

Mailed

Decision 91-04-051 April 24, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Thomas Bongiovonni,)
)
 Complainant,)
)
 vs.)
)
 Pacific Bell (U 1001 C),)
)
 Defendant.)

ORIGINAL

Case 90-11-023
(Filed November 9, 1990)

Thomas Bongiovonni,)
)
 Complainant,)
)
 vs.)
)
 Pacific Bell Telephone Co.)
)
 Defendant.)

Case 90-11-024
(Filed November 9, 1990)

Thomas Bongiovonni, for himself.
Colleen M. O'Grady, Attorney at Law, for
 defendant.

OPINION

Complainant, in Case (C.) 90-11-023, alleges that defendant terminated service to complainant because at the time of termination there was residing with complainant another member of the household who had had service terminated because of unpaid telephone bills. Complainant seeks an order prohibiting the defendant from denying service to complainant and cancelling the tariff which permits such denial. The complainant in C.90-11-024 alleges that defendant did not follow its tariffs in terminating his service and seeks an order directing defendant to clarify its

termination procedures. Complainant also seeks damages for the time he was refused service. The complaints were consolidated for hearing. Public hearing was held before Administrative Law Judge Barnett.

Complainant testified that in May of 1990 he moved to Los Angeles from Ventura. On May 15, 1990, he moved into an apartment at 10563 Ayres Avenue in Los Angeles. At the time the apartment was rented to Susan Biddlecomb, who continued to reside in the apartment and had her own telephone. On August 27 he requested telephone service from defendant and received telephone No. 202-7239. Several days later Biddlecomb's telephone was disconnected for nonpayment of her telephone bill. Approximately two weeks after that complainant received a notice from defendant informing him that his telephone was going to be disconnected because Biddlecomb owed a telephone bill. He filed an informal complaint with the Commission and defendant continued his service. He then received a letter from defendant stating that he owed unpaid charges of \$102.86 for his former telephone services in Ventura. He said he didn't owe the money but paid the \$102.86 to retain his Los Angeles service. The next day the telephone company terminated his service at the Los Angeles address. He informed the company that he had paid his bill and service was restored but he was billed \$40.00 for restoration of service. He then had discussions with defendant's representatives regarding the \$102.86 charge which culminated in defendant's admitting that the charge was an error and agreeing to refund the money. He asked defendant to refund the money to him at his present address at Ayres Avenue. Defendant, however, refunded the money to his former address in Ventura which was a business address. The check was cashed without endorsement. He said that he did not receive the \$102.86. The address in Ventura is the business where he worked and which is owned by his brother.

On November 8th, defendant informed complainant that his Los Angeles telephone service would be terminated (because of the Biddlecomb unpaid bill) unless he filed a formal complaint with the Commission on November the 9th. He filed the complaint on November the 9th and notified the telephone company of the filing. On the following Monday, a legal holiday, his service was terminated.

On January 15, 1991, complainant moved from Ayres Avenue to East 20th Street and promptly received telephone service from defendant, but was required to post an \$80 deposit. He refused to make the deposit with defendant but, instead, deposited the \$80 with the Commission, plus \$103 in a dispute over his final bill at Ayres Avenue.

Defendant's witness testified that at the time complainant requested service at his new address on East 20th Street he had unpaid bills from the Ayres Avenue address so a deposit was required pursuant to defendant's Rule 6. The balance due at this time is \$103. Defendant admitted that complainant was disconnected in error in October of 1990 and has been credited with the \$40.00 restoration fee. The \$102.86 that complainant paid in September was the balance due on the Ventura service. After discussions with complainant, defendant agreed to cancel the bill because there was a reasonable doubt whether complainant owed the money. Defendant sent a check for \$102.86 to complainant's Ventura address. Defendant's representative called the Ventura address and talked to complainant's brother who said that it was very likely that the check had been cashed by the company as it was sent to the company. Complainant's complaint filed on November 9, was not served on defendant until November 17, 1990. November 12, Veterans Day, a legal holiday, is not observed by defendant.

Discussion

This comedy of errors has one serious aspect: the termination of service on a legal holiday. Defendant's Rule 2.1.11.A.2.a(2) states:

"Further the Utility will not cause cessation of service on any Sunday or legal holiday observed by the Utility."

Because of the importance of utility service a customer should be given the opportunity to contest a termination as rapidly as possible. This cannot be done if the utility may terminate at any time except holidays observed by the utility and Sundays. Surely the utility can arrange its termination notices so that termination will occur only during CPUC business hours. The situation was especially egregious in this case because defendant's representative told complainant his service would not be terminated if he filed a formal complaint by November 9, which he did. Not only did he file but he called defendant and told it of the filing. This Commission makes formal service of complaints and defendant was not formally served with the complaint until November 17. Certainly complainant should not be penalized because of the Commission's cumbersome procedures of giving notice in complaint cases. Although we cannot require a change in defendant's tariff in this proceeding, we recommend that defendant amend its tariffs to provide that termination of service will take place only during CPUC business hours.

Complainant's other requests for tariff changes cannot be raised in this proceeding and, in any case, are not meritorious. The rule permitting a utility to terminate service or refuse service to one resident of a household if another resident has an unpaid bill is salutary. On complainant's request for damages for the time he was denied service, we must decline to act. The Commission has no jurisdiction to award damages.

The parties have referred to the \$102.86 dispute as \$103, and so shall we.

Findings of Fact

1. Defendant acted in accordance with its tariffs in terminating complainant's service at the Ayres Avenue address

because a resident in the household had unpaid telephone bills at the same address.

2. Complainant did not owe a telephone bill for service in Ventura. Defendant collected \$103 from complainant in error and did not refund the \$103 to complainant. Defendant owes complainant \$103.

3. Complainant owes defendant \$103 for the balance due for his telephone service at the Ayres Avenue apartment.

4. Complainant and defendant's obligation are offsetting.

5. Complainant should not be required to post a security deposit at the East 20th Street address.

The Commission concludes that the \$103 debts between the parties are off-setting and that complainant should receive all money on deposit with the Commission in these two cases.

ORDER

IT IS ORDERED that:

1. The \$103 debts between complainant and defendant are off-setting.
2. The Executive Director shall refund to complainant all money on deposit with the Commission in these two cases.
3. This is a final order and the proceedings are closed. This order becomes effective 30 days from today.

Dated April 24, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

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Neil J. Sulman
NEIL J. SULMAN, Executive Director