of service connection facilities where all or a portion of the requirement will be for business service and the utility determines that an underground supporting structure is required. These rules provide that for subdivisions the utility will provide the conduit material and metallic manhole covers where specified, and the applicant will construct, to the utility's specifications and deed to the utility, the complete underground supporting structure. In this respect, it will be noted that complainant's use of the previously discussed definitions of applicant for "continuous property" and "service connection facilities" would defeat the intended parallel requirements of the two rules by requiring Pacific to pay the entire cost of the underground supporting structure rather than the cost of the conduit and metallic manhole covers as provided for in the extension rule.

The record establishes Pacific's practice of utilizing a property line to differentiate between distribution facilities and service connection facilities even though such segregation can, as

6/ Rule No. 1 - Definitions

(a) "Underground Supporting Structure:

Conduit, manholes, handholes and pull boxes where and as required plus trenching costs as defined in Trenching Costs...."

(b) "Trenching Costs:

Cost of excavating, backfilling and compacting, and, where necessary, cost of breaking and repaving pavement and of restoring landscaping."

in this case, occur in mid-span of overhead wires. Such a division is completely unsupported by logic especially in view of the fact that the definition of distribution facilities includes facilities in a utility easement obviously on private property. In addition, as previously stated, it is Pacific's position that the facilities in question are not distribution facilities because they are located on one continuous property rather than being designed to serve more than one property, and they are not line extension facilities because they are additions to plants along existing telephone facilities specifically excluded by the definition of a line extension. Neither of these positions is supported by the record. The record shows that Pacific installed a 600-pair cable in the new underground conduit and that at the present time complainant utilizes approximately 200 pair of the cable. Obviously, the capacity of the installed facilities is not only adequate to meet the foreseeable needs of complainant but is also available to satisfy the requirements of other customers. In addition, although the new facilities utilize the same beginning and terminating points, the new facilities are twice the capacity of the original facilities, occupy a separate trench and, therefore, can be considered as an extension of existing facilities rather than additions to plant along existing telephone facilities. Because of the capacity and independent route of the new facilities, it is apparent that they are properly classifiable as line extension facilities and subject to the provisions of Rule No. 15, Line Extensions, rather than Rule No. 16, Service Connections and Facilities on Customer's Premises.

Rule No. 15 provides that within new subdivisions where all or a portion of the requirement will be for business service and the utility determines that an underground supporting structure is required, the utility will provide the conduit material and metallic manhole covers where specified, and the applicant will construct and deed to the utility the complete underground supporting structure. For other underground line extensions Rule No. 15 provides that an applicant will pay a nonrefundable amount equal to three-fourths of the estimated difference in cost between underground and equivalent aerial facilities. The definition of subdivision^{7/} as contained in Pacific's tariffs, is inapplicable in the present matter so the latter provision will govern. Therefore, the order that follows will provide that upon receipt of the deed for the conduit installation Pacific will pay complainant the difference between the nonrefundable amount computed as described above and the \$13,312 the record shows complainant paid for the installation of the facilities in question.

Both Rule No. 15 and Rule No. 16 refer to acceptable easements which can be obtained without charge or condemnation. Pacific takes the position that if it is unable to obtain a satisfactory easement from the county of Kern that those portions of

7/ Rule No. 1 - Definitions

"Subdivision:

Improved or unimproved land under a definite plan of development wherein it can be shown that there are reasonable prospects within the next three years for five or more non-temporary main telephones and PBX trunk line terminations, at a density of at least one per acre."

Rule No. 16 providing for the furnishing by Pacific of conduit and manhole covers are inapplicable. The record shows that the facilities in question as well as the original facilities were installed with the permission of the county of Kern but without an easement. Under these circumstances the tariff limitations apply when additional costs are incurred by the utility, and are therefore inapplicable in cases such as this where easements are not required.

Findings

1. On or about November 15, 1974 complainant requested an estimate of the cost to move the telephone service of her Exchange to Meadows Field and was quoted a "ball park" figure of \$5,000.

2. This estimate was confirmed in a meeting between complainant and Pacific's communication consultant on April 16, 1975.

3. On or about September 15, 1975 complainant entered into a lease with Kern County for space in the old control tower in Meadows Field, and on or before September 30, 1975 complainant placed a firm order to move her Exchange facilities to the old control tower.

4. On or about October 15, 1975 complainant was informed for the first time that she would be required to provide 400 feet of conduit at her expense before Pacific would provide the necessary facilities at her new location.

5. The cost to the complainant of the required conduit was \$13,312 more than the original estimate of \$5,000.

6. Complainant currently utilizes approximately 200 of the 600-pair cable installed by Pacific.

7. The cost of the conduit for the installation was \$1,800.

8. The provisions of Rule No. 16, Service Connections and Facilities on Customer's Premises, are intended to parallel to the extent practicable, the provisions of Rule No. 15, Line Extensions.

9. The facilities in question are line extension facilities rather than common portion service connection facilities on or to the property to be served.

10. Tariff provisions relating to the obtaining of an acceptable easement at no cost to the utility are inapplicable where it is unnecessary to obtain an easement prior to the installation of facilities.

11. Upon receipt of a deed for the underground conduit, Pacific should reimburse complainant the difference between \$13,312 and three-fourths of the estimated difference in cost between the underground and equivalent aerial facilities.

The Commission concludes that the relief requested should be granted to the extent set forth in the following order.

O R D E R

IT IS ORDERED that:

1. Within thirty days of the effective date of this order, defendant The Pacific Telephone and Telegraph Company shall reimburse the complainant Frances A. Grundy, dba Bakersfield Telephone

Exchange, the difference between \$13,312 and three-fourths of the estimated difference between the cost of the underground facilities in question and the equivalent aerial facilities.

2. Except to the extent granted in paragraph 1 of this order, the relief requested is denied.

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

Dated at San Francisco, California, this 7th day of DECEMBER, 1976.

[Signature] President
William Augustus
James L. Sturgeon
Robert Bateman
 Commissioners