

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Decision No. 9262

BAY CITIES SALES & ADVERTISING
COMPANY, JOHN E. SUTCLIFFE,

Plaintiff,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,

Defendant.

CASE NO. 1412.

BY THE COMMISSION:

O P I N I O N

This case arose out of a dispute between the plaintiff, who is conducting an advertising business in the City of San Francisco, and the defendant telephone company, involving an alleged arbitrary discontinuance of telephone service and refusal to accept two subsequent applications for the installation of telephones on plaintiff's premises.

The same issues were presented in a former proceeding between the same parties, Case 1228, in which a hearing was had and the matter submitted, but which was dismissed without prejudice because of the absence of plaintiff, Sutcliffe, who entered the service during the war. A further hearing was had in the present proceeding before Examiner Gordon, and it was stipulated that the record of the prior proceeding be deemed a part of the record herein. Additional testimony was received, the matter was submitted and is now ready for decision.

It appears from the evidence herein that telephone service maintained at plaintiff's place of business in San Francisco was discontinued on April 22,

1918, because of nonpayment of bills for previous service. Although there was some conflict of testimony as to whether or not the amount due at that time was in dispute, this dispute referred only to certain items of the bill for service rendered during the month immediately preceding the discontinuance. Plaintiff had not paid for service rendered during several months past, concerning which there was no dispute. It is apparent, therefore, that under the provisions of Rule 6 of the Rules and Regulations of the defendant company this discontinuance of service was justified.

Prior to the discontinuance, plaintiff's service consisted of an individual line measured service at the primary rate of \$19.57 per month, entitling the subscriber to 1100 calls, and to additional calls at the rate of 1 $\frac{1}{2}$ ¢ per message. In addition to this there was auxiliary line service for which was charged the primary rate of \$5.00 per month for each auxiliary line, entitling the subscriber to 80 calls and to additional calls at the rate of 1 $\frac{1}{2}$ ¢ each.

The purpose of the auxiliary line was to enable the subscriber to greatly increase the capacity of his telephone service which was an important feature in plaintiff's business of conducting advertising campaigns by telephone. There were wide fluctuations in the number of auxiliary lines used by plaintiff, varying from 5 to as high as 69, dependent upon the prosperity of the advertising business.

The same day that the above described service was discontinued plaintiff made application for an individual business measured service to be installed in an adjoining room to that in which the discontinued service had been

maintained. Two days later plaintiff made application for a residence service to be installed in room 440 of the Terminal Hotel in San Francisco which, at that time, was occupied by plaintiff, Sutcliffe. In both instances there was tendered the required advance payment of \$3.50 as a service connection charge and a cash guarantee deposit of \$5.00 to insure the payment of monthly bills, as required for this particular kind of service by the rules and regulations of the company adopted pursuant to the Commission's order in Decision No. 2879, rendered on November 5, 1915. The company refused to accept the applications or to install the service, and it is of this refusal that complaint is made.

The telephone company, in its answer, assigned as a reason for refusal that plaintiff had failed to pay for past service and that the new applications were made in an attempt to re-establish service which had been discontinued because of such delinquency. This position is not wholly tenable. The fact of nonpayment for a prior service does not justify the refusal of future service for which installation charges are tendered and proper guarantees are offered to insure the payment of future bills. It is clear, therefore, that the company should accept plaintiff's application for new service, but in so doing is entitled to require a guarantee sufficient to insure the payment of future bills to be incurred under such service. The question therefore resolves itself into what is the proper guarantee for the service in question.

The defendant company contended and submitted evidence showing that plaintiff's prior use of the telephone service for advertising campaigns--involving

as it did wide fluctuations in the number of auxiliary lines installed and the number of local messages handled per day--placed an unusual burden upon the facilities of the company and was not the character of service contemplated by the company's rules and regulations. It also appears that the service for which application was refused by defendant immediately after the discontinuance of service, was intended to be used by plaintiff for the carrying on of the same kind of business. Under such circumstances it is proper that the guarantee which could be required by defendant to insure the payment of future bills should be more than the amount of \$5.00 ordinarily required for the measured business service or residence service for which application was nominally made. The provisions of Rule 3 of defendant's rules and regulations on file with the Commission are applicable. Such rule provides in effect that subscribers who have initially established their credit and later fail to pay their bills shall be required to make a cash deposit to guarantee the payment of charges,--the amount of such guarantee being limited to twice the average monthly bill of the subscriber, based upon two months preceding the month in which impairment occurs. The evidence shows that the plaintiff had been a subscriber continuously since January 1st, 1915. The average of monthly bills over a period of forty months was approximately \$140.00 per month. For the two months immediately preceding the discontinuance of service, the average monthly bill was \$89.81. Therefore, under Rule 3 above referred to, the amount of cash guarantee which defendant should be permitted

to require for the re-establishment of service by plaintiff is \$179.62. Such guarantee of course applies only to the particular character of service here under discussion, which the evidence shows to be unique and not comparable with the ordinary service contemplated by the defendant's filed schedules and rules and regulations. Any bona fide application by plaintiff for the ordinary service of any of the classes designated in defendant's schedules, should be accorded the same consideration as that which defendant is required to give to any member of the public.

O R D E R

Complaint having been made herein for alleged failure of the defendant to receive application for telephone service and to render such service; and hearing having been had thereon and evidence received and the matter submitted, and being now ready for decision;

IT IS HEREBY ORDERED:

1. The defendant herein, The Pacific Telephone and Telegraph Company, is hereby directed to receive the application or applications of plaintiff for telephone service and to render service in accordance therewith, pursuant to the provisions of law and the orders of this Commission and the schedules and rules and regulations of said defendant on file with this Commission.

2. The said defendant, in accepting any application of plaintiff for telephone service of the character heretofore furnished by defendant to plaintiff, namely a service for use in conducting advertising campaigns by telephone, shall be entitled to require from plaintiff, as a guarantee for the payment of future bills, a cash deposit ^{of} \$179.00, to be held

and disposed of by defendant in accordance with its rules and regulations relating to such deposits.

3. In event that application shall be made by plaintiff and accepted by defendant and service installed thereunder, in accordance with defendant's schedules and rules and regulations and for a purpose other than that of conducting advertising campaigns by telephone, and such service shall be thereafter used by plaintiff for said purpose of conducting advertising campaigns by telephone, said defendant shall be entitled to require of the plaintiff, in addition to any guarantee furnished at the time of installation of such service, such additional amount as may be necessary to aggregate the sum of \$179.00 as total cash guarantee furnished by plaintiff to defendant to insure the payment of all charges for service.

Dated at San Francisco, California, this ^{23rd} ~~20th~~ day of July, 1921.

H. B. Brundage
H. D. Loveland
W. W. Mattie

Commissioners.