

ORIGINAL

Decision S3 95 013 MAY 4 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ICS COMMUNICATIONS, a California Corporation,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a California Corporation,

Defendant.

Case 82-03-06
(Filed March 15, 1982;
amended October 15, 1982)

Palmer & Willoughby, by Warren A. Palmer and
Richard B. Severy, Attorneys at Law,
for complainant.
Randall E. Cape, Attorney at Law, for
defendant.

O P I N I O N

Complainant ICS Communications, Inc. (ICS), a California corporation, seeks an order providing that defendant The Pacific Telephone and Telegraph Company (Pacific) make reparation to ICS of \$40,535.37 plus interest at 7% per annum for overcharges allegedly charged from March 1979 through August 1982.

A duly noticed hearing was held before Administrative Law Judge N. R. Johnson in Los Angeles on October 12 and 13, 1982, and the matter was submitted subject to the filing of concurrent briefs due, after several extensions, January 17, 1983. Testimony was presented on behalf of ICS by one of its vice presidents,

L. K. Harris, and by its chief engineer, R. K. Young. Testimony was presented on behalf of Pacific by its staff manager with the business relations group, J. R. Prescott, by an associate staff manager in the electronic systems assistance center, A. B. Boxer, by one of its district staff managers in its accounting department, F. W. Schaub, and by one of its staff managers in its service costs department, T. M. Halo.

I. BACKGROUND

ICS is a radiotelephone utility (RTU) providing two-way mobiletelephone and one-way tone-only and tone-and-voice paging service within its authorized service area in portions of San Bernardino, Riverside, Los Angeles, Orange, San Diego, and Ventura counties, California. Currently ICS has approximately 7,150 tone-only paging customers who have between 46,000 and 47,000 paging units.

In order to provide service with no charge per call to its paging customers, ICS has installed a number of foreign exchange (FEX) lines in its Southern California service area as well as two groups of incoming wide area telephone service (INWATS) lines obtained from Pacific. One group, 800-262-1410, is used for tone-only customers having touch-tone telephones (automatic tone-only paging service) and currently consists of one pilot line and six additional rotary lines. The second group, 800-262-1360 (manual tone-only paging service), currently consists of one pilot line and two additional rotary lines.

These two INWATS service groups have been furnished by Pacific since 1972 in accordance with its wide area telephone service (WATS) tariffs. By letter dated November 26, 1980 ICS's attorney advised Pacific's assistant vice president R. W. Hoffman

of its concern that Pacific's billing procedures and methods might be improper. This matter was never resolved to ICS's satisfaction and on March 15, 1982 it filed this complaint requesting reparation plus interest for alleged overcharges by Pacific. The amount requested was based on computations reflecting ICS's usage data compiled from its own monitoring equipment as well as other documentation.

II. POSITION OF ICS

Testimony, exhibits, and arguments presented by ICS indicated the following:

1. Federal Communications Commission (FCC) Rule 22.513 requires RTUs to provide calling-in service to its customers on a local or toll-free basis.
2. ICS does not charge its customers for the FEX and/or INWATS lines required to meet the above FCC requirement.
3. Pacific has never refused to provide INWATS to ICS under its WATS tariffs.
4. ICS installed peg counters and time clocks to count the calls and measure the time on each paging call for the automatic tone-only paging service group of INWATS lines in August 1981 and on the manual tone-only paging service group of lines in November 1981.
5. ICS sent 7,150 questionnaires to its paging customers to ascertain the average calling party off-hook time after ICS disconnected. Of those questionnaires 949 were answered and indicated an average off-hook time of 2.789 seconds.

