

Decision 88-11-024 November 9, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PTT TELECOMMUNICATIONS,

Complainant,

vs.

PACIFIC BELL (U 1001 C),

Defendant.

ORIGINAL

Case 87-06-042
(Filed June 26, 1987) ✓

OPINION

I. Summary

This case has been held in abeyance awaiting the submission of complainants' exhibits and testimony.

Hearings were scheduled on three separate occasions by assigned Administrative Law Judge (ALJ) rulings following numerous telephone prehearing conferences, during which complainant asked for and was given specific dates to submit exhibits and testimony. On each occasion complainant failed to do so. ✓

Now, after setting three specific dates for submission of exhibits and testimony and a further courtesy opportunity for complainant to respond with these materials and to state reasons for failing to meet prior commitments, it is time to dismiss this complaint for lack of prosecution by complainant.

II. Background

This complaint was filed on June 23, 1987, over 15 months ago. The complainant, PTT Telecommunications (PTT) through Cyrus Cardan, its president, alleged that Pacific Bell made false

statements to customers and provided poor service. The complaint was otherwise somewhat sketchy and attempted to rely on various letters attached thereto supporting its allegations. Taken broadly, the complainant asks for:

1. A refund of \$7,009.53 on deposit with this Commission.
2. A refund of all monies paid to Pacific Bell since the beginning of complainant's operation as a reseller of interexchange telecommunications service.
3. Forgiveness of over \$50,000 of arrearages on his accounts with Pacific Bell and that Pacific Bell restore his service and commence collecting complainants' bills, without payment of the required setup charges.

III. Scheduling of Hearings

This complaint was filed on June 23, 1987 and duly answered by Pacific Bell on August 3, 1987. The first two telephone prehearing conferences were held on September 11 and September 25, 1987, during which the parties agreed to proceed to hearing based on the following schedule which was confirmed by a ruling of the assigned ALJ on September 29, 1987:

"On or before

November 5, 1987 - Complainant, PTT Telecommunications, shall mail its prepared testimony and exhibits to all parties of record in this proceeding.

"On or before

December 30, 1987 - Defendant, Pacific Bell, shall mail its prepared testimony (response) with supporting exhibits to all parties of record in this proceeding.

"January 12, 1988 - Hearings will begin at 10:00 a.m. on the evidentiary phase of this proceeding."

While the complainant did proceed to conduct discovery, he did not file any testimony or exhibits as required by the ALJ ruling, and he did not request an extension of time before the due date.

On December 7, 1987, complainant wrote to the assigned ALJ and requested a continuance of the previously calendared hearings so that he could have more time to prepare his case. In that letter he cited certain personal problems which diverted his attention from this complaint.

Subsequently, at a telephone prehearing conference on December 17, 1987, a new schedule was established requiring complainant to file exhibits and testimony on or before February 16, 1988; Pacific Bell was to file its response by March 21, 1988, and the dates of April 12-14, 1988 were reserved for hearings.

The complainant again failed to file exhibits and testimony as scheduled, and on April 17, 1988, wrote to the assigned ALJ stating that he experienced serious family, financial, and other problems which precluded him from pursuing this complaint.

Thereafter, on April 19 and 26, 1988, respectively, two telephone prehearing conferences were held to establish a firm schedule for this proceeding. Agreement was reached on a schedule which allowed for further discovery by complainant and included an additional 30 days for unforeseen delays. Under that schedule, dates for submission of exhibits and testimony, and tentative hearing dates were confirmed by ALJ ruling on April 27, 1988 as follows:

"On or before
July 18, 1988

- Complainant, PTT Telecommunications, shall mail its prepared testimony and exhibits to all parties of record in this proceeding.

"On or before
August 15, 1988

- Defendant Pacific Bell shall prepare and mail its prepared testimony (response) with supporting exhibits to all parties of record in this proceeding."

