

ORIGINAL

Decision No. 78215

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Robert Bruce Walker,
Complainant,
vs.
Pacific Telephone Company,
Defendant.

Case No. 9117
(Filed September 16, 1970)

Robert Bruce Walker in propria persona.
Richard Siegfried, Attorney at Law, for
defendant.

O P I N I O N

A public hearing on the complaint was held before Examiner Rogers in Los Angeles on December 2, 1970 and the matter was submitted.

Pleadings

The complaint is brief, and omitting the heading, signature and attachments reads as follows:

"The complaint of Robert Bruce Walker, 2817 Nichols Canyon Place, Los Angeles, California 90046, respectfully shows:

"1. That defendant is Pacific Telephone Company, 740 South Olive Street, Los Angeles, California.

"2. That attached as Exhibit A^{1/} is copy of a letter from defendant listing trouble calls made by complainant during the period October, 1969, through August, 1970, on three business lines, one published and two outgoing lines. Despite these service complaints, the phones are still only in partial operation as they have been for approximately the past 9 years.

"3. WHEREFORE, Complainant requests the Public Utilities Commission to order Defendant Telephone Company to make any and all necessary repairs to their equipment, or to hire third party at their expense, so that Complainant can be relieved of the service problems, and compensated for the telephone services paid for but not received, plus damages.

"Dated at Los Angeles, California, this 16th day of September, 1970."

The defendant's answer pointed out that its correct name is The Pacific Telephone and Telegraph Company and denies the allegations of paragraph 2, except that it admits that Exhibit A attached to the complaint is a copy of a letter from defendant listing trouble reports received from complainant during this period October, 1969, through August, 1970.

^{1/} Exhibit A referred to is a letter dated September 3, 1970 from defendant to complainant and is a part of Exhibit No. 17 herein.

As a first separate and affirmative defense the defendant pleads its limitation of liability for interruptions and failure of service rule (Schedule Cal. P.U.C. No. 36-T, 2nd Revised Sheet 56, Rule 14 (A)) which provides:

"INTERRUPTIONS AND FAILURES OF SERVICE

"(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."

As a second separate and affirmative defense, the defendant alleges that during the period 1964 to the present, the complainant reported 158 cases of trouble with his telephone service; that each of these reports was investigated by defendant; that the following is a partial list of the corrective and preventative measures which were taken by defendant to assure that the complainant's telephone equipment works properly and continues to do so:

- a. 100 percent check of Central Office and outside equipment (11 times);
- b. Cable pair changed or replaced (6 times);
- c. High frequency test (3 times);
- d. Transmission measurements taken to and from, as well as in the manhole by Special Services, Plant Protection Engineering and Transmission Engineering groups; and
- e. All equipment on premises and associated Central Office equipment replaced.

As a third separate and affirmative defense, the defendant pleads the two year statute of limitations set forth in Section 735 of the California Public Utilities Code.

As a fourth separate and affirmative defense, the defendant alleges that the Commission may not award damages in this type of action (W. Schumacher v. P.T.&T. Co. 64 Cal. P.U.C. 295).

Damages

At the commencement of the hearing the Examiner advised the complainant that, in his opinion, this is not a matter in which damages could be awarded by the Commission and refused to permit evidence by the complainant relative to damages as opposed to reparations. We agree with this ruling.

Legally we cannot be concerned with any monetary damages which may have accrued to complainant because of negligent or improper construction or maintenance of his telephones or telephone facilities (Postal Telegraph Cable Company v. Railroad Commission of the State of California 197 Cal. 426 at 437). The Commission has repeatedly held that it has no jurisdiction to award damages for tortious conduct by a public utility toward its customers (W. M. Glynn, 62 Cal. P.U.C. 511; Postal Telegraph Cable Company v. Railroad Commission of the State of California, supra; Vila v. Tahoe Southside Water Utility, 233 Cal. App. 2d 469 at 479; Goodspeed v. Great Western Power Co. 33 Cal. App. 2d, 245 at 264).

If the complainant does not get adequate service from the telephone facilities furnished to him by defendant, the Commission only has jurisdiction to order reparation of a portion of the charges paid by complainant. If complainant is entitled to any damages (and the record herein fails to show such entitlement) his remedy is in the courts (Public Utilities Code Section 2106, Vila v. Tahoe Southside Water Utility, supra).

