

**ORIGINAL**

Decision 90 06 065 JUN 20 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Michael M. Murray, William  
Behrman, and Gerald LeTendre

Complainants,

vs.

Communication Services,  
Stanford University, and  
Pacific Bell,

Defendants.

Case 90-05-023<sup>i</sup>  
(Filed May 11, 1990)

Michael Murray, Bart De Crem, Jotham Stein,  
William Behrman, Gerald LeTendre, for  
Stanford, complainants.  
McCutchen, Doyle, Brown & Enersen, by Terry J.  
Houlihan, and Jasper Williams, Attorneys at  
Law, for Stanford University, and Ron  
McClain, Attorney at Law, for Pacific Bell,  
defendants.

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O P I N I O N

Stanford University (Stanford) is a private, nonprofit and tax exempt research university located in Palo Alto. Stanford's real and personal property are held in trust for, and it is operated for, educational purposes. Stanford maintains on its real property certain buildings devoted to housing undergraduates and graduate students and their families. Complainants are students at Stanford University and occupy residential units of various Stanford housing structures. Complainants are now provided telephone service by Pacific Bell.

Since the middle of the 1980's, Stanford has been converting its telephone service from Pacific Bell to Stanford provided services within its boundaries and to its educational, administration, and residential structures. It has constructed conduits and other facilities large enough to handle telephone service, data service, cable television and links to university computer centers. Stanford already provides many of the services mentioned to many parts of its campus through a private branch exchange (PBX). Some student residences have been converted from Pacific Bell telephone service to Stanford network telephone service. Other residential structures will be connected, according to present Stanford plans, on June 21, 1990. This cutover date gives rise to the complaint filed by the complainants on May 11, 1990.

The Complaint

Complainants allege that Stanford houses more than 3,000 graduate students in the Rains Houses and Escondido Village apartment complexes. These students are usually on a limited, fixed income and some are supporting families with children. Telephone services to these Stanford students and residents is currently provided by Pacific Bell. Such service includes Universal Lifeline and long distance competition.

In December 1988, the Stanford trustees allotted \$5.2 million to provide residential phone service through Stanford's Northern Telecom business PBX. Stanford uses the 723-xxxx and 725-xxxx prefixes for business and has reserved the 497-xxxx prefix for residences. In September 1989, Communications Services, a department of Stanford, extended Stanford's business PBX to provide residential phone service to the 300 residents and undergraduates of Roble Hall.

Complainants further allege that Stanford plans to require all Stanford residents to use its service on June 21, 1990, giving each living unit a new phone number. Stanford residents are being offered no choice but to accept Stanford service. Stanford residents will not have competitive access to long distance telephone companies, but rather Stanford will charge residents its own long distance rates based on its negotiations with long distance carriers.

Stanford will not offer Universal Lifeline service to any new residents or to residents who cannot prove previous Universal Lifeline service by producing Pacific Bell telephone bills.

Complainants contend that Stanford appears to be providing shared tenant service with no competition. Stanford is not allowing Pacific Bell access to tenants who want Pacific Bell service, which denial is in violation of Guideline 8 of the shared tenant services (STS) guidelines enacted in Decision (D.) 87-01-063. Complainants assert that since Stanford has or will violate Guideline 8, Guideline 2 gives the Commission regulatory control over Stanford.

In support of its request for a cease and desist order, the complainants allege that, if the Commission rules after June 21, 1990, that Stanford is a shared tenant service provider, the residents who wanted to continue Pacific Bell service will suffer irreparable hardship, confusion and potential loss of time and money. Such residents will be forced from Pacific Bell to

Stanford service and be given a new number on June 21, then, after the ruling, residents returning to Pacific Bell service will incur a line activation fee and another new phone number. Changing checks and notifying relatives and friends will be a continuous effort. Complainants further allege that Stanford has installed its wiring parallel to Pacific Bell's old wiring. Complainants are also informed that Stanford plans to pull the old Pacific Bell cable out of the conduits after Stanford's system is connected. If this happens, complainants allege, Pacific Bell will have a difficult time reinstating service.

Complainants request that Stanford be declared a shared tenant services provider or a public utility. Complainants prefer that Stanford be found a shared tenant services provider and that it be subject to the STS guidelines. If Stanford is found to be a shared tenant services provider, complainants request that the Commission order Stanford to place no restrictions on Pacific Bell or residents who desire service directly from Pacific Bell and to reaffirm Pacific Bell's obligation to serve. Complainants move that the Commission issue a temporary order preventing system cutover on June 21, 1990 and suspending cutover until the Commission can decide these issues.

Complainants allege that the temporary cease and desist order will alleviate the irreparable harm that would otherwise be occasioned to them from having to switch back and forth between telephone service providers. Once the Commission has ruled, complainants ask that the Commission to require Stanford to delay cutover until such time that Stanford can technically offer Pacific Bell unrestricted access to Stanford residents. Also, Stanford should be required to list Pacific Bell service as an option on its line subscriber forms so that all residents will know their options.

