

ORIGINAL

Decision No. 79953

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The E. J. McKernan Co.,

Complainant,

vs.

The Pacific Telephone & Telegraph  
Co.,

Defendant.

Case No. 9251  
(Filed July 28, 1971)

E. J. McKernan, for The E. J. McKernan Co.,  
complainant.  
Richard Siegfried, Attorney at Law, for  
defendant.

O P I N I O N

Complainant, The E. J. McKernan Co., seeks a refund of \$40.00 per month for 40.5 months during the entire length of its telephone service with defendant and for damages. Public hearing in the case was held before Examiner DeWolf on January 13, 1972, in Los Angeles and submitted on the same date.

Complainant has three phones in its sales office in Garden Grove and other phones at offices in Connecticut and Illinois.

Complainant alleged and its executive officer testified substantially as follows:

In November, 1967 or late October, 1967, complainant requested defendant to install the cheapest "213" area code line to its offices at 12642 Brookhurst Street, Garden Grove, California. Pacific Telephone informed it that a "Compton Line" was the cheapest line it could install so customers would not have to dial "714" area code to reach complainant's offices from the "213" area. Complainant's officer testified that he requested a "Los Alamitos Line" or the "213" line with the least mileage, which would be the cheapest service charge available to its office from the "213" area.

Complainant's witness testified that at least twice from 1968 to 1971, it asked defendant to check its "Compton Line" telephone bill and recommend a cheaper overall service.

Complainant's witness further testified it investigated telephone charges in 1971 at every new location considered and the investigation revealed that it could have had a "Downey Line" for \$95.00 per month service charge instead of the "Compton Line" which cost \$135.00 per month base rate. This represented savings of \$40.00 per month since the "Compton Line" was installed on November 16, 1967 and terminated on April 2, 1971.

Complainant's witness also testified that defendant's agent offered to settle the matter at one time for \$10.00 per month and that this offer was rejected.

The complainant requests for an investigation and payment of the following:

1. \$1,605.83 in excess telephone charges made between November 16, 1967 and April 2, 1971 plus 6% interest compounded yearly.
2. \$100.00 per day for the time spent in pursuing this complaint.

The sales manager for the Santa Ana office testified for defendant and identified Exhibits 1, 2, and 3 in evidence. Exhibit 1 is a comparison of monthly foreign exchange service charges for Compton and Downey Foreign Exchange. Exhibit 2 is a copy of Marketing Department training material for usage prospecting of foreign exchange service. Exhibit 3 is a map of portions of Los Angeles area showing the Compton service area outlined in green and the Downey area in red.

The sales manager testified he is responsible for the planning, organizing and supervising of communications consultants who contact customers in the Santa Ana area, and makes frequent field visits with salesmen to assure that they are using the sales techniques and sales tools provided for them. He further testified that in October 1967, Pacific had installed Garden Grove local telephone service. The telephone number was 539-1137. On November 16, 1967, it installed Compton service at Mr. McKernan's Garden Grove address, the service which is in dispute. The telephone number was (213) 631-5101, commonly known as Foreign Exchange Service or FEK. During the time period in question, Mr. McKernan's place of business was located in Pacific's Garden Grove exchange. This exchange is in the 714 Number Plan Area (NPS). The other exchanges referred to, Compton, Downey and Long Beach, are in the 213 NPA.

The company has no records of the contacts with Mr. McKernan in October and November, 1967. The records were destroyed under records retention practices which provide that such matter be destroyed after three years unless there has been unusual activity on the account.

The comparative monthly charges for Downey and Compton foreign exchange service during this period are:

Downey		\$95.95	
Compton	- Before 12-2-68	-	\$133.15
	After 12-2-68	-	\$135.60

based on mileage computations.

Of these charges, foreign exchange telephone line rates are determined by two items:

1. Line charge
2. Inter-exchange mileage charge.

The witness testified that all customers are interviewed as to their requirements and the following questions are put to them:

What area do you cover?

When are your salesmen scheduled to call in?

Where are your major suppliers located?

Why have you adopted this plan?

What do you see as your long range goals in this area?"

The witness testified that:

"Mr. McKernan called our business office first on March 17, 1971, and he was referred to a Marketing Supervisor, who called him on March 19, 1971 to explain the difference in the local called areas of Compton and Downey service. She agreed to do a toll and multi-message unit study on the Compton line. After she had gathered the toll statements, she referred the complaint to a Communications Consultant. He completed the study and called Mr. McKernan with the results on April 1, 1971.

"The study, taken over a three-month period, shows the following:

	<u>Compton</u>	<u>Downey</u>
December 1970	\$27.70	\$29.50
January 1971	26.95	29.10
February 1971	48.55	48.15

"In our efforts to determine if the correct service was installed, we asked him where his customers were located. He told us: Compton, Long Beach, Torrance, South Los Angeles, and a few in the valley. He previously said the telephone service is his livelihood and the "213" telephone number was primarily for his customers to call him without having to call long distance to a "714" telephone number. We asked if any calling, in or out, to the Whittier, Montebello and Downey area was necessary. He answered no. We asked Mr. McKernan about the contact that he had with our company in 1967. He could not remember if he talked to a woman or a man. He also could not remember if he discussed the FEX service over the telephone or if our representative made a premises contact. He does remember asking for the "cheapest '213' line possible".

