

Decision No. 86407

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THOMAS R. BENTON,

Complainant,

vs.

THE GENERAL TELEPHONE COMPANY,
a corporation,

Defendant.

Case No. 10137
(Filed July 12, 1976)

ORDER OF DISMISSAL

This complaint was filed on July 12, 1976. On August 4, 1976, defendant filed a motion to dismiss on the ground that the complaint fails to state facts sufficient to constitute a cause of action. Complainant did not amend his complaint.

Public Utilities Code Section 1702 provides in part that: "Complaint may be made...by any corporation or person...by written petition or complaint, setting forth an act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for 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." Rule 10 of the Commission's Rules of Practice and Procedure provides in part that: "The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired." Examination of the complaint indicates that it is devoid of any facts. It consists entirely of conclusory allegations as follows:

- "1. That defendant is The General Telephone Company, P. O. Box 889, Santa Monica, California 90406.
- "2. That defendant has been grossly negligent in establishing, providing, and maintaining such telephone services as permitted under the authority of the Public Utilities Commission of the State of California.
- "3. That defendant has willfully allowed the deterioration of equipment within its control to a point detrimental to the maintenance of adequate service.
- "4. The defendant has abused its monopoly position to cut back on provided services.
- "5. That defendant has abused its monopoly position to delay or eliminate the introduction of new services.
- "6. That defendant has failed to provide in sufficient quantity business office staff so as to provide rapid response to customers' needs.
- "7. That defendant has failed to properly train business office staff to offer satisfactory solutions to individual requests.
- "8. That defendant has failed to provide in sufficient quantity installation and technical service personnel to provide for rapid installation and maintenance of equipment.
- "9. That defendant has willfully failed to increase at an adequate rate its provided services concurrent with the latest state of-the-art equipment.
- "10. That defendant has willfully failed to timely petition the Public Utilities Commission of the State of California for Tariff approval to provide advanced modern services.
- "11. That defendant willfully and knowingly provides monthly statements consistently inaccurate due to known errors in computer procedures and collection methods.
- "12. That defendant knowingly fails to provide adequate supervisory staff to control the billing.
- "13. That defendant has demonstrated a continued lack of concern toward each of these situations and has consistently failed to meet an adequate standard of performance as measured against other metropolitan areas of this state in total disregard of the best interests of its customers."

Nothing in the complaint sets forth "any act or thing done or omitted to be done...in violation or claimed to be in violation of any provision of law or of any order or rule of the Commission". In the circumstances the complaint should be dismissed for failure to state a cause of action. (Blincoe v PT&T (1963) 60 CPUC 432, 434.)

The Commission finds and concludes that the complaint fails to state a cause of action because it does not allege facts showing any violation or claimed violation of any provision of law or of any order or rule of the Commission.

The Commission also concludes that the complaint should be dismissed.

IT IS ORDERED that the complaint in Case No. 10137 is dismissed for failure to state a cause of action.

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

Dated at San Francisco, California, this 21st
day of SEPTEMBER, 1976.

President
William Lyman J.
Vernon L. Stenger
Leonard H. H.
Robert F. Bateman
Commissioners

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