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Decision No. 92791

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HOLOCARD, a California partnership,

Complainant,

vs.

THE PACIFIC TELEPHONE & TELEGRAPH COMPANY, a California corporation, GENERAL TELEPHONE COMPANY OF CALIFORNIA, a California corporation, AMERICAN TELEPHONE & TELEGRAPH COMPANY, a New York corporation, and GENERAL TELEPHONE & ELECTRONICS, a New York corporation,

Defendants.

Case No. 10240
(Filed January 18, 1977; amended June 19, 1977 and September 22, 1977)

William Knecht, Attorney at Law, Gordon S. MacDonnell and Thomas E. Flowers, for Holocard, complainant.
Edward D. Schoch, Attorney at Law, for General Telephone Company of California and General Telephone & Electronics; Richard A. Bromley, Attorney at Law, for American Telephone and Telegraph Company; and Gerald H. Genard, Walter J. Sleeth, and Norah S. Freitas, Attorneys at Law, for The Pacific Telephone and Telegraph Company; defendants.
Maxine Dremann and Steven Weissman, Attorneys at Law, and Ermet Macario, for the Commission staff.

OPINION

This complaint originally sought an order requiring The Pacific Telephone and Telegraph Company (Pacific) and General Telephone Company of California (General) to enter into service arrangements with complainant Holocard, which wishes to operate a novel credit verification business.

Background

Holocard seeks to establish a new type of credit card verification system dependent upon the use of the communications systems and billing services of Pacific and General. Complainant would provide a data storage device containing information as to the validity of credit cards. The device would be connected to the telephone system and would be accessible to any caller by dialing the telephone number assigned to the credit verification service. After complainant's device automatically answered, the caller would transmit the credit card number. Holocard's device would then search its memory and respond with a signal that would indicate to the caller that the credit card should or should not be honored.

To this point, complainant's needs could be satisfied by regular tariff offerings of defendants. Disagreement has resulted from the manner by which Holocard seeks to be compensated. Holocard proposes either of two plans for this purpose.

Plan 1 would require the assignment of a series of telephone numbers to complainant which customers in general would call to obtain credit card verification. The utility would maintain a count of calls to these numbers and, based on that call volume, would periodically pay an amount to complainant. This proposal is based on the assumption that the local message

unit (MU) rate is 5 cents and that the utility's costs per MU are less than 5 cents, thus permitting payment of the difference to complainant.

Complainant's Plan 2 would be employed if the sum of the utility's and complainant's costs per credit verification call are in excess of the MU rate. Under this plan the utility would have to maintain call details (number and possibly duration) for each customer who placed calls to the credit verification service numbers, bill to and collect from those customers a special rate per call, and periodically transmit to complainant a designated portion of the collections.

Pacific and General refused to voluntarily enter into such agreements, resulting in the filing of the complaint in Case No. 10240.

The complaint alleged that the proposed business was in the public interest and that there would be no adverse impact on the telephone companies. It contended that the defendants had violated Public Utilities Code Sections 451 and 453, arguing that defendants' refusal to provide specialized services disadvantaged complainant and advantaged other companies offering verification services. The complaint requested that the Commission order both telephone companies to provide the services necessary to institute both plans.

Defendants answered, generally denying the allegations of the complaint. Both challenged the legal sufficiency of the complaint under Public Utilities Code Section 1702, asserting that the complaint was a challenge to the rate structure of both defendants, which could not be entertained unless joined in by 25 customers. Furthermore, both contended that adopting complainant's proposal would constitute a preference and an illegal additional charge in violation of Section 453 and Section 532 of the Code. Finally they claimed that the dedication rule (discussed below) deprives the Commission of jurisdiction to order any of the proposed services. Both defendants also moved to dismiss the complaint asserting lack of jurisdiction under the dedication rule and, that under Section 1702, the complaint failed to state a cause of action. Both motions were taken under submission upon completion of the hearing.

The first amendment to the complaint was filed on June 19, 1977. The amendment sought space in telephone company offices for the installation of complainant's equipment; it also prayed that

the defendants be ordered to supply personnel to periodically replace film cassettes in the verification equipment.

