

**ORIGINAL**

Decision No. 69447

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the service  
offering of telephone monitoring  
equipment under filed tariffs by  
telephone corporations.

Case No. 7915  
(Filed June 3, 1964)

Pillsbury, Madison & Sutro, John A. Sutro, George A. Sears, John A. Sutro, Jr., Arthur T. George, by George A. Sears and John A. Sutro, Jr., for The Pacific Telephone and Telegraph Company; Claude N. Rosenberg of Bacigalupi, Elkus & Salinger, for California Water & Telephone Company; Albert M. Hart, for General Telephone Co. of California; respondents. F. T. Searls and John C. Morrissey, by John C. Morrissey, for Pacific Gas and Electric Company; William L. Knecht, for The California Farm Bureau Federation; Neal C. Hasbrook, for California Independent Telephone Association; John W. Burnham, for the City of Los Angeles, Los Angeles Fire Department, and Los Angeles Police Department; interested parties. Elinore Charles and Ermet J. Macario, for the Commission staff.

O P I N I O N

On October 14, 1964, this proceeding was heard at San Francisco before Commissioner McKeage and Examiner Coffey. This matter was consolidated for hearing with Case No. 8032, the suspension and investigation of tariffs of The Pacific Telephone and Telegraph Company which would have discontinued the requirement for the use of an automatic tone device for police and fire emergency calls, and upon which a separate decision has been issued.<sup>1/</sup>

This investigation was instituted because it appeared that:

---

<sup>1/</sup> Decision No. 68678, March 2, 1965, Case No. 8032.

1. Certain public utility telephone corporations in California offer to their subscribers under tariffs on file with the Commission equipment designated as monitoring equipment, also referred to as service observing and training equipment. This equipment, as designed, permits overhearing, surveillance and recording of communication over the telephone lines of said subscribers from points on the premises and under the control of said subscribers.

2. Such equipment may have been used, or may be used, in a manner contrary to the laws of the United States of America or the State of California, or in a manner inimical to the maintenance of privacy of communication over the telephone network in California.

This investigation was instituted into the operations, services and practices of all public utility telephone corporations in California for the following purposes:

1. To determine what equipment, services or facilities are presently being offered to subscribers by telephone corporations for the purpose of permitting monitoring, overhearing, surveillance or recording of telephone communications;

2. To determine whether tariff offerings providing equipment for such practices should be canceled, suspended or modified in any particular; and

3. To determine whether any order or orders that may be appropriate in connection with monitoring practices should issue in the lawful exercise of the Commission's jurisdiction.

For the purpose of this investigation we adopt and find reasonable the following definition of monitoring or service observing and training equipment (hereinafter referred to as

monitoring equipment): telephone utility apparatus by which a telephone subscriber, or any of his employees or agents, may listen to or record telephone conversations on premises owned or controlled by the subscriber (a) without any audible indication to the parties conversing that their conversation is being overheard, or (b) without connection of a device to provide two-way conversation between the listener and the parties conversing so that the listener's voice may be heard throughout any period of eavesdropping, or (c) without notice of any recording being given by an automatic warning tone.

The staff of this Commission did not present any direct testimony, but the Utilities Division of the staff originated letters to The Pacific Telephone and Telegraph Company (Pacific), General Telephone Company of California (General) and California Water & Telephone Company (CW&T) directing them to review their operations and to make a presentation with respect to the three above-listed purposes. In addition, a questionnaire was given to said telephone utilities asking that the information requested therein be incorporated into their presentations. Further, a letter was sent to all other California telephone utilities, forty-two in number, directing them to submit written advice concerning equipment, services or facilities, if any, which they offer or furnish for the purpose of permitting monitoring, overhearing, surveillance and recording of telephone communications.

