

**ORIGINAL**

Decision 83 06 040 AUG 3, 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sonitrol Security, Inc. )

Complainant. )

vs. )

Case No. 10916

The Pacific Telephone and  
Telegraph Company, a  
Corporation, )

Defendant. )

**ORDER MODIFYING DECISION 82-12-108  
AND DENYING REHEARING**

The Pacific Telephone and Telegraph Company (Pacific) has filed an application for rehearing of Decision (D.) 82-12-108. We have considered each and every allegation of error in this application and are of the opinion that good cause for granting rehearing has not been shown. However, we are persuaded that certain modifications to the decision should be made, as discussed below.

We confirm our original judgment that reparations are in order in this case. There appears, however, to be some confusion concerning just who is entitled to them. First, reparations, where found to be appropriate, are due to whomever is billed for service provided to Sonitrol customers. In most instances, these will be the customers themselves; in a few instances, they will be Sonitrol dealers. Further references in this decision to those entitled to reparations signify these two categories. Any standing problems will be cured by the form letter procedure suggested by Pacific, discussed further below.

Secondly, reparations are due to those individuals specified above: (1) who were billed for 3001 circuits but for whom 1009 circuits would have worked, or (2) whose 3001 circuits were rendered unworkable by transmission loss in excess of 10db. Customers billed for 3001 circuits who do not fall into one of these two categories are not entitled to reparations. The measure of reparations shall be the same regardless of the category: the difference between the 3001 and 1009 rate for the duration of the problem, within the confines of the statute of limitations.

Concerning the statute of limitations, we conclude after careful consideration that Public Utilities (PU) Code Section 736 applies. For both situations where reparations are due, the Type 3001 channel rate was different than that applicable to the service the customers should have been receiving (where Type 1009 channels would have worked) or actually were receiving (where Type 3001 channels were set at attenuation levels exceeding Sonitrol's limit). In both situations, charging the Type 3001 rate was a violation of PU Code Section 532, a prerequisite for the application of Section 736.

In order to ensure that all customers are properly informed of their right to seek reparations, we will adopt Pacific's suggestion that a form letter be sent to all Sonitrol customers and dealers informing them of this decision and instructing them how to apply for reparations. This letter should also be sent to past customers (and dealers, if applicable). Sonitrol and Pacific should in good faith work together on drafting the letter and determining what information could most usefully be provided to Pacific by individual claimants. This, of course, is in addition to information to be provided to Pacific by Sonitrol itself.

We recognize that in some cases, determining whether the Type 1009 channel would have worked or was available at all may be difficult and/or expensive. We expect Pacific to use sound judgment in such cases, and where an accurate determination would be prohibitively costly, to give the benefit of the doubt to the customer.

We will also modify the decision to delete the provision that Type 1009 customers who must change to Type 3009 circuits because of problems beyond Pacific's control can continue at Type 1009 rates. We agree with Pacific that no justification exists for this, and that it would give such customers an undue preference. Therefore, customers who are forced to move to Type 3009 circuits for this reason will be able to do so with no nonrecurring charge, but will then have to pay Type 3009 rates.

Finally, we clarify two references to the record, and modify our findings, conclusions, and ordering paragraphs commensurate with the above discussion. Therefore,

IT IS ORDERED that D.62-12-108 is modified as follows:

1. The last sentence in the first paragraph on page 26 is deleted and the following language is substituted:

"As early as 1976, Pacific began consideration of installing such devices on Sonitrol customers' Type 1009 channels, although as of this date, few if any have actually been installed. Such installation would effectively preclude the use of the Type 1009 channel as a voice frequency monitoring device, and would force those customers to seek service under the provisions of a more expensive channel."

2. The last sentence in the first paragraph on page 28 (continued from page 27) is deleted, and the following language substituted:

"Such customers will then be responsible for paying the appropriate Type 3009 rate."

3. The first sentence in the first paragraph on page 33 is modified to read:

"However, Sonitrol customers are entitled to reparations for being billed under Type 3001 channel tariffs when Type 1009 channel service would have been adequate."

4. The following sentence is added to the first paragraph on page 33:

"It follows that reparations are due to those customers (1) whose Type 3001 channels were adjusted to a transmission loss greater than degraded above 10db, or (2) who were billed for Type 3001 service when Type 1009 service would have been adequate."

The second paragraph on page 33 is deleted and the following language substituted:

"We do not have, on the present record, a precise measure of the proper amount of reparations. Pacific, Sonitrol, and the customers of record all have data relevant to this determination. We deem it appropriate, to ensure that everyone is informed of this decision and its possible impact, that Pacific and Sonitrol work together to devise a form letter to be sent to all customers of record, past and present, informing them of this decision and of their right to seek reparations if they meet the qualifications specified above. Pacific and Sonitrol shall come to an agreement concerning what information should be provided by the customers, by Sonitrol, and by Pacific for determination of reparations. The measure of reparations shall be the net difference, if any, between Type 3001 and Type 1009 channel service costs, for the period of the misbilling which is covered by the appropriate statute of limitations. In cases excessively complex or expensive to determine, Pacific should give the benefit of the doubt to the customer. We urge the parties to negotiate a quick and final settlement of the reparations issue."

