

Decision No. 92860 APR 7 1987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CAUSE (Campaign Against Utility Service Exploitation),)

Complainant,)

vs.)

PACIFIC TELEPHONE AND TELEGRAPH COMPANY,)

Defendant.)

ORIGINAL

Case No. 10107
(Filed May 28, 1976)

LOUIS SAMUEL, Individually and in a representative capacity,)

Complainant,)

vs.)

PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,)

Defendant.)

Case No. 10142
(Filed July 16, 1976)

CARY D. LOWE,)

Complainant,)

vs.)

PACIFIC TELEPHONE AND TELEGRAPH COMPANY, INC., AND DOES I THROUGH X, Inclusive,)

Defendants.)

Case No. 10204
(Filed November 12, 1976)

Investigation on the Commission's own motion into the rules, practices, and procedures of all telephone corporations, as listed in Appendix A attached to the O.I.I., concerning disclosure of non-published telephone numbers, credit and other subscriber information.

Case No. 10206
(Filed November 16, 1976)

(See Appendix C for Appearances.)

OPINION IN REOPENED PROCEEDINGS

Complainant CAUSE (Campaign Against Utility Service Exploitation) (CAUSE), a coalition of utility ratepayers, in its amended complaint in Case No. 10107 alleges that the charge of \$0.15 made by Pacific Telephone and Telegraph Company (Pacific), a telephone corporation, to its subscribers who wish their telephone numbers to remain nonpublished is unjust and unreasonable on the grounds that nonpublished subscribers are led to believe that upon subscription to nonpublished service their phone numbers and other information will not be released by Pacific without a warrant when in fact nonpublished information is released by Pacific without a warrant to many government agencies. CAUSE requests the Commission to order cancellation of the \$0.15 charge and to order Pacific to refund all charges Pacific has collected for nonpublished service. CAUSE, also requests the Commission to order Pacific to prepare and mail to affected subscribers a statement which accurately reflects the confidentiality which is accorded nonpublished service subscriber information and to award reasonable attorney's fees to CAUSE's counsel.

The complaint of Louis Samuel (Samuel) in Case No. 10142, a purported class action, alleges that the \$0.15 a month charge levied by Pacific on Samuel and others for their nonpublished service violates Section 451 and 453 of the Public Utilities Code (Code) in that the \$0.15 is a charge for nonservice, and that Pacific has violated its contractual duty to protect the anonymity of its non-published numbers to government agencies and others without the subscribers' consent. Samuel requests the Commission to order Pacific to refund such portion of the disputed charge as the Commission deems appropriate.

Complainant Cary D. Lowe (Lowe) in Case No. 10204, a purported class action, alleges that he is a subscriber to Pacific's nonpublished service and that Pacific has been unlawfully releasing nonpublished service subscriber information in violation of Sections 1 and 13 of Article I of the California Constitution and of 42 USC 1983. Lowe requests the Commission to order Pacific to make reparation of all charges for nonpublished service paid to Pacific since the \$0.15 charge was instituted in 1972, with interest, and to pay Lowe's attorney's fees.

Case No. 10206 is an investigation on the Commission's own motion, prompted by the subject complaints, into the rules, practices, and procedures of all telephone corporations concerning disclosure of nonpublished telephone numbers, credit, and other subscriber information. The order instituting this investigation recites that "It is also important that whatever rules we might make on this subject be, insofar as possible, uniform for all telephone corporations."

The four cases were heard on a consolidated record and were decided by Decision No. 88597. That decision dismissed the Lowe complaint, denied the CAUSE and Samuel complaints, and established uniform tariff rules to be adopted by all telephone companies, which covered the release of nonpublished credit and toll record information to a limited group of federal, state, and local law enforcement agencies, and to taxing or regulatory agencies with investigative powers.

Petitions for rehearing of Decision No. 88597 were filed by complainants, Pacific, General, the city of Long Beach, and the U. S. Coast Guard. In addition, seventeen applications to modify Decision No. 88597 were filed by government agencies which claimed that they should be permitted access to the nonpublished subscriber credit and toll record data in a manner similar to the agencies accorded that right by Decision No. 88597.

The Commission, in Decision No. 90186 issued April 24, 1979 reopened the four cases for further hearing, but did not specifically grant or deny the petitions for rehearing. Decision No. 90434 dated June 19, 1979 dismissed the seventeen applications to modify Decision No. 88597 stating that they were rendered moot by the order reopening the proceedings and further stating that the applicants may appear as interested parties or intervenors in the reopened proceedings.

As the petitions for rehearing were not specifically granted or denied, and as state and federal agencies which were not participants in the original hearings have become parties to these proceedings and have offered evidence, we will consider in this decision all of the evidence introduced in both phases of this proceeding. This is a decision de novo in the captioned proceeding. The findings, conclusions, and order herein will supersede those set forth in Decision No. 88597, and that decision will be rescinded.

Additional hearings were held during seven days in August and September, 1979 before Administrative Law Judge Pilling. The matters were submitted February 1, 1980 upon the filing of written comments of the parties on revised tariff rules which had been circulated by the Commission staff.

Nonpublished Service - Tariffs and Miscellany

The record shows Pacific offers nonpublished service-- telephone service having what is commonly called an "unlisted" telephone number --through its tariff, Schedule Cal. P.U.C. No. 17-T, 10th Revised Sheet 5.A, Special Condition 1.h.(1), which reads as follows:

"Primary service listings shown in Rates (1) above will be nonpublished at the specific request of the applicant or customer. The telephone numbers of such service will not be listed in any telephone directory or in the directory assistance records available to the general public except that the number may be included in reference listings."

Nonpublished service is described in Pacific's Tariff Schedule Cal. P.U.C. No. 36-T, 5th Revised Sheet 11-A as follows:

"Telephone service that is not listed in a telephone directory or directory assistance records at the specific request of the customer."

Between 1972 and 1976 Pacific's California white page directories carried the following notation:

"NONPUBLISHED LISTINGS

"A charge of 15¢ a month is to help defray the cost of handling the confidential records and the increase in Directory Assistance calls generated by non-published listings. All or part of the listed address may be deleted at no charge."

Starting in 1977 Pacific changed the notation about nonpublished service in its directories to read as follows:

"NONPUBLISHED SERVICE

"With this service, your telephone number is not printed in the directory for the calling public nor will it appear in the records held by Directory Assistance Operators. This service costs 15¢ a month. When requesting a non-published service, ask your Service Representative for a full description of the offering."

Pacific made no charge for nonpublished service until 1972 when it instituted a charge of \$0.15 for the service. 28 percent or about 1,700,000 of Pacific's subscribers have nonpublished service.

General Telephone Company of California (General) offers nonpublished service under its tariff, Schedule Cal. P.U.C. No. D-1, 3rd Revised Sheet 16, Special Condition 2.1.(1), which reads as follows:

"A nonpublished number will not be printed in the customers' telephone directories or in the Utility's information service directories."

Approximately 30 percent of General's subscribers have nonpublished service for which each is charged \$0.15 per month.

Other telephone companies have a rule similar to Pacific's or General's rule. Some of these companies do not charge for nonpublished service.