In the Vila case, supra, the court states at page 479:

"By statute, the Commission is empowered to enforce its orders by suit (Sec. 2102^{2/}), by mandamus or injunction (Sec. 2102); it also has power to impose fines (Sec. 2100) and recover them by an action (Sec. 2104).

It may also punish for contempt (Sec. 2112). But Section 2106 is the only statutory authority for the recovery, by a person injured, of damages, compensatory and exemplary.

^{2/} References to Code Sections are to California Public Utilities Code Sections.

"The Commission has no authority to award damages."

The court further stated, at page 480:

"We attribute to the legislature an intent in enacting section 2106 to provide the prospective user wrongfully deprived of (water) service to which he is entitled with a speedy and adequate remedy in the (superior) Court."

This language is pertinent to the case herein considered. If complainant is entitled to damages, he has access to the courts.

The complainant mistakenly relies on this Commission's Decision No. 77406, dated June 30, 1970, in Case No. 8593^{3/}, to support his claim that this Commission may award consequential damages. The Commission's rules and practices prior to the effective date of Decision No. 77406, supra, were perhaps confusing to the utility users in that the rules purported to restrict recovery for faulty service to reimbursement of all or a portion of the customer's service charges over a given period of time. But the limitations of liability rules do not apply to situations involving wilfull misconduct, fraudulent conduct or violations of law (Decision No. 77406, supra, Civil Code of California, Section 1668). Decision No. 77406, supra, allows a telephone utility user to recover a limited amount of damages depending on the size of the utility, in addition to reimbursement of charges, for gross negligence, a recovery not specifically authorized prior to said decision. But the forum for the recovery of such damages is not this Commission but the civil courts (Decision No. 77406, supra).

^{3/} In the Matter of an Investigation on the Commission's own motion into all rates, conditions or tariff provisions limiting liability of telephone corporations.

Evidence

The complainant has three telephones furnished by defendant at his home, 2817 Nichols Canyon Place in Los Angeles. He appears to be a dealer in stocks, bonds and mutual funds (Exhibit No. 20). He conducts this business from his home and has in the recent past, in addition, operated out of additional offices. He presented 21 exhibits, 19 of which are here commented on.

Exhibit No. 1 is a letter dated December 14, 1966 from defendant to complainant. It refers to 36 complaints by complainant between June 3, 1964 and December 6, 1966. In 24 instances, no trouble was found. One complaint was caused by a number change-over (June 3, 1964); one complaint was caused by trouble in a different central office (April 14, 1965); on one occasion (June 28, 1965) the defendant could not gain access to complainant's premises to check; on one occasion (July 10, 1965) trouble was found in a General Telephone Company line called; one complaint (July 20, 1965) was caused by the complainant testing equipment; one complaint (July 28, 1965) was caused by trouble on another company line; on one occasion (August 2, 1965) a tapping sound was caused by work being done in a service order; on one occasion (August 24, 1965) complainant's phone was found off the hook; on one occasion (August 25, 1965) noise on the line was corrected by the replacement of a wire; one complaint (October 14, 1965) was a billing complaint; one complaint (October 17, 1965) relative to noisy line was caused by a grounded station wire; one complaint (November 18, 1966) was caused by trouble in defendant's plant; and the last complaint (December 6, 1966) was relative to a noisy line which the defendant stated it

corrected within two hours. In the final paragraph, the defendant states that until December 13, 1966, it has not been permitted access to the premises for testing purposes; that "Access was permitted on December 13, 1966, and at that time we replaced all the equipment at your premises as well as that equipment in the Central Office related to your service. The replacements were made solely as a precautionary measure, since no defects were found."

Exhibit No. 2 is a letter from defendant to complainant dated November 10, 1967. Therein the defendant refers to a complaint on October 24 (1967) by complainant that he had trouble hearing people on the line.

Exhibit No. 3 is a letter from defendant to complainant dated March 8, 1967, referring to a complaint by complainant of message unit charges.

Exhibit No. 4 is a letter, dated February 16, 1967, from defendant to complainant referring to a February 15, 1967 complaint by complainant, and stating that after an investigation was made no trouble was found.

Exhibit No. 5 is a letter from the defendant dated March 20, 1968, advising that complainant's account for the past three years had been reviewed and no tariff adjustments were applicable.

Exhibit No. 6 is a letter from the defendant to the complainant dated March 27, 1968, affirming the Exhibit No. 5 stand and giving additional reasons for no tariff adjustments.

