

ORIGINAL

Decision No. 79214

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Henry B. Halicki

Complainant,

vs.

Mobilfone, Inc.

Defendant.

Case No. 9228

(Filed May 21, 1971)

Henry B. Halicki, in propria
persona, complainant.
Robert C. Crabb, for defendant.

O P I N I O N

The complaint alleges that defendant discontinued service to complainant because he owns his radiotelephone unit; defendant has charged complainant for calls he did not make; complainant has attempted to resolve the problem without success; defendant has cancelled complainant's bill and will no longer service complainant; defendant's service is necessary in complainant's business; and complainant desires to pay for all calls he has made and have the service reinstated.

The defendant did not file an answer but appeared at a public hearing which was held before Examiner Rogers in Los Angeles on August 24, 1971. At the conclusion of the hearing, the matter was submitted.

Background

The defendant is a communication common carrier by radiotelephone in the Domestic Public Land Mobile Radio Service, commonly known as miscellaneous common carriers (MCC), as each

of said terms is defined in Rules and Regulations of the Federal Communications Commission (FCC).^{1/} It is a public utility telephone corporation, and, pursuant to the requirements of the Commission, has tariffs on file specifying its charges and its conditions of operation.

Complainant has been a subscriber to defendant's two-way mobile service (Cal. P.U.C. Sheet 110-T, Schedule L-1) for over two years. The equipment used by complainant is tube-type furnished by a company other than defendant. On September 22, 1970, complainant's car carrying the communication equipment was involved in an accident and rendered out of use until October 26, 1970. The record does not show what happened to the equipment while the car was out of service, but the complainant claims (denied by defendant) that the equipment was not used (Exhibit No. 4). After receiving the October bill (\$86.44), complainant went to the defendant's office on two occasions and demanded an itemized statement (Exhibit No. 4). The defendant advised complainant by letter that his account showed a balance owed of \$97.56, after making an allowance of \$12.90 for calls alleged by complainant not to have been made and for a \$50 payment by complainant on account. The letter contains statements that "we have received no complaints regarding our equipment from our other subscribers. Therefore we suggest that your equipment is quite old and outdated and incompatible to our system." And "If you are not happy there are other RCC's in the area who's service you can probably get on, on a limited basis."

^{1/} Decision No. 62156, dated June 20, 1961, in Case No. 6945.

On February 20, 1971, complainant advised the defendant that its records were incorrect and that the \$12.90 credit was much less than due him. He demanded an itemized statement for all charges from August 1970 to date (Exhibit No. 6).

On March 20, 1971, complainant sent defendant a check for \$37.40 in partial payment of past due charges for the reason he had not received the itemized statement (Exhibit No. 7). He stopped payment on this check (Exhibit No. 1).

The parties had a meeting in defendant's place of business on April 5, 1971. As a result of this meeting, the defendant cancelled out the balance of complainant's bill (stated to be \$149.80) as a bad debt because the defendant does not "want to have troublemakers on our service, . . ." (Exhibit No. 9).

The relationship between the complainant and the defendant has become very strained. The defendant states it will not serve the complainant unless the Commission requires it to do so.

If the complainant pays all charges due at the time the service was terminated, the defendant must serve the complainant pursuant to its filed tariffs.

That defendant must provide the service is shown by defendant's tariffs. Defendant's rule 2.b^{2/} provides:

"2. Availability of Service

a.

b. For the Two-Way Service

"Domestic Public Land Mobile Radio Service is available to any person who wishes to become a subscriber. The service is available to vehicles equipped for this service when within range of the central land station located in Los Angeles, Calif. through which such service is furnished"

The complainant has used the defendant's service and insists that the defendant provide his service. If the complainant pays the tariff charges, the defendant must provide the service. As we have heretofore stated, defendant is within the definition of a telephone corporation, which is a public utility (Section 234, Calif. Public Utilities Code). As a public utility it may not discriminate between its customers (Section 453, Calif. Public Utilities Code).

The defendant is entitled to discontinue service for the nonpayment of any sum due (Revised Cal. P.U.C. Sheet 87-T, Rule 10, Denial of Service, subparagraph b.1.), but its tariff provides that service will be reinstated upon payment of a \$10.00 connection charge (Revised Cal. P.U.C. Sheet No. 112-T, Schedule No. L-1, Condition No. 8).

^{2/} Revised Cal. P.U.C. Sheet No. 113-T, filed February 2, 1971, effective March 5, 1971. No change from prior tariff relative to the rule quoted.

The complainant has agreed to pay the outstanding charges although he states he owes less than the defendant claims. The record supports the defendant's claim that when the service was cancelled, the complainant owed \$149.80.

Findings

We find that:

1. Complainant was a subscriber to radiotelephone service furnished by defendant pursuant to defendant's tariffs on file with this Commission.

2. Due to a dispute as to the amount due for such service from complainant, defendant terminated complainant's service and cancelled the charges due. Such cancellation was improper and not authorized by this Commission.

3. The amount due from complainant to defendant at the time the bill was cancelled by defendant was \$149.80. Complainant should be required to pay this sum to defendant.

4. Defendant was justified in terminating complainant's service until the charges were paid by complainant. This being so, defendant is entitled to and should collect a \$10.00 connection charge as required by its tariff.

5. Complainant is entitled to have service furnished by the defendant when and if he pays defendant's lawful charges pursuant to the defendant's filed tariff.

Conclusion

We conclude that the defendant should be ordered to reinstate complainant's service provided that complainant pay to defendant the sum of \$149.80 plus a connection charge of \$10.00.

O R D E R

IT IS ORDERED that:

Mobilfone, Inc., within five days after the effective date of this order, shall reinstate complainant's radiotelephone service through the equipment in complainant's possession provided that (1) complainant pay to defendant the sum of \$149.80 for service rendered prior to the time defendant terminated complainant's service; and (2) complainant pay to defendant a connection charge of \$10.00.

The Secretary of the Commission is directed to cause personal service of this order to be made upon defendant. The effective date of this order shall be twenty days after the completion of such service on such defendant.

Dated at San Francisco, California,
this 5th day of OCTOBER, 1971.

William S. ... Chairman

Vernon L. Sturgeon

... Commissioners

L. Abataun

J. ... , C. ...

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.