

Decision No. 91559 APR 15 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARREE KARRIEM,

Complainant,

v

PACIFIC TELEPHONE COMPANY,

Defendant.

Case No. 10546  
(Filed April 19, 1978)

Marree Karriem, for herself, complainant.  
Nora S. Freitas, Attorney at Law, for defendant.

O P I N I O N

By this complaint, Marree Karriem (complainant) alleges that billings she has received from The Pacific Telephone and Telegraph Company (defendant) include charges for message unit and toll calls that should not have been billed to her and she requests that the billings be adjusted accordingly, and also that certain other adjustments be made by defendant. In its answer, defendant alleges that all billings were correct and should be paid, and requests that the complaint be dismissed.

Public hearing was held before Administrative Law Judge Arthur M. Mooney in San Francisco on September 11, 1978 and February 15, 1980. At the initial hearing, (1) evidence was presented by complainant and by a service consultant in defendant's marketing department; (2) while the parties were not far apart in attempts to settle the matter, a compromise was not reached; and (3) the matter was adjourned with the understanding that the parties were to further consider the possibility of a compromise and to advise the Commission if one could be reached. All attempts at a compromise

have been unsuccessful. A motion to dismiss was filed by defendant on July 24, 1979, and complainant, because of illness, requested extensions of time to answer and further consider the matter. Complainant has made various deposits with the Commission towards bills she has received from defendant. On January 11, 1980, defendant advised complainant that if all outstanding charges it had billed were not paid to it or deposited with the Commission, her telephone service would be temporarily discontinued. Since the dispute could not otherwise be resolved, the parties agreed to the further hearing on February 15, 1980, and an additional amount of money was deposited by complainant on that date. At the latter hearing evidence was presented by complainant and on behalf of defendant by its telephone key system installation supervisor and its marketing office supervisor for the area serving complainant.

Background

We find to be facts the following background data established by the record:

1. Complainant has a building at 581 Valle Vista Avenue, Oakland. The building has four levels, including a basement or ground level, and 15 rooms. Complainant's residence is elsewhere, but she does use one of the rooms for her business office. She is the local representative of a garment manufacturing company, Sirod Company. An elderly couple on a fixed income, Mr. Holloway, who is hard of hearing and crippled and his wife who is blind, live in a part of the house and Jerry Crus, a young student, lives in another part of the house. There is a housekeeper at the house at times. Other than complainant, no one else conducts business at the house.

2. Prior to January 1978, (1) the only telephone in the building was complainant's (444-3954) business line in her office; (2) the Holloways and Crus had each requested private residential service which was apparently refused by defendant; and (3) they, therefore, used complainant's business telephone for their personal calls.

3. Because she felt her monthly bill, which was around 60 or 70 dollars a month was too high, complainant contacted defendant in January 1978, and requested three separate residence telephone lines for the building and advised defendant that she would be responsible for payment of the charges. One was for the Holloways, another for Crus, and the third was to be installed in another part of the house to be used by the housekeeper. With the three additional lines, the party using a particular telephone would pay the charges for it.

4. In response to complainant's request for the three additional lines, defendant's service consultant, to whom she was referred, recommended a key telephone system (KTS) with four lines, including her business line, and five telephone sets, each connected to the four lines and equipped with six key buttons and lights, an intercom line, Touchtone and hunting. Complainant, who was not familiar with telephone systems, agreed to the recommendation and paid a \$405.50 advance installation charge.

5. Defendant's key system installation supervisor visited the building four or five days prior to installation of the KTS and discussed the system and its location with complainant and her husband. The representative informed them that it would be necessary for them, at their expense, to have a backboard and electrical outlet installed in the basement for the key service unit to which the lines to the five telephones would be connected, and that it would also be necessary to drill holes at various locations in the building for wiring for the system. Although complainant was not happy with this, she had the backboard and electrical outlet installed and paid \$150 for this work.

6. The KTS was installed on February 2, 1978. The installation supervisor visited the premises during installation and not thereafter. During installation, defendant's employee broke or loosened a mirror. One each of the five telephone instruments was installed at the following locations: (1) complainant's office, (2) the Holloways'

living quarters; (3) Crus's living quarters, (4) another area of the house for the housekeeper's use, and (5) an empty room across from Crus's living quarters. The telephone in the empty room was not used and was put there to be out of the way.

