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Decision No. 85056

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

M. A. HOFFMAN,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 9805
(Filed October 1, 1974)

M. A. Hoffman, for himself, complainant.
William B. Rowland, Attorney at Law, for
The Pacific Telephone and Telegraph
Company, defendant.

O P I N I O N

The complaint seeks restoration of complainant's residential telephone service, discontinued by defendant, and an order that defendant be restrained from further discontinuances. It was asserted the service suspensions were based on "unproven allegations" that an unauthorized foreign instrument had been directly connected to the network. Complainant claimed that Pacific's actions were motivated by a desire to retaliate against him for filing a complaint. (Mobile U.H.F. v P.T.&T., Case No. 8798.) Complainant further sought a

declaration that Pacific's Tariff Rule 19^{1/} was a violation of the Fourth Amendment to the Constitution of the United States. He also claimed that Pacific was monitoring his telephone conversations.

The Commission, by Decision No. 83580 herein, denied interim relief.

Pacific answered, claiming that line tests had demonstrated the presence of an unauthorized foreign attachment and denying monitoring and a desire to retaliate. It also moved to dismiss. On February 13, 1975 Pacific filed a petition in the nature of a cross-complaint alleging that complainant had responded to the discontinuance of his residential phone service by tapping the lines of a neighbor and using that tap to place \$363.93 worth of toll calls billed to his neighbor. Defendant sought an injunction and an order that it would not be required to restore service until complainant paid \$363.93.

Hearing was held on April 7 and 8, 1975 before Examiner Gilman in Los Angeles.

At hearing, testimony was taken from complainant and a business associate. Pacific sponsored the testimony of several of its employees. This matter was tentatively submitted upon filing of an observer's report; submission was set aside to allow briefing and resubmitted September 1, 1975.

Discussion

At hearing the parties offered testimony on the three crucial questions of fact:

1. Was there any monitoring?

1/ "ACCESS TO SUBSCRIBERS" PREMISES

"The Company's authorized employees may enter a subscriber's premises at all reasonable hours for any purpose reasonably pertinent to the furnishing of telephone service and the exercise of any and all rights secured to it by law or by these Rules and Regulations.

"The Company may remove any and all of its property, located on the subscriber's premises at the termination of service, as provided for in these Rules and Regulations." (Emphasis added.)

2. Was the foreign attachment accoustically coupled to the network, or was there a direct electrical connection, violating defendant's tariff?

3. Did complainant tap his neighbor's line, or was this an accidental connection made by an employee of defendant?

The examiner determined that the best way to resolve those issues would be to assign a disinterested expert observer to investigate. This investigation would have included testing of the lines and an examination of complainant's telephone answering device and the installations; both would require entry into complainant's premises. Neither party objected to such a procedure and the matter was tentatively taken under submission upon the filing of the observer's report. ✓

The observer was unable to gain admission to complainant's apartment, or to examine the answering device.

In a post-hearing pleading, defendant submitted the declaration of one of its employees who had tested complainant's lines subsequent to hearing. The affidavit stated that the tests had shown the foreign attachment had been removed from complainant's lines on or before April 14.

Even disregarding the events which occurred after the close of hearing, the record strongly supports each of the findings sought by Pacific. Complainant's failure to explain or defend his unwillingness to cooperate with the appointed observer justifies termination of these proceedings with prejudice.

It is not necessary to determine whether complainant's use of his neighbor's service was deliberate in order to find that he should pay for services received.

Findings

1. Pacific has not monitored conversations on complainant's residential line. Pacific has performed line tests on complainant's lines to determine whether monitoring was occurring and whether a foreign attachment was present.

2. The tests for monitoring were made in response to complaints by complainant.

3. Complainant had a telephone answering device connected to all three of his residence lines by means of a direct electrical connection.

4. Between November 18, 1974 and January 3, 1975, M. A. Hoffman used another subscriber's line to place \$363.93 worth of toll and/or message unit calls.

5. Complainant's use of his neighbor's telephone service was discovered. Defendant's subscriber has not paid for the calls made by means of the tap. Complainant has not paid for said calls.

6. Complainant's Fourth Amendment contention was admitted by him to be frivolous.

Conclusions

1. Under tariffs in effect while complainant had residential telephone service from Pacific, Pacific could discontinue service to a customer who directly connected a foreign attachment to the telephone network. The lawfulness of that tariff provision is not an issue in this proceeding.

2. Complainant owes Pacific \$363.93 and Pacific should be authorized to refuse to provide service to complainant until that sum and lawful interest thereon are paid.

3. The relief requested should be denied.


O R D E R

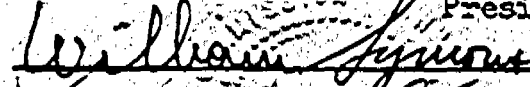
IT IS ORDERED that:

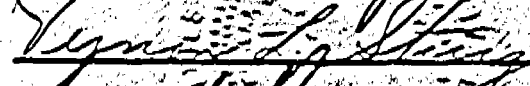
1. The relief requested in the complaint is denied.
2. Pacific is authorized to refuse telephone service to complainant until complainant pays to Pacific the sum of \$363.93 plus interest to date of payment from the date when the liability was incurred.


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

Dated at San Francisco, California, this 28th day of OCTOBER, 1975.



President






Commissioners