

ORIGINAL

Decision No. 81797

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Industrial Communications Systems, Inc.,

Complainant,

vs.

The Pacific Telephone and Telegraph Company,
Defendant.

Case No. 9404
(Filed July 24, 1972)

Homer N. Harris, for complainant.
Richard Siegfried, for defendant.

O P I N I O N

This matter began with the filing of a "Complaint and Petition for Emergency Relief" by Industrial Communications Systems, Inc. (ICS) on July 24, 1972, alleging that The Pacific Telephone and Telegraph Company (Pacific) had failed to install a telephone line and off-premise extension which had been ordered by ICS on or about June 20, 1972. In addition, ICS alleged that Pacific demanded that ICS sign an "illegal, vertical contract" before it would install the service. As a result, ICS asked that the Commission order Pacific to install the service under its applicable tariffs, and award ICS \$200 per day from July 7, 1972 in damages for Pacific's delay in installing the service.

On August 1, 1972 the Commission issued Decision No. 80343 entitled "Order Denying Emergency Relief and Setting Hearing". On August 8, 1972 ICS filed a "Motion to Enlarge the Issues" to include service quality. This motion was granted by the Examiner during the first day of hearing. On August 14, 1972 Pacific filed its answer

to the complaint admitting or denying the various allegations and setting forth its affirmative defenses. Pacific requested that the complaint be dismissed without hearing as it averred that the service in question was installed on July 27, 1972, and that it would continue to provide service to ICS within reasonable times in the future. On August 16, 1972 Pacific filed a "Response to Motion to Enlarge the Issues".

Hearing was held at Los Angeles on August 22, 1972 before Examiner Gillanders. Further hearing was held on October 10, 11, and 12, 1972 at San Francisco. The matter was submitted on February 27, 1973 upon receipt of concurrent briefs.

ICS presented the testimony of its president, a manager, the man in charge of Motorola's paging computer terminal, and three of Pacific's employees under Section 776 of the Evidence Code. Pacific presented testimony of two of its employees.

Issues

I. Was there a deliberate delay in installing the telephone line and off-premise extension ordered by ICS on or about June 20, 1972?

ICS discusses this issue in its brief as follows:

"In order to put the proper perspective on this case, it must be explained to the Commission that the Pacific Telephone and Telegraph Company (Defendant) and Industrial Communications Systems, Inc. (Complainant) are in direct competition in their respective proposals to provide one-way paging to the public in general throughout the Los Angeles area.

"It is common knowledge to the industry that, through error made by Defendant, Complainant, along with other carriers, was afforded the opportunity of providing one-way paging service to the public prior to the time the Defendant legally could provide service.

"The scope and the basic fundamental reasons that Complainant was forced to file Complaint 9404 and the motion to enlarge thereof, was because of the following facts:

- a. Wireline facilities ordered by the Complainant not being installed timely as promised by Defendant.
- b. Coercement of the Complainant's President by the Defendant re certain contract requirements.
- c. The Defendant's continued act of interference with the business of Complainant via the rendition of poor service or not service at all.

"It was developed through cross-examination of Mr. Madsen that his statement of '20 days' really meant a calendar 30 days because he indicated the Defendant did not work any Saturdays or Sundays in the rendition of this type of service. The story is further carried and is more fully described by Attachment B, Exhibit 3 introduced and unrefuted by the Defendant.

* * *

"Let there be no question about it; the Defendant is using every method within its grasp to deter the Complainant from providing service to the public until it has been legally authorized to provide a competing service. Some people simply would not believe the great wireline carrier would stoop to such tactics; let it be known the undersigned believes there is no question about it!"

Pacific, in its brief, discusses this issue as follows:

"There was a delay in installing the telephone service ordered by ICS on or about June 20, 1972.

"Mr. R. Russ Harris accurately sets forth the events which transpired between the date the service was ordered (on or about June 20, 1972) until July 20, 1972, when, in his affidavit (Exhibit 2), he says:

'On, or about June 20, 1972, I, R. Russ Harris, * * * ordered a trunk line from the Pacific Telephone Co. which is identified by circuit 971-2291. * * * The Pacific Co. gave me a completion date of July 7, 1972. I spoke with Mr. Carl Eaton, an employee of Pacific, on July 10 or 11 and he assured me the line would be completed by July 14th. There were excusable delays committed by Pacific but on July 18, 1972, Mr. Eaton called me and said the job would be completed on July 20, 1972 * * * (emphasis added)'.