The second amendment filed on September 22, 1977 alleged that both defendants had abused their monopoly position over terminal services used in data transmission including the Transaction Phone (a specialized telephone instrument supplied by both defendants). The amendment also alleged an illegal conspiracy to occupy the field of data transmission and a refusal to deal with complainant. This amendment requested actual damages, treble damages under the antitrust laws, attorney's fees and costs of the action. Pacific moved to strike the second amendment on the ground that the Commission does not have jurisdiction to consider antitrust damages, or directly enforce antitrust statutes.

Hearings on the complaint were held November 28 through December 1, 1977. The matters were submitted upon the filing of opening and closing briefs by the parties on March 7, 1978. On April 24, 1979, Pacific filed a supplemental reply brief. On June 6, 1979, complainant filed a response. The matter was thereupon resubmitted.

The original complaint also named as defendants General Telephone and Electronics Corporation of Stamford, Connecticut, and The American Telephone and Telegraph Company of New York City. Motions to dismiss were filed by both and were granted by Decision No. 87714 on August 16, 1977.

Complainant has devised a method of informing merchants, who have been presented with credit cards in payment for goods and services, whether the cards' issuers will honor them.

Complainant claims that the innovations it has devised will enable it to render this service quickly and inexpensively if it can obtain the special services it needs from telephone utilities.

Because of the characteristics of the services needed, only a telephone utility can provide them. Defendants have refused to offer these services; they will not publish a tariff or enter into a special deviation contract with complainant. (Cf. Section X of General Order No. 96-A.) Within both defendants' legal and natural territorial monopolies, complainant can only obtain the needed services from them. If defendants can refuse to provide the services, complainant must either abandon its planned operation altogether or modify it to forego all the competitive advantages which its innovations would otherwise provide.

Normal telephone facilities are the only service needed to allow complainant's merchant/clients to contact its data centers which automatically dispense credit card status information.[1/] There is no issue concerning these conventional services; defendants are willing to offer complainant any type of telephonic services which they now provide under tariff to existing credit card verifiers.

The dispute arises because of complainant's alternative plans to obtain compensation for the information it dispenses.

Complainant under Plan 1 would receive its compensation directly from the utility. From the merchant's viewpoint, Plan 1 service appears to be free in the same sense that a travel agent's service appears free. In both cases the service corporation pays

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1/ A merchant initiates a card verification by dialing a telephone number assigned to complainant's facility. Once complainant's devise has "answered" the call, the merchant enters the card number in question using a Touchtone telephone, or, if he has a dial telephone, a separate Touchtone pad. Complainant's facility checks the number against the status information stored in its memory. It responds with an audible signal if no derogatory information is found. If there is any indication that the issuer might not honor the card, a different signal is transmitted.

a commission, deducted from its rate, as consideration for the extra traffic generated. Unlike the travel agent, however, complainant's compensation would vary inversely with the profitability of the traffic actually generated. If the amount retained by the utility does not allow it to earn a reasonable return, complainant would be compelled to either accept a reduced amount per call, abandon service totally, or convert to Plan 2.

Under Plan 2, the utility would retain all of the added revenue generated by the extra traffic. The merchant would pay complainant an additional separate charge for each verification call. The innovation lies in complainant's proposal that verification bills would not be presented and collected by complainant itself, but by the serving utility. The charge would appear as an extra item on the merchant's regular monthly utility bill. The sums collected would be transmitted by the utility to the complainant. The rate for verification services would be fixed by complainant in response to the price competition afforded by other verification systems.

If a utility's total revenue from Plan 2 service produced more than a reasonable net revenue, the excess revenue could either be used to subsidize other utility services, or at the Commission's option, be flowed through to utility shareholders.

Both defendants are unwilling to enter into either proposed arrangement except with another regulated communications utility. Both claim that since they have not voluntarily dedicated their property to providing these services, they have no obligation to serve and no obligation to account for, or explain, their refusal to serve.

Complainant contends that because of this refusal to serve, defendants' service and practices are inadequate and constitute discrimination against it and in favor of existing credit

card verifiers. It is also contended that the refusal discriminates against smaller merchants who would find complainant's verification plans particularly suited to their needs and in favor of other merchants who are well served by existing verification systems. It is unchallenged that the defendants' refusal will prevent merchants from sampling and patronizing complainant's services unless complainant abandons all the features which it claims would appeal to those merchants. Complainant argues that the Commission has a duty to promote innovation and competition in the verification market. Defendants believe that the Commission has no such responsibility because it would require them to offer a new service against their will.

