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Decision No. 80679 ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM E. CASSELBERRY, JR.
dba The Casselberry Group,
Complainant,
vs.
PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,
Defendant.

Case No. 9273
(Filed September 20, 1971)

Jerry A. Green, Attorney at Law, for complainant.
Milton J. Morris, Attorney at Law, for defendant.

## O P I N I O N

This is a complaint by William E. Casselberry, Jr., doing business as The Casselberry Group, (hereinafter referred to as Casselberry) against The Pacific Telephone and Telegraph Company (hereinafter referred to as PT&T).

A duly noticed hearing was held in this matter before Examiner Donald B. Jarvis in San Francisco on March 28, 1972. It was submitted on May 5, 1972.

The complaint involves a dispute over whether Casselberry should be required to post a $300 deposit in order to obtain a business telephone service. In order to resolve this dispute it is necessary to determine whether PT&T improperly disconnected Casselberry's prior service.

The material issues presented in this matter are: 1. Are PT&T's tariff provisions and procedures thereunder which provide for advanced-toll billing illegal or unconstitutional? 2. If the advanced-toll billing procedures are legal and constitutional, were they improperly or arbitrarily applied to Casselberry under the facts herein presented?

At the hearing, counsel for Casselberry raised the issue of the legality and constitutionality of PT&T's advanced-toll billing procedures. However, no evidence was presented on the issue and counsel declined the opportunity to submit points and authorities thereon. The Commission finds and holds that there is nothing in this record which would support a finding or conclusion that PT&T's advanced-toll tariff procedures are illegal or unconstitutional. (Cf., Wood v. Public Utilities Comm., 4 Cal. 3d 288, appeal dismissed for want of Federal question, 404 U.S. 931.) This issue requires no further consideration herein.

The primary question to be determined is whether PT&T acted arbitrarily or improperly in disconnecting Casselberry's telephone service on July 23, 1971. If the disconnect was proper, PT&T is warranted in requesting the $300 deposit before reinstituting service. If the disconnect was improper, the requested deposit is also improper.1/

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1/ The Commission takes official notice of the provisions of PT&T's tariff applicable to the facts herein presented, PT&T's Rules 6(B)(1) and 7(A)(3) of Cal. P.U.C. Schedule No. 36-T, provide as follows:

Rule 6(B)(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.

Rule 7(A)(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.

Casselberry had a one-party measured business line service in San Jose prior to April of 1971. The service was discontinued, at Casselberry's request, in March, 1971. It will be hereinafter discussed. In April of 1971, Casselberry requested reinstallation of service at the same address as the prior service and was given a one-party flat rate business line with the same telephone number which he had in the previous service.

Casselberry regulated the cash flow of his business account so that disbursements were made on or about the 15th day of each month. PT&T assigned Casselberry a billing date of the 7th day of each month which resulted in his receiving the bill on or about the 15th day of the month. Sometime during or prior to June of 1971, Casselberry arranged with PT&T's marketing department for a special payment date which would be the 18th day of the month following the one in which the bill was issued. PT&T rendered its first bill to Casselberry in May of 1971. It was dated the 7th and received on or about the 15th. On May 27, 1971, Casselberry made a partial payment on the May bill. There was a balance forward of $139.74. Casselberry's June bill was dated June 7, 1971 and received on or about June 15. On June 15, 1971, Casselberry made a payment to PT&T of $139.74. Between June 15 and June 30, 1971 Casselberry received a "five-day notice" which informed him that if he did not pay his June bill within five days PT&T would disconnect his service. Casselberry telephoned PT&T's San Jose business office and talked to the business office supervisor. He complained of the five-day notice in the light of his special payment date arrangement. The business office supervisor checked PT&T's records and found a notation of the special payment date arrangement with the marketing department. She advised Casselberry that he had until the 18th of July to pay the bill. On July 1, 1971, the business office supervisor sent Casselberry a letter which stated:

> "To avoid any confusion in the future I am writing to confirm our conversation on June 30, 1971.

> "A special payment date of the 18th of each month has been arranged on your account. Payment will be due in our Business Office by 5:00 p.m. the 18th of each month or the service will be disconnected. Should such action be taken a deposit will be required to reconnect the telephone.
>
> "The next payment you are to make will be in the amount of $184.88, to be received in our office July 18, 1971, by 5:00 p.m. or the telephone will be disconnected."

