

ORIGINAL

Decision No. 88825 MAY 16 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FRESNO DATSUN, a corporation,

Complainant,

vs.

Case No. 10220

(Filed December 7, 1976)

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,

Defendant.

Ronald E. Baker and William L. Knecht, Attorney at Law, for complainant.

Norah S. Freitas, Attorney at Law, for defendant.

O P I N I O N

This complaint concerns an interexchange private line channel (tie line) between Fresno Datsun in Fresno and Downtown Datsun in San Jose. It alleges that The Pacific Telephone and Telegraph Company (Pacific) has harassed Fresno Datsun since the time that Fresno Datsun ordered its PBX equipment to be supplied by Scott-Buttner Communications, Inc. (SBCI); that Pacific has discriminated against Fresno Datsun in refusing to supply CDQ2W interfaces but has provided said interface devices to other customers so requesting; that Pacific has not credited Fresno Datsun's account as agreed; that Pacific was advised that Fresno Datsun could not use the tie line without the interface devices until the customer-provided equipment was reengineered; that Pacific did not stop billing the customer for the tie line as requested; that Pacific was ordered to disconnect the tie line on April 9, 1976 but that it was not disconnected until

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June 18, 1976; that Pacific disconnected a second tie line ordered by Fresno Datsun when disconnecting the first tie line; that full credit was not given for the disconnection; that Pacific continued to bill Fresno Datsun but did not contact them regarding the outstanding balance; and the amendment to the complaint alleges that SBCI paid Pacific \$3,270.96 after the tie line account had been referred to a collection agency.

Fresno Datsun seeks an order from the Commission requiring Pacific to credit its account "for all expenses associated with the tie line for which Pacific has not already credited customer's account." Fresno Datsun also seeks an order awarding SBCI "\$1,000 to compensate SBCI for its services in helping Fresno Datsun get this matter resolved." The amendment to the complaint requests an order requiring Pacific to refund to SBCI \$3,270.96 plus interest as well as refunding to Fresno Datsun any other monies Fresno Datsun has paid Pacific in connection with the tie line in dispute.

Pacific denies that Fresno Datsun is entitled to the relief sought, or to any other relief, and requests that the complaint be dismissed.

A hearing was held before Administrative Law Judge Main in Fresno on April 20, 1977. At the conclusion of the hearing the matter was submitted subject to the filing of concurrent briefs and late-filed exhibits.

Undisputed Facts: The following undisputed facts are established by the record and we find them to be such: Pacific received an order from Mr. Robert Upmeyer of ComPath, a division of SBCI, for a tie line (interexchange-private line) for Fresno Datsun on December 30, 1974. The tie line ordered was to be between Fresno Datsun in Fresno and Downtown Datsun in San Jose. Mr. Upmeyer also ordered two CDQ2W interface devices, i.e., one for each end of the tie line.

2. The tie line was installed by Pacific on January 31, 1975.

3. The CDQ2W interface devices were not supplied by Pacific. Pacific interpreted Schedule Cal. P.U.C. No. 135-T, Original Sheet 138-A (Sch. 135T/SH. 138A), "as limiting the offering of said interface devices to exclude two customer provided PBX's connected by a tie line." Fresno Datsun was notified on June 4, 1975 that the interface devices would not be installed.

4. Without the interface devices the two customer-provided PBX's were not electronically compatible with the tie line.

5. Pacific credited Fresno Datsun's account in the amount of \$2,979.37 for the period February 1, 1975 through September 15, 1975. The credit was shown in the November 1975 billing to Fresno Datsun. That amount represented 100 percent of the monthly charges for the tie line for that period plus 100 percent of the connection charge associated with its installation.

6. Pacific rendered monthly bills to Fresno Datsun for the tie line during the period September 15, 1975 to May 19, 1976.<sup>1/</sup> The total amount billed for that service in that period was \$3,270.96. Pacific was paid that amount after referral of the account to a collection agency. That amount is also the entire sum received by Pacific for the tie line net of credits to the Fresno Datsun account.

#### Issues

The pivotal issue is whether Pacific, in refusing to provide the interface device, properly applied its tariffs. Also in dispute is whether the tie line was functioning during the September 15, 1975 to May 19, 1976 period as well as whether Pacific received a request to disconnect the tie line prior to May 19, 1976.

<sup>1/</sup> Pacific contends it did not receive a definite disconnect order prior to May 19, 1976. A credit of \$622.36 for services from May 19, 1976 to July 6, 1976 previously billed was made June 16, 1976 by Pacific.

Pacific's Tariffs

As brought out in Finding 3 above the interface device, designated CDQ, is offered under Pacific's Sch. 135T, Connections of Customer-Provided Equipment and Systems at Sh. 138A pertaining to Private Line Channel Voice Connecting Arrangements. The relevant contents are:

Installation - Monthly  
Connection Charge - Rate

2. Arrangement to permit connection of a customer-provided communications system arranged for dial or automatic signaling, to a Utility-provided private line channel which terminates at the distant point in a Utility-provided PBX or Centrex System arranged for dial or automatic signaling, each (CDQ) \$35.00 \$5.75

"SPECIAL CONDITIONS

1. Applicable in connection with 2.

a. This connecting arrangement provides the network control signaling functions.

b. Where the connecting arrangement is furnished, it is not adapted for:

(1) Data or alternative voice data communications.

(2) Use on private line channels when the Utility does not provide channel signaling as shown in Schedule Cal.

P.U.C. No. 45-T. In dispute as whether in dispute as to whether September 15, 1975 to May 15, 1976 period as well as whether Pacific received a request to disconnect the line prior to May 15, 1976.

Pacific contends it did not receive a definite disconnection order prior to May 15, 1976. A credit of \$22.85 for services from May 15, 1976 to July 6, 1976 previously billed was made June 16, 1976 by Pacific.

