

hjh

ORIGINAL

Decision No. 78130

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MOBILE U.H.F., INC., a California
corporation,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 8798
(Filed May 3, 1968)

Warren M. Lipson and M. A. Hoffman, for
complainant.
Richard Siegfried and Robert Michalski,
for defendant.
Janice E. Kerr, Counsel, for the Commission
staff.

O P I N I O N

Complainant Mobile U.H.F., Inc. (Mobile) is a California corporation engaged in the business of owning private mobile radio systems and maintaining and leasing same to members of the general public, and more particularly to regulated trucking companies who comprise the greatest part of complainant's business.

As an integral part of the radio systems furnished to its customers, Mobile requires the use of The Pacific Telephone and Telegraph Company's (Pacific) telephone lines. Mobile alleges that defendant Pacific has threatened and is threatening, both verbally and in writing, to disconnect one or more of the lines in question, on the basis that Pacific contends that it is only obligated to render direct service to Mobile customers rather than to Mobile. Mobile asked that Pacific be enjoined during the pendency of this proceeding from disrupting or discontinuing any service now furnished

C. 8798 hjh

it or from interfering with any transmissions on the lines presently afforded it. Mobile requested an order declaring it to be a customer of Pacific and entitled as such to the use of its wires, lines, cables and channels.

On May 7, 1968, by Decision No. 74088, Pacific was ordered to restore any service to Mobile which might have been disconnected and to maintain said service pending further order.

Pacific's answer, to the complaint filed June 6, 1968, contains various averments and denials in replying to each and every paragraph of the complaint.

As its affirmative defense, Pacific averred that Mobile and/or M. A. Hoffman provide and maintain equipment for mobile radio communication systems to motor carriers; that such carriers are licensees of such systems under Part 93 of the Regulations of the Federal Communications Commission; that neither Mobile nor M. A. Hoffman qualifies for licenses thereunder and neither has qualified under Part 21 of the Regulations of the Federal Communications Commission applicable to communication common carriers; that neither Mobile nor M. A. Hoffman has acquired any right from this Commission or from the Federal Communications Commission as a miscellaneous common carrier or radiotelephone utility; that in some instances such customers have subscribed for service for the purpose of connecting control facilities to transmitters as part of such mobile radio communication systems licensed to such customers; that in other cases Mobile and/or M. A. Hoffman has subscribed for service for the purpose of connecting control point or transmitter licensed to such customer or the premises of two different such customers, either in the name of M. A. Hoffman or in the name of some other person or in a fictitious name; that in some cases Mobile and/or

C. 8798 hjh

M. A. Hoffman has subscribed for channels for remote metering, supervisory control, miscellaneous signaling purposes and thereafter transmitted voice messages over such circuits in a manner contrary to tariff; and that Mobile and/or M. A. Hoffman has interconnected lines or channels contrary to tariff.

On June 12, 1968, by telegram, Mobile indicated that if certain changes were implemented by the Bell System in California it would either ask that the complaint be dismissed or that it be set for hearing.

On May 1, 1969 Pacific petitioned for an order directing Mobile to cease and desist from certain practices in violation of Pacific's filed tariff rates and rules applicable thereto, or in the alternative, to rescind Decision No. 74088, order granting interim relief, or to set a hearing in the matter at the earliest possible time.

In addition to its allegations regarding tariff violations Pacific cross-complained alleging that Mobile had committed certain criminal acts.^{1/}

On May 8, 1969 Mobile petitioned for an order to deny the petition of defendant for an order to cease and desist or for other appropriate relief against complainant; to reaffirm Decision No. 74088 granting interim relief to Mobile; to allow to remain off calendar the hearing of Case No. 8798 pending the filing of

^{1/} These allegations were withdrawn by counsel for Pacific at the hearing of August 6, 1969. However, it is the position of Mobile that Mr. Siegfried violated the canons of legal ethics applicable to the hearing before this Commission and the subsequent filing of written argument, in that Mr. Siegfried in his brief argued the contents of his cross-complaint when Mr. Siegfried, at the hearing, moved to dismiss the cross-complaint. According to Mobile, Mr. Siegfried, as an attorney, should understand that the point is now irrelevant and immaterial, in that no pleading exists raising the issue.

new tariffs^{2/} by Pacific; and for an order directing Pacific to file new tariffs covering its policy on interconnection and private lines, in accordance with the recent public statements of the Bell System stating it would soon implement in its intrastate tariffs the new tariffs ordered by the Federal Communications Commission in the Carterfone decision.^{3/}

In its petition, Mobile admitted or denied the various allegations contained in Pacific's petition. In addition, Mobile alleged that service to several subscribers including some of its customers was interrupted and remained interrupted for almost two days due to Pacific's negligent failure to remove its cross-connect cable terminal from a condemned building formerly occupied by Mobile. The building was demolished by the City of Glendale approximately six weeks after Mobile informed Pacific of this impending action and asked Pacific to remove its facilities from this building in order to protect the telephone service to itself and others from being interrupted.

On May 14, 1969 Pacific filed an amended petition containing essentially the same allegations contained in its May 1, 1969 petition.

Twelve days of public hearing were held before Examiner Gillanders commencing May 22, 1969 and ending March 12, 1970. The matter was submitted on June 22, 1970 upon receipt of concurrent reply briefs filed by Mobile and Pacific. The record consists of 1,165 pages of transcript and includes 22 exhibits.