At no time during the discussions about the preferred payment date did PT&T differentiate between basic service and toll service. The preferred payment date was meant to apply to toll service.

PT&T's operating procedures under its tariff provide for a procedure called advanced-toll billing. In advanced-toll billing a computer is programed in multiples of $50 to indicate when a customer's current toll-call usage reaches a predetermined amount (the amount varies among area offices). When a customer's toll-calls exceed the predetermined amount, the computer prepares a printout notice of the fact. The notice is forwarded to the business office which handles the account where it is evaluated by a service representative in the light of the customer's past usage and credit information. If the evaluation indicates that there is a substantial risk of nonpayment of toll charges, a short period bill is sent to the customer. The customer is given five days to pay the bill. If it is not paid, service is disconnected.

On July 7, 1971, the business office supervisor received an advanced toll computer printout indicating that Casselberry's toll-call activity exceeded the amount programed in the computer. The business office supervisor testified that when she spoke with Casselberry on June 30 and wrote the aforesaid letter on July 1 she was unaware of Casselberry's prior service; that on June 30 she was not completely satisfied with Casselberry's credit information, and that on July 7 it was called to her attention that payments on

Casselberry's previous account had been slow. The business office supervisor decided to render an advanced-toll bill with a special five-day letter. On July 9, 1971, PT&T had the following letter hand delivered to Casselberry:

> "The enclosed bill is for long distance calls made from May 31 to July 2.
>
> "Normally, charges for long distance calls are included on your regular monthly telephone bill. However, the charges on the enclosed bill exceed the amount of credit we can extend on your account. For this reason, we would appreciate your making payment for the calls within five days from the date of this letter.
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> "If payment is not received by July 14, service may be discontinued. In this event, in addition to payment of the charges, a deposit may be required to restore the service.
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> "These calls will be listed again on your next regular bill. Payments you make before the regular bill is prepared will be shown on the balance line and subtracted from the amount billed.
>
> "If you have any questions about the bill or your account, please call me on 288-9000."

Thereafter, Casselberry telephoned the business office supervisor and protested the advanced-toll billing on the ground of his preferred payment date arrangement. He also disputed some of the toll charges on the basis of unauthorized use. That dispute was subsequently resolved and the merits thereof need not be considered herein. The business office supervisor indicated that in light of the preferred payment date arrangement, Casselberry would be given until July 18, 1971, to pay for the toll calls. This was only an extension of four days. If the preferred payment date had been applied, the toll calls involved would have appeared on the July 7, 1971 bill and payment therefor would not have been required until August 18, 1971. The advanced toll statement was for $245.81.

There were various telephone conversations between Casselberry and PT&T over the advanced-toll billing. Casselberry threatened legal action. On or about July 17, 1971, Casselberry transmitted to the Commission's Field Division Office in San Jose a check for the amount in dispute. However, the San Jose office is one which deals with transportation matters. By the time the check was transmitted to the proper division of the Commission, telephone service had already been disconnected and the check was returned to Casselberry. It also appears that PT&T was not notified about the transmittal of the check. Casselberry's service was actually disconnected on July 23, 1971.

PT&T introduced evidence to justify its invoking advanced-toll billing with Casselberry. This evidence dealt with Casselberry's prior service at the same address. In general, this evidence may be summarized as indicating that Casselberry's payments were partial ones and past due balances were paid about one month late. Casselberry contends that this resulted from his cash flow problem and PT&T's prior refusal to give him a preferred payment date.

The Commission is of the opinion and finds that under the particular facts of this case PT&T acted arbitrarily and improperly in applying its advanced-toll billing procedure to Casselberry, which resulted in the eventual disconnection of his telephone service on July 23, 1971. In arriving at this finding, we reject Casselberry's contention that the telephone call of June 30, 1971, with the business office supervisor and subsequent confirming letter dated July 9, 1971, constituted a binding contract so that PT&T could not use advanced-toll billing and could not abrogate the preferred payment date with respect to Casselberry. PT&T cannot contract away that which it is required to do by law or under its tariffs. (Cf., Johnson v. PT&T Co., 69 Cal. P.U.C. 290, 295-96.) PT&T has no authority to treat Casselberry any different than any other customer in similar circumstances. PT&T could not contract away its duty to apply its applicable tariff provisions to all customers on a nondiscriminatory basis. We base our finding on the principle that PT&T may not apply a valid tariff provision in an unjust or arbitrary manner. (Viviano v. PT&T Co., 69 Cal. P.U.C. 159.)