6. The average off-hook time for a hundred calls measured with a stopwatch was 2.7899 seconds.
7. Pacific's WATS tariffs for March 1979 through August 1982 do not authorize the one-tenth-of-a-minute six-second incremental procedure used by Pacific for billing purposes.
8. Pacific's overcharges for INWATS for April 2, 1979 through September 1, 1982 were \$31,417.35 for the automatic group of lines and \$9,118.02 for the manual group of lines, a total of \$40,535.37.
9. The peg counters and time clocks installed on the automatic and manual tone-only paging groups of INWATS lines are reliable and accurate.
10. The ICS-computed hours of usage used in determining the alleged overcharge were determined by the product of Pacific's number of calls for the billing periods and the sum of the computer holding time derived from ICS's metering equipment and the customer holding time derived from a customer survey.
11. There are approximately 235,000 paging calls per month for the automatic paging system.
12. It is fundamental that this Commission is vested with jurisdiction in all reparation cases and its jurisdiction is not affected by the fact that interpretation of contracts may be involved.

13. Pacific has endeavored to change this case from a simple tariff violation forbidden by Public Utilities (PU) Code Section 532 by claiming that the burden of proof rests with ICS to establish that Pacific's INWATS charges and billings are unreasonable, discriminatory, or excessive.
14. Any ambiguity in a tariff must be resolved against the utility responsible for the ambiguity.
15. This complaint to recover overcharge reparation is well within the three-year statute of limitations prescribed by PU Code Section 736.
16. Single Number Access Plan (SNAP) is too expensive to use for ICS's tone-only paging operations and the remote call-forwarding procedure is too slow.

III. POSITION OF PACIFIC

Testimony, exhibits, and arguments presented on behalf of Pacific indicated that:

1. Pacific feels that ICS has been treated as all other RTUs and has been provided interconnection facilities necessary for ICS's operations in the RTU industry, including the providing of paging service to the public.
2. Pacific considers ICS to be operating its paging service in accordance with the terms of an implied contract between Pacific and ICS.
3. Pacific has two negotiated contracts with ICS: one for mobile interconnections and one for private line facilities.

4. The monthly rate and overtime charges applicable to the Southern California INWATS effective November 23, 1981 to the present time are \$273 a month for the 10-hour rate with an overtime rate of \$21.50 per hour and a one-tenth-of-a-minute rate of 3.6c. For this period the 100-hour rate is \$925 a month, the hourly overtime rate is \$10.25, and the one-tenth-of-a-minute overtime rate is 1.7c.
5. Effective August 4, 1981 to November 23, 1981 the 10-hour rate was \$265 a month, the hourly overtime rate was \$21, and the one-tenth-of-a-minute rate was 3.5c. For this same period the 100-hour rate was \$900 a month, the hourly overtime rate was \$10, and the one-tenth-of-a-minute rate was 1.7c.
6. Effective August 17, 1974 to August 4, 1981 the 10-hour monthly rate was \$260, the overtime hourly rate was \$19, and the one-tenth-of-a-minute rate was 3.2c. For the same period the 100-hour monthly rate was \$700, the hourly overtime rate was \$8, and the one-tenth-of-a-minute rate was 1.3c.
7. Pacific offers SNAP to the RTU industry which allows access to a paging terminal by use of one or more numbers from a toll area. An RTU would accept the pager call at 81% of the normal toll rate from the originating area.
8. Another alternative available to RTUs for paging service is remote call-forwarding.
9. The WATS tariff is used as a rate reference, but the conditions and restrictions of the tariffs do not apply to the RTUs.

10. There are 37 RTUs in California of which less than 10 subscribe to SNAP.
11. ICS has the largest service area of all the RTUs in California.
12. The FCC has removed any resale prohibition from interstate WATS tariffs.
13. ICS's service is provided from a No. 1A ESS machine.
14. The No. 1A ESS is a stored program controlled telephone switching machine. Call timing is performed by the computer-like central processor under the control of a stored program. Timing starts when the ICS line is detected off-hook and continues until either the originating line and ICS line is in an on-hook state, or until 11 seconds after either the originating line or the ICS line is detected in an on-hook position.
15. The two basic factors accounting for the differences in INWATS usage charges billed and attested to by Pacific and the smaller amount claimed by ICS are:
(1) the accounting procedure whereby each call's duration is reflected in terms of tenths of a minute rounded up to the next whole tenth; and
(2) the chargeable time ends when the network connection is completed, not when ICS's facility goes on-hook.
16. It is necessary to accumulate calls for billing purposes in one-tenth-of-a-minute increments to cover Pacific's cost of setting up the call and the cost of usage for short duration calls.

