

ORIGINAL

Decision S4 03 114

MAR 21 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

International Wholistic Health
Institute,

Plaintiff,

vs.

Pacific Telephone Company,

Defendant.

Case 83-12-02
(Filed December 1, 1983)

O P I N I O N

The complaint of International Wholistic Health Institute (complainant), 396 South Street, Richmond, regarding telephone number (415) 235-4525 alleges that Pacific Telephone and Telegraph Company (now Pacific Bell) (defendant) failed to act properly as follows:

Complaint

1. Defendant failed to meet and confer with respect to payment prior to terminating service.
2. Defendant failed to provide telephone service in a timely fashion, and installed service on June 2, 1983, when complainant's representatives were engaged in preparation and submission of a proposal for a grant which was denied because of untimeliness as a direct result of defendant's actions.
3. Defendant is obligated to establish a payment plan suitable to its customer's financial status.
4. Defendant failed to provide prompt service (see paragraph 1), in that defendant promised that complainant's request for telephone number 235-4525 would be installed and connected on June 1, 1983 by 5:00 p.m. (The complaint states that the service was installed by 5:00 p.m., June 1, 1983, but was installed with an incorrect number, and

without an outside dial tone so that only incoming calls could be received.)

5. Defendant is liable for complainant's loss of income because of defendant's negligence and errors. (The complaint contains no substantiation of loss of income or request for specific damages.)

The complaint seeks:

1. Reparation in the amount of \$10,000.
2. Cancellation of any and all amounts deemed owed or due to defendant by complainant.
3. Defendant be instructed to continue plaintiff's service pending a hearing and decision in this matter. ✓

No funds were placed on deposit with the Commission by complainant.

Defendant's reply was received on January 11, 1984, in which it answers all material allegations in the complaint, denies that complainant is entitled to any relief, and requests that the complaint be dismissed.

Answer

Defendant makes the following admissions:

1. Complainant requested and received telephone service furnished under telephone number (415) 235-4525 from June 2, 1983 through December 23, 1983, but failed to pay any amounts billed to it for service during that period. The service was terminated on December 23, 1983 for nonpayment.
2. Defendant's employee visited complainant's premises on June 2, 1983, for the purpose of installing telephone service.
3. Complainant paid a \$100 deposit at or about the time it requested the telephone service in issue.
4. Complainant failed to pay amounts due for the telephone service, and defendant's records indicate that complainant now owes a total of \$942.36.

5. Complainant was advised that its telephone service would be installed on June 2, 1983, and that an attempt would be made to provide complainant with the use of telephone number (415) 235-4525. Complainant's telephone service was properly installed on June 2, 1983. Complainant initially was assigned a telephone number different from the one it requested. However, in order to satisfy complainant, defendant was able to retrieve the requested number from another customer and assign it to complainant the same day complainant's service was installed.
6. Complainant contacted defendant on June 1, 1983 and alleged that errors had been made in installation. Complainant was advised that installation of telephone service would not be completed until June 2, 1983, as originally specified. An employee of defendant visited complainant's premises once on June 2, 1983 and completed installation of the telephone service. After advising complainant of its assigned telephone number, defendant's installer was advised by complainant that the telephone number was incorrect. The installer then contacted the appropriate department and determined that the telephone number would be switched to the number complainant had requested.

Except as expressly admitted and averred above, defendant denies each and every allegation in the complaint.

Prior Billing Disputes

In its answer, defendant alleges that complainant disputed and continues to dispute its telephone service bills only because complainant has not paid and does not intend to pay the full amount it owes to defendant for the telephone service at issue.