It was at that point (July 20, 1972) that the matter was further complicated by a call from another employee of Pacific, Mr. Jerry Mattson. On his own, and in a sincere but erroneous attempt to be helpful, Mr. Mattson called ICS and advised Mr. Russ Harris that a Pacific-provided interface device would be required (Tr. 25, 26, 27). Mr. Mattson unfortunately was unaware of the 'unique' status (relative to interconnection) of radio-telephone utilities, such as ICS, as a result of Commission Decision No. 71291 (Tr. 27). This erroneous call plus a bad cable pair (Tr. 77-78) delayed the final installation date until July 27, 1972.

"ICS further alleged that Pacific also demanded that ICS sign an 'illegal, vertical contract' before it would install the service. This simply is not true (Tr. 68-70, 72, 75-76). This fact might best be illustrated by the following exchange (Tr. 69-70) between Mr. Homer Harris and Mr. Phil Cunningham:

'(Mr. Harris)

'Q Have you had the opportunity in the last two or three hours to examine and read the Affidavit, Exhibit 3, that was signed by Homer N. Harris?

'(Mr. Cunningham)

'A I have.

'Q Does your recollection of the conversations, etc., have any conflict with what is stated in that affidavit?

'A Yes, sir, they do.

'Q Well, now, would you point out exactly where?

'A Yes.

'Q Just call off the paragraph number and the page. That is a two-page document. Just call off.

'A Paragraph 5, page 1. I take exception to that one.

'Q On what basis?

'A On the basis that I did not say that unless you signed the contract that I would not install or would disconnect or would not install the service.

'Q Well, now, Mr. Cunningham, if the wording wasn't exactly like that, wasn't it to the effect that I must, in order to continue operating the service, must some day sign that agreement; isn't that -- aren't those your words?

'A No, those are not my words.

'Q What are your words, then, relative to that particular bit of business?

'A My words were that some day at some time and some point an agreement would -- must be reached between the two companies for the provision of these circuits or channels or extension lines, whichever you choose to call them. (emphasis added)

Mr. Cunningham had simply delivered a blank contract (see Exhibit 7) to Mr. Homer Harris of ICS for his review because it is Pacific's position that the existing contracts between ICS and Pacific do not cover ICS's one-way paging operation, and that, therefore, either a new contract or a modification of the existing contract is necessary.

"The delay in installing the service in question was unfortunate but certainly not the result of any dark and sinister plot as implied by ICS during the hearings on this matter. It resulted simply from a misunderstanding on the part of one of Pacific's employees as to the status of ICS as a radio-telephone utility."

II. Did ICS experience any service problems for which it is entitled to relief during the period June 1972 through October 12, 1972?

According to ICS:

"The Complaint specifically dealt with trouble which started about the middle part of June, 1972. The Defendant, in its attempt to white-wash the specific problems enumerated by Complainant (see Attachments C, Exhibit 11 and Attachment D, Exhibit 1) introduced its Exhibit 16 dealing with trouble starting in January of 1972 and skipped some of the specifics such as no service at all on September 15 and 16, 1972 on telephone circuits being used specifically for the purpose of competing with the Defendant.

"It is strange indeed and causes one to raise an eyebrow that on or about June 15, 1972 (the date the Complainant instituted its one-way paging service in competition with the Defendant) the Complainant started having trouble on almost a daily basis with one facility or another but more important those facilities that were connected with, or had direct relationship to the rendition of one-way paging.

"We herewith request the Commission to take notice of the Complaint filed against the Complainant (No. 9450) by the Defendant on October 6, 1972 and the Commission's decision pertaining to said Complaint (No. 80606).

"At Tr. 290 the same official indicated that the Complainant had not had quality service for the last 90 or 120 days. At Tr. 292 the same official said,

'I would say that the service over the last 2 or 3 months has been, or was something less than desirable.'

At Tr. 294 the same witness said that he believed that Mr. Harris had more trouble in the last 90 days that he had in a total of 26 years using the telephone company service."

