

ORIGINALDecision No. 71742

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JACK BLOCK,

Complainant,

vs.

PACIFIC TELEPHONE AND
TELEGRAPH CORPORATION,

Defendant.

Case No. 8129
(Filed February 15, 1965;
Amended March 24, 1965)Jack Block, for complainants.Pillsbury, Madison & Sutro, John A.
Sutro, Jr., Arthur T. George, by
George A. Sears and John A. Sutro,
Jr., for The Pacific Telephone and
Telegraph Company, defendant.O P I N I O N

This is a complaint by Jack Block and others (complainants) against The Pacific Telephone and Telegraph Company (Pacific). The complainants allege in substance that Pacific abrogates their rights by compelling them to rent as an extension instrument for residential use a Western Electric Model 500 telephone (Model 500 telephone) identical to the legally purchased Model 500 telephones complainants already own or would prefer to purchase.

The Model 500 telephone, manufactured by Western Electric Company, is sold by them only to Bell System operating companies (including Pacific) and to the United States Government. Some of these models do, however, find their way into the free market. The record shows Model 500 telephones are being offered to the general public by some specialty mail order outlets at \$17.50 for a black set and \$19.95 for a colored set. The plug is available for

approximately \$2.00. In short, complainants contend that since there are two sources of Model 500 telephones for extension use, the insistence by Pacific to supply the telephone on a rental basis as against allowing complainants to purchase and have installed an identical telephone "abrogates rights of complainants". Furthermore, should these "rights" be acknowledged and the ownership of the telephone rest with complainants, the complainants further state the charge of \$1.00 per month per extension would be excessive. Complainants, therefore, request an order expressly modifying Pacific's tariff rule 15 so that there would be acknowledged the right of private citizens to employ personally-owned Model 500 telephones for extension purposes and an order modifying Pacific's Schedule Cal. P.U.C. No. 4-T, 10th Revised Sheet 13, relieving complainants and like subscribers from all tariffs for the use of personally owned Model 500 telephones as extensions.

Pacific filed a motion to dismiss the complaint on the grounds that the responsibility of serving telephone companies for the ownership and maintenance of telephone sets is well settled. Furthermore, Pacific contended that it should own, furnish and maintain facilities necessary to provide exchange and message toll telephone services, and that no equipment, circuit or devices owned by customers should be attached to or connected with the telephone system.

Our recent Decision No. 70862 in Case No. 7839, Western States Telephone Co. v. Pacific Telephone & Telegraph Co., states, in part:

"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 other recent cases in which the Commission has departed from its long-standing principle, the question of the ownership by others of devices or equipment attached to or connected with the telephone system was actually of minor import. It arose only because the instrument, device, or equipment found necessary to meet a reasonable demand for service was not offered by the utility. Even in the applicable cases where private ownership has been authorized, it was principally as an alternative in the event the utility did not desire to acquire, install, and maintain equipment from unaffiliated sources. In this case, however, the question of private ownership is the principal if indeed not the only point. Complainant Block, who testified for all of the complainants, indicated the principles of private ownership, freedom to own property, and freedom of choice are deeply involved in this case. He stated, for example, that he owned his own home and similarly desired to own his own telephone. Here, however, he supplemented his broad statement of principles by pointing out in addition that he did not like to be compelled to pay a monthly rental charge for a telephone the exact duplicate of which he could buy and own. In this respect the complaint apparently does not question the level of the monthly charge as presently assessed for residence extension

telephones, but requests its elimination as being excessive should their main prayer be granted, i.e., establishing the right of private citizens to employ personally-owned Model 500 telephones for extension purposes.

Contrasted to some of our prior cases, there appears to be lacking here the issue of connection to Pacific's communications system of an instrument not offered by Pacific nor manufactured by its affiliate; the question of refusal by Pacific to provide the desired type telephone, and any evidence that Pacific has failed or will fail in any respect to meet a reasonable demand for service.

