

ORIGINAL

Decision 93194 JUN 16 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HENAMAN - WERDELL, INC., a
California corporation,

Complainant,

vs.

GENERAL TELEPHONE COMPANY OF
CALIFORNIA,

Defendant.

Case 10933
(Filed December 17, 1980)

Gregory J. Gordon, for complainant.
Richard E. Potter, Attorney at Law,
for defendant.

O P I N I O N

Complainant, Henaman-Werdell, Inc. (HW), seeks an order requiring defendant, General Telephone Company of California (General), to immediately install, on an interim basis, one additional 10-button telephone and replace two 5-button telephones with 10-button telephones, to preclude General from denying to HW any of its services because of the existence of a Telepatcher 10/20 in use on the HW premises and to preclude General from harassing HW.

A duly noticed public hearing was held on this matter before Administrative Law Judge (ALJ) N. R. Johnson in Los Angeles on February 17, 1981, and the matter was submitted upon receipt of concurrent briefs due March 24, 1981.

Testimony was presented on behalf of HW by its president, Gregory J. Gordon, and by the following General personnel appearing under the provisions of Section 776 of the Evidence Code: Richard E. Shanks, a EPABX specialist, and Charles F. White, a customer service superintendent. Testimony was presented on behalf of General by one of its senior communications consultants, Robert R. Morrin, by one of its service facilities analysts, Jimmy J. King, and by one of its service managers, Richard C. Steiner.

I - POSITIONS OF PARTIES

Position of HW

The position of HW as presented by its witness' testimony and argued in its brief is that:

1. HW is a small insurance brokerage and financial services corporation with offices in Downey and Newport Beach interconnected by means of two private leased lines.
2. HW experienced operational problems with two General-provided telepatchers that General was unable to correct.
3. HW ordered a Telepatcher 10/20 from General and was quoted an installation charge of \$86 and a monthly charge of \$20.25 with the installation scheduled for February 20, 1979.
4. HW received a colored brochure of a Telepatcher 10/20 from General with the above price quotes and installation date.
5. When the Telepatcher 10/20 was not installed as scheduled, HW inquired about the status of the matter and was informed by General that there would be an indeterminate delay.
6. A General representative advised HW to obtain its own telepatcher from a manufacturer's representative.

7. HW purchased a Telepatcher 10/20 unit and had it installed by the manufacturer's representative in April 1979 and had the two General telepatchers and a 10-button key telephone removed in May 1979.

8. General was aware of the installation of the customer-owned Telepatcher 10/20 as evidenced, among other things, by the fact that one of General's workman answered questions about the proper wiring of the instrument during its installation.

9. One of General's I & M supervisors, R. E. Shanks, was called to the HW premises because of improper operation of the telephone key system. The trouble was found to be an improperly connected PBX cable wired to the Telepatcher 10/20. This cable, believed to have been installed by other than General's personnel, was removed resulting in the proper operation of the telephones.

10. Mr. Shanks discussed this customer-provided combination telepatcher-10 key telephone with his supervisor and it was agreed that HW should request the installation of a RJ24X connecting device. This request was made.

11. HW's own Telepatcher 10/20 has been in continuous use since early 1979 and it was only when HW ordered additional equipment and services that General objected to it.

12. By letter dated December 10, 1980 General notified HW of its intention to not provide additional services until the Telepatcher 10/20 was removed from the premises. The letter included a statement to the effect that HW's account was being credited \$34.50 originally billed for a RJ24X multi-line bridged connecting device that was reportedly installed on April 10, 1979, but was not on the HW premises when visited by General's representatives on December 3, 1980.

13. General, by virtue of filing a tariff offering the Telepatcher 10/20, has assumed the duty of providing such a device.

14. General is under duty to provide adequate service, but has failed to do so as indicated by its inability to make the original telepatchers function properly, even though it was collecting revenues for them.

Position of General

General's position as testified to by its witnesses and argued in its brief is as follows:

1. General has not and does not offer the Telepatcher 10/20 installed by HW.

2. General offers a "stand-alone" telepatcher rather than the combination telepatcher-key telephone set installed by HW. Its tariffs relate only to the "stand alone" units which are covered by tariffs and are therefore not objectional to General.

3. A log of visitors to General's Business Sales Center is kept and there is no record of a visit by an HW representative.

