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ORIGINAL

Decision No. 77081

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EDWARD HSU,

Complainant,

vs.

PACIFIC TELEPHONE COMPANY,
a corporation,

Defendant.

Case No. 8996
(Filed November 13, 1969)

Edward Hsu, for himself, complainant.

Richard Siegfried, for The Pacific Telephone
and Telegraph Company, defendant.

O P I N I O N

On November 13, 1969, complainant Edward Hsu filed the complaint herein against defendant The Pacific Telephone and Telegraph Company alleging that:

1. Since February 1960 he has subscribed to one-party message rate business telephone service from defendant.

2. His business telephone service was not a one-party line because on numerous occasions when he picked up the telephone to dial a call, he heard loud and clear conversations on his line so that he often was unable to make a phone call forthwith, and despite complaints made to the defendant and some repairs made by its service agents, this situation has persisted for years.

3. As complainant did not get the private line he paid for, he was overcharged by defendant for his telephone service.

4. In addition, frequently there was no dial tone and complainant had to wait for a period of time or dial the same number repeatedly in order to make a phone call, and often during the middle of a telephone conversation noise and interruption occurred.

5. Recently complainant has attempted to effect a settlement of complainant's claims against defendant, but defendant refused to settle such claims and has threatened to discontinue defendant's telephone service.

Complainant requests an order (1) requiring defendant to pay complainant as compensation and reimbursement the sum of \$500 less the \$50 which is due to defendant by complainant on the current bill, and (2) restraining defendant from cutting off complainant's business telephone service pending the hearing and decision on this complaint.

On November 18, 1969, the Commission by the order issued in Decision No. 76457 herein, restrained defendant from terminating the business service subscribed to by complainant herein, and designated 673-2277, provided that complainant not be delinquent on charges for service accruing subsequent to November 13, 1969, and pending further order of the Commission.

On December 5, 1969, defendant filed its answer to the complaint as follows:

1. An individual line message rate business service, 673-2277, was established for complainant in February of 1961, and complainant has paid all charges for such service except the sum of \$50.32

which represents the total due on the bills dated April 11, 1969 through October 11, 1969.

2. Defendant admits that complainant's business service, 673-2277, has been an individual line message rate business service since the date it was established, but denies that complainant has ever been overcharged for such service.

3. Pacific's records indicate only two reports of trouble from complainant on business service 673-2277 during the two years immediately preceding the date of filing of the complaint. The remaining allegations of complainant regarding service complaints are denied by defendant.

4. Complainant has contacted defendant regarding settlement of his claim, and defendant refused to settle said claim because it had no legal basis for doing so.

5. Defendant notified complainant of its intention to disconnect business service 673-2277 for nonpayment, but it has not disconnected complainant's service in compliance with the restraining order issued by the Commission on November 18, 1969.

Defendant in its first separate and affirmative defense alleges as follows:

6. The complaint does not state facts sufficient to constitute a cause of action.

7. Section 1702 of the Public Utilities Code provides in pertinent part that a complaint must set forth:

"... any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for 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. ..."

8. The complaint seeks relief for alleged service interruptions. Schedule Cal. P.U.C. No. 36-T, 2nd Revised Sheet 56 which governs such a claim provides as follows:

"(A) Credit allowance for Interruption to Service

"For the purpose of administering this Rule with respect to the determination of charges for a fractional part of a month, every month is considered to have thirty days.

"Upon request of the customer the Utility will allow customers credit in all cases where telephones are 'out of service' except when the 'out of service' is due to the fault of the customer, for periods of one day or more from the time the fact is reported by the customer or detected by the Utility, of an amount equal to the total fixed monthly charges for exchange service multiplied by the ratio of the number of days 'out of service' to thirty (30) days in the billing month.

"A day of 'out of service' will be considered to exist when service is not available for a period of twenty-four consecutive hours. When any 'out of service' period continues for a period in excess of an even multiple of twenty-four hours, then the total period upon which to determine the credit allowance will be taken to the next higher even twenty-four hour multiple.

"In no case will the credit allowance for any period exceed the total fixed charges for exchange service for that period."

