

ORIGINAL

Decision 83 94 068 APR 20 1985

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROCCO ROTONDO,)
)
 Complainant,)
)
 vs.)
)
 PACIFIC TELEPHONE AND)
 TELEGRAPH COMPANY,)
)
 Defendant.)

Case 10915
(Filed October 7, 1980)

John E. Fieberling, Attorney at Law,
 for Rocco Rotondo, complainant.
Marion J. Stanton, Attorney at Law,
 for The Pacific Telephone and Telegraph
 Company, defendant.

O P I N I O N

Background

Rocco A. Rotondo (Rotondo), complainant, seeks to have billings made to him by The Pacific Telephone and Telegraph Company (Pacific) reduced by \$1,090.65 and that amount charged to a modeling business owned by him.

Rotondo is a civil engineer. He has had telephone service as a business subscriber from Pacific for his engineering consulting business since 1963. In 1977 he became an investor in the Keyword Modeling and Finishing School as a limited partner. Pacific established telephone service to the modeling school in November 1977, installing two 984 prefix business lines. From inception, Pacific billed Rotondo for these two numbers, including yellow page listings for the business, at the modeling school's address (Tr. 45).

Rotondo however, did not recall ever seeing the phone bills and testified that they were paid by Dolores Keywood, who managed the school. Likewise, Rotondo did not recall ordering phone service for the Keywood school. Pacific could not locate the application for service that was filled out when the two numbers were installed.

The modeling school business was subsequently reorganized, and was incorporated as On the Cover, Inc. Rotondo is the only shareholder and president. Rotondo testified that at the time of incorporation he recalled some "discussion" about having Pacific change its records to show the corporation as responsible for phone bills. He could not recall if Pacific was contacted specifically about changing its billing records.

Rotondo testified that he visited Pacific's directory advertising offices in San Francisco and spoke with a directory service representative about changes for the directory listings (white and yellow pages) for the modeling school. He produced carbon copies of four directory advertising orders taken at that meeting by Pacific in September or October 1978. Three were signed by him as president of On The Cover, Inc. The order forms show, in handwriting, the name change from Keywood to On The Cover Modeling School. The essence of Rotondo's testimony is that he told the directory advertising representative he wanted the corporation billed and that by signing the directory order forms after the name change for the ads he believed Pacific's billing records would be changed. He testified that while the directory advertising representative was not happy about his signing in the capacity as a corporate officer (the order forms listed the party of record to be billed for the two numbers as "Rocco Rotondo") that she accepted his signature in that capacity (Tr. 15). Thereafter he paid bills with corporate checks. The modeling business ultimately failed in August 1979, with \$1,090.65 owing Pacific (\$818.54 was for yellow page ads and the balance for basic service and calls). Between the time of

Rotondo's visit to Pacific's directory office until On The Cover, Inc. failed, Pacific continued to bill Rotondo for the service to the two numbers. The parties do not dispute the amount owing.

According to Pacific the forms to allow supersedure of the two 984 numbers by On the Cover, Inc. were never submitted, and the directory order forms were taken by its directory personnel, a department that does not change billing responsibility. Pacific looked directly to Rotondo for the \$1,090.65, threatening to disconnect phone service to his engineering business if he did not pay. Ultimately, shortly after the complaint was filed, that service was disconnected, but restored after Rotondo deposited the \$1,090.65 at issue with this Commission.

Relief Requested by Rotondo

Rotondo asks that we find On The Cover, Inc. responsible for the \$1,090.65. Additionally, he asserts that we have no jurisdiction with respect to the \$818.54 relating to the yellow page directory advertisements as Public Utilities (PU) Code § 728.2 ended our jurisdiction to adjudicate such matters on January 1, 1980. Finally, he contends that a portion of Pacific's Tariff Rule No. 11 is unlawful. Those sections are relied on by Pacific to disconnect service at one location for bills not paid for comparable service provided at another location. Rotondo wants the entire \$1,090.65 on deposit with this Commission disbursed to him.

A public hearing was held in San Francisco on June 9, 1981. Briefs were filed by Rotondo and Pacific.

Discussion

1. Is Rotondo personally responsible for charges incurred by the two 984 numbers which serviced On The Cover, Inc.?

While Rotondo cannot recall any Pacific billings for service to the Keywood School being sent him, Pacific's records show he was billed at the school's address. Rotondo produced checks to

show Margaret Keywood paid the bills, and he contends that this circumstance should have been, if nothing else, a clear indication to Pacific that he was not responsible. Nevertheless, Pacific's records (e.g. Exhibit 1-4) show Rotondo as the party billed to the 984 numbers from the inception of service in 1977 through the business failure of On The Cover, Inc. Pacific's records show that in October 1978 the \$500 deposit placed with it to establish service for the two 984 numbers at the Keywood School was returned to Rotondo personally (Tr. 61). Rotondo testified that he did not sign any forms that would have expressly shifted or established billing responsibility to On The Cover, Inc. (Tr. 29). Also, he did not produce any billings to refute Pacific's contention that after incorporation, and until the corporation failed, the corporation was billed.

