

ORIGINAL

Decision No. 92354 OCT 22 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RUNAWAY TOURS, INC.,
Complainant,
vs
THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,
Defendant.

Case No. 10768
(Filed August 10, 1979)

Wayne B. Cooper, Attorney at Law, for complainant.
Margaret deB. Brown, Attorney at Law, for defendant.

O P I N I O N

Complainant, Runaway Tours, Inc. (Runaway) is a California corporation located in San Francisco. Runaway is engaged in business as a wholesale tour operator, specializing in the leisure destinations of Mexico and Hawaii. Defendant, The Pacific Telephone and Telegraph Company (Pacific), is a telephone corporation as defined in the California Public Utilities Code and operates under the jurisdiction of and pursuant to tariffs on file with this Commission.

On August 10, 1979 Runaway filed a formal complaint alleging: (1) that Pacific failed to advise it properly of the two alternative intrastate wide area telephone services (WATS), including inbound WATS (or INWATS), available under tariff Schedule 128-T; (2) that Pacific misrepresented that the 415 and 408 area codes could be excluded from INWATS access, and (3) that

Pacific's failure to properly advise Runaway of the alternative types of WATS lines available, as well as the misrepresentation that the 408 and 415 area codes could be excluded from INWATS access, proximately caused Runaway to sustain unjustified excess charges of \$11,638 during the period February 28, 1979 through June 20, 1979. Complainant Runaway prays that this Commission order Pacific to pay the sum of \$11,638 and grant such other and further relief as is just and proper.

Pacific answered on September 13, 1979 denying that it failed to advise Runaway of the alternative types of WATS service available and denying that it represented that calls from the 415 and 408 areas could be mechanically excluded from INWATS access.

Pacific alleges six separate and affirmative defenses:

(1) that the complaint fails to state a cause of action in that it does not allege that Pacific has violated any provision of law, tariff provision, or any applicable order or rule of the Commission; (2) that Pacific does not have a duty to monitor Runaway's telephone usage continually and to recommend changes in service every time usage goes up or down; (3) that no fewer than three of Pacific's representatives discussed the availability of full service (100-hour lines) INWATS with complainant; (4) that the complaint does not comply with Rule 10 of the Commission's Rules of Practice and Procedure in that it does not allege that it has been brought to the Commission staff for informal resolution; (5) that any prayer for reparation, if granted, would be a preference to Runaway and would be in violation of Public Utilities Code Section 453(a); and (6) that if Runaway seeks an award of \$11,638 as damages, the Commission is without jurisdiction to award damages. Pacific denies that Runaway is entitled to any relief and moves that the complaint be dismissed.

Duly noticed public hearing was held before Administrative Law Judge Mary Carlos on January 3 and 4, 1980 and the matter was submitted after oral argument on the latter date.

By letter dated January 7, 1980, complainant indicates:

"...that the record will demonstrate that Runaway's case was brought before the staff of the Consumer Affairs Branch by letter dated July 26, 1979 and that branch responded on July 31, indicating that it could not take any action under the circumstances."

Runaway also asks in this letter that the prayer of the complaint be amended to conform to proof insofar as the amount of the overcharges is concerned. In support of this request, complainant alleges that it was unaware at the time the complaint was filed that the recommendations for WATS lines made to it by Pacific in late 1978 failed to take into account certain factors relating to remote call forwarding and relating to incoming collect calls from the 415 and 408 area codes. The letter alleges that complainant would have sustained additional overcharges during the period prior to the time the computations contained in Exhibit C to the complaint commenced, because it now turns out, in complainant's opinion, that the original recommendations for WATS service were negligently made. The total amount by which Runaway claims it was overcharged is \$15,404, which is shown on Exhibit 5, rather than \$11,638 as shown in the complaint. A copy of the January 7, 1980 letter was served on Pacific. Pacific did not reply.

Chronology of Events

In early November, 1978, Sheridan Dias, an account executive for Pacific, visited Ed Jackson, vice president of Runaway, to discuss more effective use of the telephone system. Jackson testified that he was familiar with WATS generally, having worked previously for a travel agency in Los Angeles that used it. Although he

had not been responsible for ordering the Los Angeles WAT service, he testified that it consisted of 10-hour lines and that the area code 213 was "blocked out" of access to the WATS lines.

A letter dated November 15, 1978 (Exhibit 1) was sent Jackson from Dias with her recommendation for INWATS lines. That recommendation is set out below:

"Recommendation

415 & 408 Areas - exclude from WATS.

California Full State WATS

2 lines @ \$330.00 each	\$ 660.00
Overtime @ \$25.00 per hour	642.50
	<u>\$1,302.50</u>

Remove Remote Call Forwarding from Los Angeles.

Remove 2 local lines to accommodate WATS.

415 & 408 - continue with collect calls, or have agents dial direct and reimburse them."

