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ORIGINAL

Decision No. 90260 MAY 8 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PARTS LOCATOR, INC.,)
 Complainant,)
 v.)
 PACIFIC TELEPHONE AND)
 TELEGRAPH COMPANY.)
 Defendant.)

Case No. 10490
(Filed January 24, 1978)

William L. Knecht, Attorney at Law, for complainant.
Duane G. Henry, Attorney at Law, for defendant.

O P I N I O N

Complainant provides instant communication for auto dealers, repair shops, and storage yards, which require constant information on the availability of auto parts. This service is provided through four telephone private line circuits classified as interstate and rated under interstate tariffs and rates which are usually less than intrastate charges.

The complaint alleges that all four circuits assigned to the complainant were connected with a 29A switch, which permitted complainant to interconnect all of said circuits, thereby qualifying all as interstate and requiring all to be billed under interstate rates and tariffs. The complaint further alleges that defendant removed the switch without authority and then assessed and collected the much higher intrastate rate on the disconnected circuit (6KPl048). The complaint prays for attorney's fees and for an adjustment whereby defendant would reimburse complainant the difference between the intrastate and interstate rates.

Defendant's answer (filed on March 1, 1978) alleges that 6KP1048 was intrastate prior to October 28, 1977, when it was connected to an 29A switch and classified as interstate. Defendant admits the other circuits assigned to complainant were interstate and asserts that interstate rates may not always be less than intrastate rates, since many varying factors may be involved.

A public hearing was held in San Francisco on June 19, 1978, before Administrative Law Judge Edward G. Fraser and the proceeding was submitted. It was reopened on September 11, 1978, at the request of the complainant and resubmitted November 3, 1978, on a stipulation of the parties.

Evidence of Record

A witness testified that: (1) She has been employed as a telephone operator by complainant since 1965; (2) auto wreckers or dealers call and she refers them to others who have auto parts for sale; (3) approximately 200 clients can be contacted and connected through the facilities in her office; (4) until January 1974 there were four lines (including 6KP1048) joined by a button at the side of her desk which was pushed to connect the circuits; and (5) the connecting button was identified as 29A on a piece of tape, and other buttons with circuit numbers. During January of 1974 the business moved to another office in the same building where duplicate facilities had already been installed to guarantee no interruptions in service.

After moving to the new facility, 6KP1048 could no longer be connected to other lines and there was no 29A switch. This was reported to the owner of Parts Locator, Inc. and messages were relayed to the person on the second circuit by the operator. On cross-examination the witness stated that three of the interstate circuits were installed and in operation when she joined in 1965. Another interstate circuit was installed later and 6KP1048 was connected in 1971 or 1972.

The owner-manager testified that he was involved in negotiating apparent overcharges on telephone service right after the move and was not aware that 6KP1048 was not in the new 29A switch circuit, which combined the other three lines maintained by complainant. He had repeatedly requested that service be furnished at the lowest lawful rate and that all of complainant's customers be connected through a switchboard even though in different areas or on separate communication systems. After advising defendant's representatives of his requirements, he relied on the latter's expertise and cooperation. He did not realize that 6KP1048 was being charged the higher intrastate rates until May of 1977, due to the complexity of the bills he received and the assurances of defendant's representatives that all charges imposed were at the lowest rates permitted. He filed a claim with the defendant and later with this Commission as soon as it became evident that 6KP1048 was qualified for the lower interstate rate. He admitted on cross-examination that complainant moved to the new facility in early 1974 and that the first time he complained about the interstate rate was in May of 1977. He further admitted that 6KP1048 was known as the "Bay Area Local Line" because all customers served by it were located in the Bay Area.

Defendant's representative testified that she was transferred to her present job in November of 1975 and became aware of complainant's account in July 1976 and that 6KP1048 was established at the request of complainant's prior owner on February 11, 1972. Defendant's records (Exhibit 12) show that the circuit was installed as an intrastate line since there is no indication that a 29A switch was ever ordered or installed. Exhibit 13 was identified as a pricing diagram, which shows what work was done as a result of the order in Exhibit 12. Exhibit 13 indicates that an intrastate circuit identified as 6KP1048 was connected, but there is no mention of a 29A switch.

