

Decision No. 74702**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THEODORE E. P. SALLUME,

Complainant,

vs.

Case No. 8819

THE PACIFIC TELEPHONE AND TELEGRAPH CO.,

Defendant.

ORDER OF DISMISSAL

The complaint herein, after naming defendant, reads as follows:

"2. That defendant does not offer just and reasonable service, and has refused to do so.
(Section 451)

WHEREFORE, complainant request an order:

1. That defendant offer immediately for sale at a reasonable rate (suggested interum rate 100% markup of cost) all supplemental equipment offered in Tariff 32-T.

2. That defendant offer over the counter sales and maintance of this equipment."

Pursuant to procedural Rule 12 a copy of the complaint was sent to defendant by way of information, and defendant submitted a statement of asserted defects, taking the position that the complaint fails to state a cause of action, does not allege any breach of duty, and raises issues determined in Block v. Pacific Telephone, 66 Cal. P.U.C. 601, as well as issues raised by complainant in Case No. 8774, under submission when the present complaint was filed.

A copy of the statement of asserted defects was sent to complainant, who was requested to advise whether he wished to file an amended complaint, request dismissal without prejudice, or rely on the present pleading. Complainant advised he relies on the present pleading.

The complaint seeks an order requiring defendant to sell, at a reasonable rate, all supplemental equipment listed in tariff 32-T, and offer over the counter sales and maintenance of such equipment. Defendant's Schedule Cal. P.U.C. No. 32-T relates to supplemental equipment in exchange telephone service. The index to the Schedule (23rd Revised Sheet 2) lists 30 types of supplemental equipment.^{1/}

Under Pub. Ut. Code sec. 1702 a complaint may be filed "setting forth any act or thing done or omitted to be done by any public utility * * * in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission." However, no complaint shall be entertained as to the reasonableness of rates or charges of a telephone utility, unless it is signed by specified public officers "or by not less than 25 actual or prospective consumers or purchasers of such * * * telephone service."

The complaint alleges no violation other than the allegation that defendant does not offer just and reasonable service. But it is obvious from the immediately following prayer that this

^{1/}	
Alarm Coupler Equipment	Jack and Plug Installations
Alarm Reporting Telephone Arrangement	Loudspeaker-microphone Equipment
Alternate Answer Service	Loudspeaker Paging Systems
Automatic Answering and Recording Equipment	Loudspeaker Sets
Automatic Dialing Equipment	Manual Conference Equipment
Availability Control Arrangement	Miscellaneous
Call Diverter	Paging System Connecting Equipment
Call Volume Indicators	Party Line Service on Dial Private Branch Exchanges
Code Calling Equipment	Recorder Connector Equipment
Colored Telephone Sets	Recorder Coupler
Cords	Service Observing Equipment
Emergency Reporting Telephone Arrangements	Signal Circuits
Farm Interphone System	Special Type Telephone Sets
High Quality Speech Input Equipment	Station Automatic Control Features
Home Interphone System	Station Auxiliary Signal Equipment

allegation is based upon the fact that defendant does not sell its supplemental equipment over the counter. No breach of duty or violation of statute or order is alleged.

In Block v. Pacific Telephone, 66 Cal. P.U.C. 601, an order was sought modifying Pacific's tariffs to acknowledge the right of private citizens to employ personally owned Model 500 telephones for extension purposes, and relieving subscribers from all tariffs for the use of such personally owned telephones. As stated at page 603:

"We have no quarrel with complainants in their advocacy of the broad principles of private ownership and freedom of choice. We do not agree, however, that in the area of public utility operations individual pieces of a system should belong to individual customers unless there is a showing (which is absent here) that the utility has failed or refused to meet a reasonable demand with equipment which it owns or is able to acquire."

For the reasons indicated, Case No. 8819 is dismissed without prejudice.

Dated at San Francisco, California, this 17th day of SEPTEMBER, 1968.

William Symons, Jr.
President

Arthur E. Mitchell
Augusta
De P. Monroney
Commissioners

*I would set this
down for hearing.
Hallowell Bennett*