

ORIGINALDecision No. 70074

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DOCTORS GENERAL HOSPITAL
OF SAN JOSE,

Plaintiff,

vs.

Case No. 7825

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,

Defendant.

ORDER DENYING REHEARING, AMENDING DECISION NO. 69343
AND DENYING MOTION TO VACATE

"Petition for Rehearing After Decision No. 69343 or in the Alternative to Vacate and Set Aside Decision No. 69343 and Dismiss the Complaint" having been filed by The Pacific Telephone and Telegraph Company, the Commission having considered said petition and each of its allegations and being of the opinion that no good cause for rehearing, or in the alternative vacating and setting aside said Decision No. 69343, has been made to appear, but that certain clarifying amendments should be made in the conclusion and order in said decision inasmuch as the prior conclusion and order in this matter were not intended to foreclose negotiations and agreement between the parties;

IT IS ORDERED that:

1. The conclusion in Decision No. 69343, as set forth in the first full paragraph at the top of page 17, immediately preceding the Order, is amended to read as follows:

"The Commission concludes, absent any indication that an amicable settlement of this controversy is possible as between the parties, that, should plaintiff request it, defendant should be required to connect its service to Ericofons owned, maintained, and equipped with plugs by plaintiff 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 plaintiff'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."

2. The order in Decision No. 69343 is amended by adding thereto the following language:

"Provided, however, that at the election of the parties, defendant may procure, install and maintain Ericofons for plaintiff pursuant to such rates as may be authorized by the Commission."

3. Defendant's Petition for Rehearing after Decision No. 69343 or in the Alternative to Vacate and Set Aside Decision No. 69343 and Dismiss the Complaint is denied.

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

Dated at San Francisco, California, this 7th day of DECEMBER, 1965.

Fredrick B. Halaloff
President
George L. Brown
Augustan
Commissioners

BENNETT, William M., Dissenting Opinion:

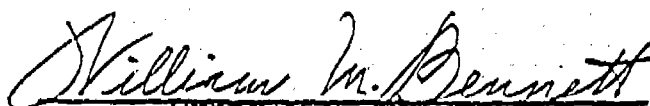
Today's order denying rehearing is not responsive to the Petition for Rehearing filed herein. Further the amending language is based upon the premise this Commission is not on notice that there has been a tariff filing herein by Pacific and that the parties have in fact arrived at an agreement between themselves for the furnishing of these telephones. In that sense the Commission is deliberately ignoring that which has been specifically brought to its attention.

Further than that however and more importantly today's decision is a most unwise judgment in that it now permits all manner of intrusions on the part of other telephone instruments into the Bell System. This is contrary to the previous holding of this Commission in City of Los Angeles vs. Southern California Telephone Company (2 Pur. N.S. 247 California Railroad Commission 1943). The action of the Commission today has compelled Pacific to purchase telephone equipment manufactured by an unaffiliated corporation and to place such within its system. It becomes very difficult to determine from today's decision confirming the original order herein how any request from any subscriber for the installation of an instrument such as here is now to be denied. Today's decision calls for equal treatment for all such requests in the future. Today's decision is a precedent and must be recognized as such. I adhere to the views I originally expressed in my dissenting opinion herein and have seen nothing subsequent to that time which would compel me to change them.

It should be noted in passing that the same laughable findings contained in the original order have not been modified as they should have been. I also point out that I agree with the position of the Legal Division of this Commission that before

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such a step as this were taken with all of its many ramifications it should have been the subject of a Commission investigation to know where we are headed before we start upon such an unknown journey.


WILLIAM M. BENNETT
Commissioner

San Francisco, California
December 7, 1965

COMMISSIONER PETER E. MITCHELL DISSENTING:

The majority of the Commission persists in its chimerical-like attitude expressed in Decision No. 69343 about unsafe and unhealthy telephones. However, for me to further pursue that issue in my dissent would not now unring a Bell but only stress the Commission majority syndrome of incurable whimsical fantasy.

Today's action by the majority makes two major changes in Decision No. 69343. The first change adds the words to page 17: "..... absent any indication that an amicable settlement of this controversy is possible as between the parties,....."

It has to be that the majority of the Commission is "putting us on": Pacific's petition for rehearing ^{1/} states on page 8: "Pacific and Doctors General Hospital have agreed that Pacific will furnish Ericofons to Doctors General Hospital upon the vacating of this decision by this honorable Commission, and under rates and conditions authorized by this Commission".

Also, a memorandum dated August 25, 1965, from the Utilities Division of the Commission, distributed to every Commissioner, recites:

"The Pacific Telephone and Telegraph Company, by Advice Letter No. 9118, filed August 6, 1963, to be effective September 6, 1965, revises its Tariff Schedule Cal PUC No. 83-T, Special Assem-

^{1/} Pacific's Petition for Rehearing After Decision No. 69343 or in the Alternative to Vacate and Set Aside Decision No. 69343 and Dismiss the Complaint

blies of Equipment, to provide Pacific-owned "Ericofons" to Doctors General Hospital of San Jose. The Doctors General Hospital has indicated that it is agreeable to such a tariff."^{2/}

There has been and there is no question that the Doctors General Hospital and Pacific Telephone and Telegraph Company have reached an accord in the use of "Ericofons". How, then, can the majority baldly insert the words: ".....absent any indication that an amicable settlement of this controversy between the parties is possible....."? How, then, indeed?

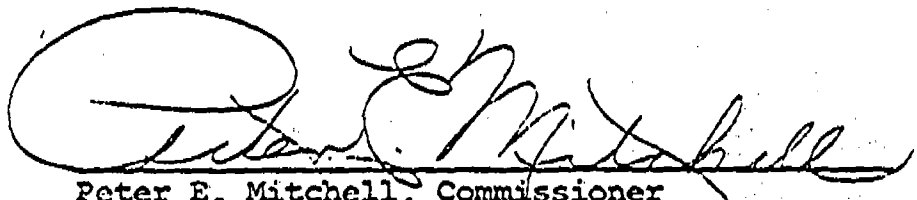
The second major epilogue of the majority covertly notifies the two litigants that "Pacific may procure, install and maintain Ericofons for plaintiff pursuant to such rates as may be authorized by the Commission."

The insertion of this amendment into the original decision as an order is frankly inconsistent with the findings and conclusions of the Commission contained in pages 16 and 17 of the said decision. The Commission finds that the cost of the use of Ericofons to serve Doctors Hospital will not burden Pacific or its subscribers if

^{2/} Tariff was suspended by the Commission

Doctors Hospital owns, connects and maintains the Ericofons. The Commission concludes that Pacific should be required to connect its service to Ericofons owned, maintained and equipped with plugs by Doctors Hospital.

These additions to Decision No. 69343 merely serve to perpetuate the bavardage contained therein about unsafe and unhealthy telephones.^{3/} I would vacate Decision No. 69343 and accept the tariff filing of Pacific.



Peter E. Mitchell, Commissioner

^{3/} See findings 4 and 5, Decision No. 69343.