

**ORIGINAL**

Decision No. 70862

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WESTERN STATES TELEPHONE COMPANY,  
a California corporation, and  
TED WASSERMAN,

Complainants,

vs.

PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, a corporation,

Defendant.

Case No. 7839  
(Filed February 7, 1964)

In the Matter of the Suspension  
and Investigation on the  
Commission's Own Motion of  
Tariffs of The Pacific Telephone  
and Telegraph Company Filed  
Under Advice Letter No. 8799.

Case No. 7933  
(Filed June 30, 1964)

In the Matter of the Suspension  
and Investigation on the  
Commission's Own Motion of  
Tariffs of The Pacific Telephone  
and Telegraph Company Filed  
Under Advice Letter No. 9137.

Case No. 8278  
(Filed October 5, 1965)

Burton Marks for Western States Telephone Company  
and Sydney Ted Wasserman, complainants in  
Case No. 7839 and interested parties in  
Case No. 7933 and Case No. 8278.  
Pillsbury, Madison & Sutro, and Arthur T. George,  
by George A. Sears and James B. Atkin, and  
Jacobs, Sills and Coblentz, by William K. Coblentz,  
for defendant in Case No. 7839 and respondents  
in Case No. 7933 and Case No. 8278.  
Neal C. Hasbrook, for California Independent  
Telephone Association, intervener, in Case No. 7839  
and interested party in Case No. 7933 and Case  
No. 8278.  
M. W. Edwards and James G. Shields, for the  
Commission staff.

O P I N I O N

Complainant, Western States Telephone Company,<sup>1/</sup> is a California corporation engaged in the business of distributing on a wholesale basis decorator-type telephone sets manufactured in Japan. It is Western States' position that said sets contain all of the electrical equipment necessary for proper functioning when installed by a subscriber on defendant's telephone system. Said complainant alleges that defendant, The Pacific Telephone and Telegraph Company<sup>2/</sup> has advised retailers and the public generally that use of such telephones is illegal, dangerous, and subjects the user to suspension or discontinuance of telephone service, to liability for damages caused by any malfunction of the telephone instrument and that said telephone is not compatible with the equipment of defendant.

Complainant, Ted Wasserman, alleges that as a subscriber of defendant he purchased from complainant, Western States, one of the telephones in question to be utilized as an extension telephone along with the primary type of telephone supplied by defendant, and that defendant refused to permit him to connect said telephone to defendant's system and network.

In reply, Pacific pointed out that its filed tariffs generally prohibit the use or connection of subscriber-owned telephone instruments with the system maintained by defendant, and that ownership and use of instrumentalities on subscriber's premises is restricted by the following tariff:

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<sup>1/</sup> Hereinafter sometimes referred to as Western States.

<sup>2/</sup> Hereinafter sometimes referred to as Pacific.

Schedule Cal. P.U.C. No. 36-T, sec. 15(A)(1) and (4):

"(1) The Company shall own, furnish, and maintain all facilities including instrumentalities, inside wiring, protective apparatus, and other equipment necessary to provide telephone service, except as may be otherwise specified in the tariffs. All facilities provided shall conform to the established construction standards of the Company.

"(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. In case any such unauthorized attachment or connection is made, the Company shall have the right to remove or disconnect the same; or to suspend the service during the continuance of said attachment or connection; or to terminate the service."

Defendant averred that on certain occasions when persons have informed defendant of their desire to use subscriber-owned telephone instruments in connection with a jack supplied by defendant, its representatives have informed such persons of defendant's tariff restrictions relating to the use and connection of such instruments with the telephone system of defendant; it has refused to install a jack except for use with plug-equipped telephones furnished by defendant under its tariffs; its representatives have informed such persons that the use of such customer-owned telephone instruments cannot be connected to defendant's system unless title to such instruments is transferred to defendant; and have informed such persons that an instrument acquired by them could not be used in connection with defendant's telephone system without having it first tested and modified by defendant so as to be made compatible with defendant's equipment at the actual cost to the customer of the labor and materials used. Defendant admitted that it has advised and will continue to advise members of the general public of its tariff provisions which relate to the subject

matter of this complaint.