17. Pacific's billing system has been checked to see if ICS's INWATS usage is being processed correctly and no discrepancies were found.
18. The 1981 embedded cost for setting up a WATS call is 5c and the ensuing cost per minute is 2c.
19. The 1983 incremental cost for setting up a WATS call of 90 miles or less is 6c and the ensuing cost per minute is 5c, and for a WATS call 91 miles or longer the setup cost is 7c and the ensuing cost per minute is 5c.
20. Pacific's INWATS billing procedure was and is reasonable and necessary to ensure that Pacific's costs to provide service for many short duration calls are recovered.
21. ICS is not a customer of Pacific's under tariff and, therefore, this Commission has no jurisdiction over this complaint.
22. When the complainant in a reparation proceeding fails to assume the burden of proving that the charges attacked are unreasonable, the absence of affirmative proof compels dismissal of the complaint.
23. Any reparation to ICS of amounts billed prior to March 1980 is barred by the two-year statute of limitations provided by PU Code Section 735.

IV. DISCUSSION

Commission Jurisdiction

In support of its position that this Commission lacks jurisdiction in this matter, Pacific argues that ICS is not a customer under Pacific's INWATS tariff Schedule No. 128-T because the tariff contains a provision prohibiting resale of INWATS. According to Pacific, the use of INWATS by ICS is not for ICS's own calls but for calls ICS subscribers make to activate their radio pagers and, therefore, ICS is being served in accordance with the terms of an implied contract rather than under the terms of the INWATS tariff schedule.

Pacific then paraphrases from our decision in Cortez v P.T.&T. (1966) 66 CPUC 197 by stating this Commission has held that it is not charged with the enforcement of private contracts, and then quotes the following from another decision:

"Ordinarily the Commission will not pass upon contracts or arrangements between public utilities, except in cases in which the Public Utilities Act requires the Commission's approval. (Pomona Valley Tel. & Tel. Union (1912) 1 CRC 362.) The interpretation of the contract and the enforcement of the remedies thereunder is properly a function of the civil court. The Commission is not charged with the enforcement of private contracts [citing Cortez]." (Sunland Refining Corporation v Southern Tank Lines, Inc. (1976) 80 CPUC 806 at 815-16.)

The Cortez decision states that while this Commission is not charged with the enforcement of private contracts, it can award reparation under PU Code Section 734 for the amount of money unreasonably collected from a ratepayer.

With respect to Sunland Refining Corporation decision involving contracts or arrangements between public utilities, it should be noted that in this proceeding we are not being asked to pass upon a contract, either written or implied, nor upon any kind of an arrangement. We are adjudicating a dispute regarding the proper application of Pacific's INWATS tariff. In this respect it should be noted that PU Code Section 1707 states:

"Any public utility may complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard ex parte by the commission or may be served upon any parties designated by the commission. (Former Sec. 62.)"

Obviously, a complaint against a utility (Pacific) by a utility (ICS) is precisely the matter before us at this time. It is axiomatic that the procedure for resolution is the same irrespective of whether or not ICS is a utility and, therefore, this matter relating to the proper application of Pacific's INWATS tariff is solely within our jurisdiction.

Statute of Limitations

PU Code Section 735 provides:

". . . 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. (Former Sec. 71(b). Amended 1953, Ch.702.)"

Pacific contends that Sections 494 and 532 are inapplicable to this proceeding and, therefore, Section 735 is governing. In support of this position Pacific argues that Section 494 applies only to the transportation of persons or property by common carriers and is inapplicable to the present proceeding. We agree.

