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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GEORGE SING LOUIE,

Complainant,

vs.

PACIFIC BELL TELEPHONE COMPANY, a
 subsidiary of PACIFIC TELESIS
 INTERNATIONAL, a corporation;
 AMERICAN TELEPHONE AND TELEGRAPH
 COMPANY, a corporation; and
 CHARLES L. BROWN, Chairman of the
 Board, AMERICAN TELEPHONE and
 TELEGRAPH COMPANY,

Defendants.

Case 86-11-026
 (Filed November 17, 1986)

OPINIONI. The Complaint

Complainant is an inmate of the prison facilities operated by the California Department of Corrections (Department). He alleges that the Department permits its prisoners at least two 15-minute telephone calls per week. The calls must be either collect or billed to a third number; and, complainant alleges, the defendants require that charges be accepted by a person at the third number before they will complete a call.

Complainant also asserts that defendants prevent prisoners from placing telephone calls through their systems using the telephone services of 21 named interexchange carriers (IECs), which services are in some cases less expensive than defendants' services. This policy, complainant avers, prevents calls to state and federal courts, NAACP Legal Defense and Education Fund, Inc., attorneys, witnesses, members of Congress, state officials,

families, friends, and others, who do not accept collect calls in some cases. Complainant states, however, that his friends, family members, and attorneys sometimes permit him to charge calls to their numbers.¹

Complainant argues that defendants' policy of preventing calls from being placed over the systems of the IECs deprives him of his rights under the United States Constitution, as follows:

1. Access to courts (1st Amendment);
2. Due process of law (5th and 14th Amendments);
3. Counsel (6th Amendment);
4. Association (1st Amendment);
5. Petition for redress of grievances (1st Amendment); and
6. Cruel and unusual punishment (8th Amendment).

Complainant further argues that the defendants' policy is arbitrary and discriminatory and is based upon whim, capriciousness, and deliberate repression.

In the Conclusion section of his pleading complainant "enter[s] the thesis that monopolizing and disallowing calls through other phone companies should be terminated...". In his prayer complainant requests "an order declaring such invidious discrimination violates the U.S. Constitution, [and the] laws of the State of California and United States". He also asks that the Commission concur with his overall points.

¹ Complainant has telephoned the Administrative Law Judge (ALJ) several times by first placing a call to his attorney and then having the attorney transfer the call to the ALJ.

II. Motions to Dismiss

Motions to dismiss the complaint were filed by: Pacific Telesis Group (Group) on December 1, 1986; Pacific Telesis International (International) on December 8, 1986; Pacific Bell (Pacific), which also answered, on December 22, 1986; and AT&T Communications of California, Inc. (AT&T-C) on January 9, 1987. We will address each of these motions below.

III. Response of Complainant to Motions to Dismiss

The ALJ afforded the complainant as much time as he requested to file a response to the motions to dismiss. Complainant replied by letter of March 31, 1987, but he did not, in fact, respond to the motions to dismiss or to the jurisdictional arguments made by the moving parties. Rather, in his two and one-half page, single-spaced letter complainant reiterates and emphasizes the arguments made in the complaint, states additional facts not previously alleged, and cites numerous federal court decisions and makes new arguments based upon them.

IV. Motion of Group

Group moves to dismiss the complaint, as to itself, on the following grounds:

1. Group is not named as a defendant in either the caption or body of the complaint but is simply identified as the parent of defendant Pacific.
2. There are no allegations in the complaint against Group.
3. Group is not a public utility. Under Public Utilities (PU) Code § 1702 complaints before the Commission may only be brought against public utilities.

Each of these points is well taken for the purposes represented in this complaint; and each point affords an appropriate basis for dismissing the complaint as to Group. We conclude, therefore, that the complaint should be dismissed as to Group.

V. Motion of International

International moves to dismiss the complaint, as to itself, based on the following grounds:

1. There are no allegations in the complaint against International; and
2. International is not a public utility. Under PU Code § 1702 complaints before the Commission may only be brought against public utilities.

Both of these points are well taken for the purposes represented in this complaint; and each point affords an appropriate basis for dismissing the complaint as to International. We conclude, therefore, that the complaint should be dismissed as to International.