The recommendation was based on a manual study made by Dias of October, 1978 collect calls which showed:

<u>"Cost</u>		
415 & 408	\$	233.00
All other California		1,096.00
<u>Hours</u>		
415 & 408		14 hours
All other		45.7 hours
<u>Average Call</u>		
415 & 408	\$1.11 -	4.03 minutes
All other	\$1.71 -	4.30 minutes"

The letter indicated that there was a problem with the facilities to provide INWATS in Runaway's area and that the condition was expected to be improved in February, 1979.

Between November 20 and November 30, 1978, Jackson testified that he called Dias and ordered two INWATS lines. Dias testified that she vaguely remembers speaking with Jackson after her first letter to him but didn't remember that much about the context of the conversation. Upon reflection, she recalled that he wanted to submit her recommendation contained in the November 15 letter to his board of directors.

This resulted in a second letter (Exhibit 2) dated November 27, 1978, which Dias characterized as an executive summary of the November meeting and the November 15 recommendation. This letter noted: "Two IN-WATS should be enough at present to handle the traffic, with the option to add more lines when it becomes necessary."

Sometime late in November or early December, 1978, Lyndon Green, a market administrator for Pacific, called Runaway and spoke to Cynthia. Cynthia Pierce was Jackson's secretary at the time, although she is no longer employed by Runaway. She did not testify as a witness in this proceeding. Green testified that he received a sales contact analysis narrative (SCAN) from Pacific's business office showing Cynthia as the contact and indicating only that the customer wanted WATS lines. This SCAN has disappeared from Pacific's files.

He further testified that he discussed what Runaway wanted, outlining the several types of WATS lines--interstate WATS, intrastate WATS, incoming and outgoing WATS lines and different tariffs for each. He inquired as to what type of line Runaway wanted but Cynthia was unfamiliar with terminology and merely indicated that Runaway was interested in a California incoming WATS line. Green asked what type of line Runaway wanted, 100-hour service or 10-hour service. He testified that she indicated one

10-hour line. He said that he knew of a problem in San Francisco and didn't know whether Pacific could provide the service. He then gave her the price and, either in this phone call or a subsequent one, indicated that the lines would not be available until February.

A second phone call to Pacific came from Jackson shortly after this. Jackson was concerned that he could not get a telephone number for the new WATS lines because he wanted to begin advertising it. Green testified that the conversation became quite heated and that he referred Jackson to his supervisor, Ron Passetta, who told Jackson that the number would not be available until late January 1979. Jackson testified that he did not recall this phone call. Green then closed out the first SCAN and wrote a second one and put it in the abeyance file for callup in January 1979. This SCAN (Exhibit 15) says simply, "Customer still needs Band 8 WATS line."

About January 24, 1979, Green again called Cynthia Pierce at Runaway. He testified that he talked to her about putting in one 10-hour WATS line and what Runaway was going to use the line for, and whether one line would be sufficient to handle the volume which would be generated from a new tour and from advertising. He asked her if there was anything on which she based the request for a single line. At this point it came out that a study (mentioned in Dias' November 15 letter) had been made with a projected WATS usage of 45 hours at the time the study was done. This was apparently the first time Green had been aware that Dias had had any contact with Runaway. He asked Cynthia if Runaway would like another study done and indicated that it would take about six weeks to have one run on the computer. He testified that he was too busy at that time to do a manual study.

He testified that Cynthia said one line was all Runaway wanted at this time and that she would talk to Jackson about it.

Green further testified that Cynthia was not familiar with WATS lines and that he again asked her whether she wanted a 10-hour or a 100-hour line. She asked the price associated with each and he told her it was \$330 for a 10-hour line and \$1,000 for a 100-hour line. He testified that she said, "Well, just put the 10-hour line in right now and Mr. Jackson will make the decision if he wants to make a change."

Green then testified that he went ahead with Cynthia's request to go ahead with the 10-hour line and prepared the paperwork during the period January 24-January 29. On January 29, 1979, he received a call from Ed Jackson during which Jackson ordered a second 10-hour WATS line. This is documented on a SCAN dated 1/29 (Exhibit 17) which reads: "Cust needs 2 lines Band 8 WATS". Green also asserts that he discussed the possibility of 100-hour lines with Jackson and that the reaction was "WOW, that is a lot of money. We really don't know what the usage on these things is going to be at this time."

Green also testified that he advised Jackson to watch the bills and as soon as the hours reached 33-37 hours, to call the phone company, and that it would take a maximum of five days to change the service to 100-hour lines. Green said that he was quite careful to determine from Jackson that the additional line was to be a 10-hour line and not a 100-hour line, because a 100-hour line would require a different class of service and would require preparation of a second set of paperwork. Instead, Green simply reissued the SCAN and extended the date of installation by one day.

