

ORIGINAL

Decision No. 79226

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Fleetwood Enterprises, Inc.
3125 Myers Street, P.O. Box 7638
Riverside, California 92503

Complainant,

vs.

Pacific Telephone and Telegraph Company
3380 14th Street, Suite 112
Riverside, California 92501

Defendant.

Case No. 9209
(Filed April 8, 1971)

Hugh J. Scallon, Attorney at Law, for
complainant.
Robert E. Michalski, Attorney at Law, for
defendant.

O P I N I O N

On April 8, 1971, complainant, Fleetwood Enterprises, Inc., filed its complaint alleging that the defendant refuses to install telephone service as required by complainant to conduct business in offices located on the second floor at 3125 Myers Street, Riverside, California. Specifically, defendant refuses to place cable within the false ceiling of the complainant's building unless placed within conduit for service of the balance of the second floor of complainant's office building.

A public hearing on the complaint was held on July 7, 1971, at Riverside before Examiner O'Leary. The matter was submitted subject to the receipt of transcript which was filed on July 12, 1971. The matter is now ready for decision.

Complainant's office building is located at 3125 Myers Street in Riverside. The building was constructed during the period April 1, 1970, to October 29, 1970. The building is a two-story structure, and complainant is the sole tenant. There are no plans to

lease any portion of the building to any other persons or entities. During construction, representatives of defendant met with the office manager of complainant concerning the installation of telephone facilities in the building. On July 23, 1970, representatives of complainant and defendant looked at the plans of the building and observed the outlet boxes and conduit that were being installed in the building for telephones. After the meeting on July 23, 1970, defendant installed telephone service at approximately 42 second floor locations without objection. Said service was provided by running cable in the area above the suspended ceiling of the first floor without placing the cable in conduit.

On December 1, 1970, a representative of complainant conferred with a communications consultant of defendant regarding the installation of approximately 16 additional telephones on the second floor. Subsequent to this meeting, communications consultant of defendant sent a letter dated December 2, 1970, to complainant's office manager (Exhibit 5). Said letter sets forth defendant's position with respect to telephone service to complainant's second floor offices as follows:

1. The offices that presently have service will not be affected unless there is a telephone move which requires recabling. In the case of recabling, conduit or exposed cable would be required.
2. The offices that presently have no service but to which cable has been provided will be served by that cable, provided it need not be moved to another outlet. In the case of a move, conduit or exposed cable would be required to the other location.
3. The offices that have not been cabled for telephone service will require either conduit or exposed cable to serve them.

The letter also states defendant was in error when it provided service under the conditions which exist (the running of cable, for second floor phones, within the area above the first floor suspended ceiling without conduit).

Between January 4, 1971, and January 11, 1971, defendant installed a telephone on the second floor of complainant's premises by running cable in the area above the suspended ceiling of the first floor without the benefit of conduit.

Defendant's tariff 36-T provides on first revised sheet 20, "Where concealed telephone wiring is required on the subscriber's premises, the subscriber shall furnish, install, and maintain the necessary outlet boxes and conduit." Defendant alleges that installation of cable servicing second floor phones without the benefit of conduit was in violation of its tariff and its established practices. Defendant's tariff does not define necessary conduit.

Exhibit 4 contains a copy of defendant's Southern California Region Marketing Practice sheet regarding conduit requirements. Said sheet provides that the area above suspended ceilings may be used to place cable without conduit for telephone service only on the same floor (the floor immediately below the suspended ceiling) so that occupants of one floor are not disturbed by telephone work for occupants of another floor. Said provision does not appear in any of defendant's tariffs.

When questioned as to why representatives of defendant failed to insist on conduit for second floor telephone installations, the witness for defendant testified:

"Over the years the use of false ceilings has grown. It has not always been a method of construction and as the use of false ceilings has grown builders have put more and more kinds of building support material into these false ceilings. The tendency was to have the telephone company put their cables without benefit of conduit in these false ceilings also. We always have requested as a first choice adequate conduit in an effort to meet a customer's needs and provide service. We became less stringent in our requirement that conduit always be provided. This was in violation of our tariff and we have since reinforced our field people's knowledge of the requirements of the tariff and our practices in this regard." (Transcript p. 30, lines 4-17.)

