

ORIGINAL

Decision 93181 SEP 1 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VALLEY BURGLAR AND FIRE ALARM CO.,)
INC., a California corporation,)
Complainant,)

vs.)

PACIFIC TELEPHONE AND TELEGRAPH)
COMPANY, a corporation,)
Defendant.)

Case 10875
(Filed June 12, 1980)

MORSE SIGNAL DEVICES OF CALIFORNIA,)
a California corporation,)
Complainant,)

vs.)

PACIFIC TELEPHONE AND TELEGRAPH)
COMPANY, a corporation,)
Defendant.)

Case 10876
(Filed June 12, 1980)

MORSE SIGNAL DEVICES OF SAN DIEGO,)
a partnership,)
Complainant,)

vs.)

PACIFIC TELEPHONE AND TELEGRAPH)
COMPANY, a corporation,)
Defendant.)

Case 10877
(Filed June 12, 1980)

C.10875 et al. ALJ/EA

F. H. BARTH CO., a California
corporation,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case 10878
(Filed June 13, 1980)

DENALECT, INC., a California
corporation, dba DENALECT ALARM
COMPANY,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case 10879
(Filed June 18, 1980)

AMERICAN PROTECTION INDUSTRIES,
INC., a California corporation,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case 10890
(Filed July 11, 1980)

VANGAS, INC., a California)
 corporation, dba ALARMEX, a)
 division of VANGAS, INC.,)
)
 Complainant,)
)
 vs.)
)
 PACIFIC TELEPHONE AND TELEGRAPH)
 COMPANY, a corporation,)
)
 Defendant.)

Case 10892
 (Filed July 23, 1980)

Gold, Herscher, Marks & Pepper, by Alan L. Pepper, Attorney at Law, for Vangas, Inc., Morse Signal Devices of California, Morse Signal Devices of San Diego, Denalect Alarm Company, Valley Burglar and Fire Alarm Company, and F. H. Barth Company; and Lester G. Ostrov and Susan R. Hershman, Attorneys at Law, for American Protection Industries, Inc.; complainants.
Chris L. Rasmussen, Attorney at Law, for defendant.

O P I N I O N

Each of the complainants allege the following:

1. They are in the business of installing and servicing fire and burglar alarm systems which use The Pacific Telephone and Telegraph Company's (Pacific) private line services to transmit alarm signals from the protected premises of an alarm customer (subscriber) to the central station monitoring facilities of the complainant servicing such subscriber.
2. Prior to 1974 the transmission services provided by Pacific were all transmitted on direct current (DC) metallic pairs which were included within private line tariff offering Schedule Cal. P.U.C. 104-T (tariff 104-T) and referred to as sub-voice grade "McCulloh" service.

3. Prior to 1974 complainants were advised by Pacific that Pacific was no longer going to provide DC metallic pairs and that alarm companies in California would have to use voice grade lines.
4. At various times after 1973, complainants began installing multiplex alarm systems (MAS) using Pacific-provided voice grade 3002 transmission facilities under tariff 111-T.
5. Pacific advised complainants that the installation cost for each MAS would be \$20 and complainants have been charging their subscribers \$20 for each installation until October 30, 1979 when Pacific was authorized a rate increase by the Public Utilities Commission (Commission).
6. Thereafter, complainants were advised by various Pacific representatives that the installation costs for the new MAS had been increased from \$20 to \$30.
7. On or about April 22, 1980 complainants were notified that the Commission had approved a rate increase for Pacific and that the installation cost for a MAS had been increased to \$45 per installation.
8. Shortly after April 22, 1980 complainants learned that Pacific had been charging complainants \$40 for each installation of a MAS when they were led to believe the charges would be \$20 per installation and \$60 for each installation when they were led to believe such charges would only be \$30.
9. Complainants, who have charged their subscribers \$20 up to October 30, 1979 and \$30 thereafter for the cost of installation based on the representations of Pacific employees that these amounts were the correct installation charges, contend that Pacific has thus wrongfully double-charged them for each of their MAS's which have been installed.

