

(Mailed 3/24/88)

Decision 88 03 069 MAR 23 1988**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of General Telephone)
 Company of California, a California)
 corporation, to discontinue its)
 obligation to provide refunds for)
 Protective Connecting Arrangements)
 pursuant to Decision No. 87620.)
 (U 1002 C))

Application 87-08-019
 (Filed August 10, 1987)

Kathleen S. Blunt, Attorney at Law, for
 applicant.
 Armour, St. John, Wilcox, Gooden & Schlottz,
 by David Simpson, Attorney at Law, for
 Independent Consulting Services,
 protestant.

OPINION

Applicant General Telephone Company of California (General), a California corporation, seeks authority to terminate its refund plan under the Protective Connecting Arrangement (PCA) equipment program which had been initiated in accordance with Decision (D.) 87620 [issued on July 19, 1977 in Case (C.) 8625 et al. (82 CPUC 262)].

D.87620 found that PCAs were not necessary for the connection of telephone equipment which had been properly certified or registered in accordance with standards set by this Commission or the Federal Communications Commission (FCC). Subsequently, we ordered Pacific Telephone and Telegraph Company, the predecessor of Pacific Bell (collectively Pacific), General, and Continental Telephone Company (Contel) to provide refunds to qualifying subscribers and effect removal of PCAs from such certified or registered equipment.

General alleges that on or about July 1, 1985, protestant Independent Consulting Services (ICS) filed a complaint, C.85-07-008, against Pacific, alleging certain PCA program violations. General was neither named a party in that action nor formally served with a copy of ICS's complaint or with Pacific's response thereto.

General further alleges that on May 28, 1986 the Commission issued D.86-05-071, which, inter alia, set a December 31, 1986 termination date for Pacific's PCA refund program. On September 4, 1986, in D.86-09-025, the Commission extended Pacific's PCA refund termination date to March 31, 1987. Since General was not named as a party in C.85-07-008 and did not automatically reap the benefits of the Commission's PCA refund termination order in D.86-09-025 (even though it was a party to the Commission's PCA refund order in D.87620 and has participated throughout the refund program on the same basis as Pacific) General now seeks a similar order terminating its PCA refund program on the same basis as Pacific's, immediately or, in the alternative, on a future date certain.

On September 14, 1987, ICS filed a reply in opposition to General's application to discontinue PCA refunds. Among other things, ICS objects to General's request for an immediate termination date. Should the Commission grant General's request to terminate its PCA refund program, ICS believes the Commission should require General to send out final notices to its PCA customers prior to any termination date. ICS further requests that General be ordered to provide PCA refunds to those customers who were using PCAs in connection with equipment which was not certified by the FCC at the time of use but which became certified pursuant to the FCC's "grandfathering" provisions. ICS alleges that Pacific has determined that its customers with FCC "grandfathered" equipment were eligible for refunds, but General

has, without any valid reason, refused to give refunds to its customers who used "FCC-grandfathered" equipment.

ICS also alleges that General, which has heretofore not required customers seeking PCA refunds to provide documentation that their PCA-connected equipment was of a type eligible for refunds or that it was in service during the time period covered by the refund program, now requires customers seeking refunds to provide such written documentation. ICS believes that this new policy unfairly shifts the burden of proof to customers seeking a refund. Moreover, ICS believes General, with readily accessible computerized records of its customers, can retrieve this type of information with relative ease.

In addition to the above, ICS seeks an order requiring General: (1) to reassemble and maintain its PCA refund unit until such time the Commission terminates the refund program; (2) to provide a complete and full accounting of its PCA refund program; and (3) to abandon its policy of requiring refund applicants to provide documentation regarding their equipment to which General required attachment of PCAs.

Following notice, a public hearing was held in Los Angeles on December 3, 1987 before Administrative Law Judge William A. Turkish, and the matter was submitted upon the filing of the transcript. The transcript was filed on January 4, 1988 and the matter is deemed submitted on that date.

General presented one witness to testify on its behalf. ICS did not call any witnesses.

