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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MORSE SIGNAL DEVICES, a California corporation, Complainant, vs. PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, Defendant.	Case 10874 (Filed June 11, 1980)

Gold, Herscher, Marks & Pepper, Attorneys at Law, by Alan L. Pepper, for complainant.
Margaret deB. Brown, Attorney at Law, for defendant.

INTERIM OPINION

Complainant, Morse Signal Devices (Morse), a California corporation, alleges that:

1. Since September 1977, and to date, defendant, The Pacific Telephone and Telegraph Company (Pacific), has withheld service from Morse, in that alarm circuits provided to Morse by Pacific have continuously and periodically been out of service, rendering them useless;

2. Notwithstanding the fact that alarm circuits have been out of service for days and sometimes weeks at a time, Pacific has continued to charge Morse its monthly service charge for the circuits;

3. A detailed analysis of the circuits which have been out of service has been submitted to Pacific and that Pacific has at all times willfully failed and refused to acknowledge any credits due for the periods of time the circuits have been out of service;

4. The total credit due for monthly service charges for the out-of-service circuits is $128,288.95;

5. As a result of the circuits having been continously and periodically out of service, Morse has been required to and has expended substantial time and labor to report and re-report the circuit outages to Pacific;

6. The total due to Morse for time and labor expended for reporting and clearing troubles is $52,008.00 for which Pacific has willfully refused to acknowledge as any credit due Morse;

7. Morse has been required to and has expended time and labor in the amount of $86,850.00 by field personnel for locating the malfunctioning leased circuits, all for the benefit of Pacific for the period September 1977 through June 1980 which Pacific has refused and failed to acknowledge for the services; and that

8. Notwithstanding the fact that the circuit outages have in many instances continued for weeks at a time, Pacific has failed and refused to repair and restore the the circuits, causing substantial damage to Morse and a substantial loss of business from subscribers who have canceled Morse service, have refused to pay Morse, and have refused to become customers of Morse. As a result, Morse has been required to issue credits to customers of $7,580.66.

9. Pacific has forced Morse to encounter numerous delays in the installation of voice grade multiplex security systems offered by Pacific, which has resulted in cancellation by Morse customers and loss of business and potential customers who have refused to become customers of Morse because of these delays.

Morse requests an order awarding it the following:

1. Reparation of $128,288.95 as of July 31, 1980 as credit for circuits which have been out of service from September 1977 through July 31, 1980;

2. $52,008.00 for reimbursement for the cost incurred by Morse to report and re-report circuit outages to Pacific for the period from September 1977 through July 31, 1980;

3. $103,740.00 for reimbursement to Morse for the cost of Morse's technicians to respond to and report telephone line troubles and outages to Pacific for the period September 1977 to June 30, 1980;

4. Damages, according to proof, from July 31, 1980 to date, for services rendered to Pacific, for reporting and correcting malfunctions on Pacific lines and for credit for line outages;

5. Recovery for losses and damages of $17,580.66 through August 31, 1980, resulting from service credits issued by Morse to its customers resulting from malfunctions on Pacific circuits, and additional damages according to proof from August 31, 1980;

6. Requiring Pacific to respond to outages on Morse lines on an emergency basis;

7. Requiring Pacific to treat the installation of Morse circuits as emergency circuits, to establish a due date for installation consistent with an emergency service, and to install the systems by the due date.

In its answer to the complaint, Pacific admits that occasionally some of the private line services provided to Morse are out of service for limited periods of times, but alleges that when this occurs Morse is given credit for such outages in accordance with Pacific's filed tariff Rule 14, Schedule Cal. P.U.C. No. 36-T. Pacific also admits that it has occasionally missed installation dates for periods up to several months as a result of facilities shortages, but that it is now quoting normal installation dates of 15 to 20 days of the time Morse orders additional services. In all other respects, Pacific denies each of the allegations of the complaint.

As affirmative defenses to the complaint, Pacific alleges that:

1. To the extent that Morse is seeking to recover damages resulting from repair and reporting activities of its employees, service credits allegedly given by Morse to its subscribers and losses it allegedly incurred as a result of circuit malfunctions, damages are barred by Commission policy and prior decisions which have held it is without jurisdiction to award damages.