Nonpublished Information--Telephone Company Release Practices

Currently, the circumstances under which a telephone company will release nonpublished information to nonemployees is determined by the individual telephone company's internal policies. Pacific's general policy is laid out in Section 4.04 of its System Instructions (Exhibit 3, Tab 8) which reads in part as follows:

"4.04 . . . The telephone number and the name and address of a customer receiving nonpublished telephone service are confidential. Do not disclose them except to a qualified Company employee or other qualified Bell System employee as provided in Section 5. With the approval of a Company attorney, the Security Director, or his designee holding written authorization from the Security Director, may release this information to a federal, state, or local government agency in response to a written request by the head or other responsible official of the agency, or in response to a subpoena of a court or of a government agency, in the manner provided in S.I. 14."

The agencies to which Pacific currently will release nonpublished information without legal process are as follows:

Federal Government

Drug Enforcement Administration
Federal Bureau of Investigation
U. S. Attorney
U. S. Marshall
Secret Service

State of California

State Police
Highway Patrol
Justice Department
-Organized Crime and Criminal Intelligence Branch
-Enforcement and Investigation Branch

County

District Attorney
Fire Department
County Narcotic Agencies
Sheriff

City

Fire Department
Police Department

Before July, 1976 there were 106 agencies authorized by Pacific to receive nonpublished information.

For an agency to qualify to receive nonpublished information from Pacific (without the agency having to secure legal process) the agency must have on file with Pacific a letter which details a compelling need, which Pacific accepts, to have access to nonpublished information. The letter must give an official call-back number, set forth the names of agency personnel authorized to receive the nonpublished information, and contain a warranty that the nonpublished information will be used only in the conduct of the agency's authorized responsibilities. A written or oral request from a listed agency is answered as promptly as possible on a call-back basis. If the

request is oral the requesting agency must confirm its request in writing to Pacific within five days of the request. Pacific's Security offices are charged with the responsibility of approving requests for and releasing nonpublished information, except in emergencies involving threat of loss of life or property when the nonpublished information may be given out to any caller on approval of Pacific's vice president and comptroller. Pacific does not notify the nonpublished service subscriber whether the subscriber's non-published information has been released unless the subscriber happens to make a specific inquiry. However, if the agency to whom the release was made requests confidentiality and gives good reason Pacific will not divulge to the affected subscriber nonpublished information has been released.

General's internal policies for handling requests for release of nonpublished information are closely akin to Pacific's current policies with certain variations. General maintains an "A" list and a "B" list of authorized agencies, unchanged since 1973. "A" list contains the names of agencies authorized to receive nonpublished information and "B" list contains the names of those agencies authorized to receive only the name and address of the nonpublished service subscriber provided the agency has the subscriber's telephone number. "A" list is composed primarily of law enforcement agencies which have arrest powers under either the Penal Code or federal statutes. "B" list is composed of a wide assortment of agencies ranging from municipal and county fire departments to the Securities and Exchange Commission and the State Department of Fish and Game. If a nonpublished service subscriber inquires whether any of his nonpublished information has been released General will not divulge whether it has been released but will tell the subscriber that it is General's policy not to divulge to the subscriber whether or not non-published information has been released.

Toll Information--Telephone Company Release Practices

Since the spring of 1974 Pacific's policy has been to release toll information only in response to legal process, except where national security is involved. In that event toll information will be given to the FBI without legal process upon written request from the FBI Director and approved by the U.S. Attorney General. The subscriber is never notified of the request, although the FBI will be notified of the subscriber's request. Previously, Pacific's subscribers would be notified in writing of the release of their toll information in response to a search warrant; currently, subscribers are notified by telephone as well as in writing where a search warrant is involved. After November, 1976 where a subpoena covers the release of toll information only those subscribers requesting notification of the release are notified.

General's policy prior to February, 1976 was to allow those agencies on its "A" list to come to General's office and view the toll information. Currently, General's policy is to give out toll information only in response to legal process.

Credit Information--Telephone Company Release Practices

Credit information is contained in the subscriber's utility account record, including but not limited to: account establishment date, "can-be-reached" number, name of employer, employer's address, subscriber's social security and/or driver's license number, billing name, location of previous service. Not included in the subscriber's credit information is the subscriber's name, address, and telephone number.

Pacific's policy in the release of credit information until July, 1976 generally followed its policy on the release of nonpublished information. Since that time Pacific's policy has been to consider credit information as confidential information to be released only in response to legal process or in unusual cases where there is an immediate threat of loss of life or property. While no subscriber has ever called Pacific to inquire if Pacific has released credit information about the subscriber, Pacific's witness testified that it would inform the subscriber whether there had been a release and, if so, name the agency to which it was released.

General's current policy with respect to the release of credit information closely parallels Pacific's. General's previous policy was to let those agencies on its "A" list come to General's office, view the credit records, and take notes.

Small Telephone Company Information Release Practice

Eleven of the smaller telephone companies have a policy of releasing nonpublished, credit, and toll information only in response to legal process, except to their collection agencies working on one of their customer's account, or working on behalf of other telephone companies. These eleven companies, which do not make a charge for nonpublished directory service, are: Dorris Telephone Company, Volcano Telephone Company, Citizens Utilities Company of California, Evans Telephone Company, Livingston Telephone Company, Siskiyou Telephone Company, Sierra Telephone Company, United Telephone Company of the Northwest, Kerman Telephone Company, CP National Corporation, and West Coast Telephone Company of California. A few of the other smaller telephone companies release the information to a selected list of agencies. ✓

The Complaint Cases

CAUSE and Samuel attempted to support their complaints principally through the testimony of Pacific's employees called as adverse witnesses. That testimony is generally summarized in the description of Pacific's policies and handling of the release of nonpublished, credit and toll information. It is also covered in discussion on Pacific's cost studies. CAUSE and Samuel presented seven witnesses in support of their respective complaints.

The business manager for the Los Angeles Public Library testified that up to four years prior to the hearing the library would request and receive current address information on delinquent book borrowers, that he did not know whether the information was nonpublished information, and that the library has no interest in receiving such information in the future. The chairman of the Peace Action Council, which has nonpublished service, testified he received harassing telephone calls as a result of his political activities and assumed that someone gave out his telephone number, but does not know whether that someone was the telephone company.

A public health investigator for the Los Angeles County Health Department testified that in an attempt to identify contacts as part of a program to control venereal diseases where the only identifying information available was a name and/or telephone number, his department would request any available information from the telephone company, but he was unable to state what, if any, information his department received. An attorney in private practice believed that law enforcement agencies had obtained his toll records from General without his knowledge or consent around April, 1974. He alleged he was damaged and that he had filed a suit against General. A retired social case worker testified she received a call from a telephone operator who told her someone was trying to get her nonpublished telephone number and asked her if the number should be given out to which she replied in the negative, after which the operator assured her that her telephone number

would never be given out. The owner of a business testified, as did other of the above witnesses, that as a subscriber to nonpublished service he expected the telephone company to keep his telephone number confidential and to give it out only in response to legal process.

