

Decision S3 02 011

FEB 2- 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KAMAL B. MAHDAVI,

Complainant,

vs

THE PACIFIC TELEPHONE COMPANY.

Case 82-08-06
(Filed August 16, 1982)

Kamal B. Mahdavi, for himself, complainant.
E. F. Neal, for The Pacific Telephone and
Telegraph Company, defendant.

O P I N I O N

Complainant alleges that defendant has harassed him for a period of more than five years, by a series of annoying telephone calls and by disconnecting his telephone service on at least one occasion without his authority or knowledge. The following incidents are alleged:

1. During April or May of 1982 complainant paid \$22 and obtained an unlisted telephone number from defendant. On June 3, 1982 he called the police to report a noisy neighbor and discovered that the police had his unlisted telephone number. Complainant's service was then changed without charge to one of his former telephone numbers, after he complained to defendant and to the Public Utilities Commission (PUC).
2. On July 22, 1982 a woman called him at 4:05 p.m., asked for an unknown person and quoted a number which had three digits different from his number. She hung up and called a minute later to request his number so she could have the call removed from her telephone bill. He asked how she could have dialed his number again if she did not know it and she hung up.

3. On Saturday, August 7, 1982, complainant tried to make a call and discovered that his line was dead. He called his number from a public telephone on Monday and heard his telephone ringing, even though it had no dial tone. He reported this event to the Consumer Affairs Section of the PUC and a representative of the latter telephoned the defendant. Defendant's representative stated that the problem was probably due to the old equipment installed where the complainant lives.
4. On Tuesday, August 10, 1982, complainant carefully unplugged (disconnected) his telephone and dialed his number from a public telephone booth. There was a continuous ringing and complainant later had a representative of the PUC dial his number, which also rang during the second call.
5. Complainant returned to his apartment at about 2:00 p.m. that afternoon and found a lady there ready to check his telephone. Complainant alleges that she plugged the telephone in and realized it was dead. Complainant further alleges that she tried to distract complainant while she thrust a sharp instrument under the wire to cut or break it. The wire did not break and a supervisor was summoned. A two-hour investigation was made and the team informed complainant that a tenant moving out of a downstairs apartment had inadvertently cut a wire. Complainant alleges that no one had moved out downstairs and that the defendant's representatives probably connected his telephone to another telephone owned by defendant which was ringing when his number was called.
6. Complainant alleges two prior incidents of harassment. On one occasion a repairman claimed that a loose screw in complainant's telephone caused a malfunction, and on another defendant repaired complainant's service only after he threatened legal action against defendant.

Complainant alleges that all public utilities are required to furnish and maintain reasonably good service, which defendant has failed to provide complainant. Complainant requests an order finding that defendant has been guilty of harassing complainant; that defendant should be ordered to cease and desist from the legal violations it has been committing against complainant; and that defendant be ordered to reimburse complainant for the \$22 complainant paid to have a new unlisted telephone number.

Defendant's answer was filed on September 16, 1982 and amended on September 29, 1982. It denies complainant's allegations of harassment and admits that complainant's telephone number was changed three times at his request to avoid alleged annoying telephone calls. It alleges that when defendant's representative called complainant to discuss his problem, defendant's representative was accused of being in the employ of complainant's landlord and of making telephone calls to harass him and get him out of the apartment. Complainant was assigned a new unlisted number after this call. For affirmative defenses defendant alleges that:

1. Complainant cites only one example of a specific disturbing call; the one on July 22, 1982. This call could have been a mistake or a misdialed number. Defendant can't guarantee perfect service to everyone at all times (Bard v PT&T (1981) Case 10720, Decision 93425).

When a complaint was received on August 10, 1982 it was investigated the same afternoon and the service was restored.

2. The complaint does not state a cause of action because it "does not set forth any act or thing done or omitted to be done which is claimed to be in violation of any provision of law or of any order or rule of the Commission" (§ 1702, Cal PU Code).
3. The complaint violates Rule 10 of the Commission's Rules of Practice and Procedure since it is not in "ordinary and concise

language." It has one disturbing telephone call and disconnection repaired the same day it was reported. Five years of harassment is alleged but there is no specific information on this charge.