According to Pacific:

"ICS did not suffer any service outages for which it is entitled to relief before this Commission.

"Before one can accurately analyze the levels of service¹ being provided to ICS by Pacific, it is necessary to have clearly in mind the volume of calls received by ICS each day. Mr. Lee Harris estimated that ICS received and in turn completes approximately 1500-2000 calls per day. They also receive a sizeable number of calls which cannot be completed for one reason or another (Tr. 141-143).

¹ ICS expended a great effort in attempting to get Mr. Cunningham to indict the service being provided to ICS. Mr. Cunningham has had no experience in the maintenance and repair of such circuits. (Tr. 336.)

"Pacific introduced evidence (Exhibit 16) compiled from its records to show that ICS reported 48 cases of troubles on its 33 lines during the period of June 15-October 1, 1972, or slightly less than 1-1/2 reports per line over the three and one-half month period. This contrasts with a range of 0.16 reports per line (Customer 9) to 1.50 reports per line (Customer 10) as shown on Exhibit 19.

"An effort was made to discredit Exhibit 16 by comparing it with Exhibits 1 and 11, and attempting to show that many of the entries on those exhibits did not appear on Exhibit 16. Such a comparison cannot be accurately made because many of the entries on Exhibits 1 and 11 are purely informative (e.g., Exhibit 11: 6-22-72: Van Nuys line back in service at 8:40 A.M.), while others do not show whether the information was ever reported to repair (e.g., Exhibit 11: 8-15-72 Wats line not working early afternoon). Generally, those items on Exhibits 1 and 11 which show as being reported to repair do appear somewhere on Exhibit 16.

"A careful analysis of Exhibits 1, 11 and 16 will show that many of the entries are of a type expected to occur considering the volume of calls being received by ICS. This is not, however, to say that no trouble existed during this period or that no action was taken by Pacific. Mr. Barksdale's testimony (Tr. 157-169) indicated the steps which Pacific has taken to insure the ICS receiving good service.

"In discussing the alleged 'dumping of calls' Mr. Barksdale said:

'THE WITNESS: This is probably one of the most difficult cases of trouble for the repair department to isolate.

'In looking for the trouble in trying to ascertain exactly where the trouble is, I had the switching department check every piece of equipment associated with ICS's lines. No apparent trouble was found. They also went to the extent of checking incoming trunk groups from other offices to make certain that we didn't have any interoffice connection failures. On every exposed wire or connection in the central office there was, special protection was placed. This special protection was a matter of covering the exposed contacts with plastic.

'We had a repairman go out and look for possible trouble; and on one of these visits on September 19, to be specific, a PBX repairman and a repair foreman looking for trouble thought they found the trouble, and the trouble they thought they found was an insufficient ground termination at ICS.

'All right. The problem of insufficient ground, what happens is, he has on his 971-numbers equipment, [w] that we call a 400D Key Telephone Unit, and what happens, the peculiarity, I should say, of this equipment is that if it does not have sufficient ground, all types of things happen: one in particular is that one line will ring in along with any number of additional lines will ring in. They start to ring from automatic ringing at the place of business. After a little discussion and determination and checking with our staff people, we found that this ground, this was the trouble, and the ground was reterminated not only at the house cable terminal but also at the power supply units that feed the switchboard and the 584B panel in which the 400D key telephone units are located.'

The 'bad ground' condition which Mr. Barksdale refers to above created a 'phantom ringing condition' that would give the appearance that valid calls were dropping off after they were answered when in fact no call was actually on the line (Tr. 273-275). ICS would have continued to receive all of its actual calls while this condition existed.

"After this condition was corrected, Pacific initiated test calls to ICS's location from various locations in the Southern California region. The results of these tests which are shown on Exhibit 17 are uncontroverted in the record. Out of 489 calls made (163 to each of the three 971-number groups) only five cases of trouble were experienced.

"Pacific took transmission measurements on all of ICS's numbers. The results of those tests are shown on Exhibit 18. The three lines which were slightly out of limits were corrected. No problem would have been caused by this condition (Tr. 283).

