

Decision No. 69343

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DOCTORS GENERAL HOSPITAL OF  
SAN JOSE,

Plaintiff,

v.

THE PACIFIC TELEPHONE & TELEGRAPH  
COMPANY,

Defendant.

Case No. 7825  
(Filed January 21, 1964)

Arthur T. George, Francis N. Marshall, George A. Seers, and John A. Sutro, Jr., of Pillsbury, Madison & Sutro, for defendant.  
Sam R. Morley and Paul I. Myers, Jr., of Myers, Hawley & Morley, for complainant.  
Richard J. Nielsen, for Western California Telephone Company, interested party.  
W. R. Roche and E. Macario, for the Commission staff.

O P I N I O N

After due notice, nine days of public hearing were held on this complaint before Commissioner Holoboff and Examiner Coffey. Following oral argument before the Commission and a demonstration of the actual operation of the telephone sets under consideration, this matter was submitted on September 4, 1964.

The complaint in substance alleges that complainant is a nonprofit California corporation operating a hospital at San Jose, California, and that:

1. For one year prior to January 21, 1964, complainant has demanded that The Pacific Telephone and Telegraph Company (defendant) acquire, install and connect to defendant's system telephone sets, called Ericofons, in numbers sufficient to provide telephone service to each bed for patients in complainant's hospital.

2. Ericofons satisfy the unique needs of hospital patients and are far superior to defendant's comparable telephone sets for the following reasons:

- (a) An Ericofon is a one-piece, lightweight unit;
- (b) An Ericofon is more easily handled by a hospital patient;
- (c) Any hospital patient can easily dial an Ericofon regardless of the patient's position, whether it be prone or sitting;
- (d) The signalling device of the Ericofon emits a soft tone as compared to the bells presently used by defendant;
- (e) Hospitals, other than complainant, using Ericofons have been satisfied in the use and expense of Ericofons;
- (f) Complainant's experimental use of an Ericofon has been most satisfactory in use and expense; and
- (g) Ericofons have a pleasing appearance.

3. Complainant has indicated to defendant that it will pay any and all fair and reasonable charges for the acquisition, installation and connection of Ericofons.<sup>1/</sup>

4. Defendant has and does refuse to acquire, install or connect the Ericofon to defendant's system; and the alternate equipment, appliances, facilities, and service proposed by defendant are unreasonable, unsafe, improper, inadequate and insufficient.

Complainant requests defendant be ordered to acquire, install, connect and maintain an Ericofon for each and every bed for patients in complainant's hospital and further to acquire, install, connect to service and maintain any and all instruments as may be requested by complainant.

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<sup>1/</sup> Testimony is that complainant represented to defendant that complainant would be willing to purchase Ericofons if such were necessary. (Tr. p.101.)

Defendant in its answer pleads substantially as follows:

1. The complaint fails to set forth any act or thing done or omitted to be done by defendant in violation of any provision of law or of any order or rule of this Commission.<sup>2/</sup>

2. Complainant has demanded that defendant acquire, install and connect Ericofons.

3. Defendant has refused and still refuses to acquire, install, or connect Ericofons to defendant's service.

4. The use of Ericofons would impair the operation of the telephone system, would reduce the quality of telephone service available to hospital patients and to all of defendant's subscribers, and would otherwise injure the public in the use of telephone service.

5. The telephone service defendant has offered complainant is not in any way unreasonable, unsafe, improper, inadequate or insufficient.

6. Defendant has offered to furnish complainant telephone service which is in all respects just, reasonable, safe, proper, adequate and sufficient, and which is superior to service which could be provided through the use of Ericofon instruments.

7. The relief requested by complainant is beyond the jurisdiction and powers of this Commission.

8. The telephone that defendant has offered to furnish complainant satisfies all reasonable service standards.

9. Any order directing defendant to acquire, install, connect or maintain Ericofons is beyond the jurisdiction and

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<sup>2/</sup> Section 1702, Public Utilities Code: "Complaint may be made ... by any corporation ... by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, ... in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission."

powers of this Commission; and any such order would deprive defendant of its property without due process of law and deny it the equal protection of laws in violation of the Fourteenth Amendment to the Constitution of the United States.

