

Decision No. 66299

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Title as amended by this decision

MRS. M. L. M. JONES,  
 Complainant,  
 vs.  
 THE PACIFIC TELEPHONE AND  
 TELEGRAPH COMPANY,  
 Defendant.

Case No. 7738

Title of complaint as filed

UTILITY USER'S LEAGUE OF CALIFORNIA,  
 a non-profit citizen's association,  
 by Edward L. Blincoe, it's President,  
 appearing for and in behalf of  
 Mrs. M.L.M.JONES, John Doe 1 through  
 50, JANE DOE 1 through 50, RICHARD  
 ROE CORPORATION, JAMES AND SMITH  
 a co-partnership,  
 Complainants  
 vs.  
 THE PACIFIC TELEPHONE AND TELEGRAPH  
 COMPANY, a corporation,  
 Defendants

PRELIMINARY ORDER

The complaint herein bears the heading "COMPLAINT FOR UNLAWFUL, WILFUL, IRRESPONSIBLE AND MALICIOUS INTERRUPTION OF TELEPHONE SERVICE, and other matters." Although the title lists a number of "complainants", it is clear from the pleading that the true complainant is Mrs. M. L. M. Jones. The names of all others listed as "complainants" will be stricken from the pleading, and the title amended as shown above.

The complaint sets forth five separate causes of action. The first cause alleges that in April of 1963 defendant caused

service on complainant's telephone to be interrupted; since then she has been unable to receive or originate calls; and such interruption was wilful and irresponsible, calculated to harass complainant and force payment of disputed charges not proved to have been owed.

The second cause alleges that the interruption of service was contrary to tariff provisions that service on a disputed bill should not be interrupted within fifteen days from the date bill is rendered.

The third cause alleges that the claimed charges to complainant's telephone arose solely through defendant's misconduct and irresponsible action amounting to malice in maintaining on the rear of complainant's building, at shoulder height, a telephone junction box, with subordinate boxes, used for many telephone connections, which was unprotected in any way, and was available and exposed to tampering and improper connections. It is alleged that such "deliberate, malicious and irresponsible conduct" of defendant has damaged complainant, caused her mental suffering, loss of time and money, and invaded her rights of proper and peaceful use of utility service.

One prayer of the complaint is that if it be within the Commission's power and jurisdiction, "to award complainant damages \* \* \* in the sum of \$1,000.00 as actual damages and the sum of \$25,000 as exemplary damages or if not within the jurisdiction of the Commission to make such award to declare that the action of complainant "[!]" was wilful, malicious and irresponsible as a finding of this expert tribunal as a foundation for suit in Civil Court."

The Commission is without jurisdiction to award damages for the reasons set forth in the complaint, or to make the

requested finding as a basis for court action. The third cause of action, as well as the request for damages, and the request for establishment of a tariff declaring defendant liable for damages for interrupting service where a bill is disputed, pending a finding and determination by the Commission, will be stricken from the complaint.

The fourth cause of action alleges that defendant misled complainant and used duress to get her "to sign certain statements and instruments" and to pay \$50.00 on account, representing it would investigate calls and give her credit for those she was not responsible for, and under the inducement it would immediately connect her service. It is alleged defendant accepted complainant's money and instruments, but has not fairly or impartially investigated the calls, nor given the credit to which complainant is entitled, nor reconnected the service, but instead has filed claim in the Small Claims Court, Los Angeles Judicial District, No. 820768, for the sum of \$200.00 for telephone service and toll.

As such allegations in part include issues in a pending court action, and in part relate to matters embraced within the first two causes of action, the fourth cause will be stricken from the complaint.

The fifth cause of action alleges that complainant consulted an attorney, and was informed that fees for such attorney's service could well exceed the amount involved, there could be no guaranty of recovery or reconnection, and she might be better off to pay the disputed charges. It is alleged that as a ratepayer, complainant has been required by the Commission to pay rates which include as operating expenses all of the legal fees and costs of the defendant in cases of this kind. Complainant alleges that such an unfair situation deprives complainant

of that due process and equal protection of the law which is contemplated as a guarantee and protection to all individual citizens.

The decision in Blincoe v Pacific Telephone, 60 Cal. P.U.C. 432, dismissed, for failure to state a cause of action, a complaint entitled "Complaint on allowance of operating expenses creating unfair and unreasonable burden on individual ratepayer." That complaint referred to a municipal court action for an amount claimed to be due for telephone service, and sought an order to the effect that defendant shall not be allowed as an operating expense any cost arising out of any complaint or grievance of a ratepayer or any improper or unwarranted attempt of defendant to collect a bill.

Issues concerning propriety and reasonableness of operating expenses, by their very nature, require consideration in the context of a rate proceeding, and may not be resolved in the present proceeding. The fifth cause of action will be stricken from the complaint.

IT IS ORDERED as follows:

1. All names listed as complainants, other than Mrs. M. L. M. Jones, are stricken from the complaint, and the title thereof amended as hereinbefore indicated.
2. The third cause of action is stricken from the complaint.
3. The fourth cause of action is stricken from the complaint.
4. The fifth cause of action is stricken from the complaint.
5. The requests for relief, other than the first three numbered requests, are stricken from the complaint.
6. The Secretary of the Commission is directed to cause a copy of this order, together with a copy of the complaint herein, to be served upon defendant. Defendant is directed to answer the first two causes of action set forth in the complaint within ten days after such service.

7. The Secretary of the Commission is directed to cause a copy of this order to be mailed to complainant Mrs. M. L. M. Jones, and to cause a copy to be mailed to Edward L. Blincoe.

Dated at San Francisco, California, this 12<sup>th</sup> day of NOVEMBER, 1963.

William La Benda  
President

Robert W. Lee

George T. Grover

Frederick B. Holdcraft  
Commissioners