7. The telephone numbers assigned to each of the four lines were as follows: (1) 444-3954, which is complainant's original business number; (2) 444-4033, which complainant had listed under the name Organization of the Handicapped for the Holloways; (3) 444-4034, which complainant had listed under the name Geriatric Care Center for Crus; and (4) 444-4035, which complainant alleged was an extra line and not needed or used and which defendant assigned to complainant's business listing, Sirod Wholesalers.

8. Originally defendant did not separate the charges on its billing statement to complainant for the new KTS by telephone number. Complainant informed defendant on February 16, 1978, that she wanted to change some of her listings and billing arrangements and was advised by it that there would be a \$10 charge for each deconsolidation. Defendant sent the necessary forms to complainant, and she filled out and returned the forms for deconsolidation of charges for telephone numbers 444-4033, listed for the Organization of the Handicapped, and 444-4034, listed for the Geriatric Care Center. Subsequent thereto, charges on the billing statements were separately stated and listed for these two telephone numbers and for telephone number 444-3954, complainant's business number, and charges, if any, for telephone number 444-4035 were not separately stated and were included under complainant's business number.

9. When the KTS was first installed, there was a problem with the key lights on the telephones. After a call was completed, there was a delay before the light for that particular line would go out. This was reported to defendant on March 3, 1978 and was subsequently fixed.

10. Complainant was dissatisfied with the KTS, the way in which it was installed, and defendant's billing procedure and was of the opinion that message unit and toll charges for calls not chargeable to the system were being billed to her, and she filed the instant complaint.

Complainant's Evidence and Position.

Complainant pointed out, as stated above, that her request to defendant was for three residential lines. She is of the opinion that: (1) the KTS, recommended by defendant's representative, was too elaborate and costly for her needs; (2) with his expertise, this should have been apparent to him, and he should have realized that she had no knowledge of telephone systems and would rely on his recommendation; and (3) for these reasons, defendant should be required to provide a proper, efficient, and economically feasible service for herself, the Holloways, and Crus and to refund or pay to her the installation charge she paid for the KTS, the cost to her for the backboard and electrical outlet, and the cost of all necessary repairs for any damage done to the building or contents by defendant's employee during installation. As to damage, she emphasized the holes that were drilled for the wiring and the mirror that was loosened. She also alleged that defendant had left quite a bit of unsightly grey wire exposed in various rooms when it installed the KTS.

Complainant also pointed out that business rates were charged for all lines on the KTS and that since only her line was used for business purposes, an appropriate adjustment should be made by defendant for this.

As to the message unit and toll charges, with which she does not agree, complainant stated as follows: (1) she has always maintained a record of each such call made from any telephone on the KTS in a log book in her office in which the date and time the call

was made, the length of the call, and other pertinent information is entered; (2) the Holloways and Crus give her the information on such calls made by them, and if she is not present, they will make the necessary entry; (3) other than message unit and toll calls made or authorized by herself, the Holloways, and Crus, all of which are recorded in the log book, no other such calls are made on the KTS by anyone else; (4) when complainant receives a bill from defendant, she compares it with her log and double-checks with the Holloways and Crus to make certain all message units and toll calls have been logged, and any message unit or toll calls shown on the bill that are not listed in her log have obviously been incorrectly billed to the numbers on the KTS and the charges therefor should be canceled by defendant; (5) to her knowledge, the occupants of the building and herself have always correctly and precisely listed all message unit and toll calls in the log; (6) based on the charges shown on defendant's billings for the calls listed in her log for the period January 1978 through the end of January, 1980, the total amount of the charges for message unit and toll calls that were in fact made from the building should be \$1,573.55; whereas, defendant has incorrectly included on its statements, numerous other calls that were not chargeable to any of the building's KTS numbers and were made by unknown persons and has billed substantially higher charges; and (8) defendant's billings should be adjusted accordingly, and she should not be required to pay more than the correct charge of \$1,573.55 for such calls during this period.

