

Decision No. 80184

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN B. COGAN,

Complainant,

vs.

CALAVERAS TELEPHONE COMPANY,

Defendant.

Case No. 9226
(Filed May 19, 1971)

Hugh E. McColgan, Attorney at Law, for John B. Cogan, complainant.

J. Calvert Snyder, Attorney at Law, for Calaveras Telephone Company, defendant.

O P I N I O N

On May 19, 1971, complainant John B. Cogan filed the complaint herein against defendant Calaveras Telephone Company alleging that:

1. Complainant is the owner of Poker Flat Resort Motel located on Tulloch Lake in Calaveras County, California, which consists of 25 individual living units, an office, kitchen, dining room, recreation room and other related facilities.

2. Defendant is a California corporation doing business as a public utility supplying telephone service to the public in Calaveras County, California.

3. In June of 1969, complainant entered into an oral agreement with defendant under which defendant agreed to supply telephone service to complainant's motel. Said oral agreement provided that the acquisition cost and installation cost of all telephone equipment to be utilized at the motel would be borne by defendant and that the sole cost to complainant would be for the actual use of the service determined by the calls actually made utilizing the equipment installed.

4. In September of 1969, defendant advised complainant that in addition to the charges to be made for the actual service utilized there would be an additional monthly charge of \$150.00 for the entire telephone system installed to service the motel.

5. On or about November 15, 1969, defendant submitted a written statement to complainant entitled "Explanation of your monthly service charge and installation charges", a copy of which is attached to the complaint as Exhibit A, notifying complainant for the first time that there would be a fixed monthly service charge of \$270.00 per month for the entire telephone system installed to service the motel and a special installation charge in the amount of \$575.00 for certain telephone equipment installed at the motel by defendant.

6. At no time did defendant or any person make to complainant, or to any of his employees or agents, any reference to any other costs or charges, or any tariff or any other matter which would indicate that the basic monthly cost or the installation would involve any cost or expense other than that mentioned specifically above.

7. Following many months of fruitless discussions between complainant and defendant regarding the material differences between the oral agreement and the claims subsequently made, the services of defendant to the motel were terminated, and defendant removed certain of its equipment from the motel about June of 1970.

8. Following removal of the telephone equipment by defendant, complainant was advised for the first time that a cancellation charge of \$3,272.00 was to be made by defendant against complainant, and then on August 2, 1971, complainant was advised by defendant that the corrected cancellation charge was \$5,214.75.

9. Complainant authorized the subject telephone service on the basis of the oral agreement and could not have reasonably expected or anticipated the excessive charges which the defendant has attempted to levy against complainant.

Complainant requests that defendant be restrained from charging complainant for telephone services of any kind or nature in connection with installing, maintaining and operating equipment of defendant on complainant's property known as Poker Flat Resort Motel, other than in conformity with the oral agreement above set forth, and that complainant be awarded such other and further relief as may be appropriate.

On June 14, 1971, the defendant filed its answer admitting the allegations set forth as 1 and 2 above, but denying the other allegations set forth above except as follows:

1. Defendant admits that on or about November 15, 1969, defendant submitted a written statement to complainant entitled "Explanation of your monthly service charge and installation charges", a true and correct copy of which is attached to the complaint and marked Exhibit A.

2. Defendant admits that certain services of defendant to the motel were terminated in June of 1970 and that certain equipment was then removed at the request of complainant through a letter, a copy of which is attached to the answer and marked Exhibit A.

As a further answer and defense, defendant alleged that during all discussions in connection with the services involved in this proceeding, defendant advised the complainant and his servants and employees that for service and other charges complainant would be charged according to the established tariff rates filed with this Commission, and that all charges for which complainant has been billed are based upon the defendant's established and filed tariff schedules as the defendant interprets them.

Defendant requests that the Commission issue an order in this proceeding establishing that complainant should pay the charges as billed by defendant.

