

ORIGINALDecision No. 89397 SEP 19 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the use of the public
utility telephone systems by automatic
dialing-announcing devices for
solicitation.

OII No. 11
(Filed February 22, 1978)

Duane G. Henry, Attorney at Law, for The Pacific Telephone and Telegraph Company; and A. M. Hart, H. Ralph Snyder, Jr., Richard Potter, by H. Ralph Snyder, Jr., Attorney at Law, for General Telephone Company of California; respondents. Floyd M. Curlee, for Dialog Corp.; and Phil McSpadden, for Ad Tec, Incorporated; protestants. William S. Shaffran, for the City of San Diego; Louis Possner, for the City of Long Beach; R. W. Russell, by K. D. Walpert, for the City of Los Angeles; Richard B. Spohn, Attorney at Law, for the Department of Consumer Affairs; Sylvia M. Siegel and Ann Murphy, for TURN; Dennis Fitzgerald, for Dycon International; Wilfred E. Briesemeister, Attorney at Law, for Trane Home Comfort Center; George T. Scordel, for Kosco Communications, Inc.; Robert M. Shillito, for California Retailers Association; and Walter S. Baer, Ed Sandstrom, and Bill Dewey, for themselves; interested parties. Richard D. Rosenberg, Attorney at Law, and Paul Popenoe, Jr., for the Commission staff.

FINAL OPINION AND ORDER ADOPTING TARIFFS

On January 10, 1978, the Commission, through its Executive Director, required all public utility telephone systems to file tariffs prohibiting the certification or interconnection of any automatic dialing-announcing device (ADAD) used for solicitation. The tariffs were filed and several protests were received. The protests, among other issues, raised a question of whether the tariffs should be adopted without hearing. The telephone utility proposed tariffs were unspecific and were not uniform. By an Order Instituting Investigation herein dated February 22, 1978, the Commission rejected all of the proposed tariffs and

required the filing of new tariffs by March 6, 1978 containing uniform specified provisions. The order also instituted an investigation into the present and potential use of the public utility telephone systems in this State by ADAD for solicitation and set public hearings before the then Chief Administrative Law Judge Robert Barnett. It also directed respondents The Pacific Telephone and Telegraph Company (Pacific) and General Telephone Company of California to present certain evidence.

Simultaneously with the issuance of OII 11, the Commission issued OII 12, a separate investigation into the subject matter of unsolicited telephone messages to residential customers. That proceeding was intended to cover a much wider ground, including whether residential telephone customers' right to privacy requires this Commission to prohibit or limit the use of telephone systems for solicitations, advertising, or announcements without the consent of the intended residential customer. Public hearings in OII 12 have been completed and the matter is now submitted but no decision has been issued by the Commission.

Subsequent to the hearings herein Decision No. 88770, an Interim Opinion and Order, was issued on May 2, 1978. That decision included, as Appendix A, a proposed tariff which defined ADAD as automatic terminal equipment which either stores and recalls a list of numbers to be called or includes a random or sequential number generator and which has the capability of disseminating a recorded message to the number called. The decision found that use of such devices could tie up the called party's line, could create a burden or network overload if there were a rapid increase of ADAD usage, and, where random or sequential dialing is employed, tie up telephone lines used for essential or emergency public services. It also found that without the use of a human operator who would state the nature of the message, identify the group or organization offering the message, and not play the tape unless the called party consents, ADAD use would infringe on the comfort and convenience of telephone subscribers (Section 451 of the Public Utilities Code).

It also found that employment of a human operator provides assurance that any system abuses will be avoided. It also found that unless there is a requirement for user notification, telephone companies would not be able to adequately forecast the amount of load to be generated by the use of such devices.

Exceptions

Pacific was the only party to file exceptions to the proposed tariff. Its principal exception would have substituted for the human operator requirement, a requirement that the device be equipped with some means of assuredly terminating the call whenever the called party hangs up. There are several objections to adopting Pacific's proposal at the present time. First, the record does not support a finding that a device with such a capability now exists or is likely to be in production within the near future. Secondly, the proposal does not accommodate the Commission's concern for live monitoring of the system to prevent sequential dialing of governmental offices, nonpublished numbers, etc., or possible malfunctions.