As to the listings in the telephone directory for the Holloways and Crus, complainant explained that: (1) the Holloways had their telephone number listed under the name Organization of the Handicapped because Mr. Holloway is a well-known individual and does not want to be unnecessarily bothered by numerous calls from his many friends, acquaintances, and people who have heard of him,

and they selected this name because they are handicapped; (2) Crus had his telephone number listed under the name Geriatric Care Center because it is a popular fad with young students, for humorous purposes, to list their telephones under names other than their own, and he selected this name because it is close to his first name, Jerry, and his studies are concerned with this field; and (3) all telephone calls made by the Holloways and Crus are personal and not of a business nature.

Defendant's Evidence and Position.

It is defendant's position that: (1) no undue influence was exerted on complainant to have her order the KTS; (2) the installation of the system was in accordance with established procedure; (3) numerous attempts have been made to settle the dispute with complainant, but she has rejected all offers; and (4) all charges billed by defendant to complainant have been in accordance with its filed tariffs, are correct, and should be paid.

As to why he recommended the KTS to complainant, defendant's service representative who took her initial request for additional service, testified that it was his opinion, based on the information she had given him regarding the type service she required, that the KTS would best suit her needs. Defendant's key system installation supervisor testified that: (1) when he visited complainant at her building several days in advance of the installation and explained the installation procedure and the necessity for a backboard and an electrical outlet to her, he informed her that she could cancel her order at anytime prior to installation, but she advised him to go ahead with the order; (2) when he again visited the premises during the installation, he observed that the installer was following usual procedures and that a minimum amount of wire was exposed in the rooms in which the telephones were located; and (3) having satisfied himself that the system was being correctly installed and in accordance

with complainant's instructions to him, there was no purpose for his returning to the building at a later time, and for this reason, he did not do so. According to defendant's evidence, the only defect in the system it was aware of was the button light which it fixed.

Evidence regarding defendant's attempts to settle the controversy was presented by its marketing office supervisor for the district in which complainant's building is located. She testified that numerous attempts, including the one at the initial hearing, have been made by defendant to negotiate a settlement of the dispute with complainant, but on each occasion, complainant either failed to or would not accept defendant's offer. She stated that in its last offer, defendant agreed to: (1) change the current KTS to a simpler single-line, single-set system; (2) make a 100 percent adjustment of the \$405.50 installation charge incurred by complainant for the KTS; (3) make an adjustment of \$51.20 per month which is the difference between the monthly rate for the KTS and that for the replacement system from February 1978 to the present; (4) credit complainant for the \$150 she paid for the backboard and electrical outlet; (5) give a \$127.85 adjustment in disputed long-distance operator-assisted calls that were made before August 1979; and (6) repair any damage that was done by its employees during the installation of the KTS, either by itself or by someone of its choice. The witness explained that the new system would be a single business line for complainant and two single residence lines.

The marketing office supervisor testified as follows regarding charges for operator-assisted message unit and toll charges billed to complainant: (1) 5 to 10 percent of all of the message unit and toll calls were in this category; (2) defendant is willing, because of the time and effort required to establish proof, to make an adjustment for these operator-assisted calls that are in dispute; and (3) the \$127.85 adjustment stated in the settlement offer is for such disputed calls made through July 1979.



As to the disputed direct dialed message unit and toll calls billed to complainant, the marketing office supervisor testified as follows: (1) Defendant had its equipment checked in October 1978 and July 1979 as evidenced by the test results in Exhibits 3 and 5, and in both instances it found that its central office equipment was functioning correctly; (2) it is usual procedure when such tests are made to check the subscriber's equipment; however, complainant would not allow defendant on the premises to do this; (3) the tests, therefore, could only be made up to the pole to which the KTS line was connected; (4) at the time of the first test, complainant informed defendant that the telephone instruments would be placed on windowsills so they could be checked from the outside; however, because of the safety problems involved, defendant did not consider this a reasonable alternative to entering complainant's building to check the entire system and declined the offer; (5) defendant's Rule 19 on Sheet 65 of its Schedule CPUC 36-T entitled "Access to Customers' Premises" states in part as follows: "The Utility's authorized employees may enter a customer's premises at all reasonable hours for any purpose reasonably pertinent to the furnishing of telephone service and the exercise of any and all rights secured to it by law or by these Rules"; (6) complainant's refusal of entry to defendant was a noncompliance with this rule; (7) it is very seldom that there are any problems with KTS stations, and if there are any, they are generally so drastic that the system cannot be used, as for example, other outside parties on the line, inability to make outgoing calls, or substantial noise on the line; (8) no such problems were reported by complainant; (9) there were, therefore, no apparent malfunctions with the KTS; (10) it is quite possible that other parties could have had access to the telephones and made direct dial calls; (11) in this regard, Rule 9 on Sheet 44 of defendant's Schedule CPUC 36-T entitled "Rendering and Payment of Bills" states in part