In June of 1964 defendant filed by Advice Letter No. 8799 a proposed tariff for nonstandard telephone sets (Exhibit 36). It was intended that this tariff would be applicable for the types of telephone sets being distributed by complainant. The Commission by order dated June 30, 1964, in Case No. 7933, suspended the tariff, ordered an investigation and consolidated it for hearing with Case No. 7839.

Hearing on the consolidated cases was held before Examiner Patterson in Los Angeles on December 14 through December 18, 1964, inclusive. In that series of hearings complainant, Western States, developed its case substantially as follows:

Mr. Joseph Segal, a licensed accountant in California for approximately 11 years, is the majority shareholder, President and Chairman of the Board of Directors of Western States Telephone Company. The firm has a total of only nine employees but it has a line of credit from three banking institutions in the approximate sum of \$500,000 and was negotiating to increase that line of credit by the approximate sum of \$1,500,000.

The telephone instruments in question are manufactured in Japan by the Japanese telephone industry. Mr. Segal testified that the Japanese telephone industry is basically controlled and regulated by Nippon Telephone and Telegraph Company which functions as the equivalent of the Federal Communications Commission in this country, and is the sole operating telephone company in Japan. All of the manufacturers of telephone instruments and telephone equipment are banded together in a combine, are closely regulated by

Nippon Telephone and Telegraph and they supply the needs of Nippon Telephone and Telegraph.

Intercontinental Telephone Company of New Jersey headed by Mr. Paul Brown has entered into written agreements with the Japanese telephone industry wherein the Japanese industry has agreed that Intercontinental Telephone Company shall have the sole and exclusive rights to import telephone instruments from Japan. Western States is licensed by Intercontinental Telephone Company to obtain a certain number of telephone instruments guaranteed to Intercontinental Telephone Company by the Japanese telephone industry for distribution throughout the United States.

Western States functions as an importer of telephones (indirectly through Intercontinental Telephone Company) and as a distributor of said telephones throughout the United States, sales being made to department stores, mail-order houses, gift shops, and other retail outlets. In addition to their regular allotment of telephone instruments, Western States receives an amount equal to 1 percent of all said telephone instruments to serve as replacement parts for repairs. Mr. Segal testified that he and Mr. Brown, in accordance with agreements with the Japanese telephone industry, have designed certain decorative-type enclosures for telephone instruments and that these decorative enclosures contain the same telephone components that are utilized domestically by the Japanese telephone industry. A decorative, simulated French-type of antique telephone, sometimes referred to as a continental set (Exhibits 17A and 18A) which retails for approximately \$50, constitutes the bulk of the sales.

Certain other more elaborate styles of decorative sets, as illustrated in Exhibits 1 and 54, retail at higher prices ranging up to about \$250.

From October or November of 1963, until approximately December of 1964, Western States had sold to retailers approximately 16,000 or 17,000 of such telephone instruments.<sup>3/</sup> Testimony presented by complainant emphasized that the telephone sets are sold with the understanding that they are to be used solely as extension telephones, the primary instrument being supplied by the operating telephone company. Each of the telephones is equipped with a telephone plug so that it may be used in conjunction with a telephone jack connected to the operating telephone company's system. It was stated that the reason for this arrangement was to insure that if one of the telephone sets in question failed to function properly the subscriber would need only to unplug the instrument and mail it back to Western States for repair pursuant to a three-year guarantee. During the time of repair the subscriber's telephone service would not be interrupted since he still would have the use of the primary instrument supplied by the operating company.

A consulting engineer, employed by complainant Western States, testified as to tests he had made of the telephone instruments distributed by Western States in comparison with telephone instruments normally supplied by defendant. It was the consultant's opinion that his tests demonstrated that the Japanese

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By September 1965, sales had increased to 35,000 or 40,000 telephone instruments.

telephones were compatible with defendant's system and functioned as well as the telephone instruments supplied by defendant.