In the alternative, if Stanford is found by the Commission to be acting as a public utility, then complainants

request that the Commission order Pacific Bell to continue to serve Stanford residences because Stanford is their filed service territory. Meanwhile, Stanford may file the required application for authority to serve. The complainants move that the Commission issue a temporary order preventing system cutover on June 21, 1990, to prevent Stanford from removing Pacific Bell's existing wiring.

Administrative Law Judge's Ruling

On May 22, 1990, the Administrative Law Judge (ALJ) issued a ruling requiring the filing of answers to the complaint on an accelerated schedule. Pacific Bell filed its answer May 31, 1990, and Stanford filed its answer on June 1, 1990. Concurrently, the ALJ set a prehearing conference to occur on June 1, 1990.

Answer of Pacific Bell

In addition to admitting and denying various allegations of the complaint, Pacific Bell asks that the complainants' prayer for relief be granted as follows:

1. That, pending resolution of this dispute, all work necessary to effect the transition to Stanford telephone service at the resident dormitories be put on hold.
2. That Stanford be ordered to provide Stanford telephone service in accordance with the shared tenant services guidelines in D.87-01-063, which would permit each user of that service the option of being served directly by Pacific Bell, should that student resident so choose.
3. Except as expressly set forth in its answer, Pacific Bell requests that the complainants' prayer for relief be denied.

Answer of Stanford

In its answer filed June 1, 1990, Stanford appears specially to answer the complaint of three of its students and to deny that the Commission has jurisdiction over it. In addition to admitting certain allegations of the complaint and denying others, Stanford makes the following affirmative defenses to the complaint:

1. The Commission lacks jurisdiction to grant the requested relief.
2. The Commission cannot grant the requested temporary cease and desist orders because complainants failed to allege irreparable harm to themselves as individuals.
3. The Commission cannot grant the requested temporary cease and desist orders because there is no showing of irreparable harm to anyone.
4. The Commission does not need to grant any relief for the benefit of Pacific Bell.
5. Regulation the Stanford network is preempted by the FCC.

Stanford, therefore, requests that the Commission dismiss the complaint.

Stanford attaches to its answer a Memorandum of Points and Authorities in opposition to the motion for temporary order preventing system cutover. Stanford also attaches to its answer copies of certain contracts between Stanford and Pacific Bell providing the terms and conditions of sale of certain telephone facilities in or near named Stanford University student housing complexes (Manzanita Park, Florence Moor Hall, Wilbur Hall, Rains, and Governor's Corner). Stanford also attaches to its answer the declaration of Jan Thompson in opposition to temporary order preventing system cutover.

Prehearing Conference

A prehearing conference was held on June 1, 1990 before ALJ Robert T. Baer. Stanford and Pacific Bell appeared by its attorneys, complainants appeared for themselves. No temporary resolution of the dispute between complainants and Stanford University could be achieved during the prehearing conference and no stipulations could be arrived at. Accordingly, the ALJ set the case for immediate hearing on June 5 and 6, 1990. The purpose of

the hearing was to receive factual evidence in support of the Commission's jurisdiction or lack thereof over Stanford and, secondly, to take evidence in support of or in opposition to the request of complainants for cease and desist orders pertaining to the installation of the Stanford telephone service on June 21, 1990.

The parties were also advised that they could file briefs in response to Stanford's Memorandum of Points and Authorities no later than June 6, 1990. Finally, the ALJ ruled that oral argument on the issues would be taken at the close of evidence on June 6, 1990. All parties were agreeable to the procedure proposed by the ALJ.

#### Evidentiary Hearings

Evidentiary hearings commenced on June 5 and concluded June 6, 1990. Complainants, Pacific Bell, and Stanford offered oral and documentary evidence. Following oral arguments on June 6, the case was submitted for decision.

#### Issues to be Decided

The issues to be decided in this case are as follows:

1. Does the Commission have the jurisdiction to regulate Stanford University as a public utility telephone corporation because it provides telephone service to its students in campus housing units?
2. Assuming that the Commission does have jurisdiction to regulate Stanford University, does the record support an order requiring Stanford to cease and desist from terminating Pacific Bell's service to certain campus housing units and installing its own telephone service to those units on June 21, 1990, and following?



Constitutional and Statutory Provision  
Dealing with Jurisdiction

The jurisdiction of the Public Utilities Commission is set forth in the constitution, statutes, and case law of the State of California. In Article 12, Section 3, the California Constitution provides:

"Private corporations and persons that own, operate, control, or manage a line, plant, or system for the...transmission of telephone and telegraph messages...to or for the public...are public utilities subject to control by the Legislature. The Legislature may prescribe that additional classes of private corporations or other persons are public utilities."