VI. Motion of AT&T-C

AT&T-C moves to dismiss the complaint, as to itself, based on the following grounds:

1. The complaint fails to state a cause of action against AT&T-C;
2. The Commission lacks jurisdiction over the complaint;
3. The complaint does not seek or require relief from AT&T-C; and
4. The complaint is legally insufficient since AT&T-C is not tariffed to provide service arrangements to the State of California.

We will discuss each of these points in order.

A. Failure to State a Cause of Action

Wardens and superintendents at institutions under the Department are responsible for establishing procedures for inmate use of telephones.² The type of billing procedure in place at an institution is the result of policy decision by the institution's warden or superintendent. (15 Admin. Code § 3282(d).) Once this

2 "Each warden and superintendent will establish procedures for inmate use of telephones within the institution. Such procedures will apply to...public telephones for personal calls by inmates. Each institution must provide at least one public telephone for the use of general population inmates to make personal calls. Additional public telephones may be provided for inmate personal calls as desired or deemed necessary by the warden or superintendent. The following general regulations will be incorporated in the institution telephone procedures:"

* * *

- "(b) An inmate may not use or be allowed access to a telephone with the capability of direct connections with a public telephone system, except as authorized in the institution's telephone procedures."

* * *

- "(d) No limitation will be placed on the numbers, identity or relationship to the inmate of persons to whom an inmate may make a telephone call, providing the inmate or person called, or a third party, agrees to accept all charges for the call." (15 Admin. Code § 3282.)

procedure is determined by the warden or superintendent, Pacific is responsible for implementing his or her chosen policy at the institution, in accordance with its tariffs.³

Based on the type of billing procedure selected by the Department, Pacific has instituted a system of collect-only coinless telephone calls for inmate use. By design, this system requires operator assistance to place long-distance calls. AT&T-C alleges that it is the only IEC capable of providing this type of service at the present time. It also alleges that it provides operator assistance for long-distance calls placed by prison inmates and bills the charges for those calls according to established tariff provisions. According to AT&T-C, it is not responsible for either the type of billing procedure in place at the institution or the configuration of the telephone system that

3 "Individual line semipublic service provided...to the State of California and its political subdivisions, departments, agencies and other bodies may be arranged to provide special handling of outward coin and non-coin telephone calls. This special semipublic service arrangement will be provided subject to the tariff schedules of the Utility and the provisions of agreements (form numbers M 1452-2 and M 1452-3) as shown in Schedule Cal. P.U.C. No. A2.3.

"The calls will be identified at the Utility operator's position so that all calls will be handled in one of the following ways:

- "a. USOC - 852 - Permit only outward coin sent-paid local and toll calls and collect local and toll calls. Collect local calls will be billed at the applicable operator assisted toll rates.
- "b. USOC - 1S8 - Permit only outward non-coin collect local and toll calls. Collect local calls will be billed at the applicable operator assisted toll rates."

(Pacific's Schedule Cal.P.U.C. No. A5, ¶ 5.5.2.B.4.)

provides such service. Rather, the Department, as indicated by 15 Admin. Code § 3282(d), requires calls to be either collect or the charges accepted by a third party; and Pacific implements that policy through its tariffs.

AT&T-C demonstrates that none of the paragraphs of the complaint states a claim against it. The policy that complainant alleges to be unlawful is either that of the Department or of Pacific. Under these circumstances the complaint fails to state a cause of action against AT&T-C and should be dismissed, as to AT&T-C, under PU Codes § 1702, Rules 9 and 10, and Blincoe v. PT&T (1963) 60 CPUC 432.

B. Lack of Jurisdiction

AT&T-C also argues that the complaint should be dismissed for failure to state a claim within the jurisdiction of the Commission. It points out that the Director of the Department is responsible for the "...care, custody, treatment...of inmates." (Penal Code § 5054.) The Director is also authorized to make rules and regulations for the administration of the prisons. (Penal Code § 5058) Pursuant to that rulemaking authority, the Director has provided in 15 Admin. Code § 3282 that wardens and superintendents will establish the procedures for inmate use of telephones within correctional institutions run by the Department.

