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Decision No. 84558

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN A. MEININGER,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH CO.,

Defendant.

Case No. 9639
(Filed December 5, 1973)

John A. Meininger, for himself, complainant.
Michael J. Ritter, Attorney at Law, for The Pacific Telephone and Telegraph Company, defendant.

O P I N I O N

Complainant John A. Meininger charges defendant The Pacific Telephone and Telegraph Company, a telephone corporation, with collecting a compensation for installing his phone different from that set out in its tariffs in violation of Section 532 of the Public Utilities Code and with failing to provide service in the South Lake Tahoe area that is adequate, efficient, just, and reasonable in violation of Section 451 of the Public Utilities Code and Tariff Schedule Cal. P.U.C. No. 36-T, 1st Revised Sheet 29. In connection with the alleged Section 532 violation complainant requests that the Commission award him reparations in the form of interest at the rate of 10 percent per annum on the $15 he paid defendant as advanced installation charges for the period between September 24, 1973 and November 30, 1973 when installation of his telephone service was delayed. In connection with the alleged Section 451 and tariff

violations, complainant requests that we award him damages in an amount representing the difference between what he had to pay to make toll telephone calls from a pay telephone and what he would have had to pay to make calls from his own private service but for defendant's delay in installing his telephone. Also in connection with the latter violations complainant requests that we order a comprehensive investigation of defendant's installation practices and procedures in the South Lake Tahoe area as a basis for prescribing future standards of performance and methods of internal operation to be observed by defendant relative to installations and to establish the rule that defendant must install telephone service within 14 days after receipt of an application for service. Additionally, complainant requests that we award him his costs, with interest, in bringing and maintaining this complaint. Complainant states that he is bringing this complaint not only for himself but for all other persons similarly situated in the South Lake Tahoe area and requests that we award them similar remuneration and relief. Hearing on the matter was held before Examiner Pilling at South Lake Tahoe on May 16, 1974.

Defendant moved to dismiss the complaint on the grounds that (1) the completion of a routine order providing additional cable facilities in the subdivision in which complainant resides has enabled defendant to satisfy all requests for service in that subdivision since November 30, 1973; (2) complainant has no interest in the matter as complainant is no longer an applicant for telephone service nor a telephone subscriber nor a resident in the South Lake Tahoe area; (3) class actions before the Commission are not authorized; (4) an order requiring defendant to furnish comprehensive information concerning defendant's installation service in the South Lake Tahoe area would serve no useful purpose and would duplicate information now on file with the Commission pursuant to General Order No. 133,

Sections 3.1, 3.2, and 3.3; (5) the complaint does not allege that defendant has violated any provision of law or order or rule of the Commission, as required to be shown in a complaint by Section 1702 of the California Public Utilities Code; (6) defendant has complied with its tariffs in collecting toll charges and the advance payment for installation; (7) Pacific's tariffs specifically provide that no interest shall be paid on refunds; (8) Pacific offered to return the advanced payment to complainant on October 30, 1973; and (9) the Commission is without jurisdiction to order costs to complainant.

Complainant in reply to the motion to dismiss contends that he has asserted facts showing unreasonable delay in engineering of increased capacity necessary to provide service, consequently, a claim for reparations has been stated. Complainant also contends that while he is not living in the South Lake Tahoe area he continues to be employed part time there with the possibility of future full time employment and that complainant's actual loss of service, consequent entitlement to reparations, and future possible residence in the area provide sufficient interest to sustain an action. He also contends that class actions before the Commission are not proscribed and that facts are alleged in the complaint which show a continuing course of illegal conduct sufficient to warrant the Commission instituting a full scale investigation of defendant's installation practice in the South Lake Tahoe Exchange area. Lastly, complainant states that defendant's offer of refund was to the best of his knowledge made over the phone, was not pressed as serious, and was not presented in circumstances in which complainant could fully assess the implications of the offer.

Defendant's South Lake Tahoe Exchange area encompasses the area generally beginning at the junction of the shore of Lake Tahoe and the California-Nevada border thence running west and northwest around the shore of the lake to the vicinity of Emerald Bay, thence west four miles, thence south across U.S. Highway 50 at Strawberry to a point 4-1/2 miles south of Strawberry, thence east to the junction of California Highway 89 and the El Dorado-Alpine County line, thence northeast following that county line to the California-Nevada border, thence northwest via the border to the point of beginning. The exchange area lies principally within National Forest boundaries.

