

Decision SS 03 C3S MAR 16 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Kenneth Levin,)
)
 Complainant,)
)
 vs)
)
 The Pacific Telephone and)
 Telegraph Company,)
)
 Defendant.)
)
)
)

Case 10928
(Filed November 26, 1980)

Jerry N. Ackeret, Attorney at Law,
 for Kenneth Levin, complainant.
Marlin D. Ard, Attorney at Law, for
 The Pacific Telephone and Telegraph
 Company, defendant.

O P I N I O N

Kenneth Levin (Levin or complainant) is a subscriber to telephone service provided by The Pacific Telephone and Telegraph Company (Pacific or defendant) at 68 Paul Drive, San Rafael, Telephone Number (415) 472-4600.

Levin alleged that since December 1, 1978 to the date of the filing of the complaint Pacific has failed to provide him with telephone service meeting the minimum requirements of General Order (GO) 133 - Rules Governing Telephone Service, and Pacific has supplied him only substandard and inadequate service. Levin alleges that he made frequent requests upon Pacific to improve telephone service, and that Pacific has not been able to improve his service.

Pacific acknowledged that it had received numerous complaints about poor service from Levin and that it had made several tests to identify, isolate, and correct alleged deficiencies, but with few exceptions, has been unable to find any equipment

disorders. Pacific's position is that, in spite of Levin's allegations, the service provided Levin is at the level required by GO 133.

Summary of Decision

The evidence clearly shows that Levin, a heavy user of telephone service, has been furnished telephone service by Pacific that meets neither Levin's needs and requirements nor Pacific's standards for good service. While we cannot award damages to complainant, reparation may be awarded up to the total amount paid to defendant for the telephone services in issue. Based on all relevant factors, including the \$6,000 adjustment previously offered by Pacific and accepted by Levin, we find that reparation of \$6,624.06 adjustment previously made and reparation of \$15,248.81 plus interest for service in the period from July 1, 1978 to the date of the complaint will be reasonable and is justified.

Hearing

Public hearing was held before Administrative Law Judge Sara Myers in San Francisco on July 16 and 17, and August 19, 20, and 31, and September 1 and 2, 1981. The matter was submitted on receipt of closing briefs on December 1, 1981.

Complainant's Evidence

The evidence presented by Levin shows the following: Levin is self-employed as the owner and operator of Ntron Electronics (Ntron), a company which manufactures and sells medical electronic equipment (transcutaneous nerve stimulators and heart monitors) at 68 Paul Drive, San Rafael. Commencing December 1, 1978, Pacific installed at Levin's request ten 20-button telephone sets equipped with six lines for service to Levin's business. The number of telephones was increased first to 14 and then to 22, and the lines were increased to eight.

The evidence shows that Levin experienced the following types of problems with his telephone service:

1. Poor level of transmission resulting in an inability to hear callers, or for them to be only faintly heard.
2. A clicking noise, followed by a screeching noise, and then a disconnect.
3. Severe static, or other noise.
4. A ringing signal without an answer on incoming calls with no ringing on complainant's line.
5. On outgoing calls, connection to a number not dialed.

Complainant kept logs concerning trouble calls and made frequent requests on defendant for correction of the essential service deficiencies.

Complainant showed that good telephone service is essential to his business as his sales are accomplished almost entirely through telephone contacts with potential customers. The majority of his calls are long-distance calls to points in other states or countries. Complainant asserts that telephone service at a prior location in San Rafael (telephone number 457-9060) was satisfactory, but since moving into the 472 exchange service has become unsatisfactory. Complainant asserts that while its business and personnel has grown, its telephone requirements per station and per employee are approximately the same. The great majority of Ntron's calls are long-distance calls and the preponderance of the service problems experienced by Ntron are with long-distance calls. Complainant and five of Ntron's employees testified that approximately three out of 10 incoming and outgoing calls experienced trouble. On some days almost all calls experienced trouble.

