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ORIGINAL

Decision No. 80972

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COM-U-TROL CORPORATION,

Complainant,

vs.

GENERAL TELEPHONE COMPANY OF CALIFORNIA,

Defendant.

Case No. 9323
(Filed February 8, 1972)

Carl Hilliard, Attorney at Law, for Com-u-trol Corporation, complainant.
A. M. Hart, by Lorin H. Albeck, Attorney at Law, for General Telephone Company of California, defendant.
Donn E. Cassity, Attorney at Law, for Communications Certification Laboratory, intervenor.
Janice E. Kerr, Attorney at Law, and Paul Popenoe, Jr., for the Commission staff.

O P I N I O N

Complainant Com-u-trol Corporation manufactures the Divert-a-call, a call diverter designed to be connected directly to the telephone system. Its complaint was primarily intended to seek permanent relief from the common arrangement or coupler requirement contained in General Telephone Company of California's (General) tariff[1/] on behalf of all present and future owners of Divert-a-call. The complaint also sought interim relief on behalf of a Divert-a-call purchaser whose telephone service was disconnected by General because

1/ General's tariff rules Nos. 20 and 41 require that customer-owned communications equipment be attached to the telephone network only through a utility-provided common arrangement or coupler.

the purchaser had insisted on using his diverter without the utility-provided coupler. Decision No. 79732 dated February 16, 1972 denied interim relief.

The complaint alleges that the rates established by General for the coupler are unreasonably high, thereby discouraging the purchase of Divert-a-calls and increasing the economic value of defendant's inventory of competitive call diverters. The installation of the type of coupler designed for any type of use with call diverters costs $100; there is a monthly charge of $18.15. It is further alleged that interconnection of the Divert-a-call to the telephone network without a common arrangement or coupler will not cause hazards to the system.

Communications Certification Laboratory (CCL) intervened to seek Commission adoption of a product certification program as a solution to problems arising from interconnection of foreign attachments, such as the Divert-a-call, to the telephone network.

General answered and also moved to dismiss the complaint. As grounds for dismissal, General urged that the complaint did not allege violation of any statute, rule, or regulation and, further, that Com-u-trol was not a person with standing to file a complaint. General also contended that if the Commission ordered a network connection without a coupler, General would thereby be required to violate a rule or regulation of the Federal Communications Commission. General asserts that the entire range of interconnection problems is presently being considered both by this Commission and by the Federal Communications Commission, and urged that the complaint should be held in abeyance until a final interconnection policy is evolved. The answer generally denied the material allegations of the complaint.

Initial hearings were held before Examiner Gilman in Santa Ana on March 28, 29, and 30, 1972. At that time complainant attempted to produce evidence challenging the reasonableness of defendant's coupler charges. The examiner sustained defendant's objection to

the evidence on the ground that complainant had no standing to raise the question of reasonableness of an existing rate under Section 1702[2/] of the Public Utilities Code. At subsequent hearings on April 17 and 18, 1972, complainant presented petitions to intervene by 28 actual or potential customers. The examiner then permitted evidence on reasonableness to be introduced.

During the course of the hearings, complainant offered extensive evidence intended to demonstrate that the Divert-a-call was designed and manufactured in such a manner that it could be connected directly to the telephone network without causing any hazard to employees or telephone subscribers and without adversely affecting the operation of the network. Complainant also called six General subscribers to demonstrate a public need for a call diverting device. In addition, complainant called three of defendant's employees as adverse witnesses.

The Commission staff called a staff engineer in support of its proposal for the adoption of a certification program. Both the staff and the intervenor were permitted to incorporate by reference evidence concerning certification given in another Commission proceeding.[3/]

Position of the Parties

General has for all practical purposes conceded that there are no design defects in the Divert-a-call which would cause hazards to the system. It does, however, attempt to justify the coupler requirement as a means of protecting against hazards which might be caused by improper installation, by defects in quality control, or by improper repair or service.

2/ "... No complaint shall be entertained by the Commission...as to the reasonableness of any rates or charges...unless it is signed ...by not less than 25 actual or prospective consumers or purchasers..."

3/ Case No. 9271, Telephonic Equipment Corporation vs. Pac. Tel. & Tel. Co.

The primary thrust of General's argument is that there is an urgent necessity for this Commission to adopt a program which deals generally with the problems arising from interconnection of foreign attachments. It supports a certification program with the following characteristics:

1. The design, testing, quality control, inspection of installations, and licensing of maintenance people should be certified by an independent, non-aligned agency acceptable to both the utility and manufacturer and responsible to the Commission.

