

Decision No. 76254

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension and)
Investigation on the Commission's)
own motion of tariffs covering the)
furnishing of background music)
service for use with loudspeaker)
paging systems by General Telephone)
Company of California.)

Case No. 8871
(Filed December 3, 1968)

- A. M. Hart and H. Ralph Snyder, Jr., by
H. Ralph Snyder, Jr., for General
Telephone Company of California,
Respondent.
- Kaplan, Livingston, Goodwin, Berkowitz
& Selvin, by Harry L. Usher and
Henry Pollard, for Muzak; Pierson,
Ball & Dowd by Robert B. Hankins,
for International Planned Music
Association, Protestants.
- R. W. Russell, Department of Public
Utilities and Transportation, by
K. D. Walpert, for City of Los Angeles;
Hill, Farrer & Burrill, by Kyle D. Brown,
for National Electrical Contractors
Association, Interested Parties.
- T. I. Toczauer, for Commission staff.

O P I N I O N

On November 7, 1968 respondent General Telephone Company of California filed under Advice Letter No. 2102 tariff sheets offering on an experimental basis background music service in conjunction with its loudspeaking paging systems in the Santa Monica Exchange. International Planned Music Association, whose members provide background music service in about 100 cities; Muzak, a division of Wrather Corporation; and other firms in the background music business protested this service offering.

On December 3, 1968 the Commission issued its order suspending through April 6, 1969 the tariff sheets so filed and instituting an investigation to determine if the suspended tariffs are unreasonable or unlawful. By Decision No. 75443 dated March 18, 1969, the period of suspension was extended to and including October 6, 1969.

After due notice, a public hearing was held before Examiner Main on April 23, 24 and 25, 1969 in Los Angeles. During the course of hearing Muzak petitioned for a proposed report by the presiding officer, and by letter dated May 2, 1969 the Commission informed the parties to the proceeding of its decision not to authorize the proposed report. Concurrent opening briefs were filed on June 17, 1969, closing or reply briefs on July 1, 1969 and the matter is ready for decision.

The Proposed Service

Respondent proposes to provide 24-hour background music service to its loudspeaker paging service customers in the Santa Monica Exchange at a monthly rate of \$15 after an initial non-recurring charge of \$20. The proposed service is offered on an experimental basis to test public need and the level of estimated costs of rendering this service. Absent the suspension, the tariff would have been withdrawn January 9, 1970, unless sooner cancelled, changed or extended.

The above specified rate and initial charge for background music service is intended to reflect costs, as developed in Exhibit No. 2, which are incremental to respondent-provided loudspeaker paging systems and such estimated costs are based upon service in both the Santa Monica and West Los Angeles

Exchanges. The latter exchange was included in the development in order to make the costing of the service more representative of an ultimate system configuration of equipment and facilities, which respondent would foresee, in a general or more extensive service offering. In the configuration used, equipment to provide background music from a central source including the tape player (SCA-3142 Metrotech Music System) is located at the Santa Monica Central Office. Feeder music channels or circuitry link the central source to the Ocean Park, Bundy, West Los Angeles and Westwood central offices, where amplification is provided. Music channels are provided from the central offices to respondent-provided loudspeaker paging system customers.

The rates and charges for amplifiers and speakers over which the music would be received on the customer's premises are specified in respondent's existing tariff for loudspeaker paging service. Under that tariff the monthly rate for the basic five-speaker paging system is \$15.

The Background Music Industry

By making the proposed service available to its loudspeaker paging service customers in the Santa Monica Exchange, respondent would enter the background music business as an experimental venture.

According to the protestants, the background music industry is highly competitive. It has developed over a period of many years and is comprised of companies which range in size from one and two man operations to large nationally listed companies such as Minnesota Mining and Manufacturing Company and Wreather Corporation.

Background music services are subject to public performance and mechanical reproduction licenses and offer what is described in the applicable BMI public performance license as "... unobtrusive accompaniment to work, shopping, conversation, dining and relaxation." A wide range of quality of service appears to be available in the marketplace. Prices for background music service appear to start at about \$25 per month for a simple, single speaker system and go up to four figures as monthly rates to some major accounts having extensive installations and requirements.

Characteristically, a background music operator produces music programs from records or magnetic tapes at a central studio and transmits such programs from the studio to its customers at various locations throughout a city or metropolitan area. FM multiplex broadcasting or telephone lines may be used for such transmission.

