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ORIGINAL

Decision No. 73976

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CARL BOWLES,

Complainant,

vs.

PACIFIC TELEPHONE & TELEGRAPH CO.,

Defendant.

Case No. 8248
(Filed August 17, 1965)

JOHN L. SALVERSON,

Complainant,

vs.

PACIFIC TELEPHONE & TELEGRAPH CO.,

Defendant.

Case No. 8275
(Filed October 1, 1965)

EARL W. KING,

Complainant,

vs.

PACIFIC TELEPHONE & TELEGRAPH CO.,

Defendant.

Case No. 8282
(Filed October 14, 1965)

Gerard J. Glass, for Carl Bowles, complainant.
Arthur T. George; Pillsbury, Madison & Sutro, by
William E. Mussman and James B. Atkin, for
The Pacific Telephone and Telegraph Company,
defendant.

Keith E. Pugh, Jr., for Marcom, Inc., intervenor.
W. R. Roche, Counsel, and Harold D. Seielstad,
for the Commission staff.

O P I N I O N

After due notice, six days of public rehearing were held on these complaints before Commissioner Morrissey and Examiner Coffey. These matters were submitted for decision on February 23, 1968, upon

the receipt of defendant's written brief, other parties having either argued orally or foregone the filing of briefs.

By his complaint, Carl Bowles, doing business as Superior Sales Company, requested an order of the Commission requiring The Pacific Telephone and Telegraph Company (Pacific) to install on his business premises a Marcom Call Diverter, an automatic telephone call diverting device, or in the alternative to allow him to purchase a diverter from Marcom, Inc. (Marcom) and have it installed on said premises.

After eighteen days of public hearings and the receipt of concurrent opening and closing briefs, the Commission issued on November 29, 1966, Decision No. 71608, effective December 19, 1966, which ordered Pacific to install and maintain at the business premises of Bowles a current model of the Marcom Call Diverter, or, as an alternative to permit Bowles to install and maintain said diverter. If Pacific elected to install and maintain the diverter, the order provided that the rates and rules therefor should be as agreed upon between Pacific and Bowles, but subject to this Commission's continuing jurisdiction. Further, if an agreement were not effected, the rates and rules would be fixed by further Commission order.

On December 8, 1966, Pacific petitioned for rehearing. Decision No. 72131, dated March 7, 1967, granted a rehearing of Decision No. 71608 limited solely to the issue of whether the Marcom Call Diverter is such an adequate and efficient instrumentality and telephonic facility as is necessary to promote the safety, health, comfort and convenience of Pacific's patrons, employees and the public. Further, the effective date of Decision No. 71608 was suspended pending further Commission order.

At prehearing conferences on March 27, March 29, April 3 and April 10, 1967, arrangements were made for further tests and trials of the diverter. The parties were to request hearing time after the completion of the tests and trials.

On July 27, 1967, Pacific by Advice Letter No. 9595 made a tariff offering of Call Diverter service using the Marcom Call Diverter in conjunction with Pacific's automatic answering equipment, which transmits a prerecorded message to the calling party advising of the call diversion. This service offering became effective on August 27, 1967,^{1/} without any findings by the Commission of the reasonableness, adequacy or efficiency of the equipment, charges and rates, or condition of service.

Subsequent to the issuance of Decision No. 71608, Marcom sold approximately 50 call diverters directly to the public in the San Francisco Bay area. Among those so sold for \$588.56 was one installed at Bowles' business premises on December 13, 1966.

Pacific and Marcom having contracted, on July 24, 1967, that Pacific would purchase from Marcom the call diverters to be used in Pacific's Call Diverter service and Marcom previously having made direct call diverter sales to Pacific's subscribers, Pacific and Marcom agreed to attempt to persuade subscribers to substitute Pacific's Call Diverter service for subscriber-owned equipment and that Marcom should offer to repurchase at full credit (or at such depreciated value as justified) all diverters owned by subscribers. Thereafter, representatives of Pacific and Marcom contacted Bowles

^{1/} Subsequently, on January 23, 1968, Pacific by Advice Letter 9710 offered in addition a new version of Call Diverter service which eliminated the requirement for associated automatic answering equipment inasmuch as the Marcom Call Diverter had been re-designed to include the prerecorded announcement function.

and attempted to settle his litigation. Bowles, having refused to permit his complaint to be satisfied by accepting the offer of Marcom to buy back the call diverter and by subscribing to Pacific's Call Diverter service, notice was sent, on September 29, 1967, to all parties that a recorded prehearing conference would be held on October 11, 1967, for the purposes set forth in the Commission's Rules of Procedure.

