

ORIGINAL

Decision No. 80715

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GEORGE K. K. MATA, et al.,

Complainant,

vs.

PACIFIC TELEPHONE & TELEGRAPH
COMPANY, and GENERAL TELEPHONE
COMPANY OF CALIFORNIA,

Defendants.

Case No. 9308
(Filed December 29, 1971)

John E. Yeager, Attorney at Law, for George K. K.
Mata, complainant.

Robert E. Michalski, Attorney at Law, for
The Pacific Telephone and Telegraph Company;
and A. M. Hart and Donald J. Duckett, by
Donald J. Duckett, Attorney at Law, for
General Telephone Company of California,
defendants.

O P I N I O N

This is a complaint by George K. K. Mata (hereinafter referred to as Mata) against The Pacific Telephone and Telegraph Company (hereinafter referred to as PT&T) and General Telephone Company of California (hereinafter referred to as General). Complainant alleges that defendants' advance billing procedures alone or in combination with their establishment of credit tariff provisions are illegal or unconstitutional.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis in Los Angeles on July 6, 1972, and it was submitted on July 25, 1972.

On July 28, 1971, Mata filed a complaint against PT&T and various Doe defendants in the San Diego Superior Court. The complaint was on behalf of Mata and an alleged class of more than

50,000 persons similarly affected. The complaint alleged that as a result of advance billing, the class had been damaged in the amount of \$350,000,000. The prayer of the complaint sought: (1) Damages in the amount of \$350,000,000. (2) Treble damages in the amount of \$1,050,000,000. (3) Punitive damages in the amount of \$100,000,000. PT&T and General filed demurrers to the complaint. On October 7, 1971, the Superior Court sustained PT&T's demurrer, with leave to amend by January 13, 1972, on the ground that "the Court has no jurisdiction and the California Public Utilities Commission has jurisdiction of the subject matter of plaintiff's amended complaint...." It does not appear that the complaint in the Superior Court was thereafter amended.

The complaint before the Commission incorporates by reference and alleges the material contained in the Superior Court complaint. The prayer of the complaint before the Commission seeks, in part, an order "Confirming jurisdiction in the Superior Court of the State of California in and for the County of San Diego, to hear all proceedings, including trial arising out of...[the complaint] and confirming jurisdiction to grant the relief prayed for...." It is not the function of the Commission to review the correctness of rulings of the Superior Court.

PT&T's and General's tariffs provide in part for advance billing for message rate exchange service. PT&T's advance billing tariff provision was applicable to the business service furnished Mata in San Diego, which is the basis for the complaint herein. Under advance billing a bill for the basic monthly rate is prepared as of the date a customer's service becomes operable. The bill is usually mailed to the customer about seven days later. Bills are

due and payable on the date of presentation. (E.g., PT&T Schedule Cal. P.U.C. No. 36-T, Rule 9(c).) The Commission takes official notice that PT&T's Schedule Cal. P.U.C. No. 36-T, Rule 11(A)(2) provides that: "Monthly bills shall be considered past due if they are not paid within 15 days after date of presentation." General has a similar tariff provision. Generally, the customer is usually given a reasonable time in which to pay the bill. "[U]nder PT&T's usual current billing procedures, 23 to 53 days can elapse from the time a charge is incurred until the service is subject to a temporary disconnect for failure to pay the bill for it." (Munnemaker v. PT&T, 70 Cal. P.U.C. 38, 50-51, affirmed 4 Cal. 3d 288, appeal dismissed for want of federal question, 404 U.S. 931.) The evidence indicates that, on one occasion, Mata did not pay his monthly bill for more than 30 days after it was rendered. PT&T made no attempt to discontinue service.

Mata contends that to the extent a customer pays PT&T or General on an advance billing before the end of the period for which the bill is rendered the company gets an interest free "float" of money. It is alleged that the float to the defendants exceeds \$3,000,000 per month, although there is no evidence in the record to support this allegation. Mata asserts that the use of customer's money by defendants, without paying interest thereon, during the period for which the bill has been actually paid in advance of receiving service, is illegal and unconstitutional. Mata also contends that the alleged illegality is manifest, when it is noted that PT&T and General pay interest on security deposits when required under the companies' establishment of credit rules.

PT&T and General contend that their tariff provisions providing for advance billing are legal and proper. They argue that advance toll billing is considered as one factor in the issue of working cash in major rate cases. If advance billing is struck down, it would affect the companies' revenue requirements, which could result in higher rates to customers.

The Commission takes official notice that advance billing or requiring advance payment for goods and services is commonplace in our society. Rent is usually payable in advance. A traveller who purchases a round trip air line, bus or train ticket is required to pay for the entire transportation even though he may not use a portion of it for a period of time. Persons attending the theater, movies, concerts, operas, etc. are required to pay admission prior to and not after the performance. The same is true for athletic events. Magazine subscribers pay in advance. Insurance premiums, including health insurance, are payable in advance.