A public hearing in this matter was held before Examiner Cline in San Francisco on January 25, 1972. The matter was to have been taken under submission on March 21, 1972, on or before which time the parties were to be given the opportunity to file proposed findings of fact and conclusions of law. Proposed findings of fact and conclusions of law were filed by the defendant on March 21, 1972. The complainant is hereby given a two day extension of time, and the proposed findings of fact and conclusions of law filed by the complainant on March 23, 1972 are hereby made a part of the record in this proceeding. The matter was taken under submission on March 23, 1972.

Based upon a consideration of the record herein, the Commission finds as follows:

1. Complainant John B. Cogan was at the times involved in this complaint, and until about August of 1971, owner of certain real property located in Calaveras County, California, situated contiguously to Tulloch Lake.

2. In late 1968 and the early part of 1969, Mr. Cogan made plans to subdivide the above-mentioned property and caused the preparation of a tentative map of the above-described property, which showed a subdivision into five hundred residential lots, three commercial areas and a resort motel to be known as "Poker Flat Resort Motel".

3. Mr. Cogan first caused the construction of the Poker Flat Resort Motel, which consisted of twenty-five individual living units, a business office, a restaurant, a bar, a kitchen, a recreation area, boat docking and gas service areas and other related facilities. During the course of construction of the motel and until the latter part of 1970, a Mr. Glenn Vergara was employed by Mr. Cogan as the manager of the Poker Flat Resort Motel. During this period of time, Mr. Cogan visited the motel frequently to check on the progress of construction of the project and to discuss financial and other related matters with respect to the project with Mr. Vergara.

4. Defendant Calaveras Telephone Company is a corporation duly organized and existing under the laws of the State of California whose address is P. O. Box 37, Copperopolis, California, 95228.

5. Defendant is a public utility owning and operating a telephone system furnishing exchange and toll telephone service in the unincorporated towns of Copperopolis and Jenny Lind and vicinity in Calaveras County and a small portion of Stanislaus County, as shown on the map filed with the Public Utilities Commission of the State of California as part of Calaveras Telephone Company's complete filed tariff schedule.

6. During June, 1969, Howard J. Tower, the President of Calaveras Telephone Company, when the Poker Flat Resort Motel was in the process of being constructed, contacted Glenn Vergara and advised him that if Calaveras Telephone Company was going to put in any amount of service in the facilities, it should be wired before the buildings were closed or the motel could not have any concealed wiring for the telephone service, and Glenn Vergara requested Howard J. Tower to install such wiring. Thereafter Mr. Tower and Mr. Vergara had numerous discussions about the type of service to be installed. The sales engineering personnel of Stromberg-Carlson Company designed a suggested system to be installed. The suggested system was fully discussed with Mr. Vergara who approved the complete system and directed Calaveras Telephone Company to install the system which was done. The equipment is a relatively standard piece of equipment with a maximum of eighty extensions for guest room service with outside automatic switching.

7. In June of 1969, Mr. Cogan, Mr. Vergara and Mr. Bob O'Neill, an acquaintance of Mr. Cogan, discussed the proposed installation of telephone equipment for the Poker Flat Resort Motel with a Mr. Larry Schindler, then an employee of defendant. This discussion was the basis for an alleged oral understanding that complainant would be charged only for toll charges by defendant. Mr. Schindler was an installer and central office maintenance man for defendant during the installation of the P.A.B.X. at the Poker Flat Resort Motel. He performed no other duties for the defendant.

8. During the months of August and September of 1969, the Calaveras Telephone Company accrued only toll charges on the telephone service to Poker Flat Resort Motel. No charge was accrued or made during these months for installation of the service or for the monthly service charge.

9. After the telephone equipment was fully installed and on or about November 15, 1969, Mr. Tower presented a written statement to Mr. Vergara addressed to Poker Flat Resort Motel and entitled "Explanation of your monthly service charge and installation charges", advising that there would be a fixed monthly "service charge" of \$270.00 per month and a special "installation" charge for the telephone system installed at the Poker Flat Resort Motel by defendant which amounted to \$575.00. This statement of the charges was based upon the filed and established tariff schedules of Calaveras Telephone Company. Mr. Vergara accepted the statement without objection. This statement did not come to the attention of Mr. Cogan until May of 1970 when he was making an audit with his office manager.