^{2/} Schedule 135-T was filed by Pacific on April 28, 1969 to become effective May 29, 1969.

^{3/} At complainant's request the Commission will take official notice of the Carterfone decision (Carter v. American Telephone and Telegraph, 13 FCC 2d 420).

Statement of Issues

On the fourth day of hearing, after considerable evidence was introduced, including testimony on such matters as title to real property, all parties agreed on the issues presented by this case. The issues which must be decided are:

1. Has Pacific discriminated against or harassed the complainant?
2. May private lines be ordered by complainant with itself as the customer for use by its clients in connection with their private mobile radio systems?
3. May 30-baud signal channels, paid for at the 30-baud signal channel rate, be used for voice transmission?
4. May private lines be cross-connected to provide access to the transmitter-receiver location by more than one user?
5. May radio equipment be directly wired into telephone instruments used for exchange service?
6. May the exchange network be used to connect remote dispatch/control points with a transmitter-receiver location?

Three issues deal solely with private line services. Two issues deal solely with exchange service. One issue is a general issue. Before turning to a discussion of the issues individually, some general considerations having application to all issues should be discussed.

General Principles of Tariff Interpretation

This complaint involves the application of a number of Pacific's tariff sheets on file with this Commission.

Pacific's tariff schedules as well as those of any other regulated utility are binding on both the utility and its customers until the Commission finds that such tariff schedules or a portion thereof are unreasonable (Northern California Power Co. v. Southern Pacific (1911) 1 C.R.C. 56; In re Pasteris (1936) 39 C.R.C. 551).

A fundamental principle of tariff interpretation is that the tariff schedules must be applied in their entirety, and must be given a fair and reasonable construction. This Commission in Consolidated Vultee Aircraft Corp. v. Atchison, Topeka & Santa Fe Railway Co., et al., (1945) 46 Cal. P.J.C. 147, held that:

"* * * Under generally recognized rules of tariff interpretation the tariff should be given a fair and reasonable construction and not a strained or unnatural one; all the pertinent provisions of the tariff should be considered together, and if those provisions may be said to express the intention of the framers under a fair and reasonable construction, that intention should be given effect; and constructions which render some provisions of the tariff a nullity, and which produce absurd or unreasonable results, shall be avoided * * *" (p.149).

It is well established in public utility law that any ambiguities in the tariff schedules are resolved against the maker of the tariff schedules.

1. Has Pacific discriminated against or harassed the complainant?

Complainant alleges that Pacific has discriminated against it in that Pacific allows others to do what it is doing without taking action against them. Complainant further alleges that Pacific has harassed it in that Pacific has refused to deal with it, has threatened its trucking clients, and has passed on confidential information to its competitors. According to Pacific it has not discriminated against complainant. Pacific claims complainant has not produced any evidence which supports its allegation that Pacific has discriminated against it.

Similarly, according to Pacific, the record does not support complainant's allegations that Pacific has harassed it.

Complainant's opening brief consists of 145 pages, the majority of which deals with the subjects of discrimination and harassment. Pacific, in its brief, states that the testimony clearly

established that Pacific has at all times been willing to deal with complainant provided it would comply with Pacific's tariffs.^{4/}

Pacific presented Mr. George Sweet, its Regional Tariff Supervisor, Southern Region, Southern California, as its witness to point to those provisions in the tariff schedules that the company believed had been violated by Mobile and to explain how that formed the basis of the company's actions toward Mobile.

Mr. Sweet has been in the telephone business since 1935. He has held a variety of assignments in the Commercial, Marketing, and Administration Departments in San Diego and Los Angeles. He has been in his present assignment since June 1, 1960.

As the Regional Tariff Supervisor, Southern Region, Mr. Sweet supervises about 20 people who are engaged in the application, review and preparation of company tariffs applicable to rates and services. Mr. Sweet is frequently called on by Pacific's personnel to determine the applicability, scope and limitations of the tariff schedules as it pertains to various sets of facts.

He is Chairman of Pacific's Regional Foreign Attachment Committee (referred to in testimony by Mobile's witness as the Interconnection Committee). In his capacity as chairman he heads a group that meets as required to determine the nature of customer provided service being used with the company's service and to analyze their effect upon the network and to identify any potential hazards. The number of people involved in the committee in its entirety is about nine but the number varies depending upon the type of case and the location. The committee meets in a rather

^{4/} Obviously Pacific means its tariffs as interpreted by it.

informal fashion, sometimes in person, sometimes by conference call, and sometimes by Mr. Sweet acting in a one-man meeting (with himself). Occasionally, the committee has a formal meeting, usually for the purpose "of acquainting people with new developments and things that they might be interested in."

The committee never met in connection with Mobile's activities. Mr. Sweet testified that he had no need to call a meeting because as soon as he was notified that Mobile's equipment was directly wired into Pacific's system he knew it was a tariff violation and accordingly informed the marketing people of that fact.

Having received Mr. Sweet's determination, the record shows that in some instances the marketing department dispatched two of its functionaries by taxicab to hand deliver Mr. Sweet's pronouncement to certain of Mobile's clients. Sometime in 1966, a meeting was held between Pacific's representative and all other private mobile radio dealers in the Los Angeles area except Mr. Hoffman.^{5/} At that meeting the dealers were informed by Pacific that certain of their methods of operation were in violation of Pacific's tariffs. All present changed their operations to conform to Pacific's interpretation of its tariff.

