

ORIGINAL

Decision No. 79288

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Phonetele, Inc., a corporation,
Complainant,

vs.

GENERAL TELEPHONE COMPANY OF
CALIFORNIA, a corporation,
Defendant.

Case No. 9177
(Filed January 15, 1971)

Phonetele, Inc., a corporation,
Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a corporation,
Defendant.

Case No. 9265
(Filed August 26, 1971)

Robert L. Feiner and Charles Brouyette,
for complainant.

Milton J. Morris, Attorney at Law, for
defendant in Case No. 9265.

Donn E. Cassidy, Attorney at Law, for Com-
munication Certification Laboratory,
intervenor.

John S. Fick, Attorney at Law, for the
Commission staff.

INTERIM OPINION

Introduction

In Case No. 9265, as amended October 4, 1971, complainant Phonetele, Inc., sought, among other things, an order directing defendant, The Pacific Telephone and Telegraph Company (Pacific), to

cease and desist from interfering with the installation and performance of complainant's Phonemaster 1040 telephone restriction unit.

Decision No. 79225, dated October 5, 1971, set for hearing on October 26, 1971, the limited issue of a temporary restraining order pending final resolution of the complaint. The decision also required Pacific to cease and desist from interfering with the operation and performance of complainant's then existing installations of toll device and equipment, pending hearing on the issue of the broader temporary restraining order requested by complainant.

On October 14, 1971, complainant filed a second amendment requesting expansion of the temporary restraining order in Decision No. 79225 to include six imminent installations of equipment in addition to the three existing installations covered by that decision. This request was not granted but, instead, consideration of the additional locations was included on the agenda of the hearings set by Decision No. 79225.

Pursuant to Decision No. 79225, public hearing was held before Commissioner Symons and/or Examiner Catey in San Francisco on October 26 and 27, 1971. Opening, interim and closing statements on the limited issues under consideration in this phase of the proceedings were presented by complainant, Pacific, intervenor Communication Certification Laboratory (CCL), and the Commission staff. Two witnesses for complainant and one for Pacific presented testimony and exhibits regarding the equipment involved in Case No. 9265.

Complainant and Defendant

Complainant is a manufacturer which sells and leases to telephone subscribers a device known as the Phonemaster 1040. This device is installed at a suitable point between the telephone instrument and the connecting lines to a telephone utility's central office. It then limits outgoing calls to a predetermined group, such as only local calls, so that the subscriber's telephone cannot be used for types of calls unauthorized by the subscriber.

Pacific is a telephone utility serving a large portion of the state.

Existing and Imminent Installations

Aside from a temporary installation at a trade show, no longer in service, complainant has installed Phonemaster units at three locations within Pacific's service area. Inasmuch as the device must be interposed between two segments of Pacific's facilities, the installation requires the physical removal of some of Pacific's wiring on the subscriber's premises and substitution of the Phonemaster itself or a suitable connecting arrangement in place of the removed portion of the wiring.

Complainant considers a simple terminal strip or block to be an adequate connecting arrangement. Pacific considers that a more sophisticated connecting arrangement is needed to protect Pacific's system and equipment. Apparently as a result of this disagreement, and because of complainant's doubts about the compatibility of the Phonemaster and Pacific's connecting arrangement, complainant removed part of Pacific's wiring in making at least two of the existing Phonemaster installations and did not have Pacific provide a connecting arrangement.

Tampering with Pacific's wiring is prohibited by the utility's tariffs. Complainant matched the appearance of the utility's wiring in each installation. The record is not clear as to whether this was done to disguise the tariff violation or merely to maintain uniformity in color coding of connecting wires.

Complainant has scheduled the installation of Phonemaster units at six additional locations within Pacific's service area, as set forth in the second amendment to the complaint in Case No. 9265. Delay in completing the installations could have serious or even disastrous financial consequences to complainant because of contractual deadlines.

Interim Solution

We cannot condone the further violation of Pacific's tariffs by permitting complainant to rearrange or remove parts of the utility's wiring. Until final resolution of all of the issues in the complaints, however, we do not consider it necessary to revise the wiring at the three existing locations wherein such tariff violations are involved. Letters received as Exhibits Nos. 12 and 13 indicate that the telephone subscribers at two of the locations have experienced no service problems as a result of the unauthorized rewiring by complainant. The third location is at complainant's premises. Leaving the existing direct connections for a period of time will permit some evaluation and testing of that mode of installation.

For future installations, Pacific, rather than complainant, should provide whatever connecting arrangement is to be used. We are aware that this differs from the temporary relief granted complainant by Decision No. 78363, dated March 2, 1971 in Case No. 9177, involving General Telephone Company of California (General). The difference is academic, however, because complainant has no imminent additional Phonemaster installations in the service area of General. After Pacific installs a connecting arrangement, complainant can then connect to this arrangement without removing Pacific's wiring. The installation of Pacific's ZZAGM connection device at any or all of the new Phonemaster locations will permit testing of the compatibility and effectiveness of the ZZAGM--Phonemaster combination. If complainant's fears prove groundless and Pacific is able to make the ZZAGM work with the Phonemaster, the units can be left in place for a longer term of testing, during pendency of these complaints. If Pacific cannot initially make the ZZAGM compatible with the Phonemaster, Pacific temporarily can avoid delaying the Phonemaster installation by installing a simple terminal block or, preferably, some form of closed-circuit jack arrangement which will permit unplugging the Phonemaster for test purposes without having to install temporary jumpers across terminals.