"The statute of limitations in this case is three years, as provided by PU Code Section 736. In charging rates different than those applicable to the service that certain customers should have been or actually were receiving, Pacific violated PU Code Section 532. Consequently, where reparations are appropriate, they may be determined back to October 10, 1977."

6. Finding 15 is modified to read:

"Pacific is not obligated to restore Sonitrol circuits served as Type 1009 channels to their former level where the quality of transmission has deteriorated to a level unsatisfactory to Sonitrol customers, but should convert these to Type 3009 with no imposition of connection or other nonrecurring charge."

7. Conclusion of Law 2 is modified to read:

"The customers of record of Sonitrol are entitled to reparation if: (1) they were provided voice frequency monitoring service under the provisions of Type 3001 channels when Type 1009 channel service with acceptable transmission loss was available at a lesser rate, or (2) their Type 3001 channels were adjusted to a transmission loss greater than 10dB."

8. Conclusion of Law 10 is modified to read:

"Pacific should be ordered to compute the proper amount of reparations due Sonitrol's customers of record. Sonitrol and Pacific should work together to draft a form letter to be sent to all customers of record, past and present, and to determine what information should be provided by Pacific, Sonitrol, and the customers to best determine the appropriate amount of reparations."

9. Conclusion of Law 10a is added to read:

"Because Pacific violated PU Code Section 532 in this case, the statute of limitations is governed by Section 736."

10. Ordering Paragraph 5 is modified to read:

"At such time as the transmission quality of a Sonitrol Type 1009 channel deteriorates to an unsatisfactory level, Pacific shall convert the channel to Type 3009 without imposition of an installation charge or other nonrecurring charge. Service shall then be furnished at the appropriate Type 3009 rate."

11. Ordering Paragraph 9 is modified to read:

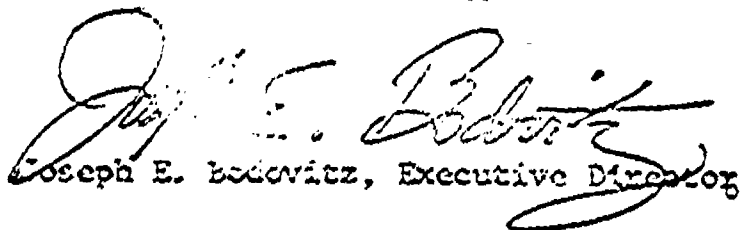
"Pacific and Sonitrol shall jointly draft a form letter to be sent to Sonitrol's customers of record, past and present, informing them of this decision and instructing them how to apply for reparations, including what information, if any, they must provide in such an application. Pacific and Sonitrol shall jointly determine what information should be provided by each of them and by the claimants in order for accurate reparations to be calculated. Pacific shall compute and report to the Commission within 120 days of the effective date of this order, with copy furnished at that time to Sonitrol, the proper amount of reparations due all claimants as described in the text of this decision. Sonitrol shall either accept Pacific's computation or provide comments to the Commission within 15 days of the filing of the report."

IT IS FURTHER ORDERED that the stay of D.82-12-108 imposed by D.83-03-026 is hereby vacated and rehearing of D.82-12-108 as modified herein is denied.

This order is effective today.

Dated AUG 3 1983, at San Francisco, California.

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

  
Joseph E. Bodovitz, Executive Director

LEONARD M. CRIMES, JR.  
President

VICTOR CALVO  
FRISCHILLA C. GREN  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

L/MAM:bjw

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vs. )

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Telegraph Company, a  
Corporation, )

Defendant. )

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✓ The Pacific Telephone and Telegraph Company (Pacific) has filed an application for rehearing of Decision (D.) 82-12-108. We have considered each and every allegation of error in this application, <sup>and</sup> are of the opinion that good cause for granting rehearing has not been shown. However, we are persuaded that certain modifications to the decision should be made, as discussed below.

We confirm our original judgment that reparations are in order in this case. There appears, however, to be some confusion concerning just who is entitled to them. First, reparations, where found to be appropriate, are due to whomever is billed for service provided to Sonitrol customers. In most instances, these will be the customers themselves; in a few instances, they will be Sonitrol dealers. Further references in this decision to those entitled to reparations signify these two categories. Any standing problems will be cured by the form letter procedure suggested by Pacific, discussed further below.

