

Decision No. 86235

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Leisure Electronics, Inc.,
Complainant,

v.

General Telephone Company
of California, a corporation,
Defendant.

Case No. 10023
(Filed December 17, 1975)

Joel K. Baker, for complainant.
Mary L. Sullivan, Attorney at
Law, for defendant.

O P I N I O N

Leisure Electronics, Inc. (Leisure) operates a Lafayette Radio Electronics associate store in Torrance, California and receives phone service from the defendant (General) with two phone numbers on four outlets.

Leisure has several complaints about defendant's service, the most serious being the failure to connect incoming calls. Leisure states that upon picking the phone up, there is frequently either silence or a dial tone. The frequency of this problem is uncertain and random, occurring as frequently as two or three times in a few minutes with sometimes as long as weeks between occurrences. The average frequency was estimated at one to two calls a day.

Leisure estimates the total number of incoming calls at about 100 a day. This indicates a fail ratio on the incoming calls of one to one and one-half percent. The problem began in 1973 and the first action by General was in the spring or summer of 1974 when it made an informal inspection (an inspection without the keeping of any records to support it) in which it was indicated to Leisure that some calls were traced to a switching station in downtown Los Angeles but because this station could not be shut down to make repairs, it could not do anything further. This was established after a tracing procedure instituted by one of General's service foremen. The problem continued and Leisure sent a letter to this Commission dated March 6, 1975 (Exhibit 1) setting forth its complaints. Shortly thereafter, the defendant's representatives again tested the equipment at Leisure and the line from central office to Leisure and found no problems. Tracing equipment was twice placed on Leisure's line (with its consent). It required dialing "2" to trip the tracing equipment. The first tracing period lasted a few days in which one outgoing call was caught but there was some difficulty with the manner in which the equipment was hooked up by the company. A few weeks later, equipment was reinstalled at which time there was one other problem call traced. General also made a full inspection of Leisure's equipment and found no problems.

General advised this Commission that no failures were experienced and it had adjusted charges for a long distance phone call for Leisure. Neither were entirely accurate statements nor was any mention made by General of the earlier inspection in 1974 which

revealed some problems at the switching center. General informed the Commission it had made 90 test calls checking Leisure's equipment but its special inspect records indicate only 78 test calls. Nor had the company made the long distance adjustment at the time it represented to this Commission that it had made such an adjustment. Leisure, after receiving a letter from this Commission advising it that there was no corrective action the Commission would take because the tariffs of the company had not been expressly violated, wrote a letter to the Governor, whose office advised Leisure that the only recourse available was to file a formal complaint with this Commission. This formal complaint is the subject matter of this proceeding.

General's service foreman, who made an informal inspection in 1974 but has no records pertaining to it, testified solely from his memory that the inspection at that time might have had one or two traces on it which came from a tandem office. During these tracing procedures the company inadvertently disconnected Leisure's burglar alarm overnight and neglected to advise Leisure of the completed tracing so that the line could be put back into active service. The tracing records of General (Exhibits 4 and 6) are not signed, nor do they have a record of the date of termination of the trace. The form does not indicate on its face when the trace was installed, why it was installed, nor when the equipment was actuated to record a trace. The tracing logs were not checked by any supervisor or foreman to determine whether they were accurately completed, nor were they signed by the employee completing them. General's witnesses and records were unable to determine exactly when the equipment was either installed or removed. These logs were clearly completed in

different handwritings, though General's testimony originally indicated they were completed by the same employee. General's service foreman admitted thereafter that he did not actually know who completed these forms. General's records indicated that each of the traces was on for approximately a week but the company is unable to verify this by any records, and Leisure maintains that each trace was on for only two or three days.

Leisure also complains about a requested separation of the billing for the two lines which was promised but not done by the company, which allegedly caused Leisure a monetary loss. Leisure wants this Commission to refund all connection charges from the date of the first complaint because General has not provided connection on all incoming calls. Leisure also wants punitive and injunctive relief of various kinds. Leisure maintains that the efforts put forth to find the problem were less than represented, limited, and not in good faith, particularly since the 1974 inspection traced the problem to a specific location.

General argues there has been no evidence to indicate that any problem is due to the malfunctioning in any portion of its equipment, and that the special inspections made in 1974 and in 1975 found no problems. It maintains that the complainant is unrealistically insisting it should be receiving 100 percent reliability on its calls. Leisure is receiving an adequate grade of service since perfection is not attainable and there is no evidence to support Leisure's allegations of service failure upon which to base any adjustment for service failure. General admits that it did interrupt service on at least one occasion but since it was not in excess of 24 hours it did not violate the company's Tariff Rule No. 26.

