

ORIGINAL

Decision No. 85451

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SYLVIA C. TEITELBAUM,

Complainant,

vs.

GENERAL TELEPHONE COMPANY  
OF CALIFORNIA,

Defendant.

Case No. 9866  
(Filed January 27, 1975)

Sylvia C. Teitelbaum, for herself,  
complainant.  
Mary L. Sullivan, Attorney at Law,  
for defendant.

O P I N I O N

Complainant, Sylvia C. Teitelbaum, seeks an order requiring defendant, General Telephone Company of California (General), to cease and desist monitoring any and all telephone calls, with or without a beeping tone, without first obtaining prior approval.

Public hearing was held before Examiner Johnson at Los Angeles on September 29, 1975, and the matter was submitted on October 17, 1975 upon receipt of transcript.

Complainant's Position

Complainant, testifying on her own behalf, presented as exhibits quotes from several articles appearing in the Los Angeles Times indicating that such agencies as the National Security Agency monitor overseas calls of some U.S. citizens

and that a number of congressmen believe such monitoring to be a clear violation of the First and Fourth Amendments to the Constitution of the United States. Complainant testified that in her opinion the situations described in these articles were analogous to General's practice of administrative monitoring and that such monitoring violates the First Amendment guaranteeing freedom of speech and the Fourth Amendment which guarantees against unreasonable search and seizure.

Complainant further testified that on General's system the beep tone is indistinguishable from other interference noises and, therefore, cannot be classified as "an appropriate notice required as a reasonable condition of service in the public interest in promoting the privacy of communication. (67 Cal PUC 528.)"

Were the beep tone to serve as appropriate notice, according to complainant's testimony, it would defeat the purpose of administrative monitoring as a training aid because General's failure to identify the employees being monitored would negate the benefits of the monitoring.

Complainant further alleged that this Commission does not enforce the provisions of Public Utilities Code Section 7906 which states "The Public Utilities Commission shall regularly make inquiry of every telephone corporation under its jurisdiction to determine whether or not such corporation is taking adequate steps to insure the privacy of communications over such a corporation's telephone communication system."

Defendant's Position

Defendant presented exhibits and testimony through one of its service observing supervisors and by its Santa Monica Division manager. This testimony indicated that:

1. General's service observing personnel, located at 100 Wilshire Boulevard, engage in administrative monitoring as a valuable tool in evaluating the quality of service being provided its customers.

2. Once the remote observing equipment has been activated by dialing an appropriate number, a security code is available which prevents another party from locking into the observing equipment.

3. Only calls between customers and General's customer representatives can be monitored by the observing equipment.

4. Approximately 100 calls a month are recorded, on a random selection basis, at each of General's 32 business offices.

5. The tapes from these recorded calls are scored on a form known as an observer's record (Exhibit 7), the results are tabulated monthly, and each office and the company, as a whole, are rated on performance with neither the caller nor the customer representative being identified.

6. Employees develop habits in dealing with the public and, therefore, react the same whether or not they are being monitored.

7. An abort button is available which permits the customer representative to disconnect the recording equipment should the customer evidence displeasure at having his call monitored.

8. The abort procedure has only had to be used for between one and two percent of the calls and this is the first time a formal complaint has been filed on this matter.

9. When PBX rings the customer representative, the observing equipment automatically sends out a beep tone serving notice that the conversation is being recorded. These beep tones are checked annually to insure proper performance.

Discussion

The news items (Exhibits 1 to 4), which complainant alleges indicates that wiretapping is a widespread practice that violates the First and Fourth Amendments to the Constitution, relate to the activities of the Central Intelligence Agency and complaints of illegal wiretapping received by the American Telephone and Telegraph Company. The wiretapping is described in those articles as being secretive and involving the monitoring of calls between individuals who are not associated with those who are monitoring the calls. Such monitoring contrasts sharply with the administrative monitoring complained of in this matter which, the record shows, is limited to calls selected on a random basis between defendant's customers and its customer representatives. The record further shows that the majority of these calls are not monitored per se but are recorded for future listening and evaluation and neither the customer nor customer representative are identified.