Jackson admits that he talked to Green at the end of January, but testified that he was not advised that there was a

difference between 10-hour and 100-hour lines, nor that he could switch from one service to the other within a week for \$25 per line, nor that he should monitor his bills and watch his hourly totals.

The next contact between Runaway and Pacific appears to be on the date of installation of the first two INWATS lines on February 21, 1979. At this time, the installers advised Jackson that their work order did not provide for the exclusion of the 415 and the 408 area codes from INWATS access. Jackson called Dias about this but spoke to her boss and was advised that the area codes 415 and 408 could not be mechanically excluded from access to the WATS lines.

Jackson testified that he would have made the decision then to scrap the whole service except that he had gone beyond the point of no return through his advertising and promotion of the WATS service. So two lines were installed and became ultimately functional on February 28, 1979. Jackson was billed for installation as of February 21, 1979, complained of the error to Green, and received a credit on a subsequent phone bill.

On or about March 12, 1979 Jackson spoke with Charlene Keane, also a market administrator for Pacific. Keane testified that she was taking Green's calls while he was on vacation. According to her, Jackson asked her for rates on California INWATS. She determined that he wanted statewide rates and not just northern California rates. She testified that she turned to the WATS section of the Marketing Sales and Service Handbook and read him the following information:

"There are two time periods for interstate (sic) WATS. There is the statewide 10-hour WATS line, which is \$330 a month and \$25 for each additional overtime, and there is a 100-hour WATS line, which is \$1,000 a month and \$10 for each additional hour in overtime.

"The installation on either of these WATS lines is \$50, and you should allow at least three weeks for installation after placing your order."

She testified that Jackson did not place an order for WATS lines with her. No record or SCAN was made of this call by Keane. Jackson testified that he thought he had placed an order with her. Jackson had made a note of this call (Exhibit 14) which shows only the rates for 10-hour lines. He denied being told of 100-hour lines.

On March 20, 1979, Green testified, Jackson called him inquiring about the installation date of the two lines ordered from Keane. Green checked with Keane and was told that she had only quoted rates to Jackson. Green then took the order for an additional two WATS lines (bringing the total WATS lines to four) from Jackson. Green testified that he did ask if Jackson wanted the same kind of lines he already had and Jackson said, "Yes." These two lines were installed mid-April, 1979.

In mid-June, 1979 Jackson called the phone company to complain about the size of his May WATS bill which was in excess of \$10,000. He spoke with Catherine Sheehan, a market administrator. Jackson testified that she told him that 100-hour lines were available and that that was the first time he had been told that 100-hour lines existed. Sheehan testified that Jackson was quite irate and that he directed her immediately to make Runaway's bill retroactive for four 100-hour lines from the time of installing the WATS lines or to pull the lines out. She has no recollection of mentioning to Jackson the availability of 100-hour lines. She testified that she told Jackson she would need to get more information, confirmed that he wanted a retroactive adjustment, and said she would get back to him which she did later that day. She prepared a recap of these calls dated June 15, 1979 (Exhibit 23).

On June 20, 1979 she called back suggesting a configuration of three 100-hour lines and one 10-hour line as the most economical based on a computer study of his existing WATS usage. Jackson then ordered that configuration and has since changed the configuration on several occasions to reflect the rise and fall of his telephone use due to the seasonality of the travel business.

Discussion

As is apparent from the chronology, there are both major and minor differences between the recollections of Runaway's witnesses and Pacific's witnesses about the timing and content of each contact between Runaway and Pacific. The minor differences we ascribe to the passage of time between the occurrences and the testimony about them. This is only natural, particularly since people ordinarily do not anticipate having to testify about everyday business transactions and the conversations surrounding them.

The major differences are another matter, however. It is quite apparent to us that three questions are in need of answers: (1) What did Pacific advise Runaway about excluding area codes 408 and 415 from INWATS access? (2) What did Pacific advise Runaway about the availability and cost of 100-hour INWATS lines? (3) When did Runaway become aware of these things? The written documentation by Runaway, in the form of Jackson's handwritten notes, does not begin until March 3, 1979, some five months after the initial contact with Pacific for INWATS service. The written documentation by Pacific is incomplete and inconclusive. We are left, therefore, having to rely primarily on the testimony of the parties' various witnesses (supported wherever possible by written documents) to try to answer these questions.