"In addition, there was considerable testimony regarding alleged trouble on the two lines which terminate in the Motorola computer. The testimony of Pacific's witness, Edward Hitchcock (Tr. 169-198), and ICS's witness, John Ade (Tr. 223-262), are most illuminating on this point. Most of the problems apparently were caused by compatibility problems between the telephone circuit and the Motorola computer. In Mr. Ade's estimation the majority of such problems were due to the computer (Tr. 252).

"The problems which Mr. Ade attributed to the computer lasted for long periods of time. In response to Mr. Harris' question, Mr. Ade responded as follows (Tr. 253):

'A well, some of them, like the noise problem which initially attributed to the electric and telephone company, later turned out to be our problem, was not correct for several days.

'Most of the problems are corrected initially after you call because you want immediate satisfaction, and the telephones have to work right then; and that is generally what has happened on all of the calls. Some of them were reoccurring and particularly the level problem reoccurred even though we made an adjustment of modification, it turned up later. This, this was not satisfactory, and the level problem, before we really got it solved, took three weeks from the initial inquiry. (emphasis added)

"The above reference to the 'computer problems' is not an attempt to place all the blame for the problems which may have existed on Motorola. It is simply an honest effort to indicate that such problems can exist at the beginning of any new endeavor which involves many parties. This is especially true if ICS's attitude continues to be that expressed by Mr. Homer Harris (Tr.7):

'In the view of Industrial it is none of defendant's business what the complainant does with the defendant's circuit, so long as the use of said circuits are technically used properly.

'The complainant is a telephone corporation, just like the defendant. The defendant is putting its nose in where it's not wanted, is not needed, nor where it has any legal right to be.'

Such an attitude is self-defeating where technical coordination is critical to the success of a project. Each party does have a legitimate need for technical information on how the other's system works. Mr. Ade and Mr. Hitchcock might have been able to solve many of these problems had such an exchange of information taken place before the telephone circuits were installed."

III. Should telephone service to be used in connection with ICS's one-way paging business be provided under contract or tariff? If by contract, then are the existing contracts between ICS and Pacific sufficient?

According to ICS:

"As to the need of some additional contract so that the customers of the Defendant can be interconnected to those facilities of Complainant, this is so much poppycock!

"At Tr. Page 37, Counsel for Defendant said,

'Pacific is prepared to stipulate in this case as to the order of events that happened and the mistakes that were made.'

The only remote possibility of any additional contract being needed could very simply be spelled out in one or the other already executed contracts (Exhibits 5 or 6) submitted into this case along those lines that were suggested by the Complainant, namely,

'The radiotelephone utility further agrees to:

1. Request its customers to use touch calling devices supplied by the wireline carriers, Pacific Telephone & Telegraph Co.;
2. That the customer pay to the wireline company its regular tariff prices whether or not separate appliances are required;
3. The condition above subject to prompt installation (10 working days or less) by the wireline company, Pacific Telephone & Telegraph Co.;

4. In the event the radiotelephone utility is, and its customer is subjected to the non-compliance with 3. supra, by the wireline company, Pacific Telephone & Telegraph Co., the radiotelephone utility will install only that equipment that fully meets with the specifications of the Bell System, and in no way damage or otherwise interfere with the wireline carrier, Pacific Telephone & Telegraph Co. in the discharge of its obligation to provide good service to the public.'

Instead of a simple addendum, the Defendant proposes a unilaterally adopted contract numbering 13 pages and which was presented to the Complainant on July 25, 1972 on the basis that it must be signed. See Tr. Page 86 in which the Defendant's witness said,

'To the best of my recollection, I said that unless we could arrive at an agreement that I could not continue to provide these facilities.'

At Page 78 the same official and witness admitted, as a layman he did not understand why any contract was needed relating to one-way paging service.

* * *

" Exhibits 5 and 6 clearly point out that the Complainant will protect the facilities of the Defendant and the Defendant will protect the facilities of the Complainant. The signing of some additional contract in this regard is nothing but hokus-pokus and a delaying tactic used by the Defendant.^{1/}"

"^{1/} Please observe original contract signed by the Complainant dated June 5, 1967 (Exhibit 5), but not returned until October 18, 1967 after being executed by the Defendant. This has been called by some at the wireline company as 'expeditious handling.'"

According to Pacific:

"Telephone service to be used in connection with ICS's One-Way Operation must be provided by contract rather than tariff."