The witness from CAUSE stated that members of his organization were astounded when they learned through newspaper articles of Pacific's practice of giving out nonpublished information to government agencies without being required to do so by legal process. The CAUSE witness stated the following:

"Unlisted numbers were always thought of as private, secret and unavailable.

"Indeed, Pacific Telephone itself promulgates this attitude by stating in the phone directory that a charge of 12 cents a month is to help defray the cost of handling the confidential records and the increase in directory assistance calls generated by nonpublished listings.

"Webster's dictionary has three definitions of confidential: One, told in confidence; imparted in secret. Two, of or showing trust in another; confiding. And, three, entrusted with private or secret matters.

"If we accept the premise that Pacific does not use the term 'Confidential' to deliberately mislead its customers, then we must face the fact that in giving out unlisted numbers with impunity, Pacific Telephone has violated the public trust and therefore the conditions of its franchise to operate as a public utility in the State of California, regardless of what is written in its tariff regulations."
(Transcript p. 31.)

Complainant Lowe did not present any testimony but chose to "rest on the evidence presented by the other parties".

Pacific pointed out that Decision No. 79941, dated April 11, 1972, found Pacific's \$0.15 a month charge for nonpublished service to be reasonable. In addition, this charge was claimed to be unreasonable by Samuel in Louis Samuel v. Pacific Telephone & Telegraph Company, Case No. 9493, and the decision in that case, Decision No. 83488 (writ of review denied (S.F. 23236)), rejected Samuel's contention. It found: (1) that the charge did not violate Section 451 or 453 of the Public Utilities Code, and (2) that nonpublished service is a special classification of telephone service provided by Pacific.

In the present case Pacific presented cost studies (Exhibit U) which showed that its total monthly recurring expenses, including overhead, in connection with residential nonpublished service was \$0.13 per customer, which included a factor of \$0.006 for security expense. Pacific contends that it also has nonrecurring expenses which must be added to the \$0.13 recurring expense figure. Pacific claims that between 80 to 85 percent of the time the initiation of nonpublished service involves a telephone number change for the subscriber. Pacific estimates it has a nonrecurring cost of \$27.55 to effect each telephone number change and that the average service life of a nonpublished number is 28 months. If the nonrecurring cost of \$27.55 is amortized over 28 months, the average nonrecurring monthly cost is estimated to be \$0.98, which, when added to the total recurring cost of \$0.13, brings the total cost per non-published service customers to \$1.11. Applied against this total

monthly cost of \$1.11 is monthly recurring revenue of \$0.15 and monthly nonrecurring revenue estimated to be \$0.40, or a total monthly revenue per nonpublished service customer of \$0.55 which leaves a revenue shortfall of \$0.56 per month. On cross-examination Pacific was shown to have calculated its nonrecurring cost based on the assumption that all nonpublished services included number change.

Also, according to CAUSE the monthly charge made by Pacific for nonpublished service is unreasonable because Pacific does not preserve the confidentiality of nonpublished information. CAUSE points to the notation in Pacific's white pages directory which states that the \$0.15 charge is to help defray the cost of handling the confidential records and the increase in directory assistance calls generated by nonpublished service. CAUSE contends that since Pacific does not give the confidential service for which a nonpublished service subscriber pays then the subscriber's money should be returned and the charge discounted.

The Investigation Proceeding, Case No. 10206

Case No. 10206 was heard on a consolidated evidentiary record, and the evidence discussed in the previous portions of this opinion is applicable.

The order instituting Case No. 10206 stated, in part:
"It is also important that whatever rules we might make on this subject [the release of nonpublished, credit, and toll information] be, insofar as possible, uniform for all telephone corporations."

Pacific contends there is no need to require Pacific to publish tariff rules respecting the release of the subject information or to amend its tariff rule describing nonpublished service. Pacific claims that the record has not demonstrated any reason to change Pacific's policies, or that Pacific has abused its position with respect to giving out this information. General takes the same position. The Commission staff is of the opinion that Pacific's present procedures, if strictly adhered to, are largely satisfactory. But it recommends refining and amending those procedures and imposing them on all telephone corporations by way of tariff publication to prevent potential abuses. CAUSE takes the position that Pacific should be made to follow rules respecting release of the subject information rather than being allowed to make the rules. CAUSE favors the institution of tariff rules to insure that a subscriber's right to privacy will not be violated without due process.

Most representatives of local and state government agencies who appeared and gave testimony at the hearing were not opposed per se to the establishment of tariff rules governing release of the subject information.^{1/}

1/ Representatives of the following governmental entities or agencies appeared and gave testimony at the hearings:

<u>City Police</u>	<u>County Marshall</u>	<u>Sheriff</u>	<u>Fire Marshall</u>
Garden Grove	Ventura	San Bernardino	State of California
Torrance	Los Angeles	San Diego	City of Los Angeles
San Diego	San Bernardino	Sacramento	
Oakland	Orange	Los Angeles	
San Francisco		Santa Barbara	
Fresno			
Los Angeles			

<u>District Attorney</u>	<u>Health Offices</u>	<u>Other State or Local Agencies</u>
San Bernardino County	San Bernardino County	East Bay Regional Park District
Los Angeles County	San Francisco County	California Department of Insurance
	State of California	California Department of Forestry
	Los Angeles County	California Department of Justice
		Alameda County
		911 Trial Project

Federal Agencies

Secret Service	Marshall
Coast Guard	Immigration Service
Internal Revenue Service	Air Force
Navy	Postal Service
Army	Forest Service
Customs Service	Federal Bureau of Investigation
Bureau of Alcohol, Tobacco, and Firearms	Drug Enforcement Administration
	Department of Justice

On the other hand, representatives of federal agencies were opposed to such rules on the ground that the Supremacy Clause of the United States Constitution precludes the Commission from imposing restrictions upon federal investigations. They contend that federal law determines what legal process is necessary in order for a federal investigative agency to obtain evidence for its use. Federal agencies also contend that under federal law, telephone subscribers lack the Fourth Amendment interest necessary to entitle them to challenge the means by which a telephone company conveys information to the federal government. If any tariff rules are ordered to be published, some of the federal agencies request that they be exempted from the rules' application.

The parties made many suggestions for modification of the tariff rules found in Decision No. 88597 should the Commission require telephone companies to adopt tariff rules governing the release of subscriber information. The salient features of those rules were that nonpublished information may be released to government agencies named in the decision without legal process if certain procedures are followed, while credit information and toll records could be released only in response to legal process. In addition, within 30 days after the release of subscriber information the telephone company must notify the subscriber of the release, the nature of the information released, and the name of the agency to whom the information was released.

CAUSE takes the position that tariff rules should require that nonpublished information be released only in response to legal process. It believes this would be consonant with the confidential status of the information as advertised by Pacific, and because people believe they are paying for such privacy.

The various local, state, and federal agencies who appeared at the hearing, as well as Pacific, General, and the staff take the position that releasing nonpublished information to approved agencies under the procedures set forth in the proposed rules in Decision No. 88597 is not an unlawful invasion of the subscriber's privacy. They cite People v Elder (1976) 63 CA 3d 731 in which the Court of Appeal states on p. 738 as follows:

". . . There is no reasonable expectation of privacy in name, address, or telephone number as found in the records of the telephone company...from disclosure to law enforcement, without the benefit of a warrant, as part of its normal and legitimate investigative procedures. We think it unreasonable to conclude that the information of identity here obtained would be reasonably contemplated by the subscriber to be within the constitutional privacy protection. . . ."

