

Decision 89 02 050 FEB 24 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Alyce Vrba,)
 Complainant,)
 vs.)
 General Telephone Company of)
 California,)
 Defendant.)

Mailed
 FEB 24 1989 ORIGINAL
 Case 88-03-004
 (Filed March 1, 1988)

OPINION

Alyce Vrba (complainant) filed this complaint on March 1, 1988. Complainant disputes approximately \$2,000 of telephone charges from GTE California Incorporated (defendant and formerly General Telephone Company of California) for the period August 1985 through September 1987, the date complainant's telephone service was disconnected. Complainant asserts that she should be required to pay for only telephone service in working condition and used by complainant.

Complainant requests that defendant reinstate complainant's telephone number without further expense, prejudice, or harassment to complainant. Also, complainant requests that defendant provide telephone service to any person requesting telephone service at complainant's residence.

Defendant's answer to the complaint was filed on April 8, 1988. Defendant requests that the complaint be dismissed because defendant has acted in accordance with all the terms and conditions in its filed tariff.

A prehearing conference was held on May 19, 1988, in Los Angeles. Complainant chose to represent herself, after being

informed of her right to be represented by an attorney. The evidentiary hearing was set for July 11, 1988.

Complainant arrived late at the July 11, 1988 evidentiary hearing. Although complainant requested that her complaint be processed expeditiously, she requested a continuance of the evidentiary hearing. Defendant was prepared to defend its position and to present witnesses in its defense. Both complainant and defendant agreed to continue the evidentiary hearing to August 11, 1988.

At the August 11, 1988 evidentiary hearing defendant again was ready to defend its position and to present witnesses in its defense. However, complainant did not appear. The Commission's Office of Public Advisor informed the assigned administrative law judge (ALJ) that complainant called its office on August 11, 1988 and requested the Office of Public Advisor to ask the ALJ to continue the evidentiary hearing to a future date.

Defendant requested that the ALJ dismiss the complaint because complainant has failed to prosecute her case. This motion was taken under consideration and the complaint was taken off calendar pending a decision on defendant's motion.

By an August 19, 1988 ALJ ruling, complainant was provided until September 8, 1988 to respond to defendant's motion to dismiss the complaint for complainant's failure to prosecute the case. No response was received from complainant.

In a complaint proceeding the burden of proof is on the complainant. Complainant was provided two opportunities to present her position. However, complainant was not prepared to present her case. Further, complainant failed to respond to defendant's motion to dismiss the complaint for lack of prosecution.

Although complainant was provided every opportunity to present her case, she failed to do so. Defendant's motion to dismiss this complaint is granted.

Findings of Fact

1. Complainant requested the July 11, 1988 evidentiary hearing be continued to a future date.
2. Defendant was prepared to defend its position and to present witnesses at the July 11, 1988 evidentiary hearing.
3. Complainant and defendant agreed to continue the July 11, 1988 evidentiary hearing to August 11, 1988.
4. Complainant did not appear at the August 11, 1988 evidentiary hearing.
5. Defendant was prepared to defend its position and to present witnesses at the August 11, 1988 evidentiary hearing.
6. By a telephone call to the Commission's Office of Public Advisor on August 11, 1988, complainant requested a continuance of the August 11, 1988 evidentiary hearing to a future date.
7. Defendant requested the dismissal of this complaint case because complainant has failed to prosecute the case.
8. Complainant did not file a response to the defendant's motion to dismiss this case as requested by an August 19, 1988 ALJ ruling.

Conclusion of Law

This complaint case should be dismissed because complainant has not prosecuted this case.

ORDER

IT IS ORDERED that the complaint in Case 88-03-004 is dismissed without prejudice.

This order becomes effective 30 days from today.

Dated FEB 24 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

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

[Handwritten Signature]
Executive Director

[Handwritten Initials]