

ORIGINALDecision No. 61763

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GORDON CROCKETT,

Plaintiff,

vs.

Case No. 6973

CALIFORNIA WATER & TELEPHONE CO.,

Defendant.

Gordon Crockett, in propria persona.
Bacigalupi, Elkus & Salinger, by Claude N.
Rosenberg and Dennis T. Rice, for defendant.
Eugene S. Jones, for Commission staff.

O P I N I O N

By the complaint herein filed on September 12, 1960,
 Gordon Crockett complains that defendant over a period of time has
 overcharged him for telephone service as follows:

	<u>Total bill amounts</u>	<u>Overcharges</u>
April 1959	\$12.60	\$ 4.24
May 1959	12.60	4.24
July 1959	27.39	8.80
August 1959	19.31	10.95
September 1959	16.73	7.43
October 1959	22.66	12.65
December 1959	23.44	13.37
January 1960	25.57	8.80
February 1960	10.35	2.04
May 1960	14.28	1.21
June 1960	14.63	1.21
July 1960	14.86	.44

In addition, the complainant requests that defendant be
 ordered to refund said overcharges; alleges that all bills payable
 before the current month (August 1960) have been paid; and alleges

that by three letters and repeated phone calls, defendant has threatened to disconnect the telephone service. Complainant requests that the defendant be restrained from any adverse action until after a hearing in the matter.

On October 11, 1960, the defendant filed an answer wherein, inter alia, it admits the writing of the letters and the making of the phone calls relative to the asserted overcharges and admits it has threatened to discontinue the telephone service for non-payment of the telephone bill unless plaintiff complies with defendant's filed Rule and Regulation No. 12 (which refers to the deposit with the Commission of the amount of the bill). In addition it alleges that plaintiff is a subscriber to defendant's Monrovia exchange receiving foreign exchange service from the Arcadia exchange of The Pacific Telephone and Telegraph Company; that all message unit service incident thereto has been and still is operated at the Arcadia exchange of The Pacific Telephone and Telegraph Company; that for each month mentioned in the complaint the alleged overcharge is equivalent to the total billing for that month of message unit service plus the applicable Federal excise tax thereon; that the amount so billed by the defendant for such service in each of said months accords precisely with the monthly advice received by defendant from The Pacific Telephone and Telegraph Company as to the aggregate charges recorded in the Arcadia exchange for message unit calls made over plaintiff's telephone during the month; and that to the best of defendant's knowledge such charges were correct in each instance. Defendant pleads two affirmative defenses, namely, (1) that plaintiff has failed to exhaust the administrative remedy

available to him under defendant's filed Rule and Regulation No. 12; and (2) that commencing on or about December 15, 1960, and since that date, plaintiff has been able to obtain itemized billing of his message unit calls without charge by subscribing for local service from defendant in the Monrovia exchange.

A public hearing on the complaint was held in Los Angeles by Examiner Kent C. Rogers on February 14, 1961.

In support of his complaint, the plaintiff orally affirmed the allegations thereof. He also testified that there is no one in his home during his absence to use the telephone; that he does not call outside the toll-free area over this telephone; that the service is for an exchange service furnished by The Pacific Telephone and Telegraph Company, but billed by the defendant; that in each month listed in the complaint, he was overbilled for message unit charges; that between April 1959 and April 1960, he did make some message unit calls, but the message unit call charges billed to him were in excess of the calls he made; and that after April 1960 he made no message unit calls. He also testified that he kept no records of his message unit calls; that starting in May 1960, no message unit calls were made; and that in June 1959 he made message unit calls in the amount, including tax, of \$9.85 and in November 1959, he made message unit calls in the amount of \$8.31, including tax.

The evidence on behalf of the defendant, furnished by an employee thereof, shows that the plaintiff is served through foreign exchange service furnished by The Pacific Telephone and Telegraph Company in defendant's service area and billed by defendant; that when plaintiff formerly dialed the central office he was connected

to a Pacific Telephone and Telegraph Company operator; that all message unit charges are accumulated by The Pacific Telephone and Telegraph Company and furnished to defendant, which in turn bills the complainant; and that the complaint involves exclusively message unit charges for service furnished by The Pacific Telephone and Telegraph Company.

Evidence for the defendant furnished by employees of The Pacific Telephone and Telegraph Company shows that prior to January 29, 1960, message unit calls were handled through an operator who made a ticket showing the calling number, the number called, and the length of the conversation; that these tickets were kept for 90 days and thereafter destroyed; that after January 29, 1960, multi-message unit records of complainant's telephone were kept on an accounting tape which shows only the calling number and the number of message units; that these cards were forwarded monthly to defendant for billing purposes; that this type of service commenced for the complainant on January 29, 1960; that prior to said date the message unit calls were handled manually and an individual ticket made by an operator for each call; that the records of The Pacific Telephone and Telegraph Company are very accurate and that Exhibit No. 2 herein shows the itemized billing for all calls made by complainant from his home phone for the period of April 21, 1959, to July 21, 1960, inclusive. The Division Engineer of The Pacific Telephone and Telegraph Company in charge of the portion of the service area which included Arcadia and The Pacific Telephone and Telegraph Company's Hillcrest central office testified that there is a very slight possibility that the customer can be billed for any

call not made from his telephone; that September 1960 was the first time he was advised that the complainant was complaining concerning the bills; that on September 14, 1960, The Pacific Telephone and Telegraph Company tested the complainant's line and found that it was working properly; and that there is a very slight possibility of a double connection which could result possibly in an unauthorized charge.

It is to be noted that this complaint by the complainant is principally for the express purpose of recovering alleged overcharges. These overcharges were assertedly based on message unit calls which the complainant claims were billed to him for calls outside his extended service area. His claim is based upon his recollection that he did not make any extended service calls during the months specified. He kept no record of such calls. He first testified to the truth of the assertion that he made no message unit calls, but during the course of the hearing admitted that he made some such calls but claimed he did not make as many as he was billed for. The record presented by the defendant shows that complainant has consistently incurred message unit charges. The charges shown on Exhibit No. 2 include substantial amounts for the month terminating June 21, 1959, and for the month terminating November 21, 1959. The complainant admits he made the calls billed for these two months. The defendant's testimony was that it is virtually impossible to bill the message unit charges incorrectly and that according to their records the charges in all of the months listed on Exhibit No. 2 were correct. In addition to the alleged correctness of the charges, there is the fact that at the present

time the records of the calls have been destroyed so that there is no way in which the correctness of the charges can be ascertained. It is our opinion and finding that the evidence fails to show that the complainant is entitled to any relief, and that an order should be issued dismissing the complaint.

ORDER

Complaint, as above entitled, having been filed, a public hearing having been held thereon, the Commission having found that the evidence fails to show that the complainant is entitled to any relief and based upon said finding; therefore,

IT IS ORDERED that the complaint herein be and the same hereby is dismissed.

The effective date of this order shall be twenty days after service of a copy on each of the parties.

Dated at San Francisco, California, this 4th day of APRIL, 1961.

Carroll Page
 President

[Signature]

[Signature]

Fredrick B. Holbrook
 Commissioners