Staff counsel construed the replies (Exhibit 1) of said forty-two other telephone utilities as indicating that none offer "monitoring equipment." Analysis of the replies, considering the adopted definition of monitoring, reveals the following:

1. California Interstate Telephone Company has received a request for telephone monitoring equipment from a hospital to be used to monitor and train receptionists and on or about July 16, 1964 submitted for staff review an unsigned and undated draft of an advice letter relating to the provision of monitoring equipment;

2. Two distance-talking speakers are connected by Central California Telephone Company to the listed fire number to enable the local police chief and fire department to monitor each report of fire;

3. Colorado River Telephone Company provides 20 private branch exchange (PBX) switchboards, serving 523 PBX stations, which have the capacity of monitoring the PBX stations;

4. A telephone answering switchboard is in service on the Gilroy Telephone Company system which "is equipped as a built in feature with a monitor key which only permits the owner to monitor operational procedures from a remote position."

A witness for Pacific testified that four principal items of monitoring equipment are furnished by Pacific as follows:

1. Monitoring equipment in connection with dial PBX systems;

2. Key equipment arranged for monitoring in small manually switched installations of up to three lines;

3. Cord-operated cabinets with capacities of from 10 to 100 lines arranged for monitoring on the larger manually switched installations; and

4. Monitoring for use by subscribers with key equipment service.

Available ancillary items used in connection with these four services include recorder-connector equipment, visual

busy and line signals and amplifying equipment. Monitoring equipment may be furnished by Pacific on the same premises as that on which the service being monitored is located or on different premises of the same subscriber in the same building; or monitoring equipment may be furnished on premises of the same subscriber in a different building from that in which the service being monitored is located.

Pacific provides in addition two special assemblies of monitoring equipment. The first special assembly is arranged for monitoring on one position of an order-receiving turret and the second special assembly provides a 10-line cabinet for monitoring and recording on microphone lines and monitoring on central office or PBX station lines. An arrangement to provide tone signal from the monitoring cabinet over one or more monitoring lines to lines or positions being monitored can be provided.

We note from filed tariff sheets that Southern California Telephone Company offered monitoring equipment by a tariff sheet filing effective June 24, 1944, and that on March 31, 1947, Pacific and Southern California Telephone Company were merged.

Pacific's witness testified that monitoring equipment is useful to a business subscriber for the basic purposes of employee-training and of supervision to evaluate and improve the overall quality of service being rendered by employees. Pacific provides 307 subscribers in California with monitoring installations. These subscribers were classified in the following twenty-seven categories:

Airlines and aircraft companies; answering services;  
auto dealers; auto leasing; banks, saving and loan;  
commercial business (service and equipment dealers);

credit associations; credit card companies; department stores; food companies; gas, electric and mobile telephone companies; hospitals and clinics; insurance companies; investigation services; magazine circulations; manufacturers; movie studios; newspapers; oil companies; other business; governmental bodies; professional services (consulting, M.D.) and other services; radio-TV stations; realty companies; schools (beauty, dance, driving, etc.); transportation (except airlines); and unions.

This record does not contain any detail of the need and use of monitoring equipment by any subscriber or business category. For example, there is no such detail in this record for the eight subscribers classed as "investigation services," and by the same token there is no explanation why "stockbrokers" do not subscribe for monitoring equipment. The record does show that Pacific furnishes to only eight subscribers recorder-connector equipment in conjunction with monitoring installations.

Without reference to any filed tariff sheet, Pacific's witness testified that:

1. Monitoring equipment is not furnished to business subscribers to enable the monitoring of private conversations;
2. Business lines which are subject to monitoring typically carry conversations between an employee of the business subscriber and a customer of the business subscriber;
3. Lines subject to monitoring are not intended for use for personal calls unrelated to the business interests of the subscriber to the equipment;
4. Pacific has made no residential monitoring installations;

5. Pacific's employees are instructed in the nature and use of monitoring equipment;

6. Pacific informs "interested subscribers" of the purposes for which monitoring equipment is offered, and how it may be useful and "properly" used;

