

DEC 19 1978

ORIGINAL

Decision No. 89763

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMERCIAL DRAPERY CO.,  
Complainant,

vs.

PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY,  
Defendant.

Case No. 10579  
(Filed May 23, 1978)

Rick Soto, for complainant.  
James S. Hamasaki, Attorney  
at Law, for defendant.

O P I N I O N

Complainant, Commercial Drapery Co., a California corporation, seeks an order requiring that charges assessed by the defendant for its new telephone serving arrangement featuring an SG-1 Pulse PBX be waived and that its original system, a KTS with 16 call directors, be reinstalled without charge. In addition, complainant seeks consequential and punitive damages. Defendant, The Pacific Telephone and Telegraph Company, denies that complainant is entitled to the relief sought.

Public hearing was held before Administrative Law Judge Main in Los Angeles on August 16 and 18, 1978. Testimony was presented on behalf of complainant by its president, its corporate secretary, and its receptionist/PBX operator, and on behalf of defendant by an account representative, a service consultant, and a repair supervisor.

Complainant's Evidence

Testimony presented on behalf of complainant indicated that:

1. Complainant's business is interior design, fabrics, and related products. Over 80 percent of this business, which grosses about \$3 million per year, is done by telephone.

2. Before its replacement, complainant's key telephone serving arrangement consisted of call directors, at diverse locations on the premises, with 12 to 14 lines, including foreign exchange (FX) service.

3.a. The main reasons for complainant's seeking a change in the telephone serving arrangement were: (1) to better serve its customers; and (2) to eliminate misuse of lines.

b. The shortcomings of the key system were: (1) an inability to keep track of calls placed on hold; and (2) an inability to assure the proper use of lines as contrasted with the use of any available line (i.e., an inability to eliminate using FX lines for local calls, the wrong FX line, or local lines for FX calls).

4. Complainant's corporate secretary, an employee of complainant for 16 years and a prodigious telephone user,<sup>1/</sup> requested assistance on these problems from defendant. She provided information concerning complainant's operations, as they relate to telephone use, to defendant's expert on telephone serving arrangements.

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<sup>1/</sup> Tr. page 73: "I would say 95 percent of my time is on the phone. If I had three calls holding I would catch two of them and...possibly forget the other one."

5.a. Complainant's corporate secretary and defendant's account representative toured the plant for "approximately a half an hour to an hour so she defendant's account representative<sup>7</sup> could check all the stations."

b. There was no study in depth of the use made of complainant's existing telephone serving arrangement.

6. A new telephone serving arrangement was ordered from the defendant. Complainant was under the impression that it was to include a Call Controller as well as a PBX.

7.a. Cutover to the new telephone serving arrangement was completed in December 1977.

b. Initially there were major service problems.

c. Serious service malfunctions still occur.

d. Complainant's employees know how to properly operate the new system.

8. Complainant is convinced that defendant recommended and installed a system that does not meet its needs in that:

(a) It fails to meet a mobility requirement; (i.e., under the prior serving arrangement employees were "able to pick up any instrument anywhere and give an answer. ...had the full board of 14 lines coming in, 12 or 14.").

(b) It does not include a Call Controller.

(c) It is a trouble-prone serving arrangement.

Defendant's Evidence

Testimony presented on behalf of defendant indicated that:

1. In response to a request of complainant's corporate secretary for information on PBX service, an account representative for defendant telephoned the corporate secretary on August 15, 1977, making an appointment to see her on August 18, 1977. During the telephone conversation, the corporate secretary inquired about changing the present key telephone service (KTS) system to a private branch exchange (PBX) system. She expressed concern about controlling outgoing calls and indicated a need for a central answering point.

2.a. The responsibilities of defendant's account representative were to review the customer's communication needs, to make recommendations as to how best meet those needs, and to meet also customer preferences.

b. To meet these responsibilities the account representative's work included an analysis of the complainant's existing serving arrangement and equipment. It also included an examination of complainant's premises, inquiries into the outlook for growth and the special requirements of the business, and a review of the toll, message unit, and FX usage.