as follows: "A customer for service shall be responsible for the payment of all exchange, toll and other charges applicable to his service made in accordance with the Utility's schedules of rates and rules"; (12) according to this rule, a subscriber is, therefore, responsible for the charges for calls made from his or her system, irrespective of who may have made them; (13) in various meetings with complainant's husband, he did admit that he recognized the telephone numbers for some of the disputed direct dialed calls as belonging to people he knew but stated that no such calls could have been made at the date and time shown on the billing, and he denied any knowledge of all other disputed direct dialed calls; (14) defendant made a check of the disputed direct dialed calls to determine how many were repeat calls to the same number and also a reverse check to determine whether a return call was made from a number to which a disputed call was made and the frequency of such return calls, and as a result of this check which did show repeat calls to some of the disputed numbers and return calls from some of the others, defendant is satisfied that its billing for direct dialed calls is correct; and (15) defendant has done all that it can to resolve this matter, and complainant should be directed to pay her bills.

In her closing remarks, defendant's attorney pointed out that defendant has made numerous attempts to settle the matter, and she stated that since complainant has rejected defendant's last offer, it is withdrawn. She requested that no adjustments be made in the bills defendant has rendered to complainant and that complainant be required to pay the full amount shown on the billings.

#### Discussion

The background of the complaint and position of the parties is set out in detail above and need not be further discussed. The major issue for our determination is the amount of adjustment, if any, that should be made in defendant's billings to complainant.

We are of the opinion that defendant should be directed to make the adjustments set forth in its last settlement offer, with several minor revisions for disputed operator-assisted message unit and toll calls made after July 1979 and for the billing deconsolidation charge.

While the evidence certainly does not establish that defendant's service representative unduly influenced complainant to accept his recommendation of the KTS, nonetheless, we have before us the situation of a customer who has no real knowledge of alternative telephone systems and a representative of defendant who has substantial expertise in this field. Our reason, therefore, for adopting defendant's withdrawn settlement offer, with the several minor modifications referred to above, is because of the possibility that complainant may not have been advised adequately or in a manner a layperson could readily understand of the disadvantages as well as the advantages of the KTS so she could make an informed judgement as to whether it would be an appropriate system for her particular needs.

As to the disputed direct dialed message unit and toll calls, there is nothing in the record that establishes with any degree of certainty that there was any malfunction with the system or that defendant was incorrectly billing complainant for such calls. As shown in Exhibits 3 and 5, defendant had checked its central office equipment and lines up to the pole to which the KTS is connected in October 1978 and July 1979 and on both occasions found no malfunctions. We recognize that the equipment in complainant's building was not checked; however, complainant would not allow defendant in the building to do this and placing the telephone instruments on window sills was certainly not an acceptable alternative. For a complete check of the KTS equipment, access to the building was essential so that not only the telephone stations but also the key service unit in the basement and all lines and connections could be checked. It is incumbent on

one who complains of telephone service or charges to cooperate with the utility in its investigation of the complaint, including allowing access by the utility to complainant's property at reasonable times to check the communication equipment when such action is appropriate to the investigation as was the case here. As pointed out by defendant, its tariff provides for this. We have no alternative, based on the facts before us, but to presume that the KTS equipment on complainant's property and its connection to the pole were functioning properly. We are mindful of complainant's testimony that she maintained a log of all message unit and toll calls from the KTS and that any charges shown in defendant's billings for such calls that were not included in her log were incorrect and should be canceled. While we do not doubt that complainant did attempt to have all such calls made by anyone from any station on the KTS listed in her log, and that in her opinion all such calls were so listed, nonetheless, the record before us does not support a conclusion that a different procedure was used by defendant for recording the placement of and charges for direct dialed calls from defendant's system than is used for all other such customers. It is presumed, therefore, that defendant's billings to complainant for such calls were in compliance with established procedure and were correct, and complainant's evidence does not rebut this presumption.