4. The RJ24X coupler is for use with "stand alone" telepatchers and the provision of such a coupler did not constitute permission by General for HW to connect its own key telephone to General's key telephone system.

5. The Commission staff has taken the position that the owners of customer-provided equipment and the public generally would be best served if key sets were to be certified in accordance with General Order 138 (GO 138) only for use with nonutility key systems.

6. The staff recommendation for certification of key telephone sets only for nonutility key systems was initiated as a company policy by an internal memorandum dated January 30, 1978.

7. HW's Telepatcher 10/20 could not, by law, be connected to any utility lines or equipment because it was neither registered with the Federal Communications Commission (FCC) nor was it grandfathered.

8. The interface between a multi-line telephone and the common equipment of a system is not considered an appropriate interface for a multi-line, customer-provided telephone.

9. Installation of adjuncts can be made only with the permission of the owner of the host equipment.

10. General's tariffs do not provide for the connection of customer-owned key telephones to company key systems.

11. General has given no express or implied permission to HW to connect its own combination telepatcher, 10-button key telephone to General's common equipment.

II - DISCUSSION

General

Because of the complexity of the matter under consideration, this discussion portion of the decision has been subdivided into the following component parts:

- a. Line Common Equipment
- b. The Telepatcher 10/20
- c. Tariff Provisions
- d. California Public Utilities Commission (CPUC) Certification and FCC Licensing
- e. Intermixing of Equipment

Line Common Equipment

The line common equipment is that portion of the wiring of a multi-line key system that serves as a unit to generate the timing functions required by the telephones to operate hold, steady light indication of use, flashing light indication for lines on hold, and intercom service functions for key telephone systems. General asserts that the common equipment is not part of the network system but is rather a connecting system to connect the key telephone instruments to the telephone network. This position appears to be generally accepted in the telephone industry. The common equipment installed on the HW premises consists of a multiple terminal arrangement on a wall that feeds all the equipment in the office.

The Telepatcher 10/20

The Telepatcher 10/20 installed and in use by HW is manufactured by Telephonic Equipment Corporation and is a 9-line 10/20 series telepatcher built into a standard 10/20 telephone instrument. Other versions of the 10/20 telepatcher are available including "stand-alone" devices. It is General's position that it has never offered the combination unit, but it did offer a 10-button "stand-alone" unit mounted in a case with a mounting tray designed to accommodate a 10-button key telephone. The two units occupy essentially the same amount of space as the combination unit used by HW.

General's position that it understood HW's order for a telepatcher to mean such a "stand-alone" unit is supported by HW's order which states:

"Gentlemen: We would appreciate your installing the 'Telepatcher 10/20' unit described in the brochure I've just received (photocopy enclosed) from your office. It is to be installed at our DOWNEY location, and replace the two older type telepatchers now there." (Exhibit 1)

No mention is made of the replacement of the 10-button phone which would be included were the combination unit to be installed. On the other hand, the picture referred to in the order depicted the combination unit that HW actually purchased.

Tariff Provisions

It is General's position that its tariffs do not provide for connection of customer-owned key telephones to company key systems. In support of this position General refers to Sections A.1, A.2, A.3., B.1, B.2, C.1, and D.1 of Rule 41 which, according to General, contemplates only direct connections to its exchange facilities and not equipment-to-equipment connections.

The above-listed sections of Rule 41 relate to various connecting arrangements of terminal equipment attested to by a manufacturer or supplier, or certified by this Commission, and will be subsequently discussed in the section relating to CPUC certification and FCC licensing.

There are, however, some other tariff provisions that warrant attention at this time. First, there is Schedule A-34, the basic rate schedule for push-button telephone system service. This tariff provides charges for line common equipment based on each central office line, PBX station line, or private line terminated in the system. To this line common equipment charge is added a charge for each push-button station location (or instrument). Such tariff construction can be construed to support the connection of customer-owned key telephones to line common equipment owned by the utility commensurate with the growing trend permitting the installation of customer-provided equipment.

Also of interest is Section C.16 of Schedule A-34 providing a monthly charge for a 10-button conference and bridging arrangement (telepatcher) with a capacity of nine lines of \$20.25 as quoted by HW. It is obviously applicable to a "stand-alone" unit and not the telepatcher installed by HW. There is no tariff offering for the 20-button, 9-line combination unit HW installed.