Section 5 of Article 12 also provides that:

"The Legislature has plenary power, unlimited by the other provisions of this constitution but consistent with this article, to confer additional authority and jurisdiction upon the Commission...."

The Legislature has provided in Public Utilities (PU) Code § 216 that:

- "(a) 'Public utility' includes every... telephone corporation...where the service is performed for...the public or any portion thereof.
- "(b) Whenever...a telephone corporation... performs a service for...the public or any portion thereof for which any compensation or payment whatsoever is received, that...telephone corporation...is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part."

The PU Code in § 234 further defines "telephone corporation" as follows:

"'Telephone corporation' includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation within the State.

"'Telephone corporation' does not include any hospital, hotel, motel, or similar place of temporary accommodations owning or operating message switching or billing equipment solely for the purpose of reselling services provided by a telephone corporation to its patients or guests."

Finally, the PU Code defines certain words and phrases used in the foregoing statutes beginning with § 204. In § 207, the Legislature provides:

"'Public or any portion thereof' means the public generally, or any limited portion of the public, including a person, private corporation, municipality, or other political subdivision of the State, for which service is performed..."

#### Stanford's Position on Jurisdiction

Stanford argues that the Commission has no jurisdiction over Stanford because Stanford is not a public utility. Rather, it is a private, nonprofit university. Just as many private corporations provide PBX services for their businesses without dedicating those facilities to public use and regulation, Stanford asserts that it may serve its employees, students, and guests with such services without Commission authorization or regulation. Because the Stanford network will serve only Stanford academic users, and not independent persons or businesses, is not a multi tenant provider.

Stanford further argues, and its evidence shows, that nonregulated telephone service is provided to students by a long list of California and out-of-state colleges, including the University of San Francisco, University of San Diego, Loyola-Marymount, Pepperdine, various University of California campuses, Michigan, Yale, Pennsylvania, Princeton, Brown, and Duke. Such operations have a right to interconnect to the interstate telephone system without state regulation. It would be unfair to have one

set of rules for Stanford and another for other residential colleges.

Stanford contends that it is not a PU Code § 234 telephone corporation because Stanford is not a public utility. Section 234's definition of a telephone corporation must be read in conjunction with § 216 which provides that telephone corporations are only public utilities "where the service is performed for, or the commodity is delivered to, the public or any portion thereof." The Stanford network is not available to the public. It is restricted to academic buildings including dormitories. Since Stanford dormitories serve neither the public nor any portion thereof, Stanford is not a public utility telephone corporation subject to Commission jurisdiction.

Stanford asserts that one clear indication that the Commission does not consider colleges to be public utilities is that it has never regulated telephone lines of California colleges in spite of the long bypass controversy. According to Stanford, this is not surprising; students are not the public. At Stanford and elsewhere they are a carefully selected student body with a special relationship with the faculty. At Stanford their acceptance of admission is an agreement to pursue educational goals and to comply with the university's rules, regulations, and policies. Dormitory residence is an integral part of the primary function of the university, which is to educate its student body.

Stanford alleges, and the evidence shows, that the core Stanford campus contains a number of commercial services that support the Stanford community but which will not be connected to the Stanford network. Indeed, nonacademic tenants located in the student union building will not be connected to the Stanford network even though academic users in the same building will be on the system. This selectivity is because provision of the Stanford network to such nonacademic facilities does not further Stanford's academic mission. Centrally located nonacademic facilities that

are ineligible for the Stanford network includes: the U.S. Post Office, American Express, Wells Fargo Bank, a credit union, Kingscote Garden Apartments (an apartment building opened to the public) and the other private commercial tenants in Stanford's core campus.

Stanford lessees adjacent to the academic core but also ineligible for the Stanford network include tenants in the Stanford Research Park, Stanford Shopping Center, Stanford Barn<sup>1</sup> and private medical offices across the street from the Stanford University Hospital. Again, academic users of these offices will be connected to the Stanford network but not private doctors and other tenants.

Thus, the Stanford network is not a telephone corporation because it is restricted to academic buildings and excludes even the immediately adjacent nonacademic users. It, thus, is not a public utility and is not subject to Commission jurisdiction. Stanford cites in support of its jurisdictional argument People vs. Orange Co. Farmers' and Merchants' Assoc., 56 Cal. App. 205, & 209 (1922) and City and County of San Francisco vs. Western Airlines, 204 Cal. App. 2d 105, 131 (1962).

In the Orange County case, the court held that Farmers' and Merchants' Association, a nonprofit businessmen's association, could provide telephone service to its members, even by using poles and wires in city streets, pursuant to county franchise, without a certificate of public convenience or necessity and without subjecting itself to the regulation of the Commission as a telephone corporation. The court concluded that the provisions of the PU Act "... have no reference to organizations or associations

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1 The Barn is an office complex in a former barn occupied by Stanford academic users and private businesses. The Barn's academic occupants will be connected to the Stanford network but its private business tenants must get telephone service from Pacific Bell.

which are engaged in delivering a commodity as a mere incident to their main objects and purposes and at costs to their members only." (56 Cal. App. 205, 210.)