Exclusion of Area Codes 408
and 415 from INWATS Access

The issue of exclusion of the 415 and 408 area codes first arose during the meeting between Dias and Jackson in November, 1978. Jackson maintains that they spoke specifically about the mechanical limitation of access--that it would not be physically possible to dial the 800 number WATS line from the 415 and 408 areas. Jackson further testified that he had worked for a travel agency in Los Angeles where the local area code was excluded from INWATS access. Dias denies discussion of the mechanical blocking of the local dialing area and testified she was not aware that it could be done. She did testify that Jackson discussed his prior experience with WATS and blocking the local calling area but felt that perhaps this was done under a tariff of General Telephone with which she was not familiar. She testified that she did not use the hours shown for calls from area codes 408 and 415 in calculating the cost of INWATS or in making her recommendation for two 10-hour WATS lines since she assumed they would continue to be handled as collect calls. She stated that Pacific did instruct people to advertise in some other way to attract calls from their own local area, such as specifying a call on the local telephone number. Jackson apparently advertised the 800 line number and a local number for area 415 and 408 calls on Rolladex cards distributed to all agents but complained that in practice many of the local calls came in on the 800 line.

The November 15, 1978 letter from Dias to Jackson memorializing the discussion at the earlier meeting recommends: "415 and 408 Areas - exclude from WATS". The letter dated November 27, 1978 which Dias characterized as an executive summary also used the term "excluding the 415 and 408 area codes." The word "exclude" apparently meant "mechanical blocking" to Jackson and "omit from consideration" to Dias and each proceeded under an individual interpretation of the word without being aware that there was an elemental difference in the other's

understanding of what could/should be done with respect to the 415 and 408 area codes.

Jackson ultimately learned, sometime late in February, 1979, when the first two WATS lines were being installed, that it would not be mechanically possible to exclude 415 and 408 area codes. He contacted Pacific, stating that an agreement had been made to exclude the local dialing areas and that based on the agreement he had gone ahead with his order for WATS service. He testified that Pacific told him that they had never heard of it being done and that they could not exclude these areas from access. Pacific suggested that he black out his 800 line advertising in these two areas or cover it in some other manner. Jackson testified that the advertising program had started early in December, 1978 and that by late February, 1979 he had gone beyond the point of no return in the promotion of WATS service and that it would have been too confusing in the marketplace to have dropped it at that point. So he proceeded with the installation of two WATS lines knowing that areas 415 and 408 could not be mechanically excluded.

Pacific's breakdown of Runaway's collect calls (based on data from the month of October, 1978) showed 14 hours of calls from areas 415 and 408 and 45.7 hours from all other areas. Dias' estimate of the cost of two WATS lines (excluding 408 and 415 areas) for this number of hours was \$1,302.50. If the additional 14.0 hours are added, the cost of two WATS lines rises to \$1,652.50, an increase of \$350. This is significantly in excess of the cost of these calls on a collect basis, which is shown as \$233 by Dias. There is no testimony from Jackson that any effort was made to remedy the situation by additional advertising, new Rolladex cards for the local calling area showing only the local number, or by any other means attempting to control the number of calls coming in on the WATS lines from 415 and 408 areas. In addition, Jackson testified that he ordered two additional WATS lines in mid-March, not to decrease his costs but

specifically to accommodate the additional number of calls coming in to the two existing lines, thereby avoiding excessive busy signals.

Under these circumstances, we cannot find that Runaway reasonably relied on a misrepresentation by Pacific which proximately caused Runaway to sustain unjustified excess charges. Runaway was aware at the time the lines were to be installed that area codes 415 and 408 could not be mechanically excluded. Runaway ordered two more lines shortly thereafter with that same knowledge. Despite Runaway's protestations, there are a number of things which could have been done: (1) Runaway could have delayed installation and requested Pacific rerun the study set forth in the November 15, 1978 letter which would not have been an unreasonable alternative considering the fact that Runaway had already waited three months for the WATS lines to be installed; (2) Runaway could have cancelled the service altogether and continued with the existing system; or (3) Runaway could have revised its advertising to reflect what Runaway knew to be changed circumstances. There is no evidence that Runaway did any of these things.

We conclude that Runaway made a conscious decision to proceed with installation of WATS lines knowing that area codes 415 and 408 could not be mechanically excluded and that additional hours of calls might come from these areas on the WATS lines. We conclude that a prudent man would have weighed the economic and operational value of the various options and chosen among them on that basis, and that having so chosen, cannot now claim that he made a poor choice and expect the utility to reimburse him for that poor choice.

Availability of 100-Hour INWATS Lines

We have a discrepancy on this issue between testimony by Runaway and Pacific. Jackson claims that Pacific did not advise him prior to June 15, 1979 that 100-hour INWATS lines were available;

Pacific witnesses Dias, Green, and Keane all state that they did tell Jackson this at various times between November, 1978 and mid-March, 1979.

Testimony of Sheridan Dias

Dias was Jackson's first contact with Pacific after he expressed interest in having WATS lines. Dias is an account executive who had, at the time she met with Jackson in November, 1978, been performing the duties of account executive for about six years. She had been responsible for the travel industry for only two months, but testified that she had worked with the transportation industry, into which the travel business falls, for almost two years.