Judy Conger, a technical support specialist and former supervisor of the PCA refund unit, essentially testified as follows:

1. The PCA refund unit, which General created following the issuance of D.87620, was phased out and disbanded in June 1987 because of the drop in refund requests. Currently, requests for PCA refunds are handled through the local business offices.

2. Only subscribers with FCC-registered and certified equipment were eligible for PCA refunds according to D.87620. General has not refunded PCA charges to subscribers with "grandfathered" equipment because it was not ordered to do so by D.87620. Pacific decided on its own to refund PCA charges to such subscribers.

Over the years, several informal complaints filed with the Commission regarding PCA refunds for "grandfathered" equipment were addressed to the refund unit. These were referred back to the Commission, based on the notion that the Commission's order in D.87620 did not order refunds on "grandfathered" equipment. The Commission backed General up on that information.

3. Only one refund has been made by General since the PCA refund unit was disbanded. A special business practices memorandum with step-by-step instructions on handling PCA refund requests was sent to all 12 business offices. Those offices were also given a central telephone number to contact if they had any questions regarding PCA refunds, eligibility, etc.
4. There have been instances where people in the local business offices were not familiar with the procedure for processing PCA refund requests. It is a very time-consuming process which includes: obtaining the information; verifying it with one book, then verifying through another book that it has not already been refunded; verifying by field investigation that the equipment is on the customer's premises or is no longer in service; determining if General is still billing for the PCA; obtaining some proof of what the customer's system was; and, finally, calculating the amount of the refund. The practice instructional bulletin gives the business offices step-by-step instruction up to the point of calculation of the refund which is done by another department.

5. Earlier on in the refund process, General took the customer's word as to the equipment on the customer's premises and made refunds on that basis. However, General then experienced situations where refunds had been made to customers for equipment the customers did not have and General had to recollect those moneys. After that experience, General changed its procedures of verification by having employees either physically visit the customer premises or requiring the customer to provide some proof of the specific equipment in question. General has denied refunds where it was unable to verify the equipment the customer claimed it had had.
6. From the time D.87620 was issued, six notices regarding refunds have been mailed to all PCA equipment customers. These notices were mailed every six months for a three-year period, along with a list of equipment which had been certified. General still has the file containing the names and addresses of the customers to whom such notices were mailed.
7. "Grandfathered" equipment was customer-owned equipment which the customer had on the premises at the time D.87620 was issued. It was equipment that the FCC determined could not be guaranteed against causing interference in the telephone company lines unless the manufacturer sought and obtained certification of any such equipment. The FCC certification program ended in approximately October 1985.

Discussion

In D.87620 issued July 19, 1977, the Commission found that PCAs, required by telephone utilities, were no longer necessary for telephone customers who owned independently manufactured telephone equipment which had been certified or registered in accordance with standards set either by the Commission or the FCC. We ordered the telephone utility companies

to provide refunds to subscribers who met the eligibility criteria set forth in that decision for all amounts collected after February 14, 1974 for PCA equipment.

General, named a respondent in D.87620, along with Pacific and Contel, initiated a PCA refund program ordered by the Commission. General notified its PCA customers of the refund program and, along with the notice, mailed a list of all certified equipment which no longer required PCAs. Notices and updated lists were mailed to all PCA customers every six months over a three-year period.

In D.86-05-071 issued May 28, 1986 in C.85-07-008, which involved Pacific and the PCA refund program, we acknowledged our concern that D.87620 did not set a specific termination date for refunds to eligible customers and thus would not make customers aware of when their rights to refund claims ceased to exist. We also made it clear, however, that PCA customers have had ample opportunity to become aware of the program over the previous nine years and to file claims with Pacific for refunds. We then ordered the program to be terminated as of December 31, 1986 with a final mailing by Pacific to its PCA customers notifying them of the termination of the program and of their right to refunds if they notified Pacific by the date of the program termination.

D.86-09-025 issued September 4, 1986 extended the program termination date of December 31, 1986 to March 31, 1987 due to delay occasioned by an application for rehearing. In D.87-12-029 issued December 9, 1987 the program termination date of March 31, 1987 for Pacific remained unchanged.