4. The complaint is classified as frivolous and unworthy of defendant's or the Commission's consideration.
5. Complainant paid \$22 for service received and he is not entitled to a rebate. This sum was paid to have his telephone number changed in March 1982.
6. Section 735 of the California Public Utilities Code contains a two-year limitation on actions applicable to this case. Complainant is therefore precluded from asserting any claim occurring prior to August 17, 1980.

A duly noticed public hearing was held on November 5, 1982 in San Francisco before Administrative Law Judge Edward G. Fraser. The matter was submitted after both parties provided testimony and documentary evidence.

Complainant testified that his number was listed in the telephone book prior to 1977 and he had no harassing calls. Subsequent to 1977 he obtained an unlisted telephone number and started to receive a constant series of unwanted telephone calls in which the caller would ask if he was speaking to a doctor's office, or a law office, then terminate the call. Sometimes the caller would engage in a brief conversation then say "I have a wrong number," and hang up. The frequency of calls varied from three or four a day to one a week, or one a month. He tried several different numbers from 1977 to 1982 and filed an informal complaint with the PUC in 1978 or 1979.

Complainant's number was changed on March 15, 1982 at a cost of \$22. It was changed again on June 2, 1982 and on June 14, 1982. The last two changes were made without charge and all three numbers were unlisted (Exhibit 4). Complainant testified that the harassment continued during and after the change in telephone numbers. The harassment is charged to defendant's employees, who are the only ones to have access to his unlisted numbers.

Complainant explained the first incident listed in his complaint. He called the police to report excessive noise and was asked his telephone number. He inadvertently gave his old number and the police dispatcher corrected him and quoted his newly issued telephone number, which no one was supposed to have. Testimony on the second incident of July 22, 1982 was stated as noted in the complaint. Complainant testified that the call may have been long distance because of static on the phone. When the woman called back she said she wanted his number to send to the telephone company with a note that the number had been called by mistake, so there would be no charge for the call.

Incidents 3 and 4 may be considered as one. Complainant testified that his phone had no dial tone; but he could call from a pay telephone and hear his telephone ringing. He had his telephone modified so it could be unplugged. He then (on August 10, 1982) disconnected the telephone and called his number from outside. He could hear ringing even though his telephone was not connected. Complainant introduced Exhibit 2 which is a statement from the PUC Consumer Affairs Branch that a representative telephoned complainant's number at this time and heard the ringing. She then contacted the defendant and suggested that repairs might be needed.

This action resulted in the 5th incident described in the complaint. When complainant returned home he found a repair person waiting for his return. Complainant testified that she entered his apartment with him and observed that his telephone was not connected. He testified that she then traced the telephone wire and placed a sharp instrument under it to cut it. The wire did not break and she called her supervisor. The latter came out and complainant was later advised that a broken wire in the apartment downstairs caused his interrupted service.

Complainant introduced Exhibit 1 which lists all harassing calls (21) he claims were received from August 29, 1982 through September 28, 1982. Two calls were made on three of the days covered. Usually it was one call a day, with one or more days between calls. The calls were described as wrong numbers, with the

caller asking for a person unknown to complainant, or hangups without conversation, or inquiries as previously described. Complainant stated that these calls are very aggravating because he works at home. He unplugs his telephone every evening to get a night's sleep.

Complainant alleges that his service was disconnected by defendant's employees prior to August 10, 1982, and transferred to a telephone assigned to one of defendant's representatives. This telephone rang when someone called complainant's disconnected telephone.

Complainant requests that the Commission make a finding: that defendant has been harassing him; that defendant has disconnected his telephone service unlawfully and without authority; that the defendant is guilty of wrongdoing; and that defendant be ordered to return complainant's \$22, since three changes in unlisted telephone numbers have not eliminated the harassing telephone calls.