The witness also testified that, subsequent to two fires in New York, the New York Board of Fire Underwriters recommended that no plastic material be placed in a false ceiling area without the use of

conduit. The witness also testified that in the average situation it would take two more man-hours to install a phone on the floor above the suspended ceiling than on the floor below when placing exposed cable in the area above the suspended ceiling. The witness also testified that when installing cable within the false ceiling area to serve the floor above there is a customer relation problem because of disruption of the work of the occupants of the floor below, and a serious problem exists with respect to restoration of service. However, the witness for the defendant admitted that such problems only exist when the premises is occupied by two or more tenants.

Defendant interprets its tariff provision concerning concealed telephone wiring to apply in some instances and not others. The only conclusion that can be drawn from such an interpretation is that the tariff is ambiguous. It is a well established principle regarding interpretation of tariffs that ambiguities in a tariff should be resolved against the utility.

Based on the evidence adduced, the Commission finds that:

1. Complainant occupies a two-story building at Riverside, California.
2. Complainant's building was constructed between April 1, 1970, and October 29, 1970.
3. On July 23, 1970, representatives of complainant and defendant looked at the plans and observed the outlet boxes and conduit that were being installed for telephone service.
4. Subsequent to the meeting on July 23, 1970, defendant installed telephone service at approximately 42 second floor locations.
5. The installations set forth in Finding 4 were accomplished by running cable in the area above the ceiling of the first floor without placing the cable in conduit. ✓
6. By letter dated December 2, 1970, defendant advised complainant that service for additional telephones on the second floor would require the use of exposed cable or conduit.

7. Between January 4, 1971, and January 11, 1971, defendant installed a telephone on the second floor of complainant's premises by running cable in the area above the false ceiling of the first floor without the benefit of conduit.

8. Defendant's Southern California Region Marketing Practice sheet regarding conduit requirements (Exhibit 4) provides that the area above suspended ceilings may be used to place cable without conduit for telephone service only on the floor immediately below the ceiling.

9. The document described in Finding 8 is not a tariff.

10. Defendant interprets its tariff provision regarding concealed wiring set forth on first revised sheet 20 of Tariff 36-T to apply to telephone service to the floor above the suspended ceiling but not to the floor immediately below the ceiling.

11. Defendant's tariff does not define necessary conduit.

12. Defendant made no showing that conduit is necessary for concealed wiring for telephone service to the floor above the suspended ceiling.

The Commission concludes that:

1. Defendant's tariff is ambiguous with respect to conduit requirements.

2. Defendant should be ordered to install telephone service at complainant's second floor locations without requiring complainant to furnish conduit.

O R D E R

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company shall install telephone service to complainant's second floor locations without requiring complainant to furnish conduit.

2. The installation required by ordering paragraph 1 of this order shall be completed within thirty days after the effective date of this order.

3. Defendant shall notify the Commission in writing upon the completion of the installation required by ordering paragraph 1.

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

Dated at San Francisco, California, this 13th day of OCTOBER, 1971.

William S. Lyons, Jr. Chairman

Yvonne L. Shugart

Ed DeL... Commissioners

I dissent.
William S. Lyons, Jr.

Thomas Moran

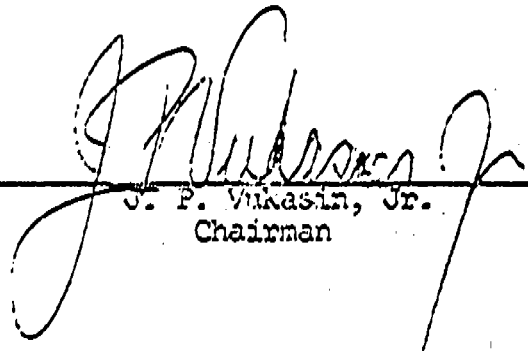
Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

J. P. VUKASIN, JR., CHAIRMAN, DISSENTING OPINION

I dissent.

The decision finds that the applicable tariff of Pacific (36-T) is ambiguous even though it is couched in plain and specific language. The tariff provides: "Where concealed telephone wiring is required on the subscriber's premises, the subscriber shall furnish, install and maintain the necessary outlet boxes and conduit." Certainly, the meaning is obvious.

The only proper issue here is the application, or non-application, of a clear and certain tariff. A finding of ambiguity results in an unsound conclusion. If the conclusion is undesirable, the Commission should require a change in the tariff.



J. P. Vukasin, Jr.
Chairman

San Francisco, California

October 13, 1971