In the Santa Monica area sixteen companies provide background music service. Because of difficulties encountered with FM multiplex transmission to portions of this area, telephone lines are used to provide this service to customers in the canyons, valleys and along the seashore. To the background music operator, the telephone line charges can be a significant portion of his costs.

Position of Respondent

Respondent contends that (1) background music service becomes a public utility service subject to the jurisdiction of the Commission if offered by respondent, (2) the proposed rates

and charges for background music are reasonable, especially in view of the experimental posture or basis of the service offering, and (3) the background music offering is a logical move in order to enhance the value of its loudspeaker paging service to its customers and is consistent with its goal of providing complete communications services.

Position of Protestants

Protestants' principal concern is the competition respondent's entry into this field would pose for them. Included among their numerous contentions in opposition to the proposed service are: (1) the lack of public need for it, (2) unfair competition through unrealistic costing of the proposed service, through rates for private line services to background music companies which are incompatible with the costing of music channels for respondent's proposed service, and through providing services essential to background music companies while competing with them, (3) service inadequacies in respondent's overall telephone service which should be remedied before undertaking any venture into the background music field where the need is already being met by the private sector, and (4) inadequate investigation and knowledge of the background music business.

Findings

It is unnecessary to examine each of the many contentions, since the following findings based on the evidence presented and on Decision No. 75873 suffice to determine this matter.

1. Consonant with its stated policy of providing a more complete communications service, respondent proposes a background music service offering, as set forth in suspended tariff sheets Nos. 7.1 and 17.1 of Schedule G-18, to augment the utility of its loudspeaker paging systems.

2.a. A public need has not been shown for respondent's proposed background music service.

b. Whatever need exists for background music service is being met by background music service companies.

3.a. Background music service companies subscribe to private line service for music channels under respondent's Schedule No. G-5. The monthly rate for each channel is \$3.50 for first one-quarter mile and \$1.25 for each additional one-quarter mile, airline measurement. Such rates relate to and are not greatly different than the rates for respondent's other private line services.

b. The estimated cost of the music channel or private line for respondent's proposed service is \$2.72 per month based on an assumed average of three miles of cable loop or music channel from the serving central office to the loudspeaker paging system customer and on annual charges of \$10.90 per mile of cable. The \$2.72 figure is a part of the \$15.00 monthly rate for background music service as developed by respondent.

c. The principal physical difference in the cable circuitry in providing music channels under Schedule G-5 and under the suspended tariffs is the loop from the central studio of the background music company to respondent's serving central office.

d. Notwithstanding the additional cable loop required to provide service by a background music company, there remains a serious question as to whether or not the rates under Schedule G-5 would become prejudicial if respondent's suspended tariff offering were to become effective. Clearly, the rate design used in Schedule G-5 is incompatible with the design of the comparable portion of respondent's rates in the suspended tariffs.

4.a. Respondent's knowledge of the background music business and its estimates of operation and maintenance expenses for the proposed service appear to have been formulated without study in reasonable depth.

b. Respondent's offering this service on an experimental basis does not diminish the need for performing necessary investigations.

c. Respondent has failed to show that the rates proposed for this service are reasonable.

5.a. In Decision No. 75873 dated July 1, 1969 in Application No. 49835 and Cases Nos. 8682, 8749 and 8750, the Commission's findings with reference to respondent's service included the following:

"General's service is inadequate. Its service, instrumentalities, equipment, and facilities do not promote the safety, health, comfort, or convenience of its patrons, employees, or the public."

b. In the absence of a demonstrated public need for respondent's proposed background music service, it is not in the public interest for respondent to undertake a venture in this field; respondent's efforts would be better devoted to upgrading its basic telephone service.

Based upon the foregoing findings, the Commission concludes that respondent's proposed background music service offering is not in the public interest, that the tariff sheets filed under Advice Letter No. 2102 on November 7, 1968 should be permanently suspended, and that Case No. 8871 should be discontinued.

O R D E R

IT IS ORDERED that:

1. The suspension of the following tariff sheets of General Telephone Company of California is hereby made permanent:

- SCHEDULE CAL P.U.C. NO. G-18
- a. 5th Revised Check Sheet A
 - b. Original Sheet 7.1
 - c. Original Sheet 17.1

2. Case No. 8871 is discontinued.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 30th day of SEPTEMBER, 1969.

William S. ...
President

[Signature]
[Signature]
Commissioners

Present but not participating
[Signature]