Defendant requested that the complaint be dismissed.

We find that the complaint charges in substance that defendant in violation of Section 451 of the Public Utilities Code <sup>3/</sup> has refused and refuses to acquire, install, or connect Ericofon telephone sets to defendant's public utility telephone system which are necessary to promote the safety, health, comfort and convenience of complainant and of hospital patients served by complainant.

The Commission's staff appeared in this proceeding. The staff's basic position was that reasonable customer demands for new or different service or equipment arrangements should be satisfied by a telephone utility if no adverse effect results therefrom on the utility or other customers of the utility. The staff presented testimony in support of its conclusion that the Ericofon is suitable for use on Pacific's telephone system, the Ericofon would be useful to many subscribers including and in addition to hospital patients, and the Ericofon would not impair the service to any other subscriber. The staff recommended that Pacific be ordered to provide a tariff offering to the public Ericofon sets at a rate which will not burden other users of Pacific's service.

3/ Section 451 of the Public Utilities Code: "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

"All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."

The material issues which will have to be resolved in this proceeding are:

1. Is the dial-in-handset which defendant has offered to furnish to complainant as sufficient, adequate, proper, safe, just and reasonable as the Ericofon which complainant desires?

2. Would the use of the dial-in-handset or Ericofon equally promote the safety, health, comfort and convenience of complainant and patients in complainant's hospital?

3. Would the use of Ericofons to serve complainant and patients in complainant's hospital result in substantial impairment or substantial reduction in quality of telephone service to complainant and patients in complainant's hospital, or Pacific's other subscribers?

4. Would the use of Ericofons to serve complainant, patients in complainant's hospital, or Pacific's other subscribers be compatible with the technical operation of defendant's telephone service?

The evidence shows that the capacity of the hospital was being increased to 150 beds by the construction of a 118-bed wing, with an ultimate completion date in January, 1965, and that most of the rooms are two bed wards. A unique cabinet has been developed by complainant and its architect for permanent installation in the wall by each bed containing accommodations so that each patient easily will have available facilities for contacting the nurse and controlling other functions in the room. In addition to providing space for the patient's personal effects, supplies, and utensils, the cabinet accommodates facilities which include a touch plate for calling the nurse, a speaker for intercommunication with the nurse, a switch to ensure that the nurse intercommunication

system will not be available for eavesdropping on patient conversations, controls for nine channels of television and radio background music, a control for window louvers, a remote control jack and a telephone. Complainant planned that each patient would have direct dial access to the toll free area, but that long distance calls would be placed by the operator of the hospital's private branch switchboard.

On September 19, 1962, complainant indicated to defendant its interest in using the Ericofon in a proposed addition to its hospital then planned for completion in early 1964. Defendant, after consideration, advised complainant that because of possible transmission loss the Ericofon could not be used. Further, complainant was advised that a single unit telephone set was under development, to be field tested in June, 1963, which would be available after December, 1963. Complainant thereupon requested definite information on defendant's proposal by November, 1962, because of architectural design limitations. When defendant attempted to obtain sample sets for tests from The American Telephone & Telegraph Company, it was advised that a firm commitment was not possible. On December 11, 1962, since defendant could not then specify what its proposed telephone set would be or guarantee availability by the first quarter of 1964, complainant again requested service by Ericofon. At this time, defendant conceded that complainant's particular installation would not present a transmission problem and changed its grounds for refusal of Ericofon service, indicating to complainant that similar service would have to be made available for all subscribers if Ericofon service were furnished to complainant and that such service would not be acceptable in many instances.

Discussions continued during January, February and March, 1963, during which time a picture of defendant's Trimline telephone set, then under development, was obtained to show complainant. Complainant was interested when apprised that a hospital "package" was being developed. However, defendant could not guarantee installation by the then scheduled hospital completion date, September, 1964, inasmuch as the "package" was not completely engineered, nor were its functions or cost well defined. In March, 1963, complainant was advised that a decision on its renewed request for Ericofon service would be available within sixty days.

On May 20, 1963, complainant was advised by defendant that it would not connect to Ericofons and that even if included in defendant's inventory, the Ericofon would not be recommended for hospital use because of:

1. Patients' lack of familiarity and 90 percent turnover of patients would require constant instruction on the use of Ericofons by complainant's personnel.
2. The relative ease of disconnection because of the switch hook location would probably cause an unnecessary workload at complainant's switchboard due to false busy signals and attendant calls.