Mr. Sweet testified as follows during cross-examination by M. A. Hoffman on behalf of Mobile:

"THE WITNESS: And over here it says, among other things, that he shall, that the customer shall connect his microphone and control channels to a connecting block or its equivalent furnished by the utility.

^{5/} Mr. Hoffman was not invited.

MR. HOFFMAN: All right.

THE WITNESS: That's the one we furnished for that purpose.

Q. It doesn't say for that purpose. It just says furnished by the utility. It says: 'Utility instruments...may be used alternately with customer provided Mobile Radio Telephone Systems subject to the following conditions:'. Now, if a man picked up his phone he'd be talking on the phone, and if he hung up and he had his radio connected to that connecting block that the phone is connected to, he'd be alternately using that service with a radio. Doesn't that seem reasonable?

A. No.

Q. It doesn't seem reasonable?

A. No.

Q. Then why don't your tariffs say that?

A. I've never run into anyone like you before."

According to the record, Mr. Hoffman requested Pacific to furnish Mobile with 2 wire metallic circuits sometime prior to April 27, 1967.

Subsequent to Mr. Hoffman's informal complaint to this Commission^{6/} a conference telephone call was held on April 27, 1967, between Mr. Hoffman and representatives of Pacific.

^{6/} The record does not show the date of this informal complaint.

By letter dated June 23, 1967, Pacific's District Sales Manager in Los Angeles stated:

"Following our conversation and in line with our joint concern over policy on the provision of metallic circuits, we have forwarded a letter requesting such a statement to San Francisco."

* * *

"We will be sure to contact you as soon as an answer is forthcoming from San Francisco."

The record reveals that Mobile never did receive a written answer from Pacific regarding its request for metallic circuits.

On March 11, 1968, Pacific's Marketing Department sent a letter to Mr. Hoffman which set out the basic ground rules for the future handling of service applications "by you on behalf of our customers."

On August 6, 1968 the Commission received a letter from Pacific's San Francisco lawyers requesting advice re Pacific's contemplated action towards one of Mobile's ex customers.

On August 9, 1968 the Commission, by letter, informed Pacific's counsel that Pacific, of course, was free to exercise its own judgment.

Mobile testified that its frustration led to its filing Case No. 8798 on May 3, 1968.

The record clearly reveals that this matter would never have come before us if Pacific had not insisted on forcing its concept of how complainant should operate its systems (and how complainant's competitors should operate their systems) upon Mobile.

It is apparent from this record that none of Pacific's employees with whom Mobile had contact deliberately set out to harass and/or discriminate against Mobile.

It is also apparent that these same employees had no means of their own nor were they provided such means by San Francisco headquarters to effectively meet Mobile's challenge to Pacific's modus operandi.

The order in this proceeding will grant most of Mobile's requested relief, but no order of this Commission can rectify the ineptitude of Pacific's employees as revealed through not only the testimony of Mobile's witnesses but also through the testimony of Pacific's own witnesses.

2. May private lines be ordered by complainant with itself as the customer for use by its clients in connection with their private mobile radio systems?

Mobile argues that it is furnishing a complete radio package to its customers (i.e., the trucking firms) and that, when such package requires the use of Pacific's circuits, it should be able to order the telephone circuits in its own name and then turn the circuits over to its clients for their use.^{7/} Mobile claims that it would be Pacific's "customer" and its clients would be "authorized users" of the telephone circuits.

The term "customer" is defined in Schedule Cal. P.U.C. 44-T, 5th Revised Page 22 as:

"The term 'Customer' refers to the person, firm, or corporation who signs the contract and is responsible for the payment of charges and the compliance with the rules and regulations of the Utility."^{7/}

^{7/} Pacific refused to render service to Mobile billed in its name. However, Pacific has rendered service billed in Mobile's clients' names and has mailed the bills for such service to Mobile. Pacific was paid for such service by Mobile.

The term "authorized user" is defined in Schedule Cal.

P.U.C. 44-T, 7th Revised Page 21 as:

"An 'Authorized User' is a person, firm, or corporation (other than the customer) on whose premises a station on the private line service or channel is located and who may communicate over the private line or channel according to the terms of the schedule. An authorized user must be specifically named in the service contract."

Mobile relies on these definitions to support its contentions.

However, according to Pacific, to determine whether a radio vendor such as Mobile may be considered the "customer" for purposes of ordering radiotelephone operation channels for use by its clients and whether its clients may be the "authorized users" of such channels, the tariff sheets must be applied in their entirety. In doing this, Pacific maintains, one must first look to the specific tariff sheets covering the offering of such a channel, namely, Schedule Cal. P.U.C. 45-T, which it claims clearly limits the offering of radiotelephone operation channels to one entity, namely, the "customer".

Schedule Cal. P.U.C. 45-T, 2nd Revised Page 4, Paragraph C, provides that:

"Channels for the remote operation and control of radiotelephone stations are channels furnished the customer between specific locations for use in connection with customer-owned ^{8/} radiotelephone station equipment."

The term "authorized user" is not used ^{9/} in reference to the offering of such channels. Hence, according to Pacific, that

^{8/} "Owned" is a nomen generalissimum and its meaning is to be gathered from the connection in which it is used and from the subject matter to which it is applied.

