

ORIGINAL

Decision No. 78830

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Maria Gargiulo,

Complainant,

vs.

Pacific Telephone Company,

Defendant.

Case No. 9188
(Filed February 3, 1971)O P I N I O N

In her complaint filed February 3, 1971, complainant, Maria Gargiulo, alleged that defendant, The Pacific Telephone and Telegraph Company, unjustly charged her account with long distance telephone calls to and from Naples, Italy, in the sum of \$228. Complainant requests satisfaction of these long distance charges in the sum of \$228., plus a reasonable allowance for expenses incurred in attempting to resolve the dispute.

In its answer to the complaint defendant admits that:

1. It billed the complainant for the following calls to Italy which are in dispute:

May 30, 1970	\$25.50
August 6	54.75
	21.00
August 26	50.25
August 31	29.25
	29.25
October 19	18.00
November 23	27.00

2. The complainant was inadvertently billed twice for the same call on August 31, 1970. Defendant has offered to adjust the applicable charge of \$29.25, plus tax.

3. Defendant will adjust the November 23 call in the amount of \$12.38 because the complainant alleges that while she was billed for a 12-minute call, she actually talked approximately seven minutes.

4. All the other disputed calls were placed by the complainant's husband or brother without her consent.

As a first separate and affirmative defense defendant alleges the complaint does not state a cause of action within the jurisdiction of this Commission. Under the Communications Act of 1934, as amended, the Federal Communications Commission has jurisdiction over "foreign communications by wire or radio" such as the calls in this case.

As its second separate and affirmative defense defendant alleges that:

1. Complainant refuses to pay for the calls in dispute, other than those which defendant will adjust, on the ground that the calls were placed or received collect by her husband and/or her brother without her knowledge or consent.

2. Complainant is responsible for such charges even though the calls may have been made without her authorization because F.C.C. 263, paragraph 2.41, the applicable A.T.& T. Company Long Line Tariff in which defendant is a concurring carrier, provides:

"The customer is responsible for payment of all charges for services furnished the customer, including charges for services originated or charges accepted at the customer's station."

3. If this Commission has jurisdiction over this complaint, the complainant would also be responsible for the calls which were placed over her telephone. Schedule C.P.U.C. No. 36-T, 3rd Revised Sheet 44 provides:

"Rendering and Payment of Bills

"A subscriber for service shall be responsible for the payment of all exchange, toll and other charges applicable to his service made in accordance with the company's schedule of rates and Rules and Regulations."

In Dewitt v. General Telephone Co. (1966), 65 Cal. P.U.C. 538, this Commission held that a telephone subscriber was responsible for telephone calls made on his phone by his son without his authorization.

Based upon a review of the pleadings, the Commission finds that the disputed telephone calls are calls from or to complainant's telephone in the defendant's East Bay Exchange Area to or from Naples, Italy.

Based upon the foregoing finding the Commission concludes:

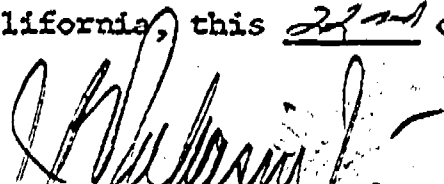
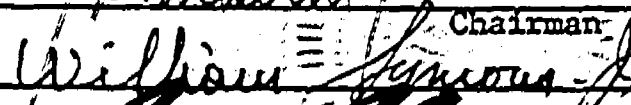
1. Under the Federal Communications Act of 1934, as amended, the Federal Communications Commission has jurisdiction over "foreign communications by wire or radio" such as the calls in this case.
2. The complaint herein does not state a cause of action within the jurisdiction of this Commission.
3. The complaint should be dismissed.


O R D E R


IT IS ORDERED that the complaint herein is dismissed.

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

Dated at San Francisco, California, this 24th day of JUNE, 1971.


 _____ Chairman





 _____ Commissioners