

Decision No. 89112 JUL 25 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
General Telephone Company of California,
a corporation, for authority to increase
certain rates and charges in Schedule
Cal. P.U.C. No. A-24, Telephone Answering
Service.

Application No. 53974
(Filed April 16, 1973;
amended September 24, 1973)

Investigation on the Commission's own
motion into the rates, tolls, rules,
charges, operations, costs, practices,
contracts, service and facilities of
GENERAL TELEPHONE COMPANY OF CALIFORNIA,
a California corporation.

Case No. 9767
(Filed July 16, 1974)

Albert M. Hart, H. Ralph Snyder, Jr., Dennis L. Dechert, and Loren Albeck, Attorneys at Law, for General Telephone Company of California, applicant and respondent.

Carl Hilliard, Attorney at Law, for TASC, protestant.

Walter Kessenick, Attorney at Law, Ermet Macario, and James Shields, for the Commission staff.

O P I N I O N

Applicant General Telephone Company of California (General) is a California corporation providing communications service within the State of California. It is wholly owned by General Telephone and Electronics Corporation with headquarters in New York City. General owns and operates telephone systems in various cities and unincorporated areas located in the counties of Fresno, Imperial, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Joaquin, Santa Barbara, Tulare, Ventura, and Yolo.

General filed Application No. 53974 on April 16, 1973, seeking authority to increase rates for Telephone Answering Service (TAS). On September 24, 1973, General filed an amendment to its application. The Commission, on July 16, 1974, issued its Order Instituting Investigation, Case No. 9767, and consolidated the investigation with General's instant application.

History

October 18, 1949. The present attendant's position rates became effective on this date, pursuant to Decision No. 43423.

February 28, 1955. The present concentrator identifier rates became effective on this date, having been authorized by Resolution No. T-2829.

July 1, 1969. Decision No. 75873, issued on General's rate Application No. 49835, advised General to request its TAS rate relief in a separate proceeding.

April 16, 1973. General filed subject Application No. 53974 for authority to increase certain rates and charges in Schedule Cal. P.U.C. No. A-24, Telephone Answering Service.

April 19, 1973. By Secretary's letter the Commission informed General that the date on which all supporting exhibits will be filed and served will be considered as the filing date of the application.

May 14, 1973. A protest was filed by Telephone Answering Services of California (TASC).

May 16, 1973. General filed the supporting exhibits to its application.

June 13, 1973. The Commission staff filed a "Motion to Consolidate Proceedings".

July 2, 1973. General filed an "Opposition to Motion to Consolidate Proceedings Under Application No. 53974 with Proceedings Under Application No. 53935".

July 9, 1973. General and TASC filed a "Stipulation to Consolidate" Case No. 9495 and Application No. 53974.

July 12, 1973. By Secretary's letter the Commission staff requested General to amend its application to show the present rates in the former California Water and Telephone Company (Cal-Water) exchanges as well as the effect of the application on them.

August 6, 1973. TASC filed a "Support of Motion to Consolidate Proceedings Under Application No. 53974 with Proceedings Under Application No. 53935".

August 15, 1973. The Administrative Law Judge informed the parties that no motion for consolidation would be granted.

September 24, 1973. General filed an amendment to its application.

December 24, 1973. Notice of hearing was mailed to parties setting hearing for January 28, 1974.

January 15, 1974. By notice mailed to all parties, the Commission removed the hearing set for January 28 from its calendar and set a prehearing conference to be held on January 29, 1974.

January 29, 1974. Prehearing conference was held at San Francisco before the ALJ.

February 5, 1974. Notice of Hearing was mailed to all parties setting further hearings for April 2, 17, and 30, 1974.

March 18, 1974. Notice Resetting Hearing was mailed to all parties resetting hearings to May 9, 21, and 30, 1974.

May 3, 1974. TASC filed a "Motion for Continuance: Declaration of Carl B. Hilliard, Jr., and Points and Authorities in Support Thereof".

May 9, 1974. General filed an "Opposition to Motion for Continuance: Declaration of Dennis L. Dechert and Points and Authorities in Opposition to Said Motion". Hearing was held and the continuance was granted by the ALJ. The matters were set over until such date as parties signed a statement indicating "that everything has been done that has to be done or can be done through discovery." (Tr. 11.)