2. To the extent that Morse is seeking to recover expenses incurred by it to visit joint customer premises, Pacific is barred by prior Commission decisions.

3. Morse is barred by California Public Utilities (PU) Code Section 735 from asserting in this complaint any claim for reparation occurring more than two years prior to June 11, 1978.

Pacific denies Morse is entitled to any relief other than the credits, previously granted to Morse and those to which it may be entitled in the future, in accordance with its Rule 14 of Schedule Cal. P.U.C. No. 36-T, and requests that the complaint be dismissed.

Following notice, a public hearing was held in Los Angeles before Administrative Law Judge William A. Turkish on May 28 and 29, 1981, and the matter was submitted upon the filing of reply briefs on August 14, 1981. Testifying on behalf of Morse was Frank Meiners, vice president of administration, William Sears, who is in charge of Morse's computer operations, and Debra McClennan, Morse's central station manager. Testifying on behalf of Pacific was Brent Clapp, a test board supervisor.

Morse is a central station burglar and fire alarm company that provides 24-hour monitoring services of burglar alarm systems, fire alarm systems, hold-up systems, and other emergency warning systems installed in a variety of businesses and residences. Morse has approximately 6,000 customers and over 9,000 systems which use 312 McCulloh circuits. On each circuit there are approximately 20 subscribers and 30 systems (one subscriber may have more than one system). For burglar alarm, Morse not only monitors alarms but, in addition, monitors the opening and closing of the customers' premises. Each time a business is opened, Morse receives a signal via the McCulloh circuit and receives another signal when the business is closed. By keeping a record of these signals Morse supervises the activity of the subscriber. Morse also provides supervision on sprinkler systems, monitoring the valves that control the flow of water to the sprinkler systems in the event of fire, and it also provides monitoring on refrigeration systems and other industrial processes. Effective monitoring of these systems requires that the transmission link between the alarm company and its subscribers be reliable and constantly available. According to Morse, an outage or fault condition results in the possibility that an alarm or emergency signal will not be received or will not be intelligible when received.

The McCulloh circuit used by Morse is basically a closed loop wire which is connected to many subscribers' premises through a Pacific telephone exchange with each subscriber on the circuit tied together in series fashion at the exchange. A main trunk channel links Morse's central station to each subscriber through Pacific's local serving office. Each individual subscriber system includes a transmitting device that sends signals through the McCulloh circuit to Morse's central station, where these signals are received, interpreted, and annunciated by a computer. Morse personnel take the appropriate action in response to the signals, depending on the nature of the signal and when it is received.

The signals, of which thousands may be received each day, are numeric pulses. Each alarm system on a McCulloh circuit has an individual numeric code that distinguishes it from all other systems on the circuit. In order to send this code, the transmitting equipment at the subscriber's location will open and ground the McCulloh circuit in a pattern corresponding to that subscriber's code.

If the computer receives a code from a circuit that it cannot interpret or cannot match to any known system because of aberrations in the code or other signaling problems, it will consider these sets of signals a "clash". These signals will appear on the computer operator's display in the same pattern and spacing in which they were received by the computer, and the computer operator then attempts to ascertain which subscriber, if any, caused those pulses to be transmitted.

Each of Morse's McCulloh circuits is similar to that of a string of Christmas tree lights connected in series. If any light goes out, the entire string of lights become inoperative. Likewise, if any subscriber leg of the circuit becomes "opened" (a break in the wires between Pacific's local serving office and Morse or any of the subscribers), then the entire circuit goes out because the current or power for the circuit would be interrupted. Morse uses transmitting and receiving equipment that is designed to minimize signal aberration and to create an alternate path so that signals may be received even though an outage or fault condition may exist on the circuit.