10. Complainants allege they cannot find any basis in tariffs 111-T and 115-T to support such double-charging.

In addition to the common allegations above, complainants specifically allege the following as a result of being double-charged:

1. Valley Burglar and Fire Alarm Co. alleges it has been overcharged a total of \$2,040 from December 1, 1978, when it installed its first MAS, through March 31, 1980.
2. Morse Signal Devices of California alleges it is in the process of ascertaining the total number of installations for which it has been overcharged since it installed its first MAS in 1975 but that it has ascertained the amount exceeds \$25,000.
3. Morse Signal Devices of San Diego alleges that it is in the process of ascertaining the total number of installations for which it has been overcharged since it installed its first MAS in 1978 but that it has ascertained the amount exceeds \$25,000.
4. F. H. Barth Company alleges it is in the process of ascertaining the total number of installations for which it has been overcharged since it installed its first MAS in February 1975 but that it has ascertained the amount exceeds \$5,000.
5. Denalect, Inc. alleges it is in the process of ascertaining the total number of installations for which it has been overcharged since it installed its first MAS on or about May 18, 1978 but that it has ascertained the amount exceeds \$700.
6. American Protection Industries, Inc. alleges its first MAS became operational in 1973, that it has not yet ascertained the exact number of overcharges for voice grade 3002 channel installations for MAS, but that preliminary calculations show the total amount exceeds \$50,000.

7. Vangas, Inc., dba Alarmex, alleges that it has not as yet ascertained the total number of installations for which it has been overcharged since it first installed its MAS in 1975 but that it has ascertained the amount exceeds \$20,000.

All complainants seek an order from this Commission ordering Pacific to immediately cease and desist from its practice of double-charging for installation of MAS circuits and that Pacific be ordered to pay complainants damages for overcharges resulting from the ordering and installation of voice grade 3002 channels used in the MAS under tariffs 115-T and 111-T, according to proof.

Pacific, in its answer, admits that:

1. At issue is a special bridged alarm private line service which is described in Pacific's tariff 111-T (attached and incorporated within its answer).
2. Present rates and charges for this service are set forth in tariff 115-T (attached and incorporated within its answer).
3. The authorization to offer this service was requested by Advice Letter 11107 filed July 26, 1973 and was approved by this Commission on August 15, 1973 in Resolution T-8166.
4. Since the inception of this service, Pacific has been and is presently required by its tariffs to charge a nonrecurring charge (NRC) for each termination of a "trunk channel" at the alarm company's central station ("27B" termination) and in Pacific's central office ("TPL" termination) and to charge an NRC for each termination of a "station channel" in Pacific's central office ("TPL" termination) and at the customer's premises ("27B" first termination).

5. Until October 30, 1979 the NRC for each of the above-described terminations was \$20 per termination in accordance with Pacific's tariff 115-T.
6. On October 30, 1979 the NRC was increased to \$30 per termination as previously proposed by the Commission staff in Decision 90642.
7. The present NRC for the service at issue is \$45 per termination.

Pacific alleges the following separate and affirmative defenses:

1. Its actions in connection with this matter have, at all times, been lawful, reasonable, proper, and in complete accord with the applicable tariff provisions.
2. Pacific has been required by its tariffs, since the date on which this Commission first authorized it in Resolution T-8166 dated August 14, 1973, to offer the special bridged alarm service at issue (MAS) and to charge a separate NRC for each termination associated with the service.
3. Pacific does not "double-charge" nor has it ever "double-charged" complainants for installations of the bridged alarm service and that it has charged, and is now charging, complainants and their customers on a per termination charge in accordance with its tariffs.
4. The Commission is without jurisdiction to award damages.
5. The complaints fail to state a cause of action as required by Public Utilities (PU) Code Section 1702 because they do not set forth any act or thing done or omitted to be done which is claimed to be in violation of any provision of law or of any rule of the Commission and should be dismissed.

6. Any refund of the "TPL" and "27B" termination NRCs, which were collected from complainants by Pacific under applicable tariffs, would be a preference to complainants in violation of PU Code Section 453(a).1/
7. Complainants are in effect challenging the reasonableness of the "TPL" and "27B" NRCs set forth in tariff 115-T and, as such, the complaints do not contain the requisite 25 signatures as prescribed by PU Code Section 1702.2/
8. PU Code Sections 735 and 736 contain specified limitations on actions which are applicable to the action involved and that if complainants are alleging that Pacific has violated its filed tariffs, complainants are barred from asserting any claim occurring prior to three years before the filing date.
9. To the extent that complainants' claims are based on allegations that Pacific employees intentionally or unintentionally misquoted the total NRCs associated with the installation of the service at issue, complainants cannot recover the difference between the alleged misquote and the actual charge as set forth in tariff 115-T. (Empire West v Southern California Gas Co. (1974) 12 C 3d 805.)

1/ PU Code Section 453(a) states:

"No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage."