The week of August 22, 1988 tentatively will be reserved for hearings in Los Angeles. A notice of hearing will be sent when the dates are known."

Pacific Bell offered the complainant an option of hand-delivering his exhibits and testimony on July 15, 1988, at defendant's 1010 Wilshire, 15th floor Legal Office, in Los Angeles. Complainant, who lives in Los Angeles, accepted that offer. On July 15, 1988 complainant contacted Pacific Bell and asked that he be given until Monday, July 18, 1988 to submit his exhibits and testimony as originally ruled by the ALJ. A conference call was established with the assigned ALJ, who offered to take the hearings off calendar, and to give complainant as much time as he needed to submit his testimony. The complainant insisted that he wished to proceed with the current hearing schedule and would meet the July 18, 1988 due date.

Complainant did not file his testimony July 18, nor did complainant offer any explanation whatsoever for his failure to do so. On July 19, 1988, Pacific Bell notified the assigned ALJ by letter that it had not received complainant's testimony and that it intended to move to dismiss the case for complainant's lack of prosecution of the matter.

On July 20, 1988, the assigned ALJ issued a ruling which vacated the hearing dates and took the matter off calendar indefinitely.

On August 8, 1988, Pacific Bell filed a "Motion to Dismiss" the complaint for lack of prosecution by complainant. In its motion, Pacific Bell included a detailed discussion of the many opportunities that were given to the complainant to present his

complaint, as well as his failure to move forward effectively on any of these opportunities.

On August 11, 1988, the assigned ALJ, by a courtesy letter, gave the complainant a last chance to submit all of his exhibits and prepared testimony, together with a written response to Pacific Bell's "Motion to Dismiss" before August 30, 1988, or face a recommendation for dismissal of the complaint.

On the same date (August 11, 1988), the complainant tendered a "Motion of PTT Telecommunications (U-5108-C) to Deviate from Rules, per Rule 87 of the Commission's Rules of Practice and Procedure" for filing in the Commission's Los Angeles office.

On August 15, 1988, the assigned ALJ again wrote to the complainant advising him that:

"After reviewing your Motion, I have concluded that the suggestions and instructions contained in my August 11, 1988 letter still apply (copy attached). I will look forward to your timely and comprehensive response."

Nothing further was heard from the complainant and the complainant did not submit exhibits and prepared testimony or a response to Pacific Bell's Motion for Dismissal as suggested by the ALJ's letters of August 11 and 15, 1988.

On September 13, 1988, Pacific Bell forwarded a letter to the assigned ALJ, with a copy to the complainant, stating that as of that date the complainant had not served its testimony and exhibits, nor had it served a written response to Pacific Bell on its Motion to Dismiss the complaint.

Conclusion

The complainant has had every reasonable opportunity to present his case against Pacific Bell and has failed to do so. Therefore, this complaint should be dismissed with prejudice.

Findings of Fact

1. The complainant has deposited with this Commission the sum of \$7,009.53 representing a portion of the amounts due and payable to Pacific Bell on overdue bills.

2. The complainant has been given at least four opportunities to present exhibits and testimony in support of his complaint. On three occasions, complainant actually participated in selecting the applicable due dates.

3. The complainant has failed to prosecute its complaint.

Conclusions of Law

1. The amount of \$7,009.53 on deposit with this Commission, representing some portion of the amounts of back bills due to Pacific Bell, should be assigned to Pacific Bell.

2. The complaint should be dismissed with prejudice, for lack of prosecution.

ORDER

IT IS ORDERED that:


1. The \$7,009.53 impounded with the Commission in C.87-06-042 shall be disbursed to defendant Pacific Bell, when this order becomes effective.

2. C.87-06-042 is dismissed with prejudice.
This order becomes effective 30 days from today.
Dated NOV 9 1988, at San Francisco, California.

STANLEY W. HULETT
President

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

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


Victor Weisser, Executive Director

Decision 88 11 024 NOV 9 1988

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