The latter exhibit also shows that the new circuit was operative as of March 29, 1972. Exhibit 14 was a memo of the telephone call from a salesman to defendant's central office on February 10, 1972, which officially advised defendant that complainant had ordered the circuit. There is a note on this memo that there was to be "no switching". The witness advised that this indicated no switch was to be installed.

Exhibit 15 includes the report made by defendant's representative on the first conversations with complainant's prior owner regarding the installation of an inter-exchange private line (IXPL) circuit. The first notation is dated December 29, 1970, and states that the customer requested interstate rates on the IXPL line, also that the circuit discussed was to run from San Jose on the south to Vallejo in the north. It was to service insurance adjustors and wrecking yards. It is referred to again as a local interstate IXPL circuit, to run from Vallejo to San Jose (although the term interstate is used, the description indicates intrastate would be more accurate). The witness further testified that the notations on Exhibit 15 show that an intrastate private line was installed without a 29A switch, since there is no mention of the need for, or installation of, the switch. Exhibit 16 refers to a conversation on May 3, 1974, in which the wife of the present owner of Parts Locator, Inc. was informed that 6KPl048 was an intrastate circuit. The exhibit further reveals that complainant's owner was advised on September 11, 1974, of the pricing on complainant's three interstate lines. 6KPl048 was not included, nor was it referred to by either party. The witness described 6KPl048 as a "multi-point private line connected to many cities in the State of California. All locations have minimum one telephone and one speaker". It is a large party line and when a call is made everyone on the line can listen and become a part of the conversation. The witness testified that a 29A switch is used to connect two circuits, then members on each circuit can communicate. She further testified that the equipment consists of a switch or key, which is moved up or down to engage or disconnect the two circuits.

Exhibit 17 has two parts. The first is a summary of service dated December 25, 1973, on one of the interstate circuits assigned to complainant. The 29A switch attached to the circuit is identified in the billing along with a charge for its function. The second part of the exhibit indicates that a 29A switch was removed from one of the interstate circuits on June 14, 1974. The circuits involved are identified with their assigned numbers, but 6KP1048 is not mentioned in the exhibit. The witness noted that there is no mention in defendant's records of a 29A switch being either installed or removed from 6KP1048. She further noted that a switch could not be installed on a circuit without some record of it. The switch must be requisitioned, then a workman is assigned to install it and his time on the job is recorded. A written work order is also required which must describe the work to be done and the equipment to be removed or installed.

The witness further testified that: (1) She had a conversation with the present owner of Parts Locator, Inc., during the spring of 1977; (2) he was informed that if an intrastate circuit is switched to interstate, the latter billing would prevail and the rate difference would be about \$100 a month using the present circuit locations; (3) he was also told that the difference in rates would vary depending on several factors; and (4) he thereupon requested a credit for the difference between intra- and interstate rates since the 29A switch had been removed from 6KP1048. She searched defendant's records and finding no evidence to support his claim, it was denied.

Position of the Parties

Complainant argued that the 29A switch was installed on 6KP1048, removed when the switchboard was shutdown, and never replaced when the new installation was activated. It was further argued that complainant must prevail even if the Commission finds that 6KP1048 never had a 29A switch since defendant failed to provide complainant with the lowest lawful tariff rate and thereby violated the trust

that utilities owe their customers. Defendant argued that a thorough search of its records produced no evidence that 6KP1048 had ever been an interstate circuit or had ever been connected to a 29A switch, and to require that every utility insure that all customers be charged the lowest possible rates at all times and under all circumstances would be unreasonable.