2/ PU Code Section 1702 provides, in part:

". . . No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any...telephone corporation, unless it is signed...by not less than 25 actual or prospective consumers or purchasers of such...telephone service."

Pacific denies complainants are entitled to any relief and moves that the complaints be dismissed.

Following notice, hearings were held in Los Angeles before Administrative Law Judge William A. Turkish on October 16, 1980 and March 16, 1981, and the matter was submitted upon the filing of concurrent briefs on April 27, 1981.

Testifying on behalf of complainants were Lessing E. Gold, an attorney at law, and Michael S. Weinstock, president of Morse Products Manufacturer. Testifying on behalf of defendant was Thomas N. Stoffel, defendant's district staff manager for private line and mobile radio services.

Complainants' Presentation

Following is a summary of the testimony presented by Lessing Gold, attorney for the Western Burglar and Fire Alarm Association and its individual member companies:

1. He has represented the association in Pacific rate case applications since approximately 1967 or 1968 and is familiar with the circumstances surrounding the development of the MAS or bridged alarm system^{3/} having been involved in many meetings with Pacific in the creation of that experimental tariff.
2. Prior to the development of the bridged alarm system, Pacific informed the alarm industry that it intended to discontinue copper circuits due to a copper shortage and, because of new technology, Pacific encouraged the industry and manufacturers to change to a new voice grade technology. Meetings were thereafter held between Pacific representatives and industry representatives which the witness attended. Preliminary meetings related to engineering matters and after several months of these meetings, Pacific indicated it could provide its type 3002 voice grade channel to be used in connection with a new alarm system technology for the alarm industry.

^{3/} MAS and bridged alarm system are used throughout interchangeably.

3. After all the engineering details were worked out, the witness and other parties met with Pacific representatives in San Francisco in 1972 where Pacific presented all the potential uses of the system and the different pricing for each of the services. Pacific compared these prices to the prices which the companies were then paying under tariff 104-T. Although no presentation was made by Pacific with respect to installation charges, an industry representative raised the question and the Pacific representative stated that the cost of installation for the new MAS would be exactly the same as the cost for installing the type 1009 subvoice grade channel under tariff 104-T which was the alarm system service used by the alarm industry at the time.
4. In 1973, before tariff 111-T was submitted to the Commission, Pacific invited a group of alarm industry people to attend a presentation in San Francisco and the witness was present at this meeting. Drawings of the MAS and the charges for the system were explained by Pacific. The only charges that were discussed by Pacific were the monthly recurring charges and during the course of the meeting, Pacific was asked about installation costs. Pacific responded that the installation charge for the new 3002 channel would be \$20, exactly the same as a 1009 channel under tariff 104-T. The witness never received any written information from Pacific that specifically described the installation charges for the new 3002 channel.
5. In 1974 the witness had many conversations with Pacific's alarm industry coordinator who affirmed previous representations by Pacific representatives that the installation charge for the new 3002 channel would be \$20.

6. In 1980 the witness received a call from a member of the alarm industry who had been advised by one of Pacific's representatives that Pacific was double-charging for installation of a 3002 channel. Upon calling Pacific's rate and tariff representative in San Francisco, the witness was advised that the double charge was incorrect and that there should only be one charge for the 3002 channel, the same as it was for the 1009 channel. Thereafter, the witness received a letter from Pacific's marketing manager (Exhibit 12) indicating that the so-called "double charge" was correct and in accordance with tariff 111-T which calls for a local termination charge at the subscriber's premises and a termination charge in the telephone central office. In a later conversation with Pacific's representative with whom the witness previously discussed the matter, the representative apologized and stated that "even though that is the rate we have been quoting, ...it is the position of the company that there should be a 'double charge' and that is what we have been billing."

Following is a summary of the testimony presented by Michael S. Weinstock, president of Morse Products Manufacturer, which manufactures burglar and fire alarm security devices:

1. The witness was involved in the initial meetings with Pacific regarding the development of tariff 111-T as well as the engineering meetings that took place with Pacific, and corroborated the testimony given by the previous witness with respect to installation charges as represented by Pacific representatives during those meetings.

2. In his many conversations with telephone representatives, the general trend of such conversations was to compare the 1009 channel costs with the proposed 3002 channel costs. It was stated and understood by all that the installation charges for the trunk or backbone portion of the system between the alarm company central station and the telephone company central office under the new proposed MAS using the 3002 channel would be twice the charges of the 1009 two-wire channel system because the 3002 channel would be using a four-wire system which would have to be hybridized down to two wires coming from the subscriber's premises. In addition, the monthly recurring charge on the 3002 local station channel was going to be higher to reflect the maintenance costs or the operation of the 3002 channel.