The agencies responsible for law enforcement or criminal investigation observed that in most instances they would be unable to obtain a search warrant ordering the release of nonpublished information as the information is desired simply to follow a lead. County health agencies require nonpublished information on an immediate basis to assist them in tracking down venereal and other contagious disease carriers to prevent the spread of disease.

Many of the agencies appearing at the reopened proceedings were not authorized by the tariff rules in Decision No. 88597 to receive nonpublished information. They requested inclusion on the list as they had criminal enforcement or investigative responsibilities, or because they deal with emergencies involving possible loss of life or destruction of property. One of the latter is the Alameda County 911 Trial Project, a service designed to receive and act on emergency telephone calls for help. When the 911 number is called, the telephone number of the calling telephone is displayed in the 911 headquarters. If the caller is summoning help to the address where the telephone is located but is unable to furnish the address, then the operators of the 911 service want to be able to secure the address from the telephone company immediately.

Several agencies suggested the use of a generic description in lieu of a list which would cover those types of agencies authorized to receive nonpublished information., e.g., "Any California public agency which employs persons who are peace officers pursuant to California Penal Code Section 830". Pacific objects to such a generic description stating that with only 14 types of agencies now eligible under Pacific's rules Pacific handled 41,466 inquiries for nonpublished information during 1978. Adopting the CPC Section 830 definition would add 60 types of agencies and result in an increase in inquiry volume of 15 to 20 percent and would require additional personnel, time, and expense which would ultimately have to be borne by the ratepayers.

Practically all agency representatives as well as Pacific and General object to automatic notification by the telephone company to the subscriber when nonpublished information is released. The law enforcement agencies object on the ground that the revelation would alert a suspect that his criminal conduct is under surveillance and cause him to move the scene of his operations, flee the area, or destroy evidence, thus negating perhaps months or years of investigative work and perhaps endangering the successful completion of an investigation or related investigation. Such revelation may also "blow the cover" of an undercover agent and endanger his life. Additionally, the subscriber may be an innocent person not suspected of any crime but is nevertheless an important link in an investigation who would be unnecessarily upset if it was revealed to him that a law enforcement agency was checking up on him. County health agencies, which trace cases of child abuse and infectious disease, also object to subscriber notification on the grounds that many times it is not the nonpublished subscriber they want to get in touch with but someone in the subscriber's household, e.g., the subscriber's minor son who is suspected of

having venereal disease. Health agencies are proscribed by administrative regulation from telling the parent of a minor that the minor is suspected of having venereal disease. The intent of the regulation is to encourage minors to report disease without fear of parental reprisal. It is feared that subscriber notification would compromise this intent as well as the patient's personal mental security. Pacific contends automatic notification would require a minimum of 40 to 50 thousand letters per year with associated postage and personnel costs. ✓

The requirement that toll records and credit information be released only in response to legal process was not opposed by most local and state agencies at the hearing. Some parties were of the opinion that two state court decisions (Burrows v Superior Court (1974) 13 C 3d 238 and People v McKunes (1975) 51 CA 3d 487) require legal process for obtaining such information. In Burrows the court found that a bank that provided information to the police about all of petitioner's accounts (i.e., credit information) without a court order violated a state constitutional right to privacy as there was a reasonable expectation that such information would be used only for internal banking purposes. Burrows was used as a precedent for the McKunes case where the court held that a district attorney's obtaining of defendant's toll records from the telephone company without having first secured a subpoena or other court order, violated the state constitutional right to privacy because of the reasonable expectation that toll records will be used only for accounting purposes. Some of the federal agencies appearing at the hearing strongly objected to such a requirement on the ground that the Supremacy Clause of the United States Constitution precludes

the Commission from imposing restrictions upon federal investigations. In addition, they contend there is no right of privacy in toll records, citing Smith v. Maryland (1979) U.S., 61 L.Ed.2d 220, 230, where the Court stated:

"... The petitioner in all probability entertained no actual expectation of privacy in the phone numbers he dialed, and that, even if he did, his expectation was not 'legitimate'. The installation and use of a pen register, consequently, was not a 'search' and no warrant was required."

The American Civil Liberties Union raises the question of whether an administrative subpoena should be considered a legal process as materiality, cause, and necessity are not the basis for the issuance of such a subpoena.

A witness representing himself testified that he has nonpublished service for his two telephones and that Pacific's monthly bills contain his telephone numbers and name imprinted on the copy of the bill which he is required to return to Pacific with his payment. He opposes this procedure since it gives persons in Pacific's accounting department access to his nonpublished telephone numbers, despite his understanding that all bill copies accompanying payment, including his returned bill copies, are eventually given to a waste paper company for shredding. The witness claimed that the waste paper company could compile lists of nonpublished information from the bill copies and sell the lists. He is opposed to this potential practice also.

CAUSE contends, if any charge is made for nonpublished information it should be assessed against the agencies which are responsible for generating the increase in operator-assisted calls and which are receiving a service from the telephone company, and not from the subscriber who neither contributes to the increase in operator-assisted calls nor benefits from the release of the information. The various agencies resist this suggestion and point out that they are taxpayer-supported and that requiring them to pay for this service would only add more governmental expense on the taxpayers. In addition, they point out many of the requests for nonpublished information are not crime-oriented but are made for the benefit of the subscriber or a member of the subscriber's household as in many cases of emergency. The staff supports making agencies pay a charge as it would tend to cut down on frivolous calls by agency personnel. ✓

Discussion

Under Pacific's nonpublished service tariff rule it merely undertakes not to list the name, address, or telephone number of any nonpublished subscriber in the telephone directory or in Pacific's directory assistance records. Since Pacific was not shown to have violated its nonpublished service tariff rule there is no merit to complainants' contentions, apart from those based on constitutional grounds, that Pacific wrongfully released nonpublished information.

Complainants attempted to show that Pacific is chargeable with a more comprehensive undertaking than its tariff provides in respect to the release of nonpublished information.

Complainants argue that "unlisted numbers were always thought of as private, secret and unavailable" and that Pacific has intentionally fortified this alleged popular notion by publishing a white page directory note which states that the \$0.15 charge for nonpublished service helps defray the cost of keeping "confidential records" generated by nonpublished listing. Hence, Pacific should be made to live up to the popular notion which Pacific has adopted and be penalized for failing to do so. We disagree. The alleged popular notion about unlisted numbers, according to complainants, has "always" been around and thus would have become ingrained in the public's mind a great many years before 1972--the first year Pacific made a charge for the subject service and the first year the note was published in its directories. If such long-held popular notion does exist Pacific's white page directory note (which ran for only four years) had nothing to do with engendering the notion and little effect, if any, with maintaining the notion.