CPUC Certification and FCC Licensing

All rules applicable to the interconnection of terminal equipment formerly in this Commission's GO 138 have been superseded by rules of the FCC, and California authority to regulate in this field has therefore been completely preempted by federal action. Accordingly, all installations of terminal equipment connected to the telephone system must now meet the specifications of the FCC rules. Under these circumstances, General's position that "this Commission decided that this sort of intermixing would not be permitted (Exhibit 6)" (page 11 of General's brief) is invalid. Exhibit 6 is a copy of a letter to utilities and certifying engineers, expressing a staff interpretation of GO 138 and, therefore, is not a Commission decision on the matter. Furthermore, since the provisions of GO 138 have been superseded by the FCC, an interpretation of the order is presently inapplicable. Similarly, Exhibit 7, an internal General memorandum setting forth the Commission staff opinion as a company policy, is also inapplicable.

One of General's arguments is the HW's unit could not, by law, be connected to any utility lines or equipment because it was neither FCC-registered nor grandfathered. This is not true. As noted in HW's brief the Telepatcher 10/20 installed on HW's premises is FCC-registered under the following number: ✓
AH896Y-62317-BR-N.

General further states that even if HW's unit were FCC-registered or grandfathered, its connection within the key system is contingent upon receiving permission from General for its installation. In support of this position General quotes item (3) at the top of page 15 of the FCC's registration application as follows:

"Installation of adjuncts can be made only with the permission of the owner of the host equipment."

and additionally refers to Section 5.c. of a recently released FCC order stating that such connections are to be made only with the permission of the owner of the host equipment. The obtaining of permission to connect to utility facilities is a necessary requirement intended to protect the utility from improper and/or hazardous installations by inadequately qualified customer personnel. It is axiomatic that if a utility were permitted to withhold such permission without good and sufficient reason, customer-provided equipment installations would be severely limited or nonexistent. In this instance, there is

no evidence supporting the withholding of permission for the installation of HW's telepatcher.

Intermixing of Equipment

According to General, HW's registered or grandfathered unit could be directly connected to the telephone network but not to the key system, the common equipment of which is then directly connected to the network. Exhibit B of General's brief is a copy of an FCC order adopted February 2, 1981 and released February 9, 1981, relating to the connection of registered telephone terminal devices to registered host equipment or systems.

Paragraphs 3 and 5 of this order read:

"3. One of the registration requirements for terminal equipment is the provision of a standard plug for connecting the device to the network. See Section 68.104 of the Commission's Rules (47 C.F.R. § 68.104). Where such equipment is to be connected directly to host equipment, we believe the public interest will be best served by permitting the plug to be removed, if desired, and the device connected using any reasonable means, including hardwiring. (Such arrangements would typically involve dialers and speakerphones connected to telephones, telephones to key telephone systems, and key systems to PBXs.) Of course, the plugs and jacks specified in Part 68 would still be required for the connection of the host equipment to the telephone network."

* * *

"5. Accordingly, pursuant to authority delegated in Section 0.291 of the Commission's Rules and Regulations, 47 C.F.R. § 0.291, IT IS HEREBY ORDERED, That any reasonable method (including hardwiring) for connection of separately registered equipment as a component to host terminal equipment or a system is permitted under the following conditions:

- "a. The add-on components are separately registered;
- "b. The installation is made by trained personnel (such as authorized agents of the component or host equipment manufacturer, telephone company personnel, registered refurbishers, or those qualified under Section 68.215).
- "c. These connections are made with the permission of the owner of the host equipment; and
- "d. If the plug has been removed from the separately registered terminal equipment to permit its use as a component, such plug must be restored prior to reuse of that equipment for direct connection to the network.4/

"4/ The standard plug can be restored by any of the qualified personnel listed above in paragraph 2."

It is obvious from the above that not only can registered key telephone sets be connected to the host (utility) common system but that it can be hardwired to such a system without jacks. Such provisions contravene those portions of General's Rule 41, previously referred to, which General argues preclude equipment-to-equipment connections.

General also argues that the installation of HW's telepatcher involved an independent installer meddling with General's wiring which is prohibited by Rule 24, which states:

"Only duly authorized employees of the Utility are allowed to connect, disconnect, move, change or alter in any manner any and all instrumentalities and facilities furnished by the Utility."