Defendant's Presentation

Following is a summary of the testimony presented by Thomas N. Stoffel, a Pacific employee who is responsible for the bridged alarm services at issue:

1. The intent on page 16 of Exhibit 8 was to give an example of typical installations for the service described. However, at the bottom of the page it states that these specific example rates and charges do not apply at all to special assemblies as found in tariffs 83-T and 111-T.
2. There is a significant difference between the 3002 private line channel under tariff 115-T and the bridged alarm service under tariff 111-T. The 3002 private line channel in tariff 115-T is a voice grade channel running from approximately 300 to 4,000 Hertz and described as a 4,000-Hertz channel. It is a band width provided for both local exchange and interchange communications, and it is provided for anyone requiring that type of communication channel.

3. Tariff 111-T is a special assembly tariff designed to fulfill unique requirements of telephone subscribers. The bridged alarm system found in tariff 111-T is a unique service, provided only to the alarm industry. There are no other subscribers for that service. This unique bridging arrangement allows the splitting of a four-wire trunk channel to a low frequency and a high frequency which is then distributed to the station users via the bridging arrangement and allows communication over a two-wire channel.
4. "TPL" and "27B" designations found in tariff 111-T are Universal Service Order Codes (USOC). The USOCs are built into a computer program which prices each code and permits automated billing.
5. In the development of a new MAS for the alarm industry, Pacific and industry members were initially faced with trying to accomplish something which had not been accomplished prior to that time, namely, how to bridge a four-wire backbone channel to a two-wire local station channel and maintain the overall transmission quality required by the alarm company central station and the responders located on the subscriber's premises. It would have been feasible at the time to connect the four-wire backbone channel to a four-wire local station channel, but it would have been more costly to the alarm company to provide a four-wire local station channel to every one of the maximum 123 alarm company subscribers. For this reason, Pacific attempted to work out and develop a more economically feasible system with a different arrangement. Since no method or technical equipment existed to accomplish what was desired, Pacific had to develop both a method and the necessary equipment. Initially, the bridging contemplated was primarily 10-port bridges built in multiples, but the cost to do that was expensive.

A Pacific engineer named Hailey then developed a new bridge which is best described as an assembly or system rather than one describable piece of equipment. It consists of several components built to accommodate specific technical requirements of the alarm industry. It was designed and built by Pacific engineers to be used specifically for the alarm industry and in conjunction with the bridged alarm service described in tariff 111-T.

6. There have been no changes in the administration of tariff 111-T and the rates set forth in tariff 115-T since the introduction of the bridged alarm service in 1973. A letter dated August 1, 1973 to all regional staff managers (Exhibit 16) establishes Pacific's initial policy with respect to the advice letter filing of tariff 111-T, and the marketing practices policy dated October 30, 1973 was issued after the filing was approved. The letter and marketing practices policy go into a description of the tariff as approved by the Commission and attempt to expand on what is contained in tariff 111-T. Subparagraph 1 of the third paragraph of the August 1, 1973 letter discusses installation charges and clearly states that an installation charge of \$5 applies to each end of the station channel. The letter also contains diagrams which indicate the application of the "TPL" charge of \$5 at the serving central office as well as the "27B" charge at the primary outlying stations. The Marketing Practices Policy 750.06 (Exhibit 16) also goes into a rather in-depth description of the special experimental use of data channels for multi-point voice grade bridged alarm service.
7. The distinction between a normal two-point 3002 data channel and the two-point 3002 channel used by the alarm industry is clearly defined in tariff 111-T along with the application of the rates and charges found in tariff 115-T. The bridged alarm system has one service point at the telephone company central office which has a USOC designation of "TPL" and a service point at the subscriber's location with a USOC designation of "27B". In a normal 3002 voice grade data channel from a customer at point A to a customer at point B, the charges

are for a "27B" at one location and a "27B" at the other customer location. There is no telephone central office termination point for a normal two-point 3002 data channel. If a two-point channel for a new customer was being added to an existing multi-point channel, there would be a single "27B" NRC at the new customer's premises only.

Issue

The major issue presented is whether Pacific has been charging complainants for installation of two-point 3002 local station channels in an amount greater than that permitted by tariffs 111-T and 115-T, the applicable tariffs governing the type of service in issue.

