

ORIGINAL

Decision No. 77203

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WENDELL DELZELL,
 Complainant,
 vs.
 PACIFIC TELEPHONE COMPANY,
 a corporation,
 Defendant.

Case No. 8917
(Filed May 14, 1969)

WILLIAM C. CARTER, on behalf
 of PREST-O-DIAL, INC., a
 corporation,
 Complainant,
 vs.
 PACIFIC TELEPHONE COMPANY, a
 corporation,
 Defendant.

Case No. 8991
(Filed November 3, 1969)

O P I N I O N

The Notice of Hearing herein (dated January 30, 1970) provided that:

"All direct case-in-chief testimony of all parties will be submitted in the form of affidavits or declarations, and will be filed and served on or before April 1, 1970. Each party is required to file the original and one copy of such testimony with the Commission.

"Except for good cause shown, hearing will be restricted to:

- (a) Argument on objections to direct testimony
- (b) Cross-examination of all witnesses, and
- (c) Rebuttal by each party."

Defendant filed its testimony and exhibits as required; neither complainant has filed testimony or exhibits.

Defendant has moved to dismiss on the grounds that failure to file is a failure to meet a complainant's burden of proof and an abandonment of the complaint; complainants have not responded to said motion.

It appears that the complaints challenged the lawfulness of defendant's tariff which authorizes defendant to install a coupler between an automatic dialing device known as Prest-O-Call and defendant's switching network and the reasonableness of the rates and charges established by defendant for the coupler.

We conclude that by reason of complainant's failure to present evidence, they have in effect submitted the matter based on Pacific's exhibits and testimony, which are hereby received as Exhibit I.

Delzell purports to represent a class of 1000 Prest-O-Call users; absent a showing that any of these persons were in a position to control or influence the course of litigation, the findings adopted herein will bind only complainant Delzell personally, and no other named complainants.

Consequently we find, as to complainants Delzell, Carter and Prest-O-Dial, Inc. that the requirements of defendant's tariff (Schedule Cal. P.U.C. No. 135-T) that a coupler supplied by defendant be installed between the Prest-O-Call device and defendant's switched network, and the rates and charges established for such coupler, are not unjust, unreasonable or discriminatory.

We conclude that the complaints should be dismissed.

O R D E R

IT IS HEREBY ORDERED that the above-entitled complaints are dismissed with prejudice against named complainants.

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

Dated at San Francisco, California, this 12TH day of MAY, 1970.

William Lyons, Jr.
President
Augusta
J. H. Harkin
Thomas L. Stinson
Commissioners