It is clear that the Commission has no authority to prescribe the kind of telephone service that should be offered or provided to inmates under the rules and regulations of the Department. If those rules and regulations violate any state law or state or federal constitutional provision, then it is for the Department to adjust the matter initially; or, failing appropriate action by the Department, then redress should be sought in the courts. The Commission has not been empowered to oversee the operations of the state prison system or to determine the scope or extent of the rights of inmates to use the telephone. To the extent that the complaint asks the Commission to inject itself into

the area of prison system administration, the complainant seeks relief beyond the jurisdiction of the Commission to provide. The state and federal courts are the proper forums to litigate the lawfulness or constitutionality of the rules, regulations, and practices of the Department. (Government Code § 11350; 42 U.S.C.A. (1983).)

We conclude that to the extent that the complaint seeks to determine the lawfulness or constitutionality of the rules and regulations of the Department, the Commission has no jurisdiction of the subject matter of the complaint; and for that reason the complaint should be dismissed.

**C. The Complaint Does Not Seek or Require
Require Relief From AT&T-C**

AT&T-C argues that, to the extent complainant seeks to use the services of IECs other than AT&T-C, his complaint should be addressed to the Department or to those IECs, not AT&T-C. The complainant does not ask that AT&T-C be required to do anything it should be doing but is not; nor does he allege that AT&T-C should cease doing that which is unlawful. Complainant makes no factual statements in the complaint about AT&T-C's conduct, or lack of conduct, from which we could deduce a violation of any law, rule, order, or constitutional provision by AT&T-C. Accordingly, the complainant has joined an inappropriate defendant; and the complaint should be dismissed as to AT&T-C for that reason.

**D. AT&T-C is Not Tariffed to Provide Service
Arrangements to the State of California**

AT&T-C contends that special, semipublic, outward-only service arrangements for agencies of the State of California are offered through Pacific's tariffs but not through AT&T-C's tariffs. Thus, according to AT&T-C, the type of billing procedure selected by the Department can only be implemented by Pacific. AT&T-C states that its only involvement is to provide operator assistance for long-distance phone calls placed by inmates. It asserts that

the rates applied to these calls are in full compliance with the terms and conditions of its Cal. P.U.C. Tariff No. A6, ¶ 6.2.1 and F.C.C. Tariff No. 1, ¶¶ 2.5.12 and 2.8.3. AT&T-C states that it has acted at all times in accordance with its tariffs. It asks, therefore, that the Commission grant its motion to dismiss.

The complainant does not allege that AT&T-C has violated its tariffs or any provision of law. It does not allege that AT&T-C has failed to provide operator assistance. The complaint makes no factual assertions at all regarding AT&T-C's involvement in providing telephone service to inmates. Since it is clear that AT&T-C is not tariffed to provide the service used by complainant, it has violated no duty to him of which he has made us aware through the allegations of his complaint. The complaint should therefore be dismissed as to AT&T-C.

We conclude that the complaint should be dismissed as to AT&T-C based on the four grounds discussed above.

VII. Answer and Motion of Pacific

A. Pacific's Answer

Except as admitted or alleged below, Pacific denies the allegations of the complaint. Pacific admits that it has implemented the blocking of Feature Group B (950-XXXX) calling. "950-XXXX" signifies an interconnection arrangement that allows customers of an IEC to access the IEC's network by using an unique 7-digit number with the prefix 950. Pacific also admits that it has begun the blocking of casual calling, or Feature Group D (10XXX #) calling, from those phones subscribed to under the Inmate Class of Service. "10XXX #" signifies casual user billing that requires a subscriber access code for billing against the subscriber's account, as opposed to billing against the line. Pacific also explains that it does not permit the completion of 10XXX calling from any coinless public or semipublic phones and has

not permitted such calling since early 1986. "10XXX" signifies casual billing of calls to the line used to call out.

Pacific alleges that blocking of 950-XXXX and 10XXX # calling was initiated at the oral request of the Department and at the demand of many, and with the concurrence of all, IECs operating in California with Feature Group B (950-XXXX) and/or Feature Group D (10XXX #) service that could be accessed by prisoners. Pacific attached to its motion copies of ballots it received from IECs, who, as Feature Group B (950-XXXX) customers, agree that Pacific may block all Feature Group B (950-XXXX) calls which originate from trunks carrying Inmate Classes of Service.