Discussion

Testimony of complainants' witnesses dealt principally with a historical background of the bridged alarm system which was developed in 1972-1973 for use by the burglar and fire alarm industry in response to a contemplated shortage of copper. Copper wire previously had been used to provide the necessary type 1009 channels for the alarm industry. A portion of the testimony of complainants' witnesses dealt with representations made to them at various meetings by Pacific representatives to the effect that there would be no increase in installation charges for the new 3002 channels used in the new bridged circuit system which was replacing the older 1009 channel or "McCulloh" alarm system.

It is the contention of complainants that tariffs 111-T and 115-T are reasonably clear on their face as to the correct charge for a "TPL-27B" installation. They contend that a "TPL-27B" is considered one termination and that there is a single charge for such termination as indicated in tariff 115-T.^{4/} In support of this contention, complainants rely upon the representations made to them by Pacific representatives during the period of development of the 3002 bridged circuit alarm system and at times thereafter, as well as a comparison of tariff 104-T, which was and still is applicable to the type 1009 or "McCulloh" alarm system, and tariff 115-T which is applicable to the 3002 bridged alarm system. They argue that under tariff 104-T the addition of a 1009 alarm system local station channel to the circuit ("TPL-27B" termination) has always had a single charge, i.e., \$20, \$30, or \$45 as permitted by the tariff at the various relevant times and that since the exact same tariff language and USOCs ("TPL-27B") found in tariff 104-T for the 1009 local station channel are found in tariff 115-T for the 3002 local station channel, a similar single charge as indicated in tariff 115-T is called for rather than the double charge Pacific has been charging for each new local station channel added to the circuit. Complainants further argue that, even if taken in the light most favorable to Pacific, tariffs 111-T and 115-T at best should be construed as ambiguous, and interpretation giving complainants the benefit of the lower charge should be granted. Complainants do not dispute Pacific's charging for two terminations on the trunk channel. They are disputing Pacific's charging for two terminations on the local station channel.

^{4/} During the relevant periods, according to complainants, this charge was \$20 until October 30, 1979. From October 30, 1979 to April 22, 1980 this charge was \$30. From April 22, 1980 this charge is \$45.

Pacific argues that tariff 104-T is inapplicable in this proceeding since it applies only to type 1009 metallic pair or so-called "McCulloh" channels, while the issue involves a multiplex bridged alarm system which is a special assembly arrangement as described in tariff 111-T using voice grade 3002 data channels. Furthermore, Pacific argues that a 1009 local station channel under tariff 104-T is a point-to-point channel which terminates at the alarm company's central station on one end and the alarm company subscriber's premises on the other end. It is a continuous loop that merely passes through the telephone company central office without a service point at the central office and is totally different from the configuration of the 3002 bridged alarm system. Since there is only one service point or "27B" being added when a new alarm company subscriber is added to the 1009 channel, only a single charge for the "27B" termination is charged under tariff 104-T. On the other hand, the 3002 bridged circuit channel, using a different technology, requires each local station channel be terminated both at the subscriber's premises, on the one hand, and at the telephone company central office, on the other hand, where up to 128 local station channels must go through a special bridge assembly to join the alarm company's trunk channel. The telephone company considers its central office termination as a service point (USOC designation "TPL") and the alarm company subscriber's premises termination as a service point (USOC designation "27B"), according to tariff 111-T. It interprets tariff 115-T as permitting a \$45 charge (currently) for the "TPL" termination and a \$45 charge (currently) for the "27B" termination. Since a resolution of the issue involves an interpretation of Pacific's published tariffs, a review of the applicable tariffs is appropriate.

Tariff 111-T, First Revised Sheet 10.L, is entitled "Private Line Services and Channels" and subtitled "Special Assembly Services and Channels for Miscellaneous Experimental Purposes". The parties agree that this tariff was filed in 1973 to provide for the experimental offering of 3002 voice grade data transmission channels to the alarm industry which would enable an alarm company central station to query up to a maximum of 120 subscriber local stations and to receive responses from each of those subscriber stations.

The relevant portion of Section A.43 of tariff 111-T, which describes a multi-station channel arrangement, provides as follows:

"A multi-station channel arrangement consists of:

- "(1) A trunk channel from the customer's central station location to each central office normally serving the locations where stations are to be established which are to be connected to the trunk channel. Each central office is considered a service point. A two-point trunk channel is furnished if the channel from the customer's central station is to a single central office. A multi-point trunk channel is furnished if the channel from the customer's central station is to more than one central office.

"The channel facilities furnished with the trunk channel are equivalent to those furnished for duplex Type 3002 (Schedule 4) channels for data transmission.