Under defendant's filed tariffs, an applicant for telephone service is required to pay any unpaid balance due to it for prior telephone service.¹

At least three times before the present dispute, complainant or its apparent representatives have received telephone service, failed to pay amounts billed to it for such service, and been disconnected for nonpayment. The most recent incident concerned telephone service furnished to complainant under telephone number (415) 620-9849, which was disconnected by defendant for nonpayment on April 11, 1983. Complainant brought the matter before the Commission in a case entitled International Wholistic Health Institute v Pacific Telephone and Telegraph Company, Case (C.) 83-03-01. Hearing was held on June 20, 1983. Decision (D.) 83-10-040 issued on October 19,

¹ Schedule Cal.P.U.C No. 36-T, 1st Revised Sheet 36-B, Rule No. 6.I.D. applies to complainant and provides as follows:

- "D. Reestablishment of Credit - Other Business Applicants
- "1. A customer whose service has been discontinued for nonpayment of bills will be required to pay any unpaid balance due the Utility for the premises for which service is to be restored, to pay a reconnection charge* as prescribed in Rule No. 11 under 'Restoration - Reconnection Charge' and to reestablish credit by making the deposit prescribed in Rule No. 7 B., before service is restored.
- "2. An applicant who previously has been a customer of the Utility and during the last twelve months of that prior service, has had service temporarily or permanently discontinued for nonpayment of bills will be required to pay any unpaid balance due the Utility and to reestablish credit by making the deposit prescribed in Rule No. 7 B.3." (Footnote omitted.)

1983 granted defendant's motion for nonsuit. On May 27, 1983, just prior to the June 20, 1983 hearing, at a time when the telephone service at issue in C.83-03-01 had been disconnected for nonpayment, complainant contacted defendant's business office and ordered the service at issue in the present complaint installed. Complainant was routinely asked by defendant's service representative if it had had prior service and complainant responded that it had not, deliberately failing to advise the service representative of the dispute then before the Commission or that previous telephone service had been disconnected for nonpayment. Despite D.83-10-040, complainant has failed to pay any amounts whatsoever and currently owes a total of \$168.10 for the telephone service at issue in that complaint.

The second prior incident concerned telephone service provided to complainant's representative Ethel Dotson.² Ms. Dotson was furnished telephone service at complainant's present address under telephone number (415) 234-4748 between March 15, 1982 and October 28, 1982. Ms. Dotson has failed to pay any amounts whatsoever billed to her for such service and currently owes a total of \$395.79. Service was disconnected for nonpayment on October 28, 1982.

The third prior incident concerned telephone service provided complainant's representatives, acting under the name Welfare Rights Organization,³ at complainant's present address. Telephone service was furnished under telephone number (415) 235-4525, which is the same telephone number that complainant requested and under which telephone service was furnished in the present complaint. Complainant's representatives have failed to pay a total of \$168.13 billed for the telephone service provided. Service was disconnected for nonpayment on February 26, 1982.

² Ethel Dotson appears to be president of complainant.

³ The Welfare Rights Organization which participated in A.82-12-57, San Diego Gas & Electric's general rate case, has no connection with the Welfare Rights Organization discussed in this decision.

Combined, defendant's records show that a total of \$1,674.38 in charges for the telephone service at issue in this proceeding and in prior proceedings remains uncollected. Defendant asserts that complainant should be barred from obtaining any relief in this matter and the complaint should be dismissed.

Affirmative Defenses

In its answer defendant raises the following additional affirmative defenses:

Assignment of Number

Complainant alleges that it was provided with an incorrect telephone number. Complainant requested that telephone number (415) 235-4525 be assigned to it in connection with the telephone service that is the subject of the complaint. When the telephone service was installed on June 2, 1983, complainant was originally assigned a different number than it had requested. That same day, although defendant was under no obligation to do so, in an effort to satisfy complainant, telephone number (415) 235-4525 was retrieved from another customer and assigned to complainant.

Defendant alleges that even assuming arguendo that complainant had been permanently assigned a different telephone number than it had requested, under defendant's filed tariffs it is not required to furnish its customer with particular telephone numbers. Schedule Cal.P.U.C. No. 36-T, 3rd Revised Sheet 63, Rule 17(c) provides as follows:

"(C) Changes in Telephone Numbers

The assignment of a number to a customer's telephone service will be made at the discretion of the Utility. The customer has no proprietary right in the number, and the Utility may make such reasonable changes in telephone number or central office designation as the requirements of the service may demand."