As we have said, the record indicates there are two sources of the telephone instrument desired. We must decide in this case whether the insistence by Pacific that it be the source of the instrument for use in its communications system is a reasonable one; whether such insistence abrogates the rights of complainants; or if such denial constitutes a failure to meet a reasonable demand for service.

We have no quarrel with complainants in their advocacy of the broad principles of private ownership and freedom of choice. We do not agree, however, that in the area of public utility operations individual pieces of a system should belong to individual customers unless there is a showing (which is absent here) that the utility has failed or refused to meet a reasonable demand with equipment which it owns or is able to acquire. Regarding the freedom of choice as a guiding principle, complainants' request for ownership status of Model 500 telephone instruments presumably could be extended to include telephone wiring in and around complainants' homes. No justification appears necessary to be made for our position that when the Legislature declared telephone systems to be public utilities it was expected and anticipated that

public interest would require the imposition of reasonable restrictions upon the utilities as well as on the users thereof. The restriction which Rule 15, Tariff Schedule Cal. P.U.C. 36-T imposes on complainants is not an unreasonable one in this case.

The motion of defendant Pacific to dismiss amended complaint without hearing is denied, and we find that:

(1) Western Electric Company, the manufacturer, sells Model 500 telephones only to Bell System operating companies (including Pacific) and to the United States Government.

(2) Some Model 500 telephones find their way into commercial channels and can be purchased in the open market.

(3) Pacific does not refuse to provide complainants with extension service using Model 500 telephones.

(4) Complainants' demand for Model 500 telephones should be supplied by Pacific in accordance with Rule 15, Tariff Schedule Cal. P.U.C. 36-T.

(5) Complainants in this case, having the burden to do so, did not establish, with respect to Pacific's furnishing Model 500 telephones for use on its system, that Rule 15, Tariff Schedule Cal. P.U.C. 36-T is unfair, unjust, unreasonable, or discriminatory.

(6) Complainants, having the burden to do so, did not establish supporting authority of their alleged right which Rule 15, Tariff Schedule Cal. P.U.C. 36-T is alleged to abrogate.

We conclude that complainants' amended complaint should be dismissed.

ORDER

IT IS ORDERED that complainants' amended complaint is dismissed.

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

Dated at San Francisco, California, this 21st day of DECEMBER, 1966.

Paul E. Mitchell
President

Augustin

Commissioners

I will file a concurring opinion.

George E. Trover

Commissioner Frederick B. Holoboff 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.

Concurring Opinion of Commissioner Grover

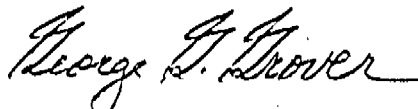
I concur in the Order of Dismissal.

Unlike the situation in certain other cases involving the foreign attachments rule (see Doctors General Hospital v. Pacific Telephone, Decision 69343, in Case 7825, 64 Cal. P.U.C. 462; Bowles v. Pacific Telephone, Decision 71608, in Case 8248), Pacific is willing to provide the service in question - by means of the very same type of instrument which complainant proposes to use. Moreover, the right to own one's own telephone is not of any real consequence. Complainant's only substantial interest here, therefore, lies in the rate for extension service.

Pacific's charge is for extension service, not for the instrument as such; this service is much more than the instrument, involving, as it does, an extra connection to the international telephone network. The price at which the instrument is available on the market is not therefore dispositive of the rate which should be charged for the service. The cost of the instrument is only one consideration.

It is unlikely that Pacific must pay more for telephone instruments than complainant does; in any event, in constructing a rate for the service the Commission must consider what several million instruments cost, not the bargain price at which one may be purchased. The present extension rate has already given appropriate consideration to Pacific's overall instrument costs - and also to the many other rate factors involved, including the value of the service.

Concentrating on the question of title to his telephone instrument, complainant has failed to relate the cost of that one instrument to the issue of the proper charge for extension service. He has failed to make the type of record upon which the Commission could find that the present extension rate is unreasonable.



George G. Grover, Commissioner