

ORIGINAL

Decision No. 80891

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 Brouvette, for
complainant.A. M. Hart and Donald J. Duckett, Attorneys at
Law, for defendant in Case No. 9177.Milton J. Morris, Attorney at Law, for defendant
in Case No. 9265.Donn E. Cassity, Attorney at Law, for Communication
Certification Laboratory, intervenor.John S. Pick, Attorney at Law, and Paul Popenoe, Jr.,
for the Commission staff.SUPPLEMENTAL OPINION MODIFYING DECISION NO. 80812

Decision No. 80812 is hereby modified to read as follows:

Decision No. 80247, dated July 18, 1972, disposed of all of the issues in these proceedings except the possible implementation of a workable certification program under which it would become reasonable

for defendants to supply simple nonprotective terminal blocks or jacks for connection of toll call diversion devices owned by complainant or sold by complainant to defendants' customers, and the antitrust issue.

Decision No. 80696, dated October 31, 1972, denied complainant's petition for rehearing of Decision No. 80247. Ordering paragraphs 1, 2, 3, and 5 of Decision No. 80247 were stayed, however, by Decision No. 80765, dated November 21, 1972, until such time as the Supreme Court acts on complainant's application for a writ of review or until further order of the Commission.

As was pointed out in Decision No. 80247, a certification program should cover design, manufacture, installation, and maintenance of the customer-owned or customer-leased equipment. Neither of the two certification plans proposed in these proceedings would insure proper installation and maintenance of the toll call diversion devices. Decision No. 80247 cites examples of types of deficiencies which have occurred in installation and maintenance of such devices. Complainant, defendants, intervenor, and the Commission staff should be given the opportunity to study the feasibility of expanding the concept of certification to include installation and maintenance, and to file the results of such studies in these proceedings. If those studies indicate that these proceedings should be reopened, an order to that effect can then be issued.

One of the problems faced by complainant was the delay sometimes encountered in obtaining promptly from defendants the required protective connection devices. To avoid unreasonable delays when such devices are not available in sufficient quantities from defendants, the order which follows requires a temporary nonprotective connection device to be furnished if a protective connection device is not provided within 30 days after a customer applies for it. Although defendants have the right, under normal circumstances, to require the protective connection devices, there is a concomitant obligation to furnish such devices promptly when needed.

Briefs filed herein by Complainant and the Commission staff have raised the antitrust issue. Indeed, had such issue not been so raised, it would be incumbent upon the Commission (upon its own motion if relevant) to consider and weigh antitrust factors along with all other considerations in determining the public interest.^{1/} The Commission recognizes the important public policy in favor of free competition. The Commission is also cognizant of the argument that to require the installation of a protective connection device, as will be hereinafter ordered, may impose some restraint on competition. However, the evidence clearly indicates that the direct connection of Complainant's Phonemaster 1040 to defendants' respective telephone networks involves potential harm to such networks. Such potential harm could adversely affect not only those customers utilizing Phonemaster 1040 equipment, but all other subscribers to utility service from such networks. In balancing the public interest in insuring that the telephone networks are safeguarded with the public interest in preserving free trade and competition, it is our opinion based on this record that whatever restraint on competition which may result from the Commission's Interim Decision (Decision No. 80247) and the order made herein is outweighed by the necessity to protect the telephone networks. All parties agree that a certification program is desirable (Tr. 243, 277, 280-283, 787). Pending the adoption of an acceptable certification program, the restrictions imposed herein are in the public interest.

The Commission finds that:

1. The parties to these proceedings have not presented feasibility studies covering certification of installation and maintenance of Phonetele toll call diverters.
2. Certification pursuant to the plans submitted so far in these proceedings would not eliminate the need for utility-provided protective connection devices for customer-owned or customer-leased Phonetele toll call diversion devices.

^{1/} Northern California Power Agency v. Public Utilities Commission, 5 Cal.3d 370.

3. If defendants do not provide protective connection devices promptly, the temporary provision of nonprotective devices for short periods of time will not cause unreasonable risks.

4. Any restraint on competition which may result from the restrictions imposed by Interim Decision No. 80247 and this order is made necessary by the paramount consideration to safeguard the integrity of defendants' respective telephone systems pending the adoption of an acceptable certification program for complainant's and other toll call diverters.

The Commission concludes that the parties should be given an opportunity to study further the feasibility of certification of installation and maintenance of Phonetele toll call diverters and that defendants should be required to furnish connection devices promptly.

IT IS ORDERED that:

1.A. Defendants General Telephone Company of California and The Pacific Telephone and Telegraph Company shall review the feasibility of providing certification of Phonemaster toll call diverters, including the installation and maintenance thereof, by defendants' own employees or by outside certification agencies.

B. On or before March 31, 1973, defendants each shall file in these proceedings a report on the feasibility studies, and furnish copies to all parties to these proceedings.

C. On or before March 31, 1973, complainant Phonetele, Inc., intervenor Communication Certification Laboratory, and the Commission staff also may file feasibility studies described in the foregoing paragraph 1.A, provided copies thereof are furnished concurrently to all parties in these proceedings.

2. Defendants shall provide protective connection devices for Phonemaster toll call diversion devices on a reasonably expeditious basis when requested by customers.

3. If protective devices cannot be provided within 30 days after requested, defendants shall install promptly, without charge, temporary terminal blocks, strips, jacks, or other means of connecting the Phonemaster units to the utility's wiring and leave such temporary connection devices in place until protective connection devices are installed.

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

Dated at San Francisco, California, this 21st day of
DECEMBER, 1972.

Vernon L. Sturgeon
President

William J. Gurnea, Jr.

[Signature]
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.