Citing Orange County, Stanford argues that it is excluded from public utility status by this principal because Stanford provides its telephone/data service only to its educational buildings; ordinary telephone service is incidental to its main purpose of education, and all Stanford network services are provided at or below cost.

In the Western Airlines case, the court dealt with the question whether San Francisco Airport was a public utility. In arguing its position on that issue, the City and County of San Francisco cited certain statutory provisions and cases dealing with the California Public Utilities Commission. The court stated: "In the absence of Legislation otherwise providing, the [California Public Utilities] Commission's jurisdiction to regulate public utilities extends only to the regulation of privately-owned utilities. [Citation omitted.] Unless the enterprise or activity in question is a public utility as defined in the constitution or Public Utilities Code, it is not subject to the jurisdiction of such commission." [Citations omitted.]

Furthermore, Stanford argues, the California Supreme Court and the CPUC have consistently held that public utilities are only those providers of utility services who provide the service to, and have dedicated their property, to the public. Stanford cites Yucaipa Water Company vs. Public Utilities Commission, 54 Cal. 2d 823-828 (1960). In that case, the California Supreme Court upheld the Commission's findings that the Yucaipa Mutual Water Company was a public utility subject to the regulation of the Commission, based on evidence that it provided service not only to its shareholders but to lessees of its shareholders, and others. In that case, the Supreme Court said:

"Property may be shown to have been devoted to a public use by implication from the acts of its

owners and their dealings and relations to such property, without regard to statutory provisions. [Citations.] The test to be applied ... is whether or not those offering the service have expressly or impliedly held themselves out as engaging in the business of supplying the water to the public as a class, not necessarily to all of the public, but to any limited portion of it, such portion, for example, as could be served from his system, as contradistinguished from holding himself out as serving or ready to serve only particular individuals, either as a matter of accommodation or for other reasons peculiar and particular to them." (54 Cal. 2d 823, 828.)

Stanford asserts that it falls within this exception. It serves only those academic facilities and particular individuals who are Stanford students for reasons that are peculiar and particular to them - namely, to further residential education and the university's other educational goals.

Stanford also argues that CPUC decisions are consistent with the results indicated in the foregoing court decisions. The Commission has held that private radio telephone service, where the provider does not hold itself out to serve the public and has not dedicated its property or service to the public, is not a § 234 public utility telephone corporation. Moreover, the Commission found that there was no compelling public need for an assertion of its jurisdiction under such circumstances. (Motorola Communications and Electronics, Inc., 66 Cal. PUC 512, 514, 522, 523 (1964)). The Commission has also held that a nonprofit cooperative that provides communications to physicians, where the facility was not dedicated to the public, was not a § 234 telephone utility. (Jack Vogelmann and Robert Podesta, 68 Cal. PUC 270, 271, 279 (1968). See also Pacific Tel. & Tel. Co., 55 Cal. PUC 387, 400 (1957)). Indeed, the Commission explicitly recognized over 10 years that universities were not made telephone utilities by offering PBX-type service to dormitories. In California Hotel &

Motel Association vs. Pacific Telephone and Telegraph, Co., 84 Cal. PUC 352, 360, D.89323 (1978). The Commission stated:

"We agree with the arguments of the Association. While a hotel 'holds itself out' to the public, or a segment thereof, this 'holding out' is simply as a hotel (or at common law, an 'inn') and not as a telephone utility. Logic and common sense dictate that telephone equipment is provided for guests as an incidental part of the hotel or innkeeping business and not vice versa. Other types of institutions such as hospitals, convalescent homes, and dormitories provide telephone systems, usually of the PBX variety, for persons staying upon the premises. If hotels are telephone utilities, so are these types of facilities, and they are also subject to the direct regulation of their rates and charges and to regulation of expansion and financing of their system. It is clear that nothing of the sort was intended by any constitutional or statutory provision."

Citing PU Code § 741.2, Stanford argues that the Legislature has explicitly recognized that universities are not public utilities and are exempt from Commission regulation where they provide services to academic users. Thus, § 741.2 states, in part:

"(a) No nonpublic utility provider of telephone services, including, but not limited to, a hotel, motel, hospital, university, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the purpose of reselling services provided by a telephone corporation to its patients or guests is required to file or maintain tariff schedules."

Subsection g of § 741.2 states in part:

"... This section does not constitute any such provider a telephone corporation or otherwise subject it to regulation by the commission as a public utility."

Stanford asserts that falls within the language of § 741.2. It contends that it will provide no interexchange services, whether intraLATA or interLATA, and the evidence supports that assertion. Off campus communications will be provided only through the resale of Pacific Bell or interLATA carrier services. Since the Legislature clearly, sufficiently, and unequivocally says that universities are not made utilities by such activities, Stanford contends it is not subject to Commission jurisdiction and the Commission should not grant the interim relief sought by complainants.

