Alt.-DBJ-ka/lc

ORIGINAL

Decision No. 88752 APR 19 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BALFOUR, GUTHRIE & CO., LIMITED, a corporation,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a telegraph corporation,

Defendant.

Case No. 10406
(Filed August 31, 1977)

Bernard M. Berry, for complainant.
C. F. Berlenbach, for defendant.

O P I N I O N

This complaint seeks a refund of installation and basic termination charges for telephone service. On January 19, 1978 hearing was held under the Expedited Complaint Procedure by consent of the parties, Administrativo Law Judge Gilman prosiding. The matter was submitted on February 2, 1978 upon receipt of late-filed exhibits.

The original complaint covered numerous issues. However, the evidence considered at the hearing covered only the circumstances surrounding complainant's decision to remove a 770A PBX supplied by defendant and to substitute a PBX provided by a nonutility company.

Complainant had originally been supplied with a version of the 770A having a large capacity for incoming trunks and stations. This version was very unreliable; however, and after numerous repair calls, The Pacific Telephone and Telegraph Company (Pacific) modified the installation. This reduced the number of trouble calls experienced but also reduced the capacity of the switchboard. Complainant, at that time, was unconcerned with the limited capacity since it had no known plans for significant expansion.

Subsequently, complainant transferred personnel and functions from another office to San Francisco, which created a need for a substantial number of additional trunks and stations. The 770A installation as modified did not have sufficient capacity. Complainant could, in fact, have converted back to an improved version of a 770A. If complainant had done so, it could have achieved the needed additional capacity without incurring a termination charge.

During negotiations between the parties, Pacific's representative assumed that complainant would never consider the expanded capacity 770A version as acceptable. For that reason, he did not give complainant any information about Pacific's progress in improving the reliability of that system. Pacific proposed other systems which could have provided complainant with the additional capacity needed. Complainant found these offerings unacceptable, and instead opted for an interconnect PBX even though such a change required the payment of a termination charge under Pacific's tariffs.

The expanded capacity 770A would now perform reliably. Had this been known to complainant, it would have selected that PBX and thus avoided termination charges.

<u>Findings of Fact</u>

1. In October 1972, Pacific installed a 770A PBX for complainant. This version of the 770A had a large capacity for incoming trunks and stations, but it was unreliable. Pacific made numerous repair calls and modified the installation. The modification reduced the number of trouble calls. It also reduced the capacity of the switchboard. At the time, the reduced capacity was of no importance to complainant.

2. In 1976, complainant had a need for additional telephone switchboard capacity. At that time improvements had been made in the 770A so that it performed in a reliable manner. The improved 770A would have provided the additional capacity required by complainant.

3. Pacific's representative did not inform complainant that the improved 770A was reliable and would meet complainant's need for additional capacity. The representative suggested other systems to meet the need for increased capacity. If complainant had selected the 770A, no termination charges would have been incurred.

4. Complainant found the proposals of Pacific unacceptable and contracted with another firm to provide an interconnect PBX system.

5. Complainant was not afforded the opportunity to obtain its needed extra capacity without the payment of a termination charge.

6. Pacific assessed a termination charge of $1,077.77 against complainant. Complainant refused to pay that amount and thereafter instituted this complaint.

Conclusion of Law

Pacific should be ordered to cancel the termination charge of $1,077.77 from complainant's bill.

C.10406 Alt.-DBJ-1c

ORDER

IT IS ORDERED that The Pacific Telephone and Telegraph Company shall remove from complainant's billing the sum of $1,077.77, and desist from any further attempts to collect that sum from complainant.

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

Dated at San Francisco, California, this 19th day of APRIL, 1978.

Robert Batinovich
President

I dissent.

William Symons, Jr. Commissioner

I dissent

Vernon L. Sturgeon

Richard D. Gravelle

Claire T. Dedrick

Commissioners