The notion, however, is well-founded in respect to eleven California telephone companies which do not release the information except in response to legal process. This may have contributed to misconceptions surrounding non-published service of all telephone companies. But the evidence is not convincing that Pacific intentionally or through gross negligence misrepresented its nonpublished service, or that complainants and nonpublished subscribers in general suffered injury or diminution in the value of telephone service rendered by relying on Pacific's representations about the service. Thus, there is no ground for reparation.

We also disagree with complainants' contention that Pacific's release of nonpublished information was an unconstitutional invasion of the subscribers' right to privacy. Name, address, and telephone number are matters of identity, do not give rise to an expectation of privacy, and are not entitled to the constitutional protection of privacy. We think that the Elder case is controlling on this point and we will deny complainants' request to find that Pacific's release of nonpublished information violated the subscriber's constitutional right to privacy.

Based on the evidence we are unable to conclude that Pacific's \$0.15 charge is unreasonable. Cross-examination on Pacific's cost figures did little to undermine their validity, and the staff presented no study. However, it was shown that the nonrecurring cost was inflated as Pacific based its nonrecurring cost on the assumption that every nonpublished service involved a telephone number change when the evidence showed that between 15 and 20 percent of such services have not involved a number change. However, after allowing for the inflated cost Pacific's figures still show a substantial revenue shortfall.

Section 734 of the Public Utilities Code provides that reparation may be awarded only in the event that we find a rate to be unreasonable, excessive, or discriminatory, but that no reparation may be awarded where the rate in question has, by formal finding, been found by the Commission to be reasonable. Hence, even if the Commission did find Pacific's charge for nonpublished service unreasonable for the future that code section would prevent the Commission from awarding reparation as the charge was previously found to be reasonable and lawful in Decision No. 83488. Additionally, Pacific was not shown to have charged in excess of its tariff rate. The rate was not shown to be discriminatory.

Complainants and the staff recommend the nonpublished service charge be levied against the agencies requesting release of nonpublished information rather than against the nonpublished service subscribers. We do not agree. Very little of the monthly service charge (approximately \$0.006 per nonpublished subscriber) goes to defraying Pacific's cost of handling and satisfying requests from the agencies. Furthermore, many requests from the agencies are not made to further law enforcement, but are made in humanitarian, emergency, or public welfare efforts which may be inhibited if agencies were required to pay for the information.

Pacific and all telephone companies have treated nonpublished information with a greater degree of privacy than their tariff rules provide. Under their tariff rules they merely undertake not to include the nonpublished information in the customers' directory or in the directory assistance operators' records, whereas in actual practice they do not release the information without a court order or release it to law enforcement agencies under strict standards. Their tariff rules, then, do not fully disclose the extent of their nonpublished services and therefore are insufficient in detail. This insufficiency of detail will be remedied by their adoption of the new nonpublished tariff rules set out in Appendix A, the salient features of which will be discussed later. Sections 728 and 761 of the Public Utilities Code require a public utility to publish tariffs which are sufficient in detail to currently apply the rates and rules provided therein.

In deciding whether to make the new release rules on nonpublished service uniform for all telephone utilities we realize that there are eleven telephone utilities which have a policy of releasing such information only in response to legal process. The lack of a uniform release policy among all telephone companies might account in large measure for the misconceptions among the general public as to the degree of privacy accorded nonpublished information by all telephone companies. The tariff publication of uniform release rules applicable to all telephone companies will dispel many of these misconceptions and will, therefore, be in the public interest. Adherence to their present policies by the eleven telephone companies may result in obstructing law enforcement agencies from pursuing their normal and legitimate investigative functions and duties. In the Elder case, supra, a law enforcement agency's warrantless search for and seizure of telephone company records of nonpublished information was upheld as not violating the involved subscriber's right to privacy where the search and seizure was done as part of the agency's normal and legitimate investigative procedures. Our new nonpublished information release rules will not act to obstruct these procedures.

We have not included private suicide prevention organizations in the list of approved agencies since they did not appear at the hearing to explain what, if any, safeguards they propose.

Pacific presently lists a total of nine different types of state and local agencies authorized to receive nonpublished information. Pacific points out that our definition of authorized agency adopted in Appendix A, paragraph B(1) includes over 60 different types of state and local agencies and that such an increase in the number of authorized agencies will result in an estimated increase in inquiry volume of between 15 and 20 percent. Some small increase in inquiry volume can be expected with the adoption of our definition of authorized state and local agencies. However, Pacific's present list of state and local agencies includes agencies whose principal duties are general law enforcement and from whom we would expect most of the inquiries would emanate. Many of the additional agencies which will be added by our definition have principal duties other than law enforcement and are given law enforcement duties only in a very limited sphere. We therefore anticipate very little increase in Pacific's inquiry volume.

Since the smaller telephone companies serve very limited areas and the bulk of the inquiry volume comes from local police departments we do not foresee that requiring them to honor requests for nonpublished subscriber information will prove onerous..

A major issue raised about the rules set out in Appendix A had to do with whether a telephone company should be required to routinely notify a subscriber of the release of his nonpublished information. We have not included that requirement in the rules. Routine notification creates unneeded expense and effort and we cannot see any benefit accruing to the subscribers from it.

Further, many ongoing criminal and health investigations would be imperiled by the requirement. Since, as stated in the Elder case, there is no reasonable expectation of privacy in the disclosure of nonpublished information by a telephone company under certain circumstances, we find no duty should be imposed on the telephone companies to automatically notify subscribers about the release. However, if a nonpublished subscriber requests information from a telephone company as to whether his nonpublished information has been released in the past we are requiring the telephone company to disclose to him that information.

The procedure to be followed as set out in Appendix A, paragraph C, will act to prevent personnel in authorized agencies from overstepping their bounds while at the same time it will not act as an obstruction to their legitimate investigative efforts.

As a matter of policy and practice almost all telephone companies in the state release calling records and credit information only in response to legal process. We think the telephone companies' present practices are reasonable but that the practices should be published as a tariff rule to give them sanction and to protect consumers from any slackening in the standards.^{2/} Representatives of practically all state and local law enforcement agencies who testified at the hearing indicated that securing a search warrant as a condition to obtaining such information did not present a

^{2/} Sections 489, 728, and 761, of the California Public Utilities Code, authorize the Commission to require telephone companies to publish tariff rules governing the practice of releasing subscriber calling records and credit information as such practice is related to the telephone services given to a subscriber and to the rates paid by a subscriber for the service.

problem to their agencies. The rule we adopt appears in Appendix B. Telephone companies, as well as law enforcement and other government agencies authorized by this decision to obtain toll and credit information when empowered to do so by legal process, should be aware of People v. Blair (1979) 25 Cal. 3d 640.^{3/} We expect the telephone companies and governmental agencies to comply scrupulously with the spirit of Blair. Any abuse of the subpoena process as a means of evading stricter judicial safeguards over the issuance of warrants shall cause us to reevaluate the rule adopted in Appendix B. A fortiori, the discussion in Blair makes use by governmental agencies of administrative subpoenas completely impermissible.

