

Decision No. 80562

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COPY COPIA, INC., a corporation,  
and RICHARD ZACHARY,

Complainants,

vs.

GENERAL TELEPHONE CO., a  
corporation, and H & T INDUSTRIES,  
a corporation,

Defendants.

Case No. 9399  
(Filed July 10, 1972)

Anthony G. Wilson, Attorney at Law, for Copy  
Copia, Inc., and Richard Zachary,  
complainants.

A. M. Hart, H. Ralph Snyder, and D. Earl  
Ellis, Attorneys at Law, for  
General Telephone Company of California;  
and David S. Smith, Attorney at Law, for  
H & T Industries, Inc., defendants.

### O P I N I O N

The complaint seeks an order from the Commission directing General Telephone Company of California (General) to assign telephone number 477-4229 to Copy Copia, Inc. (Copy Copia) for the continued use by Copy Copia for so long as Copy Copia meets all necessary conditions to the continued use of said telephone number. It also seeks an order restraining General from permitting the use of said number by defendant H & T Industries, Inc. (H & T), a corporation, or any other person, firm or corporation other than Copy Copia and Richard Zachary (Zachary).

By Decision No. 80280, dated July 18, 1972, the request for a restraining order was denied and the matter set for hearing on less than 10 days' notice before Examiner Boneysteele in Los Angeles. Hearings were held on July 25 and August 7, 1972.

At the hearing, defendant H & T objected to its being subjected to the jurisdiction of the Commission inasmuch as H & T is not a public utility. H & T did, however, request the privilege of participating as an interested party. No evidence was introduced to indicate that H & T is a public utility subject to the jurisdiction of the Commission as defined in Section 216(b) of the Public Utilities Code and the request was taken under submission by the examiner. The request of H & T is granted and the order which follows will dismiss the complaint insofar as it pertains to H & T.

Summary of Complainant's Showing

Complainant Zachary is the president and sole stockholder of Copy Copia, Inc. On July 1, 1970 he was hired by Michael's Art and Engineering Supply (Michael's) for the purpose of establishing copy centers in various retail outlets which were in the process of being established. In this connection he established a copying and reproduction service at 915 Westwood Boulevard in the Westwood District of the City of Los Angeles. This copy center was operated under the name Multi-Copy. On November 1, 1970, the business arrangement was changed. Mr. Zachary ceased being employed by Michael's but continued to operate the copy service as a sole proprietorship, reimbursing Michael's for the space occupied and equipment used by paying a percentage of gross sales. The letter of agreement under which the arrangement was established provided that Zachary was to have use of Michael's telephone system with the understanding that any exorbitant usage or long distance calls would be Zachary's responsibility.

Zachary obtained a business license from the City of Los Angeles under his name, doing business as Multi-Copy. He did not, however, publish a fictitious name certificate. On March 1, 1971, Zachary incorporated Copy Copia. He continued the copying business at Michael's as an individual; Copy Copia never actually did business as Multi-Copy. Despite the heading and prayer for relief, Copy Copia, the corporation, does not appear to be involved in this proceeding.

On April 29, 1971, Michael's instructed Zachary to install his own telephone for use in the Multi-Copy center. An employee of Zachary thereupon obtained a separate telephone, under the name Multi-Copy, said telephone being assigned the number 477-4229. The first month's telephone bill presented to Multi-Copy includes an installation charge of \$54.20. By a check dated June 16, 1971, signed by Dorothy Zachary, the entire bill of \$159.40 was paid. Zachary continued to pay the telephone bill until May 5, 1972, deducting an amount equivalent to that for paid-for local telephone service from the percentage of the gross paid Michael's. Michael's never made any objection to this arrangement.

On May 1, 1972, Michael's was sold by its owners, International Industries, a corporation, to H & T. Shortly after the change of ownership, Zachary notified H & T that he intended to leave the premises of Michael's by July 1, 1972.

Zachary's attorney testified that some time between May 10 and May 22, he called General and was informed that the number 477-4229 had been subscribed for by Zachary and could not be used by anyone else. It could, in fact, be reserved for Zachary's future use in the event that there was a hiatus between the time Zachary abandoned the premises at 915 Westwood Boulevard and the time he opened at a new location.

Based on this representation, Zachary's attorney wrote to H & T and informed him that Zachary intended to continue the use of the number in his new location. A vice president of H & T then called Zachary and stated that H & T "owned" the number. Zachary's attorney thereupon called General again and was informed that H & T had signed a form called a "credit card" and therefore the number "belonged" to H & T.

Zachary's counsel thereupon advised him not to pay the telephone bill until the issue of who had the right to the number was resolved. Acting on this advice, Zachary ceased paying the bill for Multi-Copy. He also stopped paying the percentage of gross sales to H & T.

On June 28, 1972, Zachary visited the office of General Telephone on Sawtelle Boulevard and discovered that H & T, by means of completing the General form known as a "credit card", had indeed assumed responsibility for the account for the telephone assigned the number 477-4229, under the directory listing "Multi-Copy". An unsuccessful search of General's files was made at Zachary's request for a similar form made out for Zachary, but none was to be found.

On June 30, 1972, Zachary vacated the premises of Michael's and has not to date established another copying business in Los Angeles County. Zachary and his attorney proceeded to make an informal complaint to the Commission staff which complaint was not resolved successfully. On July 10, the subject formal complaint was filed. Zachary's attorney testified that he did not examine any of the provisions of General's tariffs dealing with the assignment of telephone numbers before he filed the complaint in behalf of his client.