According to the record, the total amount defendant billed complainant for the period January 1978 through the end of January 1980 is \$4,978.93. This amount does not include any adjustments. With the adjustments defendant had offered, the charges for this period would be reduced to \$3,206.72.

As stated, we are adopting defendant's withdrawn offer, and we are also increasing the adjustment for disputed operator-assisted calls to \$300 and adding an adjustment of \$20 for the billing deconsolidation charge paid by complainant. In defendant's offer, the adjustment for disputed operator-assisted calls was for the period

to July 1979, and while there is nothing in the record on which to make a precise determination as to the number of and charges for such disputed calls between July 1979 and January 31, 1980, it is noted that, according to defendant's evidence, 5 to 10 percent of long distance calls were operator-assisted. The increase in the adjustment amount would cover any such calls made during this latter period. With these minor revisions, the total amount of the adjustments we will direct defendant to make in its billings to complainant for the January 1978 to January 31, 1980 period is \$2,104.30. This is calculated as follows: (1) \$405.05 for the installation charge for the KTS; (2) \$1,228.80 for the \$51.20 per month difference between the monthly rates for the KTS and for a single business line and two separate residential lines system for the 24 months between February 1978 and the end of January 1980; (3) \$150 for the payment by complainant for the backboard and electrical outlet for the KTS; (4) \$300 for disputed operator-assisted calls; and (5) \$20 for the billing deconsolidation charge. With these adjustments, defendant's billings for the period in question are reduced to a total of \$2,874.63. As of February 15, 1980, complainant has deposited \$2,209.08 with the Commission toward her telephone bills. The deposits will be released to defendant, and the remaining balance payable by complainant to defendant for service through the end of January 1980 is \$665.55.

The order which follows will direct defendant to adjust its billings to complainant as stated above and to remove the KTS from complainant's building and replace it with the aforementioned single-line system. The order will further provide that the deposits by complainant with the Commission shall be released to defendant to be applied towards the adjusted charges and that complainant may pay the \$665.55 balance in five equal monthly installments. We recognize that there could be jurisdictional questions raised by

defendant regarding any directive by us to it to repair any damages that may have been caused by its personnel to complainant's property during the installation of the KTS. However, defendant did agree to do this in its compromise offer by either itself or someone of its choice, and although the offer was not accepted by complainant, it is expected that defendant will do this on its own initiative.

Complainant is placed on notice that our action herein relates to billings she has received from defendant through January 31, 1980 and in no way affects any charges for telephone equipment or service she may have incurred subsequent to that date.

It is noted that at the February 15, 1980 hearing it was understood that during the following week the KTS would be removed and that it would be replaced by the one business line and two separate residential lines system. With this change, it is anticipated that no further questions regarding message unit and toll charges should arise and that defendant's future monthly service charges will be based on the system of single lines.

#### Findings of Fact

In addition to the 10 numbered findings of fact under the heading "Background", we further find to be facts the following:

11. Defendant has on a number of occasions attempted to settle the complaint. In its last settlement proposal to complainant, defendant agreed to remove the KTS and replace it with a system of 1 single-line business telephone and 2 separate single-line residence telephones, and it offered to make the following adjustments in its billings to complainant: (1) remove the \$405.50 installation charge for the KTS; (2) adjust the monthly rate charged complainant by \$51.20 per month, which is the difference in the charge for the KTS and the 1 business and 2 residence single-line system, from February 1978 to the present; (3) credit the \$150 complainant paid for the backboard and electrical outlet for the KTS; and (4) adjust disputed long-distance

operator-assisted calls made before August 1979 by \$127.85.

12. Complainant has rejected all of defendant's settlement offers, and for this reason, defendant has withdrawn all offers, including its last offer referred to in Finding 11. ✓

13. It has not been established on this record that defendant's service representative unduly influenced complainant to accept his recommendation of the KTS; however, because of his expertise and complainant's complete lack thereof regarding telephone systems and the possibility she may not have been advised in a manner readily understandable to her of the consequences of selecting the KTS, defendant should be required to adjust its billings to complainant in accordance with its final offer set out in Finding 11 with the following modifications: (1) increase the adjustment for disputed operator-assisted calls to \$300 to cover any such calls between July 1979 and January 31, 1980; and (2) add an additional adjustment of \$20 for the billing deconsolidation charge. ✓

14. The total of the adjustments referred to in Finding 13 that defendant should make in its billings to complainant through January 1980 is \$2,104.30.

