

bj/mz

ORIGINAL

Decision No. 81342

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ELOISE MOTZ,

Complainant,

vs.

PACIFIC TELEPHONE & TELEGRAPH COMPANY
BRANCH OFFICE MANAGER, ANN SHEEDY
REPRESENTATIVE, L. GARRITY
REPRESENTATIVE, J. EDELBLUTE
JOHN DOE, MANAGER, SACRAMENTO
DISTRICT, DOES 1 to 100, ET AL

Defendants

Case No. 9492
(Filed December 29, 1972)

Eloise Motz, for herself, complainant.
James M. Phillips, Attorney at Law, for
defendant.

O P I N I O N

Complainant Eloise Motz seeks an order that defendant, The Pacific Telephone & Telegraph Company (Pacific), maintain telephone service to her without interruption as long as she pays according to the average customer's method of payment; that it be required to follow the proper procedure and be restrained from discriminating against her in regard to her telephone service; and that she be awarded damages in the amount of \$100,000 for the mental stress, discrimination, harassment, inconsistency, loss of income, interruption of major affairs due to lack of service, and reimbursement of payment already made for full service when in fact several times there existed only half service.

Public hearing was held before Examiner Johnson at Sacramento on March 16, 1973 and the matter was submitted.

Complainant's Position

Complainant testifying on her own behalf summarized several transactions which allegedly prove improper business

procedures, inequitable and inconsistent billing practices, inconsistent and arbitrary disconnection of service, and undue harassment at the hands of defendant's employees. The first transaction involved a request made early in 1972 that her answering service business number 967-0948 be transferred to her residence to replace her unlisted residence telephone number 967-1166 which was to be permanently disconnected. Instead Pacific had the business phone disconnected and the residence number changed from 967-1166 to 967-0948 which resulted in two bills for the same number and the inadvertent failure to transfer the credit deposit established for her 967-1166 account to her 967-0948 account.

The second transaction related to the proper billing to be applied during periods of temporary discontinuance of service for nonpayment of bills. This temporary discontinuance of service consisted of blocking outgoing calls but permitting incoming calls. Complainant testified that on several occasions upon request Pacific had adjusted her billings from full service to half service for the period of temporary disconnection but has discontinued making such adjustments.

In support of her contention that her telephone was temporarily disconnected in an inconsistent and arbitrary manner, complainant related one instance when full telephone service was restored upon payment of \$95 of a balance due of \$153.91 and another instance where the phone was temporarily disconnected with a balance outstanding of \$30.19. In addition she testified that in some instances extensions of time for payment of overdue bills were granted and in other instances were not granted, apparently depending on the mood of defendant's employees at the particular time.

Complainant testified that she had made numerous requests to the defendant that all collection attempts be limited to written notices but that contrary to her instructions defendant's employees

continually telephone her, sometimes as often as twice a day, to discuss her account. She considers such actions as undue harassment.

Defendant's Position

Defendant presented testimony through the manager of Customer Services of District 3 in Sacramento. This witness testified that the business answering line for telephone number 967-0948 was disconnected and the residence telephone number 967-1166 was changed to the then available business number 967-0948 effective May 22, 1972 to save the complainant the usual \$15 connection charge. She also testified that upon request the residence phone credit deposit was credited complainant's account thereby achieving the end result requested by complainant without assessing a connection charge.

In answer to the alleged improper billing for the periods of temporary disconnection of service (half service) this witness testified that the tariffs provide that service temporarily disconnected will be charged for in accordance with the regular full rates for a period not to exceed 15 days. She stated, however, that in an effort to effect early collection of past due amounts she made a managerial decision to adjust the bills for the half service periods. When such action apparently had no effect on the time lapse of collection of overdue balances, she discontinued making such adjustments.

Defendant's witness presented testimony and two exhibits setting forth the bases for the allegedly inconsistent and arbitrary temporary discontinuance of telephone service for delinquent bills. She testified that 92 percent of the 25,000 customers in her district pay their bills promptly with no notices and, therefore, complainant's payment is unique and different from the average; that for the period May 8, 1972 through March 14, 1973 service was temporarily disconnected five times and that

collection of overdue amounts was effected only after such discontinuances; that during that period numerous extensions of time to pay overdue amounts were granted; and that the tariff provided some remedies, such as a provision for the collection of 50 percent of the full reconnection charge for temporary discontinuance of service which defendant elected not to exercise to complainant's advantage.

The witness further testified that it is defendant's normal practice to telephone customers whose accounts are delinquent. She stated in this particular case numerous repeat calls were necessitated because complainant was not at home or was unable to discuss her billings at that particular time.

Discussion

Defendant appears to have attempted to comply with complainant's request to have her residence phone disconnected and business phone transferred to her residence in such a manner as to avoid the necessity of assessing a \$15 connection charge. Such a result would have obtained had the credit deposit been transferred from the account for 967-1166 to the account for 967-0948 at the time the number was changed.

The record shows that Schedule 36T, Rule 9F of defendant's tariffs provides for the charge of regular rates for temporarily disconnected service for a period not to exceed 15 days. Defendant properly applied its tariffs in charging the full rates during periods of temporarily disconnected service. The decision of defendant's personnel to adjust the amount of the bill in an attempt to effect an early collection of a delinquent account is within the purview of managerial discretion and such occasional action cannot be construed as establishing a precedent for the future.

The record shows that the granting of extensions of time for the payment of bills, the temporary disconnection of the telephone,

and the restoration of service varies somewhat from incident to incident but such variations were not detrimental to complainant or contrary to the tariffs.

Complainant's request that contacts by defendant's personnel relative to telephone matters be by mail does not appear unreasonable. A review of the record, however, indicates that such telephone contacts by defendant's personnel were not frequent enough so as to be classified as harassment.

Complainant made no attempt to offer evidence supporting her claim for \$100,000 damages. However, were such a showing attempted it would have been irrelevant to this proceeding as such matters as the awarding of legal damages as such is outside the jurisdiction of this Commission.

Findings

1. Defendant's actions in disconnecting complainant's business phone 967-0948 and changing her residential number from 967-1166 to 967-0948 resulted in the avoidance of a \$15 connection charge that would have been incurred had the residence number 967-1166 been disconnected and the business number 967-0948 been transferred to the residence as requested by complainant.

2. For the period May 8, 1972 through March 14, 1973 complainant paid telephone bills only after receipt of disconnect notices, consequently her method of payment or pattern of payment is such that she cannot be classified as the usual or average customer.

3. Defendant's billing procedures and temporary disconnection practices relative to complainant's telephone service were in accordance with defendant's filed tariff rules and did not constitute unduly harsh or discriminatory application of these tariff rules.

4. Defendant's personnel's telephone calls to complainant were not frequent enough to constitute harassment as claimed by complainant.

5. The Commission has repeatedly held that it is without jurisdiction to award legal damages as such (Schumacher v PT&T (1965) 64 CPUC 295).

Conclusions

1. The complaint should be dismissed.
2. The Commission does not have authority to award damages. (Vila v Tahoe Southside Water Utility (1965) 233 CA 2d 469, 479)

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 8th day of MAY, 1973.

James L. Stanger
President
William Symons, Jr.
Alan W. ...
...
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.