Exhibit No. 7 comprises a transmittal letter, dated May 9, 1968, a release of claims in consideration of \$180, a draft for \$180 and three follow-up letters, one dated September 20, 1968, one dated October 10, 1968 and one undated inquiring about the check and release. The complainant did not accept the \$180 check.

Exhibit No. 8 is a letter dated August 14, 1968, from the president of this Commission to the complainant advising that a Commission staff man would arrange an appointment with complainant to determine how to resolve his complaints.

Exhibit No. 9 is a letter dated August 19, 1968, from complainant to the Commission president complaining of additional telephone trouble and acknowledging that he had been contacted by the staff man.

Exhibit No. 10 is a letter dated October 10, 1968, from American Telephone and Telegraph Company to complainant referring to telegrams from complainant.

Exhibit No. 11 is a letter dated October 18, 1968, from complainant to the president of this Commission referring to complainant's letter of August 19, 1968 (Exhibit No. 9 herein) stating that he cannot get his telephones in working order and that he needs help to get his phones working and ending:

"If you people cannot do this or do not have the authority to get this done, I will attempt to get the elected public officials of this State to personally help you, if you will tell me what more you need."

Exhibit No. 12 is a multi page document consisting of a letter dated November 1, 1968, from the Commission's president to complainant (2 pages) enclosing a list of trouble reports between May 7, 1964 and September 26, 1968 and a copy of a trunk test report. The president's letter, inter-alia, suggests that a recorder be placed on the lines with complainant's consent. The attachments show that between May 7, 1964 and September 26, 1968, complainant reported trouble on 92 separate occasions; on all but 15 occasions, the

defendant found that the lines tested okay or could find no trouble; on the remaining occasions, the defendant found some trouble and did some work such as replacing a slow dial, replacing a defective dial or replacing coils and carbons in a phone.

Exhibit No. 13 is a copy of a letter from the Commission secretary to complainant dated December 19, 1968, with a copy of that portion of the Commission's rules of practice and procedure relative to filing formal complaints.

Exhibit No. 14 is a multi page document dated September 3, 1969 from Communication Services Company of Van Nuys (C.S.C) to a Mr. Kenny of the defendant, relative to complainant's service. Attached are two copies of letters, one from complainant to the C.S.C. relative to the service and one dated November 3, 1969 from complainant to the C.S.C. relative to service interruptions.

Exhibit No. 15 is a letter dated March 24, 1970 from defendant to complainant together with a questionnaire relative to complainant's service. The attached questionnaire was filled in by complainant. A statement on the last page written by complainant reads:

"Dear Mr. Fry:

"Please find enclosed the information you requested March 24, 1970. I would like to ask you to instruct me by letter as to how I can receive future settlements to my satisfaction for the inconvenience caused by Pacific Telephone's inability to render proper service for which I have paid since April 12, 1968.

"Please also find enclosed a copy of the last offer of settlement made by Pacific Telephone Company for their admitted breach of contract for not rendering proper service. Because of the inequitable terms naturally, we must discuss this further."

Exhibit No. 16 is a letter dated May 13, 1970, from defendant to complainant, relative to a date for a discussion.

Exhibit No. 17 is a letter dated November 30, 1970, from defendant to complainant, and a similar letter dated September 3, 1970. These letters simply list a total of 57 complaints by complainant between October 9, 1969 and November 28, 1970.

Exhibit No. 18 is a two page document showing the total of the complainant's telephone bills for the years 1966 through 1969 and for six months of 1970.

Exhibit No. 19 is a letter dated August 17, 1970, from a Commissioner to the complainant advising, inter alia,

"It is not within the power of this Commission to determine just compensation for alleged loss of business. Such judgment rests entirely within the power of the courts of the State of California."

The complainant gave oral testimony reiterating some of the complaints listed in the exhibits. He said that there is no pattern to his telephone troubles; that on any day in November, 1970, he could not get complete telephone service; and that there was never a total day when his service was operatable.

At the close of the hearing the Examiner asked the complainant if he would consent to having his lines monitored (recorded) by the Commission staff. He refused to permit monitoring.

