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Decision No. 81123

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

A-HEAD PRODUCTS, INC.,  
a corporation,

Complainant,

vs.

THE PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY,  
a corporation,

Defendant.

Case No. 9269  
(Filed August 31, 1971)

Lawrence A. Merryman, for complainant.  
Robert E. Michalski, for defendant.

O P I N I O N

This matter was filed on August 31, 1971. Defendant's answer was filed on February 28, 1972. On April 26, 1972 complainant advised the presiding officer that his attorney and defendant were still trying to work out something in order to avoid a hearing.

As the parties could not reach agreement, by notice dated June 5, 1972, the matter was set for hearing to be held on July 27, 1972. At the request of the parties, the matter was reset to October 17, 1972 and reset again to December 13, 1972. Hearing was held on December 13, 1972 before Examiner Gillanders and the matter submitted.

Testimony on behalf of complainant was given by its president and by a user of the device. Testimony on behalf of defendant was given by its Headquarters Customer Service Engineer - Voice Systems.

Complainant's Evidence

Complainant manufactures and sells a device named Phone-Censor. In the past 1-1/2 years it has sold between 80 to 90,000 Phone Censors in the United States and Canada. Eight to ten thousand of the devices have been sold in California.

Applicant's president demonstrated how the Phone-Censor was installed in the handset of a conventional telephone and how the device could, when activated, cut off any transmission from the telephone transmitter.

Only two of the devices sold have been returned. They were returned because they did not meet the user's need. No complaints have been received regarding phone system trouble due to the installation of a Phone-Censor.

Exhibits 1 and 2<sup>1/</sup> are copies of proposed tariff sheets prepared by defendant in the course of negotiations between complainant and defendant. Complainant's president testified that it objected only to a portion of paragraph II.B.8.a. shown on Original Sheet 22-B and to paragraphs II.B.1.f. and 1 shown on Original Sheet 22-C, which require payment of monthly charges of 35 cents per line.

A user<sup>2/</sup> of the Phone-Censor testified that his busy insurance office had seven modular telephones<sup>3/</sup> equipped with Phone-Censors and had never experienced telephone trouble caused by the Phone-Censor.

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- 1/ Exhibit 2 is a later proposal than Exhibit 1.  
2/ Also financially interested in complainant.  
3/ A telephone having plug in replacement parts.

Defendant's Testimony

According to defendant's witness there is really no need for a device such as the Phone-Censor as defendant will provide the same type of service (push-to-talk or push-to-listen) under Schedule Cal. P.U.C. No. 32-T, Original Sheet 38-H. He testified that the Phone-Censor could harm the telephone instrument; that it could possibly damage the contacts; that the metal set screws could damage the threads; and that a call might be charged for before unlocking the Phone-Censor. He testified that on the modular telephone the cord could come loose when the Phone-Censor is installed as was the case in one installation in El Centro.<sup>4/</sup> He was also concerned that with the Phone-Censor installed the handset could be used for monitoring because the device cuts off transmission but allows reception without knowledge of other parties on the line. As a basis for his concern regarding possible damage to the telephone system he referred to the provisions of Schedule Cal. P.U.C. No. 135-T, Original Sheet 10.

Discussion

It is apparent from the evidence that complainant and defendant have resolved their differences in all respects except monitoring.

Defendant requested that we take official notice of Decision No. 73146 dated October 3, 1967 and Decision No. 78442 dated March 23, 1971.

In Decision No. 69447 we said:

"In our view, Section 7906 of the Public Utilities Code and Section 653j of the Penal Code clearly indicate that it is the continuing policy of the Legislature that communications over public utility telephone systems shall be private."

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<sup>4/</sup> He could not testify that the El Centro trouble was definitely caused by the Phone-Censor itself. The problem was resolved by defendant replacing the modular phone with a standard 6-button wall phone and allowing the user to install the Phone-Censor in the wall set.

Decision No. 78442 reiterated the view expressed in Decision No. 69447.

There is nothing in this record which demonstrates that we should change our view. On the contrary, the record is clear that we should continue to prevent the monitoring of communications over public utility telephone systems.

Defendant's proposed tariff sheets paragraphs II.B.8.a, II.B.1.f., and I do not prevent the monitoring of communications over public utility telephone systems. It is our interpretation of Schedule Cal. P.U.C. No. 32-T, Original Sheet 38-E, that such tariff sheet allows unlimited monitoring. Such schedule must be changed to conform to the various decisions which defendant uses as a basis to deny applicant the privilege of installing its device in the telephone network.

No other issue other than that of monitoring need be disposed of in this proceeding.

Findings

1. Complainant manufactures and sells a device called a Phone-Censor.
2. Eighty to ninety thousand Phone Censors have been sold in the last year; one-half throughout the United States and Canada.
3. Eight to ten thousand have been sold in California.
4. Two were returned to complainant as they did not meet the customer's needs.
5. Complainant has received no complaints regarding phone system trouble caused by the Phone-Censor.
6. The Phone-Censor has no wires.
7. The Phone-Censor is installed by removing the cap from the telephone handset; removing the transmitter button from the handset; placing the Phone-Censor in the handset; re-installing the transmitter button, replacing the cover; and tightening two metal set screws (to be replaced with nylon set screws).

8. The Phone Censor can be directly connected to the telephone network without hazard to network performance or to employees or subscribers.

9. By depressing the button on the Phone-Censor all transmission from the handset is cut off.

10. By pulling a lever on the Phone-Censor the phone is on sensor-lock and all transmission from the handset is cut off.

11. The Phone-Censor can be used to permit monitoring of communications over public utility telephone systems.

Conclusion

To allow the installation of the Phone-Censor would violate the continuing policy of the Legislature that communications over public utility telephone systems shall be private as the Phone-Censor, when attached to the telephone, creates an instrument which can be used for monitoring purposes.

The complaint should be dismissed.

O R D E R

IT IS HEREBY ORDERED that:

1. The complaint in Case No. 9269 is dismissed with prejudice.
2. Defendant and staff of this Commission shall immediately take the necessary steps to insure that Schedule Cal. P.U.C. No. 32-T, Original Sheet 38-H, is modified to prohibit connection of any device which can be used for monitoring purposes in controvention of the stated policy of the Legislature.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of MARCH, 1973.

Vermon L. Stuyven  
President  
William J. Stuyven  
William J. Stuyven  
William J. Stuyven  
Commissioners

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