Both staff and the utilities contended that applicant's Plan 1 showing constituted a challenge to the reasonableness of a rate and thus could not be considered unless supported by 25 actual or prospective customers. (Section 1702.)

Implementation of Plan 2 requires that a three-digit prefix (an "office code") in each calling area be set aside for use by complainant (and perhaps other information purveyors). Staff and defendants claim that such an assignment was not warranted and would be adverse to the public interest and discriminatory.

Complainant sought damages (a claim since abandoned), attorney's fees, and an order requiring defendants to provide it with space for its facilities, labor to tend its machines, and assistance in promoting its service. Defendants opposed all of these.

Complainant's Evidence

Complainant's first witness, one of its principals, described the operation of the verification system and explained the two plans by which it would be paid for its services.

He predicted that if complainant is able to commence operations, complainant's system could be employed for as many as 25 percent of the credit card transactions in California.

He estimated that when fully developed, complainant's system, under either or a combination of both plans, would be processing 60 million calls a year in California. He claimed that at high traffic volume, complainant's calls would generate enough additional utility revenue that a Plan 1 operation could be capable of subsidizing other telephone company operations. On the other hand, if a change in rate design, or an increase in telephone company expenses reduced complainant's revenue under Plan 1 to an unsatisfactory level, complainant would have the unilateral power to discontinue Plan 1 service or to convert to Plan 2 service.

He predicted that a Plan 2 service in the (415) calling area could easily generate 600,000 calls per month. He estimated that this amount of traffic would be far more than that generated by 5,000 to 7,000 individual telephones, which, at least in Pacific's territory, is the normal loading for a new office code.

He explained that a favorable signal from complainant's data center indicates that the credit card's issuer is unconditionally ready to honor a charge against the card presented. An unfavorable signal indicates that the merchant honors the card at his own risk; he can, however, honor it without risk if he can obtain verbal clearance directly from the credit card issuer by telephone.

For Plan 1 he estimated that Pacific's costs (including uncollectibles and return), based on its own representations, could easily be covered by 2.5 cents per call. He noted that

Pacific in a past rate case had estimated holding costs of 0.24 cents per minute in contrast to the 2.3 cents per minute Pacific developed in response to discovery herein.

Under Plan 2 his proposal contemplated two payments for two services. The payment to complainant would be billed and collected by the utility but would not be fixed or regulated by this Commission. He claimed that without utility billing, it would be impossible to prevent unauthorized users from obtaining complainant's services while escaping its collection efforts. He rejected an alternative means of solving this problem under which merchants would be given a secret identification number. He explained that this would be more expensive and less responsive to the merchants' needs. It would also increase the length of each verification call and hence utility costs.

He asserted that complainant's system would be particularly advantageous to any merchant completing more than 50 and less than 3,000 credit transactions per month; such merchants, he claimed, would be much more likely to patronize complainant than other verification systems. The merchants at the lower end of that range would find Plan 1 particularly suited to their needs.

He argued that the bulk of verification calls would occur off-peak and would not trigger any significant need for new central office capacity. In any case, he asserted that the maximum expected increase in calling would be less than 10 percent.

He expressed the opinion that it would be no harder for a thief or other unauthorized user to obtain data from complainant's

system than from issuer's status books or from a call to the credit card's issuer. He also predicted that transcribing errors would be very rare; complainant's data base is automatically transcribed from the same magnetic tape which the issuing companies supply to the printers of credit card status books.

He asserted that complainant's devices which would be directly connected to the telephone network are not computers but rather read-only memories. He contended that the device's function is not computing since it is incapable of any computation, i.e., adding, subtracting, etc., nor does it respond to a programmed instruction. The "instructions" are actually part of the device's design and construction; in engineering terms, the program is hardware rather than software.

He explained complainant's demand for space in telephone companies' central offices in which to install data centers and for periodic use of telephone company personnel to change the holographic data base. He conceded that complainant could provide space and personnel itself, but asserted that the defendants could provide these at a much lower cost on an incremental basis. He conceded, however, that denial of such services would not severely affect complainant's competitive viability.

He disclosed that complainant was in the process of acquiring a patent on the methodology underlying both Plan 1 and Plan 2. The patent would cover other potential applications of the general concept as well. In response to a question by the Administrative Law Judge, he indicated that complainant would commit itself to licensing the patent at prices to be fixed by arbitration or by some other objective method. We take official notice that the patent was subsequently granted.