7. Business subscribers "generally" inform their employees of the existence and use of monitoring equipment;

8. The operation of monitoring equipment is the responsibility of the subscriber;

9. Pacific's employees operate subscriber monitoring equipment only at a subscriber's request to study the subscriber's communication usage problem and to recommend improvements in the subscriber's telephone practices;

10. Monitoring equipment has been offered by Pacific for over twenty years with a record of subscriber satisfaction and absence of complaints by employees of subscribers or other persons;

11. No complaints have come to the witness's attention except in connection with Brookside Hospital, and those complaints arose out of an internal dispute between the hospital administrator and staff doctors;

12. Abuse or misuse of the equipment is possible;

13. Pacific believes that the possibility of misuse by an unprincipled few is no reason to deprive business subscribers of the benefits of monitoring equipment;

14. There are numerous electric devices available which are better adapted to secret surveillance than monitoring equipment furnished by Pacific, which latter equipment is bulky, is "normally" installed in plain view of those whose calls are subject to

monitoring and is neither intended nor adapted for secret or surreptitious use;

15. Pacific has never removed monitoring equipment because of improper use;

16. Pacific cannot "police" monitoring equipment;

17. Recorder-connector equipment, incorporating the "beep tone" required by Federal Communications Commission regulations, may be used in conjunction with monitoring equipment connected to exchange or toll facilities;

18. A "beep tone" is not required for recorders connected to private line facilities; and

19. About \$125,000 in revenue was received by Pacific for monitoring installations during the fiscal year ending June, 1964, or about 1/100 of 1 percent of operating revenue.

Pacific presented, in Exhibit 4, prepared tariff sheets which set forth proposed conditions governing the use of monitoring equipment.

A witness for General provided block diagrams of monitoring equipment and testified that:

1. Monitoring equipment has been offered by General since 1941 (about 23 years);

2. One hundred seventy-two customers subscribe for 353 units of monitoring equipment;

3. Monitoring equipment is not actively sold and most installations result from customer action;

4. General does not require subscribers' employees to be notified of the use of monitoring equipment;

5. After installation, General makes no follow-up;



6. No complaints on use of monitoring equipment have come to the attention of the witness;

7. General is in favor of continuing the offer of monitoring equipment since it is believed that such equipment is a necessary adjunct to the training and supervision of employees and the arrangement serves a legitimate and important business purpose;

8. If the monitoring equipment needs of customers cannot be met by General, the witness believes the customers will seek other ways and means of satisfying these needs; and

9. The annual billing for monitoring equipment, excluding special assemblies for governmental agencies, is about \$25,300, special governmental assemblies amounting to an additional \$21,200 annually.

A witness for CW&T testified that:

1. CW&T has offered monitoring equipment since August, 1958;

2. Equipment is provided to customers which is designed to monitor PBX station lines and trunks, no indication being given to the calling and called parties that the call is being monitored and there being no way by which the operator of the monitoring equipment may converse with either of said parties;

3. The monitoring turrets are usually located in private or semi-private locations;

4. The monitoring operator may listen to two-way conversations between PBX stations or between a PBX station and a station outside the PBX system;

5. CW&T presently furnishes monitoring equipment to three subscribers and has two applications on file for monitoring systems;

6. CW&T does not undertake to ensure that monitoring equipment will be properly used;

7. CW&T has never had any complaint that such equipment was being used for improper purposes;

8. Monitoring equipment could be used for improper purposes, but is no more susceptible to misuse than other equipment provided by CW&T;

9. Ordinary PBX installations are susceptible of being used for eavesdropping by a PBX operator either at her own instance or upon instructions of her employer, or even by accident;

10. CW&T takes no steps to ensure that employees of a subscriber know monitoring equipment is being used;

11. It would be impossible for CW&T to "police" the use of monitoring equipment;

12. Some customers will provide and use their own monitoring equipment if the utility does not provide it; and

13. Annual revenue from monitoring equipment was \$768 in 1963.

A member of the public testified that Pacific monitoring equipment without "beep tone" had been used to listen to a personal telephone conversation in San Francisco between herself and her lawyer and to listen to a telephone conversation between a union business agent and herself, and that it was the basis of an accusation relating to language used on the telephone. The witness was not cross-examined.