The reason for the blocking, according to Pacific, is that the IECs had cited many instances of fraudulent calling initiated by prisoners, resulting in large and unchecked financial losses. Pacific attached to its motion a copy of an April 12, 1985, letter from Satellite Business Systems (SBS) reporting a loss of \$100,000 over a four-month period from toll fraud. SBS traced the fraudulent calls to correctional institutions in the San Jose area. It determined that the calls were made from pay phones by using illegally obtained authorization codes. SBS formally requested that Pacific block 950-XXXX access from pay stations in all correctional institutions in California.

Pacific alleges that Inmate Classes of Service are identified in its tariff as "Semipublic Telephone Service". Schedule Cal. P.U.C. No. A5, § 5.5.2.B.4 (quoted in full above) provides that government agencies may subscribe to "Outward Only Service", which permits either:

1. "Outward coin sent-paid local and toll calls and collect local and toll calls"; or
2. "Outward non-coin collect local and toll calls".

Pacific asserts that it provides coinless and coin public phones to the county or State of California as its agent. The

agent is not billed for the service. Pacific receives revenues from coins inserted and from the party that accepts the collect call from the inmate. Though it has blocked certain kinds of calls at the request of the Department and the IECs, it has permitted prisoners' phone calls to be placed through its system if the call is made with coins or collect. Furthermore, those phones that block credit card calling over the systems of IECs also block credit card calling over AT&T-C's system.

Finally, Pacific states that its blocking policy only affects Inmate Classes of Service. Prisons and jails have the option to request services that are noninmate in nature, including public coin service, semi-public service, or Customer Owned Pay Telephone (COPT) service. These services are not affected by Pacific's blocking of Feature Group B (950-XXXX) and Feature Group D (10XXX #) calling.

B. Pacific's Affirmative Defenses

1. Pacific states that the complaint does not comply with Rule 10 in that it does not allege that the matter has been brought to the staff for informal resolution.
2. Pacific argues that Commission is not the proper forum to determine complainant's rights under the U.S. Constitution. It asserts that the federal courts have the primary jurisdiction to determine such claims, citing U.S. Const., Art. III, § 2, Cl. 1. It also cites People v. Chapman (1984) 36 Cal. 3d 98, 112, for the proposition that "the Commission is not a duly constituted 'expert' body on constitutional law". The California Supreme Court also stated that the "Legislature may not confer upon the Commission the judicial power to determine the constitutional rights of California citizens." (Id. at 111, fn. 9.)
3. Pacific also argues that the complaint should be dismissed because it is required by tariff to provide semipublic telephone service to those government entities that

request it. (Schedule Cal. P.U.C. No. A5, § 5.5.2.B.4.) The subscriber is the prison or jail facility; and the subscriber determines the type of semipublic telephone service it wishes to subscribe to if it desires semipublic telephone service for its inmates. Pacific provides the service as requested; and the inmates may then use the telephone in the way that the tariff provides for its use. The prison or jail facility may also request a public Inmate Class of Service or nonsubscriber coin/coinless service. It is clear, according to Pacific, that if complainant's constitutional rights have been violated, it is not Pacific that has infringed them.

4. Finally, Pacific argues that the complaint should be dismissed because the Department is responsible for deciding on the type of telephone service to which prisoners shall have access. (15 Admin. Code § 3282.) The Department through wardens and superintendents, determines the type or class of telephone service to which inmates shall have access.

C. Pacific's Motion to Dismiss

Pacific submits that it cannot be held liable for the alleged violations of complainant's constitutional rights, since it has not in any way caused such violations. It nevertheless cites Bell v. Wolfish (1979) 441 U.S. 520, involving pretrial detainees, who are considered to have more rights than convicted prisoners, for the proposition that:

"restraints that are reasonably related to the institution's interest in maintaining jail security do not, without more, constitute unconstitutional punishment, even if they are discomforting and are restrictions that the detainee would not have experienced had he been released while awaiting trial." (Id. at 540.)

The proper inquiry that raises the issue of a policy that deprives a prisoner of liberty without due process is whether the condition amounts to punishment; and a condition is punitive if

there is a showing of express intent to punish. However, "if a particular condition is reasonably related to a legitimate nonpunitive objective, it does not, without more, amount to punishment." (Id. at 539-40.)