The pivotal question is whether Rotondo's executing the directory order forms to change the business name relating to the 984 numbers in the capacity of a corporation officer absolves him from personal liability. This is a close question. While it may be that Rotondo thought the corporation became liable at that point, we think that as a business subscriber, with the sophistication to incorporate his business, Rotondo should have been more diligent in ensuring that Pacific in fact changed its records to reflect that the corporation was responsible; particularly as bills continued to be sent to him personally. Pacific's directory representative who met with Rotondo at Pacific's San Francisco office did not testify; however, Pacific presented a witness who testified that its directory representatives do not process forms to accomplish supersedure. They are supposed to tell customers who inquire about the procedure for supersedure where to get the forms, and where to submit them.

Under these circumstances, we think Rotondo simply should have exercised more diligence and effort to make sure billing responsibility was changed by documents showing official assumption of liability (e.g. completed supersedure forms). His failure to contact Pacific and follow through when bills continued to arrive in his name, with no reference to On The Cover, Inc., after he had gone to the effort of incorporation, shows that he was either inattentive or not sufficiently concerned about ensuring that the corporation would be liable.

We conclude Rotondo is personally responsible for charges relating to the two 984 numbers which served the modeling school. Rotondo's point that the phone bills paid by corporate checks placed Pacific on notice that On The Cover, Inc. was responsible is not persuasive. Pacific's personnel cannot be expected to match up every payment source with the party or entity of record who is responsible. Who submits payment on a bill is immaterial to Pacific, as long as it is paid. Thus while one can pay his neighbor's phone bill, making such a payment does not shift ultimate responsibility.

2. Is Pacific's Tariff Rate No. 11
unlawful or unreasonable?

Pacific's Tariff Rule No. 11 governs Pacific's disconnect practices. Rotondo contends that Public Utilities (PU) Code § 7904 was violated in that Pacific's Tariff Rule No. 11 (Rule 11), H(2)(c) allows the utility to disconnect service at one location for a nonpayment dispute involving service at another location. PU Code § 7904 makes it a misdemeanor for a telephone utility not to transmit messages or provide service if a customer is current in paying charges. What aggrieves Rotondo are the portions of Pacific's Rule 11 on which Pacific relies (1) to allow it to look at all service of the same class provided to a customer, regardless of premises location, and (2) to disconnect some numbers for nonpayment for other numbers.

We have concluded that Rotondo was liable for service to the 984 numbers and the number for his engineering business. All of these numbers are for business service. Pacific's Rule 11 provides that for a class of service to a customer there may be a disconnect at one or more premise locations for any nonpayment within that same class of service. This is a logical and reasonable collection procedure to ensure bills are paid; if there are disputed amount there are procedures for resolving the matter. The cornerstone of those procedures is for the disputed amount either to be paid to Pacific and a refund sought or paid to this Commission to hold on deposit until the matter is resolved. Without these procedures a customer could incur phone charges and ultimately escape responsibility for some of the charges because they resulted from use or service at a separate premise location. Noncollection by any utility ultimately poses an economic burden on all customers since uncollectible revenue must be borne by all customers in their rates. ✓

Of the \$1,090.65 owed by Rotondo to Pacific for the 983 numbers, \$818.54 relates to directory advertising charges. This fact is relevant because Rule 11.A.11. provided that a customer could not be disconnected because of failure to pay directory charges.¹ Rotondo's counsel contends in the complaint that he offered or tendered the portion of the \$1,090.65 owed for exchange

¹ At the time this complaint was filed and the money deposited with the Commission, Rule 11.A.11. provided that "[a] customer's telephone service will not be temporarily or permanently discontinued for failure of that customer to pay charges for advertising in the telephone service." This provision was deleted from the current Rule 11 (effective September 3, 1982) in keeping with the change in our jurisdiction over directory charges discussed in the following section.

service or calls (\$272.11) to prevent the disconnect of Rotondo's engineering business number, but that Pacific demanded the full amount. Ultimately the service was disconnected, Rotondo deposited the full \$1,090.65 with the Commission, and service was then restored for his engineering business. No evidence supporting the offer of payment and rejection, however, was presented by Rotondo or elicited from Pacific by Rotondo. Thus, we have before us only the allegation of a tariff rule violation with no direct evidence to support it.

We conclude, therefore, that Pacific's Rule 11 is not inconsistent with PU Code § 7904 and that there was no violation of the statute or tariff by Pacific. At most Rotondo deposited \$818.54 more than was required to maintain service pending our determination of the issue of billing responsibility.

3. Does the Commission have jurisdiction to adjudicate the \$818.54 relating to directory service and disburse these funds to Pacific?

