

sjg/JM

Decision No. 80107

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DOLORES M. CONNELLY,

Complainant,

vs

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, and John Doe/s, Mary Doe/s

Defendants.

Case No. 9236
(Filed June 16, 1971)

Dolores M. Connelly, complainant.
Milton J. Morris, Attorney at Law,
for defendant.

O P I N I O N

By the above complaint filed on June 16, 1971, Dolores Connelly, complainant, alleges, among other things, that on Saturday, May 15, 1971, she noticed that some wires which had been on the floor of her bedroom were no longer there; that on checking she found that the telephone equipment furnished by the defendant and a 25-foot extension cord had been removed; that she checked her first floor and noticed that another 25-foot cord had been removed; that the defendant's public relations department continually refused to acknowledge her letters or telephone calls; that when they did acknowledge her calls or letters, the defendant's personnel would tell her that the company does not practice public relations with their subscribers and they transferred her call to some "unfit, unqualified, sweet and annoying-taking (sic)" business representative;

that there were constant insinuations by the defendant that money had not been sent to the defendant; that she has on occasion gone as long as three to six months without paying her bill to defendant without service being disconnected; that defendant's representatives have forced entry into her properties to pick up equipment without making appointments for such entry; and that the defendant does not indoctrinate its employees properly in that it permits breakage, entry, trespass, invasion of privacy, breakage of civil rights and invasion of civil rights. In addition, complainant alleges that the defendant removed equipment from the safety of complainant's bedroom with no notice of intention; that defendant removed a "trap" set for locating persons calling her telephone using obscene language, making threats; that defendant has never given her any credit for interrupted service or for bad service; interruption because of disputes and overcharges; that she was billed for some 300 or 400 message units improperly; that her telephone was not only a personal telephone but a method of communication for tenants or for prospective tenants; that she has had a loss of approximately \$1,200 per month in rentals because of removal of telephone service; complainant also complains that the equipment is poor, service is poor; she gets a poor reply in emergency calls; that her credit rating has been ruined and that the defendant furnished poor extension cords which twist up; and that one of the cords removed had been in her place for 12 or 13 years without twisting.

She said that her injuries are: "Knowledge that the Complainant is a member of the Armed Forces, is frequently out of town and/or making it impossible for business people to contact Complainant; prejudice in asking for a deposit, and refusing same; that during week of May 10, 1971, a telephone call by Defendant(s) to an unlisted number requesting information re Complainant as to whether or not employed at that number; was Complainant known; etc.; no explanation why these tactics; who made the telephone call; that since the Defendant, can so easily break into my home and remove equipment, in the event that something happens here, and an emergency arises at one of my properties, or here at the Complainant's residence, or to the Complainant, the Defendant is being held totally responsible and copy of this is being given her attorney."

As to relief requested, she alleges that she desires: "No communication with Defendant by certified/registered mail and/or telephone; nor any representative making a personal visit to Complainant's residence, 819, 821-823 South New Hampshire Avenue and/or 129 South Westmoreland Avenue, all in the City of Los Angeles. Should there be communication, regular mail ONLY will be accepted.

"Defendant is not to assign 388-9914 to another subscriber until such time as this matter is settled, if it is settled.

"Should matter be resolved, there is to be no reconnection charge, same 25-foot cord removed from second-floor of Complainant's residence is to be returned.

"Complainant be reimbursed for injury to person; time; effort; etc."

She requests "An order for compensation from Defendant(s), charges Defendant(s) with trespass; invasion of privacy; civil rights; breakage and entry; leaving back door of residence and gate of Complainants open and ajar, respectively; nervous strain. Likewise for undue, sarcastic insinuation of being 'a crook,' refusal on Defendant's part to believe Complainant's statements. Likewise reimbursement for time and effort compiling this and/or telephone calls and/or any and all subsequent legal fees should same be necessary; replacement of glass on service porch of Complainant's residence; an order from making inquiry re Complainant; removal of John Doe(s) and Mary Doe(s) responsible for this, and/or their Supervisors; holding 388-9914 and not giving this number to another subscriber; loss of rent; wasteful expenditures on advertising showing 388-9914 as the contact; any effects lost and/or removed from Complainant's residence, 249 South Gramercy Place, Los Angeles, California 90004; any medical bills which may be the outcome of this upsetment and/or nervousness, or revival of my health problem and any and all other medical, physical, or personal injury resulting from this incident caused by Defendant(s)."