10. On June 30, 1970, Calaveras Telephone Company was notified by Glenn Vergara to discontinue the room telephones, the kitchen phone, amplifier loud speakers, and the P.A.B.X. service. Pursuant to this notice, the defendant discontinued telephone service to the Poker Flat Resort Motel with the exception of one line to the office and one extension to the bar. Thereafter, defendant Calaveras Telephone Company billed complainant for the unpaid charges for telephone service as follows:

Service Charge

\$270 per Month for the 9 Months of October, 1969 through June, 1970	\$2,430.00
Charge for July, 1970 until Termination.....	6.50
Total Service Charge.....	\$2,436.50
10% Tax Thereon.....	243.65
Total Service Charge and Tax.....	\$2,680.15

Toll Charge

For period August, 1969 through July, 1970..\$	756.21
10% Tax Thereon.....	75.64
Total Toll Charge and Tax.....	\$ 831.85
Installation Charge.....	\$ 575.00
Total Unpaid Charges for Telephone Service for the Period August, 1969 through July, 1970 Termination Date and for Installation.....	\$4,087.00

11. Complainant refused to pay the above charges of defendant, other than the toll charge and tax in the amount of \$331.85, on the ground that the previous installer, Mr. Schindler, had told him there would be no charge for the basic installation.

12. At no time did defendant Calaveras Telephone Company through its authorized agents enter into an oral agreement with complainant to provide telephone service to Poker Flat Resort Motel for toll charges only, without any service and installation charges as provided in its tariff.

13. Subsequent to the termination of service to the Poker Flat Resort Motel pursuant to complainant's notice through Mr. Vergara to defendant on June 30, 1970, a Mr. James Martel, an employee of Calaveras Telephone Company told Mr. Cogan that if Calaveras Telephone Company were allowed to leave the bulk of the telephone system in the Poker Flat Resort Motel, the termination charge would be reduced for each month of subsequent operation of such telephone equipment. On the basis of Mr. Martel's representation, complainant

allowed the Calaveras Telephone Company to leave at the motel the bulk of its telephone system which had been installed there. Mr. Martel at that time was and still is a combination installer and maintenance man for defendant.

14. Following the termination of service to the motel pursuant to complainant's notice of June 30, 1970, complainant was advised for the first time by defendant that a termination charge of \$3,272.00 was to be made by defendant against complainant. On August 2, 1971, complainant was advised by defendant that the corrected termination charge was \$5,214.75, which is the basic termination charge of \$6,135.00 less a credit of \$920.25 for nine months use by complainant.

15. Defendant's Tariff Schedule No. A-7, entitled Automatic Private Branch Exchange Service provides for a basic termination charge of \$6,135.00 for the automatic switching unit which reduces 1/60 for each full month the equipment is retained in service at the same premises. Special Condition 4 of defendant's Schedule No. A-7 provides as follows:

"4. In the event the equipment is not retained by subscriber in conjunction with exchange service for a period of five years, the subscriber will, upon discontinuance of the equipment unit described under Rates (1), pay in cash to the Company the amount of the 'Basic Termination Charge' less one sixtieth (1/60) of that amount for each full month the equipment was retained in service at the same premises."

16. Complainant sold his interest in the Poker Flat Resort Motel and in and about August of 1971 the telephone system installed by defendant for complainant which had been disconnected at complainant's request was reconnected and has been in operation since that date. Since the date of reconnection, defendant has been charging the present owner of the Poker Flat Resort Motel the same charges for the telephone equipment installed in the Poker Flat Resort Motel as were charged complainant at the time he was the owner of the Poker Flat Resort Motel.