Representatives of the telephone utilities argued that no evidence was presented that monitoring was illegal or improper, that the monitoring equipment is desired by customers, that generally the tariff revisions proposed by Pacific are acceptable to the utilities, that telephone utilities should not be required even by implication to enforce the proper use of monitoring equipment, and that telephone utilities should be indemnified by a

subscriber for any liability that might be asserted against the utility by reason of the subscriber's use of monitoring equipment.

Staff counsel argued that utilities have a duty to safeguard against abuses by the use of monitoring equipment, that the utilities should be required to remove monitoring equipment if a subscriber fails to comply with any of the specified conditions of service, that notice to employees of the use of monitoring equipment should be effected by posters in the working area of those employees whose telephone conversations are subject to monitoring, and that without such special conditions the utilities should not be permitted to use an indemnity clause. Staff counsel also suggested the use of a recorded message to inform outside parties that a call is subject to being monitored, or in lieu thereof a "beep tone."

At the request of the examiner, counsel included in this record argument on the legal status of the monitoring

equipment. Counsel agree that public utility offering of monitoring equipment is legal and not in direct violation of Section 653j of the Penal Code.<sup>2/</sup>

2/ Section 653j. "Eavesdropping or recording confidential communications.

"(a) Every person or his authorized agent not a party to the communication who, intentionally and without the consent of any party to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records a confidential communication, whether such communication is carried on among such parties in the presence of one another or by means of a telegraph, telephone or other device, except a radio, shall be punished by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars (\$1,000), or by both such fine and imprisonment.

"(b) The term 'person' includes an individual, business association, partnership, corporation, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof, whether federal, state, or local, but excludes an individual known by all parties to a confidential communication to be overhearing or recording such communication or an individual acting under the direction of a party to the confidential communication.

"(c) The term 'confidential communication' includes any communication carried on in such circumstances as may reasonably indicate that the parties to such communication desire it to be confined to such parties, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.

"(d) Except as proof in a suit or prosecution for violation of this section, no evidence obtained as a result of eavesdropping upon or recording a confidential communication in violation of this section shall be admissible in any judicial, administrative, legislative or other proceeding.

"(e) This section shall not apply to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the overhearing is for the purpose of construction, maintenance, conduct or operation of the services and facilities of such public utility, or to the normal use of the services and facilities furnished by such public utility pursuant to its tariffs.

"(f) This section shall not be construed to repeal Sections 591, 593(b), 619, 621, 640, 653h or 653i of this code or to render lawful any act which is unlawful under any of those sections.

"(g) This section does not apply to the use of hearing aids and similar devices, by persons afflicted with impaired hearing, for the purpose of overcoming the impairment to permit the hearing of sounds ordinarily audible to the human ear.

"(h) Nothing in this section shall be construed as prohibiting law enforcement officers from doing that which they are otherwise authorized by law to do."

The citations presented and their legislative history<sup>3/</sup> would seem to indicate that consent to the use of monitoring equipment by one of the parties to a conversation may make possible the use of monitoring equipment without legal penalty. However, Section 7906 of the Public Utilities Code provides:

"The Public Utilities Commission shall regularly make inquiry of every telephone corporation under its jurisdiction to determine whether or not such corporation is taking adequate steps to insure the privacy of communications over such corporation's telephone communication system."

In our view, Section 7906 of the Public Utilities Code and Section 653j of the Penal Code clearly indicate that it is the continuing policy of the Legislature that communications over public utility telephone systems shall be private.