On July 30, 1971, the defendant answered the complaint. This answer contained various denials and admissions plus three affirmative defenses as follows:

1. "The complainant has alleged a cause of action sounding in tort; namely, trespass. The Commission has repeatedly held that it has no jurisdiction to award damages for tortious conduct by a public utility to its customers (Warren v. Pacific Tel. & Tel., 54 Cal. P.U.C. 704 (1956); W. Schumacher v. P.T.&T Co., 64 Cal.P.U.C. 295 (1964); Watson-Rooter Corporation of America v. The Pacific Telephone and Telegraph Company, Decision No. 77811 (1970)). More specifically,

in a case involving a complaint for damages because an electric utility had erected a pole on private property, the Commission held that it had to dismiss the complaint as it (the Commission) has no jurisdiction over the enforcement of the law as regards trespassing or the entering upon and damaging the property of the complainant (Crow v. Pacific Gas & Electric Co., 65 Cal.P.U.C. 174 (1965) (unreported decision). These holdings apply to the instant case.

"Further, Schedule Cal.P.U.C. 36-T, Original Sheet 65, Rule 19 provides:

"19. ACCESS TO SUBSCRIBERS' PREMISES

The Company's authorized employees may enter a subscriber's premises at all reasonable hours for any purpose reasonably pertinent to the furnishing of telephone service and the exercise of any and all rights secured to it by law or by these Rules and Regulations.

That Company may remove any and all of its property, located on the subscriber's premises at the termination of service, as provided for in these Rules and Regulations."

2. "As to the allegations regarding disconnection, the complainant's telephone service was temporarily disconnected on April 13, 1971 for nonpayment pursuant to Schedule Cal.P.U.C. No. 36-T, 4th Revised Sheet 49, Rule No. 11 A.2.a. which provides:

"a. All Classes, Types and Grades of Exchange and Toll Service

Service to a particular premises, separately served and billed, may be temporarily or permanently discontinued for the nonpayment of a bill for the service furnished, provided the bill therefor has not been paid within the period specified below and the utility informs the customer with a written 5 day notice:

Thirty calendar days after presentation when bills are rendered yearly;

Five calendar days after presentation of special bills;

Fifteen calendar days after presentation of all other bills."

"Appropriate notice was given prior to said disconnection.

"Pacific offered to reestablish service for the complainant provided she paid the then outstanding charges of \$28.89 as well as a \$25 deposit. Said deposit was requested under the authority of Schedule Cal.P.U.C. No. 36-T, 4th Revised Sheet 36, Rule 6.B.1 which provides:

"B. Re-establishment of Credit

1. A customer whose service has been discontinued for nonpayment of bills will be required to pay any unpaid balance due the Utility for the premises for which service is to be restored and may be required to pay a reconnection charge as prescribed in Rule No. 11 under 'Restoration - Reconnection Charge' and to re-establish credit by making the deposit prescribed in Rule No. 7, before service is restored."

"While a payment of \$28.89 was received, the \$25.00 deposit was not paid. As a result her service was permanently disconnected on April 19, 1971. The final bill which was rendered April 22, 1971 totaled \$23.64. Neither the final bill nor the deposit has been paid. Since the service was permanently disconnected, a reconnection charge of \$35.00 will also be due under the authority of Schedule Cal.P.U.C. No. 36-T, 1st Revised Sheet 53-B, Rule 11.B. which provides:

"B. Restoration - Reconnection Charge

The utility may collect a reconnection charge when restoring service which has been temporarily discontinued; this reconnection charge will be equal to 50% of the in-place service connection charge. Service connection charges as set forth in Schedule No. 28-T will apply when restoring service which has been permanently discontinued in accordance with the provisions of this rule."

3. "As to the complainant's allegations that certain charges for telephone service have either been applied in error or are excessive, Pacific adjusted calls for the complainant in the past when she expressed no knowledge of a particular call. However, all charges which appear on the final bill are correct and in accord with the provisions of Pacific's filed tariffs."

After due notice, a public hearing on the complaint was held on Thursday, October 28, 1971 at 10 a.m. in the Commission's Courtroom, 107 South Broadway, Los Angeles, California. The Commission's records show notices of hearing were served on all parties, including the complainant at her stated address 249 South Gramercy Place, Los Angeles, California 90004. At the time and place set for hearing the defendant appeared through its attorney and the complainant failed to appear. Thereupon at the motion of the defendant the Commission issued an order of dismissal, Decision No. 79503 dated December 21, 1971.

