

ORIGINAL

Decision 82 09 024 SEP 8 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROBERT S. SACHS,)
)
 Complainant,)
)
 vs.)
)
 GENERAL TELEPHONE COMPANY,)
)
 Defendant.)

Case 82-03-02
(Filed March 4, 1982;
amended April 15, 1982)

Robert S. Sachs, Attorney at Law, for himself,
complainant.
David Moring, Attorney at Law, for defendant.

O P I N I O N

In his complaint, Robert S. Sachs alleges that in September 1976 he had a telephone installed in his residence by General Telephone Company (General) and that there was continuous static on this telephone until September 22, 1981 when General replaced the handset part of the telephone with a different unit. Sachs alleges he made numerous complaints to General's employees as well as to General's management about the static, and although several checks were made of his telephone line, the instrument itself was never inspected until September 22, 1981. Sachs further alleges he tried on numerous occasions to get credit for the amount of time the telephone had static, but General's supervisors declined to grant any credit whatsoever. As the result of the static, Sachs alleges he was unable to have full use of his personal telephone during the above-stated period. Sachs seeks an order from the Commission ordering General to grant him a credit based on the monthly fee for his telephone from the date of installation in September 1976 to September 22, 1981.

Answering Sachs's amended complaint, General admits a repair visit was made to Sachs's residence on September 22, 1981, and no further trouble with the telephone service has since been reported. General also admits its repair records from January 1980 through March 1982 show only two complaints from Sachs plus an informal Public Utilities Commission complaint about his telephone service. In all other respects General denies the allegations and requests that the amended complaint be dismissed.

Sachs has deposited \$267.35 with the Commission which represents the billings from General for December 1981, and January, February, and March 1982.

Following notice, a public hearing was held on the matter before Administrative Law Judge William A. Turkish in Los Angeles on June 8, 1982. Sachs testified on his own behalf. Raymond L. Bentley, an employee of General, was an adverse witness. No witnesses were called by General. The matter was submitted at the conclusion of the hearing.

Sachs testified he had his residence telephone (456-6936) installed shortly after he moved into his residence in Malibu. He claims there was static on his telephone from the start and he complained to General about it repeatedly. Although Sachs testified he was absent from home during the day and therefore could not testify that the line was out of service for any 24-hour period, he testified to static on his telephone in the early morning hours before he left the house and again when he returned in the late evenings. He claims he could not hear the other party because of the static. According to Sachs, his residence is a two-story townhouse and he has only one telephone upstairs, the 456-6936 line. He stated that on a number of occasions he received calls from repairmen calling from another location who told him they could not find any trouble on the line. Sachs testified there was no static when the repairmen called, but there was static when he

tried to call other parties. He testified the static often forced him to hang up and complete the call through the operator. He testified that in September 1981, after one of his complaints, Philip Scott, a General employee, changed the telephone handset and the static was virtually eliminated.

Upon cross-examination, Sachs testified repairman Scott may have also fixed the business telephone on the first floor of his townhouse in 1980, but he replaced the upstairs residence telephone in September 1981. Sachs was unable to recall how many times he reported static on the line from 1976 to 1981 and said he did not specifically report the telephone out of service, but merely that there was static.

Bentley, manager of General's Malibu Exchange, testified he was station installation and maintenance supervisor in the West Los Angeles office in 1976 and became acquainted with the case in 1981 when Sachs telephoned him. The witness was aware of the informal complaint Sachs filed in 1980 with the Public Utilities Commission because General's files contain a report of the investigation it undertook after the informal complaint. The first documented 611 repair record for Sachs occurred in 1980. There is no record of any complaints before 1980. During the investigation two field inspections were made; the first on July 17, 1980 which found no trouble, and a followup field inspection on July 18, 1980 which again found no trouble. According to General's records, a repairman went to Sachs's residence on September 22, 1981 because Sachs reported he could not call out. The repairman found a General employee working in the vicinity had crossed Sachs's line with another line. The trouble was fixed the same day, but Sachs was without residential telephone service on that date from 10:00 a.m. until 3:30 p.m. No exchange of any part of the telephone instrument was made on that date and the repairman was not Scott on that date, as testified to by Sachs.

On October 6, 1980 at 9:05 a.m., General received a trouble report from Sachs about static on his telephone in the mornings and in the late evenings. The repairman who came was Scott. The trouble report received by General was for Sachs's business number, 456-1717, but the repairman found the trouble was actually on Sachs's residence telephone, 456-6936. After the problem was cleared, no further trouble reports were received from Sachs concerning his residence telephone in 1980. According to General's records, the October 1980 visit by Scott was the only one he made to Sachs's residence.

In the informal complaint Sachs filed with the Commission on July 3, 1980 is a memorandum dated June 30, 1980 from Sachs about his telephone number 456-6936 in which he states: "Sirs: I do not use the above everyday, but when I do use it, I repeatedly have to go through an operator, as the phone call does not go through." It further states that "when I try to report a repair, I have to wait 15 minutes or longer..." In response to the informal complaint filed by Sachs, General stated there had been only one trouble report made by him during the period January through June 1980. That call on June 6, 1980 related to his problem calling out. Upon investigation no trouble was found. After the formal complaint General received only one trouble report for telephone number 456-6936, the call on September 22, 1981 about not being able to call out.

In oral argument Sachs stated he should receive credit on his telephone bill for each month during which there was static on the line until the instrument's handset was replaced. General argues that no credit is due, in any event, before March 4, 1980 because of the two-year statute of limitations imposed by Public Utilities (PU) Code Section 735. Further, Sachs is not due any credit under General's tariff Rule 26 because Sachs's telephone was never completely out of service for any 24-hour period.