When an outage or fault occurs on a circuit, Morse's central station receiving equipment activates a light and buzzer. Morse then attempts to condition the circuit by providing circuit power in an abnormal configuration in an attempt to create a circuit pathway around the fault condition. This enables Morse to identify the nature of the trouble on the circuit, i.e. a ground, an open, or a combination of the two. This procedure, however, does help Morse identify any particular leg of the circuit or identify the subscriber or subscribers affected by the fault. Morse would then call Pacific's repair service to report that the circuit is in trouble as well as the nature of the trouble. This report is timed and entered into a log along with the name, initials, or number of Pacific's empoyee receiving the call. Morse considers this initial contact with Pacific as a report of trouble while Pacific considers it a "call for test assistance".

When Pacific receives a call from Morse, it logs the call and then begins testing the circuit to ascertain where the fault or outage condition exists. Pacific's testing procedure involves the placing of "shoes" into the circuit so that its testing equipment can be used. However, each time a shoe is placed in the circuit for testing purposes, the entire circuit is temporarily disconnected from Morse and no signals can be received by them until the testing is completed.

If Pacific's testing indicates the outage is in a local leg of the circuit, it then calls Morse to give the location. Under Pacific's tariffs, Morse then has the option of dispatching its personnel to the location to ascertain whether or not the trouble is in Pacific's circuit or in Morse's equipment, or it may request that Pacific dispatch its personnel to the location. If Pacific dispatches its personnel, a visit charge is imposed against Morse if the problem is found to be in Morse's equipment. If the fault is in Pacific's equipment, Pacific makes the necessary repairs, contacts Morse to return the circuit, and both firms log the clearance call.

Issues

There is no dispute between Morse and Pacific over Morse's claim of entitlement to credits for the various outages Morse experiences. However, Pacific calculates such credits in a substantially different manner than Morse. Where there is an outage on a single local leg, Pacific gives credit only for the single leg, while Morse contends such outage substantially impairs the signal-processing ability of the entire circuit and, thus, it should receive credit for the entire circuit.

In addition, Pacific measures the time of an outage from the time that Morse calls Pacific and requests that Pacific clear the trouble while Morse seeks credit for the outage from the time it contacts Pacific to request assistance in locating the trouble. Additionally, Pacific will not grant any credit for an outage unless it has ascertained that the cause of the trouble was in Pacific's equipment. Finally, Pacific raises the statute of limitations to bar a portion of Morse's claim.

The primary issues are:

1. Whether Morse is entitled to a credit or reparation for the entire McCulloh circuit when an outage is found to be on a single leg.

2. Whether Morse is entitled to a refund or reparation for Pacific-caused outages from the time Morse first reports the trouble to Pacific until the time service is restored or from the time Pacific is requested by Morse to clear the trouble until the circuit is returned to Morse.

3. Whether Morse is entitled to any credit for outages where the fault clears or is removed prior to the time Pacific is able to ascertain where the fault existed.

4. Whether the burden of proof lies with Morse or Pacific regarding fault conditions.

5. Whether the statute of limitations imposes any bar to Morse's claim of reparation. 1/

6. Whether Morse is entitled to money damages for the time and labor expended by its employees for reporting and rereporting troubles to Pacific and in locating malfunctioning McCulloh circuits.

At the outset of the hearing, Morse withdrew from issue the allegation raised in its complaint regarding the delays experienced in the installation of voice grade multiplex security systems by Pacific, so we need not consider this issue.

Discussion

Statute of Limitations

PU Code Section 735 provides, in part:

> "All complaints for damages resulting from a violation of any of the provisions of this part, except Sections 494 and 532, shall either be filed with the commission, or where concurrent jurisdiction of the cause of action is vested by the Constitution and laws of this State in the courts, in any court of competent jurisdiction, within two years from the time the cause of action accrues, and not after."

The original complaint here was filed by Morse on June 11, 1980. Credits were claimed from September 1977 to the present. Morse stipulates that PU Code Section 735 bars that portion of its claim occurring before June 11, 1978. Thus, any reparation in favor of Morse will run from June 11, 1978.

1/ The parties stipulated that the issues presented should be resolved before any evidence be taken on the amounts in issue. Following a resolution of the issues, the parties agree to negotiate the amounts in issue in accordance with the findings in this decision.