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In Blair, the California Supreme Court considered, inter alia, the release to a prosecuting attorney by the Diner's Club of certain charge records made by a suspect with his credit card. The prosecution had issued a subpoena returnable before the trial court, but Diner's Club released the records directly to the prosecution in advance of the date they were returnable. This release was illegal. The Supreme Court observed: "The issuance of a subpoena duces tecum pursuant to Section 1326 of the Penal Code ... is purely a ministerial act and does not constitute legal process in the sense that it entitles the person on whose behalf it is issued to obtain access to the records described therein until a judicial determination has been made that the person is legally entitled to receive them. (Citation)" (25 Cal. 3d at p. 651; emphasis added; fn. omitted.)

The practical effect of Blair in this respect may be to cause law enforcement agencies to prefer search warrants over subpoenas. As noted in the text above, almost every California law enforcement agency participating in these proceedings stated that a warrant requirement for credit and toll information would not hinder law enforcement efforts. If California law enforcement agencies can accept a warrant requirement, we see no reason why federal law enforcement agencies cannot also function effectively under a warrant requirement. In any case, we are required under the California Constitution to adhere to the stricter protection of privacy granted to Californians by our own Supreme Court.

The rule that credit and toll information may be released only in response to legal process applies to the federal government and federal agencies. We cannot accept the argument that such information should be divulged in response to a federal grand jury subpoena or subpoena duces tecum. Regardless of the safeguards employed by the U.S. Attorney, we are bound by the decision of the California Supreme Court in People v. Blair (1979) 25 Cal. 3d 640, a case decided after the additional hearings in the fall of 1979 but before these matters were submitted in 1980.

In Blair, the Court confronted the defendant's contention that a record of telephone calls made by his employee from her home in Philadelphia should be suppressed because the F.B.I. obtained the list from the Bell Telephone Company without legal process. The Court noted that the seizure was legal under both Pennsylvania law and federal law (see Smith v. Maryland (1979) __U.S.__, 61 L. Ed.2d 220) but found the seizure illegal under California law.^{4/}

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Although the seizure was illegal under California law, the call record was not ordered suppressed, on the ground that the purposes of the exclusionary rule would not have been served by ordering suppression. (25 Cal. 3d at pp. 655-656.) The Court's refusal to suppress the evidence does not detract from its conclusion that the manner in which the F.B.I. obtained the record was illegal under California law.

The Court observed:

"The People contend that because the records were produced pursuant to a subpoena, they were obtained by legal process, and therefore there was no violation of either Burrows or McKunes. As we have seen, an agent of the Federal Bureau of Investigation issued the subpoena under the authority of the United States Attorney, who was in turn authorized to do so by the grand jury. The subpoena was made returnable before either the grand jury or an agent of the Federal Bureau of Investigation and the documents were delivered by the telephone company to the agent.

"Such a procedure would have rendered the telephone records inadmissible in evidence in this state. For the same reasons which impelled us to conclude above that the mere issuance of a subpoena duces tecum by law enforcement officials did not entitle them to obtain the records of defendant's credit card transactions, we hold that the prosecution would not have been entitled to the telephone records if they had been produced pursuant to a subpoena issued by a California grand jury, without a judicial determination that law enforcement officials were entitled thereto. We have recognized that the prosecution 'is typically in complete control of the total process in the grand jury room' and that the grand jury is 'independent only in the sense that it is not formally attached to the prosecutor's office.' (Hawkins v. Superior Court (1978) 22 Cal.3d 584, at p. 589 (150 Cal.Rptr. 435, 586 P.2d 916).) Thus, we have no doubt that Vineyard's telephone records could not have been introduced into evidence in California if they had been seized here under circumstances similar to those which occurred in Philadelphia." (25 Cal.3d at pp. 654-655.)

Blair, Burrows and McKunes are all clear that, under our state constitution, court-approved legal process is required to obtain toll records and credit information. Were we to agree with the contention of some of the federal agencies that federal preemption exists to require our state telephone companies to release information without court-approved legal process, we would in effect be declaring part of our state constitution unenforceable.

The question is not whether this Commission can dictate to federal officers what they may or should do. Rather, the question is whether this Commission, in view of Blair, Burrows and McKunes, can permit California utilities to adopt or follow practices which do not protect privacy as stringently as our state constitution requires. The answer must be "No". Thus, we expect that our utilities, if ordered by federal authorities to do anything inconsistent with this decision will inform this Commission of such orders, in order to allow us to insure that California privacy rights are fully protected.^{5/} For their part, federal agencies may avoid conflict with our rules simply by obtaining a search warrant. We expect this far casier and more harmonious approach will be followed. ✓

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Our state constitution leaves us with no choice in this matter. Unless and until a federal appellate court orders otherwise, we must follow Blair, Burrows and McKunes. (Cal. Const., Art. III, Section 3.5.)

Findings of Facts

1. In Pacific's nonpublished service tariff rule, Pacific excludes the name, address, and telephone number of all nonpublished service subscribers from the telephone directory and its directory assistance records.

2. Pacific has not published the name, address, or telephone number of any of its nonpublished service subscribers in any of its subscribers' telephone directories or in any of its directory assistance records.

3. The service rendered by Pacific under its nonpublished service tariff fully complies with that tariff's rules.

4. Pacific's costs in providing nonpublished service are greater than its revenues derived from subscribers to nonpublished service.

5. Decision No. 83488, dated September 24, 1974, established the reasonableness of Pacific's nonpublished service charge.

6. In July 1976 Pacific substantially reduced the number of listed agencies to which Pacific would, if requested, release nonpublished information without requiring the agency to first obtain legal process.

7. The reduction described in Finding 6 was not shown to have affected Pacific's nonpublished service costs.

8. Except as set out in Finding 6, no change in circumstances was shown to have taken place since Decision No. 83488 was issued which would render unjust or unreasonable Pacific's \$0.15 charge for nonpublished service.

9. Pacific has not charged in excess of its published tariff rate for nonpublished service.

10. Pacific's charge for its nonpublished service is not discriminatory.

11. Pacific's monthly prorated cost of releasing nonpublished information to government agencies of \$0.006 per nonpublished service subscriber is too insignificant to warrant shifting any part of the nonpublished service charge from the subscriber to the inquiring agency.

12. The note in Pacific's subscribers' directory which stated two of the reasons for the nonpublished service charge did not misrepresent the extent of Pacific's nonpublished service.

13. No subscriber was shown to have been misled by the note described in Finding 12.

14. No nonpublished service subscriber was shown to have subscribed to nonpublished service based upon any misrepresentation made by Pacific about such service.

15. The name, address, and telephone number of a person are a matter of identity.

16. Pacific has released nonpublished information only to government agencies, the preponderance of which are public safety agencies.

17. In making the releases set out in Finding 16, Pacific did not abuse its relationship with the affected subscribers.

18. Over the years Pacific, the largest telephone company in the State, has amended its list of authorized agencies.

19. General, the second largest telephone company in the State, maintains two lists of authorized agencies.

20. With minor exceptions, eleven of the small telephone companies in the State release nonpublished information only in response to legal process.

21. The nonpublished service tariff rules of all telephone companies are insufficient in detail.

22. Respondent telephone companies lack uniformity in their practices of releasing nonpublished information.

23. Principally because of (a) lack of uniformity in the policies of respondent telephone companies, and (b) the insufficiency of detail in their tariffs, many nonpublished service subscribers misconceive the degree of privacy accorded nonpublished information by respondents.