On October 10, 1967, Bowles amended his complaint to request the following:

1. That Advice Letter No. 9595 be suspended pending final disposition of the complaint.
2. That evidence be heard of threats by Pacific to discontinue all telephone service to Bowles unless Bowles settled his complaint.
3. That evidence be heard that Pacific participated in an attempt to bribe Bowles to sign a release of his complaint.
4. That Bowles be permitted to own, install and operate a Marcom Call Diverter on Pacific telephone lines at his place of business as an exception to Pacific's tariffs relating to foreign attachments.

On the fifth day of hearing, complainant and intervenor simplified the issues by Bowles and Marcom agreeing to exchange the call diverter owned by Bowles for one being supplied by Marcom to Pacific for Call Diverter service and by complainant rejecting any service under the filed tariff and indicating that he basically wants the right to own, operate and maintain his own call diverter.

All parties stipulated that with the filing of Pacific's tariff for Call Diverter service the generalized adequacy of the call diverter was established. Despite this and the exchange of

complainant's equipment, Pacific in its brief pleaded that a finding should be made by the Commission that the prior inadequacy of equipment has been substantially eliminated. No proper regulatory purpose would be served by so doing inasmuch as the issue of instrumentality adequacy and efficiency has been removed from this proceeding by the actions of Pacific and Marcom.

There remain only the two issues:

(1) Did Pacific's representatives engage in acts of coercion and bribery to get Bowles to dismiss his complaint? and

(2) Should Bowles be permitted to connect his own diverter to Pacific's network as an exception to the tariff prohibiting such connection?

Findings and Conclusions

We find that:

1. After extensive hearing this record contains nothing based on fact to support the allegations of Bowles that Pacific's representatives engaged in acts of coercion and bribery to persuade Bowles to dismiss his complaint.

2. From this record Pacific's actions do not appear to have been unlawful or improper.

3. Counsel for complainant conceded that the allegations of coercion and bribery by Pacific were irrelevant to any relief.

4. Subscribers, other than Bowles, will be treated fairly by Marcom if Marcom purchases back subscriber-owned call diverters for a mutually acceptable compensation.

5. Decision No. 71608, after eighteen days of hearings, substantially granted the relief requested by complainant by permitting him, but no other subscriber, to have the use of a Marcom Call Diverter on Pacific's telephone circuits.

6. Considering the burdens on Bowles of this protracted proceeding, Pacific's offering of Call Diverter service only after having received an adverse decision and being granted a limited rehearing, there will be no unreasonable burden on Pacific or any of its subscribers, nor any unreasonable discrimination, and substantial justice will be effected if without expense to Pacific Bowles is permitted to own, operate and maintain a call diverter equal to or of a later design than the Marcom Model Pl-7 used by Pacific.

7. Complainants in Case No. 8275 and Case No. 8282, after due notice, have made no appearance in these proceedings.

We conclude that Bowles should be permitted to own, operate and maintain a Marcom Call Diverter as herein provided as an authorized deviation from the filed tariffs of Pacific and that Case No. 8275 and Case No. 8282 should be dismissed.

O R D E R

IT IS ORDERED that:

1. Without expense to The Pacific Telephone and Telegraph Company, Carl Bowles, dba Superior Sales Company, shall be permitted by The Pacific Telephone and Telegraph Company to connect to its subscriber telephone lines at 3871 Piedmont Avenue, Oakland, California, as a deviation from its filed tariffs, a Marcom Call Diverter owned by Carl Bowles. Said diverter shall be the equal of, or of later design than, the Marcom Model Pl-7 used by Pacific in its Call Diverter service. This authorization is not transferable to any other person or location and is conditioned upon the requirement that Bowles reimburse Pacific for all reasonable commercial, traffic and maintenance expense caused Pacific by his use of his own call diverter.

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2. Cases Nos. 8275 and 8282 are dismissed without prejudice.

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

Dated at San Francisco, California, this 9th
day of APRIL, 1968.

John E. Mitchell
President

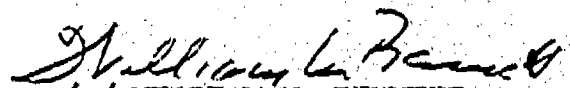
August
William J. Givens Jr.
Paul P. Monrosey
Commissioners

c. 8248

10-173776

WILLIAM M. BENNETT, COMMISSIONER, Dissenting Opinion

I realize that the foreign attachment rule is being ignored to the point of being meaningless. I do not quarrel with the trend toward greater customer rights in the telephone handset. I do object, however, to today's order because of the uncontradicted evidence in the record that the call diverter does interfere with telephone efficiency and that there is nothing set forth herein spelling out the obligation of Pacific let alone its right to repair the call diverter.


/s/ WILLIAM M. BENNETT

WILLIAM M. BENNETT
Commissioner

Dated: San Francisco, California
April 9, 1968