Pacific objected to Western States' proposal that customers be allowed to own and connect foreign or other nonstandard operating telephone components to its system on the basis that telephone company ownership and responsibility for maintenance of the operating telephone set is a basic principal of telephone service in the United States and that customer ownership would defeat the objective of standardization of operating telephone components and would impair the quality of telephone service.

An engineer from Bell Telephone Laboratories testified concerning the results of tests which he had made of the Japanese decorator sets. He stated that such sets failed to measure up to the performance of the standard Bell System 500 set which is generally considered to be the standard for the telephone industry. The deficiencies he enumerated included lower transmission capability on longer loops by about 5 decibels; inadequate side-tone balance; lack of circuitry for automatic equalization of transmission level on long and short loops; lack of circuitry for protection against acoustic shock; lack of circuitry to provide tip party identification, thereby precluding use on other than single party lines; the dial operation because of dial pulsing time would not assure that central office relays would follow the dial pulses, and in areas where joint pole lines or other factors cause power noise or interference, noise conditions would be about 4 to 20 decibels worse than with a Bell System set.

Pacific's initial tariff proposal for decorator-type sets (Exhibit 36) suspended by Commission order in Case No. 7933,

contemplated that pursuant to a written agreement the telephone company would acquire title to a decorator set owned by a customer and would modify the set to telephone company standards by removing the foreign components and installing standard Bell System components for a one-time charge based upon the cost of modification. The essential terms of the customer agreement were:

1. Title to the set including the decorative enclosure would be transferred to the telephone company for a consideration of \$10.

2. The customer would pay the cost of modification and would pay an additional monthly rate of \$1.50.

3. The telephone company would maintain and repair the set excluding the exterior finish.

4. The customer could reacquire title to the set when service was discontinued or the set would not work satisfactorily by paying the telephone company the same amount of \$10 involved in the original transfer of title.

The record indicates that the modification cost that might be expected under this tariff would be in the range of from \$50 to \$100.

A Commission staff engineer testified that he experienced satisfactory results when making test calls using the Western States Japanese-made telephone sets and that they performed without noticeable difference from standard sets provided by defendant. He objected to defendant's proposed tariff (Exhibit 36) on the bases that some telephone sets, such as those distributed by complainant, did not, in his opinion, require any modifications



and that the charges contemplated by defendant were too high. He pointed out that a customer who had paid \$50 to \$250 for a decorative set would not understand and would resent being called upon to "sell" the set to the telephone company for \$10; also that the administrative procedures for transfer and retransfer of title to the decorative set between customer and telephone company would be difficult and confusing.

The staff engineer proposed a tariff schedule (Exhibit 41) which would permit the use of special telephone sets different from those regularly supplied by defendant provided they met standards provided in the tariff. Technical standards were not actually specified in the tariff, but the witness stated that sets should not be allowed which would degrade service. He emphasized that the sets would be allowed only on a "plug-in" basis and only on one-party service. There would be a \$1.00 per month charge for such a set in addition to the normal tariff charges applicable and defendant would maintain the set, except for the housing. The set would be considered as donated to defendant when plugged in but title would revert to the subscriber when extension service was discontinued or the set was unplugged.

Adjourned hearings were scheduled on several occasions for completion of these proceedings but were postponed at request of both complainant and defendant pending their attempts to resolve their differences. Upon request of complainant, hearings were scheduled for resumption on September 20, 1965. On September 10, 1965, defendant filed a revised tariff proposal by Advice Letter No. 9137 and requested withdrawal of the tariff

which had been under investigation in Case No. 7933. This revised tariff proposal (Exhibit 43) was reviewed in hearings extending from September 20 through September 24, 1965. Said revised tariff was suspended by Commission order dated October 5, 1965, in Case No. 8278, and the tariff having been investigated in the September 1965 hearings, Case No. 8278 was consolidated with Cases Nos. 7839 and 7933. Withdrawal of the prior tariff, however, was not granted and therefore both proposed tariffs (Exhibits 36 and 43) are part of the record and through further orders are still under suspension. The consolidated cases were submitted upon receipt of closing briefs on December 15, 1965.

