

ALJ/MFG/jc

Decision 90 09 072 SEP 25 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

David Arnold,

Complainant,

vs.

Pacific Bell (U-1001-C),

Defendant.

David Arnold,

Complainant,

vs.

Pacific Bell (U-1001-C),

Defendant.

ORIGINAL

(ECP)

Case 90-06-048
(Filed June 19, 1990)

(ECP)

Case 90-07-046
(Filed July 17, 1990)

Teresa E. deBeaubien, for Pacific Bell,
defendant.

ORDER OF DISMISSAL

Summary of Complaint

David Arnold (complainant) filed two complaints against Pacific Bell (defendant) under the Commission's Expedited Complaint Procedures (ECP's). The first complaint disputes the applicability of four surcharges on his telephone bill, and the installation of Information Service Call Blocking to his telephone service. The surcharges under dispute are Universal Lifeline Telephone Service, State Regulatory Fee, Communications Devices for the Deaf and Disabled, and 911 tax.

The second complaint asserts that defendant disconnected complainant's telephone without providing prior notice.

Answer to Complaints

Defendant filed its answer to the first complaint on July 26, 1990 and its answer to the second complaint on August 13, 1990. Defendant asserts that the disputed surcharges are applicable to complainant's telephone service and that the Information Service Call Blocking was placed on complainant's service at complainant's request.

In response to the second complaint, defendant asserts that a disconnect notice was mailed to complainant on January 2, 1990. Complainant's service was temporarily disconnected on June 1, 1990 and permanently disconnected on June 11, 1990 for non-payment of his telephone bill in the amount of \$378.77.

Hearing

An evidentiary hearing for both complaint cases was set for August 16, 1990 in San Francisco. Notice of the hearing appeared on the Commission's Daily Calendar of August 3, 1990. Notice was also mailed to both complainant and defendant on August 3, 1990.

Teresa E. deBeaubien appeared at the hearing with two witnesses for defendant. Complainant was not present at the start of the hearing so the Administrative Law Judge (ALJ) called a 30-minute recess. When the hearing resumed complainant was still not present. Neither the ALJ nor defendant received any notice from complainant that he would not appear.

At the hearing, the ALJ consolidated both cases pursuant to Rule 55 of the Commission's Rules of Practice and Procedure. Prior to closing the hearing, the ALJ ruled that he would recommend to the Commission that the consolidated complaint cases be dismissed because complainant failed to prosecute his complaints. The proceeding was submitted at the close of the hearing.

Rule 52 requires that the Commission provide notice of hearings in complaint matters not less than ten days before the date of hearing. The hearing notice for this proceeding was mailed

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to complainant 13 days prior to the August 16, 1990 hearing date at the address provided by complainant in his complaints, General Delivery, San Francisco, California, 94120.

Telephone contact was not possible because complainant provided no telephone number, other than the number that was disconnected on June 11, 1990 for non-payment of bills.

When a complainant files a complaint, the complainant is expected to be ready and willing to prosecute his complaint. Complainant has had a sufficient amount of time to receive notice of the hearing and to prosecute his cases. We concur with the ALJ that this consolidated proceeding should be dismissed because complainant has failed to prosecute his complaints.

Pursuant to Rule 13.2(e), separately stated findings of fact and conclusions of law will not be made in ECP's.

IT IS ORDERED that the complaints in Case 90-06-048 and Case 90-07-046 are dismissed with prejudice.

This order is effective today.

Dated SEP 25 1990, at San Francisco, California.

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

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SCHULMAN, Ejecutivo Director