

ORIGINAL

Decision No. 58015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

NATIONAL MOBILE RADIO SYSTEM, )  
an incorporated association, )

Complainant, )

vs. )

Case No. 6146

THE PACIFIC TELEPHONE AND )  
TELEGRAPH COMPANY, a corpor- )  
ation, )

Defendant. )

Berol & Silver, by Bruce Geernaert, for complainant.  
Arthur T. George and Pillsbury, Madison & Sutro, by  
Charles B. Renfrew, for defendant.  
James F. Haley, for the Commission staff.

O P I N I O N

Complainant's Request

National Mobile Radio System, an incorporated association,<sup>1</sup> filed the above-entitled complaint on July 8, 1958, and requests that this Commission issue its order directing defendant as follows:

1. Henceforth to charge and collect for the installation of remote operation and control channels used in connection with miscellaneous common carrier land radio stations, if supplied on a contract basis, a charge which is commensurate with that which is imposed and collected for the installation of channels for the remote operation and control of radio telephone stations for use in

<sup>1</sup> Complainant is a nationwide association having among its members numerous private businesses engaged in the operation of miscellaneous common carrier radio stations in California, duly licensed as such by the Federal Communications Commission.

connection with private land radio telephone stations for communication with mobile radio units; or

2. Forthwith to include within its tariff offering (Cal. P.U.C. Nos. 44-T and 45-T) channels for the remote operation and control of mobile radio telephone stations for use in connection with land radio telephone stations used for transmission of speech to mobile radio units, whether private or public.

#### Public Hearing

Public hearing on this complaint was held before Examiner Manley W. Edwards on January 6, 1959, in San Francisco. Complainant offered two exhibits and testimony by one witness in support of its request. The defendant did not offer any testimony by witnesses, but instead offered to satisfy the complaint under alternative No. 1 and made a motion that the complaint be dismissed. The Commission staff, represented by a telephone engineer, cross-examined the complainant's witness for the purpose of developing a full record to aid the Commission in deciding this matter. The motion to dismiss the complaint was taken under submission at the close of the day's hearing and now is ready for decision.

#### Complainant's Operations

Exhibits Nos. 1 and 2 illustrate the facilities and method of operation used by the complainant's members. Complainant furnishes a base radio transmitter station located on some high point usually at some distance (two to twenty miles) from its control point. The wires to connect from the control point to the radio transmitter station customarily are furnished by the defendant under contract. These are known as remote operation and control channels. Such channels are used to turn the transmitter on and off and carry the voice currents of the operator and persons with

mobile radio sets who subscribe to the complainant's miscellaneous common carrier service.

The complainant also subscribes to the regular public telephone service of the defendant at the control point so that its operator can relay messages from its customers' mobile radio sets or make appointments with any person having a regular public telephone. Complainant represents that it does not interconnect its facilities with those of the telephone company in such a manner that its mobile stations can talk directly with any person having a public telephone. Messages must be relayed through the operator to comply with telephone company rules. Since this service is in competition with the mobile telephone service offered by the defendant, complainant represents that defendant charges it a higher installation charge for its remote operation and control channels than for a private individual not so competing.

Complainant's Position

Complainant states that in the operation of miscellaneous common carrier radio stations it utilizes private line services and channels supplied by the defendant; that these remote operation and control channels are offered by defendant on a contract basis; that the installation charge for such channels is \$30; that defendant now offers channels for the remote operation and control of radio telephone stations for use in connection with private land radio telephone stations for private mobile radio communication systems under Tariff Schedule No. 45-T for an installation charge of \$8; and that the channels offered under the tariff constitute facilities identical to those facilities offered and supplied by defendant to operators of miscellaneous common carrier radio stations and their customers on a contract basis.

While the complainant and its members would be satisfied with a Commission order under alternative No. 1 of their request, they would prefer to have the service under a tariff alternative No. 2 of the request, because:

1. The contract arrangements would have no necessary uniformity up and down the State of California;
2. There is no assurance under contract of continued availability of these lines in the future;
3. The charges for these lines can be raised without advance notice;
4. No means of contract negotiation is offered to the complainant;
5. There is doubt that under the contract and terms as full use of the facilities of the complainant to the public's benefit could be made as if these lines are under tariff.

#### Defendant's Position

Defendant takes the position that this service is not a public offering; that it does not hold itself out to furnish such service to common carriers on a tariff basis; that this is not an appropriate proceeding to consider the tariff matter since it is willing to satisfy the complaint fully based on the first alternative request; that service to another utility customarily is made under contract; that the complaint has been satisfied; and that under Rule No. 13 of the Commission's revised rules of procedure a motion to dismiss may be made at any time after the filing of an answer.

#### Findings and Conclusions

After considering the evidence of record the Commission finds merit in the position taken by the defendant that it has satisfied the complainant and the complaint now should be dismissed. The action taken herein should not be construed as a determination of the utility status of the service being provided under the contracts involved in this proceeding since such question was not at issue.

O R D E R

Complaint as above-entitled having been filed with the Commission, a public hearing having been held thereon, the defendant having offered to satisfy the complaint as provided by alternative No. 1 and having made a motion to dismiss the complaint, the motion having been submitted and the Commission being of the opinion that the motion should be granted; therefore,

IT IS HEREBY ORDERED that the above-entitled complaint be and it is dismissed.

Dated at San Francisco, California, this 17<sup>th</sup> day of February, 1959.

[Signature]  
President

[Signature]

[Signature]

[Signature]  
Commissioners