Jackson mentioned that he had had WATS previously and that he was familiar with WATS service and from Dias' understanding, knew how it worked. Although she testified that she did discuss costs with him in a general sense, at the November, 1978 meeting, they didn't discuss exact costs because she did not yet know what kind of toll use history Runaway had. Dias testified that she does not use a standard presentation when a customer calls for information about WATS service, nor does she have a standard list of points to cover when first speaking to a customer asking for service. The only documentation available (other than the two letters written by Dias to Runaway) is a handwritten document which Dias indicated was her own form prepared soon after contact with a prospective customer. This form shows: Name, address, telephone number, contact, decision maker, ownership, type agency, annual gross revenue, projected growth, and goals. A copy of the document Dias prepared after meeting with Jackson shows no information concerning type of WATS service, nor number of WATS lines desired.

Dias did testify that she did a manual study of Runaway's October 1978 usage. Apparently various possible WATS line configurations were worked out on that study but it has either disappeared from Pacific's files in the reorganization of the Burlingame office, or was not kept in the first place. Dias made her recommendation for two WATS lines in the November 15, 1978 letter to Jackson, quoting the price for 10-hour lines. The lines were identified only as "California Full State WATS - 2 lines at \$330.00 each". The November 27, 1978 letter likewise referred to "Two IN-WATS" lines without other distinction. When questioned as to why she had not presented Jackson with the option of one 100-hour line and one 10-hour line in her letters, she stated that her study was based on the amount of toll Runaway was using at the time and that ordinarily it is desirable to keep down the costs to give the best possible service at the least cost. In any event, she testified that the WATS lines could not be installed for some time (due to lack of Central Office facilities), that the recommendation was a "ball park" estimate based on current use, and that she did not feel the matter was closed.

Although Dias testified that the estimate was only "ball park", we find nothing tentative in her letter recommendation, nor do we find any indication that she intended to recalculate her estimate at a later date or revise her recommendation of two 10-hour WATS lines.

She did not talk to Jackson again and when she went to follow up on her November letters, found that Green had taken care of the matter because Jackson had called him.

Testimony of Lynn Green

Green first talked to Runaway in late November or early December, 1978. His contact was Cynthia, who was at that time Jackson's secretary.

Green stated that he called Runaway because he had received a SCAN from the San Francisco business office which said simply, "Customer wants WATS lines." He testified that he determined from

Cynthia that Runaway wanted a single 10-hour line, gave her the price, and told her that WATS lines would not be available until February.

Green was not aware at this time that Dias had already contacted Jackson or that she had done a manual study on Runaway's toll usage. Although he testified that he kept almost 90 percent of all the SCANS he ever wrote the SCAN that came to Green in late November, 1978 is missing from his files and cannot be located in any of Pacific's files.

Although Green testified that he also talked to Jackson during this period, between November-December, 1978, those conversations concerned advance availability of the WATS telephone number for advertising purposes. There is no indication that Green discussed price or kind of WATS lines with Jackson during these calls.

Green's next conversation with Runaway was on January 24, 1979 and he again talked to Cynthia. He said he again quoted her prices and determined that she wanted one 10-hour WATS line. This contact was recorded in a Sales Contact Opportunity Referral Evaluation (SCORE) (Exhibit 15). The document simply says, "Cust. still needs Band 8 WATS line" and contains internal ordering information. The term "Band 8" refers to all-California INWATS service and does not distinguish between 100-hour lines and 10-hour lines.

On January 29, 1979, Jackson called Green to add a line. Green is emphatic in his recollection that he told Jackson about the cost of a 100-hour line; however, the SCORE prepared as a result of this conversation (Exhibit 17) says only, "Cust. needs 2 lines Band 8 WATS" and contains internal ordering information. Both conversations were memorialized on a Contact Narrative on January 29, 1979. (Exhibit 16.) This form bears the heading "Person Interviewed - Services Discussed - Charges Quoted - Order Number." The two entries (both dated 1/29, although the first refers to the 1/24 conversation) read:

"1-29: Received call from cust. to order one Band 8 In Wats measured. Issued SO #040381, due 2-20."

"1-29: Cust called to add one more line to order issued replacement changed due date to 2-21."

Thus, despite the fact that Green testified that he told both Cynthia and Jackson twice about the cost of 100-hour lines, this assertion is not supported by any business record kept by Pacific although the Contact Narrative is specifically designed to record this type of information.

Testimony of Charlene Keane

Subsequent to Runaway's installation of the first two WATS lines, Jackson had a conversation with Charlene Keane. Keane testified that she quoted him rates for all-California WATS service, both for 10-hour and 100-hour lines. This conversation occurred March 12, 1979. By this time Jackson had begun keeping handwritten notes of his communications with the telephone company. His notes of this conversation begin "Come in 2" and contain reference only to 10-hour lines and their cost. They contain nothing about 100-hour lines. Keane has no documentation of the information given out since Pacific does not require a record of any contact that does not entail a call-back to the customer.