Several other noncontroversial changes proposed by Pacific helped clarify the tariff and will be adopted. We have also added a requirement that any system be capable of being programmed not to call any numbers which may be placed on a no-call list as a result of OII 12.

We find that:

1. There is no device presently available which will assuredly terminate an ADAD call when the called party hangs up.
2. It is necessary to require that any ADAD be capable of accepting and responding to a program not to call specified numbers. ✓

We conclude that the proposed tariff as modified should be ordered adopted by all California telephone utilities.

IT IS ORDERED that within ten days after the effective date hereof each telephone utility operating in California shall file intrastate tariff sheets incorporating Appendix A hereto. Such filing shall comply with General Order No. 96-A and be effective five days after filing. ✓

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 19th day of SEPTEMBER, 1978.

Robert Baymire
President
William J. ...
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Commissioners

Tariff Rule Regulating Automatic Dialing-Announcing Devices

Connection and Use of
Automatic Dialing-Announcing Devices

1. An Automatic Dialing-Announcing Device (ADAD) is any automatic terminal equipment which incorporates the following features:
 - a. (1) Storage capability of numbers to be called; or
 - (2) A random or sequential number generator that produces numbers to be called; and
 - (3) An ability to dial a call; and
 - b. Has the capability, working alone or in conjunction with other equipment, of disseminating a prerecorded message to the number called.
2. An ADAD may not be operated while connected to the telephone network, except under the following conditions:
 - a. An ADAD may be used pursuant to a prior agreement from the called party that (s)he desires to receive such telephone communication; or
 - b. An ADAD may be used if the recorded message is preceded by an announcement made by a human operator who:
 - (1) States the nature and length in minutes of the recorded message; and
 - (2) Identifies the individual, business, group, or organization calling; and
 - (3) Asks the called party whether (s)he is willing to listen to the recorded message; and
 - (4) Disconnects from the called party's line if the called party is unwilling to listen to the recorded message.

3. a. Before an ADAD may be operated while connected to the telephone network, the potential user of such device shall notify the telephone utility in writing of the intended use of the ADAD equipment. The written notice shall contain a statement of the calendar days and clock hours during which the ADAD(s) will be used and include an estimate of the expected traffic volume in terms of message attempts per hour and average length of completed message.
- b. The telephone utility shall review the statement of intended use of ADAD equipment to determine whether there is a reasonable probability that use of the equipment will cause overload of the utility's facilities. If the utility finds that a reasonable probability exists that the ADAD operation will overload its network, the utility may refuse to provide connections for the ADAD(s) or provide them subject to conditions necessary to prevent an overload. If, after service has been established, it is determined that the volume of calling originated by the ADAD is degrading the service furnished to others below the standard level set forth in General Order No. 133 of the California Public Utilities Commission, the utility may discontinue the service after five days' notice to the customer. If use of the ADAD creates a call blockage in a telephone company switching office, the utility may disconnect the service with no prior notice.

- c. The telephone customer who uses ADAD equipment shall notify the utility in writing within 30 days of any changes in the ADAD operation which result in either an increase or decrease in traffic volume.
- d. No ADAD shall be connected to the network until the telephone utility has determined that the equipment can effectively preclude calls to any number or series of telephone numbers on a list of telephone subscribers who may be in the future designated by the utility, by regulation or by statute, as customers who are not to receive ADAD calls.
4. The telephone utility may discontinue the telephone service of any customer who uses an ADAD in violation of the provisions of this rule provided that the customer is given five days' notice or with no prior notice if use of the ADAD creates a call blockage in a telephone company switching office.
5. Any dispute involving application of this rule may be referred to the California Public Utilities Commission for review. Any request for deviation shall be made to the Commission by means of an application under the Commission's Rules of Practice and Procedure.
6. Before being connected to the switched network an ADAD must also be certificated for interconnection pursuant to the California Public Utilities Commission's General Order No. 138-Series or approved for interconnection by the Federal Communications Commission.