Discussion

PU Code Section 735 provides in relevant part that:

" . . . All complaints for damages resulting from a violation of any of the provisions of this part, except Section 494 and 532, shall . . . be filed with the commission . . . within two years from the time the cause of action accrues, and not after."

As this complaint was filed initially on March 4, 1982, Sachs would be entitled to a credit, if any, only for the period from March 4, 1980 to the day the service problems were corrected.

General's tariff Schedule Cal. P.U.C. No. D&R, Rule 26, sets forth the limit of its liability. Except for errors and omissions caused by willful misconduct, fraudulent conduct, violations of law, or gross negligence, it provides that the liability of the utility for damages arising out of mistakes, omissions, interruptions, delays, errors, or defects in any of the services or facilities furnished by the utility shall in no event exceed the amount equal to the pro rata charges to the customer during which the service or facilities are affected by the mistake, omission, interruption, delay, etc. Where there is interruption in service for 24 hours or more, not due to the conduct of the customer, an amount equal to the pro rata charges for each 24-hour period after the initial period of interruption shall be allowed as a credit.

In complaint matters the burden of proof rests upon the complainant. Although Sachs testified there was continuous static on his residence telephone since its installation in 1976 until General's repairman replaced the handset of the instrument in September 1981, he offered no proof that his telephone service was interrupted for periods of 24 hours or more. It is clear from Sach's testimony that the service on his residential line was not satisfactory to him because of the static. However, the evidence is insufficient to determine with any degree of certainty the frequency

or the severity of the static. By his own testimony Sachs states he did not use the telephone every day and he was not home during the major part of the day. Similarly, the records of General and the informal complaint Sachs filed do not support his testimony that he made continuous complaints to General. General's witness testified that during January through June 1980 General had only one trouble report from Sachs and that related to his inability to call out from his telephone.

General's records show that on September 22, 1981, the date Sachs testified repairman Scott replaced the handset on his residence telephone, Sachs called to report he could not call out. This was because of crossed wires inadvertently caused by a field repairman. However, this was repaired on the same day reported.

The evidence indicates the handset of Sachs's residence telephone (456-6936) was replaced on October 6, 1980, not, as Sachs testified, in September 1981. He had reported the trouble was on his business number, but the repairman found the fault on his residence telephone and repaired it. In Exhibit 1, a letter from Sachs to General dated December 8, 1980, reference is made to a recent change of Sachs's faulty telephone by General's repairman because of previous static problems. This supports General's contention that replacement of the telephone instrument occurred in 1980 rather than in 1981.

General's records show no additional trouble reports from Sachs during the period in question or after October 6, 1980, and Sachs was unable to recall the number of times he supposedly filed trouble reports of static on his line during the period he said he was having the problem.

After reviewing the testimony and evidence, we are convinced that although Sachs may have had some annoying static on his line, he has not sustained his burden of proof by showing either that his telephone service problems were so great that he could not use his telephone or that he was without telephone service

for more than 24 hours. We would expect anyone having telephone problems of the nature and magnitude described by Sachs to report them to General with greater frequency than the evidence shows Sachs actually did.

Findings of Fact

1. Sachs has been a residential subscriber of telephone service furnished by General from September 1976 to the present time. ✓

2. On July 3, 1980 Sachs filed an informal complaint with the Public Utilities Commission about his residence telephone number, 456-6936. In that informal complaint Sachs stated whenever he tried to use that telephone, which was not every day, the phone call did not go through and he repeatedly had to go through an operator. There was no complaint about static.

3. Between January and March 1982, General received two complaints plus an informal Public Utilities Commission complaint about service on telephone number 456-6936. On October 6, 1980 General received a trouble report from Sachs about static on the line and sent a repairman to Sachs's residence. His telephone instrument was replaced on October 6, 1980 and the static was eliminated.

4. There is no evidence that Sach's telephone service was interrupted for a period of 24 hours or more between March 4, 1980 and October 6, 1980.

Conclusions of Law

1. Sachs has failed to meet his burden of proof with respect to interruptions of telephone service for which reparation may be made or that the service was so unsatisfactory it could be construed as an interruption of service.

2. The complaint should be denied.

O R D E R

IT IS ORDERED that:

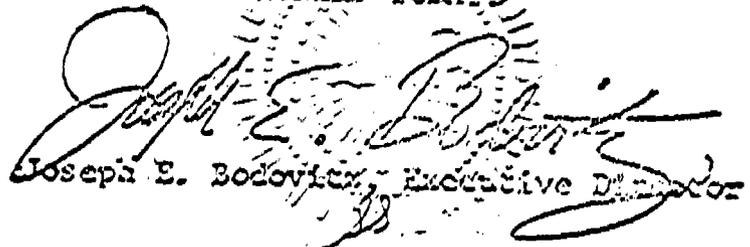
1. The complaint in Case 82-03-02 is denied.
2. The \$267.35 Robert S. Sachs deposited with the Public Utilities Commission shall be disbursed to General Telephone Company of California.

This order becomes effective 30 days from today.

Dated SEP 8 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

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


Joseph E. Bodovick, Executive Director

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3. Between January and March 1982, General received two complaints plus an informal Public Utilities Commission complaint about service on telephone number 456-6936. On October 6, 1980 General received a trouble report from Sachs about static on the line and sent a repairman to Sachs's residence. His telephone instrument was replaced on October 6, 1980 and the static was eliminated.

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