Pacific's revised tariff proposal (Exhibit 43) provides that Pacific will own and install and maintain a telephone apparatus assembly or kit of standard operating components in suitable decorative enclosures purchased by customers. Ownership and maintenance of such enclosures will remain with the customers. The operating components constitute the telephone set from the standpoint of telephone system operation. The kit consists of standard Bell System operating telephone set components including ringer, dial, network, transmitter, and receiver, all manufactured by the Bell affiliate Western Electric Company. Pacific's witness testified that drawings showing the dimensions and configuration of the components had been furnished to complainant and would be made available to anyone wishing to manufacture decorative enclosures. Under the tariff a subscriber would pay a one-time charge of \$10 to cover installation of a telephone set assembly in a decorative enclosure designed to accommodate the assembly. If the subscriber's decorative enclosure would not

accommodate the telephone set assembly the tariff provides for a flat charge of \$25 for modification of the enclosure and installation of components. Pacific's witness testified that this latter alternative is necessary to take care of existing enclosures including the Japanese decorative sets sold by Western States. In either case regular monthly rates for telephone service would apply but there would be no additional monthly charge such as the \$1.50 per month as contained in the earlier proposed tariff (Exhibit 36).

Development of the proposed tariff charges is contained in Exhibits 44, 50, and 51. The charges represent Pacific's costs in excess of those incurred in providing service with standard telephone sets as costs associated with rendering telephone service are recognized in exchange service charge. The \$25 charge required where some modification is necessary reflects the estimate that one-half of such instruments would require inclusion of an amplifier as part of the components. Exhibit 50 shows that where an amplifier is not required the cost of modification is \$22.50. Exhibit 51 shows that if an amplifier is required the cost of modification is \$30.

Western States' president objected to Pacific's revised proposed tariff because: it would be difficult to design cases that would universally accommodate the internal components of the different types of telephone sets used by the various telephone companies in the United States; it would subject complainant's designs to the approval of a competitor (Western Electric or Bell Laboratories) for determination of

their suitability to accommodate the internal components; some models of complainant's telephone sets, such as the Enchanted Majesty line, could not be adapted by the standard kit; the divided responsibility for maintenance of case and operating components would cause problems, and a subscriber would be unduly burdened by having to pay the conversion charge each time he moved from the operating area of one telephone company into that of another.

The Commission staff generally supported, but with certain reservations, Pacific's revised tariff proposal as a reasonable solution to the problems presented. The staff witness testified that the issue as to whether Pacific or the subscriber owns the telephone set is not vital to the matter of providing efficient telephone service but it is essential that the telephone set be maintained by the telephone company and that the charge for maintenance be included as a nonoptional part of the charge for telephone service. His testimony indicated that he had not been persuaded that Western States' telephone sets would degrade Pacific's telephone service, but he was of the opinion that use of nonstandard operating components would increase maintenance costs and therefore he recommended that the operating components in complainant's sets be replaced with Western Electric components. He favored the imposition of a nonrecurring charge for modification of a telephone set rather than a smaller continuing monthly charge but stated that in his opinion the proposed \$25 charge for modification of a telephone enclosure was too high and should be in the range of from \$16 to \$20.

The staff witness voiced no objection to the subscriber being responsible for maintenance of the telephone enclosure or housing except that where modification of the enclosure requires incorporation of a transmitter button in the mouthpiece he recommended that those two items be treated as a unit and be maintained by the utility. He also recommended that the decorator-type telephones be permitted only as secondary or plug-in type instruments so as to insure the continuance of the subscriber's primary telephone service in instances where the subscriber finds it necessary to return the decorator set to the supplier for repairs to the enclosure.