"Telephone service can be provided in only two ways, either by contract or under tariff. If Pacific were to provide telephone service to ICS under tariff, then all of the conditions in its tariffs would apply to the service including provisions such as those which prohibit 'resale of service' and those which require utility-provided protective connective arrangements for interconnection. Those provisions would be restrictive on ICS's operations and would be contrary to Decision No. 71291. To avoid such undesirable consequences, the service must be provided under contract, at applicable tariff rates, but without many of the otherwise restrictive provisions of the tariffs.

"The next question then is whether the existing contracts between ICS and Pacific are sufficient to cover the services in question. The terms of Exhibit 5, the contract covering the offering of private line channels, are sufficiently broad enough to apply whether the private lines are to be used in connection with either one-way paging or two-way mobile service. The same cannot be said of Exhibit 6, however. The terms of that contract clearly cover only the telephone circuits to be used in connection with ICS's two-way mobile operation. For example, looking at but only three of the many provisions in the contract:

1. Traffic Interchanged

The parties hereto shall interchange message telephone traffic (both local and foreign exchange and toll as hereinafter defined) between the system operated by Company and the system operated by Carrier upon the terms and conditions herein stated.

The traffic interchanged hereunder at the point of connection hereinafter designated shall be calls to and from mobile units within the service area of Carrier's base station which serves the area in which the point of connection is located. Mobile units as used herein include duly licensed rural subscriber stations and temporary fixed stations. (emphasis added)

6. Carrier's System

Carrier's system is a two-way communications system consisting of a base station or stations, a control point and mobile units. The components of Carrier's system are set out in Carrier's radio station license. (emphasis added)

7. Facilities

These connecting circuits shall be used only for inter-connected calls between Carrier's mobile units and the telephones served by the exchanges and toll facilities of Company and its connecting companies, and for no other purpose.

It was for this reason that Pacific provided ICS with a copy of Exhibit 7 as a proposal covering the furnishing of telephone circuits to be used for the one-way paging operation. Exhibits 6 and 7, and for that matter 5 also, could be combined into one document if that is ICS's objection. Pacific would be willing to negotiate with ICS on just such a change."

IV. Are there any "Northern California Power" antitrust considerations in this case? [Northern California Power Agency v Public Utilities Commission (1971) 5 C 3d 370.]

According to ICS:

"The Commission, in its wisdom, has chosen to regulate the radiotelephone industry and has done so on its own motion. Even though the radiotelephone utility industry, along with the Complaining party in this case, is actually being treated by the wireline companies as a customer, it is, in fact, a telephone utility just like the Defendant. This is not a case of a customer complaining about service and asking for damages. This is a case where one utility has been coerced and interfered with by a much larger utility in which the larger utility had a monopoly position in providing service for a smaller utility.

"At Page 11 of Exhibit 8 (a copy of Decision 71291),

'Pacific argues that each utility should own and maintain its own system free from interference by the other utility and each with undivided responsibility and quality of service it provides.'

The service that has been provided by the Complainant in the period talked about has been subjected to the interference that has been enumerated by the Complainant in this case."

According to Pacific:

"There are no 'Northern California Power' Anti-Trust implications in this case.

"Pacific has taken no action in this case which raises any anti-trust implications. The delays in installing the telephone service in question were the result of an unfortunate, but certainly excusable, misunderstanding on one individual's part of the status of ICS as a radio-telephone utility. Pacific did not demand that ICS sign a contract before providing the service in question. In fact, it has provided more than one service to ICS to be used in connection with the one-way paging operation. Providing the service at tariff

rates under contract, rather than under tariff, fosters competition rather than inhibiting it. If the telephone service were to be provided by tariff, all of the provisions of the tariff would apply and could have a restrictive effect on ICS's ability to operate its business. Finally, any service problems which may have existed were simply that and nothing more. Pacific has taken prompt action to correct those problems which may have existed. Its technical staff has, and will continue to, cooperate with ICS and the Motorola technicians in solving any technical problems which have or may develop in implementing ICS's new computerized paging operation."