Determining Length of Time
Of Interrupted Service

While both parties agree that entitlement to credit for interruption of service is governed by tariff Schedule Cal. P.U.C. No. 36-T, Rule 14, which allows credit for service interruption of 24 hours or more on intra-exchange service and 30 minutes or more on inter-exchange circuits, they disagree on when the time commences for the accumulation of such credits.

Morse starts the clock running at the time of the first call to Pacific to report an outage. Pacific, on the other hand, regards this initial call as a "test assist" which, according to Pacific's witness, is understood by Pacific and the alarm industry as a request for Pacific's help in locating the source of trouble. According to Pacific's witness, when such "test assist" call is received by Pacific, it attempts to determine through testing where the trouble is on the circuit. If the source of trouble is found to be in Pacific's central office equipment, it is corrected and the circuit is returned to Morse with a credit for the affected portion of the circuit, if appropriate (i.e., an inter-exchange circuit out of service over 30 minutes or an intra-exchange circuit over 24 hours). If the source of trouble is in a local leg of the circuit, Pacific calls Morse and gives it the location. At this point, there is no dispute that Morse has the option of dispatching one of its own personnel to investigate the trouble or asking Pacific to dispatch a repairperson and thus risk the imposition of a visit charge if the trouble is found not to be caused by Pacific.

At this point, too, according to Pacific, Morse could request Pacific to temporarily strap the leg in trouble. This act would temporarily disconnect Morse's subscriber from the circuit, but it would retain the integrity and reliability of the remainder of the local legs on that circuit. Although Morse's witness acknowledged this could be done, it was Morse's impression that, in doing so, a reconnection charge would be imposed when the trouble was repaired and the disconnected subscriber was reconnected into the circuit. Pacific's witness denied that reconnection charges are imposed when a temporary strap is placed across the troubled leg.

If Morse asks Pacific to dispatch a serviceperson after being notified of a trouble location, Pacific starts the time running from that point in determining if Morse is entitled to any credit for interrupted service. The significance of when the time starts running is minor if Pacific's response to Morse's initial "test assist" call is within a few hours. However, it takes on major significance if it takes several days for Pacific to respond with a location to Morse's initial call. According to Morse's witness, an outage averages four to five days before the trouble is located and repaired. The witness also testified that approximately 90% of all trouble reports are ultimately found to be Pacific's fault.

Although Pacific's witness testified that it was understood by both Pacific and the alarm industry that an initial call from an alarm company is considered to be a call for test assistance, it does not alter the fact that an interruption of service has, in fact, already occurred which precipitated the call to Pacific.

We find no provision in Pacific's tariffs which supports Pacific's view that the period of time between Morse's initial trouble report call and Pacific's response to Morse, advising Morse of the location of the trouble, is not compensable. On the contrary, a review of Rule 14, subparagraph (3) of Schedule Cal. P.U.C. No. 36-T, clearly indicates that credit shall be given "for the period during which the services...are affected by...interruption..." This tariff provision is clear on its face that Morse is entitled to credit from the time it first contacts Pacific to report the trouble to the time the circuit is accepted back by Morse following repair of the circuit by Pacific. If the trouble on the circuit is attributable to Morse equipment, or to Morse's subscriber, Morse, of course, is not entitled to any credits.

We are aware, from the record, that Pacific does not maintain sufficient troubleshooting or repair capability in all of its offices on a 24-hour basis and thus is not able to respond immediately to Morse's calls for test assistance or dispatch. However, Pacific is aware that the alarm industry is a 24-hour business and that Morse and its subscribers expect and pay for reasonable and reliable service. Pacific's staffing and repair capability is not the responsibility of its customers. If Pacific cannot offer reasonable trouble-free service for whatever reason, it should be ordered to at least return the pro rata share of that customer's payment for the period of interrupted service. Pacific does so for residential and business customers and it should likewise do so for alarm company subscribers. The fact that Morse has the option of either dispatching its own serviceperson or requesting Pacific to dispatch instead should make no difference as to when to start the clock running.