2. The cost of all matters concerned with certification should be borne by the manufacturers.

3. The Commission should regulate the rates of the certification agency.

4. Agency determination should be appealable to the Commission by either party.

5. General should be provided, upon request, with a copy of the evaluation results and there should be published a current list of all certified equipment.

6. The certification agency must be totally responsible for its act of certification.

7. Any technical modification of customer-provided equipment will require recertification.

It would appear that General is less concerned about the potential hazards arising from this particular piece of equipment than about the possible precedent value of this decision. It asserts that using the complaint format to determine whether a foreign attachment can safely be directly connected does not give adequate assurances nor continued control of proper installation, adjustment, and repair. General asserts that, until such a certification program is adopted and fully functional, its coupler policy must be retained as the only viable alternative means of ensuring on-going protection for the telephone network.

General concedes that the coupler charges were developed on an experimental basis and that the costs utilized to prepare the tariff sheet were composed of estimates since there was no record of actual cost available. It asserts, however, that complainant has not shown that the rates were unreasonable, unlawful, or arbitrary.

Staff and CCL also strongly support adoption of a certification program. The differences between staff and CCL are minor and relate primarily to different methods of adapting an unprecedented and novel program to traditional concepts of utility regulation.

Complainant seeks an unconditional order requiring General to permit the Divert-a-call to be connected directly to the telephone network. It asserts that neither certification nor couplers are necessary to prevent hazards to the telephone network. Alternatively, it seeks a finding that the coupler rates are unreasonable and excessive.

The Divert-a-Call

A call diverter is a device which automatically transfers a telephone call from one station to another. For example, a small business man who does not wish to have his office manned continually can install a Divert-a-call at his office, connected to two telephone lines. When he leaves for home or a remote location, he sets the home or remote telephone number on a dial on the device's face. The Divert-a-call will respond to an incoming call on one of the office lines, after a predetermined number of rings, by "answering" the call and generating dial pulses corresponding to the pre-set telephone number. These dial pulses initiate another call to the pre-set telephone number (the home number, for example) using the second line. Once the home telephone is answered, the Divert-a-call inductively patches the two calls together, permitting end-to-end communication between the two parties. This particular device gives no perceptible indication that a call is being diverted; the calling party continues to hear a ringing signal until the diversion process is complete. If the incoming call is a long distance or message unit

call, billing will commence as soon as the Divert-a-call answers and will last until the caller hangs up, regardless of whether the second call is answered or not.

The Marcom Call Diverter

In a previous decision (Bowles vs. PT&T (1966) 66 PUC 479, 68 PUR 3d 33), the functionally similar Marcom call diverter was found not to present any significant hazard to the system. The defendant therein was offered the option of either permitting interconnection without coupler or purchasing and supplying the device to the complainant therein. As a result of this decision, General elected to purchase a stock of the Marcom call diverters and to offer them under tariff to its subscribers. While the use of the Marcom device has not resulted in any reported network hazards, its performance as a diverter has been less than satisfactory. The company which manufactured the device has been absorbed by another, and the device is no longer in production.

General will install the Marcom diverter for $45; there is a continuing monthly charge of either $20 or $21.75 depending on the dialing capacity of the instrument furnished. Since such a device when provided under tariff by the utility is not customer-owned and maintained, no coupler is required by the tariff items in question.

General has been negotiating with the successor company with a view to possible purchase of a substantially improved call diverter device as a replacement for the Marcom. One of the issues under negotiation is a possible repurchase of General's stock of existing devices by the successor company.

The Marcom device and the Divert-a-call are directly competitive with each other.

Competition

A utility tariff which is significantly anti-competitive would be unlawful unless justified by an overriding public interest (cf. Northern California Power Association vs. Public Utilities Commission (1971) 5 Cal 3d, 370). The coupler charges in General's tariff are anti-competitive; a Divert-a-call purchaser must not only pay the purchase price for his call diverting unit ($750), he must also pay the installation and recurring monthly charges for a coupler. The coupler charges alone are almost equal to the charges for defendant's competitive device.

In several reported instances, the coupler has caused a Divert-a-call to malfunction. This utility-imposed unreliability further tends to inhibit complainant's ability to market its device.

The Coupler

The ostensible purpose of General's coupler is to protect the telephone network against several types of hazards. If, in fact, the Divert-a-call is hazardous, the public interest in network reliability and safety would constitute an overriding public interest.