ICS requests that General's PCA refund program be continued because it believes a substantial amount of PCA refund money collected by General has yet to be returned to the people from whom it was collected. In the alternative, if we determine that the program should end, ICS requests that we treat General as we treated Pacific, and require General to send a final group of

notices to those customers who may still be eligible to receive PCA refunds. Likewise, as with Pacific, ICS requests that the Commission require General to report, in its next general rate case filing, the outstanding balance of PCA charges which can be credited to General's ratepayers so that General will not receive a windfall from unrefunded PCA charges.

ICS further requests that we order General to make PCA refunds on so-called "grandfathered" equipment based on its belief that such "grandfathered" equipment was rightfully the subject of PCA refunds and to follow Pacific's lead in granting PCA refunds to customers with "grandfathered" equipment.

General takes the position that the Commission has not ordered refunds on "grandfathered" equipment and that D.87620, which established the criteria for the refund program, did not specify that "grandfathered" equipment would be included. Furthermore, General believes the issue whether refunds are due on "grandfathered" equipment is not a subject of its application and thus not properly before the Commission in this proceeding, although it concedes the issue may be appropriately considered in a specific complaint matter. According to General, manufacturers of "grandfathered" equipment could have removed their equipment from the "grandfathered" list and thus made their customers eligible for refunds by seeking and obtaining FCC approval and Commission certification.

Requests for PCA refunds have dropped considerably in recent years to such an extent that General disbanded its special PCA refund unit in 1987. Since the unit was disbanded only one refund request has been processed and paid. In accordance with D.87620, General had mailed six refund notices to PCA customers over a three-year period. It was not the Commission's intent in D.87620 to have the PCA refund program continue indefinitely even though no specific ending date was identified in the decision. We believe that the program, which has been going on for over nine

years, has offered PCA customers ample time in which to seek refunds. We therefore find no valid reason to require General to continue its PCA refund program. The reasons given in D.86-05-071 for terminating Pacific's PCA refund program are just as valid with respect to General. It is thus appropriate to order General to terminate its PCA refund program in the same manner as we required of Pacific.

As with Pacific, we will require General to mail a final notice to its PCA customers within 30 days following the effective date of this order, informing them of the termination date of the program and of their right to refunds if they present a claim to General by the date of the program termination. We believe a termination date of 120 days from the effective date of this order is reasonable and affords sufficient time to present claims to General for PCA refunds.

A policy of requiring verification from customers claiming a refund as to PCA equipment is reasonable to prevent fraud or abuse. General may continue requiring verification.

General is correct in pointing out that D.87620 did not include "grandfathered" equipment as being eligible for PCA refunds if it did not meet the criteria set forth in that decision. Likewise, General is correct in asserting that its application merely requested a termination date for its PCA refund program and that the subject of PCA refunds for "grandfathered" equipment might not be a proper issue in this proceeding. However, the issue was raised by ICS and although General did not include this as an issue in its application, we deem that it would be expeditious to settle all PCA refund issues in one proceeding rather than inviting the filing of specific complaints regarding this issue and having additional hearings in the matter.

D.87620 ordered retroactive PCA refunds for customer-owned equipment which was connected to the telephone utility network by a PCA, and had been certified or registered in accordance with standards set by the Commission or by the FCC. While it is true that manufacturers of "grandfathered" equipment could have removed their equipment from the "grandfathered" list by seeking and obtaining FCC approval and Commission certification, there may not have been sufficient financial incentive or motive for manufacturers to seek certification of equipment, which had either already been used by telephone companies without PCAs attached prior to 1977 when the FCC registration program began, or whose manufacture may have been discontinued after 1977. The FCC, according to the declaration of ICS's attorney, presumed that "grandfathered" equipment did not pose any threat to the telephone network and thus determined that such equipment could remain connected for life, without being certified.

Pacific, after discussions with the Commission's telecommunications staff concluded the same thing and began to include "grandfathered" equipment in its PCA refund program. Equity requires the same treatment for General's customers with "grandfathered" equipment. Accordingly, we will order General to include customers with "grandfathered" equipment in its PCA refund program.