Pacific further contends that Section 532, which states in part:

"...no public utility shall charge, or receive a different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time..."

applies only to cases in which a complainant disputes the rate or charge applied by the defendant and not in a case such as this where ICS does not dispute either the monthly rate or the overtime charge per minute, but disputes only the manner in which overtime minutes are accumulated. We disagree. It is academic whether the alleged overcharge derives from the application of an inappropriate tariff or the misapplication of the appropriate tariff--the end result is the same.

Consequently, PU Code Section 736, which states:

"736. All complaints for damages resulting from the violation of any of the provisions of Sections 494 or 532 shall either be filed with the commission, or, where concurrent jurisdiction of the cause of action is vested in the courts of this State, in any court of competent jurisdiction within three years from the time the cause of action accrues, and not after. If claim for the asserted damages

has been presented in writing to the public utility concerned within such period of three years, such period shall be extended to include six months from the date notice in writing is given by the public utility to the claimant of the disallowance of the claim, or of any part or parts thereof specified in the notice. (Former Sec. 71 (c). Amended 1953, Ch. 702.)",

is applicable and the statute of limitations in this proceeding is three years, as argued by ICS.

Timing of Calls

The central core of this dispute is the proper method for deriving the time of INWATS line usage for the computation of the billing charges in accordance with tariff Schedule No. 128-T.

As previously stated, ICS is served from a No. 1A ESS machine. Call timing is performed by the central processor under control of the stored program. The stored program will cause the central processor to monitor the state of both the calling line (the originator of the call) and the called line (ICS line). Timing commences when the ICS line is detected in an off-hook state and continues until either both lines are detected in an on-hook position or an 11-second interval has lapsed after either line is placed in an on-hook position. Under the stored program control the time interval information is transferred to a magnetic tape and forwarded to Pacific's accounting department for processing. Calls of two seconds or less are not considered completed calls and are dropped from further processing at that time. One second is deducted from the duration of all calls over two seconds and the remaining time is converted to minutes and tenths of minutes to create a WATS message record. These records,

one per call, are summarized on a daily basis to produce daily usage records. Once a month the daily usage records for each line are summarized into one monthly usage summary record by adding the accumulated duration in minutes and tenths of minutes. The resultant summation is divided by 60 minutes to convert the total usage into hours and tenths of hours. From this total the base allowance is subtracted, leaving the overtime hours expressed in hours and tenths of hours which is priced out at the appropriate hourly overtime rate. In computing the WATS message record, the seconds are converted into tenths of a minute by rounding up to the next whole tenth of a minute. For example, an eight-second call would be counted as two-tenths of a minute.

ICS took issue with Pacific's procedures, especially the rounding up of seconds to the next whole tenth of a minute, and installed peg counters and timers on the automatic paging lines in August 1981 and on the manual paging lines in November 1981. With this equipment ICS meters the total hours the ICS equipment is off-hook each month and the number of calls on each line. The hourly figure is converted to seconds and divided by the number of calls to derive the average time in seconds for each call. Such measurements were taken for all lines for both the automatic and manual paging systems. ICS also sent questionnaires to 7,150 customers to ascertain the average calling party off-hook time after the ICS equipment had left the line. Of the customers replying, 949 indicated an average off-hook time for the calling party after ICS equipment left the line of 2.789 seconds. In addition, 100 calls were randomly timed and indicated an average hang-up time of 2.7899 seconds. During the time the peg counters and timing clocks were in place, ICS computed the

INWATS lines billing time by adding 2.79 seconds per message to the timed ICS equipment off-hook interval. For the balance of the period in dispute, ICS added 2.79 seconds to the average off-hook time for each message to derive an average time per message. This amount was multiplied by the number of messages billed by Pacific and converted to hours and tenths of hours for the application of the tariff charges. Using this method, ICS computed the INWATS charges from March 1979 to August 1982 to be \$31,417.36 less than billed for the automatic paging system lines and \$9,118.02 less for the manual paging system, a total of \$40,535.37.

