

Decision 89 07 048

JUL 19 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PTT Telecommunications (U-5108-C),)	
)	
Complainant,)	
)	
v.)	Case 89-03-049
)	(Filed March 30, 1989)
Pacific Bell, Pacific Telesys,)	
et al.,)	
)	
Defendants.)	

OPINION

Complainant seeks reparations from defendant in the amount of \$7,009.53 plus "all previous payments through March 30, 1987." Defendant moved to dismiss on the ground that the complaint contains the same allegations and request for relief which complainant brought before this Commission in Case (C.) 87-06-042 which was dismissed by Decision (D.) 88-11-024 with prejudice for lack of prosecution. The Commission in D.88-11-024 ordered that the \$7,009.52 deposited by complainant with the Commission be disbursed to defendant. Complainant responded to defendant's motion and asserted that his complaint was based upon a different cause of action. [Complainant's response was late (Rule 42) but was filed to ensure a complete record. Parties are admonished, however, that late filings will be rejected unless good cause is shown.]

In D.88-11-024 we characterized complainant's complaint (in C.87-06-042) as follows:

"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."

C.87-06-042 never went to hearing. Complainant had been given at least four opportunities to present exhibits and prepared testimony and in each instance failed completely to meet the filing dates, or any other date. On three of those occasions the date for filing was agreed to by complainant. Because of this failure to prosecute the Commission ordered the complaint dismissed with prejudice and the \$7,009.53 on deposit disbursed to defendant.

We have reviewed the allegations and relief sought in C.89-03-049 and compared them to the allegations and relief sought in C.87-06-042. Although the language is different, the gravamen of the complaints is the same. Defendant disconnected complainant's service for failure to pay rates and charges. Complainant says the disconnection was improper and in violation of defendant's tariffs and therefore complainant is entitled to reparations; defendant denies the allegations.

The dismissal of an action with prejudice is a bar to any future action on the same subject matter. (Wouldridge v Burns (1968) 265 CA 2d 82, 84.) The allegations in C.89-03-049 are based

on the same facts as the allegations in C.87-06-042, therefore this complaint must be dismissed.

Findings of Fact

1. In C.87-06-042 complainant sought reparations for acts of defendant in terminating complainant's service for failure to pay rates and charges.

2. By D.88-11-024 we dismissed C.87-06-042 with prejudice.

3. C.89-03-049 seeks reparations for acts of the defendant in terminating complainant's service for failure to pay rates and charges - the same rates and charges for the same service on the same dates as alleged in C.87-06-042.

Conclusion of Law

C.89-03-049 should be dismissed with prejudice.

O R D E R

IT IS ORDERED that C.89-03-049 is dismissed with prejudice.

This order is effective today.

Dated JUL 19 1989, at San Francisco, California.

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

Commissioner Patrick M. Eckert,
being necessarily absent, did
not participate.

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

Victor Weisner
Victor Weisner, Executive Director

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