

ORIGINAL

Decision No. 79041

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROGER A. GHENO,
 Complainant,
 vs.
 PACIFIC TELEPHONE COMPANY,
 Defendant.

Case No. 9153
 (Filed November 30, 1970)

Roger A. Gheno, in propria persona,
 complainant.
Richard Siegfried, Attorney at Law,
 for defendant.

O P I N I O N

Complainant's home telephone has an unlisted number. He seeks \$5,000 in damages for defendant's alleged disclosure of his unlisted number in several instances.

Public hearing was held in San Francisco on February 16, 1971, before Examiner Gilman. Complainant testified indicating that one of the reasons for obtaining such service is that he keeps a valuable art collection on which he is unable to obtain insurance; he does not wish a potential burglar to use his telephone to determine when no one is at home.

He testified to several incidents, each of which involved a completed telephone call from persons who claimed to have been given the unlisted number; in four instances the source of the number was claimed to be the company's operators. In two instances the callers had sought information as to other subscribers' numbers and instead had been given complainant's number. In two remaining instances the caller's comments could be interpreted as a statement

that they had sought complainant's number and been given it by company personnel. The final incident was another wrong number with no clear indication of the source of the misinformation.

Discussion

Unlisted customers have a right to expect the telephone company not to compromise an unlisted number. Unambiguous testimony to this effect would undoubtedly have required remedial and possibly reparatory relief herein.

The statements of the callers, however, were not so unambiguous. Since they were not available for cross-examination, there is insufficient evidence to support a finding on this point.

We will assume that defendant has taken reasonable steps to investigate the wrong number calls and if the problem was caused by a factor within the company's control to correct it. We will require a report of such investigations.

Finally, the evidence does indicate that an airline completed a call to complainant with defendant's assistance and without complainant's consent. There is no showing, however, that complainant would have refused the call or that any injury or annoyance was caused by the failure to obtain consent. While it is clear that the failure to obtain consent was a violation of the company's internal rules and deprived complainant of a right to which he is plainly entitled as an unlisted subscriber, no specific value can be placed on the diminution in the value of service rendered. Consequently, no reparations can be awarded.

Findings

1. Complainant subscribes for an unlisted number on his residential telephone.
2. On July 17, 1970, defendant's employees, knowing that the caller was ignorant of said unlisted number, completed a call to that telephone, without first having obtained complainant's consent.

3. Complainant has received wrong number calls. The company's information service may in two instances have given complainant's number rather than the correct number of the subscribers whom the callers wished to contact.

4. The evidence does not convince us that defendant compromised complainant's unlisted number.

Conclusions

1. Defendant violated its duty not to connect a caller, ignorant of an unlisted number, without the consent of the unlisted subscriber.

2. Complainant had failed to carry the burden of producing sufficient evidence that defendant compromised his unlisted number.

3. Complainant has a right to have the company investigate any factor within the company's control which could cause wrong number calls and attempt to correct such factor.

4. No reparations should be ordered herein.

5. The Commission has no jurisdiction to award damages.

O R D E R

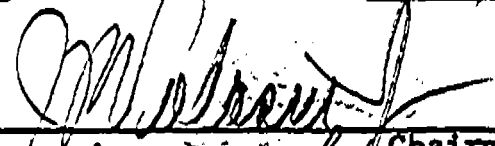
IT IS ORDERED that:

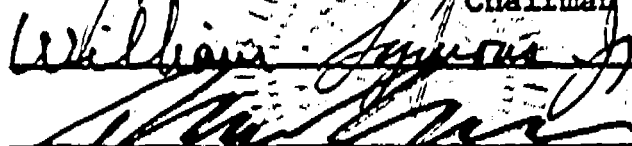
1. Within twenty days after the effective date of this order, defendant shall file and serve a copy of its investigation into the cause of the wrong number calls described on pages 5 and 6 of the transcript, and of the corrective action, if any, taken.

2. The complaint is hereby dismissed.

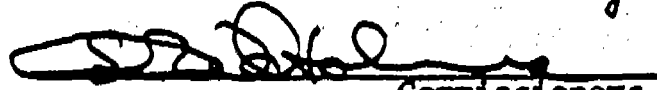
The effective date of this order shall be twenty days after the date hereof.

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


_____ Chairman






_____ Commissioners