If Morse elects to dispatch its own personnel rather than requesting Pacific dispatch or dispatches its own personnel and later requests Pacific to dispatch on the same problem, it is conceivable that additional time may be consumed than if Morse had requested Pacific to dispatch initially. However, Morse would, as a practical matter, be interested in clearing the trouble as expeditiously as possible since interrupted service could be harmful to Morse from both a customer relations point of view in addition to the potential liability it could face for an inoperative alarm system. It is clear from the evidence that if Morse requested that Pacific respond to each location immediately upon being advised of the location, Pacific would not have the capability of doing so.

We find no justification in Pacific's contention that credit should only be given from the point in time that Morse asks Pacific to dispatch. Morse has paid for service and it should be entitled to credit for interrupted service as outlined in Pacific's tariffs.

The discussion above deals with credit entitlement for interrupted service where the interruption is caused either by Pacific or by Morse.

Other situations which frequently arise and which must be addressed are those where the reported fault clears unexplainedly prior to the time Pacific is able to ascertain the location of the fault or where Pacific finds no trouble condition on the reported faulty circuit. In the first instance, it is presumed that Pacific has verified the trouble condition and is in the testing stage to determine where the trouble is located. If this is so, we must conclude from the language of Pacific's tariff that in such situation, Morse is entitled to credit for the period of time between its call to Pacific to report the trouble and Pacific's return response that the circuit cleared while testing. In Schedule Cal. P.U.C. No. 36-T, Section 4(a) and (d), the language states that "the utility shall allow for interruptions in service...not due to the conduct of the customer...in an amount equal to the pro rata charge..."

The tariff does <u>not</u> say that Pacific shall only give a credit for interruptions caused by Pacific. It states that Pacific is required to give a credit for all interruptions not caused by the customer. Thus, interruptions caused by the customer is the exception to the rule that "the utility shall allow for interruptions in service...in an amount equal to the pro rata charge..." The party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim or position that the party is asserting. (See California Evidence Code, Section 500.) Morse has the burden of proving an interruption of service. Pacific has the burden of proving that the exception applies in order to escape granting an allowance for such interruption of service. Thus, in the first situation, in the absence of proof by Pacific that the interruption was caused by Morse or its equipment, Morse is entitled to credit for interruption of service if the trouble clears while Pacific is testing and before it can determine the location of the trouble. In the second situation posed above, if Pacific finds no trouble on the circuit reportedly in trouble, we do not deem that Morse has sufficiently met its burden of proof. At the very least, a report of interrupted service should be verifiable by Pacific that the interrupted service does indeed exist. At that point, the burden is satisfied and then shifts to Pacific to prove the exception. We thus conclude that Morse is entitled to credit where it reports a troubled circuit and the trouble clears while Pacific is still testing but has failed to determine the location of the trouble. However, Morse is not entitled to credit where Pacific does not find any trouble on the reported troubled circuit unless Morse can prove Pacific's facilities caused the trouble.

Another issue in this same vein is those situations where Morse's records indicate a trouble report being made to Pacific, the fault repaired and the circuit returned to Morse, where the source of the trouble is logged by Morse as "unknown". Morse's witness testified that this is the information as received from Pacific. Pacific's witness testified that it does not return a circuit to Morse with an "unknown" as the source of trouble. Pacific's witness compared and discussed Morse's evidence of trouble reports as shown on Exhibit 10 with Pacific's evidence of trouble reports as shown in Exhibit 13. Exhibit 13 showed several instances of the interrupted service caused by Morse which shows on Exhibit 10 as "unknown".

These discrepancies in the exhibits detract somewhat from their probative value. However, since the burden of proof rests with Pacific to prove the exception to the liability rule, it must bear the responsibility for interruptions of service where the source of the interruption is not linked directly to Morse. A new procedure in logging with better communication between Morse and Pacific is certainly indicated from the evidence.

We next consider the issue of whether Morse is entitled to a refund for the entire McCulloh circuit when the outage is determined to have been on a single local leg or only for the outage on the local leg.

Pacific's position is that Morse is entitled to a credit only for the specific leg of the McCulloh circuit on which the trouble exists. It bases this position on tariff Schedule Cal. P.U.C. No. 36-T, Rule 14(3), 5th Revised Sheet 56,[1/] and on the testimony of its witness as well as the testimony of Morse's witnesses.