After considering these objections, complainant again requested Ericofon service; defendant then offered to provide "the most up-to-date instrument available when the hospital was ready."

On June 10, 1963, complainant informally referred its request to this Commission.

In July, 1963, defendant provided complainant with a working model of the Trimline telephone for a three-day trial. Complainant indicated the set did not fit complainant's envisioned desires for hospital use.

At a meeting of complainant, defendant, and the Commission's staff on August 15, 1963, the staff requested that defendant do "something else" to provide complainant with service. At a meeting on September 23, 1963, defendant produced a working prototype of a dial-in-handset telephone and subsequently provided complainant with the prototype for a three-day trial. Thereafter, complainant indicated that this last instrument did not meet complainant's requirements.

Witnesses for defendant testified that throughout the time of the foregoing series of conferences, defendant's top management did not at any time during the decision-making process on complainant's request rely on the fact that the affiliates of defendant were producing a possible substitute for the Ericofon. Further, in arriving at the decision, in addition to other factors herein indicated, consideration was given by top management as to whether a product was produced by an affiliate of defendant or by a nonaffiliate. It was stated that some equipment of nonaffiliated producers has been accepted and used by defendant (telephone booths, head telephone sets, tools and minor items, repertory or automatic dialers, automatic answering and recording sets) when the equipment was best suited for the job in the opinion of defendant. Defendant stated that its general policy is to provide customers with the best services which defendant has available and to provide special assemblies if they are consistent with tariff applications and the economic situation. Further, a suitable Bell-manufactured telephone instrument would normally be recommended for use, but an instrument which defendant felt to be fully suitable from technical and all other standpoints would be provided if defendant did not have an instrument of Bell manufacture.



The wall cabinet in which complainant desires to place the Ericofon is approximately 30 inches long, 18 inches high and 6 inches deep, and will be partially recessed in the wall next to each patient's bed. Depending on the location of the bed, it is planned that the telephone set will be placed in either the upper left or right compartment of the cabinet. When hearings began on this complaint, May 20, 1964, the hospital addition was about 70 percent completed and the cabinets were being constructed. The cabinet design was concluded just before bids were invited on the hospital in March, 1963.

The Ericofon is a one-piece telephone set containing the transmitter, receiver, network, dial, switch hook and, customarily, the tone ringer in one plastic case which is hand-held. When not in use the set rests upon the base in which the dial and switch hook are mounted in such a way that the switch hook is depressed to place the instrument "on hook."

The dial-in-handset is a telephone set containing transmitter, receiver, network, dial and switch hook in a single case which is hand-held. A separate base or mounting contains the ringer and a switch hook. This handset may be operated as if it were a one-piece telephone set by operating a push button on the handset and as a two-piece telephone set by placing the handset on the base or mounting.

The Ericofon has been manufactured in the United States since 1958 solely by the North Electric Company, a producer and supplier of telephone apparatus. The North Electric Company is a subsidiary of the L.M. Ericsson Company, an electronic and equipment manufacturer of a complete line of telephone apparatus. Less than 50 percent in total value of Ericofon parts are

4/ The term "switch hook" is applied to those switching functions of a telephone set actuated by replacing the receiver on its "hook," or "cradle." North Electric Company uses the term "stand switch" to describe these switching functions in the Ericofon.

imported from Sweden. Over one million Ericofons are used in Europe in conjunction with telephone systems employing equipment made by American, Swedish, German, and other manufacturers. A large number of Ericofons are in service in Canada, South America, and Australia. Independent telephone companies in the United States use over 115,000 Ericofons, most having been sold within the last three years. The Rural Electrification Administration, after tests, has approved the use of Ericofons on the lines of its borrowers. Forty governmental telephone administrations throughout the world have approved the Ericofon.