The difference in the computed charges results from differences in the hours of use rather than the number of messages as indicated by the fact that the total number of messages on all the INWATS lines recorded by Pacific for the period January 1982 through August 1982 was 2,480,962 as compared to 2,499,272 indicated by ICS's peg counters for that period, a difference of less than three-quarters of 1%. There is, however, a marked difference in the average time per message recorded by Pacific and computed by ICS as indicated by the following tabulation:

	Line Groups			
	Automatic		Manual	
	1410 (4-100 hour lines)	1412 (3-10 hour lines)	1360 (1-100) hour line)	1361 (2-10 hour lines)
	(S e c o n d s)			
Pacific Time Per Message	9.404	8.653	12.526	12.345
ICS Time Per Message*	5.006	5.114	8.653	8.962
Difference	4.398	3.539	3.873	3.383

* Excluding customer hang-up time estimated by ICS to be 2.79 seconds.

These differentials ranging from 3.383 seconds for the 1361 group of lines to 4.398 seconds for the 1410 group of lines consist of the sum of ICS's customer hang-up time and Pacific's rounding up of the seconds message time to the next whole tenth of a minute.

Effective August 17, 1974 and continuing today, tariff Schedule No. 128-T contains the following provision applicable to measured service:

"Service is offered with two options of an initial measured time period of either 10 hours or 100 hours accumulated time per month or any fraction thereof. The additional period is measured in tenths of an hour or major fraction thereof. The charge per tenth of hour is one-tenth of the additional hour rate."

From August 17, 1974 to September 22, 1980 the tariff contained the following provision:

"Measured time begins when connection is established between the WATS access line and the called or calling station, and ends when such connection is terminated.

Effective September 22, 1980 and continuing today, the above tariff provision was replaced with:

"Chargeable time begins when connection is established between a station associated with the WATS access line and the calling or called station, and ends when the calling station 'hangs up' thereby releasing the network connection. If the called station 'hangs up' but the calling station does not, chargeable time ends when the network connection is released by automatic timing equipment in the telephone network."

Effective November 4, 1982 the following provision was added for the computation of chargeable time:

"(b) Elapsed time is measured separately for each message and accumulated in increments of one-tenth minute with fractions of a tenth-minute rounded to the next higher tenth minute. Minutes and tenths of minute are summed by rate period and chargeable hours determined rounded to nearest tenth of hour."

According to the record, Pacific has been employing this "elapsed time" procedure in computing ICS's billing charges at least as long as the period encompassed by this complaint, i.e. March 1979 through August 1982. There is no doubt that such a procedure is applicable from November 4, 1982 forward. Prior to November 4, 1982, however, Commission authorization for the use of such a procedure is absent.

In this respect we note that Ordering Paragraph 8 in Decision 93367 dated August 4, 1981 reads as follows:

"8. Pacific is directed to make a study and file a proposed tariff, within 6 months after the effective date of this order, which changes the rate structure of its intrastate WATS to a structure parallel to that in effect for interstate WATS with no increase in net revenue."

The "elapsed time" provision was included in the tariff filing resulting from the above-quoted Ordering Paragraph 8. Apparently it was filed to formalize and obtain authorization for a practice that had been followed for some time. This does not mean, however, the procedure was a correct one. The tariff provision in effect prior to November 4, 1982 relates to tenths of hours, not tenths of minutes. The only rounding upward

mentioned in the tariff relates to major fractions of the time unit set forth in the tariff and, in our opinion, is a far cry from rounding upward to the next whole unit any amount, however small, in excess of the basic unit. Consequently, for the time period under consideration in this matter, we will permit the accumulation of small time increments (seconds) for billing computations, but will not permit rounding upward the timed intervals to the nearest whole tenth of a minute.

