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The Battle Over Eavesdropping

By RONALD SULLIVAN

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THERE are more than six million telephones in New Jersey, and on any given day the chances are that someone could be listening in on calls made on any one of them. It could be the Federal Bureau of Investigation or the state police, armed with a court warrant authorizing a telephone tap; however, it is more likely to be the telephone company, or any one of 1,200 other concerns and Government agencies that use monitoring and listening devices as part of their day-to-day work.

It could be a telephone company supervisor, making sure an operator is answer-

ing questions correctly and politely. It could be a supervisor at Eastern Airlines, checking on how reservation clerks give out information on flights. Or, it could be the Internal Revenue Service or the state's Division of Motor Vehicles.

In an order handed down on March 2, the state's Board of Public Utility Commissioners, which regulates telephone service, ordered the New Jersey Bell Telephone Company and the concerns that Bell has equipped with monitoring equipment to stop using such devices until new civil-rights safeguards have been instituted.

New Jersey Bell is now fighting that order bitterly, and the dispute has pitted the company against Joel R. Jacobson, the P.U.C. president and a strong advocate of strengthened laws to

protect civil liberties and the right of privacy.

Both New Jersey Bell and the large companies, such as Eastern, that subscribe to its monitoring equipment contend that the eavesdropping—they prefer to call it service observing—is vital if they are to be assured that their employees are performing efficiently and honestly. Also, they maintain that such a practice enables them to conduct quality-control checks on customer service.

All told, the New Jersey Bell supplies 177 companies with equipment capable of monitoring incoming and outgoing calls. The range of subscribers is said to include Federal and state agencies, such as the I.R.S. and the Division of Motor Vehicles, as well as newspapers, airlines, hospitals, retail stores, canvassers, public utilities,

insurance companies, travel agencies, hotels, an exterminating service and even hair stylists.

As a condition of making the monitoring equipment available, subscribers must sign a letter of understanding that the devices will be limited to supervisory control and be restricted to the training of their personnel. In addition, employees must be warned that the phones they use are subject to company monitoring and that the listening devices cannot be used for any other purpose.

The most important of the new conditions being demanded by the P.U.C. requires every listening system to have a beep signal, which would serve to alert those talking on the telephone that their conversation was being monitored. The beep tone

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The New York Times/Barlon Silverman

Phone calls being monitored in Newark area

for a 90-day extension and the deletion of the orders pertaining to the beep-tone requirement and the prohibition against using monitoring evidence to discipline employees.

Informed sources believe that the P.U.C. will grant the extension, most likely this week.

In New Jersey Bell's brief, Bernard M. Hartnett Jr., the company's counsel, contended that existing use of the beep tone was generally understood to be limited to circumstances under which conversations were recorded by one party, such as the police or a radio station. He asserted that use of a beep signal would only alert employees that their performance was actually being monitored, thus making the effort useless.

Moreover, New Jersey Bell maintained that it "gives extraordinary attention to the protection of the right of privacy" and that such attention received "the highest priority" in all company decisions.

In the event that the company is compelled to comply with the new requirements, Mr. Hartnett argued, the costs would be prohibitive and a "waste" and the expense would fall on everyone in the state who uses a telephone.

Eastern Airlines, one of the companies that uses monitoring systems, said that it regarded them as essential in maintaining its service. Like the telephone company, it believes that the requirement of a beep tone would only cause confusion and lengthen the time of each call on already-overloaded airline reservation numbers.

Robert DeLoach, the airline's director of communications, said that he regarded as a workable compromise the new regulations promulgated in Georgia. There, he noted, any company, such as Eastern, that uses monitoring devices includes in its telephone-book listings a

symbol alerting callers to such a practice.

In addition, any Eastern phone that is capable of being monitored is so tagged.

"We regard this as a reasonable protection of the right of privacy," Mr. De-

Loach said. "We are also able to make sure our agents are on the ball."

However, other states, such as California, have gone the other way and outlawed surreptitious monitoring entirely. ■

would be similar to the signal used by radio stations in their telephone interviews.

In addition, the P.U.C. has ruled that, under no circumstances, can the telephone company or any other concern having a monitoring system use evidence derived from the monitoring to discipline an employee.

Six other conditions, such as placing a notice on all telephones that are capable of being monitored, also have been imposed by the P.U.C., but the telephone company has reacted the strongest to the beep-signal requirement and the prohibition against using monitoring evidence to discipline employees.

In a brief filed with the commission two weeks after the agency's initial order was handed down, New Jersey Bell contended that both conditions would prevent it from guaranteeing quality control to its customers and maintaining a high level of employee performance.

"The new beep-tone requirement will mean the end of legitimate subscriber efforts to improve service quality," the company warned. "This new use of the beep tone will generate subscriber confusion and frustrate the legitimate goals of service observing."

In a statement, Mr. Jacobson, whom Governor Byrne recently named as presiding Commissioner of the P.U.C., said:

"Our goal in imposing strict limitations on the use of telephone monitoring and recording equipment is to preserve and protect an individual's right to privacy in the use of their telephone.

"After careful examination of the record . . . on the prior use of monitoring and recording equipment, we [the commission] were extremely cognizant of the inherent danger of abuse of the right to privacy. To safeguard against this peril, we issued the monitoring order, which in every sense is in the public interest.

"It is valid to assume that, as long as the human element is involved in the operation of the equipment in question, and the capability exists to violate the rights of others— notwithstanding any instructions to the contrary—the likelihood of such violations taking place is too probable to ignore.

"This board notes that, while these businesses have a legitimate interest in assuring the training of personnel and the quality of customer contacts, there is still the overriding concern about the potential for abuse which exists in this equipment.

"It is our conclusion that a strong order of a protective nature must be issued after it has been demonstrated that reliance upon the tenuous safeguards which had existed would only engender further doubts, rather than assurances, concerning individuals' right to privacy."

The P.U.C.'s interest in the highly controversial issue of telephone-monitoring began in February 1976, when it ordered an investigation of such practices in the state. According to P.U.C. officials, the extent of the monitoring was staggering.

For example the investigation determined that the American Telephone & Telegraph Company had combined with New Jersey Bell to monitor approximately 2.6 million calls from 1966 through 1970. This was done to detect toll fraud through the use of so-called "black" and "blue" boxes, which mimic the computer signals on long-distance calls and allow illegal calls to go through toll free.

In addition to its official service monitoring, New Jersey Bell conducts supervisory or local monitoring of 11 percent of the telephones within the company, ostensibly for quality control purposes. Personal calls were said to be excluded entirely from monitoring.

Initially, the P.U.C. order was to take effect immediately. However, the telephone company filed a brief asking