The dial-in-handset is manufactured by the Western Electric Company, an affiliate of defendant. This handset was recently developed as a modification of the Trimline telephone, several thousand having been produced by a model shop as of July 1, 1964. The Trimline product trials were complete and the market trials were in progress as of July 3, 1964. No product trial appears to have been made on the dial-in-handset because of its similarity, except for possible cycling of the dial-in-handset off-hook push button, to the Trimline set. No market trials had been completed on the dial-in-handset as of July 1, 1964. A tariff filing with this Commission was effective on March 24, 1964, offering the dial-in-handset for public service.

The main physical differences between the Ericofon and the dial-in-handset are:

1. The Ericofon has a tone ringer in the handset, or a separate ringer may be used; the dial-in-handset has a bell mounted in its base or mounting;
2. The Ericofon has no control of loudness of tone or bell; the dial-in-handset has a two-level volume control;

3. The Ericofon emits a chirping sound (2500 cycles per second) when ringing, described as pleasant; the dial-in-handset emits a gong sound, described as harsh, designed to attract attention;

4. The Ericofon has its switch hook mounted within its case; the dial-in-handset has in effect two switch hooks, one a push button mounted within its case and one on the cradle of its base or mounting;

5. The Ericofon is stable on a slope of 40 degrees; the dial-in-handset slides on a slope;

6. The Ericofon is held while operating with the entire hand; the dial-in-handset is held or picked up and operated with fingertips;

7. The balance point of the Ericofon is near the base of its neck where the cord is attached; the balance point of the dial-in-handset is at its end due to the relative heaviness of the cord and the lightness of the set;

8. The Ericofon has a standard size dial on the bottom of the end of the instrument; the dial-in-handset dial is smaller in diameter than the standard dial and is centered on one side of the instrument between the transmitter and the receiver; and

9. The dial rotation of the Ericofon is standard; the dial of the dial-in-handset rotates easier than that of the Ericofon and rotates farther than the standard dial.

Complainant initially desired the Ericofon because it is:

1. Lightweight;
2. Easy for patients to handle;
3. Quiet, having a compatible signalling system; and
4. Easy for patients to dial and use.

After considering the dial-in-handset, complainant continued to prefer the Ericofon and not the dial-in-handset for the following reasons:

- 5/ 1. Ericofon is lighter;
2. Tone of signalling device is more acceptable for hospital use than the bell of the dial-in-handset which complainant did not like;
3. Ericofon is easier to dial than the dial-in-handset;
4. Under adverse conditions to the patient, the patient could use the Ericofon easier than the dial-in-handset;
5. The on-off switch button of the dial-in-handset is conducive to accidental disconnects by patients;
6. The dial-in-handset is not suitable for mounting in the cabinet due to lack of space and difficulty in placing handset in its mounting by patients; and
7. The on-off line button feature permits the dial-in-handset to be kept on a bed, an undesirable hospital practice which creates a hazard to patients and causes inadvertent on-line conditions.

Defendant objected to the Ericofon because of the following technical considerations:

1. Whenever lifted or moved, the Ericofon goes "off-hook," signals the central office or PBX for service and holds a circuit in a "busy" condition so as to block incoming calls;
2. The Ericofon must be set down on its base on a substantially even surface to put and keep it "on-hook";
3. Setting the Ericofon down on its base during calls may result in inadvertent disconnects;
4. Touching the switch hook button, located in the center of the Ericofon dial, while dialing may result in spurious signals and possible wrong numbers;

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5/ Contrary to the opinion of the complainant, the testimony is that the Ericofon weighs 17 ounces and the dial-in-handset weighs 12 ounces. (Tr. p.636)

5. The Ericofon lacks circuitry to protect users against acoustic shock;
6. The Ericofon lacks automatic equalization of transmission level;
7. The Ericofon lacks circuitry to permit party identification;
8. The Ericofon lacks a volume adjustment of its ringer; and
9. The trouble experience and maintenance problems with the Ericofons are substantially higher than corresponding experience with Bell System sets.

Regarding the foregoing objections by defendant to the Ericofon, the staff and complainant presented evidence to show that:

1. The Ericofon is substantially similar and equal to standard telephone sets from the standpoint of basic functions;
2. Ericofon sets would not impair the operation of defendant's telephone system;
3. Ericofons can be set on their own cord without causing an "off-hook" condition;
4. Original tests of the Ericofon in Sweden indicate a two percent increase in false "on-line" connections, explained as resulting from the handling of a new type instrument by curious users;
5. Placing the Ericofon on its side to avoid inadvertent disconnects is easily learned;
6. Provision for eliminating acoustic shock and equalization can be and has been made in Ericofons, but the disadvantages of acoustic shock and equalization are not sufficient to warrant installations for their correction.

