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Decision No. 79330

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RAYMOND BENOUN,)
)
 Complainant,)
)
 vs.)
)
 THE PACIFIC TELEPHONE)
 AND TELEGRAPH COMPANY,)
)
 Defendant.)

Case No. 9161
 (Filed December 10, 1970;
 Amended January 4, 1971)

Raymond Morris Benoun, for himself, com-
 plainant.
Richard Siegfried, Attorney at Law, for The
 Pacific Telephone and Telegraph Company,
 defendant.
Tibor I. Toczauer, for the Commission staff.

OPINION AND ORDER

Hearing on this complaint was held before Examiner Coffey on June 21, 1971, at Redondo Beach. The matter was submitted on June 30, 1971 upon receipt of the reporter's transcript.

Complainant provides horse race results by means of re-
 corded telephone announcements from his place of business in Lawndale,
 Los Angeles County. By letter dated October 27, 1970, defendant
 under the authority of its tariffs formally advised complainant that
 his telephone service was being used in connection with a plan which
 causes an unusually large volume of telephone calls to his service
 at or about the same time which results in interference with telephone
 service to other subscribers. Complainant was advised that he must
 modify his plan, or subscribe to such additional telephone service as
 is necessary to handle the volume of calls to his service. Thereupon,
 complainant had his service put on vacation rate and filed this
 complaint.

It appears complainant's business was started with three telephone lines, which he subsequently voluntarily increased to 10 lines and then to 20 lines over a period of four years as his business increased and the capacity of the lines was reached. In March of 1970, defendant became aware that the volume of incoming calls to complainant's service greatly exceeded those being answered and that congestion of calls was indicated. After making a study which demonstrated that the number of unanswered calls (overflows) ranged from a low of 23 to a high of 3,854 in a one-hour period, defendant recommended to complainant that he reduce the length of his recording and that he add 10 more lines to his service. Complainant increased his service to 30 lines as recommended by defendant, but did not reduce the length of his recording until after further conferences with defendant. A subsequent study, made from June 24, 1970 to October 31, 1970, indicated that complainant's service was able to handle more calls with 30 lines but that overflows continued to create a problem, ranging from a low of 4 to a high of 3,398 overflows in an hour.

On October 28, 1970, complainant was advised that his service would be disconnected unless he subscribed to sufficient additional lines to enable him to answer all incoming calls, or unless he accepted service from a network with a Hollywood prefix, 520, designed for customers with mass call-in needs. Service from the 520 network would require complainant to either: (1) establish a second business location in Hollywood where the announcement equipment would be installed and the control features extended to his Lawndale address, or (2) lease space within defendant's Hollywood central office, where the group announcement equipment would be installed and the control features extended to his Lawndale address, or (3) move to Hollywood and subscribe to group announcement service there with the special 520 prefix.

Complainant refused the alternatives offered by defendant, requested his service be placed on vacation rate effective November 2,

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1970, filed this complaint on December 10, 1970, requested defendant to restore his service effective December 18, 1970, and after several meetings with defendant accepted 520 service (variously referred to by defendant as group announcement service, high-volume calling network, and network designed for customers with mass call-in needs).

Alleging that he had been told by defendant that the 520 service would be the same as his previous service at Lawndale from the Pleasant central office telephone number, 778-9431, complainant amended his complaint on January 4, 1971 to request restoration of his previous service from the Pleasant central office and requested damages.

Complainant maintains that with the 520 service he has no way of evaluating the number of calls being received, whereas when served from Pleasant he could at all times tell from the relay equipment installed in his office how many lines were operating. It is alleged that defendant is now limiting complainant's service to two calls from any one prefix at any one time and that the total amount of received calls is less with the 520 service than with 778 Pleasant service.

Defendant presented a number of studies which purport to demonstrate the number of calls to the 520 service but from this record it is not possible to definitely determine if complainant's service is less with 520 service since no study was made of the number of calls completed to the 778 service. Complainant maintains he had observed that all 30 lines of the 778 service were frequently being answered simultaneously. Defendant's Exhibit No. 7 indicates that in January of 1971 only 73 percent of calls attempted to the 520 network were completed, and Exhibit No. 8 indicates that the number of available trunks per exchange to the 520 network from Pleasant and contiguous exchange areas had by June 1, 1971 been increased from the original 2 trunks to an average of about 9 per exchange or district area and that 11 more trunks are scheduled to be added.