1/ Schedule Cal. P.U.C. No. 36-T, Rule 14, 5th Revised Sheet 56, provides as follows:

> "/T/he liability of the Utility for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in any of the services or facilities furnished by the Utility, including...private line... services, shall in no event exceed an amount equal to the pro rata charges to the customer for the period during which the services or facilities are affected by the mistake, omission, interruption, delay, error or defect, provided, however, that where any mistake, omission, interruption, delay, error or defect in any one service or facility affects or diminishes the value of any other service said liability shall include such diminution, but in no event shall the liability exceed the total amount of the charges to the customer for all services or facilities for the period affected by the mistake, omission, interruption, delay, error or defect."

Morse, on the other hand, contends that it is entitled to credit for the entire circuit on which the troubled local leg is located because, in its opinion, the entire circuit is substantially impaired by an outage condition anywhere on the particular circuit. Since Morse has approximately 20 to 25 subscribers on each McCulloh circuit, the difference between credit for a full circuit rather than for a single local leg can be considerable.

Morse's reliance upon Rule 14(3), Schedule Cal. P.U.C. No. 36-T for its claim that it is entitled to credit for the entire circuit when there is an interruption of service on a local leg because it may affect Morse's ability to receive alarm signals from the other subscribers on the circuit and thus diminishes the value of the entire circuit, is misplaced.

Rule 14(3) speaks of additional liability of the utility where interruptions in <u>any one</u> service or facility affects or diminishes the value of any <u>other</u> service. Morse apparently believes that each subscriber on a circuit constitutes <u>any other service</u>. We need only direct Morse's attention to the remainder of Rule 14 to dispel its concept of what the tariff is referring to when it refers to additional liability for diminution of <u>any other service</u>. Rule 14(4) sets forth the allowances which are provided for interruptions in services furnished by the utility, other than directory services, and then lists the particular services covered. Each of the items listed is a different service offered by Pacific.

When Rule 14(3) refers to additional liability of the utility where interruptions, etc., in <u>any one service</u> affects or diminishes the value of <u>any other service</u>, it obviously is referring to a situation where a customer subscribes to two or more of the services described in Rule 14 and where an interruption, etc., in one service affects or diminishes the other service or services provided by Pacific to that customer. Morse's private line alarm service is one single service rather than a multitude of services corresponding in number to the number of its individual subscribers. Morse would be eligible for credit under Rule 14(3) only if it subscribed to any other service provided by Pacific, as shown under Rule 14(4), and interruptions in its private line alarm service affected the other service.

From our reading of Rule 14, Morse is not eligible under subparagraph (3) for additional credit for the alleged diminished value to the remainder of the circuit caused by an interruption of service on a local leg of that circuit.

Even assuming for the moment that the tariff could be construed in a light most favorable to Morse, we would still find Morse ineligible for the credit it seeks for the following reasons.

While some diminution in value of the remaining circuit can be argued from the fact that an outage in a local leg may prevent other alarm signals on that circuit from being received by Morse or that Morse may receive garbled signals which it cannot identify, it is near impossible to determine a value for such diminution since it is still possible that the remaining portion of the circuit may still function normally whenever there is an interruption of service on a local leg. Morse's witness acknowledged this. Morse has the ability to condition a circuit so that alternate signaling paths are still possible. Furthermore, this is a situation where Morse has the ability to eliminate any effect on the remaining portion of the circuit by having Pacific temporarily "strap" the leg in trouble. Morse's witness agreed that this procedure could have been used but that Morse does not request "straps" because this would take the customer on the troubled leg completely out of service. Such position is inconsistent with the witness' testimony about the extent to which a circuit is impaired when only one leg is in trouble.