Discussion

It is axiomatic that in a complaint proceeding the burden of proof is on the complainant. We believe that the evidence establishes that there was some problem in Leisure's service which was verified by General as early as 1974. However, even with this service problem the level of service which Leisure has received from General is still adequate in the light of existing technology, as perfection in service can never be achieved. We find that the service level based on the evidence was not less than 98 1/2 percent in the area of incoming calls and therefore the burden of proof required of complainant has not been met. Furthermore, even if the defective service exceeded what might reasonably be expected of the equipment involved, we could not order a full refund of all connection charges paid by Leisure since its first complaint of service, because the service level for the other phone service rendered by defendant was excellent.

However, we believe that the records kept by General of its tracing equipment usage are completely inadequate and should be upgraded by the creation of a new form which will include not only that matter included on the existing tracing equipment log but also the date and time of the installation of the equipment, the date and time of each tracing, the result of each tracing, the date and time of the removal of the equipment, the name of the person who ordered the equipment, the reason for the order of the equipment, and the date of the order of the equipment. This form should be signed by the employee completing it and by the supervisory employee(s) authorizing the trace and reviewing the form after completion. This new form should be filed by the company with the staff for approval within 30 days after the effective date of this order.

Further, we believe that the instant use of the tracing equipment did not create a viable test for defects. Therefore, we shall order the defendant, at Leisure's option (since the placing of this equipment on the line will cause a service interruption for Leisure), to retrace the continuing service problems alleged for incoming calls. General shall give one week's notice prior to the placing of the tracing equipment on the line. The tracing shall be for a consecutive six-day period commencing on a Monday morning and ending on Saturday evening. All records shall be kept in accordance with this order and a copy of the completed log shall be furnished to the complainant.

Findings

1. There was since some time in 1973, and continues to be, a problem receiving incoming calls on the telephone lines of Leisure. General furnishes phone service to Leisure.
2. The service problem does not constitute sufficient dereliction of service to render it less than adequate.
3. Leisure's telephone service is within acceptable standards, though not perfect.
4. There is no basis for ordering a full refund of all exchange and connection charges from the beginning of this service problem to the present time, and no such refund shall be ordered.
5. General's record-keeping of the tracing logs and equipment is inadequate. A new record form for ordering, replacing, and recording the use of the tracing equipment is necessary. It should

contain the following additional data: (a) the date and time of the installation of the equipment; (b) the date and time of each tracing; (c) the result of each tracing; (d) the date and time of the removal of the equipment; (e) the name of the person who ordered the equipment; (f) the reason for the order of the equipment; and (g) the date of the order of equipment. This form should also be signed by the employee completing it and by the supervisory employee authorizing the trace and reviewing the form after completion. This form should be filed by the company with the staff for approval within 30 days after the effective date of this order.

6. A service problem with incoming calls was established by the test by General's employee in 1974 but no records of that test or its results were either made or kept by General.

7. The tracing equipment deactivates the line upon which it is placed. The use of the tracing equipment to attempt to determine the malfunctioning which was causing the service problems to Leisure was not adequate.

8. It is reasonable to require General to replace the tracing equipment for a complete consecutive six-day working period from Monday morning to Saturday evening to attempt to determine the service problems with incoming calls of Leisure.

Conclusions

1. The request of Leisure for refund of exchange charges of General should be denied in accordance with the ensuing order.

2. General should be required to file with the staff for approval a new form for the installation of tracing equipment and the logging of the results thereof which shall conform with the requirements of Finding 5 above.

3. General should be required to replace, at Leisure's option, the tracing equipment for a consecutive six-day period commencing Monday morning through Saturday evening in accordance with the ensuing order.

4. All other requests for relief should be denied.

O R D E R

IT IS ORDERED that:

1. General Telephone Company of California shall prepare and file, for approval by the Commission staff, within thirty days after the effective date of this order, a new tracing log form containing not less than the requirements set forth in Finding 5 above. After approval, this form and the procedure set forth in Finding 5 above, shall be placed in use by General Telephone Company of California.

2. General Telephone Company of California, upon one week's notice to Leisure Electronics, Inc., and at the latter's option shall install tracing equipment for a consecutive six-day period from a Monday morning through a Saturday evening. The record of this tracing shall be made in accordance with this order, with a copy to be furnished to Leisure Electronics, Inc.

3. All other relief requested is denied.

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

Dated at San Francisco, California, this 10th
day of AUGUST, 1976.

President
William J. Lyons

Virginia L. Stinson

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Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.