July 16, 1974. The Commission opened its investigation, Case No. 9767.

April 21, 1975. Notice of Hearing was sent to all parties setting hearing for June 23, 1975.

June 23, 24, 1975. During the hearings at San Francisco, General presented its direct case, and a Pacific Telephone employee under subpoena testified for TASC.

July 17, 1975. This Commission's Secretary issued a subpoena duces tecum requiring Don L. Schumacher, Marketing Director of General, to appear on August 11, 1975 and bring with him documents related to General's market survey concerning telephone answering-recording services.

August 4, 1975. General mailed a "Notice of Motion for Order Quashing of Subpoena Duces Tecum", together with a supporting declaration.

August 11, 12, 13, 14, 15, 1975. General's motion was heard on August 11 by the ALJ who, after considering the papers, pleadings, and documents in the file and after hearing the testimony of Mr. Schumacher and argument of counsel, denied the motion to quash. Mr. Schumacher's appearance was then deferred by stipulation of counsel until August 13, 1975. On August 13, 1975 Mr. Schumacher appeared in response to the subpoena duces tecum. He refused to supply the subpoenaed documents and he refused to testify concerning that portion of the documents he deemed privileged. The question on discovery was referred to the Commission for appropriate action.

The Commission staff presented its direct case in the form of a report and prepared testimony put into evidence respectively as Exhibits 9 and 10. Counsel for TASC moved to strike Exhibits 9 and 10, but not the testimony and cross-examination of the staff witness. Both General and the Commission staff opposed the motion. The ALJ granted the motion, striking the testimony and cross-examination as well.

TASC presented its witnesses, General also had one witness in rebuttal. TASC moved for dismissal, and General requested time to respond by briefs. The ALJ rejected the request for briefs and adjourned the hearings pending further action of the Commission.

September 8, 1975. The Commission staff petitioned to have the staff's evidence reinstated.

April 14, 1977. General's attorney sent a letter to the ALJ which reads as follows:

"As I understand the status of the referenced application, you referred to the Commission on or about August 13, 1975 the question of whether the Commission should issue an Order to Show Cause to determine whether General's witness, Don L. Schumacher, was in contempt of the Commission by refusing to produce certain documents specified in a subpoena duces tecum issued by the Commission on July 17, 1975 at the request of Telephone Answering Services of California, Inc. (TAS). Mr. Schumacher's refusal to produce the documents was based on his belief that they contained proprietary information which was privileged. Specifically, the documents related to results obtained from a market survey designed to test the marketability of a service utilizing central office automatic telephone answering service equipment, which service would compete with services provided by members of TAS.

"The principle of nondisclosure of proprietary information remains valid and I would hope that the Commission will never compromise that principle. However, General can agree to disclosure at this time since the information is no longer proprietary because of changed circumstances.

"Nearly two years have passed since the information for the business survey was accumulated and, because of the passage of time, it has lost its usefulness. Further, the company has been unable to locate a vendor of central office automatic telephone answering service equipment which meets our technical and price requirements. Finally, our experimental tariff for the service has been withdrawn. For the above reasons, Mr. Schumacher has no objection to disclosure of the information. Accordingly, I am, by copy of this letter, forwarding a copy of the findings of the market survey to counsel for TAS.

"General's efforts to have rates adjusted for telephone answering services have been before the Commission, in one form or another, for nearly a decade. For the most part, the present rates have been in effect, for approximately twenty-five years. It is hoped disclosure of the enclosed information will get our application in a position where it can be processed to a conclusion."

July 8, 1977. The assigned Commissioner instructed by memorandum that the application should proceed to final resolution, with additional hearings afforded on the market survey documents if requested by protestants.

July 11, 1977. Protestants waived additional hearings and agreed to submission of matter.

Discussion

General, in its application, seeks higher rates for TAS. Among other things, General's proposal seeks to eliminate tariff inconsistencies^{1/} and reflect current labor and material costs in its TAS rates. General's witness indicated that, while some TAS rates were not changed since 1949, the costs of labor employed in the installation and maintenance of this service increased by 329 percent.