Although there was testimony that Pacific had on some occasions given Morse a location which proved incorrect, the frequency of such occurrences appears to be few in relation to the total number of trouble locations handled by Pacific. Thus, even though on such occasion the subscriber might be taken out of service with a temporary strap, it should not take an undue period of time to determine that the trouble was not at that location but rather elsewhere and the strap removed from the wrong location. However, in the majority of cases, the location is correct and a strap will ensure the reliability and integrity of the remainder of the circuit. If the impairment of the circuit is deemed substantial, as Morse claims it is when a single local leg is out, one would logically conclude that Morse should take one customer out of service by strapping the leg rather than tolerating a severely impaired circuit containing many other customers. We can only conclude from this that if the entire circuit is as impaired as Morse claims, it is a result of Morse's decision not to strap the single leg in trouble rather than placing the blame for such impairment entirely upon Pacific.

There is another point worth mentioning in connection with the McCulloh circuit. The McCulloh circuit is a system which goes back many years and at the time of its conception was the only economical system which was available for use by the alarm industry. The nature of the system (i.e., a closed loop) was such that the alarm industry was well aware of the fact that when there was a short or ground on a local leg of the circuit, it could have an effect on the rest of the circuit.

It is possible that Morse, in order to counteract this very problem, designed and installed its central office equipment which could "condition" the circuit to permit an alternate pathway for the alarm signal when there is an open or ground on the circuit.

In the early 1970s a newer technology was offered to the alarm industry wherein the closed loop feature of the McCulloh circuit was eliminated which permitted the remaining circuit to still function when a local leg was in trouble. This newer alarm service also has desirable features which are not available with the older McCulloh system.

Morse has replaced many McCulloh circuits with the newer voice grade multiplex alarm service. Thus, if Morse were seriously concerned with the reliability of the McCulloh circuit when a single local leg is in trouble, it could replace its existing McCulloh circuits with the voice grade multiplex service and eliminate this problem. We must also presume that the pricing of the McCulloh system is based in part on the nature of the service it provides with its limitations. In other words, one gets what one pays for.

For all of the above reasons, we conclude that Morse is not entitled under Rule 14 to a credit or refund for the entire circuit but is entitled to a credit or refund for interruption of service on each local leg only, which is not due to the conduct of Morse, its equipment, or to subscribers.

Damages

Morse seeks $86,850 from Pacific for the expense incurred by Morse for the time and labor of its employees in locating malfunctioning McCulloh circuits through June 31, 1980 and $52,008 as reimbursement for the time and labor of its employees in reporting and rereporting circuit outages to Pacific. In addition, Morse seeks $7,580.66 through August 31, 1980 corresponding to the service credits issued by Morse to its subscribers resulting from malfunctions on Pacific's telephone circuits.

The money sought by Morse for the time and labor expended by its employees in locating malfunctioning McCulloh circuits and in their reporting and rereporting of circuit outages to Pacific, as well as the amounts sought for the service credits issued by Morse to its subscribers, is a claim for damages rather than reimbursement of charges paid to Pacific.

We have repeatedly held that the Commission is without jurisdiction to award damages. (Schumacher v Pacific Telephone and Telegraph Co. (1965) 64 CPUC 295; Edward L. Blincoe, et al. v Pacific Tel. & Tel. Co. (1963) 60 CPUC 432; and Manfred M. Warren, et al. v Pacific Tel. & Tel. Co. (1956) 54 CPUC 704.) The proper forum for any damages Morse seeks from Pacific is the court system.

Pacific's answer to the complaint contained an affirmative defense relating to vendor repair visits to joint customer premises. However, there was no specific allegation in the complaint relating to such event and no such evidence was produced during the course of the hearing. We thus need not consider this as an issue.

Findings of Fact

1. Morse is a central station burglar and fire alarm company that provides 24-hour monitoring services of several types of alarm systems installed on the premises of a variety of businesses and residences.

2. Morse provides alarm services to approximately 6,000 subscribers using closed loop configuration circuits known as McCulloh circuits.

3. A McCulloh circuit is a closed loop system whereby all Morse subscribers on a particular circuit are wired in series with one another through each subscriber's local telephone central office and to Morse's central office location. The wiring between a telephone central office and a Morse subscriber is designated as a local leg.

4. Many outages or interruptions in service have occurred on the local leg of various Morse's McCulloh circuits since June 11, 1978 as a result of opens, grounds, or foreign voltage.