Based on the foregoing findings of fact, the Commission concludes as follows:

1. Complainant is obligated to pay to defendant for telephone service installed and furnished to complainant at the Poker Flat Resort Motel installation charges in the amount of \$575.00, service charges and tax thereon in the amount of \$2,680.15, toll charges and tax thereon in the amount of \$831.85, and termination charges in the amount of \$5,214.75 less the sum of 1/60 of \$6,135.00, or \$102.25, per month, for each month since July of 1971 the equipment has been and continues to be used at the Poker Flat Resort Motel to the date of the payment by complainant of said termination charge.

2. Defendant should be required to deposit the amounts which defendant collects from complainant as a termination charge under defendant's tariff in a trust account, and each month that the telephone equipment for which such termination charge has been paid continues to be retained in service at the Poker Flat Resort Motel, defendant should repay to complainant out of said trust fund the sum of \$102.25 per month until such trust fund and interest accumulated thereon has been repaid in full to complainant, or until the said telephone equipment is no longer retained in service at the Poker Flat Resort Motel, whichever date first occurs.

O R D E R

IT IS ORDERED that:

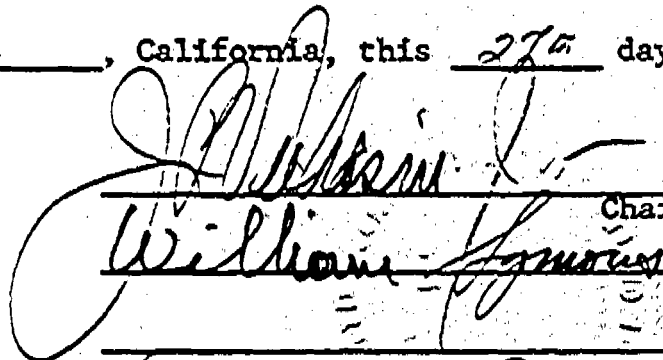
1. Defendant Calaveras Telephone Company shall rebill and forthwith collect from complainant John B. Cogan for telephone service installed and furnished to complainant at the Poker Flat Resort Motel in Calaveras County installation charges in the amount of \$575.00, service charges and tax thereon in the amount of \$2,680.15, toll charges and tax thereon in the amount of \$831.85, and termination charges in the amount of \$5,214.75 less the sum of 1/60 of \$6,135.00, or \$102.25, per month for each month since July of 1971 that the equipment for which the termination charge is made has been and continues to be used at the Poker Flat Resort Motel thereof to the date of the payment by complainant of said termination charge.

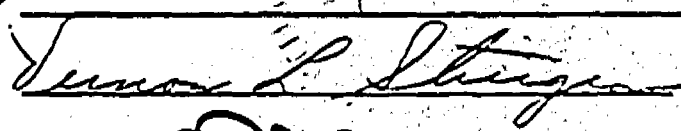
2. Defendant Calaveras Telephone Company shall deposit in a trust account with a bank or trust company acceptable to this Commission the amounts which defendant collects from complainant as a termination charge pursuant to paragraph 1 of this order, and each month that the telephone equipment for which such termination charge has been paid continues to be retained in service at the Poker Flat Resort Motel said defendant shall repay to complainant out of said trust fund the sum of \$102.25 per month until such trust fund and interest accumulated thereon has been repaid in full to complainant, or until said telephone equipment is no longer retained in service at the Poker Flat Resort Motel, whichever date first occurs. Any amount remaining in said trust account after said date shall belong to defendant.

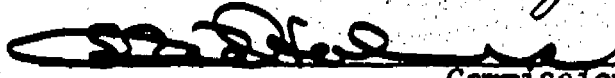
3. On or before December 31, 1972, defendant shall file reports with this Commission showing (1) the amounts which have been collected from complainant pursuant to paragraph 1 of this order and (2) the status of the trust fund established pursuant to paragraph 2 of this order. Defendant shall continue to file such reports with this Commission each six months thereafter until said amounts have been collected in full pursuant to paragraph 1 hereof, and until the trust fund has been disposed of pursuant to paragraph 2 hereof.

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

Dated at San Francisco, California, this 27th day
of JUNE, 1972.



Chairman




Commissioners