- "(2) A station channel is required from each premises at which a station is located to the central office normally serving that premises at which point it is connected to the trunk channel. These channels are two-point channels only, between a premises and the central office. The central office is considered a service point.

"A maximum of 128 station channels may be connected to a trunk channel. This maximum applies whether all station channels connected to a trunk channel are from one central office or more than one central office.

"The channel facilities furnished with a station channel are equivalent to those furnished for local half duplex Type 3002 (Schedule 4) channels for data transmission."

Tariff 111-T also provides that rates and charges, including mileage measurements where applicable, for two-point local half duplex type 3002 channels for data transmission apply to station channels and that terminations of trunk channels and station channels in telephone central offices are considered service points and are included in determining mileage measurements. Tariff 111-T further provides that the rates, charges, and mileage measurements referred to above are those specified in tariff 115-T under "Private Line Services and Channels for Data Transmission for Type 3002 Channels". It also designates the relevant USOCs associated with this channel arrangement as follows:

<u>Trunk Channel</u>	<u>USOC</u>
Each local loop-full duplex	1L6DP
Each termination of local loop--	
In customer central station	27B
In central office	TPL
<u>Station Channel</u>	
Each local loop-half duplex	1L6BP
Each termination of local loop--	
In central office	TPL
First termination on premises	27B

Tariff 115-T, applicable to "Private Line Services and Channels", establishes the NRCs for local or "Interexchange Private Line Channels" in the following format:

	NRC	
	Application Before	Application on or After
<u>USOC</u>	<u>4/22/80</u>	<u>9/22/80</u>

Each Termination:

Types 1001, 1002, 1005, and 1006	27B, TPL	\$30.00	\$45.00
Type 3002	27B, TPL	30.00	45.00

If we were to look at tariff 115-T NRCs alone, we might be inclined to agree with complainants that it is unclear and thus ambiguous on whether the \$30 or \$45 charge is applicable to 27B, TPL terminations as one termination charge for both codes, as complainants contend, or whether the charge is applicable to both the "27B" termination and the "TPL" termination individually, as contended by Pacific. However, when tariffs 111-T and 115-T are read together, it is likewise clear that the new multiplex experimental alarm system developed and used for and by the alarm industry, which uses a half duplex type 3002 data transmission channel for each local subscriber station, has two termination or service points. One such termination of the channel is at the local subscriber station and the other is at the telephone central office where it must then be connected to the telephone central office termination point of the alarm company's trunk channel. Tariff 111-T makes many references to the fact that the local station channel is a two-point channel between the alarm company subscriber's premises and the telephone central office. It designates the termination points on each end of the local station channel with separate USOCs. One of the purposes of the USOC

designations is to relate pricing to the various services offered so that billing can be computerized and automated. Thus, it is easily inferred that pricing as related to "27B" terminations and "TPL" terminations carries separate charges for each type of termination. Additionally, the USOCs assigned to the station channel refer to "each termination of a local channel" and then go on to show that the "TPL" termination is in the central office while the "27B" termination is the "first termination on premises" of the alarm company subscriber. In tariff 115-T, although the "27B" and "TPL" terminations are shown together in seriatum followed by the single charge of \$30 (applicable before April 22, 1980) or \$45 (applicable on or after April 22, 1980), they are shown under the title "each termination", which could only mean each termination. Since a "27B" and a "TPL" are separate termination designations, we can only conclude that the charges shown are for each rather than for the two as a pair.

Complainants acknowledge that a "double charge" for the trunk channel is appropriate and provided for in Pacific's tariffs and they take no issue with the charges Pacific has been billing for the trunk channels. However, the descriptive wording with respect to the service points and terminations of a trunk channel in tariff 111-T is closely similar to the wording describing the service points and terminations of a local station channel. Likewise, the USOC designations for the trunk channel terminations and local station channel terminations are closely similar in format and designation. Finally, the NRCs found in tariff 115-T are identical for trunk channel terminations and local station channels. We are thus at a loss to understand how complainants can acknowledge a charge for each "27B" termination and each "TPL" termination of a trunk channel as being proper, on the one hand, but take issue with

Pacific's charging them for each "27B" termination and each "TPL" termination of a local station or local loop channel, on the other hand. The logic escapes us completely.

The testimony of complainants' witnesses relating to the history of the developments of the bridged alarm system and to the representations made to them by various Pacific representatives that the NRCs for the 3002 local station channels would be the same as for the replaced 1009 local station channel is not persuasive in convincing us that tariffs 111-T and 115-T mean anything other than what appears perfectly clear and concise in reading those tariffs, as discussed above.