Thereafter, at the request of the complainant, the dismissal was set aside and a public hearing was held in Los Angeles before Examiner Rogers on April 18, 1972. At this hearing, the complainant appeared in propria persona and the defendant appeared through its attorney, Milton J. Morris.

The complainant was sworn and testified. She reiterated her complaint and enlarged on it by stating she had several rental properties, one at 829 South New Hampshire, one at 129 South Westmoreland, and one at 819 South New Hampshire, Los Angeles, and that on or about the date the telephones were removed from her apartment the telephones were removed from these rental apartments. Complainant further stated that the bill in the sum of \$23.64 included \$22.22 for message units that were not used and improperly charged to her telephone.

The defendant called as a witness, Mr. W. J. Callies, the District Commercial Manager for the defendant, who testified generally as follows:

He is familiar with the complaint in this case; he reviewed the records and memorandums associated with complainant's account as well as the complaint; that the complainant subscribed to a 2-party flat rate residence service, former telephone number 388-9914; that the billing history on the complainant's account is shown on Exhibit 1 herein which is a debit and credit statement covering the monthly charges, payments and credits on Miss Connelly's telephone service from September 1970 to April 22, 1971; that, for example, the October 23, 1970 bill was prepared with a partial balance from the September bill of \$6.81, monthly service charge of \$4.75, local tax 24¢, Federal tax 48¢, for a total of \$12.28; that no payment was received for this bill; and that similar statements for the November and December bills are shown next - with balances carried forward from the previous months.

The witness said no payments were received for the said months and defendant began taking collection action in January 1971, and that Exhibit No. 2 is a statement of the action taken to collect the charges due.

The witness said the defendant's records show that on January 4, 1971 Miss Connelly called and claimed no knowledge of four toll calls on her December bill; that the cost of the calls, including tax, of \$6.44 was adjusted as shown on page 1 of Exhibit 1; that on January 19 defendant mailed her a 5-day written notice; that on January 23, 1971 another bill was prepared showing a total of \$40.53; that on January 27, 1971 a 24-hour notice was mailed; that on February 5, 1971 defendant called complainant at her home and reached a busy signal; that on February 10 and 11 defendant called again but did not receive an answer; that on February 17, 1971 defendant sent a man out to personally deliver another 24-hour notice; that this man left this notice under the front door as he did not get any response; that on February 18, 1971 the defendant called complainant at her home and did not receive an answer; that on February 23, 1971 another bill was prepared showing a total of \$48.48 due; that on February 24, 1971 defendant again called the complainant at her home and did not receive an answer; that defendant again mailed a five-day written notice in the amount of \$40.53; that on March 3, 1971 the defendant attempted to call her again and received no answer; that on March 5, 1971 again defendant sent a man out to deliver a 24-hour notice; that the man again left the notice under the door; and that on March 8, 1971 defendant temporarily denied the subscriber's outgoing service.

The witness further testified that on March 10, 1971 Miss Connelly called to question why she could not make outgoing calls from her telephone; that she was advised that a payment of \$40.53 plus a \$25.00 deposit was required before service would be restored; that Miss Connelly said she would pay the amount in defendant's office on March 15, 1971; that on March 12, 1971 she called to say she had paid \$25.00 at a bank on the day before and would like to have the service restored; that she was advised that defendant still needed the balance of \$40.53; that on March 15, 1971 the payment of \$25.00 was received in defendant's office; that on March 16, 1971 Miss Connelly paid the \$40.53 in defendant's office and defendant restored her outgoing service; that on the same day she contacted defendant and canceled her payment; that defendant did not disconnect her service; that on March 16, 1971 an adjustment for 61¢ including tax on a message unit claim was credited; that on March 18, 1971 defendant mailed a five-day written notice for \$22.87; that this was the balance carried forward from the January and February bills; that the March 23, 1971 bill showed a balance of \$28.89; that this included the \$22.87 carried forward from previous bills as well as \$6.02 in current charges; that on March 26, 1971 defendant mailed an updated 5-day written notice; that on April 1, 1971 defendant mailed a 24-hour notice; that on April 9, 1971 defendant called the complainant at her home but received no answer; that on April 12, 1971 defendant sent a man to complainant's home and left another 24-hour notice; that on April 13, 1971 defendant again temporarily denied the subscriber outgoing service; and that defendant mailed her a notice to let her know that her service was temporarily disconnected for nonpayment, and the amount required to avoid permanent disconnection.

