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ORIGINAL

Decision No. 87401 June 1, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN P. MROZ,

Complainant,

vs.

PACIFIC TELEPHONE AND  
TELEGRAPH COMPANY,

Defendant.

Case No. 10258  
(Filed March 14, 1977)

ORDER OF DISMISSAL

The complainant alleges that he purchased a Candlestick telephone (Design Line Candlestick decorator set), was required to pay a \$25 installation charge, the telephone company service man came to his residence and as no service was required, he simply removed the old telephone and plugged in the new telephone. The complainant alleges that the service charge should not have been required and he seeks an order requiring the defendant to refund his \$25 charge.

The defendant has answered the complaint and seeks to have the complaint dismissed.

The defendant's tariff on file with the Commission provides in Schedule Cal. P.U.C. No. 28-T, First Revised Sheet 34, Paragraph IV.9.(c)8, that there shall be a \$25 charge for a residential replacement of telephone set with a "Design-Line" set. It appears, therefore, that the charge which the defendant made to the complainant was proper and in accordance with its tariff.

The examiner assigned to the case wrote a letter to the complainant on April 6, 1977 setting forth the provisions of Section 1702 of the Public Utilities Code, and Rules 9 and 10 of the Commission's Rules of Practice and Procedure. It was explained that it appeared that the complaint did not allege a violation by a utility of a provision of law or order of the Commission and that the motion of the defendant would have to be granted in accordance with the case of Blincoe v Pacific Tel. & Tel. (1963) 60 CPUC 432. The applicable section of the defendant's tariff was pointed out to the complainant and he was requested to let the examiner know before April 29, 1977 of any legal reason why the complaint should not be dismissed, if there was any such legal reason. The letter also explained that in the event the case proceeded to hearing, the expedited procedure would not be used but the formal procedure would be followed pursuant to the complainant's request set forth in his letter postmarked March 7, 1977.

April 11, 1977 the above-referred to letter was returned to the Commission with a notation "Not deliverable as addressed-unable to forward". The examiner telephoned the number set forth in the complaint, 630-3886, and was unable to reach the complainant inasmuch as the telephone number was not in service and there was no new number. Thereafter and as of May 3, 1977 no communication was received from the complainant.

The Commission finds that the complaint does not allege that the defendant has violated any provision of law, order of the Commission, or tariff provision, or breached any legal duty it has to the complainant; that the complaint does not state facts sufficient to constitute a cause of action; and concludes that the complaint should be dismissed.

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IT IS ORDERED that Case No. 10258 is dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 1<sup>st</sup> day of JUNE, 1977.

*Robert Bateman*

President

*William S. Jones Jr*

*James L. Stinson*

*Richard D. Howell*

Commissioners