Complainant's other principal described the holographic memory device and its operation. He also supplied supporting information regarding the contacts between both utilities, their parent corporation, and complainant. He noted that Transaction Networks were in service with other Bell companies but that merchants were less than satisfied with them since that system would verify status of only one brand of credit card. He also claimed that Bell companies in other states were originally willing to deal with complainant. He concluded that the ultimate refusal of

service both here and in other states was engendered by the respective parent companies. He inferred that General's reluctance was due in part to a fear that providing number identification, as in Plan 2, would be treated as data processing by federal authorities. He believed that Pacific's reluctance to deal was partially due to an unwillingness to concede the extent of its capability to provide automatic number identification. He proposed to deal with calls from out of area in a very simple manner. The telephone utility would retain all of the additional money from toll charges, leaving complainant with the same per call commission as for local calls. This proposal would apply with either Plan 1 or Plan 2. He did not claim that this proposal could be made consistent with existing inter-utility toll settlements.

Complainant also called one of Pacific's cost experts as an adverse witness. He testified that the per-call cost of setting up a business call could be about 3.1 to 4.4 cents; the latter figure would apply if the newest equipment were used. A similar range of holding costs could lie between 1.8 cents a minute and 2.8 cents per minute. He asserted that the length of the average business call would be well over 2 and probably less than 3 minutes.

A cost study based on hypothetical holding-time figures was proposed by complainant during the discovery process. This witness indicated that, because of the parameters selected, the study could easily cost $200,000 to complete. He indicated, however, that the cost could be reduced significantly by changing the parameters. He also testified that no cost study would produce a single reliable cost figure since utility costs would vary from central office to central office, depending on the type of equipment.

Complainant called another Pacific employee as an adverse witness. He also was employed by the company to perform costing functions. He asserted that any cost study pertaining to Plan 1 service would require input concerning the number of calls, time of day, and length of calls. He asserted that the cost study proposed by complainant involved "incomprehensible" complexities.

The next Pacific witness called as an adverse witness by complainant was responsible for evaluating the technical feasibility of both plans. He testified that it would be technically feasible to set up a new office code and to program Pacific's equipment to impose a special higher charge on all calls to that number. He also indicated that it could be feasible to use the nonnumber signals (such as the number tone) on Touchtone pads as part of a merchant code which could be used as a means to prevent unauthorized access to a verification system. Likewise it would be technologically feasible, with existing Pacific equipment, to provide the time and count information necessary for Plan 1 and the automatic number information required for Plan 2. In his opinion, introduction of Plan 2 would require extensive modification to both the central office serving complainant's data center and to the central office serving the calling party. The complexity would vary with the type of central office; an electronic switching office would require the least amount of equipment change. He asserted that the required changes to central offices to accommodate Plan 2 could take more than 120 days. Plan 1 service would be simpler to provide and could use equipment identical to that now provided to other classes of customers. This equipment is manufactured by Western Electric.

Defendants' Contentions

Defendants have refused to offer the services requested by Holocard; they will not publish a tariff nor enter into a special deviation contract with complainant.

Defendants are unwilling to enter into any proposed arrangement with complainant that would share telephone revenues with complainant (Plan 1) or which would require defendants to present and collect bills for verification services offered by complainant (Plan 2).

Defendants are unwilling to enter into either proposed arrangement except with another regulated communication utility. Both defendants claim that since they have not voluntarily dedicated their property to providing these services, they have no obligation to serve Holocard in the manner sought herein, and have no obligation to account for, or explain, their refusal to serve.

Pacific's Evidence

An executive from Pacific's marketing staff who was responsible for the decision not to provide services to complainant testified that PT&T had previously provided peg count and timing devices to other customers subject to tariff. In his opinion the essential aspect of both of complainant's proposals is a requirement that the telephone company bill and collect for private unregulated services. In his opinion the proposals also required a more intimate involvement of the telephone company with a private enterprise than that normal between utility and customer. He never actively considered preparing a tariff for complainant although he conceded that Pacific often constructs tariffs specifically designed for individual customers with unique communications needs.