The map of the area, Exhibit No. 3, is described as follows:

The red line is drawn around the local calling area of Downey service. The Downey service may call any telephone in this area for one message unit, un-limited time. Also, any telephone in that area could call the Downey telephone for one message unit, un-limited time. The green line is drawn around the local calling area for Compton service. The same calling conditions for in-and-out calls that exist for Downey is true for Compton. The shaded blue area encompasses the telephone exchanges designated by Mr. McKernan as containing his customers.

The defendant's witnesses testified that the Compton service provides the best possible service to meet Mr. McKernan's needs, at the lowest billing rates, and explained as follows:

1. As shown on Exhibit 1, Lomita, Torrance, Gardena, and the southern portion of Los Angeles are within Compton's local calling area but not within Downey's local calling area. This means that Mr. McKernan's customers in those areas can call him on the Compton number and talk as long as they like and the charge to them is but one message unit of 4.5 cents for each call. However, if these same customers were to call a Downey number, they would pay about 20 cents for a 5-minute call, about 50 cents for a 10-minute call, and so on.

Mr. McKernan stressed the importance to his business of incoming calls from his customers. The benefit to be derived from FEX service in this case is in providing a local calling area which will permit the majority of his customers to call him without incurring toll or multi-message unit charges. The Compton service did this, Downey would not.

2. Of course, equally important are the calls Mr. McKernan places to his customers in the exchanges in the Compton local calling area. Mr. McKernan as a part of the basic monthly rate for the Compton service has an allowance of 200 message units for calls placed within the Compton local calling area. Each such call, regardless of the duration of the call, is considered as one of the 200 messages allowed. With a Downey number, a call to Torrance, for example, would cost Mr. McKernan about 30 cents for a 5-minute call.

3. The Compton service also permits Mr. McKernan to contact his own office from the field on a local call basis. The need for office contact is important in any sales operation.

While the basic monthly charge for the Downey service is approximately \$40 less than that for the Compton service, this difference does not reflect the fact that charges for toll and multi-message unit calls would be higher if placed over a Downey service as previously testified. In addition, an undeterminable number of Mr. McKernan's local calls would have been charged as multi-message unit calls if placed over a Downey service.

Complainant claims that he ordered the cheapest available service and that defendant is required to provide it without regard to his use of the service and the message units involved. Complainant produced no records of his installation order except his memory of one phrase - that he ordered the "cheapest services". Under the complainant's theory of his case every telephone customer can review his accounts at the end of his service and claim refunds if any other service line might appear to be cheaper, and without regard to message units or other benefits from the service.

Findings of Fact

Upon consideration of the evidence the Commission finds:

1. The complainant has submitted no proof in support of the allegations set forth in the complaint.
2. The claim to an oral agreement between complainant and defendant is not supported by any positive evidence as to time and place and parties present.
3. Complainant has not submitted any evidence that his telephone bills are excessive or have resulted in overcharges and are not in accordance with the published tariff of defendant.
4. The defendant's tariffs do not authorize defendant to make an agreement with complainant for cheapest service as alleged either orally or in writing.

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5. The evidence discloses that the service which complainant had was reasonable and in accordance with the tariffs of defendant.

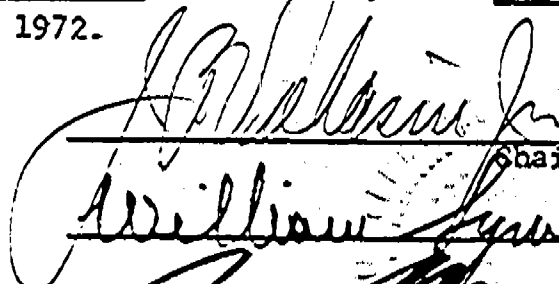
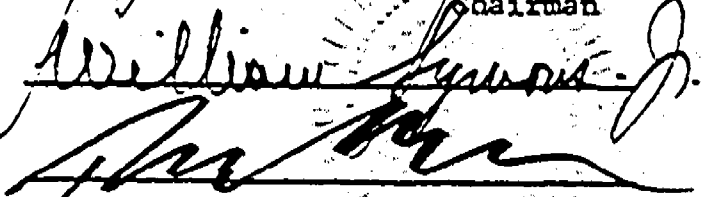


The Commission concludes that the complaint should be denied.

O R D E R

IT IS ORDERED that the complaint in Case No. 9251 is denied.

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

Dated at Los Angeles, California, this 18<sup>th</sup>  
day of APRIL, 1972.

  
Chairman  
  
William L. Strickland  
  
Commissioners  
  
Commissioners