Furthermore, at the time complainant requested the particular telephone number assignment, defendant's service representative advised complainant that the number assignment could not be guaranteed. Defendant also mailed complainant a form entitled "ADVANCE TELEPHONE NUMBER ASSIGNMENT" which contains the following statement: "Because of equipment variances, we cannot guarantee this advance assignment nor the permanence of any telephone number after installation of service."

Defendant alleges that complainant is not entitled to any relief based on an allegation of an incorrect telephone number assignment.

Installation Date

Complainant alleges that defendant promised complainant that its telephone service would be installed on June 1, 1983. Defendant alleges that complainant was originally advised on May 27, 1983, at the time the service order was placed, that the requested telephone service would be installed on June 2, 1983 and that installation of the service was in fact completed on such date.

Defendant asserts that assuming arguendo that complainant's allegation is true, complainant is not entitled to any relief for alleged failure to meet a due date for installation of service. Defendant alleges that the allegation of failure to provide prompt service is based on the theory that defendant has a contractual obligation to meet the due date given to complainant for installation of service. Defendant argues that it did not obligate itself by contract to meet a particular due date, nor is complainant otherwise entitled to any relief because of defendant's alleged failure to meet the due date.

No Cause of Action

Defendant asserts that the complaint fails to state a cause of action because it does not set forth any act or thing done or omitted to be done which is claimed to be in violation of any provision of law or of any order or rule of the Commission. Section

1702 of the Public Utilities Code provides in part that a complaint must set 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 corporation or 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."

Defendant asserts that a complaint which does not allege a violation by a utility of a provision of law or order of the Commission will be dismissed, citing: L. J. T. Industries, Inc. and R. E. Mitman v Pacific Telephone Company (1976) 80 Cal.P.U.C. 836; Blincoe, et al. v Pac. Tel. & Tel. Co. (1963) 60 Cal.P.U.C. 432.

Termination in Compliance
With Tariffs

Defendant states that telephone service furnished to complainant under telephone number (415) 235-4525 was established on June 2, 1983, and bills have been sent to complainant each month since. Complainant has failed to pay any of said telephone bills and currently is delinquent in the amount of \$942.36.

Defendant asserts that action in advising complainant that its telephone service would be terminated unless payment was received and in subsequently terminating service is in full compliance with

its tariffs, i.e., Schedule Cal.P.U.C. No. 36-T, 10th Revised Sheet 49, Rule 11.A.2.³

Unlawful Advantage

Defendant asserts that providing any relief to complainant because defendant missed an installation "due date" or because it

³ This rule provides, in part, as follows:

"DISCONTINUANCE AND RESTORATION OF SERVICE

"A. Reasons for Discontinuance of Service

* * *

"2. Nonpayment of Bills

"a. All Classes, Types and Grades of Exchange and Toll Service

"Bills shall be considered past due (delinquent) and service to a particular premises, separately served and billed, may be temporarily or permanently discontinued for the nonpayment of a bill for the service furnished, provided: (1) The bill has not been paid within the period specified below:

"By the 'Due By Date' shown on the bill or, if not shown, by fifteen calendar days after date of presentation of monthly bills, special bills, and all other bills, except yearly.

"Thirty calendar days after date of presentation when bills are rendered yearly and for custom work billing orders (CWBO).

"and, (2) the Utility first gives notice of such delinquency and impending termination at least 7 calendar days prior to the proposed termination by first class mail addressed to the customer to whom the service is billed, or delivered in person or delivered to the customer's billing address."

assigned complainant a telephone number other than the one complainant requested, if granted, would violate the provisions of Section 453(a) of the Public Utilities Code which provides as follows:

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

Inability to Award Damages

Defendant alleges that we repeatedly held that we are without jurisdiction to award damages. (Schumacher v Pacific Tel. & Tel. Co. (1965) 64 Cal.P.U.C. 295; Edward L. Blincoe, et al. v Pac. Tel. & Tel. Co. (1963) 60 Cal.P.U.C 432; Manfred M. Warren and C. Jay Hollander v Pacific Tel. & Tel. Co. (1956) 4 Cal.P.U.C. 704): therefore, complainant is not entitled to collect any damages, including damages for alleged loss of income.