When examined concerning the comparison between Centrex service and Plan 2, the witness asserted that normal procedure would require several Centrex customers to share in a three-number office code. Only the State of California has Centrex requirements large enough to occupy an entire office code.

He asserted that he was the source of the decision that complainant should be offered only the same mix of utility services as that available to a conventional credit card verification operation. He believed that it would be discriminatory for the telephone company to offer additional services knowing that only complainant would be likely to accept the offer.

Pacific's witness asserted that if billing or space for personnel were provided to complainant, the telephone company would find it very difficult to justify refusing similar services to other customers claiming to be similarly situated. He believed that either of complainant's proposals involved a relationship between utility and the verification company that was more like a joint venture than a normal customer-utility relationship. He also believed that it was inadvisable for the company to compete, either on its own or in conjunction with complainant, with established verification enterprises. He believed that such competition would involve elements of discrimination.

He described the Transaction Network system. At the time of his testimony, Pacific had not tariffed this system since no customer had been willing to contract for it. A subscriber using this system, even though based on private lines, would be billed on a variable basis, using either holding time or message count. One variant of the system would allow verification to be performed by direct interface with the data bases maintained by the credit card companies.

He noted that he was also responsible for a decision to refuse to provide a service involving transmission of data taken from various meters. This proposal would have included providing space in telephone company offices to a subscriber.

Staff Evidence

A member of the Commission's Communications Branch (now a Division) made a statement expressing his concern about certain issues. This was intended to give the parties advance warning of positions the staff would take in its brief.

The staff statement emphasized the similarity between complainant's proposals and the kind of agreements concerning service rates, and division of revenues which are used to establish a joint service by two telephone companies. He asserted that since complainant was not a public utility, Section 766 of the Public Utilities Code would not be directly applicable.[1/]

The staff representative believed that the critical factor in determining the success and economic feasibility of Plan 1 was complainant's ability to achieve very short response times. If this could be achieved, he believed it would be possible for Plan 1 operation to achieve "excess revenue" at least sufficient to cover both the utility's full cost and the full cost of verification operations.

He was concerned, however, with the possibility that the institution of this service could produce sudden increase in peak traffic load. Such a result could, in certain central offices, overload existing utility capacity, with possibly chaotic consequences. He asserted that such a result could occur even if the verification operation achieves very short holding times.

He was also concerned that institution of Plan 1 service might restrict the Commission's freedom to evolve new, more flexible rate designs. He stated that the staff was tentatively committed to a new rate design which would allow a caller only one instead of five minutes of holding time, before additional charges are incurred. He asserted that Plan 1 might become less feasible as rate design evolved to produce more and more usage-sensitivity.[2/]

1/ This section allows the Commission, after hearing, to require interconnection between the systems of telephone corporations and establish joint tolls or charges and a division of revenues.

2/ By Decision No. 90642, in Application No. 58223, the Commission adopted the so-called ZUM plan for PT&T. An element of the ZUM plan is the reduction of the free-calling time on local calls to one-minute before an additional charge is assessed.

The staff representative urged the Commission to determine whether introduction of Plan 2 service would cause premature exhaustion of office or prefix codes.

Complainant contends that because of this refusal to serve, defendants' service and practices are inadequate and constitute discrimination against it and in favor of existing credit card verifiers. It is also contended that the refusal discriminates against smaller merchants who would find complainant's verification plans particularly suited to their needs and in favor of other merchants who are well served by existing verification systems. It is unchallenged that the defendants' refusal will prevent merchants from sampling and patronizing complainant's services unless complainant abandons all the features which it claims would appeal to those merchants. Complainant argues that the Commission has a duty to promote innovation and competition in the verification market. Defendants believe that the Commission has no such responsibility because it would require them to offer a new service against their will.

Discussion

The Dedication Rule

Both defendants claim that they have no obligation to provide the services at issue, or even to explain why they will not. They have not dedicated their property to providing such service and therefore, according to their theory, have at least as much power to refuse to provide them as the owner of a private farm has to leave it fallow rather than cultivating it.