If PT&T had refused to give Casselberry a preferred payment date we could not have found an abuse of discretion based on the evidence in this record. However, PT&T did give Casselberry such a date. The special payment date was arranged for with PT&T's marketing department sometime prior to June 30, 1971. The conversation of June 30 and subsequent letter of July 1, 1971, were confirmations of the prior arrangement. While the business office supervisor may not have been aware of the circumstances of Casselberry's prior service on June 30 and July 1, 1971, the records were available to her, and it is obvious that other PT&T employees were aware of the prior service because Casselberry was given the telephone number which he previously had been assigned. As of July 1, 1971, Casselberry had the right to rely on being billed for his June telephone service, including toll calls, on July 7, 1971, and being afforded until August 18, 1971, to pay the bill. He was entitled to regulate his financial affairs accordingly. In the circumstances, PT&T's action on July 9, 1971, of applying advanced-toll billing to Casselberry was unjust and arbitrary. Thus, Casselberry was required to pay his June bill by July 18 and to pay an additional $245.81 by July 14 (later extended to the 18th). If PT&T desired to terminate the preferred payment date or to modify the arrangement, in accordance with its rules and tariffs, it should have given Casselberry reasonable notice that it intended to do so. Five days, under the facts herein disclosed, were unreasonable and arbitrary.

In the light of the foregoing discussion, we find that Casselberry is entitled to telephone service without payment of the requested $300 deposit. This decision does not hold that Casselberry is entitled to a preferred payment date, unless he is otherwise qualified for one under PT&T's rules and regulations applicable to business service customers, generally. This decision does not hold that if Casselberry is given a preferred payment date, it may not be revoked in accordance with PT&T's rules and regulations, but such revocation must be done in a reasonable manner. No other points require discussion. The Commission makes the following findings and conclusions:

Findings of Fact

1. Casselberry had a one-party measured business line service in San Jose from PT&T prior to April of 1971. The service was discontinued, at Casselberry's request, in March, 1971.

2. In April of 1971, Casselberry requested reinstallation of service at the same address as the aforesaid prior service and was given a one-party flat rate business line with the same telephone number which he had in the previous service.

3. Casselberry regulated the cash flow of his business account so that disbursements were made on or about the 15th day of each month. PT&T assigned Casselberry a billing date of the 7th day of each month, which resulted in his receiving the bill on or about the 15th day of the month.

4. Sometime during or prior to June of 1971, Casselberry arranged with PT&T's marketing department for a special payment date which would be the 18th day of the month following the one in which the bill was issued.

5. PT&T rendered its first bill to Casselberry in May of 1971. It was dated the 7th and received on or about the 15th. On May 27, 1971, Casselberry made a partial payment on the May bill. There was a balance forward of $139.74. Casselberry's June bill was dated June 7, 1971, and received on or about June 15. On June 15, 1971, Casselberry made a payment to PT&T of $139.74.

6. Between June 15 and June 30, 1971, Casselberry received a "five-day notice" which informed him that if he did not pay his June bill within five days, PT&T would disconnect his service. Casselberry telephoned PT&T's San Jose business office and talked to the business office supervisor. He complained of the five-day notice in the light of his special payment date arrangement. The business office supervisor checked PT&T's records and found a notation of the special payment date arrangement with the marketing department. She advised Casselberry that he had until the 18th of July to pay the bill. On July 1, 1971, the business office supervisor sent Casselberry a letter which stated:

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> "The next payment you are to make will be in the amount of $184.88, to be received in our office July 18, 1971, by 5:00 p.m. or the telephone will be disconnected."

At no time during the discussions about the preferred payment date did PT&T differentiate between basic service and toll service. The preferred payment date was meant to apply to toll service.