24. This lack of uniformity and misconception coupled with the fact each respondent determines its own release rules leads to the dissatisfaction of some nonpublished service subscribers when they find the degree of privacy legally accorded nonpublished information by a particular respondent is less than they had mistakenly conceived.

25. A uniform detailed tariff rule pertaining to the release of nonpublished information as set out in Appendix A will dispel public misconception about the scope of nonpublished service and will minimize public dissatisfaction.

26. Agencies listed in Appendix A, as part of their legitimate investigative procedures, need to obtain nonpublished information from telephone companies.

27. The safeguards provided in Appendix A, paragraph C, will (a) prevent personnel in the subject agencies from abusing the agencies' privilege to obtain nonpublished information, and (b) not act to obstruct the discharge of the subject agencies' duties.

28. Routine notification to the subscriber that nonpublished information has been released is not warranted.

29. A subscriber's request to be informed if nonpublished information had been released prior to his request can and should be answered by the utility, unless (a) a law enforcement agency certifies that such notification would impede an ongoing criminal investigation, or (b) a health officer certifies as set out in Appendix A, paragraph E.

30. Subscriber credit information and calling records (as they are defined in Appendix B) are part of the personal history of the subscriber.

31. In the past, some respondents released calling records without being required to do so by court order.

32. Currently, all respondents adhere to the practice of releasing credit information and calling records only in response to legal process.

33. The protection of the privacy of telephone service subscribers requires that present standards adhered to by respondents in the release of calling records and toll information, with certain modifications be adopted as a uniform rule, as set out in Appendix B, and published in the tariffs of all respondents.

34. Because of the high degree of confidentiality accorded credit information and calling records, the right to obtain them, with one exception, should first be determined by the courts and be evidenced by the issuance of a judicially authorized search warrant or subpoena. ✓

35. Respondents, as the repository of a subscriber's credit information and calling records, can and should be required to notify the subscriber when that information has been released, except in the case of the deferral of notification provision contained in Appendix B, paragraph D.

36. The tariff rules ordered by this decision to be adopted by the respondent telephone companies are reasonable, and the present tariff rules or practices of telephone companies which differ from those set out in Appendices A and B are for the future unjust and unreasonable.

Conclusions of Law

1. Pacific did not violate its tariff rule pertaining to nonpublished service.
2. Pacific did not misrepresent its nonpublished service.
3. Pacific did not unlawfully release nonpublished information.
4. Pacific should not be held to an undertaking in regard to its nonpublished service greater than set out in its nonpublished service tariff rule.
5. Pacific's monthly charge for nonpublished service is not unreasonable, excessive, or discriminatory.
6. Pacific's nonpublished service charge should continue to be levied on the nonpublished service subscriber.
7. Complainants' request for reparation should be denied.
8. Complainants' request for reasonable attorney's fees should be denied.

9. The complaints should be denied and the investigation in Case No. 10206 discontinued.

10. The respondent telephone companies should be required to adopt the tariff rules set out in Appendices A and B, which are just and reasonable.

11. Decision No. 88597 should be rescinded.

O R D E R

IT IS ORDERED that:

1. The complaints in Cases Nos. 10107, 10142, and 10204 are denied. The investigation in Case No. 10206 is discontinued.

2. Within one hundred twenty days after the effective date of this order and upon five days' notice all respondent public utility telephone corporations named in the Order Instituting Investigation of Case No. 10206 shall amend their nonpublished service tariff rule in conformity with Appendix A.

3. Within one hundred twenty days after the effective date of this order and upon five days' notice all respondent telephone corporations shall file a tariff rule in conformity with Appendix B.

4. Within thirty days after the respondent telephone corporations amend their tariffs as required in Ordering Paragraph 2, they shall furnish a notice to all existing nonpublished service subscribers by bill insert explaining the effect of the amended tariff rules in Appendix A.

5. After the effective date of this decision, the respondent telephone corporations shall inform all new applicants for non-published service of the existence and effect of the amended tariff rules in Appendix A.

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6. Decision No. 88597 is rescinded.

7. This order disposes of all the petitions for modification filed in these consolidated proceedings.

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

Dated APR 7 1981, at San Francisco, California.

John E. Guynn
President

William B. H. ...

Donald W. ...

Robert ...

Priscilla C. Grew
Commissioners

APPENDIX A
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Nonpublished Service

- A. Definition of nonpublished service: Upon a subscriber's request, subscriber name, address, and telephone number are not listed in any telephone directory, street address directory, or in the directory assistance records available to the general public. This information, as well as call-forwarding information from such unlisted telephone numbers, shall be released by telephone utilities in response to legal process or to certain authorized governmental agencies provided the requesting agency complies with the rules herein established for the release of nonpublished information.
- B. Agencies authorized to receive nonpublished information:
- (1) Any California public agency which employs persons who are peace officers pursuant to California Penal Code Section 830 and all subsections thereof.
 - (2) An agency of the federal government which is lawfully authorized to:
 - a. Conduct investigations or make arrests for violations of the criminal laws of the United States; or,
 - b. prosecute violations of the criminal laws of the United States; or,
 - c. enforce civil sanctions which are ancillary to criminal statutes; or,
 - d. conduct investigations into matters involving the national security of the United States; or,
 - e. protect federal or foreign officials; or,
 - f. protect public health and safety; or,
 - g. conduct emergency rescue operations.

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(3) Any public health agency of the State of California or of a city, county, or other local government.

(4) County or city 911 projects.

C. Procedure for release of nonpublished information to authorized agencies.

(1) A telephone utility shall only provide nonpublished information to persons within authorized agencies who are either (a) peace officers pursuant to California Penal Code Section 830 and all subsections thereof and who are lawfully engaged in a criminal investigation in their official capacity, or (b) health officers who are acting in their official capacity and are lawfully investigating a matter involving a serious communicable disease or life-threatening situation, or (c) any person acting in his/her official capacity as an employee of an authorized federal agency pursuant to a responsibility of the agency enumerated in B(2) above, or an employee acting in his/her official capacity as an employee of a county or city 911 project.

(2) Nonpublished information shall be released by a telephone utility to an authorized agency upon the agency's written request provided that the agency has previously furnished the utility with a statement, signed by the head of the agency, requesting that nonpublished information be provided to the agency upon its written request, and listing designated persons, by name, and title, who are authorized to request, in writing, nonpublished information. The written request for the nonpublished information must be signed by the head of the agency or by a previously designated person and the request must state that the nonpublished information is necessary for a lawful investigation being conducted by the agency pursuant to its responsibilities.

- (3) Nonpublished information shall also be released by a telephone utility to an authorized agency upon the agency's telephonic request, provided the agency has previously furnished the utility with a statement. It must be signed by the head of the agency, requesting that nonpublished information be provided to the agency upon telephonic request and listing designated persons, by name, title, and telephone number, who are authorized to request, by telephone, nonpublished information. The telephonic request for nonpublished information must be made by the head of the agency or by one of the previously designated persons.

The nonpublished information requested by telephone shall be provided by the utility only on a call-back verification basis.

