

ORIGINAL

Decision No. 77928

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN A. COLLINS,  
Complainant,  
vs.  
PACIFIC TELEPHONE COMPANY,  
a corporation.  
Defendant.

Case No. 9079  
(Filed June 11, 1970)

John A. Collins, in propria persona, complainant.  
Robert E. Michalski, Attorney at Law,  
for Pacific Telephone and Telegraph  
Company, defendant.

O P I N I O N

Hearing on the above complaint was held in Los Angeles on October 5, 1970 before Examiner Rogers and the matter was submitted.

The complainant alleges that he is the owner of a home in Escondido, California; that he is protesting the refusal by the defendant to grant ownership of a 25-foot extension cord located at said home; that he had requested the removal of the telephone extension with the proviso that the cord be left on the premises after the telephone was disconnected but the cord was removed; that the cord was purchased by the former owner of the premises prior to December 2, 1968, at which time the Commission ruled that extension

cords were to be considered "a service connection fee" rather than a "purchase of property". Complainant requests an order that the defendant return the extension cord or pay him \$10, the original price of the cord.

On July 13, 1970, the defendant filed an answer to the complaint. Therein the defendant admits that complainant owns the home and that he requested the removal of the telephone with the proviso that the cord be left on the premises; denies that the purchase was "a purchase of equipment"; and admits that the telephone and cord were installed prior to December 2, 1968.

In addition the defendant alleges that the complaint does not state facts sufficient to constitute a cause of action in that the complainant did not purchase the 25-foot cord at the time of installation or at any other time, but just paid the service charge for installation in accordance with the defendant's filed tariffs. Defendant further alleges that, if the complainant is claiming that the rates are not reasonable, the complaint was not filed in accordance with Section 1702 of the Public Utilities Code which provides that a complaint should be signed by not less than 25 prospective consumers or purchasers of the telephone service.

The complainant testified that the telephone and the extension cord were installed four or five years ago at 1902 Rockhoff, Escondido, California, and that subsequent to October 2, 1969, he purchased the premises at a foreclosure sale (Exhibit No. 1); that when he purchased the premises defendant's telephone and a 25-foot extension cord were on the premises; that inasmuch as he purchased

the property at public auction the telephone and the cord are his property and that the telephone and cord were removed by the defendant.

The defendant presented no evidence. It did, however, refer to certain of its filed tariffs and certain of the Commission's decisions. We will take official notice of both the tariffs and the reported decisions. The pertinent parts of the decisions and the tariffs were received in evidence for the Commission's benefit.

At all times since July 1, 1960 to and including the time of the hearing, extension cords used in connection with defendant's telephone were owned and installed by the defendant and an installation charge varying between \$5 and \$10 was charged against the user (Exhibits Nos. 2, 3, 4 and 5). These tariff provisions have the force and effect of law (Pacific Motor Tariff Bureau No. 1, 39 CRC 551 at 558) and are impliedly included in the terms of any contract between the defendant and the complainant (Sherwood vs. County of Los Angeles 203 CA 2d 354 at 359).

The complainant did not contend that the charge for the cord was unreasonable and hence the Commission has authority to determine the individual complaint (Section 1702 Public Utilities Code).

Findings

The Commission finds that:

1. In late 1969 complainant purchased at foreclosure sale a home located at Escondido, California. Until the foreclosure sale the prior owner and occupant had maintained a telephone and 25-foot

extension cord at said premises. This telephone and extension cord were installed prior to December 2, 1968 and had remained in the premises continually until removed by defendant after complainant purchased the premises.

2. At all times mentioned in finding 1 above complainant had on file tariffs and regulations providing that the defendant did install the telephone and extension cord and did retain ownership thereto.

3. After the complainant acquired ownership of the premises the defendant, at the request of the complainant, removed the telephone. It also removed the extension cord.

4. The cord and the telephone were at all times the property of the defendant and the defendant was entitled to remove said telephone and extension cord.

Conclusion of Law

The complaint should be dismissed.

O R D E R

IT IS ORDERED that complainant is entitled to no relief in this proceeding and the complaint is hereby dismissed.

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

Dated at San Francisco, California, this 18<sup>th</sup> day of NOVEMBER, 1970.

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Chairman

*Richard*

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*William J. ...*

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*...*

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*Vernon L. Sturgeon*  
Commissioners

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