Stanford also argues that it is not a shared service provider. As with many private corporations operating PBX's, Stanford does not fit within the category of service providers for multiple, unrelated users. Rather, Stanford falls within a category of reseller exempt from shared tenant guidelines by statute. The Commission's shared tenant service provider rules are simply not applicable to Stanford. D.87-01-063 provides a safe harbor for commercial landlords who might otherwise become utilities because they provide telephone service to various unrelated businesses or persons, i.e., multiple tenants.

D.87-01-063 is designed to govern telephone service by a landlord in a commercial or office building such as a business or industrial park which is under common ownership and where the tenants or owners contribute to the maintenance of common areas and communication facilities that are owned or managed by the provider. These rules are designed for the owner of a smart commercial building who wants to increase his or her profits by providing telephone service. These guidelines might be applicable to Stanford if it wanted to provide telephone service to commercial tenants in its core campus, the Stanford Barn, Stanford Research Park, or Stanford Shopping Center. But it is clear from the decision that this is the sole context for which shared service provider rules were intended.



D.87-01-063 contains no indication that it is applicable to a nonprofit educational institution whose interest is in providing the best available educational facilities to further its academic mission or for that matter to providers of temporary accommodations. Furthermore, were Stanford a shared service provider, D.87-01-063's requirement of compensation to such providers for use of their facilities would result in additional charges to students on the Pacific Bell system.

Position of Complainants'  
on Jurisdictional Issue

In their brief presented at hearing on June 5, 1990, the complainants' responded to the jurisdictional arguments of Stanford. They rely primarily on their interpretation of § 234. They argue that Stanford does not fall within the terms of the second paragraph of PU Code § 234, which states:

"'Telephone corporation' does not include any hospital, hotel, motel, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the purpose of reselling services provided by a telephone corporation to its patients or guests."

Complainants assert that Stanford apartments are permanent residence. The apartments are not hospital rooms nor are they motel or hotel rooms. Stanford students are not patients nor are they guests. Students are neither sick nor are they transient.

Complainants offer only two sentences in response to Stanford's arguments based on § 741.2. They do not respond at all to Stanford's arguments based on provisions of the California constitution and statutory provisions dealing with definitions of the public. In discussing who the public is, complainants do not cite or discuss the case law or statutes, rather they depend entirely on arguments based on the facts of their situations.

Regarding D.87-01-063, the complainants merely assert that the guidelines should be applied to Stanford. There is no

discussion of the context in which D.87-01-063 arose or of its language. Complainants responded most heavily to Stanford's preemption argument, however, this decision will not address that issue as there are sufficient state law grounds to decide it.

Position of Pacific Bell on Jurisdiction

In its answer to the complaint, Pacific Bell alleges that on January 17, 1990, complainant Michael Murray wrote to Pacific Telesis' Chairman Sam Ginn, contending that Stanford was forcing him to a "more expensive" new residential phone system, and stating that he wished to remain with Pacific. At the same time, Murray also complained to the Commission. Ginn and the Commission asked Pacific Bell to investigate Murray's claims.

Pacific Bell investigated and concluded that Stanford's student telephone service is an shared tenant service which is subject to the guidelines in D.87-01-063. Pacific Bell reached this conclusion because Stanford, with the addition of individual nonemployee users to its PBX-based system, is offering phone services for resale to the public. In this case, the public consists of those otherwise unrelated individuals who comprise Stanford's student body and the service provided is public switched network access for all personal calling needs. Since the shared services guidelines require, in part, that all users be permitted to order services directly from the utility if they so desire (D.87-01-063, Appendix A, Rule 8), Pacific Bell agreed that Murray be permitted to stay on its services.

Pacific Bell further asserts that it attempted on several occasions to persuade Stanford that the student residents should be awarded their rights, as Pacific Bell understands them, under the shared services rule. Though the parties met and discussed the issue, no resolution was reached.

During the period of Pacific Bell's discussion with Stanford, the Commission also asked Stanford to provide its rationale for why it contends that its student telephone service is

not subject to D.87-01-073, and alternatively, why it did not consider itself a public utility. Stanford replied to those requests in a letter dated May 23, 1990, addressed to Kevin Coughlan of the Commission Advisory and Compliance Division. Pacific takes issue with certain factual assertions made by Stanford in its May 23 letter, but it does not do more than assume that the student population is the "public" for purposes of the Public Utilities Code. For instance, Pacific Bell asserts that Stanford also claims that it is not a utility, but does not explain why it should not be considered a utility when it has switching equipment, cable and other plant, and for ports to provide to its student public all their personal calling needs in accordance with rates which Stanford will establish. The calling capability for the students is the same as if they were still being served by a utility. They can pick up their phones and call wherever in the world they please. The only difference is that the students will have to forfeit the protections and rights they now have under Pacific Bell's tariffs and the Public Utilities Code.