1/ General's TAS tariffs reflect two different rate structures. One is applicable to exchanges of the former Cal-Water (see General's Tariff Schedule Cal. P.U.C. No. A-24, Sheet 14) and the other is applicable to the remainder of General's exchanges.

The staff concluded that General's cost data in support of its proposed rates was prepared consistent with the usual format required in rate cases and that an increase in TAS rates is justified. The staff recommended that the utility proposed uniform rate structure be authorized and that any increase be limited to no more than 100 percent for two years to reduce the impact on TAS clients. The staff witness also recommended that TAS customers be allowed to obtain their own, more modern equipment, and interconnect it to General's lines.

TASC moved to strike staff's Exhibits 9 and 10. (Tr. 181.) The reason advanced by Mr. Hilliard was "...that my concern is somebody that wasn't present during these proceedings, and perhaps didn't read the transcript, might come upon Exhibits 9 and 10 and read that exhibit and believe that it constituted a recommendation which was based on something more than a cursory review of work papers and documents." (Tr. 221.) The staff and General opposed the motion. The ALJ granted the motion to strike Exhibits 9 and 10 and further ordered that accompanying testimony and cross-examination be stricken, apparently judging the presentation inadequate, stating, "...the laymen on the Commission normally seem to have more confidence in their technical staff than they do in those old Examiners that did this years ago and grew up with it." (Tr. 223.)

Upon review of the record and the pleadings concerning this matter, we do not agree that the staff's presentation should be excluded. The questions raised, as to the thoroughness of the presentation, will affect the evidentiary weight that we afford to the presentation. Exhibits 9 and 10 and accompanying testimony and cross-examination are admitted to the record.

TASC, through numerous witnesses, demonstrated the effect of the proposed rates on different answering service companies in different areas, and described service problems with the available telephone company equipment. The need for uniform rate treatment among General's exchanges is unquestionable. The rates proposed by General are based on detailed cost studies and result in an average increase of approximately 100 percent

in charges to TAS customers. General's proposed increase is further supported by the obvious increases in labor costs since 1949 as well as further cost increases that have certainly taken place since the filing of its application. General's witness testified that the proposed rates would increase revenues by \$967,000 for the year 1974 estimated. The need for such a sizable increase suggests that for years such TAS services have been subsidized by the general body of ratepaying subscribers. We recognize that a considerable length of time has elapsed since the application was filed and we believe that the rate increase should be granted without further delay to relieve the subscribers in general from this unwarranted burden. Considering that the studies in support of the increases are more than four years old, the staff's recommendation to limit such increases for two years is no longer timely. Nor is it necessary to authorize acquisition of equipment by TAS customers, since such equipment can become available pursuant to General Order No. 138, ^{as amended FCC regulations provided} This Commission is ^{that} not unsympathetic to the impact of rate increases on TASC members. Such increases during inflationary times are a burden on everyone. However, fairness demands that answering service subscribers not continue to be subsidized by the subscribers in general.

Question on Discovery

On July 17, 1975, the Commission issued a subpoena duces tecum requiring the appearance of Don L. Schumacher, an employee of General, and requiring that he bring certain documents relating to a TAS market survey. Mr. Schumacher appeared at the hearing on August 13, 1975 and objected to the requirement that applicant furnish on the record certain information concerning the market survey which he believed to be proprietary. (Tr. 385, 387, 397.) Applicant's request for a procedural ruling by the full Commission on this point is moot in light of applicant's letter of April 14, 1977, wherein General's counsel furnished TAS market survey findings to Mr. Hilliard, attorney for TASC. Mr. Hilliard has informed the ALJ that submission without further hearing is acceptable to TASC.

Approval of the proposed increases in General's TAS rates will increase General's gross revenues by almost \$1,000,000 annually based on the 1974 level of business. (Tr. 1901.) The staff, in Exhibit 9 at page 8, recommended that this increase be offset by a reduction in measured exchange service rates, suggesting an offsetting rate change could be accomplished in the general rate application of General, Application No. 53935. However, that proceeding was concluded when we issued Decision No. 83779 on November 26, 1974. Also, General's measured rate offerings have been expanded significantly, and by Decision No. 85740 dated April 27, 1976, we ordered establishment of message timing for local messages. For these reasons the staff's recommendations are inappropriate at this time. However, review of Decision No. 87505 (June 28, 1977), the order in General's most recent general rate proceeding, will permit an approximate evaluation of the effect of a TAS rate increase on General's rate of return, noting that a 1976 test period was employed. The adopted rate base in that decision was \$1.3 billion (mimeo. p. 15), and the net-to-gross multiplier was 2.130 (mimeo. p. 36). Dividing the \$1 million gross revenue increase in TAS rates by 2.130 and dividing the result by the \$1.3 billion rate base produces an indicated increase in rate of return of about 0.04 percent. This is a minor increase in rate of return and can await recognition in General's next rate proceeding^{2/} ~~expected to be filed~~ ~~in the fall of 1978~~ *2/1/77*

