

ORIGINAL

Decision No. 82412

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the promulgation of a General Order providing for the procedures and standards to be followed for the interconnection of customer-provided communications terminal equipment to the telecommunications facilities of intrastate telephone utilities.

Case No. 9625
(Filed October 24, 1973)

(Appearances are listed in Appendix A)

INTERIM OPINION AND ORDER

On October 24, 1973, this Commission on its own motion instituted an investigation into the promulgation of a General Order providing for the procedures and standards to be followed for the interconnection of customer-provided communication equipment to the telephone utility network.

Recognizing that the issues to be resolved were so complex that prolonged hearings may be required before the adoption of a General Order, the Commission, on October 30, 1973, issued Decision No. 82075 to consider interim arrangements. This decision provided for respondents and/or interested parties to file within 15 days from the decision date written proposals for the Commission's consideration. It also recognized the need for consideration of the possible economic impact of interconnection during the investigation.

On November 5, 1973, notice of hearing set for November 19, 1973 was sent to all respondents and to all interested parties pursuant to Decision No. 82075. Hearing was held on November 19, 1973 before Commissioner J. P. Vukasin, Jr., and Examiner Burt E. Banks. In an effort to conserve hearing time and avoid duplication of effort and argument, the presiding Commissioner suggested that parties with a common interest select a spokesman

for their group or industry. For this purpose the following categories were identified as:

Group 1 - Those parties interested in the utilization of customer-provided equipment.

Group 2 - The telephone utilities.

Group 3 - The Commission staff.

Group 4 - Proposed certification companies.

Position of Parties

Group 1 - Those interested in the utilization of customer-provided equipment.

Mr. Joseph M. Kittner, appearing for Computer & Business Equipment Manufacturers Association (CBEMA), was selected as spokesman for this group. It is their position that an interim program should not preclude the use of customer-provided equipment in accordance with the Carterfone decision (13 FCC 2d 420 (1968)) and that any interim decision and program should permit the direct connection of customer-provided equipment to the communication network. During the interim the basic technical standards to be met would be arrived at cooperatively by the Commission staff and the interested parties. In arguing this position Mr. Kittner stressed the importance of maintaining a strong national telephone network.

This group also expressed concern that any interim policy should take into consideration and avoid any conceptual federal-state conflict problem.

Group 2 - The telephone utilities.

Mr. Milton J. Morris, appearing for The Pacific Telephone and Telegraph Company (PT&T) spoke for Group 2.

The basic position of the telephone utilities is that utility-provided connecting arrangements are needed to be used in conjunction with the connection of customer-provided equipment during the pendency of the OII to assure the safety and protection of the network. Mr. Morris stated that there are unavoidable costs

associated with providing connecting arrangements necessary to protect the telephone system. He stated that PT&T estimates that in 1974 its annual revenues for protective connecting arrangements will total approximately \$3,941,679, including \$1,294,928 of installation charges.

The telephone utilities argue that these costs are associated with providing network protection and thus should be borne by the users of the equipment that makes such network protection necessary, and not by the general ratepayer.

Group 3 - The Commission staff.

Mr. Rufus G. Thayer represented the Commission staff.

The staff favors direct interconnection of customer-provided equipment to the telecommunication network subject to the assurances of network safety and reliability of service. The assurances of safety and protection of the network would be provided by independent qualified third parties in conformance with the standards section of the proposed General Order.

Group 4 - Proposed Certification Companies.

Mr. George A. Easter, appearing for Communication Certification Laboratory (CCL) spoke for this group.

Mr. Easter stated that they favor a certification program during the interim and support the basic recommendations of the Commission staff. They claim to be ready and capable of implementing a complete certification program.

The following persons made statements of position in addition to that of the four groups.

Mr. Robert Feiner, representing Phonetele Inc., was of the opinion that because of an appeal to the California Supreme Court which is pending regarding Phonetele, the OII had no application to his company, but that he may desire to take a position at some future date.

Mr. Gary M. Rutenberg, appearing for American Phone Systems, Inc. and Bucsom Systems Inc., stated that his clients supported the interim certification program of CCL and that such a program should be adopted.

Mr. David L. Hill, appearing for North American Telephone Association, supported the Commission staff proposal.

Mr. David H. Anderson, appearing for Phone-Mate Inc., supported the Commission staff proposal with some accommodation for direct interconnection installation by the customer.

Mr. David T. Artson, appearing for Telephone Answering Services of California Inc., urged that any interim order authorizing direct connection of telephone answering devices should allow similar direct connection to the subscribers' line on the premises of the telephone answering services.

Mr. Robert A. Carr, appearing for Telephone Equipment Corporation, urged the Commission to adopt those procedures and standards set forth in the proposed General Order as the means for providing reasonable quality control.

