

ORIGINAL

Decision No. 85464

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROGER A. GHENO,

Complainant,

vs.

PACIFIC TELEPHONE COMPANY,

Defendant.

Case No. 9883
(Filed March 11, 1975)

Roger Gheno, for himself, complainant.
William B. Rowland, Attorney at Law, for
The Pacific Telephone and Telegraph Company,
defendant.

O P I N I O N

Complainant alleges that the residence telephone service rendered him by Pacific during the year and a half prior to April 1, 1975 was less than full and adequate and because of such poor service he requests damages for his time lost, for endangering his own and his family's health and safety, and for his higher cost of telephone usage. Complainant also requests that we order Pacific to refund all payments made by him for the telephone service and that we order Pacific to provide him with full-time telephone service in the future. Pacific contends that the Commission does not have jurisdiction to award damages for inadequate telephone service and requests that the complaint be dismissed on those grounds and on the grounds that the complaint is defective under Section 1702 of the Public Utilities Code in that the complaint does not set forth "any act of thing done or

omitted to be done by any public utility...in violation or claimed to be in violation, of any provision of law or of any order or rule of the Commission." A hearing was held on the matter on September 1, 1975 in San Francisco before Examiner Pilling.

Gheno testified that between November 1973 and April 1, 1975 he paid for but did not receive full service from Pacific at his San Francisco unregistered residence telephone number 648-4460. He stated that there were times he could not get a dial tone when he lifted the receiver, and at other times he would dial a number and his phone would go dead and he would have to redial the number three or four times before he made a connection. At other times there was interference on the line, and several times after he dialed a number the phone would automatically click into the telephone conversations of strangers. Gheno testified he experienced outages of over 15 minutes on several occasions. He reported many of these service failures to Pacific but since he did not keep a record of his complaints he was unable to say when they occurred or the duration of the failures. Gheno testified that Pacific's repairmen on four occasions experienced a dead-after-dialing situation when they came to check his phone. When he called in a complaint to Pacific, Pacific would not give him an exact time when its repairman would make a house call to check his complaint but would tell him to expect the repairman during some span of hours, such as in the morning or afternoon, or between 9:00 a.m. and noon on a particular day and he would have to spend his time waiting around for the repairman on that day. On one occasion he waited needlessly several hours only to find, when he called Pacific to find out why its repairman did not show up, that the trouble had been fixed by repair of the equipment at the exchange. Gheno testified that his next door neighbor was experiencing prowlers and because of the unreliability of the telephone service for use to summon help Gheno feared for the safety of his wife if someone broke in their home when she was alone.

Gheno claimed that his telephone service was mistakenly suspended after his service had been reinstituted after a prior suspension for failure to pay his bill on time.

Gheno stated on cross-examination that he had made a statement to one of Pacific's employees that to Gheno's recollection, the interference to his service was less than one-tenth of 1 percent of the time he used the telephone. In his final argument Gheno stated that he could not give an accurate figure as to the percentage of time his service had been interrupted. Gheno stated that his biggest complaint against the service was the phone going dead. On April 1, 1975 Gheno received a new telephone number after which, he stated, he did not have any big problems.

The service center manager of Pacific's 25th Street plant service area who is responsible for the installation and repair activities in that area, which has 98,402 stations including those of Gheno, presented in evidence a written chronology of Gheno's service complaints, customer contacts by Pacific, and action taken by Pacific on the complaints for the period of March 16, 1974 through August 22, 1975, which was compiled from her company's records kept in the usual course of business. The chronology listed 39 complaints, including 11 complaints of noise on the line, and shows that in only five instances was trouble actually found and in those instances the trouble was promptly repaired. The first instance occurred on March 16, 1974 and was due to an overload on the switching equipment when there was a failure of Cablevision in the area. Many customers called to report the failure with more calls than the switching equipment was designed to handle. The trouble was cleared in two minutes. The next instance where trouble was found to exist was on May 7, 1974, where the reported noise on Gheno's line was traced to exchange equipment and corrected the next day. The next instance, which occurred on December 5, 1974, involved the failure of Gheno to reach

his answering service and the problem was corrected in 1 hour and 15 minutes when a broken jumper in the exchange equipment was repaired. The next occurred on March 11, 1975 and involved a report of no dial tone which was corrected in 15 minutes. The last instance occurred on March 22, 1975 and involved two reports, one of static when Gheno called a 285 prefix number and one that Pacific's repairmen had left fingerprints on a wall in Gheno's house when they were there earlier in the day. An appointment was made for 9:00 a.m. on March 24, 1975 at which time it was found that the repairmen who left the smudges on the wall had not properly secured a wire. The wire was secured and the smudges wiped from the wall.