Keane did testify, however, that she followed a consistent pattern, learned in her basic training, in giving information on rates. She first determines what type of WATS the customer wants, whether it is statewide or national. Then she determines what area, whether California north or all-California, and then, finally, she determines what hour lines the customer is interested in. She testified that she followed this procedure with Jackson.

We find this type of consistent pattern in giving information very supportive of Keane's testimony. Further, we note that the Service Handbook on intrastate WATS rates begins, "There are two time periods for intrastate WATS..." The notation "Come in 2..."

could well have been the beginning of a verbatim note of the material Keane was reading. This is speculation, however, and Jackson testified that he did not know what this phrase meant.

Testimony of Catherine Sheehan

Catherine Sheehan was the final market administrator at Pacific to whom Jackson spoke concerning his problems with WATS service. He talked to her in mid-June, 1979, to complain about the size of his latest WATS bill which was in excess of \$10,000. He testified that she was the first person at Pacific who told him of the existence of 100-hour WATS lines. He promptly ordered three 100-hour lines. She testified that, in her opinion, Jackson already knew about 100-hour WATS lines when he spoke to her. She bases this opinion on the fact that Jackson told her what he wanted done, (i.e., that Pacific was either to replace three 10-hour lines with three 100-hour lines and adjust Runaway's bill retroactively to reflect this configuration or remove the entire WATS system). He did not ask her advice during this first phone call which was very heated, and according to Sheehan, did most of the talking, pausing only while she verified exactly what he wanted done.

Sheehan's testimony is very convincing. Because she was the most recent in a chain of contacts between Pacific and Jackson, because she had had no prior involvement with Runaway's WATS service, and because the first of her conversations with Jackson was so heated, we believe that she is the most likely of all witnesses to remember specifically and recount accurately her dealing with Jackson.

Thus, although we conclude that Jackson was not advised by Pacific of the alternatives to 10-hour WATS lines when WATS was first recommended to him, we cannot conclude with certainty that Jackson did know of the existence of 100-hour lines when he talked to Sheehan, because the testimony is conflicting. We will not,

therefore, use Jackson's actual knowledge in our resolution of this issue, but will instead consider what Jackson should have known about his telephone service.

In H.T. Welker, Inc. v Pacific Tel. and Tel. Co. (1969)

69 CPUC 579, 582, we stated:

"In the complex field of communications, no layman can be expected to understand the innumerable offerings under defendant's filed tariffs. When defendant sends out one of its communications consultants to a customer's place of business for the explicit purpose of discussing telephone service, the consultant should point out all the alternative communications systems available to meet the customer's needs. This is a duty owed by defendant to its customers."

It is naturally in Pacific's interest to say that its representatives did this. Yet we find no independent corroborating evidence that Jackson was told of the availability of 100-hour WATS lines prior to his placement of an order for the first two 10-hour WATS lines. Documents, such as Dias' work sheet showing various configurations from which she derived her recommendation for two 10-hour lines, were either lost or not kept. Documents such as the Contact Narrative which call out for this kind of information do not contain it. Neither of the letters from Dias to Jackson indicated that alternatives had even been discussed, let alone what the specifics of the alternatives might have been.

Notwithstanding the similarities in fact in this case and Welker, there is one major difference and that is one of timing. In Welker the complainant was aware within 30 days that the system he had had installed was not satisfying his needs. In Runaway, the complainant did not complain about the size of his bills until mid-June, 1979, some three plus months and four phone bills after WATS service had been installed.

Jackson testified that he first became aware of the size of the bills in mid-June, 1979 when his accountant, Kinji Paschen, brought the May bill in the amount of \$10,242 in to him. Paschen

testified that this was the first telephone bill he brought to Jackson's attention because, in his words, the amount was staggering. Although the bill is dated June 2, 1979, Paschen testified that Runaway typically did not receive the bills for WATS service until mid-month and that he usually paid the bills within a week or so.

He testified that he had not brought prior months' bills in to Jackson because, again in his words, "They were reasonable in amount." The following table is a comparison of the WATS bills for the months in question compared to the toll charges of the same months the prior year, before WATS was installed:

<u>Month</u>	<u>WATS-Toll Only</u>	<u>WATS-Entire Bill</u>	<u>Prior Year Toll</u>
February	\$ 737 (3 days)	\$ 1,864 (3 days)	\$2,440 (full month)
March	3,550	4,590	1,983
April	3,837	6,156	1,772
May	8,075	10,242	1,639
June	6,280	10,769	1,877