3. Prior to the August 18, 1977 meeting with complainant's corporate secretary, the account representative reviewed pertinent records to:

- (a) Ascertain the customer's existing telephone service. It was found to comprise 13 lines (8 local and 5 foreign exchange) on 16 call directors. There was also a separate single-path intercom system;

- (b) Examine monthly billings to complainant for patterns in message unit and toll usage and for any abrupt changes in usage; and
- (c) Ascertain the last equipment order placed by the complainant, which was for a call director in October of 1976.

4. In describing in detail the meeting on August 18, 1977 with complainant's corporate secretary, the account representative testified that:

- (a) The corporate secretary was primarily concerned about calls being dialed out on the wrong lines, especially by salesmen from other companies. To control and properly care for incoming calls, she wanted to have a central answering point. In addition, she wanted the customer-owned paging system connected to the telephone serving arrangement.
- (b) The corporate secretary indicated that complainant's business, grossing about \$3 million, was expected to nearly double in the next year or so, and that they did not plan to move.
- (c) The corporate secretary was asked a number of questions on how the employees worked, what their responsibilities were, whether they could function with a single answering point, whether they were mobile within the building itself, and what the work requirements of the receptionist were.
- (d) The corporate secretary walked with her through the entire building, explaining as they went along the function of each department, each telephone user, and each telephone when not located at a desk.

The information furnished by the corporate secretary included:

- (1) The telephone-using employees, including specifically those in the order department, were not mobile and were primarily responsible for remaining at their desks to answer the telephone calls referred to them by the receptionist.
  - (2) A single answering point was needed and it was the receptionist's primary responsibility to answer the phone. It was emphasized that under the existing system the receptionist was unable to keep track of incoming calls during busy periods.
  - (3) The order department was under the corporate secretary's supervision and it was the hub of activity; the four telephones there, the telephone for complainant's president, and her telephone require both "hold" capability and multiple lines; the remaining telephones could be non-key sets without the "hold" capability.
- (e) Defendant's account representative showed the corporate secretary brochures on the Com-Key 1434 System, the SG-1 Pulse PBX System, and the Call Controller. Based on her assessment of complainant's communication requirements which tied directly to information furnished by the corporate secretary, she recommended the SG-1.
- (f) Defendant's account representative explained to the corporate secretary that she was deferring any recommendation on the Call Controller, which is a separate service offering, until after a further review of complainant's telephone bills to determine the extent of misuse and thus whether the

Call Controller, which can control FX and multi-message unit calls as well as toll calls, would be cost-effective. In the event the extent of misuse does not justify the Call Controller, toll calls, at any rate, can be controlled, she pointed out, through an "0" and "1" diverting feature of the SG-1. To curb misuse by visitors, especially salesmen in the "habit of walking in off the street and just picking up the phone", the account representative recommended placing a restricted phone in the lobby, which gains access to the telephone network only through the SG-1 console attendant.

5. In response to the account representative's call on September 26, 1977, complainant's corporate secretary informed her that the complainant was ready to go ahead with the installation of the SG-1. On September 28, 1977 the account representative met with complainant's president and its corporate secretary. She presented complainant's president with a letter agreement covering the new system which he reviewed briefly and signed. He rejected the account representative's offer to review the system with him, stating that he was very busy and had delegated the decision making authority to the corporate secretary.

6. At an October 7, 1977 meeting with the corporate secretary, the account representative disclosed that the Call Controller would not be worthy of its cost of \$250 per month because it would correct a misuse of only about \$70 per month. She also disclosed that her review of complainant's central office foreign exchange line usage indicated that two of those lines received little outgoing usage. The two lines were removed, resulting in a savings of more than \$100 per month.

7. The new system was put into service on December 12, 1977. For about the first week serious service problems were experienced with the new system, but not thereafter. The SG-1 is a proven PBX vehicle. When trouble was reported, defendant's records indicate it was promptly corrected or no trouble was found. Many of the problems experienced were attributable to a lack of training of complainant's employees in the use of the new system (i.e., the training by defendant's service advisor was not performed until January 25, 1978 because complainant did not permit it to be done prior to that time). Defendant credited \$202.32 to complainant's account for service outages and for toll calls placed over incorrect lines.

