

ALJ/jn

Decision No. 91918 JUN 17 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

id PRODUCTS, INCORPORATED,  
Complainant,  
v  
Pacific Telephone and  
Telegraph Company,  
Defendant.

Case No. 10789  
(Filed October 1, 1979)

ORDER OF DISMISSAL

The complaint of id Products, Incorporated (complainant) alleges that The Pacific Telephone and Telegraph Company (Pacific) is violating General Order No. 138<sup>1/</sup> by allowing a competitor manufacturer, Telectronix, to vend and to connect its uncertified equipment directly to the telephone network. It further alleges that Telectronix is using Commission Certification No. 0234 for equipment with multiline and Touchtone application, when that number was assigned for an entirely different control system for single line-rotary dial application only. Although the complainant does not specify the relief it wishes the Commission to grant, it is assumed that the complainant seeks an order requiring Pacific to terminate service to any of its customers who have directly connected Telectronix's uncertified equipment.

In its answer filed October 23, 1979, Pacific denies the facts alleged in the complaint and contends that it has not violated any provision of General Order No. 138. For affirmative defenses Pacific contends that the complaint fails to state a cause of action against Pacific.

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<sup>1/</sup> General Order No. 138 is entitled: "Rules for the Connection of Customer-Provided Equipment to Public Utility Telephone Company Systems."

In its answer Pacific also moves to dismiss the complaint arguing that Pacific has no statutory or other legal duty to prevent violations of General Order No. 138 and no affirmative duty under General Order No. 138 or any other regulation, tariff, or statute to enforce the certification program set up by General Order No. 138.

Discussion

The enforcement provisions of General Order No. 138 are found in Sections 1.11 and 1.12 thereof, as follows:

"1.11 Violations.

- "a. Any person or corporation making any willfully false or misleading statement or claim with respect to any filing of equipment certification or request for equipment registration is in violation of this General Order.
- "b. Any person or corporation making representation that equipment is certified by this Commission when such is not the fact or when certification has been suspended or revoked is in violation of this General Order.
- "c. Any person or corporation making representation that customer-provided equipment may be directly connected to the telecommunications network, except as provided by this General Order, or as otherwise provided by the filed tariffs of the utility, is in violation of this General Order.
- "d. Any complaint alleging violation of this General Order and the rules set forth herein shall be filed in the manner and form prescribed for formal complaints by the Commission's Rules of Procedure.
- "e. The Commission may, in its administration of this General Order and the rules set forth herein, investigate on its own motion any violation or noncompliance with these rules by any public utility or any corporation or person other than a public utility.

"1.12 Penalties.

- "a. Any public utility which violates or fails to comply with this General Order and the rules set forth herein is subject to the penalties set forth in Section 2107 of the California Public Utilities Code and such other penalties as may be provided by law.
- "b. Any corporation or person, other than a public utility and its officers, agents, or employees, which or who knowingly violates or fails to comply with this General Order and the rules set forth herein is subject to the penalties set forth in Section 2111 of the California Public Utilities Code and such other penalties as may be provided by law."

Subsections a, b, and c of Section 1.11 are apparently directed at manufacturers of telephone equipment, rather than public utilities. No conduct of a public utility is specifically mentioned as being a violation of General Order No. 138. The complainant has not cited any particular provision of General Order No. 138, any tariff provision, or any statutory provision alleged to have been violated by Pacific, and the Commission has been unable in its researches to discover such a provision of law. Thus, it appears entirely appropriate to grant Pacific's motion to dismiss the complaint for failure to state a cause of action against Pacific. However, this result leaves the complainant in a quandry which we shall now describe.

Under Section 1702<sup>2/</sup> of the Public Utilities Code the Commission may entertain complaints only against public utilities. Thus, if the telephone companies have no duty to enforce the provisions of General Order No. 138, and if an aggrieved person cannot seek relief by complaint filed with the Commission for violations of General Order No. 138 by a person other than a public utility, what recourse does he have? Section 1.12 of General Order No. 138 suggests the answer. Violations of General

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<sup>2/</sup> "Complaint may be made...setting forth any act or thing done or omitted to be done by any public utility...in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission." (Emphasis added.)

Order No. 138 may be prosecuted in the Superior Court under Section 2111 of the Public Utilities Code for the statutory penalties provided therein. Nevertheless, these actions may only be brought and maintained by the Commission (Sections 2101 and 2104 of the Public Utilities Code).

Thus, an aggrieved person should first present his case to the Communications Division of the Commission staff. After an appropriate investigation, which may include requests for information from the accused person or a citation procedure, the Communications and Legal Divisions would recommend to the Commission whether a civil action should be commenced against the accused person. The Commission would then decide whether to authorize the Legal Division to commence such an action. This procedure might have been followed in this case.

Conclusion of Law

The complaint should be dismissed for failure to state a cause of action against Pacific.

C.10789 ALJ/jn

IT IS ORDERED that the complaint is dismissed.  
The effective date of this order shall be thirty days  
after the date hereof.

Dated JUN 17 1980, at San Francisco, California.

John E. Boyer  
President

Herman L. Sturgeon

Richard D. Gravelle

Edward M. Smith  
Commissioners

Commissioner Richard D. Gravelle, being  
necessarily absent, did not participate  
in the disposition of this proceeding.