Complainants raise the point that tariff 104-T, which is applicable to the 1009 subvoice grade channel provided to the alarm industry before the introduction of the 3002 voice grade channel, is similarly worded to tariff 111-T with respect to USOC termination designations and the charges found in tariff 115-T and that only a single charge was billed by Pacific for a 1009 channel "TPL-27B" combined. In other words, complainants believe that since Pacific charged them only the single charge for the "TPL-27B" termination shown seriatim in tariff 104-T, it means that the termination of a local station consists of a single, combined "TPL-27B". Complainants' argument is without merit because, although the wording in the two tariffs is similar, there is very little similarity or comparison between the service contemplated by tariff 104-T and that provided to the alarm industry under the charges and rates for type 3002 service under tariff 115-T. Tariff 104-T is applicable to the older continuous loop 1009 channel, while tariff 115-T must be read together with tariff 111-T to determine the appropriate charge for the newer technology bridged-circuit arrangement which uses a 3002 voice grade channel. The two services are totally different in concept, in design, in application, in testing, and in the number of customers that can be served by each

service. The type 1009 service under tariff 104-T does not "terminate" in the telephone central office but, rather, is a two-point system terminating on one end at the alarm company's central station and, on the other end, at the alarm company subscriber's premises. The bridged alarm system tariffed under 111-T and 115-T is really a four-point system where the trunk channel line, which terminates on one end at the alarm company central station, also terminates at the telephone central office. The incoming local station channels which terminate at the subscriber's premises must also be terminated at the telephone central office and then joined to the trunk channel by way of the specially designed bridge assembly.

If the service using the 1009 channel under tariff 104-T were exactly the same as the 3002 service tariffed under 115-T, there would be no need for tariff 111-T. Tariff 111-T is specifically applicable to the new experimental bridged assembly system which uses the type 3002 channel under tariff 115-T. Since tariff 111-T is specific on the termination points of the channels provided for use by the alarm industry and designates a specific USOC for each termination point of those channels, it is perfectly clear that the charges indicated in tariff 115-T are for each USOC designation shown. The fact that these USOCs are shown seriatim does not signify that the two USOCs shown are to be considered as one termination. It does mean that the \$30 or \$45 charge applies to each termination. We conclude that the NRCs billed to complainants by Pacific for 3002 service used by the alarm industry are for each "27B" termination and for each "TPL" termination and were proper.

Inasmuch as we interpret tariff 115-T as being clear when read in conjunction with tariff 111-T, we reject complainants' alternative allegations that tariffs 111-T and 115-T are ambiguous as written and that they should be read in a light most favorable to them which would require Pacific to consider a "27B" termination and a "TPL" termination as one termination and charge them one termination charge only.

The testimony relative to the history of the service at issue while providing interesting background material is of little significance. To the extent that complainants' claims are based on the alleged representations made by Pacific's representatives to the effect that the NRCs associated with the installation of the service at issue would not be increased over the charges then current for providing the older "McCulloh" type 1009 service, they do not form any basis for granting the relief requested.

Exhibit 16 introduced by Pacific as rebuttal to complainants' testimony regarding pricing information given to them by Pacific representatives are copies of Pacific's Marketing Practices 750.06 dated October 30, 1973 and June 4, 1979. These are internal business documents issued by Pacific's headquarters to its field personnel and give an in-depth description of the special experimental use of data channels for multi-point voice grade bridged alarm services. They give a detailed index of what is covered and areas of responsibility covering the service. Although these documents are not available to the public, they do show Pacific employees, with diagrams and explanations, what Pacific's pricing policy is and has been for this new service since it was introduced in 1973.

Although the evidence contained in complainants' Exhibits 4, 5, and 6 appears to give the impression that the termination charges are the same for the 1009 and 3002 channel services, all it really shows is that the charges shown were "per termination" and, in fact, that did not change. Even though there was only one termination on the installation of a 1009 local station channel and two terminations on the newer 3002 local station channel, someone merely stating that the charges would still be the same would not at all be incorrect. This is because, in fact, the charge per termination was the same. The tariffs refer to a charge per termination. If the Pacific representatives were under the assumption that the alarm industry was aware from tariffs 111-T and 115-T that the type 3002 local station channel had two terminations and that the 1009 local station channel had only one termination, they were correctly stating that there was to be no increase in NRCs for the 3002 local station installation. It would not be difficult to create a misunderstanding in such fashion.