7. The use of bifurcated switch contacts has no advantage in the Ericofon since the contact surfaces are not exposed to dust and corrosion and are wiped clean by a nylon cam;

8. The Ericofon case material has recently been changed to a substance with characteristics about the same as used for Bell telephones, but more resistant to cosmetics and oil;

9. An analysis of the maintenance requirements of Ericofons and other sets for two California independent telephone companies shows for one company an experience of 9.2 troubles per 100 Ericofons and 4.8 troubles per 100 Other Sets; for the other company 5.2 per 100 Ericofons and 5.8 per 100 Other Sets; and

10. Complainant and patients in complainant's new hospital will dial local calls directly and will place toll-calls through the hospital PBX switchboard, thus party identification is not required but is a feature which is available if needed.

Defendant conducted two surveys in local hospitals to determine patients' reactions to the Trimline and Ericofon. Analysis of these surveys shows:

<u>Item</u>	<u>Number of Patients</u>	
	<u>First Hospital</u>	<u>Second Hospital</u>
Prefer to Use		
Ericofon	6	10
Trimline	4	7
No Preference	1	-
Prefer Appearance Of		
Ericofon	6	7
Trimline	4	7
No Preference	1	3

Although these samples are small, their reliability is indicated by the similarity of the results.

A staff survey indicates that of 110,990 telephone sets used in service by 11 independent telephone utilities in California, 4,355 are Ericofons and 1,737 are the Bell system manufactured Princess sets, or equivalent.

Complainant continuously tested the Ericofon in a ward for one and one-half years, where it was used by many patients, numbering hundreds.

An administrator of a hospital in Gilroy using ten Ericofons for over two years testified that patients were satisfied with Ericofons, and had no trouble learning to use them; that there had been no problems with switch hook operation, dialing, acoustic shock, or inadvertent disconnection of the set while dialing and that it is not desirable for a telephone to be in a patient's bed when the set is not in use.

A staff witness recommended that defendant be ordered to provide Ericofon sets at rates which would not burden other users of defendant's telephone service. A rate, in addition to charges for regular station service, of \$5.00 installation charge and \$1.10 a month was estimated to be sufficient to compensate defendant for additional Ericofon costs.

The Commission finds that:

1. The dial-in-handset is not an adequate substitute for the Ericofon for the purpose of mounting in complainant's cabinets.
2. The dial-in-handset is less safe and healthful than the Ericofon when used to render telephone service to hospital patients.

3. The sound of the dial-in-handset bell is less suitable for hospital use than that of the Ericofon.

4. The service and telephone sets which defendant has offered and does offer to complainant are insufficient and inadequate and do not promote the safety, health, comfort and convenience of complainant and of patients in complainant's hospital to the same degree as could be effected if telephone service were connected to Ericofons.

5. The use of the Ericofon will provide more safety, health, comfort and convenience to complainant and patients in complainant's hospital than the dial-in-handset.

6. The use of Ericofons to serve complainant and patients in complainant's hospital will not result in substantial impairment or substantial reduction in quality of telephone service to complainant, to patients in complainant's hospital, or to Pacific's other subscribers.

7. The use of Ericofons to serve complainant and patients in complainant's hospital is compatible with the technical operation of defendant's telephone service.

8. The cost of the use of Ericofon to serve complainant and patients in complainant's hospital will not burden defendant or its subscribers if complainant owns, connects and maintains the Ericofons.

9. Defendant's tariff rates for a complete private branch exchange station, which includes the station line and a telephone set, were during this proceeding \$1.50 per month for flat rate service and \$1.00 per month for message rate service. Of these rates, 50 cents per month is a reasonable allowance for the costs of providing a telephone set by defendant.



The Commission concludes that defendant should be required to connect its service to Ericofons owned, maintained, and equipped with plugs by complainant at the charges provided by defendant's tariffs for the installation and operation of a private branch exchange and the termination of station lines in jacks, with the exception that the line charge, at complainant's service option, for each private branch exchange station equipped for connection with customer-owned Ericofons shall be two-thirds of the monthly station flat rate or one-half of the monthly station message rate.