In the light of the evidence presented in this record, there is no basis for finding that tariff provisions for advance billing, which follow a common commercial practice and which are considered by the Commission in establishing rates, are illegal or unconstitutional. (See Wood v. Public Utilities Comm., 4 Cal. 3d 288, 294-95, appeal dismissed for want of federal question, 404 U.S. 931.) The fact that PT&T and General are required to pay interest on security deposits when required under their establishment of credit rules does not mean that there is a legal or constitutional requirement for interest to be paid in connection with advance billing.

Lastly, we turn to Mata's contention that the advance billing tariff provisions are illegal or unconstitutional when considered in conjunction with establishment of credit tariff provisions and those providing for installation charges.

Mata did not pay an installation charge for the service here involved because he took over an existing service. It was stipulated that if it had been a new service an installation charge would have been assessed. Assuming Mata has the right to raise this point (Public Utilities Code §1702), we find it has no merit. Installation charges are part of the defendants' rate structure. Furthermore, they are generally billed after the telephone has been

installed and service has commenced. The establishment of credit rules is also part of the defendants' rate structure. The revenue impact of these and all other applicable tariff provisions is considered by the Commission in establishing rates for PT&T and General. (Pacific Telephone & Tel. Co. v. Public Utilities Comm., 62 Cal. 2d 634, 644-45.) Mata does not dispute that PT&T and General are entitled to be paid for the service which they render. The imposition of applicable tariff charges is the basis for their compensation. We find no legal or constitutional impediment in the application of advance billing along with installation charges and establishment of credit rules.

No other points require discussion. The Commission makes the following findings and conclusions.

1. On October 19, 1970, Mata superseded to the business telephone service furnished by PT&T at 3146 El Cajon Boulevard, San Diego.

2. Because he superseded to the service, Mata was not required to pay an installation charge. Mata or any other customer requesting an initial business service connection would be required to pay an installation charge.

3. At all times herein mentioned Mata had gross monthly earnings of \$576. He was also receiving income of \$5,000 to \$6,000 per year from the proceeds of a trust from a real property sale where he was one of the beneficiaries.

4. In order to obtain the aforesaid telephone service, PT&T required Mata to post a \$25 security deposit pursuant to its establishment of credit rules. On October 19, 1971, PT&T refunded the deposit to Mata, with interest.

5. At the time PT&T commenced the aforesaid service to Mata, Rule 9 of its Schedule Cal. P.U.C. No. 36-T provided for advance billing for the basic message rate exchange service furnished Mata. General has a similar provision in its tariff.

6. PT&T rendered its first bill to Mata, which was dated October 22, 1970, on or about October 29, 1970. The bill was for the basic monthly service for the period from October 22, 1970 to November 21, 1970, plus federal tax. Thereafter, on or about the 29th day of each succeeding month, PT&T rendered a bill to Mata for the basic service plus excess message units for the previous month and any amount not paid on a previous bill.

7. Rule 11(A)(2) of PT&T's Schedule Cal. P.U.C. No. 36-T provides that "Monthly bills shall be considered past due if they are not paid within 15 days after date of presentation". General's Rule 11(A)(1) in its Schedule Cal. P.U.C. Nos. D & R is similar.

8. No interest was ever paid by PT&T to Mata in connection with his monthly payments for telephone service. PT&T has no tariff provision which would authorize or require the payment of interest in such circumstances.

9. On one occasion, Mata did not pay his telephone bill for more than 30 days. PT&T made no attempt to discontinue service in this instance or at any other time while Mata had the service.

10. On November 8, 1971, Mata terminated his telephone service and it was superseded to by LeRoy Jones.

11. Advance billing procedures are considered by the Commission as one factor dealing with the issue of working cash in connection with revenue requirements in proceedings involving the rates of PT&T and General.

12. Advance billing for goods and services is a common commercial practice.

13. The establishment of credit provisions of PT&T's and General's tariffs provide, in certain instances, for the payment of a security deposit. When a customer is required to pay a security deposit, unless it is applied toward a balance due the company, it is refunded with interest after a specified period of time.

14. Installation charges and establishment of credit rules are part of PT&T's and General's rate structures and are considered by the Commission as factors in establishing rates for the companies.

Conclusions of Law

1. There is nothing in this record which would support a conclusion that PT&T's and General's advance billing procedures alone, or in combination with their establishment of credit and installation charge tariff provisions, are illegal or unconstitutional.

2. Mata is entitled to no relief in this proceeding.

O R D E R

IT IS ORDERED that complainant is entitled to no relief in this proceeding and the complaint is denied.

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

Dated at San Francisco, California, this 14th
day of NOVEMBER, 1972.

Verne L. Steiner
President
W. Lloyd Garrison, Jr.
W. J. Pittman
Mr. [Signature]
[Signature]
Commissioners