

ORIGINAL

Decision No. 87471 Jun 21, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMERCIAL CLAIMS SERVICE
CORPORATION,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,

Defendant.

Case No. 10276
(Filed March 2, 1977)

Jack A. Klauschie, President, for Commercial Claims
Service Corp., complainant.

Stanley J. Moore, Attorney at Law, for The Pacific
Telephone and Telegraph Company, defendant.

O P I N I O N

Complainant requests an order relieving it from \$1,609.33 termination charges for the removal of a PBX system. It is alleged that defendant's unilateral modification of the agreement for the PBX system entered into on December 11, 1972 renders the contract null and void and therefore the termination charges need not be paid.

Defendant admitted that the contract had been modified to include touch tone service and therefore an increase of \$1,400 had been added to the original \$3,800 termination charge on the contract.

The record shows that when defendant installed the PBX system it installed excess equipment which was not needed, used, or ordered by complainant. The excess equipment was not listed on the contract, nor did defendant charge complainant for it. The installation of the excess equipment was done for defendant's convenience.

The touch tone equipment was included in the initial installation. It is claimed by defendant, however, that this was ordered after the original contract was signed but before the initial installation of the PBX system. When the PBX system was removed and complainant was billed for termination charges, defendant included the \$1,400 termination charge with the \$3,800 charge shown on the contract. Defendant was not able to produce any records of the order for touch tone equipment, nor a written modification of the original contract. The \$1,400 charge will be canceled.

The contract had over 18 months left at the time of termination. The actual charge for termination is an amortized amount of the charge shown in the contract derived from a formula which is based upon the remaining life of the contract. After reviewing the evidence it is our opinion that complainant should pay termination charges based only upon the amount shown in the contract. That amount, amortized, is now \$1,176.10.

Pursuant to Rule 13.2 of the Commission's Rules of Practice and Procedure, complainant and defendant consented to the Expedited Complaint Procedure and waived the presence of a court reporter and a record of the hearing and findings of fact and conclusions of law. This matter was heard on May 22, 1977 before Examiner Bernard A. Peeters.

O R D E R

IT IS ORDERED that complainant shall pay to The Pacific Telephone and Telegraph Company a termination charge of \$1,176.10.

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

Dated at San Francisco, California, this 21st
day of JUNE, 1977.

President
William J. Stulgen
Vernon L. Stulgen
Richard D. Stulgen

Commissioners

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