O R D E R

IT IS ORDERED that The Pacific Telephone and Telegraph Company shall allow to be connected to its service at the Doctors General Hospital of San Jose, at 957 Lenzen Avenue, San Jose, California, those telephone sets manufactured by the North Electric Company, designated Ericofons, which are owned, maintained and equipped with plugs by said hospital. The charge for said connections shall be those provided by the filed tariffs of The Pacific Telephone and Telegraph Company for the installation and operation of the private branch exchange in said hospital and the termination of station lines on jacks, with the exception that the line charge, at complainant's service option, for each private branch exchange station equipped for connection with

customer-owned Ericofons shall be two-thirds of the monthly station flat rate or one-half of the monthly station message rate.

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

Dated at San Francisco, California, this 29<sup>th</sup> day of JUNE, 1965.

Frederick B. Holbrook  
President  
George G. Brown  
Augustus  
Commissioners

COMMISSIONER PETER E. MITCHELL DISSENTING:

The majority has fired a 16-inch cannon to support a position that could be protected by the mere tolling of a Bell.

Doctors General Hospital of San Jose filed a simple complaint with this Commission in January, 1964. The relief requested is that The Pacific Telephone and Telegraph Company (Pacific) be ordered to install an Ericofon for every bed in the hospital. If the record substantiates the complaint, the Commission has the obligation to make the order. However, I do not believe the Commission should express findings of its own volition (as the majority does herein) which reflect outside the scope of the present proceeding and which are subject to misinterpretation as to the ability of Pacific to properly serve its subscribers.

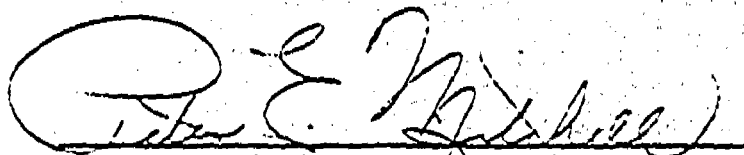
The recital by the majority of the evidence - indeed, the evidence itself - does not support certain of the findings. Unless the findings pertaining to health and safety are removed from the decision, the order should be nullified. They cannot be substantiated.

The testimony indicates quite plainly that the characteristics of the dial-in handset of Pacific are equal, if not superior, to Ericofon in health and safety attributes. The majority asserts otherwise. Briefly, the Ericofon: (1) possesses no acoustic shock protection; (2) has no automatic equalization of transmission level; (3) has no volume adjustment of tone range; (4) is a heavier weight than the dial-in handset (17 ounces vs. 12 ounces), and (5) is more cumbersome to dial.

These factors, along with others, could easily convince the reader that the dial-in handset is a healthier and safer instrument than the Ericofon. But in truth, the evidence of the complainant and the respondent was not directed to a determination of the safety or health of either instrument. The parties elaborated on the technical advancements of their respective equipment. It is the majority of this Commission that insists on making a medical judgment. There is nothing in the record of this proceeding that shows the proper use of either Pacific's dial-in handset or the Ericofon is harmful to health or safety.

Why, then, the findings on the subject? Because the majority has chosen to rely on Section 451<sup>1/</sup> of the Public Utilities Code and to discard Sections 761 and 762 proffered by the Commission staff along with Section 451. And thus having selected its legal apologue, the majority then adopted findings with equal fallibility.

It would seem that the powder for the 16-inch cannon is not at all dry.

  
 Peter E. Mitchell, Commissioner

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1/ Section 451. ....

"Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

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Decision No. 69343 in C. 7825

DISSENT

BENNETT, William M., Commissioner, Dissenting Opinion:

And now the "healthful" telephone is upon us! Mirabile dictu and wonder of wonders! Shades of Dr. Kildare!

Little did Alexander Graham Bell, he of the inventive mind, conceive that the march of progress in the communications industry would lead to the marriage of hygiene and telephony.