5. An open or ground on a local leg will cause an interruption of service from that leg. Morse has the ability to "condition" opens or grounds to provide an alternate path for alarm signals from the remaining local legs on that circuit. In so doing, Morse has the ability to continue receiving alarm signals from the other subscribers on the circuit.

6. When there is an open or ground on a local leg of a circuit, there is a strong possibility that some alarm signals from the other subscribers on that circuit may arrive at Morse's central office either in an unintelligible form or perhaps not be received at all. There is also a strong possibility that Morse will receive alarm signals from the other subscribers in a normal manner.

7. Pacific's tariff Schedule Cal. P.U.C. No. 36-T, Rule 14(3), requires Pacific to grant a credit to a customer for all periods of interrupted service.

8. Morse is entitled to credit for that entire period of time between the time Morse first informs Pacific of trouble on a circuit to the time the trouble is cleared and the circuit returned back to Morse.

9. Morse is not entitled to credit for an interruption of service only from the time that Morse first requests Pacific to dispatch a repairperson to clear a trouble report.

10. Morse could request Pacific to place a temporary strap across a local leg upon which there is an interruption of service and thus ensure the integrity and reliability of alarm signals from the remaining subscribers on that same circuit.

11. Tariff Schedule Cal. P.U.C. No. 36-T, Rule 14(3), provides for credit for interruptions in any of the services or facilities furnished by Pacific for the period during which the services or facilities are affected by such interruption, and further provides that where such interruption in <u>any one service</u> affects or diminishes the value of <u>any other service</u> provided by the utility, the customer shall be eligible for additional credit.

12. The channels used by Morse for its alarm signaling purposes, of which the McCulloh system is a part, constitute one service provided by Pacific.

13. The statute of limitations for any claim in this complaint is set forth in PU Code § 735 as two years from the time the cause of action arose.

14. There is no tariff provision which entitles Morse to any credits for credits granted by Morse to its subscribers.

15. There is no tariff provision which entitles Morse to any credit for the service costs and central station labor costs incurred by Morse.

16. The Commission is without jurisdiction to award damages; the Commission can award reparation due to violation of tariff provisions.

Conclusions of Law

1. Morse should be entitled to credit for all periods of interrupted service from the time it first notifies Pacific of an interruption of service until such time as the interrupted service is restored and the circuit returned back to Morse.

2. Morse should not be entitled to any credits for alleged diminished value of a McCulloh circuit when there is an interruption in service on any local leg of that circuit.

3. Any effect which an interruption of service on a McCulloh local leg may have on the remaining subscribers on that circuit is not compensable under Rule 14(3) since it is all one service.

4. Morse should not be entitled to any claim of credit for interruption of service occurring before June 11, 1978.

5. Morse should not be entitled to receive any credit for alleged interruptions of service where such interruptions clear themselves or are removed prior to the time Pacific is able to ascertain that such interruptions existed.

6. Morse should be entitled to credit for interruptions in service where Pacific acknowledges such an interruption has occurred but such interruption of service is cleared prior to the time that Pacific can locate the source of such trouble.

7. Morse should not be awarded damages incurred for service and labor costs.

8. Morse has the burden of proof in establishing that an interruption of service occurred on any of its circuits.

9. Pacific has the burden of proof in establishing that an interruption of service was caused by the conduct of the customer.

INTERIM ORDER

IT IS ORDERED that:

1. Morse Signal Devices (Morse) and The Pacific Telephone and Telegraph Company (Pacific) shall confer and review Exhibits 10 and 13 in this proceeding in order to ascertain whether Morse is entitled to any reparation for circuits out of service not previously issued by Pacific to which Morse may be entitled under the findings and conclusions set forth above.

2. Morse and Pacific shall notify the presiding Administrative Law Judge within 60 days of the effective date of this order of the result of their review of Exhibits 10 and 13, so that it can be determined if a final order can be issued or if further hearings are necessary.

3. Morse's claim for damages incurred for service and labor costs is dismissed.

This order becomes effective 30 days from today.

Dated JAN 5 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

Commissioner Leonard M. Grimes, Jr., being necessarily absent, did not participate.

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

Joseph E. Bodovitz, Executive Director