Discussion of the Jurisdictional Issue

It is clear from the relevant constitutional and statutory provisions quoted above that an essential element of the definition of public utility is that it serves the public. PU Code § 207 states that it is the public generally, or any portion thereof, that a corporation must serve in order to acquire the status of a public utility. The California Courts and the decisions of the Commission have consistently explained that "public" does not include those occupying a special relationship with the provider of the utility service. Thus, in the cases cited by Stanford, the Commission has declined to regulate private radiotelephone service; and it has declined to regulate telephone service where it is provided by an organization or association formed for other objects or purposes and it is providing telephone service as a mere incident to those main objects and purposes.

(People vs. Orange County Farmers' and Merchants' Association, supra.)

In California Hotel and Motel Association vs. PT&T, 84 CPUC 352 (1978), the Commission backed away from regulating hotels when they provide PBX type service to their guests. In doing so, the Commission stated:

"We agree with the arguments of the Association. While a hotel 'holds itself out' to the public, or a segment thereof, this 'holding out' is simply as a hotel (or at common law, an 'inn') and not as a telephone utility. Logic and common sense dictate that telephone equipment is provided for guests as an incidental part of the hotel or innkeeping business and not vice versa. Other types of institutions such as hospitals, convalescent homes, and dormitories provide telephone systems, usually of the PBX variety, for persons staying upon the premises. If hotels are telephone utilities, so are these types of facilities, and they are also subject to the direct regulation of their rates and charges and to regulation of expansion and financing of their system. It is clear that nothing of the sort was intended by any constitutional or statutory provision."

Stanford is holding itself out to the public as an educational institution. Campus housing, and the policies associated with it, are a part of the educational purposes of the university. Stanford's telephone equipment including basic telephone service, high speed data, cable TV, and computer links, is provided for students and their families using campus housing as an incidental part of the business of the university, which is education. Just as the Commission concluded in 1978 that the relevant constitutional or statutory provisions should not be interpreted to make hotels into telephone utilities, we should not today interpret the same provisions to make a privately-owned university into a telephone utility.

It is inappropriate in our view to read § 234 in isolation. While its provisions would seem to exclude from the

definition of telephone corporation, only hotels, motels, and hospitals, those institutions with guests and patients, this section must be read in connection with the constitutional provisions and statutory provisions giving definition to the concept of a public utility. Moreover, § 234 should be read in connection with § 741.2 which provides that universities are "nonpublic utility providers of telephone services." Furthermore, § 741.2(g) makes clear that the section does not constitute any such nonpublic provider of telephone services, a telephone corporation or otherwise subject it to regulation by the Commission as a public utility.

Finally, we do not believe that D.87-01-063 (shared tenant service guidelines) should be interpreted as applicable to Stanford University. The context in which the issue of shared tenant services arose in OII 83-04-02 was that of commercial property owners or managers providing PBX type service to commercial tenants with business service. The example used on page 2 of D.87-01-063 is that of a skyscraper with one million square feet of office space, wherein the tenants generate up to \$5 million of long distance calls. Domestic telephone service to residential tenants was not treated either in the evidence, arguments, briefs, or orders in that proceeding. The guidelines themselves, while broadly framed, do not purport to apply to domestic telephone service to residential tenants, nor do they deal with the issue of university provided telephone service to students using on-campus housing facilities. Moreover, no California privately-owned universities appeared in the proceeding or participated in any way.

We conclude that Stanford University is not a public utility telephone corporation when it provides telephone services to its undergraduate and graduate students that reside in university provided housing facilities that are located on the privately-owned property of the university. Accordingly, we have

no jurisdiction to issue a cease and desist order to Stanford University requiring it forego connecting its students to its telephone network beginning June 21, 1990.

Discussion of Issue No. 2,  
Request for Cease and Desist Order

In this section we will discuss a cease and desist order, assuming that we do have jurisdiction to issue such an order. Unless we make such an assumption, the discussion of the request for a cease and desist order would be fruitless.

The facts bearing on the request for a cease and desist order are not in dispute. Stanford, on June 21, 1990, will begin a process of connecting all of its remaining campus housing facilities to its telephone network. Once this process is completed, students in these campus housing units will enjoy telephone service, circuits that are suitable for high speed data transmission, circuits linking each housing unit with all of the campus computer centers and cable television. Thus, students, either with or without a family, may enjoy in their room, assuming that the appropriate terminal equipment is present (fax machines, television sets, and computers) all of the services that Stanford intends to provide through its network. Stanford's proposed telephone service will exclude Pacific Bell from the campus and students will not have an option to connect directly with Pacific Bell nor will they have the option to choose a particular long distance interexchange carrier for interLATA or interstate calling. Pacific Bell will continue to provide local exchange service but will connect directly to the Stanford telephone service, rather to the individual student telephone users.

