

Decision No. 85820

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM L. FINEFROCK,
Complainant,

vs

THE PACIFIC TELEPHONE & TELEGRAPH
COMPANY, a corporation,
Defendant.

Case No. 10089
(Filed April 23, 1976)

ORDER GRANTING INTERIM RELIEF

Complainant alleges that:

1. On or about December 15, 1975, he placed an order with defendant for the installation of two telephone service connections at 2151 Camino Pablo, Moraga, California, as follows: (a) a business message Moraga service (USOC LMB) terminated on a jack with intent to use equipment certified under General Order No. 138. (b) a business message Oakland Foreign Exchange service (USOC LMB FXS) terminated on a jack with intent to use equipment certified under General Order No. 138.

2. On or about December 31, 1975 the two services were installed as 376-8410 and 893-5523 and placed in operation. Call Diverter, CPUC Registration Number 0022 was connected in full in accordance with General Order No. 138 and Schedule Cal. P.U.C. No. 135-T.

3. The Call Diverter, CPUC Registration Number 0022, functioned exactly as described in the "Certificate of Accepted Performance" issued by the Commission. A copy of the certificate is attached to the complaint as Exhibit A.

4. Defendant sent complainant a letter, dated April 2, 1976, alleging that the two services were being used to defraud defendant of lawful tariff charges. The letter stated that if the alleged fraudulent practices were not discontinued within ten days, the two services would be disconnected.

5. On April 3, 1976, a consulting communications engineer representing complainant responded to defendant's letter. The response challenged defendant's assertions and contended that complainant's use of the aforesaid equipment was lawful and in accordance with defendant's tariff Schedule Cal. P.U.C. No. 135-T.

6. On April 13, 1976, defendant disconnected the two services.

7. Defendant furnishes under Schedule Cal. P.U.C. No. 32-T, a Call Diverter Type C (Ford Industries Model X01-974). This Call Diverter provides exactly the same function as the complainant's CPUC Certified Call Diverter CPUC No. 0022. Other Call Diverters certified under CPUC General Order No. 138 are Nos. 0028, 0043, 0067, 0068, 0074, 0113, 0118, 0138, 0185, 0190, 0191, 0192, 0194, and 0195.

8. Defendant offers under Schedule Cal. P.U.C. No. 140-T under "Custom Calling Service" a "Call Forwarding" which is a call diverting method for extending calls to any telephone the subscriber wishes.

9. The use of a Call Diverter, furnished by defendant as apparatus or by central office means or by customer-owned device, is no different in end result than the use of Foreign Exchange Service or Tie Lines, both of which expand the local calling areas.

10. There is no prohibition in defendant's tariffs against the use of Call Diverters to extend a local calling area. In fact, this device is most often used for this purpose.

The complaint alleges that complainant is suffering severe monetary loss by being unable to use his Call Diverter. Complainant seeks various types of relief, including (1) an order directing defendant to immediately restore the two disconnected services and

issue a written understanding that Call Diverters may be used to extend services beyond the originating exchange's local and EAS calling area and (2) an order that charges incoming to Call Diverters and from Call Diverters be no more than calls made between the point to the Call Diverter and from the Call Diverter to the point called.

The Commission finds that sufficient facts have been alleged to indicate a doubt as to whether defendant is properly applying its tariff provisions in disconnecting the two services here under consideration. We further find that complainant has shown sufficient cause to warrant granting interim relief.

IT IS ORDERED that:


1. Defendant shall restore complainant's telephone service for the numbers (415) 376-8410 and (415) 893-5523 until further order of this Commission.
2. Defendant shall permit complainant to use Call Diverters, CPUC Registration No. 0022, in connection with the two restored services until further order of this Commission.
3. Until further order of this Commission, defendant's charges for calls made to and from the Call Diverters shall be no more than those for calls made between the originating point to the Call Diverter or from the Call Diverter to the point called.
4. Until further order of this Commission, defendant is authorized to monitor calls made to and from the aforesaid two telephone services for the purpose of establishing the amount to be rebilled if defendant were to prevail on the merits herein.
5. Defendant may discontinue service in accordance with its tariff on one or both of the two services here involved if complainant does not otherwise pay for service rendered when applicable payments become due.

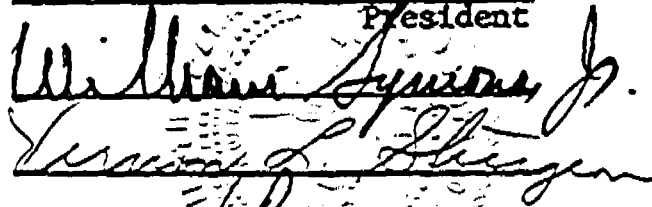
Hearings on this matter may be scheduled following completion of the normal pleadings contemplated in the Commission's Rules of Practice and Procedure.

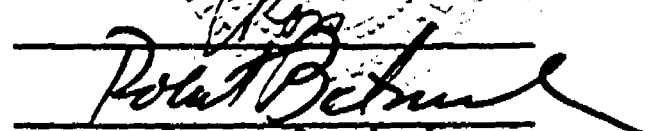
The Executive Director is directed to cause a certified copy of this order to be personally served on defendant. Service on complainant may be made by mail.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 11th
day of MAY, 1976.



President




Commissioners