

SW/kd

Decision No. 86413

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROBERT W. SAUL, JR.,

Complainant,

vs.

GENERAL TELEPHONE COMPANY OF CALIFORNIA,
a corporation,

Defendant.

Case No. 10132
(Filed July 6, 1976)

ORDER OF DISMISSAL

The complainant alleges that his residence has two private telephone lines installed for personal use which he had installed for the convenience of those persons residing at his residence and not for business use; that the individuals residing at the residence require telephone service to different areas at approximately the same time; that the residence is owned by two unrelated individuals, each having different telephone needs; and therefore there is a need for extended service on both telephone lines. He further alleges that the defendant's refusal to provide him with two telephones with optional residence telephone service is provided for in and consistent with the provisions of the defendant's tariff as set forth in Schedule Cal. P.U.C. No. B-4, First Revised Sheet 20, effective September 1, 1975. He requests an order that will negate the restrictions specified in the tariff and further requests an interim rule be made effective immediately pending final ruling and the granting of the relief requested in this case.

The defendant's tariffs provide in Schedule Cal. P.U.C. No. B-4, First Revised Sheet 20, effective September 1, 1975:

"2.d. Optional residence telephone service is limited to one such service per residence premises unless more than one such service is established or applied for prior to September 1, 1975."

There is no allegation in the complaint that the complainant applied for more than one optional residence telephone service prior to September 1, 1975.

The defendant alleges that the complaint does not properly plead a cause of action for an interim ruling inasmuch as the complaint does not allege that failure to grant such interim relief would cause irreparable injury and does not allege facts showing the extent and nature of such irreparable injury and when, if at all, such irreparable injury will occur. In addition, the defendant alleges that the complaint does not allege facts sufficient to constitute a cause of action in that it does not allege that the defendant has violated any provision of law or any tariff provision or any order or rule of the Commission, nor does it allege that the defendant has in any way breached any legal duty it has to the complainant or that the complainant has been charged at rates other than those fixed by the Commission and found by it to be reasonable and proper.

The defendant has filed a motion to dismiss the complaint as being legally insufficient and not in accordance with Section 1702 of the Public Utilities Code.

Section 1702 of the Public Utilities Code provides in part:

"Complaint may be made by...any...person ...,by written petition or complaint, setting forth any 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 9 of the Commission's Rules of Practice and Procedure provides in part:

"A complaint may be filed by any... person,...setting forth any act or thing done or omitted to be done by 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."

A complaint which does not allege a violation by a utility of a provision of law or order of the Commission will be dismissed. (Blincoe v Pacific Tel. & Tel. Co. (1963) 60 CPUC 432.)

The Commission finds that the complainant is not entitled to an interim ruling; that the complaint does not allege that the defendant has violated any provision of law, order of the Commission, or tariff provision, or breached any legal duty it has to the complainant; that the complaint does not state facts sufficient to constitute a cause of action; that the complaint states that the defendant is complying with its tariff on file with and approved by the Commission; that the complaint seeks to require the defendant to disregard the provisions of the tariff and to provide certain service to the complainant in violation of the terms of the tariff involved herein; and concludes that the complaint should be dismissed.

IT IS ORDERED that Case No. 10132 is dismissed.

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 S. Quinn President
George L. Sturgeon
Robert Batminal Commissioners

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