PU Code § 728.2, was in effect on the date this complaint was filed. That statute, effective January 1, 1980, removed our jurisdiction over directory advertising complaint proceedings initiated after that date. Rotondo contends the \$818.54 of his deposit with the Commission relating to directory charges, must be refunded to him because we have no jurisdiction to enter an order on that amount or to otherwise assist Pacific with collecting it. Pacific contends that the applicable advertising orders were taken in 1978 under tariffs approved by the Commission, and just because our jurisdiction over rates and conditions of service did not end until in 1980, these charges were incurred under those approved tariffs. We have not accepted for filing or processed any complaints involving directory advertising matters after January 1, 1980.

We agree with Pacific that the applicable rules to apply adjudicating a dispute where directory advertising was contracted for in 1978 would be the applicable tariffs at that time. The amount of the charges for directory advertising is not in dispute. However, even if there were such a dispute, we would not be the forum to adjudicate the matter because of PU Code § 728.2. Pacific's final point on this issue is that if we conclude Rotondo is responsible for the charges relating to the two 984 numbers, nothing in PU Code § 728.2 prohibits our extending that conclusion to the ancillary directory charges and disbursing the funds to Pacific. We have concluded Rotondo is responsible for charges incurred by the 984 numbers. There is no dispute about the amount owing for directory advertising. If we disburse the \$818.54 to Pacific we will have greatly aided it with its collection; however, as discussed earlier, under Rule 11.A.11. the \$818.54 need not have been deposited with us to prevent the Rotondo engineering business from having service disconnected.

One step we could take under these circumstances is to restore Rotondo and Pacific to the condition they would ordinarily be in with respect to a dispute about only directory advertising charges. That is, we could order \$818.54 disbursed to Rotondo and the balance of the funds on deposit, \$272.11, to Pacific. However, since the issue of responsibility for the 984 number charges is before us, and particularly as the amount for directory charges is not in dispute, we will disburse all the deposited funds to Pacific. Otherwise, with Rotondo having been found responsible for all applicable charges incurred by the two 984 numbers, we would be placing Pacific in the position of having to initiate proceedings in yet another forum to collect some of the charges for service owed by Rotondo. Having resolved the question of responsibility for charges we think justice is best served by issuing an order bringing the dispute between these parties to a close.

Findings of Fact

1. Pacific has provided business service to Rotondo in connection with his engineering business since 1963.
2. Billings for the two 984 numbers serving the Keyword Modeling and Finishing School and, later, On The Cover, Inc., were sent by Pacific to Rotondo at the modeling school's address until the business ultimately failed.
3. Rotondo never submitted completed forms to Pacific which would have resulted in supersedure of the two 984 numbers by On The Cover, Inc.
4. The directory order forms executed by Rotondo related to the nature of directory listings and were not forms to release a party from payment responsibility because it was assumed by another.
5. The parties do not dispute the amount of charges owing - Pacific for the two 984 numbers, including the amount relating to directory listings.

Conclusions of Law

1. Rotondo is personally liable for charges incurred by the two 984 numbers.
2. Pacific Tariff Rule No. 11 is reasonable and lawful.
3. The complaint should be denied.
4. The amount on deposit with this Commission relating to yellow page advertising should be disbursed to Pacific because the underlying question of payment responsibility has been adjudicated by this decision.

O R D E R

IT IS ORDERED that the complaint is denied and the \$1,090.65 on deposit with the Commission in connection with Case 10915 shall be disbursed to The Pacific Telephone and Telegraph Company. ✓

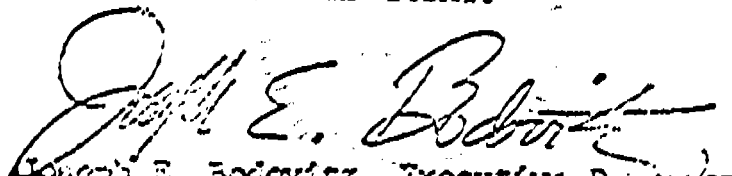
This order becomes effective 30 days from today.
Dated April 20, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
DONALD VIAL

Commissioner Priscilla C. Grew,
being necessarily absent, did not
participate.

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


Joseph E. Bodovitz, Executive Director



Under these circumstances, we think Rotondo simply should have exercised more diligence and effort to make sure billing responsibility was changed by documents showing official assumption of liability (e.g. completed supersedure forms). His failure to contact Pacific and follow through when bills continued to arrive in his name, with no reference to On The Cover, Inc., after he had gone to the effort of incorporation, shows that he was either inattentive or not sufficiently concerned about ensuring that the corporation would be liable.

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2. Pacific Tariff Rule No. 11 is reasonable and lawful.
3. The amount on deposit with this Commission relating to yellow page advertising should be disbursed to Pacific because the underlying question of payment responsibility has been adjudicated by this decision.

O R D E R

IT IS ORDERED that the \$1,090.65 on deposit with the Commission in connection with Case 10915 shall be disbursed to The Pacific Telephone and Telegraph Company.

This order becomes effective 30 days from today.

Dated APR 20 1983, at San Francisco, California.

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

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.