Mr. Donald J. Duckett, appearing for General Telephone Company of California, stated that General agrees with the telephone utility industry recommendation. He further indicated that if the Commission intends to alleviate alleged economic hardship on the providers of customer-owned equipment, which arises as a result of the charges for the utility-provided connecting arrangements, it has the alternative of making charges conditional subject to final action in this case.

Discussion

The basic issue before us at this point in the case is whether the tariffs of the telephone utilities which are now on file with the Commission should be modified pending the issuance of final orders herein, in order to allow some form of direct interconnection of customer-provided equipment to the telecommunication network, or to accommodate the certification of such equipment for

interconnection, prior to the thorough investigation we believe to be necessary in order to explore fully the technical aspects of this problem and the potential economic impact upon telephone subscribers who will not be in a position to benefit from customer-provided equipment.

We must confess that we find it extremely difficult, if not impossible, to find an interim solution which accommodates completely the interests of all parties represented in a manner assuring the protection of the public interest. The complexity and scope of these problems, which generated our original desire for a comprehensive investigation in this matter, appears to defy the most well-intentioned efforts to achieve interim arrangements which are satisfactory to all. Those seeking the right to connect their equipment directly to the telephone communications network argue that the present requirement of a utility coupling or interconnection device works a hardship upon them because it has the effect of raising the price of their equipment. Yet, if we were to sweep aside that requirement now in order to cure such alleged harm, we would be prejudging some of the basic issues which caused us to commit our resources to this in-depth investigation. Serious technical and economic criticisms have been leveled at the proposed General Order attached to our Order Instituting Investigation. The future quality and technical integrity of the telephone network may be at stake in this and other similar regulatory proceedings considering these problems. Also important are the economic effects which widespread incursions of nonutility equipment could have upon the rates of the small telephone user, who enjoys significant cost subsidies under existing rate structures. It would be unwise for this Commission, if not irresponsible, to ignore such considerations and thereby to prejudge the final result in order to accommodate what are essentially short-term concerns.

On the other hand, while the tariff provisions presently on file are practically identical to those filed with the Federal Communications Commission in response to the FCC's Carterfone decision, such provisions may not themselves be found to be an appropriate solution when this case is concluded. As the previous orders in this investigation have indicated, the present arrangements have not proved satisfactory to deal with the many individual problems which arise in this developing area of regulation.

Accordingly, we have concluded that the public interest will best be protected during the pendency of this investigation by allowing the present telephone utility tariff provisions to remain in effect, but at the same time to require the telephone utilities to set up separate accounting procedures for all charges collected by them for protective connecting arrangements or equipment which they supply. Such charges shall be made subject to refund, in order that such action may be taken if found appropriate at the conclusion of the investigation. We believe that this interim arrangement will protect the legitimate short-term interests of the parties in this case and the parties in other cases regarding customer-provided equipment currently pending before the Commission.

Regarding such pending matters, it is our belief that it is pointless to continue any separate consideration of such matters, inasmuch as the issues which would have to be resolved are inextricably bound up in the general investigation itself. It is appropriate, therefore, to consolidate all such cases, which are listed in Appendix B attached hereto, into this investigation for resolution in a manner consistent with the final results thereof.

We note specifically that among such cases to be consolidated are those involving Phonetele, Inc. (Cases Nos. 9177 and 9265). An appeal of an Interim Opinion by the Commission in those cases is presently pending before the California Supreme Court; however, that Interim Opinion makes clear that it was issued pending further orders in the proceedings and was not by any means a final

disposition of the basic issues involved in those cases, which are still before this Commission. The issues remaining undecided in Phonetele are essentially identical to those which are to be explored in this investigation; therefore, it is appropriate to include the Phonetele cases in this consolidation order. Such consolidation shall not, of course, have any effect upon the jurisdiction of the Supreme Court to review those orders presently on appeal, nor upon Commission orders staying such orders pending the Court's review.

Findings

1. It would be premature to order interim certification arrangements during the pendency of this investigation.
2. Present tariffs relating to the interconnection of customer-provided equipment should be continued in effect pending final orders herein, in order to assure adequate protection of the telephone network.
3. Any charges for coupling or other interconnection devices or arrangements collected by respondents pursuant to tariff should be accounted for separately and be made subject to refund.
4. Respondents should give their highest priority to providing adequate coupling arrangements or equipment for all customer-provided terminal equipment which is presently or may reasonably be anticipated to be on the market in this State.
5. It is necessary and desirable in the interests of orderly administration to consolidate all Commission cases involving basic interconnection issues into this investigation.

IT IS ORDERED that:

1. All telephone utility tariffs regarding the interconnection to the network of customer-provided equipment which are presently on file with the Commission shall be continued in effect pending final orders in this investigation.