#### H & T's Position

H & T's case was presented through a vice president whose testimony essentially paralleled that of Zachary's. He testified that upon taking over the operation of Michael's, he visited General's office and completed a "credit card", providing for telephone service for 477-4229 under the name of Multi-Copy with H & T being responsible for payment.

In the first part of July of this year, a delinquent bill notice was received by H & T that stated that payment for service had been overdue since May and was subject to discontinuance. H & T thereupon paid the bill and the account is now current.

#### Position of General

General views itself primarily as a stakeholder in this dispute. General does insist, however, that as far as "ownership" of a telephone number is concerned, the telephone company owns the number. General presented several witnesses who testified about General's business office procedures and the history of customer

contacts concerning the disputed number. These witnesses tended to corroborate the testimony of Zachary and H & T. Although the "credit card" could not be located, it is clear that an account was opened by Zachary. This account was subsequently assumed by H & T. The company's regular supersedure procedure was not employed, possibly because the employees involved were under the impression that only corporate officers were being changed, rather than there being a complete change of business ownership.

General provided copies of its applicable filed tariff sheets of which we take official notice. General also supplied pages from the current March 1972 Western Section Directory upon which the bold face listing "MULTICOPY" appears, once in the white pages and three times under various headings in the Westwood yellow pages.

#### Discussion

It is apparent that there are two aspects of this dispute that the Commission should consider. One is the proper interpretation of General's tariffs and their application to this record; the other is the convenience and interest of the telephone-using public.

#### Application of Tariffs

"Customer" is defined on General's Schedule Cal. P.U.C. No. D & R, 2nd Revised Sheet No. 3.1 as:

"The person on whose name service is furnished as evidenced by the signature on the application or contract for 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."

It is clear from the record that, until May 1, 1972, Zachary met the above definition. He had made application for service and regularly paid telephone bills when rendered. On May 1, 1972, he ceased making payment and about this time the vice-president of H & T completed a "credit card" for the same number. In July of 1972, H & T paid the delinquent bill.

In the absence of a "credit card" signed by Zachary, the fact that H & T is now paying the telephone bill would indicate that, according to the tariffs, H & T is the customer. A "credit card" for Zachary must have been prepared before he obtained service, however. The absence of an application in General's files could be due to a clerical error on the part of General rather than to any fault of Zachary. Zachary did not receive notice from General that his service was being superseded by H & T. Failure to pay the bill for two months does not necessarily indicate any intention to abandon telephone service under the assigned number. The fact remains, however, Zachary ceased, and H & T assumed, payment for the telephone service to 477-4229.

The tariffs alone do not give a clear cut resolution to the problem. We will therefore look for guidance as to what solution would best serve the public using the telephone network.

Public Convenience

The dispute over the right of the telephone number 477-4229 is only a part of the larger dispute over the right to use the name Multi-Copy. The dispute over the name obviously must be resolved in some forum other than this Commission. Until that dispute is resolved, it is to be presumed that a copying business, under the name of Multi-Copy, will continue to operate at 915 Westwood Boulevard. Prospective customers will wish to contact this business concerning availability of service, price quotations, and status of work left for copying. Multi-Copy is currently listed in the Westwood telephone directory under number 477-4229. To sever this number from the name Multi-Copy would require, by means of some intercept procedure, transfer of incoming calls to a telephone company version of a dead letter office, since Zachary has no place of business in Los Angeles to receive calls. Interception of incoming calls, intended in good faith for an operating business with a current listing in the telephone directory, would serve no beneficial purpose to Zachary and would cause confusion, vexation, and frustration to the

telephone-using public. As a practical matter, we see no other alternative from the standpoint of public convenience, than to deny complainant's request. Should the dispute over the name Multi-Copy be resolved elsewhere, General can assign the number in question to the prevailing party.

Findings of Fact

1. During the first week of May 1971, through an employee, Richard Zachary, doing business as Multi-Copy", obtained telephone service from General Telephone Company of California for a copying service being operated by Zachary at a store known as Michael's, 915 Westwood Boulevard, Los Angeles.

2. The telephone number for such service was 477-4229.

3. Said number 477-4229 was included in the March 1972 Western Section Directory under the listing "MULTICOPY", once in the white pages and three times in the Westwood yellow pages.

4. Zachary proceeded to pay the bills for telephone service until May 5, 1972.

5. On May 1, 1972, Michael's was sold by International Industries, Inc. to H & T Industries, Inc., a corporation.

6. Shortly after Zachary notified H & T of his intention to vacate the Michael's premises.

7. Upon taking over the Michael's store, a vice-president of H & T visited General's office and completed a "credit card" for service to 477-4229, unbeknownst to Zachary.

8. General's regular supersedure procedure was not followed.

9. On May 5, 1972, Zachary made his last payment for telephone service to 477-4229.

10. Subsequent payment for service has been made by H & T.

11. Interception of calls made to 477-4229 would cause confusion, vexation, and frustration to the telephone-using public and thereby be contrary to the public interest.

Conclusions of Law

1. H & T is not a public utility subject to the jurisdiction of this Commission.
2. This complaint, insofar as it pertains to H & T, should be dismissed for lack of jurisdiction.
3. The tariffs of General do not provide a satisfactory solution to the complaint.
4. Granting of the relief requested would be contrary to the public interest.
5. This complaint, insofar as it pertains to General Telephone Company of California, should be denied.

O R D E R

IT IS ORDERED that the complaint be, and it hereby is, denied.

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

Dated at San Francisco, California, this 31st day of OCTOBER, 1972.

William L. Steyer  
President

William L. Steyer

William L. Steyer

William L. Steyer

William L. Steyer

William L. Steyer  
Commissioners

*I dissent.*

*Thom M...*

Commissioner