Pacific submits that the goal to decrease or eliminate fraudulent calling by inmates is "related to a legitimate nonpunitive objective" under the Bell v. Wolfish test. It cites in support of its contention Wooden v. Norris, 637 F.Supp. 543 (M. D. Tenn. 1986), a class action brought on behalf of inmates challenging the constitutionality of an inmate telephone system. In that case the court held that: (1) "coinless telephones did not unduly restrict the prisoners' access to courts and counsel", and (2) that the justification provided by the defendants (Tennessee State Prison, Middle Tennessee Reception Center, and South Central Bell) for the system of coinless, collect calling was compelling. That justification was that:

"the coin-operated telephone system in existence at the prison prior to 1979 led to fraudulent billing, vandalism, and inmate calls to victims of their crimes. In addition, introduction of free-world money needed to operate these phones led to illicit trade and activities among prisoners. ...[U]nless a constitutional violation has been established, the federal courts should not delve into the day-to-day resolution of 'complex and intractable' prison problems 'which are peculiarly within the province of the legislative and executive branches of government.'" (Id. at 555, quoting Procunier v. Martinez, 416 U.S. 396, 405 (1974).)

The Wooden court concluded that the coinless telephone system did "not unreasonably restrict and impair plaintiffs' First and Sixth Amendment rights of access to courts and counsel." (Id.) The court further found that the coinless telephone system did not infringe upon the First Amendment rights of inmates' families to communicate with them. (Id.)

Pacific submits that the provision by Pacific of telephones to subscribers in the Department, which allow only collect or coin-sent paid calling, does not violate of complainant's constitutional rights. Such restrictions are within the discretion of the Department, and, even if associated with Pacific, do not amount to violations of the U.S. Constitution. Pacific asks that the complaint be dismissed.

VIII. Discussion of Pacific's Answer and Motion

We agree with Pacific that the complaint should be dismissed. We reach this conclusion without considering or resolving the various constitutional arguments, since there are adequate state law grounds for dismissal.

PU Code § 1702 provides in part that:

"Complaint may be made by...any...person... 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."

Complainant does not alleged that Pacific has violated any statute, general order, order, regulation, or tariff rule. He merely alleges that Pacific is blocking inmate access to certain IECs. Complainant does not show how this practice, which Pacific freely admits, violates any provision of law that the Commission administers. Complainant cites no state statutes, Commission orders, or utility tariffs in support of his complaint.

We will assume, however, that implicit in the complaint is a claim that Pacific is misapplying its semipublic telephone service tariff. This tariff provision, which we have quoted in full above, offers a limited form of phone service only to government agencies, such as the Department. These agencies are the subscribers to the service. For reasons of their own they have

chosen this service over other forms of public or semipublic phone service that they might have subscribed to under Pacific's tariff. This outward only service is offered in two forms: coin and non-coin. Coin service allows sent-paid and collect local and toll calls. Non-coin service allows only collect local and toll calls. In either case collect local calls are billed at the applicable operator assisted toll rates. Although it is not clear from the pleadings, we assume that collect toll calls over the AT&T-C network are billed at AT&T-C's applicable operator assisted toll rates. At least, AT&T-C so asserts.

The tariff does not mention access to IECs, 950-XXXX calling, or 10XXX # calling. By blocking 950-XXXX and 10XXX # calling Pacific does not deny to the subscriber, or to the inmate user, any rights conferred by the tariff, because the tariff confers no such rights. The subscriber is getting exactly the service to which it subscribed. The subscriber could have ordered other forms of semipublic or public phone service that allow 950-XXXX and 10XXX # calling. But since it did not place such an order, Pacific cannot be held accountable. Pacific has no discretion to insist that a subscriber choose a particular form of service from among a range of options for which the subscriber qualifies. Where a subscriber may elect various forms of public or semipublic phone service from among a number of such services offered by Pacific through its tariff, Pacific is acting merely in a ministerial capacity in filling an order for a particular form of service. This is so because Pacific is, under our system of regulation, subject to legal and contractual obligations to provide the services offered in its tariff without discrimination. It may not do otherwise. Therefore, Pacific has not violated its tariff or any law administered by the Commission in providing service to the Department in accordance with the terms of its tariff and the request of the Department.