The Stanford telephone network will provide service only to Stanford University faculty, administrative staff, and students living on campus. It will not provide service to commercial tenants of Stanford University with a physical presence on campus or to adjacent commercial enterprises, even though occupying

buildings where Stanford University staff are also present. Upon completion of the network, Stanford will own the PBX equipment, the conduits and the cables used to connect its campus facilities, staff, and students to each other and to the local exchange carriers and interexchange carriers off campus.

Complainants prepared rate comparisons showing Stanford and Pacific Bell rates for local phone service. Activation charges are \$36 (Stanford) and \$34.75 (Pacific Bell). The Stanford monthly service fee is \$11, including unlimited local calling, touch tone, and all fees except Federal tax. The charge for listing in the white pages is \$1 additional for a total of \$12. Pacific Bell's monthly service fee, including white page listing, is a flat rate of \$8.35, touch tone is \$1.20, and network access is \$3.50 for a total of \$13.05. Complainants' evidence included Pacific Bell telephone bills for the months of January through May for Murray and January through April for LeTendre. Each bill includes the extra charges for Universal Lifeline, state regulatory fees, Commission's telecommunication devices for the deaf, and 911 charges. In each case negative rate surcharges of various amounts were deducted from the monthly bills. Murray's average bill for the five-month period January through May 1990 is \$12. LeTendre's average bill for the period January through April 1990 is \$11.36. Both figures are exclusive of message toll and long distance charges; and both figures compared favorably to Stanford monthly service fee of \$12, including white page listing.

Complainants also made a comparison between Stanford's, AT&T's, and MCI's long distance telephone rates. Complainants concluded that based on regular rates, Stanford is between 4% and 12% cheaper than AT&T and between 2% and 5% cheaper than MCI. Complainants note, however, and Stanford does not dispute, that Stanford will not allow access to calling plans such as AT&T's Reach Out America and MCI's Primetime.

Complainants also compared Stanford's long distance rates with AT&T's Reach Out America plan rates and MCI's Primetime plan rates. AT&T's Reach Out America plan offers a 15% discount on evening calls and for night calls assesses a charge of \$8.15 for the first hour and \$6.90 per hour for all additional hours. There is apparently a monthly charge to subscribe to AT&T's Reach Out America plan. MCI's Primetime plan offers a 10% discount on all day calls and assesses a charge of \$8 for the first hour and \$6.50 per hour for additional hours for all evening and night calls. Stanford offers long distance service at rates of 22¢ per minute for day calls, 14¢ per minute for evening calls, and 12¢ per minute for night calls. Because of the differing rate structures the Stanford long distance rates, AT&T's Reach Out America rates, and MCI's Primetime rates are not directly comparable. In addition, both AT&T and MCI appear to charge a monthly flat rate fee for the privilege of subscribing to the long distance discount plans. Complainants' rate comparison nevertheless shows that Stanford is sometimes less expensive than AT&T and MCI and sometimes more expensive, depending on the time of day and the destination of the call.

Another factor that makes comparison between Stanford University telephone service and Pacific Bell is that the Stanford network services will include telephone service, cable television, computer links, and better high speed data capabilities. Complainants could not state their preference for Pacific Bell telephone service alone or Stanford network telephone service coupled with Stanford network cable, Stanford network computer links, and better high speed data capabilities.

Complainant Murray was asked the following questions by counsel for Stanford:

- "Q. If the choices are available to you where, on the one hand, to have Stanford network telephone service coupled with Stanford network cable and Stanford network computer links, and on the other hand, Pacific Bell



telephone service without the cable and without the computer links, which would you prefer?

"A. I can't state a preference for either one of those. Because when you bring the whole package in, there is some value in the package there. But I mean you have to have the whole package. Come in now, it's just a phone system, which by itself--and there's also the problem still the regulation issue of the phone system."  
(Tr. 1:11.)

It is true that Stanford's initial step beginning June 21, 1990 is to connect its student residences on campus to its telephone network. Later, the cable television circuit and the computer links will be installed. Ultimately, the entire campus community will enjoy these three main services, together with updated cable to provide better high speed data transmission. Stanford has no plans to charge for cable television or computer links over and above the standard charges for telephone service.

In their complaint, complainants alleged generally that the cutover to Stanford network telephone service would cause them harm, inconvenience, and disadvantage. The allegations were of a general character and did not allege specific facts giving rise to a presumption of irreparable injury. The evidence sponsored by complainants did not substantiate even a general claim of harm, disadvantage, or irreparable injury. For example, complainants alleged that certain students conducted businesses out of their homes on campus in Stanford's housing units. However, no evidence was tendered to show that that allegation was in fact the case. Complainants' own evidence through the rate comparisons in Exhibits 8 and 9 shows that the differences between Stanford's and Pacific Bell's local phone rates are de minius. The differences between Stanford's long distance rates and MCI's or AT&T's long distance calling plan rates may be more significant. But comparisons are difficult to make because of the differing rate

structures. In addition, one of the complainants testified that he is able to call from his residence on campus at Stanford to his home using his parents' Reach Out America plan membership.

