

ORIGINAL

Decision No. 85898

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LAURENCE F. PADWAY,

Complainant,

vs.

GENERAL TELEPHONE CO., a
corporation,

Defendant.

Case No. 9946
(Filed July 18, 1975)

Laurence F. Padway, for himself.
A. M. Hart, H. R. Snyder, Jr., and Kenneth K. Okel,
Attorneys at Law, for defendant.

O P I N I O N

The subject matter of this complaint involves the following incidents:

- a. Defendant printed an incorrect mailing address for complainant's business in the Santa Barbara directory.
- b. Complainant missed calls on defendant's radio paging service due to equipment malfunction.
- c. Defendant temporarily terminated complainant's service for nonpayment, even though the amount of the bill in question had been deposited with the Commission under the disputed bill procedure.

Complainant alleges gross negligence on the part of defendant and seeks \$5,247.50 in general and punitive damages.

Complainant testified that he requested listings, including a yellow pages listing, at Post Office Box 15000 for his business as a registered process server. At the same time he applied for a pocket pager. The actual listing was printed as "P. O. Box 1500" in the 1974 and 1975 directories. The person who rented Box 1500 would

periodically call Mr. Padway to pick up his misdirected mail. At other times mail addressed to him at Box 1500 was returned to sender. There were several serious delays and at least one instance in which a good customer was lost to one of complainant's competitors.

The pocket pager was intended primarily for use in and around Isla Vista; it worked very erratically. Complainant claimed that defendant had represented that the pocket pager would work reliably at all locations between Gaviota and Ventura.

Complainant filed an informal complaint with the Commission and invoked the disputed bill procedure; subsequently, the phone he shared with his roommate was turned off for nonpayment and not reconnected for more than a day.

Defendant's witness detailed the history of complainant's dealings with the utility. He presented a document signed by complainant requesting listing for Box 1500. He also testified concerning defendant's tariff rules, pointing out that for paging services there is no liability for an interruption of less than 24 hours. The same rule applies to business and residential landline service. He asserted that reconnection of the landline service was accomplished in less than 24 hours. Defendant credited complainant with \$36.96 for the listing error.

Discussion

Complainant was a joint user of the telephone service, first with an answering service and later with his roommate. The defendant made reparation for the erroneous mailing address in a manner permitted by its tariffs, i.e., by a reduction in the monthly billing. Complainant was apparently unaware that any bill reductions had been made.

Defendant has no obligation to unravel the relationships between joint users; once it has paid the sum provided in the tariff for an omission by reducing a bill rendered to a prime customer it has a defense against claims by another joint user arising out of the same omission. For this reason, defendant has no further responsibility to pay reparations for the erroneous directory listings.

Defendant's tariff provides that it is not liable for mobile telephone service interruptions, unless the difficulty persists for more than 24 hours after notification. The record would not support a finding that complainant's difficulties with his pager ever lasted for a continuous 24-hour period. There is thus no reparations liability for these occurrences.

The remaining dispute involves defendant's termination of all telephone service to complainant and his roommate. This termination was on the grounds of failure to pay, even though complainant had deposited the amount of the bill under the Commission's disputed bill procedure. Defendant claims that no reparations are owed for this mistaken termination because service was restored in less than 24 hours.

The evidence on this point was in conflict. Complainant testified that he notified the company twice of the out-of-service condition before it was restored. The utility witness' testimony was confined to a single off-hand remark indicating that service was restored in less than 24 hours. In our opinion the utility witness calculated the time commencing with the second rather than the first notice.

We do not approve of defendant's failure to inform itself of whether a disputed bill deposit had been made; however, the record would not support a finding of gross negligence on this point.

Findings

1. Complainant on January 21, 1974 signed a request for service including yellow and white pages business listing, using Post Office Box 1500 as an address.
2. Defendant published its 1974 and 1975 directories showing Box 1500 as complainant's address.
3. Complainant's mailing address was Box 15000.
4. Complainant did not notify defendant of the error until after the 1975 directory was published.
5. Complainant credited complainant's roommate's number in the amount of \$29.50 and complainant's telephone answering service number in the sum of \$6.46 in reparation for the listing error.
6. Prior to August 6, 1975 complainant had been a joint user of a telephone number assigned to his answering service and another assigned to his roommate. He was no longer a customer or joint user of service after August 6, 1975.
7. The total billing for listings was \$3.75 per month. A refund of \$35.96 is a just and reasonable reparation for the diminution in value of the listing attributable to the address error.
8. Complainant's pager was not out of order continuously for a period of 24 hours or more.
9. Defendant knew or should have known that complainant had deposited the amount of a disputed bill with the Commission. It discontinued service to complainant's roommate's telephone on the grounds on nonpayment of said bill. Service was not restored until more than 24 hours, but less than 48 hours after complainant notified defendant.
10. None of defendant's omissions were grossly negligent; its failure to check for a disputed bill deposit was negligent.

11. Defendant owes a nominal sum to complainant in reparations for said discontinuance. The record would not support a finding that this sum is in excess of \$1.00.

Conclusions

1. A utility which has credited reparations to its customer may not be required to pay reparations a second time to a joint user of the service affected.

2. Under defendant's tariffs, it owes no reparations to a paging customer whose pager is not inoperative for at least a continuous 24-hour period.

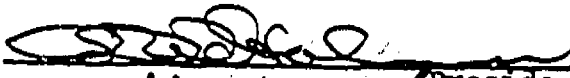
3. Under the applicable tariff, defendant owes complainant reparations in the amount of \$1.00 for all discontinued telephone service to telephone number 968-8304.

O R D E R

IT IS ORDERED that defendant shall pay reparations in the sum of \$1.00 to complainant.

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.

 President
William J. Agnew, Jr.
Verion L. Sturgeon
K. Ross
Robert Bateman
Commissioners