^{9/} According to Pacific it is not included because the licensees of a private mobile radio system under Part 93 of the Federal Communications Commission Rules and Regulations are the ones who are ultimately responsible to the Federal Communications Commission for the operation of that system.

term has no applicability when the general rules of Schedule Cal. P.U.C. 44-T are applied to the specific offering of a radiotelephone operations channel under Schedule Cal. P.U.C. 45-T.^{10/}

Pacific applies the general regulations of Schedule Cal. P.U.C. 44-T, 2nd Revised Page 7A and 7B, Paragraphs 4a through 4d,^{11/} as limited by Schedule Cal. P.U.C. 45-T, and then argues that complainant could not qualify as Pacific's "customer" because Mobile does not have a direct interest in the communications of the trucking firms using the circuits, and does not communicate over the channels itself. Thus Mobile, according to Pacific, would be receiving compensation from its clients who used the circuits and hence would be reselling^{12/} the service to them in violation of rules. Pacific maintains that only the trucking firms, as the actual users of the circuits, could qualify as Pacific's "customer" under general regulations.

10/ Such construction of the tariff schedules, according to Pacific, is in line with the general principle of statutory construction that "a general provision is controlled by one that is special." (Rose v. State of California (1942) 19 C.2d 713, 723-724)

11/ These paragraphs provide that:

"4. Use of the Service or Channels by Customer:

- a. The service or channel is intended only for communications in which the customer or an authorized user has a direct interest, except as provided in e and f below.
- b. The service or channel shall not be used for any purpose for which a payment or other compensation shall be received by the customer and authorized user, or either of them, from any other person, firm, or corporation for such use.
- c. The service or channel shall not be used by the customer or authorized user in the collection, transmission or delivery of any communications for others.
- d. The contract for the service or channel or any rights acquired thereunder by the customer may not be assigned or in any manner transferred."

12/ According to "California Words, Phrases, and Maxims", (page 54) The generally accepted definition of a "sale" is the exchange of an interest in real or personal property for money or its equivalent.

According to the staff "Pacific claims that there is no provision for an authorized user of a radiotelephone operating channel (RTOC), citing Pacific Tariff No. 45-T, Page 4(e). Mr. Sweet, Pacific's witness, also cites the definitions of 'station' and 'premises', in support of its interpretation. How the definitions of 'station' and 'premises', inasmuch as they refer to authorized users, support Pacific's position regarding authorized users is not at all clear. Pacific asks that we read the whole of 44-T and 45-T so as not to consider the definition of authorized user out of context. Reading the tariffs as a whole, however, serves only to confuse the issue. Terms such as 'private line service' are defined twice; as noted by Mr. Sweet 'customer owned' may also mean 'customer leased, rented, etc.' Such inconsistencies indicate a review of these tariffs by Pacific is advisable.

"Be that as it may it does appear from Exhibit 11, sheet 8 that RTOC's are not available to authorized users. Moreover, the whole concept of customer-authorized user as set forth in the tariffs obviously contemplates that the customer^{13/} will be a user of the service, not just a conduit for payment of the bills. If Mobile were in fact the customer, its relationship with its trucking customers would clearly be approaching resale^{14/} of Pacific's lines."

In its reply brief, Mobile states that it owns the equipment connected to the defendant's lines; Mobile is a party to a written contract with each and every customer of Mobile, which

^{13/} What is not obvious, nor was it ever explained, is why none of the many experts involved in tariff interpretation never realized that the tariff definition fails to state that the "customer" should also be the "user".

^{14/} The staff does not indicate if this is "good" or "bad".

customers are in most instances regulated trucking companies. Such contract grants to Mobile the right to deal with defendant on behalf of said customer trucking companies, to maintain and service the communication system and to use defendant's circuits attached thereto; Mobile representatives and employees have the technical expertise necessary to maintain and service the communication system and to effect orders directed to Pacific arising out of the use of such circuits, when in contrast, customers of Mobile do not have the technical competence and, in that regard, are not in a position to assure compliance with Pacific's rules and regulations; furthermore, the definition of customer includes the concept that the customer be the party responsible for the payment of bills to the defendant; in the case of customers of Mobile, contracts executed between Mobile and customers of Mobile impose the responsibility upon Mobile to pay the bills due to the defendant for services rendered in connection with customers' radio system.

Pacific, in its reply brief, states that there can be no argument that a trucking firm, which purchased its own radio equipment and hired employees who were licensed to install and maintain the radio system, would be Pacific's "customer" for ordering private lines to be used with that radio system. Nothing is changed in that customer relationship when the trucking firms lease its equipment from complainant rather than purchasing it. Similarly, nothing is changed because the trucking firms contract with an agent (i.e. complainant) to install and maintain its radio system rather than hiring an employee to perform that function. The trucking firm, as the user of the service and the licensee of the system, is still the one who ultimately must be considered as being responsible to Pacific "for payment of charges and the compliance with the rules and regulations of the utility".

Discussion

Mr. Sweet, Pacific's expert witness on tariff matters, testified that as part of his duties he does his best to make the tariffs clear, concise, and simple and capable of being understood by any person of ordinary intelligence that reads the tariff schedules filed in Pacific's offices by order of this Commission.