But no man, nor indeed even a Commission, may beat back the march of progress. From the simple, austere, black vertical telephone set, receiver on hook, technology and the rainbow have lead us away from that sparse black instrument into the world of color. Witness the green handset, the beige, blue, grey, red, pink, turquoise, white, yellow and ivory. Unfortunately those persons whose tastes prefer the black hand phone set are no longer to be satisfied in their wants, the black having been replaced with ebony. And the communications industry of America being private in nature and not inhibited by any constitutional prohibition against titles of royalty as obtains to public officials has even endowed its family with a "Princess". Now these gaily colored instruments will perform their jingling tasks in an anti-septic state unmarred by any valetudinarian defects.

A new era in regulation has begun. Those common place problems dealing with rates and charges, questions of discrimination, and the variety of service complaints received have added to them the pursuit of service which is "healthful", that is, as the dictionary defines it, a telephone "in a normal condition with respect to health; free from disease or dysfunction."

My experience in regulation has exposed me to all manner of public complaints concerning the telephone instrument, some of which will not stand repetition here at least in a society which has not yet accorded acceptance to that type of word sparsely settled and populated with four letters or less. But never has it been brought to my attention that the physical object comprised of plastic and copper, a rubberized cord, a bell and all of those other metallic parts is in any way either healthful or unhealthful. I had always thought that the telephone was efficient or inefficient.

Noting the opinion of my colleagues and its logical consequences, one is prompted to a quick concern for the state of hygiene or lack thereof of the public telephone. Are these common instruments exposed as they are to the mouthings of a nation salubrious at all times or is there within them some unknown but nonetheless real germ which poses a menace to our society and indeed to our basic institutions? Having authorized a service here upon the grounds among other things that the dial-in-handset "is less safe and healthful than the Ericofon" I presume such medical opinion will be extended beyond the periphery of this case. Speculation leads to prognostication as to all manner of other complaints which may now be addressed here. Is the helpless telephone handset to be judged now in terms of its being "healthful" and perhaps as well "romantic", "irritating", "depressing" and so on? The standard coming from efficient functioning of the body and mind could be expanded to embrace other values with untold social benefit to a great society.

Coming to the complaint before us in terms of the

relief requested, at the outset. let me point out that this matter was filed before us on January 21, 1964, and at long, long last the Commission renders a decision. It is presumed that plaintiff still seeks the relief requested but it is an unfavorable reflection upon the Public Utilities Commission of the State of California that a legitimate grievance such as this, one presenting simple issues, is so long before us without action. Other dissenting opinions have commented upon the lag which is becoming a way of life here and this case well illustrates such condition. This preoccupation with time and no result is contrary to the responsibilities of this Commission.

As to the relief here granted let me point out as has been indicated hereinabove that the findings of the majority are much too sweeping. The majority opinion condemns the present telephones now in use not only in the Doctors General Hospital of San Jose but of necessity in all hospitals and institutions of like character by finding such sets "less safe and healthful than the Ericofon" and by finding that the

...telephone sets which defedant has offered and continues to offer to complainant were and are insufficient, inadequate, improper, unjust, unsafe and unreasonable inasmuch as they do not promote the safety, health, comfort and convenience of complainant and patients in complainant's hospital to the same degree as could be effected if telephone service were connected to Ericofons.

If only the telephones under attack could speak out to the calumnies heaped upon them, I am sure that they would make a ringing denunciation of their detractors.

So sweeping a conclusion is not justified by the record but more than that it means that in every hospital in California

where dial-in-handsets of the Pacific Telephone and Telegraph Company are used and not the Ericofon that these conditions which are described as "inadequate, improper, unjust, unsafe, unreasonable and unhealthful" obtain. Such being the case is the majority to permit Pacific to continue to operate such telephones in other hospitals? The words are in the opinion and their meaning is rather clear but the result is completely ludicrous.

I know of no single instance in which a hospital patient has been endangered in any wise as to safety, health, comfort or convenience by virtue of using the telephones of defendant. Irritated perhaps, the subject of unwelcome calls -- no doubt, the trivia which is inevitably associated with basic human nature-- but in terms of "safety, health, comfort and convenience" as the law means and intends, there has been none such either in this case or in any other that this Commission is aware of.

