

ORIGINAL

Decision No. 71510

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MEDICAL COMMUNICATIONS COMPANY,
a general partnership,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,

Defendant.

Case No. 8187
(Filed May 25, 1965)

Noland, Hamerly, Etienne & Fulton, by Myron E. Etienne, Jr., for complainants.
Arthur T. George; Pillsbury, Madison & Sutro,
by Richard W. Odgers, for defendant.

O P I N I O N

Complainant herein is Medical Communications Company,^{1/} a general partnership of doctors in Salinas, California, who have associated themselves for the purpose of providing a private communications service available to members of the medical profession, hospitals and medical pharmacies. Defendant is The Pacific Telephone and Telegraph Company,^{2/} a public utility.

Stipulated facts are substantially as follows:

1. Medical Communications Company operates a private voice intercommunicating system in Salinas, California. This system is composed of telephone instruments, switching equipment and communication lines connecting the telephone instruments to the switching

^{1/} Hereinafter sometimes referred to as "Medical" or as "the partnership".

^{2/} Hereinafter sometimes referred to as "Pacific".

equipment. Intercommunication is accomplished by dialing a 2-digit code. The system is not connected to the exchange and toll network of Pacific.

2. As of June 1, 1966, Medical had 63 customers, including 43 physicians, the Salinas Valley Memorial Hospital, 13 pharmacies, an answering service, a physical therapist, and 5 medical laboratories. Forty-six of these customers are connected to Medical's switching equipment by means of communication lines furnished by Medical. The remaining 17 customers are connected by means of private line telephone channels furnished by Pacific to the individual customers. These 17 customers include 3 physicians' offices, 11 pharmacies, 1 medical laboratory, the physical therapist and the answering service. It is Pacific's private line service to these 17 customers which is in issue.

3. After investigating the feasibility of operating a private voice intercommunicating system for the benefit of members of the medical profession, hospitals and pharmacies, and after contacting Pacific and others in the business of furnishing telephone equipment, on or about August 5, 1963, 12 physicians in Salinas, California, formed Medical Communications Company, a general partnership, for the purpose of furnishing voice intercommunicating service between the offices of those Salinas physicians who chose to become customers of the service and certain locations within the Salinas Valley Memorial Hospital. On August 5, 1963, the partnership agreed to lease a voice intercommunicating system from Johnson Radio & Electronics Company (Johnson) for a term of five years with an option to purchase the system at the termination of the lease. The system consisted of a 100-line Stromberg-Carlson dial switching device and associated telephone instruments and communication lines.

4. In February 1964 the partnership commenced operation of the private line intercommunicating system. At the time of the initial

testing of the system there were approximately 37 physicians, 2 pharmacies, 2 medical laboratories, and the Salinas Valley Memorial Hospital hooked up to the system. Approximately one week thereafter, also in February 1964, in accordance with an order placed by Johnson on January 9, 1964, Pacific furnished private line telephone channels to eight customers of the partnership not connected to the system at the time of the original testing of the equipment, at which time all telephones of the intercommunication system of the partnership became operational.

5. Pacific furnished channels to other partnership customers for the same purpose in March and April 1964. The private line telephone channels furnished by Pacific to customers of the partnership were provided pursuant to Pacific's tariff Schedule Cal. P.U.C. 45-T, and are billed by Pacific to the individual users of the channels.

6. Tariff Schedule No. 45-T provides that Pacific will furnish private telephone channels to connect customer-provided private voice intercommunicating equipment "located on different premises of the same customer". The tariff precludes interconnection of such private line channels with other Pacific-provided private lines (Schedule Cal. P.U.C. No. 45-T, Sheet 23-D).

7. In July 1964, Pacific determined that the private line channels furnished to customers of the partnership under tariff Schedule No. 45-T were being used in a manner contrary to the provisions of the tariff. Pacific's review of the situation showed that the private line channels were not used to connect equipment located at different premises of the same customer, but were used instead to connect intercommunication stations on the premises of individual customers with switching equipment on the premises of the partnership. The review also showed that by means of the

partnership's switching equipment, individual subscribers to Pacific's private line channels were interconnecting their channels with those furnished by Pacific to other partnership customers.

8. After Pacific had concluded that the private line channels furnished to customers of the partnership were connected and being used in a manner contrary to tariff Schedule No. 45-T, Pacific advised the partnership and the partnership's customers who were subscribers to Pacific's private line channels that those channels would have to be disconnected.

