

Decision No. 86411

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Adelberg Research & Development
Laboratories, Inc. and Helen M.
Adelberg, M.D.,

Complainants,

vs.

The Pacific Telephone and Telegraph
Company,

Defendant.

Case No. 10031
(Filed December 24, 1975)

Marvin Adelberg, for complainants.
Norah S. Freitas, Attorney at Law,
for defendant.

O P I N I O N

Complainants (Adelberg) have two lines at their premises in Sherman Oaks. They document at least ten occasions reported to defendant between December 1974 and October 1975 when at least one of the lines would not function properly to receive incoming calls or make outgoing calls.^{1/} As a result of these reports, Pacific made several inspections of Adelberg's premises, its own central office equipment, ran line tests every two hours for five days, and changed all its central office equipment connections and all equipment and relays (except the wiring) on Adelberg's premises.

^{1/} Pacific's records indicate 16 trouble reports from December 1974 to March 1976.

Pacific alleges that it frequently found a "receiver off the hook" (roh) condition, and pursuant to its policy with respect to roh, denied a dial tone after three rohs in a 30-day period during busy hours. This would result in an inability to make outgoing calls. Dial tone was denied at least twice to Adelberg without the five-day notice required under Pacific's tariff Rule 11.A.7 which as far as pertinent reads as follows:

"7. Non-Compliance with the Utility's Rules

"The utility may discontinue service if a customer fails to comply with any of the rules herein, provided such failure is not remedied within a reasonable time, after due written notice has been given, except as otherwise provided in the rules.

"Except as provided by these rules, the utility will not temporarily or permanently discontinue telephone service to any customer for violation of any rule except upon written notice of at least five days, advising the customer in what particular such rule has been violated for which telephone service will be discontinued if the violation is not remedied...."

Pacific treats the roh as an exception to the above rule and considers it an abuse of service under its tariff Rule 11.A.12.b, which as far as pertinent reads as follows:

"12. Impairment of Service

"b. The Utility has the right to refuse telephone service to any premises and at any time to discontinue telephone service, if it finds it necessary to do so to protect itself against abuse...."

Pacific interprets these rules as allowing the denial of dial tone without any notification to the customer because dial tone denial is only a partial discontinuance of service which still allows incoming calls. The dial tone is restored when the customer calls repair service, but no affirmative action is taken by Pacific to otherwise notify the customer or to distinguish between intentional and accidental roh.

Public hearing was held in Los Angeles before Examiner Phillip E. Blecher on July 1, 1976. At this hearing Marvin Adelberg testified that since October 1975 service was better and since about the end of February 1976 his service was satisfactory. Nevertheless, though he had no complaints about his phone service for the last several months and was not seeking reparations, Adelberg requested the Commission to order Pacific to take certain actions, which, though not worthwhile discussing at length here, may be summarized as the institution of a private repair service for Adelberg's lines to rectify any future service problems. Such request amounts to preference and discrimination under Section 453 of the Public Utilities Code,^{2/} and we will not order the relief.

^{2/} Section 453, as far as pertinent, reads as follows:

"(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage...."

However, the hearing disclosed Pacific's interpretation of the above-quoted tariff rules with respect to the roh problem. At the hearing the interpretation of Rules 11.A.7 and 11.A.12.b was put in issue. We believe Pacific's reading to be unduly stringent and are ordering amendments to both rules which are set forth in the ordering paragraphs.

Findings

1. Adelberg's telephone service has been satisfactory since February 1976.
2. The relief requested by Adelberg would create preference and discrimination in violation of Public Utilities Code Section 453.
3. Pacific's tariff Rule 11.A.12.b is interpreted by Pacific to include the "receiver off hook" condition as an abuse of service.
4. Pacific makes no distinction between intentional and other abuses of service in Rule 11.A.12.b.
5. Pacific does not consider denial of dial tone as a temporary or permanent discontinuance of service under its tariff Rule 11.A.7, but treats it as a partial discontinuance of service.
6. Pacific does not notify its customers prior to denying a dial tone.

Conclusions

1. No relief should be granted Adelberg.
2. Pacific's tariff Rule 11.A.12.b should be limited to intentional abuses of services only. An intentional "receiver off hook" condition may be considered an abuse of service under this rule.
3. Pacific's tariff Rule 11.A.7 should be extended to include partial discontinuance of service. A denial of dial tone is a partial discontinuance of service.

O R D E R

IT IS ORDERED that:

1. All relief requested by complainants is denied.
2. Tariff Rule 11.A.12.b of The Pacific Telephone and Telegraph Company is amended to read as follows:

"12. Impairment of Service

"b. The Utility has the right to refuse telephone service to any premises and at any time to discontinue telephone service, if it finds it necessary to do so to protect itself against intentional abuse. Intentional abuse of service includes, without limiting the generality of the foregoing, the use of service or facilities of the Utility to transmit a message or to locate a person or otherwise to give or obtain information, without payment of a message toll charge or an exchange service charge. Another form of such abuse is an intentional uninterrupted connection of one exchange station to another station within the same exchange which permits the use of the facilities in a manner similar to private line service. It also includes intentional receiver off hook conditions."

3. Tariff Rule 11.A.7 of The Pacific Telephone and Telegraph Company is amended to read as follows:

"7. Non-Compliance with the Utility's Rules

"The utility may discontinue service if a customer fails to comply with any of the rules herein, provided such failure is not remedied within a reasonable time, after due written notice has been given, except as otherwise provided in the rules.

"Except as provided by these rules, the utility will not partially, temporarily or permanently discontinue telephone service to any customer for violation of

any rule except upon written notice of at least five days, advising the customer in what particular such rule has been violated for which telephone service will be discontinued if the violation is not remedied. This notice may be waived in cases of an emergency or in the event of the discovery of a dangerous condition on the customer's premises or in the case of the customer's utilizing the telephone service in such a manner as to make it dangerous for occupants of the premises, thus rendering the immediate discontinuance of service to the premises imperative. Denial of dial tone is a partial discontinuance of service under this rule."

4. The Pacific Telephone and Telegraph Company shall file the revised tariffs ordered in paragraphs 2 and 3 above within ten days after the effective date of this order. Such revised tariffs shall become effective within five days after filing.

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.

William J. Quinn President
Veronica L. Sturgeon
Robert Bateman Commissioners

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