V. Does the Commission have jurisdiction to award damages?

As to the request by ICS for damages of \$200 per day, ICS argues as follows:

"The Commission has, through Decision 71291, said that if a radiotelephone utility violates the terms of said decision in certain respects it will be subject and liable 'for each and every forbidden inter-connection.' See Page 22 of said decision and Page 3 of Appendix attached hereto.

"It has been, and now is the position of the Complainant in this case that the Defendant has grossly violated the terms and conditions of Decision 71291 and that, even though the Defendant in that case agreed to 'provide the radiotelephone utilities with a quality circuit' it has done the contrary.

"The Complainant argues herewith that if the Commission causes the Complainant to pay to the Defendant \$100 for certain violations each day such violations occur, then certainly the Commission has authority to grant the Complainant gratuities to be paid by the Defendant because of service that it has not provided or that has been so poor that the Complainant can not properly discharge its duties to the public in rendering good and reliable service."

Pacific argues that:

"The Commission has no jurisdiction to award damages for lost business."

"The Commission has repeatedly held that it has no jurisdiction to award damages for alleged loss of business (W. Schumacher v. P.T. & T. Co., Decision 69025 (1965) 64 Cal. P.U.C. 295). Its jurisdiction is limited exclusively to possible adjustments of charges for the services rendered. Based on the record in this case, the complainant is not entitled to such relief."

Discussion

We have quoted extensively from the briefs to show the rationale for our treating this matter as a complaint which, in effect, accuses Pacific of deliberately providing poor service in violation of antitrust statutes.

At the first day of hearing, the parties stipulated that General Order No. 133, Rules Governing Telephone Service, effective October 1, 1972, does not apply to this matter. There are, therefore, no established guidelines by which we can judge what is or is not good telephone service.

As to Issue I, there is no question that there was a delay in installing telephone service to ICS. We must decide if the delay was deliberate or "resulted simply from a misunderstanding on the part of one of Pacific's employees as to the status of ICS as a radio-telephone utility," plus a "bad cable pair".

The employee referred to in the above quotation is Mr. Jerry Mattson. Mr. Mattson has been employed by Pacific for 12 years. For the past 3-1/2 years he has been at the Compton Office. Previous to April 1972, he was in charge of negotiations^{1/} with, and ordering facilities for, the eight RTU's in Los Angeles who would share the use of the Motorola Computer which went into operation on or about June 15, 1972. Mr. Mattson was informed by his marketing staff that an interface was required on a circuit being ordered by another RTU. Because he believed that the circuit ordered by ICS was of the same type exchange service as that ordered by the other RTU, he told ICS that a coupler was necessary on its circuits. Mr. Mattson testified that until the morning of August 22, 1972 he was not aware that there were two contracts^{2/} in effect between ICS and Pacific.

Pacific admits that Mr. Mattson, a management level employee during the time he was in charge of negotiations for providing Pacific's services to RTU's, had never heard of the special status conferred upon RTU's by Decision No. 71291. According to Pacific, it was a combination of a bad cable pair and Mr. Mattson's acting "on his own, and in a sincere but erroneous attempt to be helpful..." that delayed the final installation date until July 27, 1972.

The responsibility for Mr. Mattson's apparent unawareness of the ICS - Pacific contract rests with Pacific. Its failure to inform its employee of the existence of the contract caused the delay in installing the wire line facility for ICS.

^{1/} As such, he was Pacific's local agent.

^{2/} Resulting from Decision No. 71291 dated September 20, 1966.

Regarding Issue II, the record clearly reveals that any volume user of telephone service can expect some trouble.

In an effort to determine whether or not the service supplied to ICS was different than that supplied to other large users of service within the same exchange, the parties agreed to the filing of late-filed Exhibit 19. Exhibit 19 contains the trouble reports for the 10 largest users of telephone service in the Pleasant Central Office for the period June 15, 1972 to October 1, 1972.

Our analysis of Exhibit 19 shows the average number of lines per customer is 33, the same as for No. 4, Industrial Communications Systems, Inc. No. 4 ranked fourth in number of lines with three larger customers having 45, 46, and 75 lines each. The average number of troubles reported by No. 4 is 48, considerably more than the average number of 28. The number of trouble reports per line ranged from .167 to 1.500 with No. 4 averaging 1.455 per line. There is no significant correlation between number of lines and average number of trouble reports per line.