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A comparison of Exhibits Nos. 5 and 6, studies of incoming calls to the 520 network in February and April/May, 1971, respectively, demonstrates that the 10-day total of calls answered by complainant increased from 53,547 to 77,800.

Defendant's monthly billing for 30 lines to the 778 service was \$284.25 and for the 520 service is \$386.25, an increase of \$102.00 per month. Equipment charges being the same for both services, the increase in billing results from mileage charges for a voice and two control channels from the Hollywood exchange.

Findings and Conclusions

We find that:

1. Prior to December 24, 1970, complainant received service in Lawndale from defendant's Pleasant exchange, telephone number 778-9431.
2. Complainant provides to other users of telephone service horse race results by means of recorded telephone announcements.
3. Complainant, with defendant's knowledge and encouragement, voluntarily increased his 778-9431 service from three incoming lines to twenty lines.
4. Complainant, at defendant's request, increased his 778-9431 service from 20 incoming lines to 30 lines.
5. Users of defendant's telephone service at various times prior to November 2, 1970, dialed complainant's telephone number 778-9431 in sufficient numbers to cause the volume of incoming calls repeatedly to exceed greatly those being answered.
6. Defendant, under authority of Tariff Schedules Cal. P.U.C. Nos. 36-T and 32-T, compelled complainant to accept group announcement service after December 24, 1970, telephone number 520-1400.
7. Tariff Schedule Cal. P.U.C. No. 36-T, paragraph 12.a. provides:

"12. Impairment of Service

- a. If a customer uses his service or equipment in connection with a plan which causes an unusually large volume of calls to be made to such customer at or about the same time with the result that the service to others is interfered with, the Utility will notify in writing said customer of the problem and the customer shall then take action to modify such plan so that the problem will be eliminated, or the customer may subscribe to such additional service and equipment as necessary to handle the unusual volume of calls. Such notice shall indicate the customer's right to submit the matter to the Public Utilities Commission for review. Should the customer not take remedial action within five (5) days, and a second impaired service condition arises, the Utility may discontinue the service without further notice."

8. Tariff Schedule Cal.P.U.C. No. 32-T, paragraph 4 provides:

- "4. Where the intended or actual use of automatic answering equipment under RATES (1) and (2) will injuriously affect or affects the efficiency of the telephone facilities utilized in furnishing telephone service to other subscribers, the Company may decline to furnish the equipment or discontinue service already furnished."

9. Defendant has demonstrated that complainant used his service and equipment in connection with a plan which has caused prior to December 24, 1970, unusually large volumes of calls to be made to complainant at about the same time with the result that many calls were not answered, but defendant has not convincingly demonstrated in this record that there has been interference with the service to others or that complainant's intended or actual use of his service has injuriously affected or affects the efficiency of the defendant's facilities utilized in furnishing telephone service to other subscribers.

10. Defendant's belief that its existing telephone system has been unduly congested and could have been congested to the point

of total service interruption is reasonable because of the large volume of calls to telephone number 778-9431.

11. Defendant's plant at its Pleasant exchange and elsewhere is not sufficient to complete the large volume of calls to telephone number 778-9431.

12. Defendant's plant at its Pleasant exchange is not sufficient to increase complainant's lines to 300 on demand.

13. Defendant advised complainant that group announcement service would provide the same service he had received at telephone number 778-9431.

14. Group announcement service automatically limits the number of simultaneous incoming calls from any one exchange to the number of trunks connecting said exchange to group announcement service equipment located in the Hollywood exchange.

15. Since the line relays associated with complainant's service are located now in the Hollywood exchange, complainant cannot now estimate public use of his service as he could when his telephone number was 778-9431 and the line relays were located in his office.

16. Defendant has decreased the limitation on calls to group announcement service by increasing the number of inter-exchange trunks.

17. Group announcement service in the Los Angeles area is available only from the Hollywood exchange.

18. The availability of group announcement service from only one exchange in the Los Angeles area burdens complainant and calling subscribers.

19. Group announcement service generates revenues from the subscribers to the service and from multi-message unit inter-exchange calls from other subscribers.

20. It is reasonable that complainant should be required to accept group announcement service from the Hollywood exchange to prevent interference with service to other subscribers until such time as adequate facilities are otherwise available.