The evidence shows that on September 14, 1973 complainant applied to defendant for telephone service at his apartment in the Tahoe Sierra Subdivision of the city of South Lake Tahoe, which is in defendant's South Lake Tahoe Telephone Exchange area, and at the same time made an advance payment to defendant of $15 as a service installation charge as required by defendant's Tariff Schedule 36-T, 46-A, Rule 9-C. At that time defendant committed itself to make the installation on September 24, 1973. Complainant was not required to make a deposit to establish his credit. On September 25, 1973 the service had not been installed and complainant called defendant to inquire about the delay. Defendant told complainant it would be unable to make installation of service until some time in November, 1973. On October 30, 1973 complainant met with the manager of defendant's South Lake Tahoe business office at which time, the manager testified, he made an offer to return the $15 service connection charge to complainant but that complainant refused the offer. Complainant contends the offer was made over the telephone after the meeting and that the offer was not pressed as serious and was not presented in circumstances in which complainant could fully

assess the implications of the offer. While awaiting installation complainant made several long distance calls via a pay telephone and was charged a rate higher than he would have had to pay if he had made the calls from his own private telephone had it been installed. Finally on November 30, 1973 telephone service to complainant's apartment was installed. In January, 1974 the service was discontinued at the request of complainant. Complainant presented a witness not a resident of complainant's subdivision who testified that the witness signed up for single party telephone service on October 22, 1973 but received no service until December 20, 1973 at which time a two-party service was installed. The witness testified an offer of two-party service was made to him around November 1, 1973 but the witness rejected the offer. The witness had made no advance payment of a service connection charge. The witness testified one of defendant's employees told him the delay in installation was due to a cable breakdown.

Defendant's Senior Engineer for the South Lake Tahoe Exchange area testified that by a series of ordinances the city of South Lake Tahoe required defendant to underground its overhead main feeder cables running along U.S. Highway 50 which bisects the city and that the impact of this project caused a temporary unavailability

of cable facilities which caused a surge in the number of held orders[1/] between August and December, 1973. The undergrounding project was commenced in June, 1972 and was scheduled to be completed in March, 1974. Cost of the project was approximately $531,000, required 10 miles of trenching, and consumed 8,000 hours for splicing in existing distribution cables. Defendant's witness testified that at the time complainant applied for service the undergrounding project had not been completed and there was no capacity available on existing feeder cables to accommodate the distribution lines, which were already in place, which were to serve complainant and other current applicants--some 39--in complainant's subdivision. On November 25, 1973 the undergrounding project was completed and complainant's service was installed on November 30, 1973. Defendant's witness claimed that it was necessary to complete the entire undergrounding project before

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1/ A held order is a request for service where service is delayed beyond the installation commitment date. General Order No. 133, Rules Governing Telephone Service, paragraph 3.1, requires landline telephone companies to report the monthly number of held orders where service was delayed over 30 days from the installation commitment date. General Order No. 133, paragraph 3.1, specifically provides for no standard service range relative to installations. The Commission's records show defendant reported held orders over 30 days in the South Lake Tahoe Exchange to be:

	1973	1974
January	11	29
February	22	20
March	20	28
April	21	8
May	19	13
June	11	12
July	10	15
August	4	16
September	9	12
October	21	6
November	57	6
December	30	10
	235	175

any part of the new feeder cable could take service because sequence splicing was used. The witness also testified that defendant determined somewhere around the time it received complainant's application for service that it would be more economical to hold orders for service in complainant's subdivision until completion of the undergrounding project rather than reinforce existing cable facilities. The evidence does not disclose the time it would have taken to reinforce existing cable facilities. Complainant's apartment was located three blocks from the central exchange.