The only obligation they would recognize as public utilities is to treat complainant the same as other credit card verification companies which are utility subscribers. While they both concede that complainant has a right to any service which they have previously provided to any other credit card verifier, they would not concede that it has a right to a service previously offered only to farmers or insurance companies, for example. If a service has been tariffed for a specified class of customer, they claim we would have no jurisdiction to compel them to provide the service to one who is not a member of that class.[4/]

The basis for this claim is a rule of property law which was first developed in pre-industrial England. Common law courts held that a property owner could not be required against his will to employ his property in the service of others; an exception was

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4/ We note that it is not uncommon for a communications tariff to be so narrowly drawn that it applies only to a specifically named individual or the occupant of a specified address.

made, however, for members of certain common callings, such as ferrymen, or innkeepers who could be required to serve the public generally. Munn v. Illinois (1877) 24 L ed 77.

The theory was that such individuals had voluntarily donated a portion of their property rights to the public by entering into the calling and by offering their services to the public generally rather than to selected individuals. This method of conveying a property interest was termed "dedication" and the right acquired by the public was classed as a use.

With the adoption of the Fourteenth Amendment, this rule of property became in the United States a rule of substantive due process which limited the jurisdiction of legislatures, state and local legislatures in particular. Courts could use this rule to invalidate regulation, especially rate or price regulation, of businesses which had not voluntarily conveyed a part of their property rights by dedicating plant. Tyson v Banton (1926) 71 L ed 718.

The dedication principle governed California regulation for many years, historically providing one of the most important limitations on the scope of utility and carrier regulation under the Public Utilities Code. Frost & Frost Trucking Co v. R. R. Comm. (1925) 70 L ed 1101.

The dedication rule, as a federal constitutional principle, became one of the victims of the Great Depression. Nebbia v New York (1933) 78 L ed 940 declared that the rule never should have been

considered as a part of the concept of due process. From that date forward, American courts generally allowed legislatures almost unlimited discretion to decide what kinds of business could be regulated and in what manner.

The rule, however, survived in California in a substantially altered form. Richfield Oil Co. v. Public Utilities Commission (1954) 54 C 2d 419 implicitly conceded that the California Legislature, subsequent to 1933, could have regulated undedicated private property. It held, however, that the rule should be considered as being implicitly incorporated in any pre-Nebbia legislation affecting this Commission.

The Court subsequently described the Richfield rule as follows:

> "In Richfield Oil Corp. v. Public Utilities Com. (supra), it was contended that the constitutional objections which gave rise to the requirement of dedication did not survive the decision of the United States Supreme Court in Nebbia v. New York (supra), and that therefore the court should 'reinterpret the relevant statutes and give effect to the plain meaning of their terms to the extent constitutionally permissible today.' (See Manley, Nebbia Plus Fifteen (1949) 13 Albany L. Rev. 11, 19.) Conceding the correctness of this argument, the court stated that 'In view of the history of the (Public Utilities) (A)ct and the substantial reliance on its consistent interpretation and application by this court and the commission for more than 40 years, however, it must be concluded that the Legislature by its repeated reenactment of the definitions of public utilities without change has accepted and adopted dedication as an implicit limitation on their terms.'" (Greyhound Lines, Inc. v PUC (1968) 68 Cal 2d 406 at Footnote 4.)

This more limited view of the concept of dedication has been followed in later decisions. See, for example, International Cable T. V. Corp. v. All Metal Fabricators, Inc. and Pac. Tel. & Tel., 66 Cal PUC 366 (1966); and California Community Television Assn. v. General Telephone Co. of California and Southern California Edison Co., 73 Cal PUC 507 (1972). In the latter case, this Commission found a lack of dedication of the utilities' telephone poles to carrying cable television wires even though they had voluntarily provided such service in the past. In the present case, there has been no such previous voluntary compliance with a request for service and the evidence is even stronger for a finding of no dedication.

By these decisions, this Commission's authority over a public utility has been limited to the extent of the property and services that have been dedicated to the public service. Applying that rule to the present case, it is clear that, although the telephone utilities have the billing and collecting capability sought to be used by complainant, and that such is a necessary part of their telephone service, no evidence has been presented that such billing and collecting have ever been carried on for any non-public utility businesses.

Complainant alleges that such a service is performed for Western Union, whereby a telephone customer may send a telegram and charge it to his telephone bill. However, that arrangement is unlike that sought here. All billing information is prepared by Western Union and no counting or identifying of calls is involved,

as would be the case in both of complainant's proposals. Also, Western Union is itself a public utility, whose rates and service are regulated by this Commission.