8. By letter dated March 15, 1978 defendant offered the following adjustment:

"Based on your expressed desire to have your old system configuration reinstalled, we calculated the total installation and Basic Termination Contract costs of your PBX and the reinstalling of your old system comes to \$4,975.18. Appreciating that you have been a good customer of ours since 1941, our offer to split the difference of this cost where you absorb \$2,487.59 and we absorb \$2,487.59 as a business accommodation still stands.

"If you accept our offer, which will continue in effect until March 30, 1978, your account will be adjusted at that time. From the time of that decision, it will take approximately three weeks to reinstall the Call Director system."

9. Complainant deposited with the Commission the sum of \$5,774.95, which was the total shown on its March 10, 1978 telephone bill, representing \$4,700.47 past due for January and February and current charges of \$1,074.48 for March.



10. Defendant's settlement offer was contingent upon complainant's old system configuration being reinstalled. The offer lapsed March 30, 1978.

Discussion

Complainant's contention that defendant did not make an adequate study to determine complainant's communication requirements is not persuasive. Defendant's account representative appears to have performed competently and to have recommended a telephone serving arrangement which met both the communications requirements disclosed by her investigation and the preferences of the corporate secretary, who was the duly designated person to deal with her on this matter. The account representative still recommends, based on her present knowledge of complainant's communication requirements including complainant's evidence in this proceeding, the same SG-1 system with only minor modifications.

From the evidence it seems clear that in seeking a new telephone serving arrangement the corporate secretary's primary focus was on control of outgoing calls and on a central answering point for incoming calls. Indeed, that focus seemed to run counter to the ability "to pick up any instrument anywhere and give an answer. ...had the full board of 14 lines coming in..." which complainant's president gave as the pivotal reason for wanting to return to the old system configuration of 16 call directors.

The SG-1 PBX can restrict toll calls and it provides a central answering point. Its features include incoming call identification, camp-on (a short spurt of tone is heard while talking on the phone indicating a camped-on call is waiting to be answered), a busy lamp field showing current status of all stations, and automatic timed recall (if the call is not

answered within 30 seconds the attendant is recalled automatically). However, to gain access to the "full board of 14 lines coming in..." from any station it is necessary to go through the SG-1 attendant, and a call, which has been placed on hold at one station location, cannot be retrieved and answered from another station location. Such a call is either answered at the station where it was placed on hold or transferred from that station to the SG-1 attendant for retrieval at any station location or to another station.

It is complainant's unmistakable position that if the new system was to function without service problems, it still would not meet complainant's needs as its president sees them. From this it is evident that service quality, which is in dispute, does not control complainant's decision to revert to the old system configuration. From the evidence it also seems clear that complainant had reason to know all along that the Call Controller was not included either in the recommendation made by defendant's account representative or in the order which complainant's president signed. Nonetheless, some confusion may have existed on complainant's part until the October 7, 1977 meeting because of an optional toll diverting feature of the SG-1 included in that order. In any event, the report made at the early October meeting by the account representative that the Call Controller would not be cost-effective should have dispelled from that point on any such confusion.

Better business practice, however, might have warranted defendant's determining the extent of misuse as a basis of determining whether the Call Controller would be cost-effective before recommending a system. Conceivably, this determination, especially in light of the importance placed by complainant on the need for controlling outgoing calls, could have influenced complainant's overall view of the telephone serving arrangement it needed.

Had the Call Controller been ruled out earlier, we must say it seems on balance more likely for complainant's corporate secretary to have accepted the account representative's recommendation than to have rejected it. That recommendation was keyed to the corporate secretary's expressed desires to provide a centralized answering point, with camp-on features, eliminate any unneeded key telephone equipment, and provide for future growth and some control over the outgoing calls, such as that provided by the "0" and "1" diverting feature built into the SG-1. Moreover, complainant did not request either any changes in or a reexamination of the recommended telephone serving arrangement after it was made abundantly clear that the new arrangement did not include the Call Controller.