Jackson testified that bills went directly to Paschen for payment and he only saw the bills of Runaway if they were one-time-only bills, marketing-related bills, or bills which deviated from the normal pattern. Herein lies a managerial problem at Runaway. Runaway has a new telephone service, its manager and vice president has testified that he was very conscious of the length of phone calls and yet we see no monitoring of phone bills until the level exceeds \$10,000. Jackson testified that he looked only at the first telephone bill to determine whether he had been billed beginning February 21, or February 28. Having determined the former, he complained to the telephone company and received a credit, which he instructed his accountant to look for. Jackson did not see any bills after that until mid-June. Had Jackson been monitoring the bills, he would have seen that the March, 1979 bill was substantially above the bill for March, 1978, and the April bill was more than double the bill for April, 1978. Even allowing for seasonal fluctuations in the phone

bill, and growth in Runaway's business, these differences should have raised some questions in Jackson's mind. Even if Jackson had not been aware of the availability of 100-hour WATS lines, he was surely aware that he could discontinue WATS service and return to his prior system of accepting collect calls from all areas, if it were more economical to do so.

Had he been monitoring his telephone bills he would have seen the length of time per call grow from 4.0 minutes in October, 1978, (on which Dias' recommendation was made) to 8.6 minutes in March, and 12.9 minutes in May. Again, seasonality of business may explain some of the growth in call length but all these figures are a substantial increase over the 4.0 minutes shown in Dias' first letter to Jackson in November, 1978. Had Jackson been monitoring his bills on a monthly basis he would have seen this and could have made an earlier decision on whether to continue WAT service at all, return to his old system, or seek further advice from either the telephone company or a private consultant. Had he taken any of these options, he undoubtedly would have found out about the availability of 100-hour WATS lines if he was not already aware of them.

While we agree that Pacific did not properly advise Jackson initially as to the variety of service available to him for his communication needs, we cannot agree that Jackson should be entirely excused from the responsibility he had to monitor his usage and thereby mitigate the damage he suffered at a date earlier than June 15, 1979. It appears to us that Jackson should have been alerted when he received his February bill in mid-March with 29.5 hours WATS overtime for only three days' usage (February 28 and March 1 and 2). Certainly he should have questioned the economics of the WATS system for his communication needs when he received his March bill in mid-April with 142 hours WATS overtime amounting to \$3,550. Accordingly, we will use April 17, 1979 as the cutoff ✓

for our calculation of reparation. This date is 15 days into the April billing period and, according to Runaway, is approximately the time of the month it would have received the WATS bill for the March billing period.

Recalculation of Telephone Bills

Both Runaway and Pacific submitted exhibits (5 and 19 respectively) showing recalculations of Runaway's telephone bills. Runaway's showing listed actual usage for March, April, May, and June and compared it to a "should have been" figure based on the assumption that Runaway had four WATS lines of various 100-hour/10-hour mixes since the inception of its service. February usage was not included because it was so small, according to Jackson. Pacific's showing included February usage, also varied the mix of 100-hour and 10-hour lines, and also assumed four WATS lines in use since February but distributed the usage among these four lines according to a standard engineering formula used by Pacific and testified to by witness Green. This formula distributes 40 percent of the use to the first line, 30 percent to the second, 20 percent to the third, and 10 percent to the fourth line.

Runaway took exception to the use of this formula, indicating that analysis of Runaway's later bills did not show that usage on four lines occurred in these percentages. We do not have to decide whether the engineering formula used by Pacific is valid or not in actual usage since we are not going to impute four WATS lines to Runaway for February and March, 1979, and since we will only include a portion of the April charges in our calculations.

The justification offered for imputing four WATS lines was that Runaway did not know that area codes 408 and 415 could not be mechanically excluded from access and that the 14 hours of collect calls from these areas would have to be added to the number of hours from all other areas for the purpose of determining the level of WATS service. As discussed previously, Jackson knew, at the time

his first two WATS lines were installed, that area codes 415 and 408 could not be mechanically blocked and made the decision, with that knowledge, to go ahead with the service with only two WATS lines.

However, because Runaway actually did have four WATS lines in service from April 13, 1979 and because we are only including a portion of the month of April in our calculations, we will use our best judgment as to the difference between what Runaway was actually billed and what it should have been billed.

Runaway's attorney asserts in his January 1980 letter (submitted after hearing and served on Pacific) that Pacific's failure to take the remote call-forwarding lines into consideration in making its recommendation for WATS service constituted negligence. Since there was no specific evidence or testimony at hearing as to the effect the three remote call-forwarding lines would have had on Runaway's toll use or WATS lines, we will not attempt to make a determination of our own as to what WATS usage might have occurred had the remote call-forwarding lines been removed as Dias suggested in her initial recommendation to Jackson.

By assuming that Runaway had one 100-hour line and one 10-hour line for February and March and two 100-hour lines and two 10-hour lines for the portion of April that we are concerned with, and by using the 66/34 percent usage pattern to determine use on the two lines for February and March, we calculate that the approximate difference between what Runaway actually paid for the period February 28-April 17, 1979 and what it should have paid had it been properly advised by Pacific and had it taken reasonable steps on its own to monitor its telephone bills, to be \$2,537. We will direct Pacific to pay this sum to Runaway and will deny the remainder of Runaway's claim.