Complainant has not alleged any facts which would constitute grounds for recovery under this or any other of defendant's tariffs. The complaint very generally alleges service interruptions, but fails to specify either the dates when the alleged interruptions occurred or their duration.

9. Complainant has not paid his bill dated April 11, 1969 through October 11, 1969 for business service 673-2277.

10. All action taken by defendant in notifying complainant of its intention to disconnect said business service was taken pursuant to provisions of its tariff relative to discontinuance and restoration

of service as set forth in Schedule Cal. P.U.C. No. 36-T, 4th Revised Sheet 49, Rule No. 11, A.2.

Defendant in its second separate and affirmative defense alleges as follows:

11. The Commission does not have jurisdiction to grant the relief sought by Complainant.

12. Schedule Cal. P.U.C. No. 36-T, 2nd Revised Sheet 56 limits such relief to a credit adjustment equal to "the total fixed monthly charges for exchange service multiplied by the ratio of the number of days 'out of service' divided by thirty (30) days in the billing month." Complainant has not requested this relief but has prayed for compensation and reimbursement in the sum of \$500 which is a prayer for damages.

13. This Commission has repeatedly held that it has no jurisdiction to grant damages.

Defendant requests that the restraining order be vacated and the complaint be dismissed.

Public hearing on the complaint was held before Examiner Cline in San Francisco on February 10, 1970. The matter was taken under submission on February 13, 1970, at which time the transcript of the proceedings was filed.

Issues

1. Was complainant furnished multiple party line service or individual line message rate business service on line No. 673-2277 during the period from the date of installation of service to the date of the filing of the complaint or any portion thereof?

2. Did complainant suffer interruptions of service on line No. 673-2277 for a continuous period of 2 1/2 hours or more?

3. Is complainant entitled to compensation and reimbursement in the sum of \$450 or less by reason of being overcharged for telephone service and/or by reason of service interruptions on line No. 673-2277?

4. Should the restraining order be vacated?

Findings

Based upon a consideration of the record in this proceeding the Commission finds as follows:

1. Since the inception of complainant's service on line No. 673-2277 he has had individual measured rate business service as originally ordered under the appropriate tariff rates.

2. On October 24, 1967 and on July 29, 1969, complainant reported poor transmission on his line No. 673-2277. On these two occasions no trouble was found in the service by defendant.

3. On November 10, 1969 complainant reported a slow dial tone on line No. 673-2277. At that time defendant discovered that line finder 103-49 wiped out, and the necessary repair was made by defendant.

4. On November 18, 1969 complainant again reported to defendant a slow dial tone on line No. 673-2277 but no trouble was found by defendant.

5. Although complainant has suffered telephone service deficiencies and interruptions on his business line No. 673-2277, such as other voices on the line, poor transmission, and slow dial tone, there is no evidence that complainant's telephone service on business line No. 673-2277 has ever been out of service for a continuous period of twenty-four hours or longer.

6. Schedule Cal. P.U.C. No. 36-T, 2nd Revised Sheet 56 allows a credit allowance only for interruptions to service which extend for a continuous period of twenty-four hours or longer.

7. As of the date of the hearing, complainant had not paid the bills in the amount of \$50.32 for telephone service on line No. 673-2277 for the period April 11, 1969 through October 11, 1969.

Conclusions of Law

Based on the foregoing findings of fact the Commission concludes that:

1. Complainant is entitled to no compensation, reimbursement or adjustment for interruptions and deficiencies in telephone service on line No. 673-2277 which occurred prior to the filing of the complaint herein.

2. The complaint should be dismissed, and

3. The restraining order, Decision No. 76457, issued November 18, 1969, should be vacated.

O R D E R

IT IS ORDERED that:

1. The complaint herein is dismissed.

2. The restraining order set forth in Decision No. 76457, issued herein on November 18, 1969, is vacated on the effective date of this order.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 14th day of APRIL, 1970.

William Seymour D.
President

Thomas L. Stinson
Commissioners

Commissioner J. P. Vukasin, Jr., being
-7- necessarily absent, did not participate
in the disposition of this proceeding.