A late-filed exhibit was placed in evidence by a stipulation of the parties (Exhibit 18) after complainant obtained an order setting aside submission. This exhibit consists of a series of monthly bills from October 1977 through June 1978 on 6KP1048 which do not refer to or mention a 29A switch. Complainant argues that although defendant admits that the circuit included a switch during this period, the bills do not mention a 29A switch nor is there a separate charge for the switch. Defendant's reply is in evidence by stipulation as Exhibit 19. Defendant alleges that its accounting department has not changed the billing format because of recent changes in rates and the expense of repeatedly changing the format of each bill to reflect minor changes or relations with customers. It indicates the billing forms will be changed as soon as the new rates are final and the conversion process is now underway.

Discussion

The information from defendant's business records is contrary to the testimony provided by complainant. Defendant's records describe events which occurred on the date noted, usually in the handwriting of the person involved. When the dated memorandums fail to note that a 29A switch was installed, it is persuasive evidence that the circuit never had a switch. Defendant has a continuing interest in the accuracy of its business records, which are relied on for billing and allocation of costs.

The testimony of complainant's witnesses concern an event which occurred 4-1/2 years prior to the hearing. There were no supporting documents, although recollection of what happened was first prompted during the spring of 1977 when the controversy became active and complainant requested a credit on its telephone bill. The parties agree that a switch was removed. Defendant relies on its records, however, which indicate the removal was from an interstate circuit in June 1974. It is most probable that those who testified for the complainant were unknowingly influenced by the removal of the latter switch.

Finally, circuit 6KP1048 was referred to as a local Bay Area line, serving local dealers who would seldom buy auto parts out of the Bay Area due to expense and delays in delivery. We find that 6KP1048 did not have a 29A switch prior to October, 1977.

The second question is more complex. Is defendant required to charge interstate rates on an intrastate circuit to guarantee a customer the lowest possible rate for telephone service? The answer is no.

It is evident from the record that 6KP1048 served only California customers. The argument that it was an interstate circuit was not raised by any of the parties during the first several years after complainant's office facilities were moved. Both parties treated it as an intrastate circuit until the controversy.

A holding that all customers are entitled to the lowest applicable lawful rate at all times and under all circumstances would cause constant complaints. The same customer could be entitled to rates which would vary from week to week depending upon various circumstances and use. If defendant is required to initiate the reclassification of service so that all rates charged are always the lowest authorized, it will encourage endless litigation from those who would constantly seek to determine whether they are being "overcharged".

A telephone utility's customer service representatives have the obligation to fully answer inquiries from customers and in that context, apprise them of the rate impact of different service classifications and configurations that are applicable to the intended use. But they do not have the obligation to continually review the telephone usage patterns of a subscriber and seek out the most cost-effective service classification. The initiative rests with the customer to review and assess options, with the assistance of the utility's customer account representatives. To require a utility's personnel to continually assess the telephone usage of a subscriber and then in effect "shop" for the least expensive service configuration would place an unreasonable burden and expense on the utility (with the additional expense for such activity being passed on to all ratepayers).

The prayer of the complaint should be denied.

Findings

1. Complainant maintains a private line telephone communication system for auto parts dealers through a switchboard and a series of lines or circuits.
2. 6KP1048 served the Greater Bay Area and intrastate rates were charged for the service.
3. Other circuits connecting with points outside of California were joined by a 29A switch and charged the lower interstate rates.
4. Complainant's allegation that a 29A switch was installed on 6KP1048 prior to January 1974 is not supported by the record.
5. 6KP1048 was correctly classified as an intrastate circuit prior to October 28, 1977.

Conclusions

1. Defendant is not required to reclassify an intrastate circuit to interstate retroactively from 1974 through 1977, to satisfy a demand that the lower interstate rate must be assessed.
2. Once a customer has selected a class of utility service, the utility does not have a duty to continually monitor the customer's usage to determine whether the class of service previously selected continues to be the most cost effective one.
3. The relief requested by the complaint should be denied.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 8th day of MAY, 1979.

John E. Byron
 President
Vernon L. Sturgeon

David J. DeLong
James W. Smith
 Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.