

Decision 89 04 074

APR 26 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JACK HAYES/PROGRAMMING PLUS,

APR 27 1989

Complainant,

vs.

PACIFIC BELL (U 1001 C),

Defendant.

(ECP)

Case 88-11-049

(Filed November 23, 1988;

amended December 29, 1988)

Jack Hayes, for himself, complainant.
Phyllis J. Conran, for Pacific Bell,
defendant.

O P I N I O N

This expedited complaint proceeding was heard before Administrative Law Judge John Lemke on March 14, 1989 in San Diego, and was submitted with the close of hearing.

Complaint

The essential facts contained in the complaint, as amended, are these:

1. In August 1987 Jack Hayes (complainant), doing business as Programming Plus, requested that Pacific Bell (defendant) supply him with an additional line because of customer comments that his single existing line was frequently busy. Wiring and jacks were installed by defendant, and complainant assumed the lines were working properly.

2. Complainant received several comments from customers that when they tried to reach his office, both lines seemed to be busy. He indeed determined that when the first line (272-7587) was busy, the second line (272-5225) also indicated "busy" when a customer called on the second line.

3. In November 1987 complainant contacted defendant's service department about the problem. A service technician was dispatched, but was unable to gain access to complainant's office. Complainant again contacted defendant in December 1987, reporting the problem and advising that he would withhold payment for any charges having to do with service on the second line until the problem was remedied. Defendant informed complainant it would discontinue service at both numbers unless all charges for both numbers were paid in full.

Complainant asserts that since the second line never worked properly, it has never been possible to use it for its intended purpose. He requests that defendant be required to investigate and remedy the problem, and credit complainant for the time the service was unusable. In the amendment to his complaint, complainant also asks that defendant be required to forfeit all charges claimed due, and to pay the sum of five thousand dollars per month in damages and business losses for each month the service remains interrupted. In September 1988 complainant's service was disconnected for non-payment. The amount currently owed is approximately \$490.

Answer

In its answer defendant alleged that shortly after the initial service complaint in November 1987, defendant's lines were tested and found trouble free. Defendant maintains that its action in disconnecting complainant's service was taken in accordance with its tariff rules.

During the hearing Robert Johnson, a service technician for defendant, testified that on November 10, and on December 1 and 2, 1987 he visited complainant's premises, but was unable to gain access to the telephone room since complainant was out of town. He tested the telephone lines to the "demarc" or protector, the point where defendant's responsibility for providing service ends, and found the defendant's lines "clear and balanced"; i.e.,

trouble free. He was also able to test complainant's line, and in doing so determined the presence of foreign voltage on that line, apparently indicating crossed wires within complainant's sphere of responsibility. Complainant did not dispute this testimony.

Diana Allen, a service representative for defendant, testified concerning the chronology of events surrounding complainant's complaint. She cited defendant's Schedule A2, Rule 11 as the authority for disconnection of complainant's service. This Rule states, in part:

"Non-Payment of Bills.

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

"All bills shall be considered past due (delinquent) and service to such a particular premises...may be temporarily or permanently discontinued for the non-payment of a billing...."

While we may sympathize with complainant's dilemma, the evidence is undisputed, based upon the testimony of defendant's witness Johnson, that the trouble complainant experienced was due to a problem located on his side of the protector, or "demarc." It is no longer under the jurisdiction, nor is it the responsibility of this Commission to order a remedy to such a problem. Decision 86-12-099 in Application 85-01-034, et al. detariffed rules contained in defendant's schedules relating to inside wiring.

With respect to complainant's request for damages resulting from lost business, the determination of responsibility therefore lies not with this Commission, but with an appropriate court of law.

We conclude that complainant's service was properly disconnected in accordance with defendant's tariff schedules. Based upon the undisputed testimony indicating that complainant's problem existed due to a faulty condition in his inside wiring, we must deny the complaint for lack of jurisdiction. Since this is an

expedited complaint proceeding, no findings of fact or conclusions of law will be made.

ORDER

IT IS ORDERED that the complaint in Case 88-11-049 is denied.

This order becomes effective 30 days from today.

Dated APR 26 1989, at San Francisco, California.

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

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

Victor W. Wilson
Victor W. Wilson, Executive Director
DB