However, even if the charges had been intentionally misquoted, complainants could not recover the difference between the alleged quoted charge and the actual charge as set forth in tariff 115-T.

Pacific's tariff Schedule Cal. P.U.C. 1-T, in pertinent part, states:

"No officer, employee or agent of the Utility has any authority to waive, alter or amend in any respect these Rates and Rules, or any part thereof, or to make any agreements inconsistent therewith."

The California Supreme Court, in Empire West v Southern California Gas Co. (1974) 12 C 3d 805, 809-10, has stated:

"Scheduled rates must be inflexibly enforced in order to maintain equality for all customers and to prevent collusion which otherwise might be easily and effectively disguised. Therefore, as a general rule, utility customers cannot recover damages which are tantamount to a preferential rate reduction even though the utility may have intentionally misquoted the applicable rate.

"These principles are most commonly applied in cases which involve mistaken rate quotations whereby the customer is quoted a lower rate than set forth in the published tariff. Upon discovery of the error, the utility may initiate an action against the customer to recover the full legal charges for the service, as filed and published in rate schedules. In granting recovery to the utility, the courts usually rely on the fact that the rates have been filed and published and have thereby become part of the contract between the utility and the customer. Under these circumstances the customer is charged with knowledge of the contents of the published rate schedules and, therefore, may not justifiably rely on misrepresentations regarding rates for utility service."

Findings of Fact

1. On July 26, 1973 Pacific filed tariff 111-T by Advice Letter 11107, which sought authorization to offer a newly designed and developed special bridged alarm private line service for use by members of the burglar and fire alarm industry.

2. This Commission by Resolution T-8166, issued on August 14, 1973, approved this advice letter filing to be effective on August 28, 1973.

3. Tariff 111-T describes the service to be provided, using type 3002 voice grade channels, designates the channel termination points for such service, and identifies each channel termination with a USOC designation which is associated with Pacific's pricing schedules.

4. Tariff 111-T describes a local station channel as being a two-point channel between a (subscriber's) premises and the (telephone company) central office, and states the central office is considered a service point.

5. Tariff 111-T states that terminations of trunk channels and station channels in central offices are considered service points. The USOCs associated with the trunk channel terminations are a "27B" in the customer central station and a "TPL" in the telephone central office. The USOCs associated with the station channel terminations are a "TPL" in the telephone central office and a "27B" first termination on the subscriber's premises.

6. Tariff 111-T refers to tariff 115-T for charges and rates associated with the special assembly services and channels described in tariff 111-T.

7. Tariff 115-T, in effect from August 28, 1973 to October 30, 1979, provided for an NRC of \$20 per termination for "27B" terminations and for "TPL" terminations of a trunk channel installation, and \$20 per termination for "27B" terminations and for "TPL" terminations of a local station channel installation.

8. From October 30, 1979 to April 21, 1980, the Commission authorized the "TPL" and "27B" termination NRCs to be increased to \$30 each. From April 22, 1980 on, the Commission authorized the "TPL" and "27B" termination NRCs to be increased to \$45.

9. Complainants are not challenging the trunk channel termination NRCs which Pacific has been charging them since the new service was authorized effective August 20, 1973.

10. Tariffs 111-T and 115-T are the applicable tariffs which describe the service and charges applicable to the local station channel service in issue herein.

11. Tariffs 111-T and 115-T are clear on their face as to their intent and meaning with respect to the special bridged alarm service and associated charges for such service provided to the alarm industry using type 3002 voice grade channels.

12. The special assembly services and channels for miscellaneous experimental purposes offered by Pacific to members of the alarm industry in tariffs 111-T and 115-T are different in concept, in design, in application, in testing, and in the amount of customers that can be served on the service than the older "McCulloh" service provided to the alarm industry under tariff 104-T.

Conclusions of Law

1. Pacific has been correctly applying the proper charges for installation of each local station channel requested by complainants to be added to their alarm system arrangement which uses type 3002 voice grade channels.

2. There is no ambiguity in tariffs 111-T and 115-T with respect to the applicable NRCs for local station channel terminations.

3. The complaints should be denied.

C.10375 et al. ALJ/EA/ks

O R D E R

IT IS ORDERED that Cases 10375, 10376, 10377, 10378, 10379, 10890, and 10892 are denied.

This order becomes effective 30 days from today.

Dated SEP 1 1981, at San Francisco California.

John E. Guyon
President
Richard W. Howell
Thomas J. Van...
Arthur...
Francis C. Green
Commissioners