It is the staff's position that the proposed tariff should be amplified and expanded so as to clearly indicate that the tariff is not applicable for custom installations such as drawer- and cabinet-type installations which are covered elsewhere in the tariffs and that the respective ownership and maintenance responsibilities of Pacific and the subscriber should be clearly set forth including the treatment which will ensue when the subscriber moves.

The California Independent Telephone Association supported defendant's position that allowing subscriber-owned telephone sets would result in impairment of service and in addition pointed out that divided responsibility for maintaining the telephone system under that arrangement would create confusion. The secretary of the Association testified that of 43 independent companies operating in California, 42 have filed tariffs, similar to defendant's, prohibiting the use or connection of subscriber-owned apparatus or devices. He recommended that no change be

made in these rules which prohibit connection of subscriber-owned facilities.

The Association indicated that if the tariff proposed by Pacific in Exhibit 43 were to be authorized, the independents would, of necessity, file similar tariffs. The Association anticipated that the manufacturers of telephone instruments for the independents would have no problem in providing components in kit form to fit decorator enclosures manufactured to accommodate Pacific's kits as existing telephone instruments of the independents are compatible with those installed by Pacific.

The broad issue which is raised in these proceedings is whether or not it is in the public interest to allow subscribers to connect and use on Pacific's telephone system non-Bell-type telephone instruments such as those sold and distributed by complainant Western States. The issue arises not because of any claims that complainant's sets provide better technical performance but solely on the basis that they meet the demands of subscribers who desire decorative-type telephone installations not offered by Pacific.

The principle that a telephone utility own and maintain the complete communication system, including the telephone sets used by its subscribers, if it is to provide dependable, economic service is of long standing. We have supported that principle by our past decisions departing therefrom only where telephone utilities have failed to meet reasonable demands for service.

In the proceedings now before us Pacific has not demonstrated its willingness to meet the obvious demand for

decorative-type sets evidenced by the large number of sales of such sets by complainant and others in California<sup>4/</sup> until it filed the new tariff proposal, Exhibit 43. The first tariff proposal, Exhibit 36, was unduly restrictive, uncertain, and through the high level of charges which generally would have been applicable thereunder would have encouraged many subscribers to conceal the use of unauthorized and unconverted telephone instruments to avoid payment of those charges, a practice which could only lead to degradation of telephone service. It is apparent from this record that the enforcement of tariff provisions relating to use of unauthorized telephone sets is and will continue to be a major problem unless the tariff provisions are generally acceptable to those subscribers who desire to use decorative-type sets.

The reasonableness of the charges proposed under Exhibit 43 is supported by Exhibits 44, 50, and 51. There was no objection to the \$10 charge where no modification of the telephone enclosure is required but the Commission staff urged a reduction in the \$25 charge where modification is required. The evidence does not support a reduction in that charge which must, on the average, be sufficient to adapt any enclosure which is generally of adequate size and shape to accommodate

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<sup>4/</sup> Western States' president estimated that from 25,000 to 30,000 decorative sets have been sold for use in California and that about 16,000 of these have been sold by Western States.

all parts contained in the kit. The record indicates that it may be necessary to develop several different kit configurations to accomplish this objective. Under these circumstances we see no reason to reduce the \$25 modification charge and thereby impose a burden on other subscribers. Looking prospectively to the future it would be expected that manufacturers of telephone enclosures will design them so that they will accommodate the standard conversion kit which requires no modification of the enclosure. Thus, it is reasonable to assume that the \$25 charge will apply generally for conversion of only those telephone sets which have been manufactured and distributed prior to this order.

We find it is not necessary to restrict decorative-type telephones to secondary or plug-in type use as Pacific has stated that if a subscriber's decorative enclosure needs repair it will furnish a regular set for use while the subscriber has the work done.

We find that the staff's recommendations that the proposed tariff be amplified and expanded so as to clearly set forth the applicability of the tariff and the respective ownership and maintenance responsibilities of Pacific and the subscriber, including the treatment which will ensue when a subscriber moves, are desirable.

Based upon the record we find that if the tariff as proposed by Pacific, Exhibit 43, is modified in consonance with the foregoing findings and as set forth in Appendix A to this order, it will reasonably satisfy customer demands for use of decorative-type telephone sets.