It would appear from the testimony presented in this investigation that complete privacy of communication does not in fact exist in view of the many opportunities for eavesdropping which result from ordinary party lines, telephone extensions, mobile radio operations, speaker-phones, and PBX operations. However, even though privacy of communication may not be assured absolutely, it is not in the public interest and not in accord with public policy to continue to authorize the use of monitoring equipment without adequate safeguards to promote privacy for each of the parties to a conversation being conducted over a public utility telephone system. The claim that party line and other such multiple access situations negate privacy over a telephone

---

<sup>3/</sup> Section 653j in its initial bill form prohibited overhearing without consent of "all parties"; it was amended to provide for consent by "any party".

system overlooks the many commonplace audible sounds which give notice of eavesdropping over equipment not designed for monitoring-- sounds such as key clicks, noises resulting from the movement of a telephone handset, the sound of breathing, room noises from the eavesdropper's location, and changes in telephone transmission and reception characteristics.

We find that:

1. The following telephone services do not use monitoring equipment as herein defined;
  - a. Party line service;
  - b. Recording-connector equipment with automatic tone warning device;
  - c. Telephone answering service provided by a telephone utility;
  - d. Telephone answering service provided by other than a telephone utility if the equipment does not permit the operator to "bridge" a circuit without the operator's transmitter being at the same time connected to the circuit;
  - e. Automatic answering and recording equipment which provides for answering a telephone, giving a subscriber-prepared message to the calling party and recording messages from the calling party, if the equipment advises the calling party by voice message and/or tone that a message will be recorded;
  - f. Mobile radio telephone service by a telephone utility;
  - g. Extension stations;
  - h. Key systems which connect a subscriber's subset and which are complete with transmitter to telephone circuits;
  - i. Telephone speaker-phones;

j. PBX and other operator switched equipment which does not permit the operator to "bridge" a circuit without the operator's transmitter being at the same time connected to the circuit; and

k. Telephone monitoring equipment when used by a public utility telephone corporation for the purpose of construction, maintenance, conduct or operation of the service and facilities of said public utility;<sup>4/</sup>

2. Since the inception of the use of monitoring equipment by telephone subscribers in the World War II period, the use of monitoring equipment has increased to include approximately 500 business subscribers in California;<sup>5/</sup>

3. Monitoring equipment as hereinabove defined gives no notice to any party to a telephone conversation that the conversation may be or is being monitored;

4. Public utility telephone corporations are unable to ensure, and are unwilling to attempt to ensure, that monitoring equipment will not be used for purposes other than those allowed by the authorized conditions of service;

5. This record contains no showing that business subscribers for monitoring equipment forbid private incoming telephone calls to their employees or that such calls are excluded from monitoring;

6. It is a reasonable condition of service, and it is in the public interest in promoting the privacy of communications, to require that all subscriber monitoring equipment (as herein defined) which is used to monitor telephone conversations over

---

<sup>4/</sup> This finding does not include conversations between telephone service subscribers and telephone corporation executives, managers or business office service and commercial representatives.

<sup>5/</sup> PBX switchboards are not included in this estimate.

any part of the telephone network used by the general public, or generally available to the public, in California, shall give appropriate notice to the parties to a monitored telephone conversation that said conversation is being monitored;

7. Such notice of the use of monitoring equipment should be given either:

A. By an automatic tone warning device which will automatically produce a distinct signal that is repeated at regular intervals during the course of the conversation when the conversation is being monitored; or

B. By clearly, prominently and permanently marking each telephone instrument capable of being monitored to indicate that the conversation of the user may be monitored without notice; provided that this method of giving notice may be used only if the monitoring equipment is modified to permit the monitoring only of signals transmitted from the monitored telephone, as opposed to signals received by the monitored telephone;

8. Such automatic tone warning device should have the characteristics prescribed by the Federal Communications Commission for an automatic tone which gives notice that a telephone conversation is being recorded; and

9. The use of said automatic tone and such marking of telephone instruments, to give warning of the use of monitoring equipment, should be explained in telephone directories.