Complainant further argues that the telephone companies have dedicated their accounting and billing capabilities in providing time and weather services. Again, we disagree. There are no billing and collecting for the vendors who supply equipment used in the provision of time and weather services and there is no use of the accounting and billing capabilities of the telephone companies by any vendors of such services.

A recent case in which this Commission has considered the question of dedication was in Decision Nos. 91847 and 92250, wherein we ordered Southern Pacific Transportation Company to reinstitute passenger service between Los Angeles and Oxnard. That Decision has been appealed to the California Supreme Court in Southern Pacific Transportation Company v. Pub Util Com, County of Los Angeles and the State of California, S.F. No. 24220. In finding that there was a dedication of equipment to passenger service, although such service had been previously discontinued, we relied on the fact that the railroad had previously dedicated its equipment and right-of-way to passenger service. In the present case, there has been no such prior dedication.

Complainant seeks to initiate a novel form of credit verification service. To do so, it will require the billing and call-counting facilities of defendants, which have been refused.

In order to require the telephone companies to initiate the requested service, we would need to find that there has been a dedication of such service by the companies to the public use. The record in this proceeding is to the contrary. There is no evidence that the defendants have offered to any non-utility the type of service desired by complainant. Lacking such evidence, we simply lack the authority to make the requested order for the reasons given above.

The Anti-Trust Issues

Our holding on the dedication issue leaves us without authority to require the telephone companies to provide the billing and collecting services requested by Holocard. However, we do have a duty to review any competitive considerations resulting from our actions. Northern California Power Agency v. Public Util. Com. 5 Cal 3rd 370 (1971)

Holocard, in its amendments to its original complaint, made numerous allegations that the telephone companies were attempting to use their monopolistic position in the transmission and receipt of data, and were guilty of a conspiracy and refusal to deal within the meaning of the anti-trust statutes. We have no jurisdiction of these complaints. Rather, complainant should seek relief in the state or federal courts. 15 U.S.C. Section 4; Gen. Inv. Co. v. Lakeshore Ry, 26 US 261 (1922); Safe Workers Org. v. Ballinger 389 F. Supp. 903 (1974); Bus. & Prof. Code Section 16750(a)

Our responsibility under Northern California Power, supra, is to determine the effect of our decisions on competition. Holocard alleges that denial of its complaint will result in one less competitor in the credit verification business. While it may be true that our decision will result in Holocard's inability to initiate its novel verification service, nonetheless there is nothing in our decision to prevent complainant from entering the existing credit verification field on the same terms as others. Further, even if we were of the opinion that the services proposed by Holocard were socially beneficial and should be encouraged for the sake of competition, we would still be constrained by the fact that we lack the jurisdiction to make the requested order.

Findings of Fact

1. Complainant proposes to establish a credit verification system in which the telephone companies would bill, collect and transmit charges for the service.

2. Defendants have refused to voluntarily enter into the arrangement sought by complainant.

3. Under complainant's first alternate plan, the telephone companies would pay a portion of the standard message rate charge to complainant on all calls made to complainant's number.

4. Defendants have not previously shared any of their standard message rate charge with businesses not themselves public utilities.

5. Defendant's present time and weather information services involve no revenue sharing or billing and collecting for the vendors who only supply equipment necessary for the services.

6. Complainant's second alternative would require the assignment of a special three-digit code to complainant.

7. These special codes are limited in number and must be efficiently allocated.

8. Assignment of a special three-digit code to complainant would not be an efficient allocation of such a code.

9. Complainant's second alternative would require the telephone companies to separately bill a surcharge representing the price of complainant's services used by the customer.

10. Under both plans, the telephone companies' billing and collecting capabilities would be used.

11. The telephone companies have not previously offered their billing or collecting capabilities to non-utilities.

Conclusions of Law

1. The telephone companies have not dedicated their counting, billing and collecting capabilities to servicing non-public utility businesses.

2. Since such capabilities have not been so dedicated, this Commission lacks the authority to require their use as requested by complainant.

3. The Commission is required to consider the anti-competitive aspect of cases brought before it.

4. The evidence produced at the hearing did not support the antitrust or anticompetitive allegations made by complainant.

5. The requested relief should be denied.

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ORDER

IT IS ORDERED that the Complaint in Case No. 10240 is denied.

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

Dated MAR 17 1981, at San Francisco, California.

President

Commissioners