Pacific's witness stated that throughout the period up to April 1, 1975, in response to Gheno's complaints where Pacific found no trouble to exist and to make sure no malfunction was overlooked, Pacific changed its central office equipment three times; on eight occasions Pacific made a 100 percent inspection of its central office equipment under the direction of a management person; Pacific changed the protector once and reran all of the inside and outside wire and changed the sets. It also changed the cable pair and on three occasions ran special noise-pressuring tests from its test equipment and made test calls from the premises, and on two occasions made test calls from the test board. It made five 100 percent inspections at Gheno's premises. On three occasions it referred complaints to its direct distance dialing bureau. And finally it analyzed reports from all other subscribers served from the same terminal as Gheno. These latter reports showed that for the period January 1, 1974 through March 31, 1975 five trouble reports were received from the eight other customers served by the terminal. The witness introduced into evidence three studies covering the period of January 1974 through March 1975 comparing the monthly standards of service rendered by its 25th Street plant service center to the 648 prefix telephones with the

Commission's standard of service range found in General Order No. 133 relative to trouble reports, dial tone speed measurement, and dial service, which showed that in no instance such services fell below the Commission's standard. Pacific's witness stated that Gheno's service was suspended for a period of less than 24 hours on March 10-11, 1975 because a check he tendered in late payment of his January 1975 telephone bill bounced. When the check cleared service was reinstituted. The witness stated that in the period covering six months prior to the January 1975 bill it was necessary to send Gheno disconnect notices five out of the six months for failure to pay his bill within the time allowed.

Discussion

In Robert Bruce Walker v P.T.&T. Co., 71 CPUC 778, 780 the Commission stated that "If the complainant does not get adequate service from the telephone facilities furnished to him by defendant, the Commission only has jurisdiction to order reparation of a portion of the charges paid by complainant." We resolve the issue of the jurisdiction of the Commission to award damages (except those classified as reparations) in favor of Pacific and will consider only whether and to what extent Gheno is entitled to reparation from Pacific. Gheno admitted that subsequent to the filing of the herein complaint he told an employee of Pacific that service interferences accounted for less than one-tenth of 1 percent of the time he used the service. Interferences totaling such a short duration afford no basis on which to predicate a finding that the service was inadequate, inefficient, unjust, or unreasonable and that the charges paid for the service were unreasonable, excessive, or discriminatory. (See P.U. Code Sections 734 and 451.)

Findings

1. Gheno was a subscriber to Pacific's residential exchange telephone service in San Francisco at No. 648-4460 between November 1974 and April 1, 1975.

2. During that time Gheno lodged 39 service complaints with Pacific about his telephone service. Trouble was found by Pacific on five occasions as the result of such complaints.

3. In addition to conscientiously and promptly following up each of Gheno's service complaints in an effort to correct possible trouble, Pacific, out of an abundance of caution to make sure no malfunction was overlooked, changed its central office equipment three times, made a 100 percent inspection of its central office equipment under the direction of a management person eight times, reran all of the inside and outside wire and changed telephone sets, changed cable pairs on three occasions, made five 100 percent inspections at Gheno's premises, ran special noise-pressuring tests on three occasions, and made numerous test calls.

4. Gheno was unable to approximate the duration of the time when his service was affected by the conditions which caused him to lodge his 39 service complaints.

5. Gheno stated to an employee of Pacific subsequent to the filing of the complaint that the interferences about which he complained amounted to less than one-tenth of 1 percent of the time he used the service.

6. Pacific was within its rights to disconnect Gheno's service for nonpayment of his telephone bill.

7. Gheno's major alleged service problems were eliminated by the assignment of a new number to his service.

Conclusions

1. The Commission does not have jurisdiction to order a public utility to pay damages to one of the utility's customers resulting from the rendition of substandard service to the customer by the utility but may in appropriate cases order reparations to be paid to the customer by the utility.

2. Pacific's service to Gheno has not been shown to be inadequate, inefficient, unjust, or unreasonable or that the rates charged for such service were unreasonable, excessive, or discriminatory.

3. The relief requested should be denied.

O R D E R

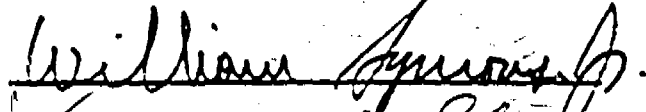
IT IS ORDERED that the relief requested is denied.

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

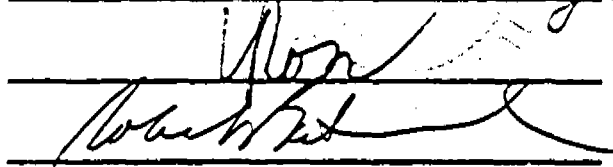
Dated at San Francisco, California, this 18th
day of FEBRUARY, 1976.



President



Vernon L. Sturgeon



Commissioners