7. PT&T's tariff and operating procedures thereunder provide for a procedure called advanced-toll billing. In advanced-toll billing a computer is programed in multiples of $50 to indicate when a customer's current toll-call usage reaches a predetermined amount (the amount varies among area offices). When a customer's toll calls exceed the predetermined amount, the computer prepares a printout notice of the fact. The notice is forwarded to the business office which handles the account where it is evaluated by a service representative in the light of the customer's past usage and credit information. If the evaluation indicates that there is a substantial risk of nonpayment of toll charges, a short period bill is sent to the

customer. The customer is given five days to pay the bill. If it is not paid, service is disconnected.

8. On July 7, 1971, the business office supervisor received an advanced toll computer printout indicating that Casselberry's toll call activity exceeded the amount programed in the computer. When the business office supervisor spoke with Casselberry on June 30 and wrote the aforesaid letter on July 1, she was unaware of Casselberry's prior service. On June 30 she was not completely satisfied with Casselberry's credit information. On July 7 it was called to her attention that payments on Casselberry's previous account had been slow. The business office supervisor decided to render an advanced-toll bill with a special five-day letter. On July 9, 1971, PT&T had the following letter hand delivered to Casselberry:

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> "These calls will be listed again on your next regular bill. Payments you make before the regular bill is prepared will be shown on the balance line and subtracted from the amount billed.
>
> "If you have any questions about the bill or your account, please call me on 288-9000."

9. Commencing in April, 1971, and at all times thereafter, employees of PT&T, including persons in its marketing department, were aware of Casselberry's prior telephone service. The PT&T records relating to the prior service were available to the business office supervisor on June 30, 1971 and July 1, 1971.

10. After receipt of the special five-day letter, Casselberry telephoned the business office supervisor and protested the advanced-toll billing on the ground of his preferred payment date arrangement. He also disputed some of the toll charges on the basis of unauthorized use. That dispute was subsequently resolved. The business office supervisor indicated that in light of the preferred payment date arrangement, Casselberry would be given until July 18, 1971, to pay for the toll calls. This was only an extension of four days.

11. If the preferred payment date had been applied, the toll calls involved would have appeared on the July 7, 1971 bill and payment therefor would not have been required until August 18, 1971.

12. The advanced-toll statement was for $245.81.

13. There were various telephone conversations between Casselberry and PT&T over the advanced-toll billing. Casselberry threatened legal action. On or about July 17, 1971, Casselberry transmitted to the Commission's Field Division Office in San Jose a check for the amount in dispute. The Commission's San Jose office is one which deals with transportation matters. By the time the check was transmitted to the proper division of the Commission, telephone service had already been disconnected and the check was returned to Casselberry. PT&T was not notified about the transmittal of the check to the Commission's San Jose office. Casselberry's service was actually disconnected on July 23, 1971.

14. Casselberry has requested that PT&T reinstate a business service for him at the same location. PT&T has demanded that Casselberry pay a deposit of $300 pursuant to its Rules 6(B)(1) and 7(A)(3) of its Schedule Cal. P.U.C. No. 36-T.

Conclusions of Law

1. There is nothing in this record which would support a finding or conclusion that PT&T's advanced-toll billing procedures are illegal or unconstitutional.

2. The summary application by PT&T of its advanced-toll billing procedures to Casselberry, after it had granted him a preferred payment date and in the light of the facts heretofore found, was unreasonable, unjust and arbitrary.

3. In view of PT&T's actions which resulted in the improper disconnection of Casselberry's prior telephone service, PT&T should be ordered not to apply its Rules 6(B)(1) and 7(A)(3) of its Cal. P.U.C. Schedule 36-T to Casselberry in connection with the requested reinstituting of service.

4. Casselberry is not entitled as a matter of contract or right to a preferred payment date in connection with his telephone service He is entitled to have PT&T apply its tariffs and procedures to him in a nondiscriminatory manner and deal with him the same way it deals with other business customers in similar circumstances.

## O R D E R

IT IS ORDERED that The Pacific Telephone and Telegraph Company shall reinstitute business service to William E. Casselberry without requiring any deposit under its Rules 6(B)(1) and 7(A)(3) of its Cal. P.U.C. Schedule 36-T; provided, however, that the re-institution of said service shall be in accordance with and subject to all other applicable provisions of defendant's tariffs.

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

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

Vernon L. Sturgeon
President

William Symons Jr.

[signature]

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Commissioners