One component of the coupler restructures dial pulses produced by a call diversion device so that they are compatible with the requirements of the system's control equipment. The record indicates that the Divert-a-call normally generates pulses which fall well within the criteria established by General for other types of dialing equipment. However, the quality control standards which Com-u-trol has established for the Divert-a-call permit a maximum variation of $\pm$ 2.5 percent from the designed make-break ratio. General's standards call for a variation of no more than $\pm$ 1 percent. Complainant's engineering witness indicated that the Divert-a-call is capable of performing well within the more restrictive standard. The coupler is also intended to isolate the system from hazardous voltages. However, the Divert-a-call itself provides a higher degree of voltage isolation than the coupler does; the coupler subcomponent which provides voltage protection is therefore redundant. The coupler

is also designed to isolate the system from excessively strong audio signals. The basic Divert-a-call does not contain an amplification device and, thus, would not generate or introduce extraneous or excessive noise or signal into the system. In some applications Com-u-trol will supply an amplifying component which when properly adjusted will not introduce excessive noise or excessively strong signals.

The Divert-a-call itself, considered apart from installation and repair problems, is network safe, if it meets defendant's make-break ratio standards.

Installation Problems

An improperly installed Divert-a-call can interfere with other telephone subscribers' access to the network. If the Divert-a-call is not properly adjusted, it may not break the connection to a calling party after he hangs up on a diverted call. Depending on the type of central office equipment serving such a subscriber, he may be unable to use his telephone until this condition is corrected. This problem can be prevented by a simple adjustment at the time of installation; since the coupler does nothing to protect the service of such a caller, it is necessary to provide a method of ensuring that all Divert-a-calls are properly adjusted.

Divert-a-call installation presents one other difficulty which has some impact on the public interest. If an incoming call is subject to long-distance or message unit charges, billing will commence as soon as the Divert-a-call answers. However, the caller will not recognize that fact, since an apparent ringing signal continues until the call diversion cycle is completed. Telephone users generally assume that they may hang up so long as a ringing signal continues, without incurring a charge. The length of the Divert-a-call's diversion program is adjustable. The shorter the program, the smaller the probability that a caller will hang up prematurely. Foreign attachments, insofar as possible, should not

cause callers to incur charges on apparently unanswered calls. Since the coupler again provides no protection, this problem also requires us to find a means of controlling installation techniques.

Even if the caller remains on the line during the whole diversion process, unexpected billings may still occur if the second, outgoing call is not answered. However, it is unlikely that Divert-a-call owners will often neglect their own best interests by diverting calls to an unattended telephone. Present technology is inadequate to reduce the probability of such diversions; requiring telephone utilities to forbid interconnection or the use of any diversion device which "answers" an incoming call before the outgoing call is completed would be unreasonable without a clear showing of substantial economic injury to a significant portion of the public. Consequently, the public must unavoidably accept an occasional unexpected billing caused by the interconnection of Divert-a-calls to the telephone network.

Repair Problems

Complainant has shown that Divert-a-calls will need repair only infrequently and that ordinarily the network protective features of the Divert-a-call will function with a high degree of reliability. The record supports an inference that those features are more reliable than the coupler itself.

It has not been established that the Divert-a-call's network safety features will survive tampering by an incompetent or ill-trained repairman. We must, therefore, act on the presumption that faulty repair is capable of causing network hazards. The coupler is obviously too expensive and too cumbersome to be acceptable as a counter-measure solely for the occasional network hazard produced by improper repair work. Again it is our responsibility to find an acceptable alternative method to protect the network.

Certification

Three of the parties have asked us to adopt a certification procedure in this proceeding. Presumably, all three are willing to postpone relief for complainant and its customers indefinitely until such a program is actually in operation.

We think this complaint is not the appropriate vehicle for such consideration. First, only one foreign attachment manufacturer and one utility are represented, and only one particular class of device considered. Furthermore, there may be alternative methods of achieving the same objectives which the Commission should fully consider. (Cf. Scenic Hudson, etc. v. F.P.C. 354 Fed 2d 608, cert. den. 324 U.S. 941.) Even if certification were finally selected, both the novel principle and the details of the program are likely to generate protracted litigation and, consequently, an unavoidable delay. Rather than delaying relief herein, we will designate the pending applications of CCL (Application No. 53293) and of USE Corp. (Application No. 53536)[4/] as the proper vehicles for further consideration of certification proposals.

Interim Interconnection Requirements

A foreign attachment certification program would necessarily have to provide a means of dealing with both repair and installation problems as well as design. However, it does not appear that a certification program will be established and functioning in the near-term future. Since the coupler tariff is not acceptable and certification not presently available, it is the Commission's responsibility to devise a workable interim protection scheme which avoids undue anti-competitive impact and unnecessary burdens on Divert-a-call owners while giving the general public adequate protection against the above-described problems.