Defendant's division plant manager for its Wilshire Division which includes the 876 prefexes (complainant's numbers are 876-6300, 876-6301 and 876-6305) testified that he had 25 years experience in installing and maintenance of telephones; that there are 600,000 telephones in the division; that 200,000 telephones per

year are installed in the division and 180,000 are removed; that Exhibit No. 22 is the trouble history for complainant's telephones from October 1, 1969 to November 28, 1970; that during this period complainant made 57 trouble reports relative to his service; that on 49 of the complaints the defendant could find no trouble; that on one occasion complainant reported a high pitched noise on the line and defendant found a line crossed at a multiple terminal; that on one occasion there was no dial tone on the line but this cleared up during testing. This is caused by too many people calling at once. On one occasion someone else was on a line and complainant could not call out, and the repairman found a new subscriber's line on the wrong cable pair which took two to three hours to repair; on another occasion the bells rang after complainant's answering service answered and a repairman was dispatched, but the complainant would not permit him to enter the premises and a test from the office showed the line was okay. On another occasion when the complainant could not get a dial tone repair-work on another trunk was being done and the switch released while being tested; on another occasion complainant reported static and the repairman found a short on a multiple terminal which took four hours to repair; on another occasion when complainant could not call a 784 prefix number the defendant found trouble at the 784 exchange and cleared it in four hours, and on another occasion the complainant complained he could not call out and the line tested okay, but the dial was replaced to satisfy the complainant.

The witness testified that 75 percent of complainant's complaints were relative to noise and static. The witness testified that because of the frequency, the complainant's complaints are immediately referred to a supervisory employee. The witness further testified that in December, 1969, the underground cable serving complainant's neighborhood was completely replaced with polyethylene insulated cable as opposed to paper insulated cable; that complainant's home equipment has been inspected on several occasions; that nothing the defendant has done has reduced complainant's complaints; that all equipment has been checked; that each time complainant complains, the defendant makes a thorough check; that defendant has requested that complainant permit it to monitor the telephones but complainant has refused.

The witness testified that complainant's three lines are in a cable with lines for 91 other subscribers; that Exhibit No. 23 herein is trouble report history of all subscribers using the cable containing complainant's services; that for the period from October 1, 1969 to November 10, 1970, with the other 91 subscribers there were only 36 complaints.

The witness presented Exhibit No. 24 which is a summary of the trouble reports by the 91 other subscribers compared to complainant's trouble reports during the period of October 1, 1969 to November 10, 1970. Exhibit No. 24 shows the following:

	<u>Other Services</u>	<u>Mr. Walker</u>
1. Total Working Services	91	3
2. Total Trouble Reports	36	54
3. Total Report Rate per Working Service	0.39	18.00
4. Total Calendar Days of Service During Study Period	33,136	1,218
5. Trouble Report Rate Per 1,000 Calendar Days of Service	1.08	44.33
6. Reports of Noise, Static or Poor Transmission	17	41
7. Reports of Noise, Static or Poor Transmission per Working Service	0.19	13.66

The witness further testified that on occasions the defendant switched cable pairs for the complainant and that the complainant's complaints continued; the subscribers switched to complainant's cable pairs did not make any complaints.

The witness further testified that complainant has the most complaints of any subscriber in the portion of the system under his control (600,000 telephones).

Findings

The Commission finds that:

1. The complainant is and has been for several years, 1964 to date, a subscriber to telephone service furnished by defendant through its Wilshire Division Central Office to complainant at his residence, 2817 Nichols Canyon Place, Los Angeles, California.

2. During said period, complainant has complained over 158 times, relative to his telephone service. As the result of said complaints, defendant on 11 separate occasions has made a 100 percent check of central office and outside equipment; has changed or replaced complainant's cable pairs 6 times; has made high frequency tests 3 times, and has replaced all equipment on complainant's premises and the related central office equipment.

3. Complainant's cables are in a cable group containing 91 other users. These subscribers have very few complaints. Complainant's lines have been switched with others in the cable. The others do not complain. Complainant continues to complain.

4. Complainant's service is reasonable and complainant is not entitled to any reimbursement for any telephone service furnished by defendant to complainant at the premises at 2817 Nichols Canyon Place, Los Angeles, California.

We conclude that the complaint should be dismissed.

ORDER

IT IS ORDERED that the complaint herein be and it hereby is dismissed.

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

Dated at San Francisco, California, this 26th day of JANUARY, 1971.

J. P. [Signature]
 Chairman

William [Signature]

[Signature]

Vernon L. Sturgeon

Commissioners