The requesting agency shall, within five working days after making the telephonic request, mail the utility a letter confirming the request.

D. Notification to Subscriber

- (1) The telephone utility shall not notify a subscriber regarding the release of subscriber's nonpublished information unless the subscriber contacts the utility and specifically requests to know whether his nonpublished information has been released.
- (2) When a subscriber inquires of the utility whether his nonpublished information has been released, the subscriber shall be informed that if information has been released he or she will be notified by mail about what information was released and which agency requested the information. If there was no release of nonpublished information, the subscriber will receive no communication from the utility.
- (3) If the requesting agency certifies that disclosure to a subscriber about the release of his or her nonpublished information to that agency could impede an ongoing criminal investigation, the telephone utility shall withhold notice to the subscriber for a period of one year from the date of release of the information to the agency.

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- (4) The one-year period of nondisclosure shall be extended for successive one-year periods upon new written certification by the agency in each instance.
- (5) If no request has been made for nondisclosure to the subscriber, the subscriber who inquires shall be notified in writing as to the identity of the agency which requested the nonpublished information and the information released.

If there has been a request for nondisclosure within 25 working days after the expiration of any outstanding certification for nondisclosure, or any renewal of such certification, a subscriber who has previously inquired, at any time during the period of nondisclosure, whether his or her nonpublished information was released, shall automatically be notified in writing by the utility that such information was released and which agency received this information.

E. Exception for Health Officers

No notification shall ever be made to a subscriber that nonpublished information was released to an authorized public health agency provided the chief health officer or designated health officer from the agency certifies that disclosure to the subscriber could violate a client's or contact's right of privacy and confidentiality.

F. Retention of Records

All written documents pertaining to nonpublished service shall be retained by telephone utilities for at least one year. When an agency requests that notice to the subscriber be withheld, the telephone utility shall retain the records involved for a period of not less than one year from the date on which the period of nondisclosure expires.

Release of Credit Information
and Calling Records

A. Definitions

(1) Credit Information

A subscriber's credit information is the information contained in the subscriber's utility account record, including but not limited to: account established date, "can-be-reached" number, name of employer, employer's address, subscriber's social security and/or driver's license number, billing name, location of previous service. Not included in subscriber credit information for purposes of these rules are: nonpublished subscriber information, or subscriber's name, address, and telephone number as listed in the telephone directory.

(2) Calling Records

Calling records are the records of calls made from a subscriber's telephone no matter how recorded and regardless of whether such information appears in the subscriber's monthly telephone service bill. Toll records and pen registers are examples of calling records .

B. Release of Subscriber credit Information
and Calling Records

A subscriber's credit information and/or calling records shall be released by a telephone utility only under the following circumstances:

- (1) Upon receipt of a search warrant obtained pursuant to California or federal law; or
- (2) Upon making return to a subpoena or subpoena duces tecum, when in fact authorized by a state or federal judge to divulge the information or records.

APPENDIX B
Page 2 of 3C. Notification to the Subscriber

- (1) Except as provided below, the subscriber whose credit information or calling records are requested by judicial subpoena or search warrant shall be notified by the utility by telephone the same day that the subpoena or search warrant is received (only one attempt by telephone is necessary). Telephone notification, whether successful or not, shall be followed by written notification within twenty-four hours after the receipt of the subpoena or warrant.
- (2) Both oral and written notification shall state that a judicial subpoena or search warrant was received for credit information or calling records for the specified dates and telephone numbers, and provide the name of the agency making the request.

D. Deferral of Notification

- (1) Notification to the subscriber will be deferred, and no disclosure made for a period of 90 days if there is a certification for nondisclosure in the body of a subpoena or search warrant. The certification for nondisclosure must contain a statement that there is probable cause to believe notification to the subscriber would impede the investigation of a suspected felony pursuant to which the subpoena or warrant was issued. Upon making return to the court to a subpoena, the telephone utility shall request instruction from the court whether it should notify the subscriber of its receipt of the subpoena before divulging the information or records requested.
- (2) The 90-day period can be extended for successive 90-day periods upon a new written certification in each instance that there is probable cause to believe notification to the subscriber would impede the investigation of a suspected felony pursuant to which the subpoena or warrant was issued.

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- (3) Successive new written certifications shall be made by the individual who procured the issuance of the subpoena or warrant or, if that person is unavailable, by another member of the authorized agency who also certifies that he or she has been assigned to handle the matter for which the credit information or calling records has been obtained.
- (4) Within five working days of the expiration of any outstanding certification, or any renewal of such certification, the deferred notification shall be given in writing to the subscriber in accordance with (C) above.

E. Exception to Procedure for Release or Credit and Calling Records

- (1) The procedure set forth above does not apply where the requester is a collection agency working for the utility on the subscriber's account or is an independent telephone company or Bell Company.

F. Retention of Records

- (1) Records of requests for credit information and calling records, other than from a utility's employees, shall be retained for a period of at least one year from the date on which the subscriber is notified in writing of the request. A copy of the letter of notification which was sent to the subscriber shall also be retained for a like period of one year.

APPENDIX C

LIST OF APPEARANCES

Complainants: Garfield, Tepper & Ashworth, by Scott J. Tepper, Attorney at Law, Greenwald & Greenwald, by Dorothy Thompson, Attorney at Law, William Barth, Attorney at Law, and Burt Wilson, for CAUSE; Jack K. Eddy, David Daar, and Michael R. Newman, Attorneys at Law, for Louis Samuel; and Carole Heller Solomon, Attorney at Law, for Cary D. Lowe.

Defendant and Respondent: Robert Michalski, Norah Freitas, Gerald H. Genard, and Kent Bridwell, Attorneys at Law, for The Pacific Telephone and Telegraph Company.

Intervenor and Respondent: Dale W. Johnson and Susan E. Amerson, Attorneys at Law, for General Telephone Company of California.

Interested Parties: Louis Possner, for the City of Long Beach; Francis J. McTernan, Attorney at Law, for himself and others; Kenyon K. Kohne, Deputy District Attorney, for San Bernardino County; Roderick W. Leonard, Deputy District Attorney, for Los Angeles District Attorney; Warren P. Reese, Assistant United States Attorney, for United States Attorney, Southern District of California; Peter C. Lehman, Attorney at Law, for District Attorney of San Diego County and California District Attorneys Association; William H. Hildebrand, for East Bay Regional Park District, Department of Public Safety; Leonard L. Snaider, Attorney at Law, for City and County of San Francisco; Jeffrey Gunther, Deputy Attorney General, for State Fire Marshal; Thomas G. Schleier, Attorney at Law, for Internal Revenue Service; Lawrence Lippe, for U.S. Department of Justice and other federal law enforcement agencies; Dennis P. Riordan, Attorney at Law, for Office of the State Public Defender; Alan L. Schlosser, Attorney at Law, for the American Civil Liberties Union of Northern California; Stephen G. Nelson, Assistant U.S. Attorney, for U.S. Attorney, Southern District of California, U.S. Department of Justice; and Steven H. Zeigen, Attorney at Law, for Department of Justice-- Attorney General.

Commission Staff: Richard D. Rosenberg and James T. Quinn, Attorneys at Law.