Having made this decision we do not have to reach the issue of Runaway's request to amend the prayer of the complaint to

conform to proof. Similarly, Pacific's motion to dismiss is denied.

Findings of Fact

1. Runaway operates a wholesale travel business using INWATS lines furnished by Pacific.
2. Runaway first inquired of Pacific about WATS lines in November, 1978 and was advised by Pacific to install two 10-hour WATS lines based on a manual study done by Pacific.
3. Runaway was also advised by Pacific to exclude area codes 408 and 415 from WATS.
4. Runaway interpreted the term "exclude" to mean no access mechanically, while Pacific used the term to mean that Runaway had to take some action to assure that it would not receive calls from these areas on its WATS numbers.
5. Runaway was advised by Pacific's installers at the time the first two WATS lines were installed that area codes 408 and 415 could not be mechanically excluded. Runaway had the WATS lines installed anyway. No additional studies of toll usage were done or requested to reflect this possible additional toll.
6. Runaway had two additional WATS lines installed about six weeks after the first two lines were installed.
7. Runaway's vice president did not routinely review telephone bills. He saw the first one after WATS lines were installed (reflecting 3 days' use) and did not see any others until his accountant brought in a bill in the amount of \$9,397 in mid-June, 1979.
8. Runaway's length of time per call grew from 4.0 minutes in October, 1978 to 8.6 minutes in March, 1979 to 12.9 minutes in May, 1979.
9. Runaway's bill for WATS use in March, 1979 was \$4,590. Runaway's bill for March, 1978 toll use was \$1,983.
10. Runaway did not begin to monitor its telephone use until June, 1979.

11. No documentary evidence was offered to support Pacific's assertions that it advised Runaway of the option of 100-hour WATS lines.

12. No evidence was adduced by either party reflecting the effect of the remote call-forwarding lines on WATS use.

Conclusions of Law

1. Pacific had a duty under its filed tariffs to advise Runaway of all the rate schedules applicable to WATS service.

2. At the time Pacific made its recommendation for WATS service to Runaway, Pacific failed to indicate that there were alternatives to the 10-hour WATS lines recommended.

3. Runaway should have monitored its telephone usage after WATS lines were installed as a prudent business practice.

4. Runaway proceeded with WATS service knowing that area codes 408 and 415 could not be mechanically excluded from access to WATS and should have reexamined, or asked Pacific to reexamine, the economics of WATS service in light of this fact.

5. Pacific's business records showing history of contact with and advice given to Runaway are poor, being nonexistent in some cases, and incomplete in others.

6. The measure of reparation to be awarded Runaway as a result of Pacific's failure to advise of alternatives to the recommended level of service should be based on an estimate of how much Runaway's billings might have been reduced had Runaway known of the availability of 100-hour WATS lines when it first applied for WATS service. The award should not be based on the optimum configuration of four WATS lines ab initio since Runaway knew that area codes 408 and 415 could not be mechanically excluded and proceeded with WATS service knowing that fact. Similarly, the award should not include any consideration of the effect of the remote call-forwarding lines on WATS usage.

7. Pacific should be required to reimburse Runaway for the difference between what Runaway's WATS bill actually was and what it should have been for the period February 28, 1979 and April 17, 1979 in the amount of \$2,537. The remainder of the claim should be denied.

8. Pacific's motion to dismiss the complaint should be denied.

O R D E R

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company (Pacific) shall reimburse Runaway Tours, Inc. (Runaway) the sum of \$2,537. To the extent that Runaway's claim exceeds this amount the remainder of the claim is denied.

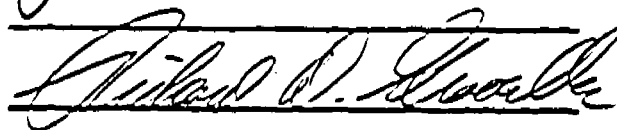
2. Pacific's motion to dismiss is denied.

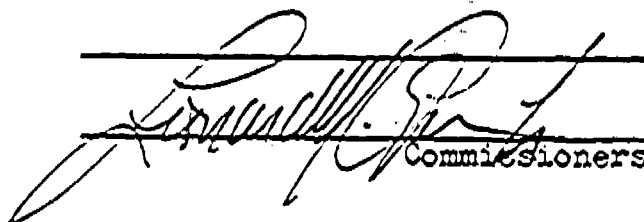
The effective date of this order shall be thirty days after the date hereof.

Dated OCT 22 1980, at San Francisco, California.



President





Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Claire T. Dodrick, being necessarily absent, did not participate in the disposition of this proceeding.