Defendant asserts that the significant increase in telephone demand at South Lake Tahoe since 1971 is part of the reason for the delay in the installation of service for complainant. At the beginning of 1971 there were approximately 8,200 telephones in service in the South Lake Tahoe area. During 1971 there were 6,991 inward telephone movements and 6,173 outward telephone movements for a net main station gain of 555. At about the time complainant sought service there were approximately 10,300 telephones in service. During 1973 the inward movement of telephones amounted to 9,117 and outward movements totalled 6,915 for a net main station gain during 1973 of 1,112 stations, a gain of one telephone for each 15 telephones installed, reconnected,or disconnected. Further reason for the delay in installation of complainant's service is attributed by the defendant to the adverse financial impact on defendant of the 1972 California Supreme Courts' nullification of the Commission's Decision No. 78851. That latter decision would have granted defendant an increase in rates. As a result of that decision defendant restricted the amount of overtime worked by its engineering forces and postponed planned additions. A witness for defendant testified that defendant does not store cable at South Lake Tahoe but orders it as needed

from a supply point outside of the area. Cable is normally received at South Lake Tahoe 2 to 5 days after the orders are placed. The witness testified there are 978 different types of cables that are manufactured for exchange use.

Findings

1. On September 14, 1973 complainant duly applied in writing to defendant, a telephone corporation, to have single party telephone service installed at his residence in the Sierra Tahoe Subdivision in the city of South Lake Tahoe within defendant's South Lake Tahoe Telephone Exchange area and at the same time paid defendant $15 advance installation charge as required by defendant's tariffs.

2. At the time of filing his application complainant was told by defendant that installation of service would be made on September 24, 1973 when in fact through no fault of complainant installation was not made until November 30, 1973.

3. Complainant was told by defendant on September 25, 1973 that because of certain alleged operating difficulties complainant would not receive service until sometime in November, 1973.

4. On October 30, 1973 defendant offered to return to complainant the $15 installation charge he advanced.

5. Complainant never demanded of defendant that his advance payment for installation be returned to him though he had the option at any time to demand and receive a refund of his money.

6. Between the promised date of installation and the actual installation date complainant made long distance pay toll telephone calls which he could have and probably would have made from his residence phone if his private service had been installed, and in so doing was charged a rate higher than he would have paid for private service.

7. Defendant was unable to satisfy complainant's request for service until November 30, 1973 due to the temporary lack of capacity on the part of defendant's existing facilities.

8. Defendant was required by local city ordinance to underground its overhead main feeder cables running along U.S. Highway 50 through the city of South Lake Tahoe.

9. Some of the feeder cables required to be undergrounded were those which would have furnished service to complainant and others in his subdivision.

10. Defendant planned to take advantage of the undergrounding project to increase the capacity of the feeder cables by increasing the number of cable pairs, reassignment of wire, resplicing, and redirection of connections in order to serve the increasing demand for telephone service in the area served by the feeder cable.

11. As an alternative measure for rendering service on held orders in the Sierra Tahoe Subdivision, existing feeder cables could have been reinforced so as to give service to current applicants in that subdivision.

12. It would have been uneconomical to reinforce existing feeder cable facilities at the time the undergrounding project was nearing completion in September, 1973 since those reinforcing facilities would duplicate in part the results of the increase in plant capacity engineered in the undergrounding project soon to be completed.

13. The time between the commitment date and the actual date of installation was lengthy but in view of the circumstances brought about by the imminent completion of the undergrounding project required by the city and the rapid increase in inward and outward telephone movements it was not unreasonable for defendant's management decision to hold complainant's order and the orders of others for service to the subdivision until completion of the undergrounding.

14. During the 9-month period ending December, 1974 defendant had almost 50 percent fewer held orders over 30 days old than it had in the same period of the preceding year.

15. Defendant's practice of not storing cable at its South Lake Tahoe Exchange area facilities but of ordering the cable when needed from a nearby storage point has not been shown to result in any delay in providing service.

16. Defendant's engineering, administrative, construction, and operational practices and procedures do not result in unreasonable delay in installing service, nor warrant a comprehensive investigation into its South Lake Tahoe telephone exchange operations.

Conclusions

1. Defendant's motion to dismiss based on the pleadings is denied.

2. Defendant has not violated any of Sections 210, 451, 532, 734, or 762 of the Public Utilities Code nor General Order No. 133, nor Tariff Schedule Cal. P.U.C. No. 36-T, 1st Revised Sheet 29.

3. The relief requested should be denied.

C. 9639 ltc

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 17th day of JUNE, 1975.

President

Commissioners