Our staff, after perusing certain tariff sheets applicable to issue 2 finds itself "not at all clear" as to how the tariff supports Pacific's position. In addition, after reading the tariff as a whole, the staff finds that the tariff confuses the issue.

If our expert staff had difficulty with tariffs designed to be "clear, concise, and simple", we cannot expect the average ratepayer to understand his responsibilities towards the supplier of telephone service.

An exemplary definition of customer is:

"Customer: The person in whose name service is rendered as evidenced by the signature on the application, contract, or agreement for that service, or, in the absence of a signed instrument, by the receipt and payment of bills regularly issued in his name regardless of the identity of the actual user of the service." ^{15/}

Another exemplary definition of customer is:

"Customer: The person in whose name service is furnished as evidenced by the signature on the application or contract for that service or in the absence of a filed instrument by the receipt and payment of bills regularly issued in his name regardless of the identity of the actual user of the service." ^{16/}

^{15/} Southern California Edison Company, Rule No. L Revised Cal. P.U.C. Sheet No. 3711-E.
Pacific Gas & Electric Company, Rule No. 1. Original Cal. P.U.C. Sheet No. 3343-E, May 15, 1962.

^{16/} General Telephone Company of California Schedule Cal. P.U.C. No. D & R Original Sheet 31.

The record reveals that in many cases private lines were ordered over the telephone. The record does not reveal if Pacific ever followed up the verbal order with a written contract. This record does show that in some cases Pacific supplied private line service to fictitious entities. It is obvious from this record that Pacific makes little or no effort to obtain a signature on a written contract.

According to Mr. Sweet, some of the reasons the tariff states that the customer must be the user of the service are:

"Number 1, I think it is a normal reason to want to know who you are doing business with and to be selling them a service that they are using at a location that is theirs.

"The divided responsibility that would stem from one person buying a channel from someone else would be a problem.

"Also, we have, I think been concerned over the years with the resale of service. In fact, I believe that is one of the issues here in this case indirectly, and, that is, the we, as a utility, provide a service at a given rate and as the only organization that can provide that channel in many instances, why, I believe there is a requirement that the rate be uniform to all people so that there isn't a competitive edge or something of that nature here.

"Also, if anyone could just go out and buy a channel between any two points, I think it lays the world open to all kinds of things; unauthorized monitoring and everything else.

"So, I think what we want is someone who is responsible and we want them to be a part of the service."

Upon the above, Mr. Sweet would have us believe that the tariff states that the customer must be the user of the service.

3. May 30-baud signal channels, paid for at the 30-baud signal channel rate, be used for voice transmission?

Mobile admitted during the course of these proceedings that it ordered 30-baud signal channels rather than radiotelephone operations channels for use by its clients for voice communication. Mobile, as a basis for its position, argues that the tariffs do not prohibit a customer from making a signal circuit suitable for voice transmission.^{17/}

Pacific argues that a careful review of Schedule Cal. P.U.C. 104-T clearly establishes that a customer may not use signal circuits to transmit voice. Schedule Cal. P.U.C. 104-T, Original Page 4, states that the channel offerings furnished under said schedule are to be used only for remote metering, supervisory control and miscellaneous signaling purposes. Schedule Cal. P.U.C. 104-T, 2nd Revised Page 17, Paragraph I, provides in pertinent part that:

"Channels furnished under this schedule *** may not be used for any purpose for which channels are offered in connection with Private Line Telephone Service or Channels***".

Radiotelephone operations channels are offered under Schedule Cal. P.U.C. 45-T, the tariff schedule covering "Private Line Telephone Service or Channels".

According to the staff, Pacific's interpretation is reasonable and is consistent with the different rates provided for voice grade as opposed to signal grade channels. Different rates

^{17/} "104-T sheet 12 A.3 (Exh. 11, page 11) states 'Customers by use of their own equipment and in accordance with the normal transmission characteristics of the channels described in 1.a through 1.e preceding, may create additional channels from the channels furnished by the utility, if the channels thus created are used for remote metering, supervisory control and miscellaneous signalling purposes.'"

are justified by the fact that it is less expensive to the company to provide a signal channel than a voice channel.^{18/}

In agreeing with Pacific that Mobile U.H.F. should not be able to pay the very low rate for a signal grade channel and derive a voice grade therefrom, the staff did not intend to imply that the conditions of service of the RTOC service provided by Pacific are sacrosanct. After hearing the testimony at the hearings regarding the problems associated with RTOC's, the staff stated in its opening brief "this is one more area Pacific would be advised to review". The staff concluded that we should order Pacific to "review the adequacy of RTOC service, and to report to the Commission in writing the results not later than 180 days following the effective date of the decision in this matter".

This record contains a plethora of testimony regarding the "adequacy of RTOC service" but unfortunately contains not a scintilla of credible evidence to support Pacific's blind insistence that operators of private mobile radio systems must use an RTOC.

Mobile subpoenaed a Mr. Somers, one of its competitors, to testify in its behalf. Mr. Somers is president of Executive Communications Corporation, an organization that sells and leases 2-way radio systems and automobile telephones. Mr. Somers' business is nine years old and for the past eight years he has been using private line services furnished by Pacific. Presently he is using radiotelephone operating lines. Previously he had used signal channels. He changed from signal channels to RTOC's as a result of a meeting held three or four years ago at which he and other radio suppliers were told by a representative of Pacific that they must use RTOC's.