Complainant furnished a billing history showing the types of services rendered and the charges for such services. According to complainant's Exhibit 2, for the period December 1978 through June 1981, Ntron was billed as follows:

Total Monthly Service	\$ 8,387.72
Total Long Distance	85,236.19
Total Message Units/Zone Charges	2,255.79
Installation and Other Charges	3,770.19
Total Taxes	2,276.57
Less Credits	<u>738.01</u>
Total Net Billing	101,188.45

Levin presented Exhibit 6, which is a letter addressed to complainant dated July 16, 1980 on defendant's letterhead showing an address of 1800 Second Street, San Rafael, and signed by Bob Penn, manager. Exhibit 6 reads, in part, as follows:

"As agreed in our telephone conversation of July 14 I'm conforming the current status of your account and the adjustment to be credited to the current balancing owing. The June 28th bill is \$21,892.58 which includes unpaid charges from the October 28th bill to the present. Of these charges the monthly service is \$2,092 and long distance calls total \$19,017.60. We have agreed to adjust 50% of the monthly charge and 25% of toll charges on the basis of diminished value of service received. We've credited your bill with \$5,908.99 including taxes. The remaining balance due is \$15,983.59."

The adjustment referred to above (\$6,000 adjustment) reduced the net billings by Pacific as shown in complainant's Exhibit 2, to \$94,564.39.

Exhibit 5 is a letter addressed to complainant dated October 30, 1979 on defendant's letterhead showing the same address as Exhibit 6, and signed by Mrs. S. Pedersen, service representative, which states, in part, "I have noted your account that temporarily we will not be expecting payment of your present bill until the static in your line has cleared."

Exhibit 9 is Ntron's employee log of trouble calls, which supports the nature and frequency of trouble calls described on the testimony of Ntron employees.

Exhibits 48 through 52 are trouble ticket analyses comparing Ntron's complaints with recorded complaints for business stations in the 472 exchange as set forth in Pacific's filing under GO 133. The analysis shows Ntron experienced a substantially higher trouble rate than the average for the 472 exchange.

Defendant's Evidence

Defendant presented several witnesses to describe Pacific's procedures for locating the sources of reported service problems and methods of eradicating those problems.

Testimony was presented by Robert Penn, Pacific's Marin County manager; Gary Kopay, district manager for business services for the Harbor Business I&M District; Paul Bonardi, supervisor of a northern Marin County business accounts repair crew; Patrick Doyel, a test board supervisor and trouble complaint analyzer; Raymond Owens, district switching manager responsible for day-to-day maintenance and operation of central offices (CO) in Marin County; Donald Griffin, supervisor of 10 craft analyzers in Pacific's Network Service Center (the interface between Pacific and American Telephone and Telegraph (AT&T) long lines); Alice Cook, service advisor, who made equipment tests at Ntron's place of business; and Cathy Thompson, manager of Pacific's business service center in San Francisco.

Witnesses Kopay, Bonardi, Doyel, Owens, and Griffin explained that they were advised that Ntron was experiencing trouble calls, that they were directed to determine the causes of Ntron's complaints, and that they checked the portion of the telephone operations under their individual responsibilities. They further testified that they were unable to locate the causes of the reported trouble in the equipment located on Ntron's premises, in the cables between Ntron's premises and the local CO, within the local CO equipment, or in the switching equipment and cables between the CO

and AT&T's Network Service Center. Evidence also was presented to show that the 472/479 CO operations had trouble complaints within the limits acceptable to AT&T.

Witness Owens testified that many of the problems encountered by Ntron, such as fast busy signals and failure to complete calls, could result from failures in CO equipment. The failures may be caused by insufficient switching or trunking equipment. In witness Owens opinion, there was adequate switching and trunking equipment in the CO serving Ntron. However, Owens testified that the Parkway CO serves more than 27,000 telephones in the 472 and 479 exchanges, and only 163 originating outgoing calls can be placed on the trunks from the Parkway CO to other exchanges. (Tr. 6, p. 730.) The switching equipment at Parkway CO is a mechanical #5 crossbar.

Witness Cook made tests at Ntron's place of business. While she found static on many calls, it was her opinion that the static was typical of long-distance operation and was within acceptable levels.