Comments to the Administrative Law Judge's Proposed Decision were filed by ICS and by General. ICS points out that Ordering Paragraph 2 implies that General should issue refunds to qualified customers with "grandfathered" equipment but fails to state it explicitly. We agree and have modified Ordering Paragraph 2 accordingly. The remaining comments have been considered but have not persuaded us to make any further changes in the decision. ✓

General takes exception to that portion of the proposed decision with respect to "grandfathered" equipment and points out that its application only requested that the Commission set an ending date for General's PCA refund program and that the application did not request any modification or further ruling on the already decided issue of whether "grandfathered" equipment was to be included in the PCA refund program. General contends that D.87620 did not order refunds on "grandfathered" equipment. The ALJ acknowledged this in the proposed decision but, for the reasons stated therein, concluded that refunds should be made on "grandfathered" equipment. We concur with the ALJ and are not persuaded that the proposed decision should be changed other than as stated above.

Findings of Fact

1. General has been providing refunds to eligible PCA customers since D.87620 was issued on July 19, 1977.
2. The PCA refund program has been in existence for over 10 years.
3. The Commission, in D.86-09-025, ordered Pacific's PCA refund program to be terminated on March 31, 1987.
4. General requests that its PCA refund program be terminated.
5. Pacific has determined that customers with "grandfathered" equipment to which Pacific had previously required PCA attachments are entitled to PCA refunds and has included such customers in its PCA refund program.
6. The FCC has determined that there was no need to register "grandfathered" equipment as such equipment posed no threat to the telephone network.
7. General still retains funds in its PCA refund program.
8. General has notified PCA customers of its refund program every six months beginning in 1977 over a period of three years.

Conclusions of Law

1. Inasmuch as the Commission has ordered the termination of Pacific's PCA refund program on March 31, 1987, General should be permitted to terminate its PCA refund program.

2. The PCA refund program ordered in D.87620 should be terminated 120 days from the effective date of this order.

3. General should be required to mail a final notice to all customers eligible for refunds under the criteria set forth in D.87620, notifying them of the termination date of the PCA refund program and that claims for refund must be received prior to such termination date.

4. Equity requires that General and Pacific PCA customers be accorded the same considerations. Since Pacific has included PCA customers with "grandfathered" equipment in its PCA refund program, General should be ordered to accord its PCA customers with "grandfathered" equipment the same treatment.

5. A verification requirement for PCA equipment on the customers' premises and for equipment no longer on the customers' premises is reasonable and should be continued for General.

6. For the remainder of the refund program, General should be required to notify customers in writing of rejection of claims. It should make refunds, when appropriate, for PCA charges from February 1974, as required by D.87620.

7. Unrefunded PCA charges should be credited to General's general body of ratepayers.

8. General should be ordered to report the balance of unrefunded PCA charges remaining in its fund in its next general rate case filing.

9. Because of the length of time involved since the PCA refund program was ordered in D.87620, this order should be made effective today.

ORDER

IT IS ORDERED that:

1. General Telephone Company of California (General) is authorized to terminate its refund plan under the Protective Connecting Arrangement (PCA) equipment program ordered in Decision (D.) 87620 within 120 days from the effective date of this order.
2. Within 30 days of the effective date of this order General shall notify all of its PCA customers who may qualify for refunds, as well as all PCA customers with "grandfathered" equipment including "grandfathered" equipment customers previously denied refunds, of their possible eligibility for refunds and of the termination date of the refund program. General shall issuerefunds to all qualifying customers with "grandfathered" equipment who were required to install PCA's. General shall also inform customers who no longer have the equipment on the premises of its verification procedure requirements.
3. The interest payments ordered in D.87620 remain effective for all claims for refunds presented to General prior to the termination date.
4. General shall report in its next general rate case filing the total amount refunded under the PCA equipment program and the balance remaining in the special fund maintained by General of all PCA charges which have not been refunded.

5. The application is granted as set forth above.

This order is effective today.

Dated MAR 23 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Victor Weisberg
Victor Weisberg, Executive Director

years, has offered PCA customers ample time in which to seek refunds. We therefore find no valid reason to require General to continue its PCA refund program. The reasons given in D.86-05-071 for terminating Pacific's PCA refund program are just as valid with respect to General. It is thus appropriate to order General to terminate its PCA refund program in the same manner as we required of Pacific.