Nonetheless, defendant's recommending a telephone serving arrangement before determining the extent of misuse as it related to the need for controlling outgoing calls, taken together with the fact that defendant made a settlement offer, is indicative that a just decision in this matter must resolve a closer question than defendant's evidence otherwise indicates. A settlement would not be unduly discriminatory in this instance, and therefore is not prohibited by Public Utilities Code Section 453. Among other things, complainant is distinguishable from other customers being served under defendant's tariffs governing SG-1 PBX service in that the soundness of defendant's recommendation, which led to installation of that service, is in dispute.

Clearly, complainant bears at least equal responsibility for a telephone system being installed which does not fulfill complainant's needs as its president sees them. That responsibility fixes an appropriate upper limit to reparations. In our considered judgment defendant's settlement offer, which has

lapsed, provided a fair and reasonable resolution of this matter. Contingent upon the old system configuration being reinstalled, complainant will thus be entitled to reparation of one-half of the pertinent charges, as prescribed in Ordering Paragraph 2 of this decision. Presumably, if the old system configuration is reinstalled, complainant will have given due consideration to, and accepts, its inherent limitation in keeping track of incoming calls during busy periods. Should complainant's business eventually double, which we gather it did not do within a year or so as anticipated earlier by the corporate secretary, that problem could be expected to become less manageable.

Findings

1. Prior to December 1977, complainant's telephone serving arrangement consisted of 13 lines (8 local and 5 foreign exchange) on 16 call directors. The customer-owned single-path intercom system was not connected to that telephone serving arrangement.

2. In August 1977 complainant sought the advice and assistance of defendant to select a telephone serving arrangement which would better meet the particular requirements of complainant's business.

3. Defendant recommended, complainant accepted, and defendant, in December 1977, installed a telephone serving arrangement featuring an SG-1 PBX.

4. Complainant bears at least equal responsibility with defendant for installation of a telephone system which does not meet complainant's needs as its president sees them.

5. In a not unduly broad sense telephone service should embrace the soundness of a utility's recommendation to install a given system. Where warranted, a partial reparation of installation and basic termination charges is a proper form of redress and not unduly discriminatory. ✓

6. The installation and basic termination charges of the SG-1 PBX and the installation charge to reinstall the old system amount to \$4,975.18 as of March 1978.

7. Complainant deposited the sum of \$5,774.95 with the Commission in connection with this dispute.

Conclusions

1. The sum of \$5,774.95 impounded by the Commission should be remitted to defendant.

2. Contingent upon complainant's old system configuration being reinstalled, complainant is entitled, as was contemplated in defendant's settlement offer which has lapsed, to reparation of one-half of the following charges: the installation charge of the SG-1 PBX; the unexpired portion of the basic termination charge of the SG-1 PBX; and the installation (i.e., reinstallation) charge of the old system. ✓

3. If complainant's old system configuration is not reinstalled, complainant is liable for the full installation charge of the SG-1 PBX system.

4. The Commission lacks jurisdiction to award consequential and punitive damages.

O R D E R

IT IS ORDERED that:

1. Deposits by complainant in the sum of \$5,774.95, and any other sums deposited with the Commission by complainant with respect to this complaint, shall be disbursed to defendant.

2. In the event complainant's old system configuration is reinstalled within sixty days after the effective date of this order, defendant shall thereupon credit to complainant's account one-half of the \$2,314 installation charge for the

SG-1 PBX and one-half of the unexpired portion of the \$1,000 basic termination charge for the SG-1 PBX, and shall charge to complainant's account one-half of the then current installation charge for reinstalling the old system configuration.

3. In all other respects the complaint is denied.

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

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

Robert Bateman  
President  
William J. Quinn  
James A. St. George  
Charles W. Hinkle  
Clare J. Deitch  
Commissioners