9. On April 5, 1965, the partnership made an informal complaint to the Public Utilities Commission, stating that the channels had been in use "for some time" and expressing its desire that the service be continued (Informal Complaint No. U-10642). Pacific responded to the informal complaint by letter of April 26, 1965. On May 12, 1965, the staff of the Commission closed the informal proceeding without recommendation.

10. On May 25, 1965, the partnership filed the complaint herein against Pacific (Case No. 8187). Pacific answered on June 17, 1965. The case was thereafter set for hearing for September 15, 1965.

11. Before the partnership's complaint was filed, Pacific and the partnership began discussions in an effort to devise a method by which the 17 partnership customers who were using Pacific's private line channels could maintain their connection with the intercommunicating system in a manner consistent with Pacific's tariffs. The first of these discussions was held in Salinas on February 10, 1965, and subsequent discussions were held periodically thereafter. On August 17, 1965, the partnership and Pacific requested that Case No. 8187 be removed from the calendar in order that the parties might continue their negotiations.

12. Following a meeting between Pacific and the partnership on January 10, 1966, the parties agreed that Pacific would seek Commission approval of a deviation from tariff Schedule No. 45-T to permit Pacific to continue to provide private line channels to the 17 subscribers who were using Pacific's channels to connect to the partnership's intercommunication system. In turn, the partnership agreed to dismiss its complaint with prejudice.

13. On April 6, 1966, Pacific filed a request for a tariff deviation in which it stated:

"We have been furnishing local private line service to 17 private line subscribers connected to the customer-owned and maintained dial telephone system of the Medical Communications Company in Salinas. The furnishing of these private line services is on an irregular basis.

"The subscribers wish to retain this service.

"We would like to continue furnishing service, on a deviation basis, but to confine it to the existing private lines connected to the Medical Communications Company system and not extend the deviation to additional lines or to any changes in existing lines of the present subscribers."

14. On May 10, 1966, the Commission issued its Resolution No. T-6000 by which the deviation requested by Pacific was granted "during the pendency of Case No. 8187."

15. Pacific is willing to continue to furnish private line telephone channels to the 17 partnership customers now subscribing to such channels, subject to Commission approval of that tariff deviation. Pacific is not willing to provide private line telephone channels to partnership customers other than those customers presently subscribing to Pacific's channels, or to increase the number of private line telephone channels now being furnished, or to terminate the existing private line channels at new locations. The present subscribing customers, however, would have the right to take in partners in the conduct of their profession or business at the same location without being determined a new customer. The withdrawal

of a partner from the subscribing customer's profession or business would likewise not be determined to have the effect of creating a new customer. Presently subscribing customers would also be permitted to change the form of their business entity without being determined a new customer.

16. If Pacific furnishes private line telephone service in accordance with Paragraph 15, above, the partnership will release Pacific from all claims against Pacific arising out of or based upon service or equipment furnished to the partnership or its customers by Pacific prior to July 12, 1966.

Public hearing in the matter was held before Examiner Emerson on July 12, 1966, at Salinas. Upon receipt of a "statement of stipulated facts"^{3/} and the testimony of one witness called by defendant, the matter was submitted. It is now ready for decision.

The parties jointly seek a specific deviation from Pacific's Schedule No. 45-T, applicable to this case alone because of the services already established by Pacific and because of the related extenuating circumstances. If the existing service is terminated, complainant avers that it will suffer substantial loss and in fact will be unable to continue to exist and to operate its facilities.

The testimony demonstrates that this situation came about through a series of errors on the parts of various of Pacific's employees, compounded each step of the way until semiannual reports from various areas of the State were examined by Pacific's general-office administrative people and the unusual aspects of the Salinas situation brought to light and investigated in detail by them. By that time, the service was not only well established but had become a virtual necessity to the partnership. To attempt at this late date

^{3/} Exhibit No. 1.

to reverse or undo all that has occurred would appear to be unrealistic and in the light of the fact that no claim or showing has been made that any unreasonable discrimination will result from a continuance of the existing services provided by Pacific, the Commission finds that it is reasonable to grant Pacific authority to continue the existing service as a deviation from its filed tariffs.

ORDER

IT IS ORDERED that The Pacific Telephone and Telegraph Company is authorized and directed to continue to provide private line telephone channels to customers of Medical Communications Company, limited to and identified in Paragraph 15 of Exhibit No. 1 in this proceeding and in accordance with provisions therein contained, as a deviation from its filed tariff Schedule No. 45-T, Sheet 23-D.

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

Dated at San Francisco, California, this 9th day of NOVEMBER, 1966.

[Signature]
President
George J. Crover
Friedrich B. Haloloff
Attorney
William M. Bernard
Commissioners