Secondly, reparations are due to those individuals specified above: (1) who were billed for 3001 circuits but for whom 1009 circuits would have worked, or (2) whose 3001 circuits were rendered unworkable by <sup>transmission loss</sup> ~~degradation~~ in excess of 10db. Customers billed for 3001 circuits who do not fall into one of these two categories are not entitled to reparations. The measure of reparations shall be the same regardless of the category: the difference between the 3001 and 1009 rate for the duration of the problem, within the confines of the statute of limitations. ✓

Concerning the statute of limitations, we conclude after careful consideration that Public Utilities (PU) Code Section 736 applies. For both situations where reparations are due, the Type 3001 channel rate was different than that applicable to the service the customers should have been receiving (where Type 1009 channels would have worked) or actually were receiving (where Type 3001 channels were <sup>set of attenuation levels exceeding Sonitrol's limits</sup> ~~degraded below voice transmission capability~~). In both situations, charging the Type 3001 rate was a violation of PU Code Section 532, a prerequisite for the application of Section 736. ✓

In order to ensure that all customers are properly informed of their right to seek reparations, we will adopt Pacific's suggestion that a form letter be sent to all Sonitrol customers and dealers informing them of this decision and instructing them how to apply for reparations. This letter should also be sent to past customers (and dealers, if applicable). Sonitrol and Pacific should in good faith work together on drafting the letter and determining what information could most usefully be provided to Pacific by individual claimants. This, of course, is in addition to information to be provided to Pacific by Sonitrol itself.



We recognize that in some cases, determining whether the Type 1009 channel would have worked or was available at all may be difficult and/or expensive. We expect Pacific to use sound judgment in such cases, and where an accurate determination would be prohibitively costly, to give the benefit of the doubt to the customer.

We will also modify the decision to delete the provision that Type 1009 customers who must change to Type 3009 circuits because of problems beyond Pacific's control can continue at Type 1009 rates. We agree with Pacific that no justification exists for this, and that it would give such customers an undue preference. Therefore, customers who are forced to move to Type 3009 circuits for this reason will be able to do so <sup>with</sup> ~~no~~ <sup>nonrecording</sup> charge, but will then have to pay Type 3009 rates. ✓

Finally, we clarify two references to the record, and modify our findings, conclusions, and ordering paragraphs commensurate with the above discussion. Therefore,

IT IS ORDERED that D.82-12-108 is modified as follows:

1. The last sentence in the first paragraph on page 26 is deleted and the following language is substituted:

"As early as 1976, Pacific began consideration of installing such devices on Sonitrol customers' Type 1009 channels, although as of this date, few if any have actually been installed. Such installation would effectively preclude the use of the Type 1009 channel as a voice frequency monitoring device, and would force those customers to seek service under the provisions of a more expensive channel."

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"Such customers will then be responsible for paying the appropriate Type 3009 rate."

3. The first sentence in the first paragraph on page 33 is modified to read:

"However, Sonitrol customers are entitled to reparations for being billed under Type 3001 channel tariffs when Type 1009 channel service would have been adequate."

4. The following sentence is added to the first paragraph on page 33:

"It follows that reparations are due to those customers (1) whose Type 3001 ~~service was~~ *channels were adjusted to* ~~exceeded above~~ 10db, or (2) who were billed for Type 3001 service when Type 1009 service would have been adequate."

*a transmission loss greater than*

The second paragraph on page 33 is deleted and the following language substituted:

"We do not have, on the present record, a precise measure of the proper amount of reparations. Pacific, Sonitrol, and the customers of record all have data relevant to this determination. We deem it appropriate, to ensure that everyone is informed of this decision and its possible impact, that Pacific and Sonitrol work together to devise a form letter to be sent to all customers of record, past and present, informing them of this decision and of their right to seek reparations if they meet the qualifications specified above. Pacific and Sonitrol shall come to an agreement concerning what information should be provided by the customers, by Sonitrol, and by Pacific for determination of reparations. The measure of reparations shall be the net difference, if any, between Type 3001 and Type 1009 channel service costs, for the period of the misbilling which is covered by the appropriate statute of limitations. In cases excessively complex or expensive to determine, Pacific should give the benefit of the doubt to the customer. We urge the parties to negotiate a quick and final settlement of the reparations issue."

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6. Finding 15 is modified to read:

"Pacific is not obligated to restore Sonitrol circuits served as Type 1009 channels to their former level where the quality of transmission has deteriorated to a level unsatisfactory to Sonitrol customers, but should convert these to Type 3009 with no imposition of connection or other nonrecurring charge."

7. Conclusion of Law 8 is modified to read:

"The customers of record of Sonitrol are entitled to reparation if: (1) they were provided voice frequency monitoring service under the provisions of Type 3001 channels when Type 1009 channel service with acceptable transmission loss was available at a lesser rate, or (2) their Type 3001 channels were *adjusted to a transmission loss greater than 10dB.* ~~degraded to above a 10dB loss.~~"

8. Conclusion of Law 10 is modified to read:

"Pacific should be ordered to compute the proper amount of reparations due Sonitrol's customers of record. Sonitrol and Pacific should work together to draft a form letter to be sent to all customers of record, past and present, and to determine what information should be provided by Pacific, Sonitrol, and the customers to best determine the appropriate amount of reparations."

9. Conclusion of Law 10a is added to read:

"Because Pacific violated PU Code Section 532 in this case, the statute of limitations is governed by Section 736."