

On March 24, 1964, by Decision No. 66988, in this case, the Commission determined that it is without jurisdiction to determine the existence of liability or to award damages for alleged loss of business resulting from the acts or omissions of public utilities. It directed the defendant telephone company to answer the complaint, but only insofar as it concerns the complainant's alleged failure to receive the telephone service he subscribed and paid for. ✓

On April 3, 1964, the defendant telephone company answered, alleging that its full name is The Pacific Telephone and Telegraph Company. In addition, the defendant alleges, among other things, that complainant contracted for telephone service in May, 1962, for W. Glynn Co. Jewelers, Inc., for a two-line, two-key telephone service, numbers 722-1733 and 722-1734; that on June 7, 1962, complainant changed his listing to Lamar Retail & Manufacturing Jewelers; that on June 28, 1962, the complainant added the listing Lamar Messenger & Delivery Service for the number 722-1734; that on April 19, 1963, the telephone number 722-1734 was disconnected at the request of complainant; and that on August 22, 1963, the listing for Lamar Messenger & Delivery Service was discontinued.

Defendant further alleges that its tariff, Schedule Cal. P.U.C. No. 36-T, 1st Revised Sheet 56, specifically defines the scope of defendant's liability in the event of service interruptions and that said tariff provides that the credit allowances for interruption of service shall be limited to out-of-service periods of 24 consecutive hours or more, in which case the subscriber shall be entitled to a pro rata credit to monthly fixed exchange charges. ✓
The defendant prays that the complaint be dismissed.

A public hearing on the complaint was held before Examiner Rogers in Oceanside on July 14, 1964. Evidence was presented and the matter was argued and submitted.

The complainant, who admittedly kept no records of his complaints to defendant concerning his service inasmuch as he was depending, he said, on the defendant's records, in general testified that during the period of service, as set forth in the defendant's answer referred to above, his place of business was open daily from 9:00 a.m. to 10:00 p.m.; that many attempted incoming calls failed to reach him and that as a result thereof, he was forced to discontinue the messenger service business. This testimony was verified by one of complainant's employees. Both of these parties testified that many complaints were made to the defendant that complainant was not receiving his incoming telephone calls; that checks would be made by the telephone company; that on occasions some changes were made in the telephone facilities; that complainant still failed to receive incoming telephone calls; that on three occasions complainant requested the installation of entirely new equipment; that complainant finally cancelled one number; and that the faulty service continued intermittently during the whole period of the complaint.

In rebuttal, the defendant showed that records were kept of all complaints by all subscribers; that certain repairs were made to the service facilities of the complainant; that all his complaints were investigated; and that, generally, records were made of complaints. The defendant attempted to show that there were few service complaints by the complainant. The defendant admitted that, inadvertently, records of approximately 100 complaints during the

complaint period were lost or destroyed; and that such records included some complaints by the complainant. The defendant stated that on several occasions, checks were made of the complainant's telephone service and that the in-plant facilities would show whether or not the telephone was ringing at complainant's place of business. The defendant admitted that the central office equipment may reflect that ringing is taking place at a subscriber's place of business whereas the ringing is not, in fact, taking place.

The records of the defendant show that some parties who desired to use complainant's messenger service claimed to have attempted to contact the complainant by telephone, but were unable to secure any contact thereby. These parties discontinued using complainant's messenger service due to inability to contact complainant.

It was stipulated that during the period from August, 1962, through March, 1963, inclusive, defendant's charges to complainant for the two-line, two-key service were \$23.10 per month and for the months of April and May, 1963, the one-line, plus one extension, service charge was \$9.25 per month in each instance, plus the federal tax of 10 per cent.

The defendant urges that the burden of proof is on the complainant to show that he is entitled to reparation. In addition, it urges that under the applicable tariff, Schedule Cal. P.U.C. No. 36-T, 1st Revised Sheet 56, loss of service is considered for credit on the fixed charges only for periods of one day of 24 consecutive hours or more.

Upon the record herein, the Commission finds that:

1. Defendant is, and was at all times referred to in the complaint herein, a public utility telephone corporation subject to the jurisdiction of this Commission and rendering service as such in and around Oceanside, California, among other places.

2. At all times mentioned in the complaint herein, to wit, August, 1962, through May, 1963, inclusive, W. M. Glynn was a subscriber to defendant's telephone service at his place of business in Oceanside, California, and paid all charges for such service billed to him by the defendant; for the months of August, 1962, through March, 1963, inclusive, the equipment charges were \$23.10 per month for a total of \$184.80; and for the months of April and May, 1963, the equipment charges were \$9.25 per month for a total of \$18.50 for said two months, and that the total of said charges was \$203.30, plus the 10 percent federal tax.

3. Throughout the period August, 1962, through May, 1963, the telephone service furnished to complainant by defendant was faulty and defective in that many incoming calls were not transmitted to the complainant at his place of business in Oceanside; during said period calls originating at complainant's place of business were transmitted adequately.

4. This failure of defendant's telephone facilities to transmit incoming calls to complainant at his place of business in Oceanside was sporadic and intermittent; on many occasions during the named period, complainant complained to the defendant

that he was not receiving his calls; on several occasions he requested a change of equipment to replace the existing equipment; defendant made certain changes and corrected some defects, but failed to correct the facilities to the extent that complainant could receive all incoming telephone calls; and said failure to correct the service furnished by defendant to complainant resulted in a loss of business and customers to complainant.

5. The durations of the periods when the telephone services furnished by defendant to complainant were not transmitting incoming telephone calls cannot be determined as there are no records kept by the defendant which would show such nontransmitted calls and complainant has no knowledge of such nontransmitted calls other than complaints from various customers and ex-customers.

6. Complainant is entitled to reimbursement for faulty and defective telephone service during the period specified; one-half of the total charges, including taxes, is a reasonable sum to be paid to complainant by defendant as reimbursement.

Upon the foregoing findings, the Commission concludes that the complainant should be awarded reparations in the total amount of \$111.81.

O R D E R

IT IS ORDERED that:

The Pacific Telephone and Telegraph Company shall, within ten days after the effective date hereof, pay to the complainant, W. M. Glynn, as reparations the sum of \$111.81.

The Secretary of the Commission is directed to cause personal service of this order to be made upon defendant. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 25th day of August, 1964.

Frederick B. Hallock
President

John E. ...

George H. ...

William L. ...
Commissioners