As previously stated, ICS computed the hang-up time to be 2.79 seconds based on 949 questionnaires (Exhibit 8) and the average of 100 timed calls (Exhibit 9). The average hang-up time from the questionnaires was computed as follows:

	S e c o n d s							
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>Total</u>
Number Answering in Interval	244	317	151	66	60	25	86	949
Number Answering Times Interval	244	634	453	264	300	150	602	2,647

2,647 divided by 949 equals 2.789 seconds average answering time.

The average hang-up time for the 100 timed messages was 2.899 seconds after limiting the hang-up time to a maximum of 11 seconds to correspond with Pacific's timing procedure.

However, applying the same method to the timed calls from Exhibit 9 yields the following:

	<u>S e c o n d s</u>								<u>Total</u>
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>7</u>	<u>8</u>	<u>11</u>	
Number Answering in Interval	45	31	10	5	2	2	1	4	100
Number Answering Times Interval	45	62	30	20	10	14	8	44	233

233 divided by 100 equals 2.33 seconds rather than the actual average of 2.7899 seconds.

The ratio of 2.7899 to 2.33 is 1.20 which, applied to the questionnaire-derived average of 2.789 seconds, yields an average hang-up time of 3.34 seconds. This latter figure appears to us to be more reasonable than ICS's figure of 2.79 seconds and will be adopted for purposes of computing the reparation in this proceeding.

Deducting this 3.34-second figure from the tabulated difference between ICS's recorded off-hook time and Pacific's time per message set forth on page 14 results in an adjustment for Pacific's billings to ICS for the period March 2, 1979 through November 4, 1982 equal to a reduction in the overtime charges computed as: the product of the number of messages divided by 3600, 1.058 seconds, and the overtime rate of charges for the 1410 group of lines, the product of the number of messages divided by 3600, 0.199 seconds, and the overtime rate for the 1412 group of lines, the product of the number of messages divided by 3600, 0.533 seconds, and the overtime rate for the 1360 group of lines, and the product of the number of messages divided by 3600, 0.043 messages, and the overtime rate for the 1361 group of lines. The order that follows will provide for Pacific to submit the computations of the above adjustment

to the Commission staff for review within 30 days of the effective date of this order. When the staff agrees the computations are correct, the amount of reparation so obtained plus 7% per annum interest through January 31, 1983 will be forwarded to ICS from the \$40,125.05 on deposit with this Commission and the balance will be forwarded to Pacific.

Cost of Call

Pacific submitted evidence indicating that the average "setup" cost of an INWATS call is 5¢ and the usage cost per minute is 2¢. Such costs exclude costs associated with the access line from the ICS customer location to Pacific's serving office and common overhead-type costs. Pacific argues that, on the whole, its costs of providing INWATS to ICS were not covered by revenues collected from ICS for the period covered by this proceeding and that any grant of relief will, according to Pacific, make the shortfall even worse. Suffice to say that rates are designed to provide the utility a certain level of earnings which, on the average, provides the utility its cost to serve including a return on rate base. INWATS is provided to a variety of customers and because rates are based on averages some customers pay more than their pro rata share of the costs and some pay less than their pro rata share of the costs. Consequently, the argument that the costs of providing INWATS to ICS are not covered by the revenues received from ICS cannot serve as a basis for our condoning Pacific's practice of computing ICS's INWATS charges in an improper manner.

V. FINDINGS AND CONCLUSIONS

Findings of Fact

1. In this proceeding we are not being asked to pass upon a contract or arrangement between two utilities, but rather are adjudicating a dispute regarding the proper application of Pacific's INWATS tariffs.

2. This proceeding is a complaint against a utility by a utility and is subject to the same resolution as a complaint against a utility by a nonutility.

3. An overcharge is a valid basis for a complaint whether the overcharge results from the application of an inappropriate tariff or the misapplication of an appropriate tariff.

4. Pacific provides INWATS to ICS in various groups consisting of four 100-hour lines billed under 800-262-1410, three 10-hour lines billed under 800-262-1412, one 100-hour line billed under 800-262-1360, and two 10-hour lines billed under 800-262-1361.

