

SW/lam *

Decision No. 81351

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMERCIAL NATIONAL BANK,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH CO.,

Defendant.

Case No. 9467

(Filed November 8, 1972)

Robert F. Anderson, for complainant.
Mrs. Katherine Tooks, Attorney at
Law, for defendant.

O P I N I O N

The material portion of the complaint reads:

"The complaint of COMMERCIAL NATIONAL BANK, 8781 Knott Avenue, Buena Park, California 92680 respectfully shows:

"(1) That defendant is THE PACIFIC TELEPHONE AND TELEGRAPH CO.

"(2) We, the COMMERCIAL NATIONAL BANK, state the following facts:

"(a) A quoted rate of \$10.00 per month was made to us in 1966 by Defendant for a direct line to the Police Department for alarm purposes.

"(b) Defendant now wishes to increase rates to \$25.40 per month with three years retroactive.

"(3) The decision to install this line was predicated on this quote. As the rate seemed fair, we did not explore other avenues of obtaining this same type of service, such as Arco alarm. Certainly if we were aware of the additional costs, consideration would have been given to placing our service with one of the alarm companies.

"(4) We respectfully pray that the three years back billing be rescinded with the understanding that we will pay the current rate from the date of judgment."

On January 2, 1973, the defendant filed an answer alleging that \$25.40 per month rather than \$10 per month is and was during the period of service the correct charge,^{1/} and that it cannot charge other than the filed and applicable tariff charges.

A public hearing on the complaint was held in Los Angeles before Examiner Rogers on March 21, 1973, and the matter was argued and submitted.

The complainant's vice president and manager testified that the quoted charges of \$10 per month were paid between December 1966 and December 1971 when the bank was advised by defendant that the correct charge should have been \$25.40 per month, and defendant billed complainant for three years' undercharges totaling \$554.40. The witness stated the bank has been paying the \$25.40 in 1973 but does not feel it should pay the three years' undercharges. The witness said that the bank could have received more protection at a lower charge if it had known the charges would be \$25.40 per month instead of \$10.^{2/}

^{1/} PT&T Schedule Cal. P.U.C. No. 104-T.

^{2/} Exhibit No. 1.

A telephone consultant for the defendant testified that the bank was advised on December 27, 1971 that the billing was incorrect and that the correct charge was \$25.40 per month rather than the \$10 charged and that the amount owing for three years (the assumed maximum back billing limitation) was \$554.40.

We agree with defendant that the lawful tariff charges must be collected unless barred by the lapse of time.

"The carrier (public utility) cannot by contract, conduct, estoppel, waiver, directly or indirectly increase or decrease the rate as published in the tariff of the carrier until the published tariff itself is changed."

(Transmix Corp. v. Southern Pac. Co.
(1960) 187 Cal. App. 2d 257 at 264.)

Section 737 of the Public Utilities Code provides in pertinent part:

"All complaints for the collection of the lawful tariff charges or any part thereof, of public utilities may be filed in any court of competent jurisdiction within three years from the time the cause of action accrues, ..."

We are not here determining when the cause of action accrued or the amount due for back charges. These matters are not in issue. It appears that each month the defendant delays in commencing action to collect the \$15.40 per month undercharge, the smaller the amount it can force the bank to pay.

Findings

We find that:

1. The correct charge for the service provided was \$25.40 per month commencing in December 1966 and continuing to the present time.

2. The complainant paid \$10 per month during the period between December 1966 and January 15, 1972, leaving a deficiency per month of \$15.40.

3. Commencing with January 15, 1972, complainant paid \$25.40 per month.

4. The defendant cannot legally enforce collection of charges for more than three years prior to the commencement of an action by the defendant to collect the undercharges.

Conclusion

We conclude that the relief requested should be denied.

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 7th day of MAY, 1973.

Yessie L. Sperry
President
William Sperry, Jr.

[Signature]
Commissioners

I dissent.

Thom Moran
Commissioner

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