Defendant's case was initiated with testimony from the foreman of the repair crew that checked complainant's telephone. He testified that defendant's dispatcher notified his unit at 1:15 p.m. on August 10, 1982 that complainant's telephone was not operative. The job order was placed in evidence as Exhibit 3. One of the members in his crew met complainant outside of his apartment as previously stated. The foreman was contacted when she suspected a broken wire but could not find the break. After an investigation they discovered that complainant's telephone wire was broken in the apartment underneath complainant's. This could not be determined from complainant's apartment and was not easy to detect in the other apartment. No employee tried to cut complainant's telephone wire, although it is possible that a wire may have been pulled in an effort to find if the wire was loose and therefore disconnected or broken.

He explained the ringing which was heard when complainant's disconnected telephone was dialed. The ring is caused by the activation of equipment in the central office to advise the caller that the call has been completed. It was not from the bell on an

instrument. In other words, the caller would know that the call was through, even though the telephone was disconnected and could not be answered. He further testified that repairmen never disconnect a telephone service without a specific order from the head office.

Defendant's second witness was the manager of all telephone service in the area where complainant lives. He introduced Exhibit 5 which is an order authorizing one of complainant's new telephone numbers.

He testified how difficult it is to obtain an unlisted number and how they are safeguarded. Individual employees have no access and a number can only be obtained by applying to the unlisted bureau which is a unit within defendant's organization with the responsibility of ensuring the confidentiality of these numbers.

He also testified regarding complainant's allegation that the police had his new unlisted number shortly after he obtained it. When a caller dials "911" to report an emergency, his telephone number flashes on the police computer. This is a protection for the caller who may be too upset to recall his number, or who may be calling from another number. If a call is made to the official police number and seems to be an emergency, the dispatcher can momentarily hold the call and request the caller's telephone number from the phone company. This is also a protection to the caller and reduces the chance of sending policemen out on a "false alarm."

Discussion

Complainant's position is based on the supposition that only defendant's employees have access to his unlisted telephone numbers, therefore they are making the harassing telephone calls. Defendant's employees have less opportunity to get these numbers than the general public. Complainant has not directly referred to motive or the reason behind the harassing calls. On cross-examination complainant admitted that annoying calls had been received prior to his obtaining an unlisted number. He classified these as practical jokes, stating that he knew who was making the calls. He also stated that the police would know his call was not an emergency since there is a lot of noise in his building. It can be inferred that he has

made prior contacts to complain of noise. Someone from his building could be making the calls. His number may be printed on the instrument or available on old telephone bills. Friends and business acquaintances also have his number, otherwise there would be no point in having a telephone. There is no evidence in the record to indicate that defendant's employees have been making harrassing telephone calls, or that defendant's employees have disconnected complainant's telephone service.

Findings of Fact

1. Complainant has received telephone service from defendant since 1977.

2. Some harassing telephone calls were made prior to March 1982.

3. Complainant paid the authorized \$22 charge and was assigned an unlisted telephone number on March 15, 1982.

4. Complainant received another unlisted number on June 2, 1982 and a third unlisted number on June 14, 1982 without charge.

5. Complainant has received a continuous series of wrong number and like calls which have continued from March 15, 1982 through September 28, 1982.

6. There is no evidence that defendant's employees were, or are, involved in placing these telephone calls.

7. On or about August 10, 1982 a broken wire caused a delay in complainant's telephone service. Defendant's repair personnel found the break and promptly repaired it. The cause of the broken wire is unknown.

8. Defendant has not revealed complainant's unlisted telephone numbers to anyone, except during the hearing on this proceeding, with complainant's permission.

Conclusions of Law

1. Neither defendant nor its employees have violated any laws, nor been guilty of any wrongdoing toward complainant.
2. Complainant is not entitled to the return of his \$22 since he received the service he paid for.
3. The relief requested should be denied.

O R D E R

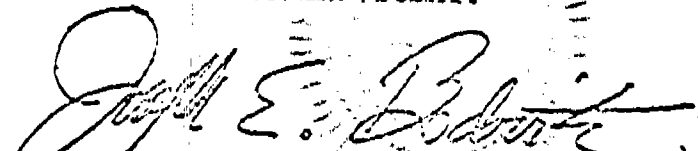
IT IS ORDERED that the relief requested in Case 82-08-06 is denied.

This order becomes effective 30 days from today.

Dated FEB 2 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Bodovitz, Executive Director

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