Whereas 950-XXXX and 10XXX # calling are not part of the Inmate Classes of Service tariff discussed above, they are part of Pacific's tariff provisions dealing with interconnection between Pacific's network and the networks of the IECs. That is, 950-XXXX and 10XXX # calling are "features" of the interconnection arrangements provided to IECs under Pacific's tariff. It seems clear that restricting the use of these "features" to certain subscribers or denying their use to other subscribers is the prerogative of the IECs and Pacific as they may agree. The practical effect of such agreements is that the IECs deny to themselves telephone traffic from particular classes of subscribers, and the revenue that traffic might generate; but, on the other hand, they avoid uncollectable accounts that may have caused large losses from these classes. In any event, it is "features" of the tariff provisions applicable to IECs that are being restricted or denied, not provisions of the Inmate Classes of Service tariff.

The central issue, to which most of AT&T-C's and Pacific's arguments point, is: Who is the proper defendant? It is clear to us that the real party in interest is the Department. By law it is the agency vested with responsibility for the care, custody, and treatment of inmates. The Director of the Department has rulemaking powers by which he establishes the policies of the Department with respect to the terms of confinement. The Director has exercised his rulemaking authority in the area of telephone service for inmates. The two policies relevant here are that (1) an inmate may not use or be allowed access to a telephone with the capability of direct connections with public telephone system, and (2) an inmate may call anyone, provided that the inmate or the

person called, or a third party, agrees to accept all charges for the call. (15 Admin. Code § 3282(b) and (d).)⁴

The Director has delegated to each warden or superintendent the duty to establish procedures for inmate use of telephones within each institution. Those procedures are to apply to public telephones for personal calls by inmates and are to incorporate the two policies mentioned above. (15 Admin. Code § 3282.) The warden or superintendent then subscribes to the form of telephone service for the personal use of the inmates that is consistent with the procedures he has established and the policies of the Director. It is abundantly clear that, if the form of telephone service chosen for an institution by the Department or its agents violates the constitutional rights of the inmates, the cause of action for violation of those rights lies against the Department. It has legal responsibility for the inmates; it has rulemaking power; it has exercised that power; and it has exercised its discretion in choosing the form of inmate telephone service.

We conclude, therefore, that the proper defendant for causes of action in the complaint alleging violations of complainant's constitutional rights is the Department. Since the Department is not a public utility, the Commission may not entertain a complaint against it, even if complainant had named the Department as a defendant. Thus, not only has complainant named the wrong defendants in his complaint, he has also chosen the wrong forum. Accordingly, the complaint should be dismissed.

Findings of Fact

1. Group is not a public utility for the purposes represented in this complaint.

⁴ Pacific's tariff is consistent with both of these policies. Direct connections are avoided by the requirement that calls be "identified at the Utility operator's position"; and proper billing is assured by the requirement that the calls be collect or coin sent-paid.

2. International is not a public utility for the purposes represented in this complaint.

3. Complainant has failed to allege facts sufficient to constitute a cause of action against AT&T-C.

4. The Department is the agency of State government with authority over the State prison system.

5. The Director of the Department supervises, manages, and controls the State prisons and has the responsibility for the care, custody, treatment, training, discipline, and employment of the inmates. (Penal Code, § 5054.)

6. The Director may prescribe and amend rules and regulations for the administration of the prisons. (Penal Code, § 5058(a).)

7. The Director has exercised his rulemaking authority to establish policies pertaining to telephone service for inmates. (15 Admin. Code §§ 3282(b) & (d).)

8. The Director has delegated to wardens and superintendents in the prison system the duty to establish procedures for inmate use of telephone. Those procedures are to apply to public telephones for personal calls by inmates and are to incorporate the policies cited in Finding 7. (15 Admin. Code § 3282.)

9. Wardens and superintendents have subscribed to public telephone service for personal calls by inmates.

Conclusions of Law

1. Complaints before the Commission may be brought only against public utilities. (PU Code § 1702.)

2. The complaint should be dismissed as to Group for lack of jurisdiction.

3. The complaint should be dismissed as to International for lack of jurisdiction.

4. If the form of telephone service chosen for a prison by the Department or its agents violates the constitutional rights of the inmates, the cause of action for violation of those rights lies

against the Department or the Director in the state or federal courts.