On 1st Revised Sheet 6 of this Sch. 135T there is a limited disclaimer of responsibility for the "through transmission of signals generated by customer-provided equipment." The provision is:

"The Utility shall not be responsible for the installation, operation or maintenance of any customer-provided equipment or systems. The facilities of the Utility are not represented as adapted to the use of customer-provided equipment and systems, and where such equipment or systems are connected to Utility facilities the responsibility of the Utility shall be limited to the furnishing of facilities suitable for exchange and message toll service or private line service and to the maintenance and operation of such facilities in a manner proper for the service furnished: subject to this responsibility the Utility shall not be responsible for (i) the through transmission of signals generated by the customer-provided equipment or systems or for the quality of, or defects in, such transmission, or (ii) the reception of signals by the customer-provided equipment or systems."

The general regulations governing Pacific's private line services and channels are contained in Schedule Cal. P.U.C. No. 44-T (Sch. 44T). Original Sheet 10 of that schedule, which became effective September 19, 1948, includes the following provision:

"B. REGULATIONS APPLICABLE TO ALL PRIVATE LINE SERVICES AND CHANNELS"

"15. Other Equipment and Arrangements"

"Equipment and arrangements requested by the customer and not otherwise provided for, are furnished wherever possible, if facilities are available and if not detrimental to any of the services furnished by the Telephone Company, and additional charges based upon the costs incurred, apply."

Discussion

Obviously, Sch. 135T/Sh. 138A does not require that the interface coupling device be provided in this instance because the tie line connected two customer-provided PBX's. In late-filed Exhibit 4 Pacific contends:

"Schedule Cal. P.U.C. No. 44-T, Paragraph B., 15, applies to private line services only. An example of an arrangement provided under 44-T, B., 15, would be a customer request for a private line with a zero transmission level. Pacific could provide the requested service by a special arrangement conditioning the line. The customer would pay an additional charge for this service.

"44-T, Paragraph B., 15, Original Sheet 10, became effective September 19, 1948, which was prior to general interconnection with customer-provided equipment.

"With the advent of general interconnection in the communications industry, Schedule Cal. P.U.C. No. 135-T was approved by the Commission and became the controlling authority when customer-provided equipment is connected to Pacific's facilities.

"The CDQ protective arrangement is connected at the termination of an interexchange private line and customer-provided PBX. The CDQ serves as a protective device and also includes signaling to be compatible with the signaling equipment in the trunk circuits in the utility's PBX. The signaling is considered as part of the trunk circuit offered and charged by the utility as part of its tariffs covering PBX's.

"Schedule 44-T, B., 15, does not apply to the request by ComPath to provide CDQ's on an interexchange private line between two customer-owned PBX's. As interconnection is involved, the prevailing tariff is Schedule Cal. P.U.C. No. 135-T.

... (2) ... of ... ..  
 ... ..

"Schedule Cal. P.U.C. No. 135-T, I., A., 1st Revised Sheet 6, effective August 6, 1975, is applicable in this case (Attachment 2). The tariff states in part, "...the utility shall not be responsible for (i) the through transmission of signals generated by the customer-provided equipment or systems or for the quality of, or defects in, such transmission, or (ii) the reception of signals by the customer-provided equipment or systems." The CDQ's as requested by ComPath would have provided the signaling. We believe that it is the customer's responsibility to provide the necessary equipment for the through transmission of the signaling generated by his PBX."

Pacific's contentions are not persuasive in light of the additional findings which follow.

#### Additional Findings

7. Sch. 135T serves to protect the telephone network and other facilities by requiring interface devices where necessary, but conversely it does not serve to preclude the furnishing of such devices. Similarly, the disclaimer on responsibility for through transmission, quoted above from tariff sheet 6 of this schedule, is not equivalent to authority for refusing to provide devices which will make possible or enhance such transmission.

8. Regulations in Sch. 44T as supplemented by regulations in Sch. 135T govern private line service involving customer-provided equipment. Sch. 44T and Sch. 135T are not in conflict.

9. Sch. 44T, paragraph B., 15 (Original Sheet 10) applied to the requested serving arrangement and its criteria were met:

"Equipment and arrangements	(that would be the (CDQ2W's.
"requested by the customer	(SBCI did make the (request.
"and not otherwise provided for,	(no other provision (covered the situation
"are furnished wherever possible, if facilities are available and if not detrimental to any of the services furnished by the Telephone Company."	(The CDQ installation (was feasible and it (was part of an (established tariff (offering.

10. To the extent ambiguities exist in Pacific's pertinent tariffs, all reasonable doubts as to their meaning should be resolved against Pacific (Kings Alarm, D.86879 dated January 18, 1977, C.9914).

11. The tie line was of little service, if any, to Fresno Datsun.

#### Conclusions

1. Fresno Datsun's request that "Pacific be ordered to pay Fresno Datsun's agent, SBCI, \$1,000 to compensate SBCI for its services in helping Fresno Datsun get this matter resolved" should be denied on the grounds the Commission lacks jurisdiction to grant such award.

2. Based on the foregoing findings, Pacific should be required to refund \$3,270.96 plus interest accrued from the date of collection.



O R D E R

IT IS ORDERED that:

1. Fresno Datsun's request for an award of service fees is denied. ✓

2. The Pacific Telephone and Telegraph Company shall refund to Fresno Datsun or its agent, as Fresno Datsun shall indicate, the sum of \$3,270.96, with interest at the rate of seven percent per annum thereon until paid.

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

Dated at San Francisco, California, this 16th day of MAY, 1978.

Robert Bateman  
President  
William Quon Jr.  
Wynne L. Steyer  
Richard D. Howell  
Clair J. Schulz  
Commissioners