What about housewives, office workers, teenage phone fanatics, in short -- what about all others? Should they move about at their peril -- exposed daily in their very homes, their offices, their private places, to a silent menace, save when ringing -- the unhealthy telephone?

And on a serious note, there cannot be ignored questions of civil liability which are raised by virtue of the wide and unrestrained language of the majority. What relationship does the doctrine of products liability bear to the continued use by subscribers wherever and by all public utility telephone corporations of handsets which have been so thoroughly maligned in terms of safety and contribution or lack thereof to health. See Seely v. White Motor Company, L. A. 27618 filed June 23, 1965, in



the Supreme Court of the State of California.

I can take official notice of the fact that the telephone handset has been designed not for purposes of therapy but for purposes of communication. It is quite adequate to that task but if it is not as used in hospitals then its continued use poses a breakdown in regulation according to the majority. Any reader of this opinion being prompted to the belief that his telephone handset is in some way not "healthful" is urged to examine the instrument! And let me point out that historically our concern over the telephone under the Public Utilities Act has been directed to its efficiency, its safety, its service and the charges associated therewith. I know of no instance where we have issued so massive a judgment in so foreign a field in a case which clearly does not support such an erroneous finding in terms of the qualities of health. My research of Sections 451 and 768 of the Public Utilities Act discloses no case in the entire history of the Commission in which we have entered into the field of hygiene with reference to a public utility telephone and telegraph corporation of California.

Since this matter has been before the Commission and unresolved since January 21, 1964, there has been in use in the Doctors General Hospital of San Jose the dial-in-handsets of the Pacific Telephone and Telegraph Company. These are the same handsets which have been maligned as "insufficient, inadequate, improper, unjust, unsafe and unreasonable..." as not promoting "the safety, health, comfort and convenience of complainant and patients." This is a wholesale and unjustified attack upon Pacific and it is a most serious indictment of the management

of the Doctors General Hospital of San Jose which has not only permitted such a system but indeed demanded it be made available to it from defendant. And how unrealistic the Commission has become! Having before it an actual case history of the handsets of Pacific, it cannot document a single instance of unhealthfulness, lack of safety and so on.

The Pacific handset has always been an integral part of the telephone system. The use of such a handset permits the benefits of mass production and redounding savings to consumers. The use of such uniform equipment permits a superior program of maintenance and repair on the part of Bell employees. And in my opinion the use of such equipment permits a superior service. The exception which is here made must in fairness be accorded to all applicants for a so-called foreign attachment and if the decision here means a change in the historic pattern of telephone service, it should be done on a record much more complete than this. Note for example that the majority opinion totally ignores the tariff provisions which we must presume were placed therein for good cause in the public interest which provides:

Schedule CAL. P.U.C. No. 36-T

RULES AND REGULATIONS


15. OWNERSHIP AND USE OF INSTRUMENTALITIES ON SUBSCRIBERS' PREMISES

(A) GENERAL

- (1) The Company shall own, furnish, and maintain all facilities including instrumentalities, ...
- (4) No equipment, apparatus, circuit or device not furnished by the Company shall be attached to or connected with the facilities furnished by the Company, whether physically, by induction or otherwise, except as provided in the tariffs. ...

If this Commission is about to authorize and indeed to encourage the use of telephone equipment within the Bell system which equipment is not a product of a Bell manufacturing subsidiary then it should take a long hard and careful look before so doing. On the record made herein I am not prepared to grant an exception to Doctors General Hospital. While it may suit the convenience of the individual hospital I find nothing in the record which justifies it from the standpoint of the complete public convenience and necessity of all telephone users in California, including hospital patients.

Further, I would deliberate a long time and carefully upon a record more complete than this, before I would authorize an arrangement here which will lead to the installation of all manner of telephone instruments other than those manufactured by, suited to and specifically designed for the telephone network which is embraced within the American Telephone and Telegraph system. This is a system recognized to be a monopoly, permitted so by law and one which despite differences of opinion from time to time over service, rates and charges and other matters, is in the last analysis an efficient and successful national telephone system. It takes almost an unknowing leap into the future to begin the process which may well erode the total efficiency and therefore detract from the true public interest to permit each man to dictate his own individual telephone requirements.

  
WILLIAM M. BENNETT  
Commissioner

San Francisco, California  
July 1, 1965