4/ CCL's application seeks a certificate of public convenience and necessity as a public utility telephone company under Sections 233 and 234, Public Utilities Code. USE merely seeks to be selected as a certification agency.

Complainant has already assumed certain responsibilities for ensuring that its products are properly installed. It also offers a limited term repair warranty. It does not appear unreasonably burdensome or anti-competitive to require it to temporarily assume additional responsibilities in these areas as a condition of direct interconnection. We will, therefore, order direct interconnection but impose conditions which, in essence, require complainant to temporarily assume the function of certifying installers and repairmen. The record is insufficient to establish in detail the responsibilities which should be assumed; we will, therefore, establish an effective date of our order to allow negotiation and, if necessary, further hearing on such subjects.

It should be noted that our order herein is not intended to deal with the mutual rights and obligations arising between the manufacturer and the purchaser of customer-owned telephonic equipment. Those rights and obligations are private matters; our sole concern is protection for the general user of the telephone network, and of utility employees.

Findings

1. A Divert-a-call, without amplifier, operating within $\pm$ 1 percent of its designed make-break ratio, can be connected directly to the telephone network without hazard to network function or to the physical safety of utility employees or customers, if properly adjusted and repaired.

2. An improperly adjusted Divert-a-call may interfere with the telephone service of parties to a diverted call. The utility-provided coupler does not protect such parties.

3. A subscriber who calls a Divert-a-call user and hangs up during the diversion process may be billed for a long-distance or message unit call.

4. Such a caller cannot determine when billing begins.

5. If the Divert-a-call is adjusted for the shortest possible diversion program, it is less likely that a caller will hang up before the diversion process is completed.

6. There is insufficient evidence to find that Divert-a-calls will never need repair.

7. There is insufficient evidence to find that improperly repaired Divert-a-calls will not be hazardous to network function or to utility employees and users.

8. Defendant and complainant are in competition.

9. The relevant market is the market for call diversion devices in territory served by defendant as a telephone utility.

10. The payments required for defendant's coupler are an unreasonable competitive handicap to sales of the Divert-a-call and provide an unreasonable competitive advantage to defendant in marketing call diversion devices provided by it under tariff.

11. There is insufficient evidence to determine the reasonable costs of defendant's coupler, and of its coupler installation service.

12. We take official notice that the Federal Communications Commission has not by rule or order required that the Divert-a-call be connected to the telephone network through a protective coupler.

13. It is not unreasonably burdensome or anti-competitive to require complainant to provide reasonable assurances that proper installation and repair procedures are uniformly followed.

Conclusions

1. There is an overriding public interest in protecting the telephone network from hazards caused by customer-owned call diverters.

2. There is an overriding public interest in protecting subscribers from unexpected charges for prematurely terminated calls to a Divert-a-call equipped station.

3. When a coupler is used in conjunction with a Divert-a-call, any protection provided by the coupler is outweighed by its cost and by its anti-competitive impact.

4. The public interest requires that direct interconnection of Divert-a-calls be permitted only to the extent that the public can reasonably be assured that the devices are properly installed and maintained.

O R D E R

IT IS ORDERED that:

1. General Telephone Company of California shall permit the direct electrical connection of Divert-a-calls to the telephone network subject to the condition that complainant shall provide reasonable assurances that quality control, installation, and repair procedures herein or hereafter found necessary for the preservation of network integrity and safety will be uniformly followed.

2. General shall offer an interface device, without protective features, to directly connect the Divert-a-call to the network. General shall serve complainant with a copy of any advice letter intended to establish rates and charges for the furnishing of such interface.

3. If General and complainant have not, before the effective date of this order, been able to agree upon a plan to achieve compliance with the conditions stated in ordering paragraph 1, they or either of them shall so inform the Commission in writing with notice to all parties herein and, upon filing of such notice with the Commission, ordering paragraph 1 above shall be stayed, and this proceeding reopened for the taking of further evidence.

4. General shall immediately disconnect or terminate service to any directly connected Divert-a-call whenever it has reasonable grounds to believe that such device has become hazardous to network operations or to the safety of utility employees or subscribers.

5. Complainant is hereby authorized until further order of the Commission to include in its advertising matter a statement approved for form and content by the Secretary of this Commission indicating that the Divert-a-call has been conditionally approved for direct interconnection to the telephone system of General Telephone Company of California.

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

Dated at San Francisco, California, this 23rd day of JANUARY, 1973.

Vernon L. Sturgeon
President

Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.