We conclude, therefore, that the tariffs now under suspension in Case No. 7933 and Case No. 8278 should be permanently suspended and Pacific should be ordered to file a tariff for Special Type



Telephone Sets substantially as set forth in Appendix A attached hereto. We conclude further that Pacific should provide for appropriate listing of decorative set enclosures in its classified directories.

O R D E R

IT IS ORDERED that:

1. The tariffs now under suspension in Case No. 7933 and Case No. 8278 are permanently suspended.
2. The Pacific Telephone and Telegraph Company shall file within five days after the effective date of this order, to become effective upon five days' notice, a tariff for decorative-type telephone sets substantially as set forth in Appendix A attached hereto.
3. Defendant shall provide for appropriate listing of decorative set enclosures in its classified directories.

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

Dated at San Francisco, California, this 14th day of JUNE 1, 1966.

Frederick B. Holmberg  
President

George J. Traver  
Commissioners

APPENDIX A  
Page 1 of 3

Applicant's tariffs and rates for special type telephone sets shall be filed as follows:

Schedule No. 32-T

SPECIAL TYPE TELEPHONE SETS

SPECIAL CONDITIONS

18. Conditions applicable to RATES, (22), telephone apparatus assemblies:
- a. This tariff sheet does not apply to drawer-type, box-type or other custom-made installations which are covered in Tariff No. 83-T, Sheet 51-I.
  - b. A telephone apparatus assembly is a combination of electrical and mechanical telephone parts which, when installed in a suitable subscriber-provided telephone enclosure or housing, has operating characteristics conforming to those established for telephone sets regularly furnished by the Company.
  - c. The subscriber-provided telephone enclosure or housing shall be of adequate size and shape to accommodate all parts which comprise a telephone apparatus assembly, including transmitter and receiver parts. It shall be of a design and appearance significantly different from that of any telephone set regularly furnished by the Company.
  - d. Ownership of the enclosure or housing shall remain with the subscriber and the telephone apparatus assembly shall be the property of the Company.
  - e. The Company assumes no responsibility for the maintenance, repair or replacement of subscriber-provided telephone enclosures or housings in which telephone apparatus assemblies are installed. However, the Company shall be responsible for maintenance, repair and replacement of the telephone apparatus assembly.
  - f. Subscribers shall not remove or permit others than the Company to remove telephone apparatus assemblies from subscriber-provided telephone enclosures or housings.
  - g. When leaving the premises or discontinuing service, by the subscriber-provided telephone, the subscriber has an option of either leaving the telephone apparatus assembly in the housing or enclosure and reimbursing the Company by a sum set forth in RATES, (22), to acquire the ownership, or asking the Company to remove the telephone apparatus assembly. The subscriber is responsible for transporting the instrumentality to his new premises.

Should the subscriber move within Pacific Telephone's service area and retain the telephone apparatus assembly the payment shall be refunded and the assembly shall become the property of the Company.

APPENDIX A  
Page 2 of 3

- h. The nonrecurring charges shown do not apply when a subscriber-provided telephone enclosure or housing is equipped with a telephone apparatus assembly previously installed by this or any Bell System Company in the United States.
- i. Subscribers requesting service, covered under this tariff, shall receive a copy of Special Condition 18 at the time of application.

APPENDIX A  
Page 3 of 3

Schedule No. 32-T

SPECIAL TYPE TELEPHONE SETS

RATES

Nonrecurring  
Charge

22. Each telephone apparatus assembly installed in a subscriber-provided telephone enclosure or housing:
- (a) Where modification of the telephone enclosure or housing is not required .... \$10.00\*
  - (b) Where modification of the telephone enclosure or housing is required ..... 25.00\*
  - (c) At discontinuance of service, may be sold to the subscriber for \$12.00.
- (Refer to Special Condition 18.)

\* The above charges are in addition to the charges and rates for regular station service of the class, type and grade ordered.