We conclude that public utility telephone corporations should be required to file tariff sheets incorporating the special condition that all monitoring equipment, as herein defined, will be furnished only: (A) with an automatic tone



warning device having the characteristics, and operating in the manner, set forth in the following order, or (B) with monitoring equipment modified to permit monitoring only of signals transmitted by the monitored telephone, and then only if such telephones are marked as provided in the following order. A period of continuing operation of equipment to permit the monitoring only of signals transmitted from the monitored telephone, as opposed to signals received by the monitored telephone, shall be permitted.

O R D E R

**IT IS ORDERED that:**

1. All those public utility telephone facilities (sometimes referred to as monitoring or service observing and training equipment) which are designed to permit eavesdropping, overhearing,

surveillance and/or recording, by a subscriber or his employee or agent, of two-or-more-way telephone conversations over any part of the telephone network used by the general public, or generally available to the public, in California, without the knowledge and consent of all parties to said conversations, shall, after six months after the effective date of this order, be used only when notice of any such monitoring, eavesdropping, overhearing, surveillance or recording is given to the parties to each monitored conversation, as hereinafter provided.

2. Said notice of the use of monitoring or service observing and training equipment shall be given either: (A) by an automatic tone warning device which shall automatically produce a distinct tone warning signal audible to all parties to a telephone conversation, repeated at regular intervals during the course of said conversation, whenever said equipment is in use to monitor, eavesdrop, overhear and/or record said conversation, or (B) by clearly, prominently and permanently marking each telephone

*CORRECTION*

# CORRECTION

THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY

warning device having the characteristics, and operating in the manner, set forth in the following order, or (B) with monitoring equipment modified to permit monitoring only of signals transmitted by the monitored telephone, and then only if such telephones are marked as provided in the following order. A period of conversion should be permitted.

O R D E R

IT IS ORDERED that:

1. All those public utility telephone facilities (sometimes referred to as monitoring or service observing and training equipment) which are designed to permit eavesdropping, overhearing, surveillance and/or recording, by a subscriber or his employee or agent, of two-or-more-way telephone conversations over any part of the telephone network used by the general public, or generally available to the public, in California, without the knowledge and consent of all parties to said conversations, shall, after six months after the effective date of this order, be used only when notice of any such monitoring, eavesdropping, overhearing, surveillance or recording is given to the parties to each monitored conversation, as hereinafter provided.

2. Said notice of the use of monitoring or service observing and training equipment shall be given either: (A) by an automatic tone warning device which shall automatically produce a distinct tone warning signal audible to all parties to a telephone conversation, repeated at regular intervals during the course of said conversation, whenever said equipment is in use to monitor, eavesdrop, overhear and/or record said conversation, or (B) by clearly, prominently and permanently marking each telephone

instrument capable of being monitored to indicate that the conversation of the user may be monitored without notice; provided that this method of giving notice may be used only if the monitoring equipment is modified to permit the monitoring only of signals transmitted from the monitored telephone, as opposed to signals received by the monitored telephone. The characteristics and operation of said tone shall be the same as those specified by the Federal Communications Commission for notice of the use of recording devices in connection with interstate and foreign message toll service.

3. Each California public utility telephone corporation which offers monitoring or service observing and training equipment shall, not later than six months after the effective date of this order, revise its tariff sheets on file with this Commission relating to monitoring or service observing and training equipment to comply with this order. Said revisions shall include detailed specifications for the marking of telephone instruments which is referred to in paragraph 2 of this order.

4. All California telephone directories issued by, or under the authority of, any public utility telephone corporation shall include a description and statement of the significance of

said tone warning signal and of such marking of telephone instruments; said description and statement shall be included in all directories issued more than six months after the effective date of this order.

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

Dated at San Francisco, California, this 27th day of July, 1965.

Fredrick B. Holbluff  
President  
George L. Crover  
Augusta

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.