

Decision No. 85881

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JAY EDWARDS,

Complainant,

v.

GENERAL TELEPHONE COMPANY OF
CALIFORNIA,

Defendant.

Case No. 10058
(Filed March 2, 1976)

ORDER GRANTING MOTION TO DISMISS

Jay Edwards, complainant, filed this complaint alleging that on or about Tuesday, February 24, 1976, his phone service was disconnected by General Telephone Company of California, defendant, because he was four days late in paying the \$34 which he owed for telephone service. Complainant seeks \$100,000 in damages from defendant because of the disconnection of his telephone service.

On April 7, 1976, defendant filed a Motion to Dismiss, Motion to Strike and Answer to Complaint. In its answer defendant admits that on February 24, 1976, it temporarily disconnected complainant's telephone service due to an indebtedness of approximately \$34 on complainant's telephone bill which was past due for 15 days; that complainant called defendant's Granada Hills office on that date to inquire as to why his service had been disconnected; and that complainant was told the temporary disconnection was for failure to pay his telephone bill. Defendant further admits that since February 1975 defendant has had a special treatment procedure for complainant's telephone bill, instituted at complainant's specific request and as an accommodation to complainant whereby complainant is routinely sent a five-day disconnect notice every month, but complainant is given three or four weeks to pay his bill and that complainant has regularly paid his bills under this arrangement.

As an affirmative defense defendant alleges that Rule 26 of its tariff schedule limits General's alleged liability, if any, to that of complainant's pro rata adjustment of a monthly exchange charge.

Defendant moved that the Commission dismiss the complaint on the grounds that (1) the complaint does not allege that defendant has violated any provision of law or any tariff provision or any order or rule of the Commission, (2) it does not contain any allegation that defendant has in any way breached any legal duty it has to complainant, (3) it contains no allegations that complainant was charged at rates other than those fixed by the Commission and found by it to be reasonable and proper, and (4) it contains no allegations that defendant violated the tariff provisions covering temporary or permanent discontinuance of service (Schedule Cal. PUC No. D&R, Second Revised Sheet 34, Rule No. 11).

Further, defendant points out that complainant is seeking to recover damages for the alleged service disconnection and that the Commission does not have jurisdiction to award damages.

(Williams v Pac. Tel. & Tel. Co. (1965) 64 CPUC 736; Schumacher v Pac. Tel. & Tel. Co. (1965) 64 CPUC 295; Blincoe v Pac. Tel. & Tel. Co. (1963) 60 CPUC 432; Warren v Pac. Tel. & Tel. Co. (1956) 54 CPUC 704.)

Findings

1. The complaint is legally insufficient because:
 - (a) The complaint does not allege that defendant has violated any provision of law or any tariff provision or any order or rule of the Commission.
 - (b) The complaint contains no allegations that complainant was charged at rates other than those fixed by the Commission and found by it to be reasonable and proper.

- (c) The complaint contains no allegations that defendant violated the tariff provisions covering temporary or permanent discontinuance of service.

2. Complainant is seeking to recover damages for the alleged service disconnection, but this Commission does not have jurisdiction to award such damages.

Conclusion

The complaint should be dismissed.

IT IS ORDERED that the complaint is dismissed.

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

Dated at San Francisco, California, this 2nd day of JUNE, 1976.

Iabstain
Uro Commissioner

[Signature]
President
William H. Hume, Jr.
Lincoln L. Sturgeon
Robert B. Hine
Commissioners