The above-referenced FCC order of February 9, 1981 provides for the installation of customer-owned components by trained personnel. Trained personnel are defined by the FCC as authorized agents of the component and host equipment manufacturers, telephone company personnel, registered refurbishers, and those qualified under Section 68.215 of the FCC's Rules and Regulations (47 C.F.R.) (authorized installers of key systems and PBXs). The manufacturers representative's employee that installed HW's telepatcher would obviously qualify under this definition.

III - FINDINGS AND CONCLUSIONS

Findings of Fact

1. HW ordered a Telepatcher 10/20 from General and was quoted an installation charge of \$86, a monthly charge of \$20.25, and an installation date of February 20, 1979.
2. The requested Telepatcher 10/20 was not installed as scheduled and HW was informed there would be an indeterminate delay.
3. HW purchased and had installed in April 1979 a 9-line combination telepatcher-key telephone set designated as a Telepatcher 10/20.
4. HW had two 5-button telepatchers and a 10-button key telephone set removed in May 1979.
5. General's tariffs provide for a 10-button, 9-line "stand-alone" telepatcher but not for a combination telepatcher-key telephone set such as was installed for HW.
6. By letter dated December 10, 1980 General notified HW of its intention to not provide additional requested equipment until HW removed its Telepatcher 10/20 from service.

7. General credited HW's account \$34.50 originally billed for a RJ24X multi-line bridged connecting device that was reportedly installed on April 10, 1979 but was not on the HW premises when visited by General's representatives on December 3, 1980.

8. The line common equipment installed by General for HW consists of a multi-terminal arrangement on a wall that feeds all the telephone equipment in the office.

9. Schedule A-34, the basic tariff schedule for push-button telephone system service, consists of a basic charge per line for line common equipment plus a charge for each instrument and is, therefore, designed to permit the installation of customer-provided key telephone instruments in utility-owned key systems.

10. The Telepatcher 10/20 installed by HW is FCC-registered (AH896Y-62317-BR-N).

11. All rules applicable to the interconnection of terminal equipment formerly in this Commission's GO 138 have been superseded by the rules of the FCC.

12. All installations of terminal equipment connected to the telephone system must meet the specifications of the FCC rules.

13. The Commission staff's interpretation of GO 138 regarding the certification of key telephone instruments is presently inapplicable because of the preemption of Commission jurisdiction over these matters by the FCC.

14. FCC-registered key telephone instruments may, with the permission of the utility, be connected to the utility's key telephone system.

15. Installation of adjuncts can be made only with the permission of the owner of the host equipment. However, such permission cannot be withheld without good and sufficient reason.

16. FCC-registered telephone equipment may be installed on a utility system by authorized agents of the component or host equipment manufacturer, telephone company personnel, registered refurbishers, or those qualified under Section 68.215 of the FCC Rules and Regulations (47 C.F.R.).

17. Because of HW's pressing need for additional telephone equipment, the effective date of this order should be the date of signature.

Conclusions of Law

1. General's tariffs provide for a 10-button, 9-line "stand-alone" telepatcher but not for a combination telepatcher-key telephone set as installed by HW.

2. General should not withhold permission for HW to connect its combination telepatcher-key telephone set, known as a Telepatcher 10/20, to General's line common equipment.

3. General should expeditiously provide, in accordance with its tariffs, the additional equipment requested by HW.

4. General should rescind its policy letter about the staff interpretation of GO 138 relating to certification of key telephones.

O R D E R

IT IS ORDERED that:

1. General Telephone Company of California (General) shall, in accordance with the provisions of its tariffs, expeditiously install the additional telephone equipment requested by Henaman-Werdell, Inc. (HW).

2. Within 30 days of the effective date of this order General shall rescind its letter to Division and Exchange Managers dated January 30, 1978, relating to the certification of key telephones in accordance with the provisions of General Order 138.

3. General shall take no further action with HW regarding the removal of the combination telepatcher-key telephone set known as a Telepatcher 10/20 presently in operation in HW's Downey office.

4. In all other respect HW's request for relief is denied.

This order becomes effective today.

Dated JUN 16 1981, at San Francisco, California.

John E. Bay President
Richard D. ...
Jonathan M. ...
Antonio ...
Prudencia ... Commissioners