

ORIGINAL

Decision No. 78868

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROBERT H. ERNST, General Partner
dba Golden West Fasteners,
Complainant

vs.

MOBILEPHONE, INC.,
Defendant

Case No. 9200
(Filed March 8, 1971)

Robert H. Ernst, for complainant.
Robert C. Crabb, for defendant.

O P I N I O N

A public hearing on the above entitled complaint was held before Examiner Rogers in Los Angeles on May 7, 1971 and the matter was submitted.

Robert H. Ernst is the general partner in a limited partnership (hereinafter sometimes complainant) which supplies industrial fasteners (bolts, nuts, screws). The service requires some emergency or expedited delivery service. In order to provide such service complainant contracted for two one-way paging devices^{1/} furnished by defendant.^{2/} With these devices a person desiring

^{1/} Exhibit No. 1. It is noted here that Exhibit No. 1 is not in accordance with the defendant's filed tariff and defendant has no authority to use such form in making contracts for service.

^{2/} See Mobilfone, Inc., Cal. P.U.C. Sheet No. 44-T, Schedule No. L-2, one-way paging service.

to contact complainant's vehicles which were equipped with the paging devices, would call the defendant's office. The defendant would transmit complainant's call signal over the air. This signal would be picked up by the paging device in the complainant's vehicles and the person using the vehicle would call complainant's office. This service costs complainant \$20.00 per month for each of two paging devices^{3/} and complainant signed a contract for each for which he was required to pay \$20.00 each for the first month's service and \$40.00 each as a deposit to secure defendant's interest in the receivers.^{4/}

This complainant alleges billing errors, temporary overcharges, failure to credit payments, delay by defendant in transmitting calls to complainant and discontinuance of service for failure to pay when due. The complainant testified that on June 23, 1970 defendant cut off complainant's service, demanding \$171.10 for past due payments; that at the time complainant had paid defendant two payments for a total of \$88.55 which cleared the bank on June 17 and June 24, 1970 and a payment of \$40.00 made on March 10, 1970 but which defendant did not credit to complainant's account until October 1, 1970, leaving a balance of \$42.85 as of

3/ Mobilfone, Inc., Revised Cal. P.U.C. Sheet No. 103-T and Exhibit 1, supra.

4/ Exhibit No. 1, supra, and Mobilfone, Inc., Revised Cal. P.U.C. Sheet No. 51-T, Rule 8.a., Deposits.

June 9, 1970; that charges incurred up to June 23, 1970 were \$2.85 for excess service (calls over the monthly allowance) and 23/30ths of the monthly charge of \$40.00 for the two receivers or \$30.67; and that he has a return due on his two \$40.00 deposits of \$46.48.

At the time the service was terminated the complainant acquired two-way radio transmitters and receivers for his vehicles and he now has no use for the paging devices, but he refuses to deliver them to defendant until he receives a refund of the balance of the \$80.00 deposit. The defendant on the other hand is billing the complainant at the rate of \$12.00 per month for each of the paging devices for their retention even though the complainant does not use them. No such charges are authorized by defendant's tariff. The defendant claims a balance due of \$223.65 as of February 10, 1971 and states that a charge of \$24.00 per month is accruing.^{5/}

There is no basis in defendant's tariff for an accruing charge of \$12.00 per month and the derivation of such sum cannot be ascertained. In addition, the defendant's bookkeeper could not explain the sum claimed to be due although defendant's original records were before us. The evidence supports a finding that complainant's services terminated as of June 23, 1970.

^{5/} Exhibit No. 2.

Findings

We find that:

1. Defendant, a public utility under the jurisdiction of this Commission, furnishes one-way paging service by radio to subscribers. Charges for this service are purportedly set forth in tariffs on file with this Commission.

2. Defendant's filed tariffs state that defendant provides, among other types of service, a one-way selective alerting paging and signaling service. The subscriber to this service is furnished a small receiver which, when defendant desires to advise the subscriber that there is a message for him, the defendant transmits a selective beep or tone. The subscriber then contacts the defendant or the subscriber's office to receive the message. The charge for this service is \$20.00 per month for each receiver. The rental of the receiver allows the subscriber 30 calls and any calls over that number cost the subscriber 15 cents each.

3. On June 23, 1969 complainant contracted with defendant for selective paging service and on August 22, 1969, it contracted for a second device. The contract required the complainant to pay \$20.00 as an advance security deposit. These charges are in accordance with defendant's filed tariff, but the contract is not the contract on file with the Commission.

4. Between the date of the contracts and June 23, 1970 complainant had service furnished by defendant. This service was unsatisfactory to complainant and complainant ceased using such service on June 23, 1970. At that time complainant owed defendant \$33.52 for accrued charges and was entitled to a refund of \$46.48, pursuant to the tariff and the signed contracts. This latter sum is the difference between complainant's total deposits of \$80.00 on the two contracts and the \$33.52 due to defendant.

5. Defendant is not entitled to charge complainant any other sum for the receivers after June 23, 1970. Complainant did not use the receivers after said date and defendant's tariffs contain no provision for rental of equipment while service is not being provided. ✓
✓

6. Any action for recovery of money allegedly due for the retention of the receivers should be in a court of law and is not before this Commission.

Conclusion

We conclude that Mobilfone, Inc., should be ordered to refund to complainant the \$80.00 deposit for service, less the accrued charges totaling \$33.52 or a net sum of \$46.48.

ORDER

IT IS ORDERED that Mobilfone, Inc., shall return to complainant the sum of \$46.48 representing the balance of the \$80.00 deposit made by complainant for two one-way paging devices.

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

Dated at San Francisco, California, this 29th day of JUNE, 1971.

[Signature]
Chairman
William Lybore, Jr.
[Signature]
Vernon L. Sturgeon

Commissioners

Commissioner D. W. Helms, being necessarily absent, did not participate in the disposition of this proceeding.