

Decision 93631 OCT 20 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SONITROL SECURITY, INC.,)
 Complainant,)
 v.)
 THE PACIFIC TELEPHONE AND)
 TELEGRAPH COMPANY, a)
 corporation,)
 Defendant.)

Case 10916
(Filed October 10, 1980)

Linda Hendrix McPharlin and Charles T. C. Compton, Attorneys at Law, for Sonitrol Security, Inc., complainant.
Margaret deB. Brown, Attorney at Law, for The Pacific Telephone and Telegraph Company, defendant.
Willard A. Dodge, Jr., for the Commission staff.

ORDER MODIFYING DECISION 93268

On July 7, 1981, this Commission issued Decision (D.)93268, an interim order based on a motion by complainant, Sonitrol Security, Inc. (Sonitrol). Sonitrol, a private alarm business, now seeks to modify that decision.

Between the issuance of D.93268 and the filing of Sonitrol's petition for modification on September 17, 1981, seven days of hearing were held in this complaint. During that time, Sonitrol completed its direct showing and defendant, The Pacific Telephone and Telegraph Company (Pacific), presented two of its four witnesses testifying in response to Sonitrol's showing. Additional days of hearing will commence on October 19, 1981, in San Francisco.

Ordering Paragraph 1 of D.93268 states:

"1. The Pacific Telephone and Telegraph Company shall (1) take no steps to increase the decibel loss on any currently existing circuits provided to Sonitrol Security, Inc. (Sonitrol) in Sonitrol's alarm business; (2) when Sonitrol dealers order new 3001 circuits, engineer those circuits not to exceed a 16 dB loss, and refrain from taking any steps to add decibel loss to any new circuits which have a decibel loss less than -16 dB, but rather to leave the circuits with the amount of decibel loss that they have when installed, with the attenuator adjusted to zero, and (3) repair Sonitrol circuits in a manner that maintains their dB levels, ± 1 dB, which existed when the circuits were installed and does not increase the dB loss from those levels."

Sonitrol asserts that based on the record completed as of the filing date of its petition and its need for interim relief, subparagraphs (2) and (3) of Ordering Paragraph 1 must be modified. Sonitrol proposes to substitute the following language which would require Pacific to

"(2) install new circuits ordered by Sonitrol dealers at a decibel loss of -10 or better, and

"(3) repair Sonitrol circuits in a manner that maintains a dB loss level at -10 or better."

Sonitrol also requests that two new ordering paragraphs be added "to reflect conduct which Pacific has agreed with Sonitrol it will follow pending the PUC's final decision in this case." According to Sonitrol, those paragraphs should state:

"Pacific shall not install on any existing Sonitrol circuits, nor on any new circuits

supplied to Sonitrol, any equipment which would suppress the transmission of audio or voice on those circuits.

"Pacific shall take no steps to alter current practice with Sonitrol dealers with respect to the allocation and billing of circuits. Specifically, for those Sonitrol dealers who are currently supplied or billed for 1009 circuits, Pacific will continue to supply or bill for such circuits."

Because of an alleged "imminent danger of irreparable harm to Sonitrol and its thousands of customers in California," Sonitrol also asked the Commission to act on its petition by September 22, 1981, prior to any regularly scheduled Commission conference.

On September 21, 1981, Pacific responded to Sonitrol's petition opposing the proposed modifications of D.93268. Sonitrol subsequently filed a reply on September 28, 1981.

Discussion

Granting Sonitrol's petition would not, as alleged by Pacific, "give Sonitrol everything it requests in the complaint" prior to a final decision in this case or Pacific's opportunity to fully rebut Sonitrol's testimony. (Emphasis added.) A modification of D.93268 would be temporary in nature and, based on Sonitrol's petition, would not address every area of relief sought by the complaint.

The petition, like Sonitrol's first request for interim relief, does, however, focus on an issue which is central to this controversy. In D.93268 we defined that issue as "whether Pacific's tariffs permit it to provide Sonitrol with voice-grade (3001) channels which experience a decibel loss of no more than -10 dB at a frequency of 1000 Hertz."

It is apparently Pacific's position, refined through several days of hearing, that the 3001 circuit is designed in accordance with its technical manual to a decibel loss of -16 dB.

Pacific interprets its tariffs as incorporating this technical manual by reference. Sonitrol's witnesses, on the other hand, have testified that not only have they received 3001 circuits in the past with no more than a -10 dB loss, but that the Sonitrol equipment which is uniformly manufactured for nationwide distribution cannot effectively operate with a decibel loss of more than -10. The recent petition and responding papers highlight the contentiousness of both parties with respect to this issue.

We agree with Pacific that no "emergency" has been demonstrated that would require a resolution of this petition prior to a regularly scheduled Commission conference. The facts which have been elicited during hearing and subjected to cross-examination, which do not include many of the statements contained in the affidavit attached to Sonitrol's petition, point to only a few instances in which the decibel loss on a Sonitrol circuit has been greater than -10 dB and has not been reduced by Pacific.