The witness further testified that the complainant did not acknowledge this notice; that on April 19, 1971 defendant permanently disconnected her telephone service; that on that day payment was received in the amount of \$28.89 along with a note questioning the amount due; that defendant was asked to call her at 755-5826 with the information; that before defendant could call her complainant called defendant and wanted to know the amount owing on her bill; that defendant's service representative explained that she would call her back by the next day, April 20, 1971, with the information; and that thereafter the representative could not contact complainant.

On further examination of the parties, it developed that the only amounts claimed due are the April 22, 1971 item totaling \$23.64 (Exhibit No. 1) plus the \$25.00 reconnection charge (Exhibit No. 3).

Exhibit No. 3 is defendant's Rule No. 11, "Discontinuance and Restoration of Service" which, among other things, provides that in the event the service is disconnected for failure to pay the proper charges, a deposit shall be made for restoration of service. The pertinent portion of Rule No. 11 reads as follows:

"A. Amount of Deposit

1. The amount of deposit required to establish credit for residential telephone service is \$25.00. Whenever a deposit is taken, service connection charges and an advance payment will not be collected at the time of application.

2. The amount of deposit required to establish credit for business telephone service is twice the estimated average monthly bill, but not less than \$25.00.
3. The amount of deposit required to re-establish credit is equal to twice the average monthly bill for the last three months, when available."

Mr. Callies stated that the defendant is willing to reinstate service when the company has received payment of the \$23.64 shown on page 2 of Exhibit No. 1 and complainant has deposited the \$25.00 reconnection charge as set out above.

Mr. Callies stated that there is some question about the \$20.13 item of message units shown on page 2 of Exhibit No. 1. On questioning by the examiner, it appeared probable that the defendant would reinstall the telephone service if the complainant would pay the \$25.00 reconnection fee and other charges amounting to approximately \$3.00. The complainant refused to do so.

The Commission has great power relative to the entities whose rates, services and facilities it controls but it is limited in its jurisdiction to hear and determine only such complaints as are germane to regulation and control of public utilities (Motor Transit Company v. Railroad Commission of the State of California, et al, 189 Cal. 573. Pacific Telephone and Telegraph Company v. John E. Eshleman, et al, 166 Cal. 640).

Legally we do not have jurisdiction with respect to monetary damages which may have accrued to complainant because of billing (Postal Telegraph-Cable Company v. Railroad Commission of the State of California, 197 Cal. 426 at 437). The Commission has repeatedly held that it has no jurisdiction to award damages for tortious conduct by public utilities toward its customers. (W. M. Givnn v. Pacific Telephone Company, 62 Cal. P.U.C. 511; Postal Telegraph-Cable Company v. Railroad Commission of the State of California, supra; Joe Vila v. Tahoe Southside Water Utility, 233 Cal. App. 2d 469 at 479; Isabelle A. Goodspeed v. Great Western Power Company of California, 33 Cal. App. 2d, 245 at 264.)

If the complainant does not get adequate service from the telephone facilities furnished to her by defendant, the Commission only has jurisdiction to order reparation of some or all of the charges paid by complainant. If complainant is entitled to any damages her remedy is in the courts (Public Utilities Code Section 2104, Vila v. Tahoe Southside Water Utility, supra).

In the Vila case, supra, the court states at page 479: "By statute, the Commission is empowered to enforce its orders by suit (Sec. 2102),^{1/} by mandamus or injunction (Sec. 2102); it also has power to impose fines (Sec. 2100) and recover them by an action (Sec. 2104). It may also punish for contempt (Sec. 2112). But Section 2106 is the only statutory authority for the recovery, by a person injured, of damages, compensatory and exemplary. The Commission has no authority to award damages."

^{1/} References to Code Sections are to California Public Utilities Code Sections.

The court further stated, at page 480:

"We attribute to the legislature an intent in enacting section 2104 to provide the prospective user wrongfully deprived of service to which he is entitled with a speedy and adequate remedy in the (superior) Court."