As with Pacific, we will require General to mail a final notice to its PCA customers within 30 days following the effective date of this order, informing them of the termination date of the program and of their right to refunds if they present a claim to General by the date of the program termination. We believe a termination date of 120 days from the effective date of this order is reasonable and affords sufficient time to present claims to General for PCA refunds.

General's policy of requiring verification from customers claiming a refund as to equipment which is no longer on the customers' premises is a reasonable policy to prevent fraud or abuse. Its verification policy of equipment on the customers' premises is also deemed reasonable. General may continue such verification policy.

General is correct in pointing out that D.87620 did not include "grandfathered" equipment as being eligible for PCA refunds if it did not meet the criteria set forth in that decision. Likewise, General is correct in asserting that its application merely requested a termination date for its PCA refund program and that the subject of PCA refunds for "grandfathered" equipment might not be a proper issue in this proceeding. However, the issue was raised by ICS and although General did not include this as an issue in its application, we deem that it would be expeditious to settle all PCA refund issues in one proceeding rather than inviting the filing of specific complaints regarding this issue and having additional hearings in the matter.

D.87620 ordered retroactive PCA refunds for customer-owned equipment which was connected to the telephone utility network by a PCA, and had been certified or registered in accordance with standards set by the Commission or by the FCC. While it is true that manufacturers of "grandfathered" equipment could have removed their equipment from the "grandfathered" list by seeking and obtaining FCC approval and Commission certification, there may not have been sufficient financial incentive or motive for manufacturers to seek certification of equipment, which had either already been used by telephone companies without PCAs attached prior to 1977 when the FCC registration program began, or whose manufacture may have been discontinued after 1977. The FCC, according to the declaration of ICS's attorney, presumed that "grandfathered" equipment did not pose any threat to the telephone network and thus determined that such equipment could remain connected for life, without being certified.

Pacific, after discussions with the Commission's telecommunications staff concluded the same thing and began to include "grandfathered" equipment in its PCA refund program. Equity requires the same treatment for General's customers with "grandfathered" equipment. Accordingly, we will order General to include customers with "grandfathered" equipment in its PCA refund program.

Findings of Fact

1. General has been providing refunds to eligible PCA customers since D.87620 was issued on July 19, 1977.
2. The PCA refund program has been in existence for over 10 years.
3. The Commission, in D.86-09-025, ordered Pacific's PCA refund program to be terminated on March 31, 1987.
4. General requests that its PCA refund program be terminated.

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5. Pacific has determined that customers with "grandfathered" equipment to which Pacific had previously required PCA attachments are entitled to PCA refunds and has included such customers in its PCA refund program.

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7. General still retains funds in its PCA refund program.

8. General has notified PCA customers of its refund program every six months beginning in 1977 over a period of three years.

Conclusions of Law

1. Inasmuch as the Commission has ordered the termination of Pacific's PCA refund program on March 31, 1987, General should be permitted to terminate its PCA refund program.

2. The PCA refund program ordered in D.87620 should be terminated 120 days from the effective date of this order.

3. General should be required to mail a final notice to all customers eligible for refunds under the criteria set forth in D.87620, notifying them of the termination date of the PCA refund program and that claims for refund must be received prior to such termination date.

4. Equity requires that General and Pacific PCA customers be accorded the same considerations. Since Pacific has included PCA customers with "grandfathered" equipment in its PCA refund program, General should be ordered to accord its PCA customers with "grandfathered" equipment the same treatment.

5. General's verification procedure for equipment on the customers' premises and for equipment no longer on the customers' premises is reasonable and should be continued.

6. For the remainder of the refund program, General should be required to notify customers in writing of rejection of claims. It should make refunds, when appropriate, for PCA charges from February 1974, as required by D.87620.

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7. Unrefunded PCA charges should be credited to General's general body of ratepayers.

8. General should be ordered to report the balance of unrefunded PCA charges remaining in its fund in its next general rate case filing.

9. Because of the length of time involved since the PCA refund program was ordered in D.87620, this order should be made effective today.

ORDER

IT IS ORDERED that:

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Dated _____, at San Francisco, California.

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