Section 631 of the California Penal Code prohibits unauthorized connection to telephonic equipment. Section 631(b), however, provides an exemption "... to any public utility engaged in the business of providing communications services and facilities, or to the officers, employees or agents thereof, where the acts otherwise prohibited herein are for the purpose of construction, maintenance, conduct or operation of the service

and facilities of such public utility..." Such a provision can only be construed as permitting monitoring of calls under certain conditions. In Decision No. 73146 dated October 3, 1967 in Case No. 7915, our investigation into the service offering of telephone monitoring equipment under filed tariffs by telephone corporations, we excluded from the term monitoring the concepts of "wiretapping and eavesdropping" forbidden by the Penal Code as interceptions of confidential communications and monitoring by law enforcement and national defense agencies when permitted under enabling laws and legal safeguards. The purpose of such exclusion was to avoid jurisdictional conflicts and resulted in the permissive utilization of administrative monitoring to provide the utility with an office index measuring overall quality of service afforded the subscriber. We further found in Decision No. 73146:

"15. It is a reasonable condition of service, and it is in the public interest in promoting the privacy of communication to require that all monitoring equipment (as herein defined), which is used to monitor any communication over any part of a public utility network, shall give appropriate notice of monitoring to all parties to such communication unless such monitoring is essential to the actual operation, maintenance, and construction of the communication circuitry or to national defense or to law enforcement or to the health and safety of the public and individuals"; and

"16. Such notice of monitoring by recording of communications should be given by the 'beep' tone prescribed by the Federal Communications Commission or by marking telephone instruments from which communications may be recorded as hereinafter prescribed."

This record contains no basis for reversing or modifying those findings. Complainant's allegations that this Commission does not comply with Section 7906 of the Public Utilities Code which states, "The Public Utilities Commission shall regularly make inquiry of every telephone corporation under its jurisdiction to determine whether or not such corporation is taking adequate steps to insure the privacy of communications over such corporation's telephone communication system" is apparently premised on her conclusion that any monitoring of telephone calls is an invasion of privacy and our permitting of administrative monitoring constitutes noncompliance with the above-quoted code section. The record fails to support complainant's contention.

Complainant alleges that beeping is not an appropriate notice because, unless one is specifically listening for the beeping tone, it will be mistaken for just another telephone noise. In general, telephone interference is a continuous noise as contrasted to the beep tone which is a cyclic occurrence. Because of this differential in duration and occurrence it is difficult to accept the allegation that one sound is indistinguishable from the other. We must, therefore, reiterate our original findings that a beeping tone is appropriate notice of monitoring. In this respect, we must not lose sight of the fact that administrative monitoring by General's service observing personnel can only be done on calls between defendant's customers and customer representatives. In most instances the call is made to the company in general rather than to any one specific employee. Under these circumstances, it would appear relatively unimportant whether the call was responded to by a customer representative, or a customer representative plus a

recording device. The record shows that in those instances when the beep tone or the monitoring of the conversation is objectionable to the customer the representative can disconnect the recording device by the simple expedient of pushing a button. It would appear that had this been done in this case when complainant first objected to having her call monitored, a formal complaint might have been avoided. Defendant should instruct its customer representatives to abort the monitoring device at the first indication, however slight, that the monitoring of the call is objectionable to the customer.

Findings

1. Administrative monitoring by General Telephone Company of California is used to provide it with an office index measuring overall quality of service afforded the subscriber, but does not measure individual performance and individual employees are not identified.

2. Administrative monitoring exercised by the utility as a tool in upgrading its quality of service does not violate the First and Fourth Amendments.

3. A cyclic repetitious beeping tone should normally be distinguishable from the relatively continuous telephone interference noises.

4. Monitoring equipment used for administrative monitoring should give appropriate notice of monitoring to the parties of such monitoring.

5. Such appropriate notice of monitoring of recording of conversations should be given by the beep tone prescribed by the Federal Communications Commission and used by defendant for administrative monitoring.

6. The use of such a beep tone will not defeat the purpose of administrative monitoring as customer representatives' responses

to public inquiries are little affected by the use of such beep tones.

7. Defendant's customers should be able to decide whether or not their calls should be monitored.

8. The monitoring device should be disconnected at the first indication that monitoring the call is objectionable to the customer.

The Commission concludes that except to the extent granted in the order below, the relief requested should be denied.

O R D E R

IT IS ORDERED that:

1. Defendant General Telephone Company of California shall instruct its customer representatives to disconnect monitoring equipment at the first indication that monitoring is objectionable to the customer.

2. Except to the extent granted in paragraph 1 of this order the relief requested is denied.

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

Dated at San Francisco, California, this 18<sup>th</sup> day of FEBRUARY, 1976.

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President  
  
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Commissioners