We do recognize, however, the serious damage which can occur if only one Sonitrol circuit becomes inoperable -- an undetected break-in and potential loss at a customer's premises. In D.93268 it was our aim to maintain the existing service levels being provided by Pacific to Sonitrol dealers without prejudging the issues in this case or giving either party an advantage during the pendency of this proceeding. The facts before us at that time dictated our order in D.93268. It was our belief that Ordering Paragraph 1 would permit Sonitrol to serve its existing customers and continue to expand its markets. With respect to this latter goal, we provided, essentially, that new 3001 circuits would be allowed "to fall where they may." Under this order, Pacific, in turn, would not be required to take any overt action which it might consider a violation of its tariffs.

Statements made by Pacific both during hearing and in response to Sonitrol's petition now indicate, however, that only

some 3001 circuits "fall" anywhere. In arguing that the suggested modifications relating to 3001 circuits would be difficult and costly to implement on an interim basis, Pacific states:

"When 3001 circuits go through the formal design process, they are supposed to be designed at a loss level of -16 dB. . . . Because most of Sonitrol's 3001 circuits are relatively short local ('intradistrict') loops that do not usually go through the design process, they generally fall, when installed, at -10 dB or better. Recently Sonitrol has been ordering more and more longer and/or interdistrict circuits that go through the formal design process. . . . For Pacific to change its whole design process now for one customer on an interim basis (with the possibility of further change when the Commission issues its final decision) would be costly and difficult."

Pacific contends that due process requires that it be given the opportunity to complete its case before D.93268 is modified. It seems unlikely, however, that any witness produced by Pacific in the final days of hearing could refute the record, as of September 17, 1981, on two facts:

1. The decibel loss on the telephone circuits connecting a customer's premises and Sonitrol's monitoring station must be no greater than -10 dB for Sonitrol's equipment, as presently manufactured, to operate as advertised.
2. Voice-grade (3001) circuits have been provided to Sonitrol in the past which experience a decibel loss no greater than -10 dB, apparently when used for either intradistrict or interdistrict communications.

Even Pacific's witnesses acknowledged that while new circuits are provided to Sonitrol in other parts of the country

under varying tariff offerings, these tariffs had one thing in common: The decibel loss for that circuit would be no greater than -10 dB.

We believe that it is appropriate at this time to make the modifications to subparagraphs (2) and (3) of Ordering Paragraph 1 of D.93268 as requested by Sonitrol. There does not appear to be a serious enough emergency to require resolution of Sonitrol's petition prior to a regularly scheduled conference. A modification is required, however, to ensure that service to existing and future Sonitrol customers will not be diminished while this matter is being resolved. The language proposed by Sonitrol basically achieves this end. Subparagraph (2), as modified, however, should specify 3001 circuits and the repairs addressed in the modification to subparagraph (3) should apply to all circuits.

We emphasize that this order, like D.93268, is only an interim order designed to preserve the status quo of the parties pending final resolution of this complaint. Unlike D.93268, however, this order which will supersede D.93268 will remain in effect for a limited time period in part to ensure that there will be no delay in submitting this matter. Although this Commission acknowledges the need for interim relief, its primary responsibility and goal is to ensure that the appropriate factual and legal conclusions, based on a complete record, are made as soon as possible.

The additional ordering paragraphs requested by Sonitrol are unnecessary. Sonitrol and Pacific indicate that these paragraphs have been the subject of an agreement between the two parties. No further action by this Commission is required. Any relief granted by this Commission prior to the submission of this complaint should be restricted to matters upon which the parties cannot agree and for which an interim solution is required.

Finally, we do not believe that it is appropriate or necessary to this modification to comment on other arguments or statements made by the parties, including Pacific's plans for a new tariff filing. Such analysis may lead to a premature judgment on issues which have not been fully explored or presented at hearing or in briefs.

Findings of Fact

1. Modification of D.93268 is required to better preserve the status quo during the pendency of this complaint.

2. The language proposed by Sonitrol with respect to subparagraphs (2) and (3) of Ordering Paragraph 1 of D.93268 will basically achieve this end.

3. Because an agreement has been reached between Pacific and Sonitrol relating to the equipment on and billing of 1009 circuits, no ordering paragraphs embodying that agreement are required.

Conclusions of Law

1. Subparagraphs (2) and (3) of Ordering Paragraph 1 of D.93268 should be modified.

2. Because immediate action is required, the order should be made effective today. The order should remain in effect for 60 days.

IT IS ORDERED that:

1. Ordering Paragraph 1 of D.93268 is modified as follows:
"The Pacific Telephone and Telegraph Company shall (1) take no steps to increase the decibel loss on any currently existing circuits provided to Sonitrol Security, Inc. (Sonitrol) in Sonitrol's alarm business; (2) install new 3001 circuits ordered by Sonitrol dealers at a decibel loss of -10 or better; and (3) repair all Sonitrol circuits in a manner that maintains a dB loss level of -10 or better."

2. Ordering Paragraph 1, as modified, shall be in effect for 60 days.

This order is effective today.

Dated OCT 20 1981, at San Francisco, California.

JOHN E. BRYSON

President

RICHARD D. GRAVELLE

LEONARD M. GRIMES, JR.

VICTOR CALVO

PRISCILLA C. CREW

Commissioners

I certify that this decision was approved by the above Commissioners today.

John E. Bryson