21. No unreasonable discrimination will occur if reparation is made to complainant for installation and line mileage charges for past service at the Hollywood exchange, telephone number 520-1400, and if no line mileage charges are made to said number until such time as the Commission has determined the reasonableness of rates and charges for high volume group announcement service.

22. The Commission does not have jurisdiction to award consequential damages.

23. The Commission has the power to award reparations and abatements.

We conclude that:

1. Defendant should be required to report to this Commission alternate solutions to its present group announcement service from its Hollywood exchange.

2. Defendant should be required to review and recommend to the Commission improvements in the structure of pricing of group announcement service to equitably distribute the costs of said service.

3. Defendant annually at complainant's request should furnish complainant with data that will enable complainant to evaluate the calls to his service.

4. Until the Commission has determined the reasonableness of rates and charges for high volume group announcement service, defendant should not charge complainant any more for service at telephone number 520-1400 than the charges for service would have been at telephone number 778-9431.

5. Defendant should refund to complainant all installation and mileage charges caused by the change of service from telephone number 778-9431 to 520-1400.

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company, on or before January 1, 1973, shall report to the Commission in writing the engineering and economic feasibility of means of providing large volume calling group announcement service to subscribers in the Los Angeles

extended area alternate to that presently provided at the Hollywood exchange.

2. The Pacific Telephone and Telegraph Company shall on or before January 1, 1973, present to the Commission in writing a rate proposal which equitably distributes demonstrated costs of large volume calling group announcement service between subscribers to the service and other subscribers.

3. Upon three months' written notice, for any two-week period, once a year, at complainant's request, The Pacific Telephone and Telegraph Company shall furnish complainant with data similar to that set forth in exhibits in this proceeding, sufficient to enable complainant to determine if he wishes to change the number of lines for which he subscribes.

4. Until the Commission has determined the reasonableness of rates and charges for high volume group announcement service, The Pacific Telephone and Telegraph Company shall not charge complainant more for service from the Hollywood exchange telephone number 520-1400, than the charge for service would have been from the Pleasant exchange, telephone number 778-9431.

5. The Pacific Telephone and Telegraph Company shall refund to complainant all installation and mileage charges which resulted from the change of complainant's telephone service from the Pleasant exchange to the Hollywood exchange.

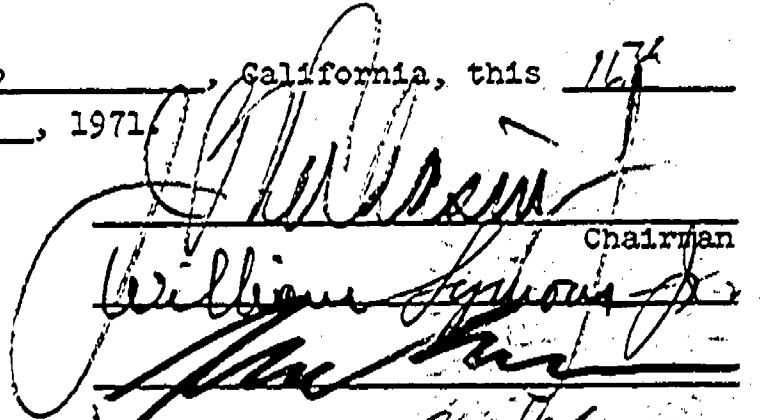
6. Complainant's request that his service be restored to the Pleasant exchange is denied without prejudice.

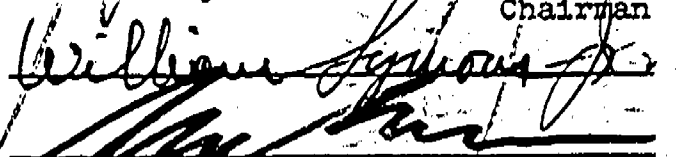
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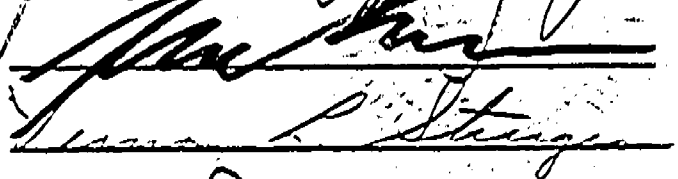
7. Complainant's request for the award of damages by this Commission is dismissed.


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

Dated at San Francisco, California, this 16th
day of NOVEMBER, 1971



Chairman






Commissioners