^{18/} Both Pacific and the staff point out that in their opinion Mobile's complaint cannot be considered as challenging the reasonableness of the rates for RTOC service inasmuch as the requirements of Public Utilities Code Section 1702 are not met.

He testified that signal channels are satisfactory for his purposes and work much better than RTOC's as a signal channel is normally a simple 2-wire circuit without a lot of telephone company provided equipment in between as is common in RTOC's. This RTOC equipment has caused him "tremendous headaches". More than 80 percent of the time in the last eight years the RTOC's have not worked.

According to Mr. Somers, the people that work in Pacific's central offices' testboards do not understand any circuit more complicated than either a signal circuit or the simplest type of RTOC.

According to Mr. Somers, the manufacturers of commercial mobile radio equipment design their equipment so that it will work satisfactorily if connected only by a simple 2-wire circuit.

The record is clear that in some types of private two-way mobile communications the need for such communication is less than full time.

The record is very clear that no one simply by looking at a cable pair can tell if such pair is a signal circuit or a voice circuit. Mr. Somers and Mobile plead to be allowed to use only a pair of wires instead of being forced to subscribe to RTOC service.

Mobile's and Mr. Somers' testimony with reference to the inadequacy of RTOC's and the inability of Pacific's personnel to service such RTOC's is uncontroverted in this record.

4. May private lines be cross-connected to provide access to the transmitter-receiver location by more than one user?

Mobile has admitted cross-connecting radiotelephone operations channels and/or signal channels to provide multipoint access to various transmitter-receiver locations. Exhibit 18 and the testimony of Pacific's witness, E. N. Sechrest, show in detail these cross-connections.

According to Pacific, cross-connecting two radiotelephone operations channels so that more than one firm will be able to use them in connection with their radio system is a violation of Schedule Cal. P.U.C. 45-T. Such "party-line use conflicts with the offering of radiotelephone operations channels in Schedule Cal. P.U.C. 45-T, 2nd Revised Page 4, Paragraph C, which specifies that such a channel is to be provided to a "customer between specified locations for use in connection with customer-owned radiotelephone station equipment."

According to Pacific, Schedule Cal. P.U.C. 104-T, 2nd Revised Sheet 17, Paragraph I, clearly prohibits the interconnection of radiotelephone operations channels and signal channels to provide such multiparty service. Secondly, such an interconnection would mean that the signal circuit was being used for voice transmission, which as previously discussed, is a violation of Schedule Cal. P.U.C. 104-T. Mr. Sechrest testified to the pricing advantage Mobile gains over his competitors by engaging in these practices.

Pacific claims that radiotelephone operations channels and signal channels are designed for use between specified locations. Therefore, cross-connecting these channels and using them in the manner advocated by Mobile results in using them in a manner for which they were not designed and will contribute greatly to the maintenance problems to which complainant testified.

Further, according to Pacific, Mobile's action in cross-connecting these circuits is a violation of Schedule Cal. P.U.C. 44-T, Original Page 10, Paragraph 14, which provides in pertinent part that:

"* * * A customer (or authorized user)^{19/} may not rearrange, disconnect, remove or attempt to repair, or permit others to rearrange, disconnect, remove or attempt to repair any instruments, apparatus or wiring installed by the Telephone Company, except upon the written consent of the Telephone Company."

According to the staff, Mobile by making the interconnections has effected what is essentially a sharing of facilities. There is however, no provision in the tariffs for a sharing of services provided to customers such as the truckers here involved in order to connect their control point with a distant transmitter point. The staff reasons that to allow Mobile to effect a sharing when its competitors may not do so would be discriminatory.

A witness for Pacific testified that:

"... I tried to explain. The present RTOC tariff, in that I can find no way to install a single private line connecting two or more separate companies, customers, to the transmitter, which, by the way, we call joint use, or something like this, in the tariff. We say there is no joint use provision on that service...."

Mobile contends that Pacific's position is arbitrary in that Pacific does not object to the joining of RTOC lines at the transmitter site but, on the other hand, its witness indicates that there is an objection made when the same type of joining occurs at a point geographically closer to the customer or the customer's premises or the control point. According to Mobile, Pacific requires "the customer to refrain from joining his line with that of another customer when the joining would result in the purchase of a shorter line or a less expensive line on the part of each of the customers, for it only makes logical sense that to run separate lines to a further point prior to the joining of two separate

^{19/} Pacific insists that the term "authorized user" does not apply to a RTOC. Pacific's rationale is incomprehensible.

customers' lines involves a more costly purchase of a larger number of lines over a greater geographical distance than would be required should Pacific authorize the same joining at a point closer to the customer's dispatch location than two separate lines would need only be purchased to the common point."

Pacific's testimony is inherently improbable.

In view of our findings and conclusions re issue 3, we will find that the simple 2-wire circuits can be cross-connected at the most convenient common point.

5. May radio equipment be directly wired into telephone instruments used for exchange service?

Mobile has wired the radio equipment leased to certain of his trucking clients directly into telephone instruments furnished by Pacific for use in connection with normal exchange service. According to Pacific, this direct electrical connection violates Schedule Cal. P.U.C. 36-T, Original Page 61, Rule 16.D (formerly 3rd Revised Page 58, Rule 15 I.D.) which provides that:

"No equipment, apparatus or device not furnished by the utility shall be attached to or connected with the facilities furnished by the Utility, whether physically, by induction or otherwise, except as provided in the tariffs. In case any such authorized attachment or connection is made, the Utility 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."