Refunds

Consistent with the refund provisions directed by Decision No. 87505, issued June 28, 1977 (mimeo. pp. 14, 16), the rates established by this decision must be made subject to refund.

Any pending motions not heretofore granted or denied are hereby denied.

^{2/} Such a procedure was followed in Decision No. 88232 (December 13, 1977) in Pacific Telephone's Application No. 55492, where we offset the revenue requirement by \$1.4 million granted in several other minor proceedings.

Findings

1. Certain of the TAS rates proposed to be increased by General have been in effect since 1949 or 1955, during which time costs have increased significantly.

2. The present TAS rates in Schedule Cal. P.U.C. No. A-24 are not compensatory and thus create a burden on other subscribers.

3. General based its proposed rates, in part, on its normal cost method for establishment of rates for other than basic service. The then current, 1974 or older, costs of materials and labor were utilized in the computation and the estimates of labor were based on empirical data. Other factors, such as comparison of rates for similar offerings under its tariffs with adjacent companies, and judgment as to customer acceptance, were considered.

4. General's proposal to establish a uniform rate structure for secretarial lines in all of their exchanges is reasonable.

5. The increases in rates and charges authorized by this decision are just and reasonable; and the present rates and charges, insofar as they differ from those prescribed by this decision, are for the future unjust and unreasonable.

6. The rates authorized herein should be subject to possible refund, pending resolution of the test year normalization issue. (City of Los Angeles v P.U.C. (1975) 15 Cal 3d 680). The decision by the Commission reached on remand should be applied in due course to this proceeding.

7. The increase in rates to be authorized herein should be subject to the timely filing by applicant of an advice letter for a rate reduction based on the estimated 1978-79 ad valorem tax decrease. The 1978-79 estimate shall use the market values adopted by the County Assessor or the State Board of Equalization on or after May 24, 1978. The utility should be directed to establish a tax initiative account pursuant to Commission OII 19, issued June 27, 1978.

8. Because of the long delay involved this order should be made effective immediately.

The Commission concludes that the application should be granted to the extent set forth in the following order, and in all other respects, denied.

O R D E R

IT IS ORDERED that:

1. General Telephone Company of California (General) is authorized to file with this Commission, after the effective date of this order, revised Tariff Schedule Cal. P.U.C. No. A-24 with changes in rates, charges, and conditions as proposed in Exhibit C attached to Application No. 53974, as amended on September 20, 1973. Such filing shall comply with General Order No. 96-A. The effective date of the revised schedule shall not be less than five days after the date of filing.

2. General's rates authorized herein shall be subject to possible refund pending resolution of the test year normalization issue. Whatever decision is reached by the Commission on the remand shall be appropriately applied in due course to this proceeding.

3. The increase in rates ordered herein is subject to the filing of an advice letter on or before August 1, 1978 requesting a rate reduction based upon the estimated reduction in ad valorem taxes on utility property as of July 1, 1978. In the absence of such a filing the rate increase hereby authorized shall automatically terminate on August 1, 1978. The rates in effect immediately prior to the increase ordered herein shall apply thereafter and the utility shall immediately file appropriate tariffs in compliance with General Order No. 96-A.

4. General is directed to establish a tax initiative account pursuant to Commission OII 19, issued June 27, 1978.

5. The investigation instituted by the Commission in Case No. 9767 is hereby terminated.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 25th day of JULY, 1978. ✓

*I abstain
Robert Bateman*

~~Robert Bateman~~

 President
 William Spitzer

 Leonard J. Saperstein

 Robert W. Howell

 Claire J. DeLoach

 Commissioners