5. The complaint should be dismissed as to AT&T-C for failure to state a cause of action.

6. The complaint should be dismissed as to Pacific for failure to state a cause of action.

ORDER

IT IS ORDERED that the complaint is dismissed.


This order becomes effective 30 days from today.

Dated OCT 14 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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


Victor Weiszer, Executive Director

Each of these points is well taken; and each point affords an appropriate basis for dismissing the complaint as to Group. We conclude, therefore, that the complaint should be dismissed as to Group.

V. Motion of International

International moves to dismiss the complaint, as to itself, based on the following grounds:

1. There are no allegations in the complaint against International; and
2. International is not a public utility. Under PU Code § 1702 complaints before the Commission may only be brought against public utilities.

Both of these points are well taken; and each point affords an appropriate basis for dismissing the complaint as to International. We conclude, therefore, that the complaint should be dismissed as to International.

VI. Motion of AT&T-C

AT&T-C moves to dismiss the complaint, as to itself, based on the following grounds:

1. The complaint fails to state a cause of action against AT&T-C;
2. The Commission lacks jurisdiction over the complaint;
3. The complaint does not seek or require relief from AT&T-C; and
4. The complaint is legally insufficient since AT&T-C is not tariffed to provide service arrangements to the State of California.

We will discuss each of these points in order.

person called, or a third party, agrees to accept all charges for the call. (15 Admin. Code § 3282(b) and (d).)⁴

The Director has delegated to each warden or superintendent the duty to establish procedures for inmate use of telephones within each institution. Those procedures are to apply to public telephones for personal calls by inmates and are to incorporate the two policies mentioned above. (15 Admin. Code § 3282.) The warden or superintendent then subscribes to the form of telephone service for the personal use of the inmates that is consistent with the procedures he has established and the policies of the Director. It is abundantly clear that, if the form of telephone service chosen for an institution by the Department or its agents violates the constitutional rights of the inmates, the cause of action for violation of those rights lies against the Department. It has legal responsibility for the inmates; it has rulemaking power; it has exercised that power; and it has exercised its discretion in choosing the form of inmate telephone service.

We conclude, therefore, that the proper defendant for causes of action in the complaint alleging violations of complainant's constitutional rights is the Department. Since the Department is not a public utility, the Commission may not entertain a complaint against it, even if complainant had named the Department as a defendant. Thus, not only has complainant named the wrong defendants in his complaint, he has also chosen the wrong forum. Accordingly, the complaint should be dismissed.

Findings of Fact

1. Group is not a public utility.

⁴ Pacific's tariff is consistent with both of these policies. Direct connections are avoided by the requirement that calls be "identified at the Utility operator's position"; and proper billing is assured by the requirement that the calls be collect or coin sent-paid.

2. International is not a public utility.
3. Complainant has failed to allege facts sufficient to constitute a cause of action against AT&T-C.
4. The Department is the agency of State government with authority over the State prison system.
5. The Director of the Department supervises, manages, and controls the State prisons and has the responsibility for the care, custody, treatment, training, discipline, and employment of the inmates. (Penal Code, § 5054.)
6. The Director may prescribe and amend rules and regulations for the administration of the prisons. (Penal Code, § 5058(a).)
7. The Director has exercised his rulemaking authority to establish policies pertaining to telephone service for inmates. (15 Admin. Code §§ 3282(b) & (d).)
8. The Director has delegated to wardens and superintendents in the prison system the duty to establish procedures for inmate use of telephone. Those procedures are to apply to public telephones for personal calls by inmates and are to incorporate the policies cited in Finding 7. (15 Admin. Code § 3282.)
9. Wardens and superintendents have subscribed to public telephone service for personal calls by inmates.

Conclusions of Law

1. Complaints before the Commission may be brought only against public utilities. (PU Code § 1702.)
2. The complaint should be dismissed as to Group for lack of jurisdiction.
3. The complaint should be dismissed as to International for lack of jurisdiction.
4. If the form of telephone service chosen for a prison by the Department or its agents violates the constitutional rights of the inmates, the cause of action for violation of those rights lies