Pacific also maintains that a direct connection also violates Schedule Cal. P.U.C. 135-T, Original Page 17, Paragraph II.B.4 and Original Page 23, Paragraph II.C.1 which require that such connections be through a utility-provided connecting device.

Mobile argues that the Carterfone decision (Carter v. American Telephone & Telegraph (1968) 13 D.C.C. 2d 420) is justification for its practices. Pacific argues that Mobile has misconstrued the holding of Carterfone.

The staff believes that the provision made effective on August 19, 1969^{20/} is reasonable and should be maintained. The staff states: "Pacific must concede an ambiguity at least existed until the August 10 date." In the Carterfone decision (13 F.C.C. 2d, 420) the Federal Communications Commission (FCC) held that "the tariff is unreasonable in that it prohibits the use of interconnecting devices which do not adversely affect the telephone system". The FCC concluded...."that a customer desiring to use an interconnecting device to improve the utility to him of the telephone system and a private radio system should be able to do so, so long as the interconnection does not adversely affect the telephone company's operations or the telephone system's utility for others".

Pacific through the testimony of its witnesses utterly failed to show that Mobile's methods and procedures in connecting its private radio systems to the circuits of Pacific adversely affected Pacific's operations or the system's utility for others. Pacific's testimony consisted only of the same type of argument rejected by the Federal Communications Commission. We join in such rejection.

We caution Pacific that in interpreting Sheet 96, Paragraph IV, K.5.(d) it shall not circumvent the intent of our authorizing a simple 2-wire connection between the transmitter and receiver locations of private radio systems.

20/ Tariff No. 135-T, Sheet 96, Paragraph IV, K.5(d) provided until August 10, 1969: "The customers shall provide the equipment required to permit the alternate use of utility instruments with the customer-provided radiotelephone system including the connecting block or its equivalent."

On July 10, 1969, by advice letter filing Pacific inserted the word "Utility" in place of the second word "customers". The advice filing became effective August 10, 1969.

6. May the exchange network be used to connect remote dispatch/control points with a transmitter-receiver location?

Mr. Alan Kerner, a client of Mobile, testified that in using the exchange network to connect his control point with the transmitter-receiver location he would place a call on Monday morning and leave it up until at least the following Friday night. Mr. Bowman, another client of Mobile, testified that he would place a call at approximately 4:30 each morning and leave it up until at least 5:00 that night.

According to Pacific, a private mobile system may be interconnected with the exchange network through appropriate interconnecting devices. However, use of the exchange network in a manner similar to private line service is abuse of service under Schedule Cal. P.U.C. 36-T, 2nd Revised Page 53-A, Rule No. 11.A.12.b, which provides:

"The Utility has the right to refuse telephone service to any premises and at any time to discontinue telephone service, if it finds it necessary to do so to protect itself against abuse. Abuse of service includes, without limiting the generality of the foregoing, the use of service or facilities of the Utility to transmit a message or to locate a person or otherwise to give or obtain information, without payment of a message toll charge or an exchange service charge. Another form of abuse is an uninterrupted connection of one exchange station to another station within the same exchange which permits the use of the facilities in a manner similar to private line service".

and Schedule Cal. P.U.C. 135-T, 1st Revised Page 116, Special Condition P.1.a. which provides:

"An uninterrupted connection to another station within the same exchange, or local calling area in a contiguous exchange, which permits the use of the facilities in a manner similar to private line service is considered to be an abuse of service and is subject to the provisions of Schedule Cal. P.U.C. 36-T, Rule No. 11".

Mobile argues that Rule 11.A.12.b is ambiguous because it does not specify a time limit after which continued use of the exchange network would be an abuse.

Mobile contends that if the permanent dial-up at Kerner and California Delivery constitute abuse of service, so too must the lengthy calls on the access lines to computers constitute abuse.

According to the staff, it appears from Exhibit 22 that the great majority of the calls to Allen-Babcock,^{21/} a computer firm, are handled on the first 20 of the 40 lines available. In the five-day study of the first 20 lines (seven days were observed but there was little use on Saturday and Sunday), there were calls of 9 hours (line 13), 9-1/2 hours (line 11) and almost 8 hours (line 9). All of the first 20 lines except one, line 4, handled at least one call of over three hours.

The distinction to be made, according to the staff, is that the average^{22/} holding time for all the calls over the access lines was 34.50 minutes^{23/} (Exh. 22-A) as opposed to the average holding time at Kerner and California Delivery of 12 hours to five days.

Findings of Fact

The Commission finds that:

Issue 1

1. Pacific applies its interpretation of its tariff schedules equally to Mobile and Mobile's competitors.

^{21/} Because of the rotary system in use.

^{22/} It is the position of Mobile that it too could create an average calling time of 34.5 minutes by simply instructing its customers to place a series of 15-second calls at the end of each of their 10-hour calls in order to bring the average down to 34.5 minutes.

^{23/} The impact on the exchange network of an average holding time of 34.50 minutes and calls ranging up to 9 hours in length is of growing concern to the staff.

Issue 2

2. Schedule Cal. P.U.C. 44-T 5th Revised Page 22 does not contain the word "user".
3. Pacific does not, in some cases, define customer in accordance with Schedule Cal. P.U.C. 44-T 5th Revised Page 22.
4. Mobile has not resold telephone service.