Robert Penn and Cathy Thompson testified with respect to the \$6,000 adjustment made on Ntron's bill. Their testimony indicates that the adjustment was intended to induce payment by Ntron and that subsequent service complaints would not result in a further billing adjustment.

Exhibits 22, 26, and 27 presented by Pacific's witness Doyel show trouble reports from Ntron by category by month. Exhibits 27 and 28 show that for the year 1980 and the first five months of 1981 Ntron's trouble reports fall into the following categories:

Table 1

<u>Categories</u>	<u>Number</u>	<u>% of Total</u>
No dial tone	9	3.2
Can't call others	47	16.6
Transmission noise	166	58.2
Can't be called	26	9.1
Physical condition	1	0.1
Miscellaneous	29	10.3
Excluded reports	<u>7</u>	<u>2.5</u>
Total	285	100.0

Monthly average 16.75

Levin disputes the manner in which these trouble reports were compiled and their relationships to total trouble reports in GO 133 filings. Levin presented Exhibits 40 through 51 in rebuttal.

Pacific's Exhibit 28 compares Ntron's trouble reports to the total voice grade lines working and total trouble reports for Parkway 10 cable pair 1601-1700. This cable includes Ntron's line (472-4600). According to this exhibit, Ntron's total trouble reports range from 87% to 95% of all trouble reports for the cable, and from 92% to 96% of trouble reports for transmission and noise. Pacific argues that this shows Ntron's problems are not encountered by other customers sharing the same cable.

Other witnesses presented factual data designed to show that Ntron initiated more trouble reports than others for use of other facilities and that repair and maintenance personnel could locate no specific problems with Pacific's equipment and facilities.

Discussion

Adequacy of Service

In this proceeding, Levin seeks substantial reparation for the alleged inadequacies in the telephone service provided by Pacific. The right to recover reparation for faulty or defective service is provided under Public Utilities Code § 734.

Here, there is no question that Ntron experienced severe problems with its toll and long-distance service. The problems included static, noise, faint transmission, disconnections, no dial tone, and the inability to make and receive calls. These problems were attested to by Levin, corroborated by his employees, and reflected in the telephone logs and trouble reports presented by Levin and Pacific. The record further shows that Ntron's problems were far worse than those of other customers in the 472 exchange.

Pacific argues that no reparation should be awarded since it made a conscientious effort to locate and correct the source of Ntron's problems. We disagree. The fact that Pacific was unable to identify the particular piece of equipment causing the problems is immaterial. Despite Pacific's efforts, the problems persisted and the service provided to Ntron continued to be inadequate for over two and a half years.

From the evidence presented in this proceeding, it appears that the problem may lie in the exchange CO or the trunking between the CO and long-distance facilities. The combination of mechanical switching, the growth within the exchange, and Ntron's heavy usage may result in the overloading of exchange or trunking equipment producing poor service for Ntron. Considering Ntron's testimony that it did not experience the noise, cutoffs, and fast busy signals before moving to the Parkway CO, rerouting Ntron's calls through a different CO could have alleviated many of the problems. We note that Pacific did not offer to reroute Ntron's calls.

Therefore, we conclude that the service provided to Ntron was inadequate and reparation should be awarded for the period at issue.

Amount of Reparation

Levin seeks reparation in an amount based on 40% of the amount billed and paid to Pacific from December 1978 to July 28, 1981, the last day of hearing. Levin asserts that the total billing

for this period was \$106,599 as shown in Exhibits 2 and 11. Forty percent of this amount is \$42,639 which Levin would reduce by the \$6,624.06 adjustment previously made by Pacific leaving a net reparation of \$36,015.57. Levin requests that interest at 7% be applied from the date of payment to each monthly bill.

Pacific contends that the reparation sought by Levin overstates the effect of any diminished service on Ntron. Pacific maintains that if reparation is awarded, the proper amount is \$313.34 based on the number of trouble calls recorded by Pacific.

In the alternative, Pacific proposes that Levin receive an amount based on "complainant's estimate of total trouble" as reflected in Exhibit 52 and suggests that an amount based on twice this estimate would be appropriate. Pacific calculates these amounts to be \$1,795.59 and \$3,693.06, respectively. The amounts proposed by Pacific range from .3% to 3.5% of the total billing for the period at issue.