Telephone subscribers at the new Phonemaster locations should not be required to pay the installation fees and monthly charges for the ZZAGM or other connection arrangement provided on an interim basis until it has finally been determined in these proceedings what connection arrangement is to be required for all Phonemaster installations. In view of the testing to be accomplished by the interim use of the different modes of connection, it is warranted to authorize and direct Pacific to deviate from its filed tariffs to the extent of a moratorium on charges normally applicable to the connection arrangements.

In certain situations, Pacific justifiably requires that subscribers' restriction devices, such as the Phonemaster, provide a 1.5-second delay between the time the telephone is replaced on-hook and the time that the device restores connection of the telephone to the telephone lines. This avoids such problems as the erroneous charging for incompleting incoming calls arriving coincident with restoration of normal operation subsequent to diversion of an outgoing call. Complainant should be allowed a reasonable time, however, to make necessary design changes before Pacific enforces this requirement in relation to Phonemaster installations.

Findings and Conclusion

The Commission finds that:

1. The continued temporary use of Phonemaster 1040 units at the three present locations in the service area of The Pacific Telephone and Telegraph Company (Pacific) without a connecting arrangement installed by Pacific will permit observation of the combined functioning of the Phonemaster unit and Pacific's system with direct connection and will not result in undue risk of damage to Pacific's system.

2. Pacific's tariffs (Schedules Cal. P.U.C. Nos. 36-T and 135-T) prohibit parties other than the utility from changing or altering the utility's wiring.

3. A temporary moratorium on the charges for installation and use of Pacific's ZZAGM Message Diverting Equipment Coupler (Schedule Cal. P.U.C. No. 135-T) in conjunction with a limited number of Phonemaster 1040 units is warranted to permit observation of the combined functioning of the Phonemaster and ZZAGM units.

4. Complainant contends that Pacific's ZZAGM coupler may be incompatible with the Phonemaster 1040.

5. Failure of complainant to comply with Pacific's 1.5-second delay requirement for diverting equipment could cause inconvenience to subscribers attempting to call Phonemaster users but complainant should be given a reasonable time within which to modify its Phonemaster design.

The Commission concludes that complainant should be granted the temporary relief afforded by the following order, pending further order following hearings to be held after additional test data are available on the Phonemaster installations.

INTERIM ORDER

IT IS ORDERED that:

1. Until further order of this Commission defendant, The Pacific Telephone and Telegraph Company (Pacific), shall not interfere with the operation and performance of the Phonemaster 1040 units at:

- a. Swett & Crawford, Los Angeles
- b. Wally Heider Recording, Hollywood
- c. Phonetele, Inc., Van Nuys

2. Except for the three temporary deviations authorized by the foregoing paragraph 1, Pacific may enforce the provisions of its tariffs prohibiting modification of the utility's wiring by complainant.

3. Until further order of this Commission, Pacific is authorized and directed to deviate from its filed tariffs to the extent of temporarily waiving the installation charge and monthly charge for

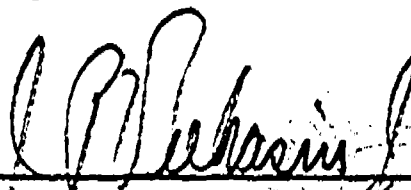
the next ten of its subscribers who request a connecting device for a Phonemaster 1040. Pacific shall advise each such subscriber, in writing, that a final order of this Commission in Case No. 9265 could require the customer's payment of the installation charge and the commencement of monthly charges applicable to periods beyond the effective date of the Commission's final order.

4. In the event Pacific is unable to make its ZZAGM coupler function with the Phonemaster 1040 at any of the installations made pursuant to the foregoing paragraph 3, Pacific shall install, without charge, temporary terminal blocks, strips, jacks or other means of connecting the Phonemaster units to Pacific's wiring.

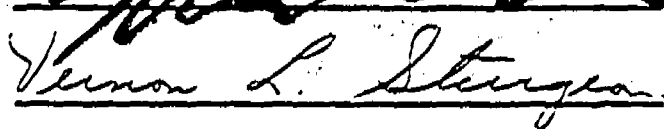
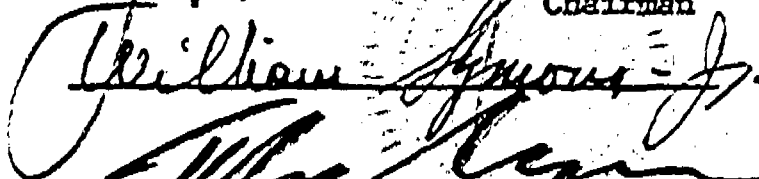
5. For ninety days after the effective date of this order, Pacific shall not enforce its 1.5-second delay requirement for diverting equipment in the case of Phonemaster 1040 installations.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 2nd day of NOVEMBER, 1971.



Chairman



Commissioners