Issue 3

5. Mobile has used 30-baud signal channels for voice communication.
6. Schedule Cal. P.U.C. No. 104-T prohibits voice transmission on 30-baud signal channels.
7. There is a need for a simple 2 wire circuit connecting the transmitter and receiver locations of private radio systems.
8. There is a need for less than full period service for two way private radio systems.

Issue 4

9. Mobile has cross-connected private line channels.
10. Customer made cross-connections violate Schedule Cal. P.U.C. 45-T.

Issue 5

11. Pacific failed to prove that Mobile's direct wiring of radio equipment adversely affected Pacific's operations or the telephone system's utility for others.

Issue 6

12. Mobile's customers use the exchange network to connect remote control points to a receiver/transmitter location.
13. Computer operators use the exchange network to connect their customers with the computer.

Conclusions of Law

The Commission concludes that:

Issue 1

1. Pacific has not discriminated against or harassed Mobile.

Issue 2

2. Schedule Cal. P.U.C. 44-T 5th Revised Page 22 does not require the "customer" to be the "user".
3. Mobile may, under Schedule Cal. P.U.C. 44-T 5th Revised Page 22, order private lines with itself as the customer for use by its clients in connection with their private mobile radio systems.
4. Schedule Cal. P.U.C. 44-T 5th Revised Page 22 does not express the intention of Pacific.
5. Schedule Cal. P.U.C. 44-T 5th Revised Page 22 should be rewritten to plainly state the intentions of Pacific.

Issue 3

6. Pacific's insistence upon supplying only RTOC service to operators of private radio systems is unjust, unreasonable, and improper.
7. Pacific must furnish a two-wire circuit to operators of private mobile radio systems on a less than full time basis. Such service should be at rates and charges based on the cost of furnishing said service.

Issue 4

8. The provisions of Schedule Cal. P.U.C. 45-T and Schedule Cal. P.U.C. No. 104-T which prohibit cross-connection of private line channels except at the transmitter location of a private radio system are unjust, unreasonable, and improper.

9. A tariff schedule must be filed which authorizes cross-connection of a simple 2-wire circuit at the point most convenient to the operation of a private mobile radio system.
10. The operator shall indicate the most convenient point and Pacific shall make such connection in accordance with its tariff schedules.

Issue 5

11. Schedule Cal. P.U.C. No. 36-T, Original Page 61, Rule 16D is unreasonable in that it prohibits the use of inter-connecting devices which do not adversely affect the telephone system.

Issue 6

12. The wording of Schedule Cal. P.U.C. No. 36-T, 2nd Revised Page 53-A, Rule No. 11.A.12.b, regarding uninterrupted connections is so vague that it cannot be said to grant Pacific the right to refuse telephone service to any premise or to discontinue service at any time.
13. The use of averages to determine abuse of service is meaningless as the user of the service has the ability to conform his average to any standard average which might be determined as non-abuse.

O R D E R

IT IS ORDERED that:

1. Pacific, in accordance with the provisions of General Order No. 96-A, shall cancel Schedule Cal. P.U.C. 44-T 5th Revised Page 22 and shall file a new sheet containing the following definition:

Customer: The person in whose name service is furnished as evidenced by the signature on the application or contract for that service or in the absence of a filed instrument by the receipt and payment of bills regularly issued in his name regardless of the identity of the actual user of the service.

2. Pacific, in accordance with the provisions of General Order No. 96-A, shall file a tariff schedule providing for two-wire circuits to be used by operators of private two-way mobile radio systems on a less than full-time basis. Such service shall be at rates and charges based on the cost of furnishing said service.

3. Pacific, in accordance with the provisions of General Order No. 96-A, shall cancel the provisions of Schedule Cal. No. P.U.C. 45-T and Schedule Cal. P.U.C. No. 104-T, which prohibit cross connection of private line channels except of the transmitter location of a private radio system and shall file new tariff sheets which authorize cross connections of simple 2 wire circuits at the point most convenient for the operation of private mobile radio systems.

4. Pacific shall revise its Schedule Cal. P.U.C. No. 135-T to provide specific arrangements for the interconnection of private mobile systems to the toll network.

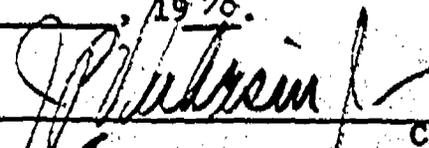
5. Pacific shall revise its tariffs to specify clearly the criteria it applies to use of the exchange network in determining abuse under Rule 11.A.12.b and is directed to apply such criteria, without discrimination, to all customers who use the service.

C. 8798 hjh

6. Pacific, in accordance with the provisions of General Order No. 96-A, shall file all necessary cancellations, additions, or changes in its tariff schedule necessitated by the above ordering paragraphs.

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

Dated at San Francisco, California, this 22nd day of DECEMBER, 1970.

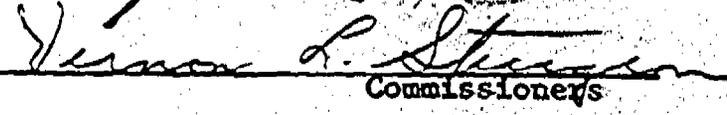


Chairman









Commissioners