ICS made 48 reports of trouble during the period June 15, 1972 and October 1, 1972, of which 42 percent were located and repaired. No trouble was located by the dispatched repairman or by testing the line in 29 percent. For the other nine customers between 33 percent and 80 percent of reported troubles were repaired.

Pacific's Exhibit 16 indicates the number of lines in the number group, whereas Exhibit 19 provides only number of lines so that data is not readily comparable. Exhibit 19 notes type of trouble, i.e., specific defective or broken equipment repaired or replaced, whereas Exhibit 16 gives a more general description making evaluation and comparison of magnitude of troubles difficult.

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On this record, we cannot find that the service supplied to ICS was of less quality than that supplied to comparable users in the same exchange.

Issue III is easily resolved. Pacific's service used in connection with ICS's one-way paging business should be provided by contract. This can be done by simply changing the description of ICS's system from that of a two-way communication system to a communication system providing one-way and two-way communications and making any required changes in terminology to conform to the system's use of both one-way and two-way communications. The parties should negotiate such changes in their existing contracts and file such changes in accordance with General Order No. 96-A.

We cannot agree with Pacific that "There are no 'Northern California Power' Anti-Trust implications in this case." (Issue IV.) It is obvious that, when two entities are in competition for a one-way signaling market, withholding a required service from a competitor is an anticompetitive act.

Issue V

Pacific's Tariff Schedule 36-T is the limitation of liability tariff which clearly points out that monetary damages, up to \$10,000 in the case of Pacific, must be sought in some other forum.

It is apparent that ICS is fully aware of the provisions of Schedule No. 36-T as it bases its claim for "gratuities" on a novel interpretation of Decision No. 71291.

ICS, in arguing what Decision No. 71291 meant regarding the interconnection of foreign exchange or local exchange circuit, quoted the decision as holding that a utility may be liable "for each and every forbidden interconnection." In order to understand the thrust of the decision, it is necessary to quote the whole sentence in which the phrase occurs: "Violation of the prohibition against interconnection will void the option of the RTU to provide its own interconnection equipment, and will cause the RTU to be liable for a charge by Pacific of \$100 for each and every forbidden interconnection." ICS further argues that the decision means that the \$100 runs for each day such violations occur.

It should be plain that the \$100 is not a fine or an award of damages but is a cost related activity--a payment to the telephone company for finding and removing the forbidden interconnection. It is obviously a one-time charge in the nature of liquidated damages related to a specific interconnection. ICS's claim, that if Pacific can collect monies from an RTU for certain types of behavior, then in fairness an RTU should be able to collect damages from Pacific for other types of behavior, must be rejected. We hold that we have no jurisdiction to award damages for alleged loss of business.

The "miscellaneous considerations" discussed in Pacific's brief transcend the scope of the examiner's grant of enlargement of the case and thus will not be decided in this matter.

Findings

1. ICS and Pacific are vying for a portion of the one-way paging market in the Los Angeles area.
2. In order to make its paging system operate, ICS must obtain telephone circuits from Pacific.
3. On or about June 20, 1972 ICS ordered a telephone line and an off-premise extension from Pacific.

4. The installation was not completed until July 27, 1972.
5. The delay in installation was caused by Pacific.
6. Volume users of telephone service must expect some trouble.
7. The quality of service supplied to ICS is not less than that supplied to comparable users within the same exchange.
8. Existing contracts should be modified to encompass both two-way and one-way communications service.
9. ICS's interpretation of Decision No. 71291 regarding "gratuities" is not correct.

Conclusions

1. We have no jurisdiction to award damages for alleged loss of business, regardless of how such alleged loss arose.
2. ICS and Pacific should file changes to their existing contracts which recognize that ICS is supplying both two-way and one-way signaling.

O R D E R

IT IS ORDERED that Industrial Communications Systems, Inc. and The Pacific Telephone and Telegraph Company shall file within

ninety days of the effective date of this order and in conformity with the provisions of General Order No. 96-A, contracts which recognize that Industrial Communications Systems, Inc. is supplying two-way and one-way communications to members of the public.

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

Dated at San Francisco, California, this 28th day of AUGUST, 1973.

Verma L. Stearns
President
William Synnott

[Signature]
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.

Labstam

[Signature], Commissioner.