This language is pertinent to the case herein considered. If complainant is entitled to damages, she has access to the courts. We have advised the complainant that we cannot award general damages. Our jurisdiction is supreme within our sphere of authority. We cannot assume jurisdiction above that granted by the legislature.

The complainant flatly refused a compromise suggested by the examiner.

Findings

The Commission finds that:

1. Dolores M. Connelly, complainant, prior to October 1, 1970, to and including April 19, 1971, was a subscriber to and user of telephone service furnished by defendant at her home, 249 South Gramercy Place, Los Angeles, California, plus other telephone service furnished by defendant at rental units owned by complainant.

2. Between October 23, 1970, and April 19, 1971, defendant permitted complainant's telephone bills to accumulate from month to month for as long as three months. Commencing in January 1971, the defendant commenced action to attempt to collect complainant's telephone bills as presented. On or about May 15, 1971, the defendant permanently disconnected complainant's telephone service for failure to pay a current bill in the amount of \$23.64. Defendant will reconnect complainant's telephone service when complainant pays the amount claimed due plus reconnection charges.

3. Complainant's contention that \$22.22 in multi-message units which defendant included in its bill of \$23.64 were not made by her was not rebutted by defendant.

4. As of the date service was disconnected, to wit, April 19, 1971, complainant owed the defendant for telephone service \$1.42, the difference between \$23.64 and \$22.22.

5. The complainant violated tariff provisions during the period referred to in these findings by not paying her telephone bills on presentation. This action resulted from a continuing course of conduct between the complainant and the defendant whereby the defendant permitted said bills to cumulate without taking affirmative action to collect.

Conclusion

We conclude that as a result of the course of conduct between the complainant and the defendant, the complainant should have her telephone restored without payment of a deposit other than payment of the balance of her telephone bill referred to above.

O R D E R

IT IS ORDERED that upon the payment by Dolores M. Connelly to the defendant of the sum of \$1.42, defendant shall reinstall complainant's telephone service in as near the same manner as when the services were removed.

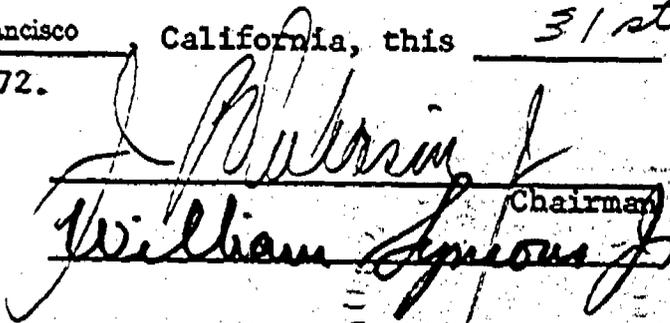
The effective date of this order shall be twenty days after service on defendant.

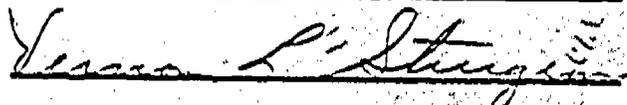
Dated at San Francisco, California, this 31st day of MAY, 1972.

I dissent



Commissioner


Chairman



Commissioners

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

D. W. HOLMES, COMMISSIONER, Dissenting:

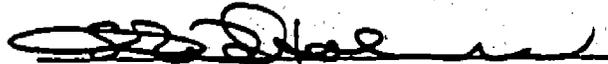
This decision represents a flagrant violation of existing tariffs. Further, it establishes a precedent which can have far-reaching implications for all the utilities regulated by this Commission. In effect, the utility is penalized for having attempted a compromise with the complainant and for having failed to invoke a policy of immediate discontinuance of service.

The record is clear that the complainant was several times accorded all protections which the tariffs afford any subscriber. There is a specific finding that complainant continuously violated the applicable tariffs by failing to pay bills on presentation.

I must emphasize my criticism of the utility for abdication of its responsibility by failing to put into the record testimony regarding the actual balance owed by complainant. While I recognize that the amounts involved are insignificant and that good public relations decreed prompt disposition of the matter, the Commission must have at its disposal all requisite facts for an equitable decision.

The Commission owes a duty to insist that utility and subscriber conform to affirmative tariff duties. It cannot be seen to penalize the utility for compassion. Payment of outstanding balances and the applicable reconnection fee will not be too harsh a penalty

for complainant's recalcitrance.


Commissioner

San Francisco, California,
May 31, 1972.