2. All charges for protective connecting arrangements or equipment collected by the respondent telephone utilities pursuant to such tariffs shall be recorded and kept in separate accounts according to customer and shall be subject to refund.

3. Respondent telephone utilities shall proceed in a diligent manner to make available the necessary protective connecting arrangements or equipment for all types of customer-provided terminal equipment which may reasonably be expected to be offered for interconnection to the telephone network.

4. Any customer who desires to utilize terminal equipment for which appropriate protective arrangements are not offered by filed tariffs may submit a written request therefor to the appropriate utility. If such arrangements have not been provided within thirty days after such request, the customer may temporarily connect his terminal equipment directly to the telephone network after having certified such equipment to the Commission in the manner provided for in the proposed General Order, until the utility provides protective equipment under its filed tariffs.

5. The cases listed in Appendix B attached hereto are hereby consolidated into this investigation.

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

Dated at San Francisco, California, this 29th day of JANUARY, 1974.

Vernon L. Sturgeon
President
William Synovitz

[Signature]
[Signature]
Commissioners

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

APPENDIX A

LIST OF APPEARANCES

Respondents: James A. DeBois, Milton J. Morris, and Robert M. Ralls, Attorneys at Law, for The Pacific Telephone and Telegraph Company; Jeanne W. Davis, for Richard D. Crowe, Vice President, Continental Telephone Company of California; and A. M. Hart and Donald J. Duckett, by Donald J. Duckett, Attorney at Law, for General Telephone Company of California.

Interested Parties: Neal C. Hasbrook, for California Independent Telephone Association; Meserve, Mumper & Hughes, by David H. Anderson, for Phone-Mate, Inc.; David T. Artson, for Telephone Answering Services of California, Inc.; Robert A. Carr, for Telephone Equipment Corp.; George A. Easter, Attorney at Law (Utah), for Communication Certification Laboratory; Robert Feiner, for Phonetele, Inc.; Carl B. Hilliard, by David Eilfort, Attorney at Law, for DASA Corporation, Concept 1, Inc., and Astrodata, Inc.; McKenna, Wilkinson & Kittner, by Joseph M. Kittner, Attorney at Law (North Carolina-D.C.), for Computer & Business Equipment Manufacturers Association (CBEMA); Richard S. Kopf, Attorney at Law, for Southern Pacific Communications Company and Southern Pacific Transportation Company; H. V. McNulty, for Telephonic Equipment Corporation; Jay H. Stoffer, for Delphi Communications Corporation; F. Sherwood Lewis, Attorney at Law (North Carolina), for Control Data Corporation and its subsidiary, The Service Bureau Corp.; Robert W. Russell, for the City of Los Angeles; Keller & Heckman, by David L. Hill, Attorney at Law (District of Columbia), for North American Telephone Association; Tannenbaum, Kaplan, Neiman & Sieroty, by Gary Mitchell Ruttenberg, Attorney at Law, for American Phone Systems, Inc. and Buscom Systems, Inc.; McCutchen, Doyle, Brown & Enersen, by William W. Schwarzer and Boak Christensen, Attorneys at Law, for International Business Machine Corporation; Elliott Werczler, for American Telephonics; and Dean E. Wilson, for USE Labs.

Commission Staff: Rufus G. Thayer, Attorney at Law, and Paul Popenoe.

APPENDIX B

A-Head Products v The Pacific Telephone and Telegraph Company; Case No. 9269, Decision No. 81123 decided March 13, 1973; petition for rehearing pending.

Com-u-trol Corporation v The General Telephone Company of California; Case No. 9323, Decision No. 80972 decided January 23, 1973 and Decision No. 81141 decided March 13, 1973; final decision pending.

Telephonic Equipment Corporation v The Pacific Telephone and Telegraph Company; Case No. 9271, Decision No. 81339 decided May 8, 1973, petition for rehearing pending.

Electronic Concepts Laboratories v The General Telephone Company of California; Case No. 9456, Decision No. 81403 (denying temporary relief), matter awaiting hearing.

American Telephonics v The Pacific Telephone and Telegraph Company; Case No. 9360, matter submitted for decision.

American Phone Systems v The Pacific Telephone and Telegraph Company; Case No. 9600, matter awaiting hearing.

Astrodata v The Pacific Telephone and Telegraph Company; Case No. 9610, matter awaiting hearing.

Phonetele v General Telephone Company of California (Case No. 9177) and Phonetele v The Pacific Telephone and Telegraph Company (Case No. 9265); Decisions Nos. 80812 (December 12, 1972) and 80891 (December 21, 1972); petition for writ of review pending in the Supreme Court.

Case No. 9637, OSI (Advice Letter 11178).

Case No. 9652, Arden Fair Theaters v PT&T.