5. ICS is served from a No. 1A ESS machine wherein call timing is performed by the central processor under the control of the machine's stored program.

6. Timing of ICS calls by the No. 1A ESS machine commences when the ICS line is detected in an off-hook state and continues until either both the originating line and the ICS line are restored to an on-hook position or 11 seconds after either of the two lines is restored to an on-hook position.

7. In computing the time for charges for INWATS billings, Pacific disregards calls of two seconds or less, deducts one second from the duration of all calls over two seconds, and converts the remaining time to minutes and tenths of minutes, rounding the seconds to the next highest whole tenth of a minute.

8. Pacific's practice of rounding time intervals upward to the next whole tenth of a minute was contrary to the provisions of Pacific's INWATS tariffs prior to November 4, 1982 when such a procedure became effective in Pacific's tariffs.

9. Such a rounding provision resulted in Pacific assessing overcharges to ICS for the period March 2, 1979 through November 4, 1982 which should be returned with interest.

10. The numbers of messages billed ICS by Pacific on the INWATS lines are reasonable.

11. The difference in hours of use of the INWATS lines measured by Pacific's No. 1A ESS machine and ICS's timers consists of the sum of ICS customer hang-up time and Pacific's practice of rounding upward the seconds message time to the next higher tenth of a minute.

12. A customer hang-up time of 3.34 seconds for ICS paging customers is reasonable.

13. The reparation due ICS from Pacific for the period March 2, 1979 through November 4, 1982 should be equal to the product of the number of messages divided by 3600, an adjustment factor, and the appropriate overcharge rate. The adjustment factors are as follows:

For the 1410 group	- 1.058 seconds
For the 1412 group	- 0.199 seconds
For the 1360 group	- 0.533 seconds
For the 1361 group	- 0.043 seconds

14. An interest charge equal to 7% per annum should be added to the above-computed reparation for the period ending January 31, 1983.

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15. The argument that the costs of providing INWATS to ICS are not covered by the revenues received from ICS cannot serve as a basis for our condoning an improper tariff procedure.

Conclusions of Law

1. The Cortez decision, supra, states that while this Commission is not charged with the enforcement of private contracts, it can award reparation under PU Code Section 734 for the amount of money unreasonably collected from a ratepayer.

2. This Commission has jurisdiction in the resolution of a complaint against a utility irrespective of whether the complaint is lodged by a utility or by a nonutility.

3. The statute of limitations in this proceeding is three years as provided in PU Code Section 736.

4. The relief requested should be granted to the extent set forth in the ensuing order.

O R D E R

IT IS ORDERED that:

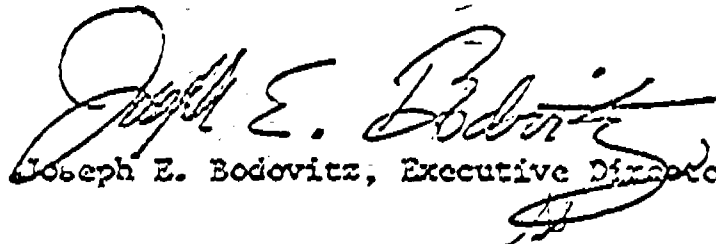
1. The Pacific Telephone and Telegraph Company shall compute reparation to ICS Communications, Inc. in accordance with Findings 13 and 14 and submit such computations to the Commission staff for review within 30 days of the effective date of this order.

2. When the reparation computations are verified by the Commission staff, ICS Communications, Inc.'s deposit of \$40,125.05 shall be disbursed by returning the amount of the reparation thus computed plus interest at 7% to January 31, 1983 to ICS Communications, Inc. and forwarding the balance remaining to The Pacific Telephone and Telegraph Company.

3. In all other respects, the relief requested is denied.
This order becomes effective 30 days from today.
Dated MAY 4 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Bodovitz, Executive Director