Stanford has chosen a time of year when the least amount of inconvenience can be expected from the changes caused by cutover to the Stanford network telephone service. Because of the end of the regular school year, fewer number of fulltime students will be present on campus in university-provided housing units. Accordingly, Stanford has mitigated, to the extent possible, the inconvenience intended on the switch over to Stanford telephone service.

Even ignoring the jurisdictional issue discussed above, this case does not demonstrate significant, irreparable injuries to the student residents of Stanford. Even under a worst case of scenario, all differences in rates that might be occasioned to Stanford students could be discharged through reparations, if necessary. In any event, the amounts are so small as to be insignificant or, at worst, would tend to balance themselves out over a period of time.

Complainants' rate comparison evidence shows that the potential difference between Stanford telephone rates and Pacific Bell and AT&T or MCI rates is a question of a few cents per call or a dollar or two per month, depending on calling volumes of long distance calls. This evidence contrasted with other evidence in the record regarding the cost of housing and tuition at Stanford University shows that telephone service is truly incidental and insignificant in comparison with the other costs of education at Stanford. For example, annual charges for a family with children at Escondido Village are \$8,592 for a two-bedroom unit, \$10,356 for a three-bedroom unit, and \$12,324 for a four-bedroom unit. Married couples without children at Escondido Village would pay \$5,304 for a one-bedroom unit and \$6,030 for a two-bedroom loft. Both charges are on a three-quarters of the year basis. In addition, regular

tuition for the academic year, payable autumn, winter, and spring quarters, is \$4,760 per quarter for the 1990-91 academic year, or a total of \$14,280 for the regular academic year, September through June. To these staggering sums must be added the cost of books and materials, food, transportation, and incidentals. Even if we assume that Stanford telephone service rates would be on the average slightly more expensive than Pacific Bell - and the evidence is equivocal on this point - it is clear that comparing this assumed difference of a few cents or a few dollars per month against the total cost of education at Stanford puts the telephone service cutover to Stanford network service in the proper prospective. Stanford telephone service is merely incidental in every practical, financial, and legal sense to Stanford's educational enterprise. Were the Commission to attempt to regulate Stanford in the provision of telephone service to its students, it could not guarantee that any useful purpose would be served by such regulation and the cost of such regulation would no doubt be passed on to students through tuition or housing costs, which we do not regulate.

Findings of Fact

1. Stanford holds itself out to provide educational services to a select group of students occupying a special relationship to its administration and faculty.
2. Stanford provided telephone service to student residents of campus housing facilities is merely incidental to the overall purposes of Stanford University.
3. When fully implemented the Stanford telephones network would provide telephone service only to Stanford's administrative office, faculty, and student residences, all of which are on the Stanford campus.
4. Stanford University is a privately owned university occupying its private property in the city of Palo Alto.

5. Stanford will not provide telephone service to any commercial enterprise whether that enterprise is on campus or off campus.

6. Stanford's telephone rates will be, as a whole, comparable to the combined rates of Pacific Bell and either AT&T or MCI.

7. The evidence does not support the issuance of a cease and desist order.

Conclusions of Law

1. Stanford students, whether graduate or undergraduate, who reside in university-provided housing units on the campus of Stanford University are not members of the public as those terms are used in the provisions of California Constitution and PU Code sections cited above.

2. Stanford University does not hold itself out to serve and does not dedicate its property or telephone service facilities to provide service to, the public generally.

3. Stanford University is not a public utility telephone corporation.

4. The shared tenant service guidelines are not applicable to Stanford.

5. The Commission has no jurisdiction to regulate the telephone service provided by Stanford University to the students residing in university-provided housing facilities. The Commission should not issue a cease and desist order preventing Stanford from commencing conversion of student telephone service to Stanford provided network service.

6. The complaint should be dismissed for lack of jurisdiction.

7. Because of imminence of Stanford's project to convert student telephone service to the Stanford network, the following order should be effective today.

O R D E R

IT IS ORDERED that the complaint is dismissed for lack of jurisdiction.

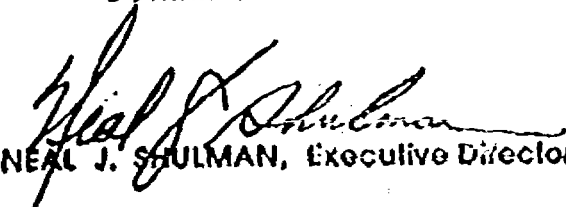
This order is effective today.

Dated JUN 20 1990, at San Francisco, California.

FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

President G. Mitchell Wilk,  
being necessarily absent, did  
not participate.

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

  
NEAL J. SHULMAN, Executive Director

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