While we agree with Pacific that Levin's request is too high, we also decline to adopt any of the proposals put forth by Pacific since they fail to reflect the full extent of Ntron's problems. The record shows that Pacific's trouble reports understate the problems since the reports are incomplete and often combine multiple complaints in a single entry. Even if the reports are adjusted to correct for these deficiencies, the reports would reflect only those problems which Ntron reported to Pacific. Problems encountered by Ntron but not reported would not appear in Pacific's records.

We find that a reasonable reparation to which Levin is entitled for the inadequate telephone service furnished by Pacific is \$21,872.87 which represents 25% of the long distance and message units/zone charges billed during the period in question. We will subtract the \$6,624.06 adjustment made previously by Pacific. This results in a reparation of \$15,248.81. No reparation is made for local service charges since Ntron's problems were limited to long distance and toll service.

Findings of Fact

1. Pacific's service complained of in this proceeding was unsatisfactory to complainant.

2. Pacific was unable to locate and correct the specific problems complained of by Ntron.

3. Pacific's long-distance and message-unit service to complainant was not adequate or within accepted standards.

4. A \$6,624.06 credit adjustment was previously allowed to complainant by Pacific's local manager in mitigation of the diminished value of the service accorded complainant.

5. Reparation should be awarded for the diminished value of service accorded complainant based on 25% of the long distance and message units/zone charges assessed in the above billing period less the \$6,624.06 adjustment previously made. The unpaid amount should be subject to interest from the effective date of this decision at 7% per annum.

Conclusions of Law

1. Reparation should be awarded for the diminished value of service accorded complaint in the amount of \$21,872.87.

2. The award of reparation in the amount of \$21,872.87 should be reduced by the \$6,624.06 credit adjustment described in the above findings.

3. Interest in the amount of 7% per annum should be added to amount set forth in conclusion 3 from the effective date of this order to the date of payment.

4. No discrimination will occur as a result of this order.

5. As the sources of Ntron's trouble reports could not be discovered by Pacific, there is no basis for a directive to Pacific to take further action to correct Ntron's service problems.

6. The Commission cannot award damages: attorney fees should not be awarded in this proceeding.

7. To the extent not granted, the complaint should be denied.

O R D E R

IT IS ORDERED that:

1. Complainant shall retain the \$6,624.06 credit adjustment made by defendant.
2. Complainant is awarded additional reparation of \$15,248.81, subject to interest at the rate of 7% calculated from the effective date of this order.
3. Except to the extent granted herein the complaint shall be denied.

This order becomes effective 30 days from today.

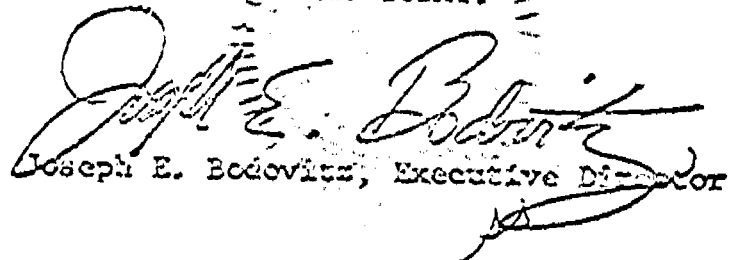
Dated MAR 16 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
FRISCILLA C. CREW
DONALD VIAL
Commissioners

Commissioner VICTOR CALVO

Present but not participating.

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


Joseph E. Bodovitz, Executive Director

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5. Reparation should be awarded for the diminished value of service accorded complainant based on 25% of the long distance and ~~message unit/toll~~ toll charges assessed in the above billing period less the \$6,624.06 adjustment previously made. The unpaid amount should be subject to interest from the effective date of this decision at 7% per annum. SS

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2. The award of reparation in the amount of \$21,872.87 should be reduced by the \$6,624.06 credit adjustment described in the above findings.

3. Interest in the amount of 7% per annum should be added to amount set forth in conclusion 3 from the effective date of this order to the date of payment.

4. No discrimination will occur as a result of this order.

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