

Decision 83 10 040 OCT 19 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

INTERNATIONAL WHOLISTIC HEALTH)
INSTITUTE,)

Complainant,)

vs.)

PACIFIC TELEPHONE AND TELEGRAPH)
COMPANY,)

Defendant.)

Case 83-03-01
(Filed March 1, 1983)

Ralph McClain, for complainant.
Michael D. Sasser, Attorney at Law,
for defendant.

O P I N I O N

Complainant, International Wholistic Health Institute, requests an order directing defendant Pacific Telephone and Telegraph Company not to terminate service furnished under telephone number (415) 620-9849.

Public hearing was held before Administrative Law Judge Frank J. O'Leary on June 20, 1983. The matter was submitted upon the filing of the transcript on July 11, 1983.

The complaint which is signed by Ethel Dotson, the complainant, states in paragraph 2:

"Defendant is proposing to terminate service 2-28-83 by 5 pm, even though I have a deposit on the account, this is contrary to the law. I am requesting continuation of service pending a review of this matter.

"I have a public telephone (coin operated) in my place of business. Pac. Tel. Co. collects the money deposited in the telephone for calls made. Pacific Telephone Company is still billing me \$164 in addition. This is double billing."

On or about November 8, 1982, Ralph McClain, the executive director of complainant, contacted defendant and requested installation of a coin-operated public telephone at complainant's place of business located at 396 South Street, Richmond.

At that time, defendant's service representative quoted to McClain the costs of semipublic coin-box telephone service. McClain was advised that there would be an installation charge of \$74 plus a monthly service charge of \$13. Defendant's service representative also requested that payment of the \$74 for installation charges and a \$25 deposit be made prior to installation of the telephone service. Subsequently, on or about November 11, 1983 McClain contacted defendant and requested that the requirement of advance payment of the \$74 for installation charges be waived. Defendant agreed not to collect the advance payment immediately but to include the installation charges on complainant's regular monthly telephone bill. However, complainant did pay the \$25 deposit.

Complainant's telephone service as requested was installed on November 30, 1982. At complainant's request a nondial extension telephone was also installed on the same day.

Complainant was sent telephone bills each month beginning in December 1982, yet failed to pay any amounts for the telephone service it had ordered. On February 18, 1983, McClain called defendant's Concord Public Service Center and advised a defendant's service representative that complainant had received a seven-day notice advising that complainant's telephone service would be disconnected on February 19, 1983 for nonpayment. McClain stated that the reason that the telephone bill had not been paid was because he was waiting for funding to be released. He stated that he should have the funding by February 25, 1983. Defendant agreed to extend time for payment of \$164.51 then due, to 5 p.m. on February 25, 1983. On February 25, 1983, McClain again called defendant's Concord Public Service Center and stated that he had run short of time and would not be able to make payment that day. Defendant again agreed

to extend time for payment to 5 p.m. on February 28, 1983. On February 28, 1983, defendant was advised that complainant would be filing a complaint with the California Public Utilities Commission. Defendant then proceeded to investigate the matter and temporarily delayed termination of complainant's telephone service furnished under telephone number (415) 620-9849. Service was terminated on April 11, 1983.

Complainant admits that the only payment made to defendant for the service was the \$25 deposit.

The complaint does not allege nor did complainant present any evidence that the installation charge (\$74) was not proper.

At the conclusion of complainant's presentation, defendant made a motion for a nonsuit alleging that complainant had not presented any evidence of any wrongdoing by defendant. The motion was taken under submission. Defendant then proceeded with its affirmative defense.

Findings of Fact

1. Complainant has not presented any evidence that defendant did not follow the rules set forth in its tariff with respect to discontinuation of service.

2. Complainant has not shown that the charges assessed by defendant were improper.

3. The amount of deposit (\$25) was less than the charges incurred from time of installation until the first discontinuance notice when \$164.51 was due.

Conclusion of Law

The Commission concludes that defendant's motion for a nonsuit should be granted.

O R D E R

IT IS ORDERED that:

1. The motion for nonsuit is granted.
2. Case 83-03-01 is dismissed.

This order becomes effective 30 days from today.

Dated OCT 19 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

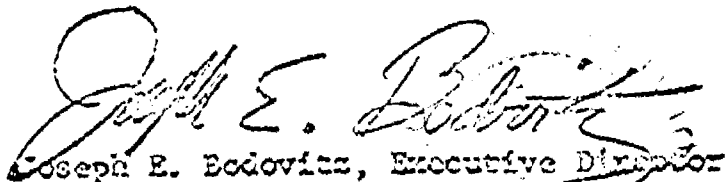
PRISCILLA C. GREW

DONALD VIAL

WILLIAM T. BAGLEY

Commissioners

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


Joseph E. Bodovitz, Executive Director