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ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RAUL RESENDEZ,

Complainant,

vs.

Case No. 8695

GENERAL TELEPHONE CO.,
Lancaster, California,

Defendant.

ORDER OF DISMISSAL

The above complaint, dated and verified at an airbase in Germany, alleges as follows:

"2. Said defendant company is requesting payment of \$87.56 on my account, said amount having been already paid.

3. On or about 3 August 1966, my wife, Donna Resendez, executed a draft payable to the said defendant. This draft was returned to said defendant by my bank, the Security First National Bank of Lancaster, California, as there were insufficient funds in my account. Said defendant asserts this check was never returned to it. However see Exhibit "A".

4. On or about 5 August 1966, my wife was notified by telephone by said defendant that the draft of \$87.56 had been returned from the bank and said defendant requested her to return said check.

5. On or about 8 August 1966 my wife went to the Lancaster office of said defendant. Cash in the amount of \$87.56 was given to defendant's agent and a receipt and the check were received by my wife.

6. Said check and receipt were lost, along with other personal items, on a subsequent move to Germany, and are no longer in my possession." 1/

1/ Exhibit A to the complaint is a letter from a bank stating that "the check you wrote for \$87.56 on August 5, 1966 would have been returned to the payee."

Complainant requests an order "stating that his account with said defendant be corrected to reflect payment in the amount of \$87.56 as having been received and credited by defendant."

Under the Commission's procedural rules, when a complaint is filed a copy is mailed to defendant by way of information, allowing 10 days in which to point out wherein the complaint may fail to state a cause of action within the Commission's jurisdiction. Defendant has submitted the following statement of asserted defects:

"The complainant alleges, in essence, that he has already paid a bill submitted by this company for telephone services rendered. The facts so alleged should properly be raised as a defense to a possible action by General to recover the monies it claims are due. Since such an action by this company must be brought in a civil court of law and not in a Commission proceeding (Manfred M. Warren and C. Jay Hollander v. Pacific Tel. and Tel. Co. (1956, Dec. No. 52850), 54 P.U.C. 704), it is submitted that the Commission is not the proper forum to adjudicate the issues raised in the complaint and that the complaint should be dismissed for that reason."

In Williams v. Pacific Telephone (1965), Decision No. 69606, Case No. 8036, the Commission found that a subscriber had made a payment which had not been credited to the subscriber's account, and had made a second payment in the same amount under threat of discontinuance of service. Reparation was awarded in the amount of the second payment.

Here, however, complainant is not presently a subscriber, and the sole relief sought is that the Commission determine whether or not a bill for past service furnished by defendant has or has not been paid. Determination of this single issue, divorced from any regulatory question such as service discontinuance for nonpayment, appears to be a matter for court determination. In any event, such issue could not be decided

without a public hearing, and complainant's essential witnesses are not presently in the United States. For these reasons, Case No. 8695 is dismissed without prejudice.

Dated at San Francisco, California, this 7th day of NOVEMBER, 1967.

D. E. [Signature]
President
William L. Bennett
Augustor
William [Signature]
Fred P. [Signature]
Commissioners