Communication With Complainant

By registered letter dated January 18, 1984, addressed to Ethel Dotson, president, and Ralph McClain, secretary, by the assigned administrative law judge, complainant was advised that it may request a public hearing to present additional facts and arguments, that the hearing date would be that selected by complainant, and that unless a reply was received to the letter within 15 days, the complaint may be dismissed for want of prosecution.

The registered letter was returned unclaimed on January 30, 1984.

Discussion

Ordinarily, this complaint would be routinely dismissed without prejudice for want of prosecution. However, because of the history behind this complainant, we will deny this complaint with prejudice, and direct our Consumer Affairs Branch and our Docket Office not to receive subsequent complaints concerning disputed bills filed by Dotson, McClain, International Wholistic Health

Institute, or Welfare Rights Organization, (when acting as an alter ego for complainant, Dotson or McClain) unless complainant accompanies the formal or informal complaint with a deposit in the amount(s) of the disputed bill(s).⁴

We encourage defendant to enforce the provisions of its tariffs and require payment of unpaid balances for previous service and deposits before again providing telephone service to complainant and Dotson. In addition, we note that more timely enforcement by defendant of its tariff governing discontinuance of service for failure to pay bills, quoted in footnote 3, would have lessened the amount of the unpaid bill, which may eventually be borne by defendant's paying customers.

⁴ Ms. Dotson has also filed informal and formal complaints concerning disputed gas and electric bills, without paying such bills or depositing the amounts in dispute.

Findings of Fact

1. No cause of action has been stated in complaint.
2. Complainant has not prosecuted its complaint.
3. Complainant, related organizations, and Dotson have a history of nonpayment for telephone services rendered by defendant.

Conclusions of Law

1. This complaint should be denied with prejudice, because of the frivolous nature of the complaint and complainant's history of not paying for, but disputing, charges for telephone service.

2. Complainant, and Dotson and McClain should be placed on notice that any future formal or informal complaints filed by them concerning disputed charges must be accompanied by a deposit of the full amount of the charges in dispute. ✓

3. Defendant should be directed not to accept new applications for service from Dotson or complainant unless prior bills are paid and the application for new service is accompanied by a deposit, as provided in defendant's tariffs.

O R D E R

IT IS ORDERED that:

1. The complaint in C.83-12-02, as amended, is denied with prejudice.

2. Complainant, International Wholistic Health Institute, and its officers, Ethel Dotson and Ralph McClain, are placed on notice that future complaints concerning disputed bills will not be accepted for filing unless accompanied by a deposit in the full amount of the disputed bills. ✓

3. Defendant, Pacific Bell, is directed not to accept future applications for telephone service from International Wholistic Health Institute or Ethel Dotson unless prior unpaid telephone bills are paid in full, and the new application is accompanied by a deposit.

This order becomes effective 30 days from today.

Dated MAR 21 1984, at San Francisco, California.

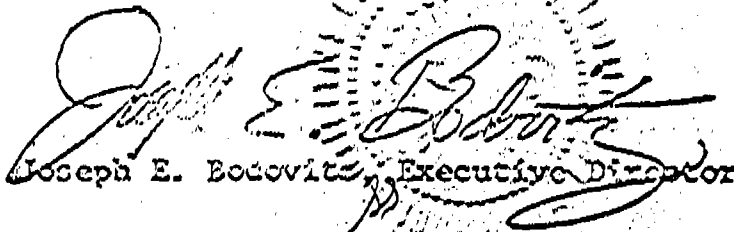
LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL

Commissioners

Commissioner William T. Bagloy
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

without an outside dial tone so that only incoming calls could be received.)

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3. Defendant should be directed not to accept new applications for service from Dotson or complainant unless prior bills are paid and the application for new service is accompanied by a deposit, as provided in defendant's tariffs.

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