15. Complainant maintained in her office a log in which message unit and toll calls made from the KTS were to be recorded, and she is of the opinion that all such calls were so recorded.

16. Defendant's billings to complainant included many direct dialed message unit and toll calls that were not listed in complainant's log.

17. Defendant checked its central office equipment and lines up to the pole to which the KTS in question is attached in October 1978 and July 1979 and found no malfunctions. Complainant would not allow defendant access to her building to check all of the KTS equipment therein, and the offer by complainant to place the telephone instruments on windowsills for defendant to check was not a satisfactory alternative.

18. The evidence does not rebut the presumptions that the KTS and defendant's central office and other equipment were functioning properly and that defendant correctly billed complainant for direct dialed message unit and toll calls in accordance with its established procedure which it uses for all other customers of the same class.

19. No adjustment should be made in the charges for direct dialed message unit and toll calls billed by defendant to complainant through January 31, 1980.

20. The total amount of charges billed by defendant to complainant from January 1978 through January 31, 1980 is \$4,978.93. With the adjustment referred to in Finding 14, the correct amount of these charges should be \$2,874.63.

21. Through February 15, 1980, complainant has deposited \$2,209.08 with the Commission towards billings it has received from defendant.

22. The deposit referred to in Finding 21 should be released to defendant and applied by it towards the adjusted charges referred to in Finding 20.

23. With the release of the deposit and the adjustment in defendant's billings to complainant, the balance due and owing by complainant to defendant, as of February 15, 1980, for services through January 31, 1980 is \$665.55.

24. In the settlement defendant had made to complainant and which complainant refused, it stated that it would repair, either by itself or by someone of its choice, any damages by its personnel to complainant's property during the installation of the KTS. It is expected that defendant will do this.

25. Defendant should remove the KTS from complainant's premises and replace it with a single-line business and two separate single-line residence services.



Conclusions of Law

1. As of February 15, 1980, complainant owed defendant, for service through January 31, 1980, the adjusted sum of \$2,874.63, less \$2,209.08 on deposit with the Commission which should be paid to defendant, leaving a balance of \$665.55 to be paid by complainant to defendant.

2. Complainant should be authorized to pay any balance it owes defendant for service through January 31, 1980 in monthly installments as provided in the order which follows.

3. Defendant should remove the KTS from complainant's premises and replace it with a single-line business service and two single-line residence services.

4. To the extent not granted in the following order, the relief requested by complainant should be denied.

5. Defendant's motion to dismiss the complaint should be denied.

O R D E R

IT IS ORDERED that:

1. Within ten days after the effective date of this order, The Pacific Telephone and Telegraph Company (defendant) shall credit the sum of \$2,104.30 to Marree Karriem's (complainant) account as an adjustment to the \$4,978.93 billed to her for service for Telephone Nos. 444-3954, 4033, 4034, and 4035 for the period January 1978 through January 31, 1980.

2. Deposit by complainant in the sum of \$2,209.08 and any other sums deposited with the Commission by complainant with respect to this complaint, shall be disbursed to defendant.

3. Complainant may pay any balance due and owing on her account with defendant for service through January 31, 1980 in five equal monthly installments with the first installment due on or

before the fifteenth day of the month following the effective date of this order and each succeeding installment due on or before the fifteenth day of each following month until the balance is paid in full.

4. Defendant shall remove the key telephone system from complainant's premises and replace it with one single-line business and two separate single-line residence services.

5. All other relief requested in the complaint is denied.

6. Defendant's motion to dismiss the complaint is denied.

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

Dated APR 15 1980, at San Francisco, California.

\_\_\_\_\_  
 President  
*Thomas L. Sturgeon*  
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*Richard W. Howell*  
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*Clare J. ...*  
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*John E. Bryson*  
 Commissioners

Commissioner John E. Bryson, being necessarily absent, did not participate.