

ORIGINAL

Decision No. 87469

June 21, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM B. POLLOCK & ASSOCIATES,)
INC.,)

Complainant,)

vs.)

GENERAL TELEPHONE COMPANY OF)
CALIFORNIA, a California)
corporation,)

Defendant.)

Case No. 10002
(Filed November 7, 1975)

Robert E. Krause, Attorney at Law, for
William B. Pollock & Associates, Inc.,
complainant.

A. M. Hart, H. R. Snyder, M. L. Sullivan,
by Mary L. Sullivan, Attorney at Law,
for General Telephone Company of
California, defendant.

O P I N I O N

This is a complaint instituted by William B. Pollock & Associates, Inc.^{1/} (complainant), a corporation, against General Telephone Company of California (General), in which complainant seeks reparation from General in the amount of \$7,018.47 for excessive telephone call charges, reparations and damages for General's failure to properly list complainant in its telephone directories, reparations

^{1/} The complaint was originally brought in the name of William B. Pollock, an individual and owner of William B. Pollock & Associates, Inc. At the hearing a motion was granted to amend the complaint to substitute William B. Pollock & Associates, Inc. as the complainant.

for faulty service, and \$25,000 damages due to complainant's loss of business because of faulty telephone service and of wrongfully disconnecting complainant's telephone service. General admits that complainant was a customer of General for the period in question but denies that it overbilled complainant, or that its service was faulty, or that it improperly listed complainant in its directories, or that it wrongfully disconnected complainant's telephone service. General also claims that the Commission lacks jurisdiction to award complainant damages for loss of business caused by the alleged improper listing, faulty service, or wrongful disconnection. General also contends that portions of complainant's claims for reparation are barred by Section 735 of the Public Utilities Code (limitation of actions). A hearing was held on the matter in Los Angeles on June 2 and 9, 1976 before Examiner Pilling.

Between June 1971 and October 1975 complainant, which was managed and principally owned by William B. Pollock (Pollock), maintained an office at Long Beach at which it engaged in the business of brokering gas, oil, and other commodities. Its employees consisted of Pollock and at times one or two other persons. Two of General's telephones, each with a different area code 213 number and used principally by Pollock, were located in complainant's office. The telephones were on a rotary system which provided that if one telephone was busy an incoming call to the busy telephone would be rotated to ring the other telephone if the other telephone was not also busy. The rotary system mechanism was located at General's central office.

Pollock testified that until December 1974, when General changed its 10-A-1 equipment in the building occupied by complainant with 10-A-2 equipment, he experienced constant problems in using the telephones in the office in placing outgoing and receiving incoming long distance and message unit calls. He stated that nearly 90

percent of complainant's business was conducted by telephone with persons in those areas. The chronic problems he was aware of consisted of inability to make any contact with numbers, "wrong-number situations", being cut off in the middle of conversations, and the inability of incoming callers to reach his office due to the malfunction of the rotary system which caused a busy signal to be emitted even though the other line was open. He stated that on many occasions after he had hung up from calling a number and picked up the telephone to dial a new number that he found the telephone was "still connected" up to fifteen minutes after its last use was completed. He stated that between 20 percent and 25 percent of his outgoing calls had to be placed through the operator after being frustrated by dialing and nothing happening. He testified that he had registered complaints about poor service with General on many occasions and that General never failed to cooperate as far as getting its repairmen out to the building to run down the problems, but that the repairmen were unable to locate and fix the trouble in most instances. Pollock testified that on one or two occasions when the repairmen came to check his complaint that the telephone was not releasing they told him the reason incoming calls were getting the busy signal was because the rotary did not rotate the call to his other number. When new equipment was substituted in December 1974 Pollock stated that one of General's installers told Pollock that General was having trouble with the equipment in the building because it was worn out, and, therefore, it was being replaced with new equipment; and the reason Pollock's phone did not disconnect was because of "sticking latch relays"; and the reason callers from the outside could not get through to him when one of his telephones was busy and the other was not was because of the failure of the rotary to switch over.

Because of the conversation with the repairmen Pollock suspected he was being overcharged on his message unit and toll calls and complained to General about it. At General's suggestion Pollock reviewed complainant's telephone bills from June 1971 until December 1975. As Exhibit 1 Pollock submitted a copy of complainant's fifteen-page telephone bill covering the monthly period from April 24, 1972 through May 25, 1972 which listed 327 message unit calls to 55 different numbers and 196 toll calls to 57 different numbers or a total of 523 message unit and toll calls for the period. The total bill for the month came to \$498.01 of which \$41.65 was for service charges. Pollock claimed there was excessive time charged on 121 message unit calls and 56 toll calls, or a total of 177 calls. Pollock estimated that the total billing charges were between 35 percent and 40 percent in excess of what they should have been for the period June 1, 1971 to December 1974. He estimated that during that 42-month period he paid General approximately \$25,000 in telephone charges. Since Pollock's first awareness of the alleged overcharges occurred in December of 1974 he had not had the opportunity to evaluate any one particular call by timing the calls and, later, comparing the figures with his actual billing. He could not identify having timed any call after December 1974, to determine whether or not he felt it was still being overcharged. He considered his telephone service to have improved with the installation of the new equipment. Pollock stated that his telephone bill dropped 50 percent the first month after the new equipment was installed.

By letter dated April 28, 1975 General denied in writing complainant's request for a \$7,018.47 adjustment to its past telephone charges. On May 7, 1975 General notified complainant that the latter was delinquent in the amount of \$1,474 for past-due telephone charges. Complainant contended that it did not owe the

\$1,474 because of complainant's alleged \$7,018.47 offset against such charges. After sending complainant two more delinquency notices General disconnected complainant's telephones on October 13, 1975. Shortly after the disconnection complainant shut its Long Beach office and thereafter operated out of Pollock's home in Huntington Beach.

Pollock testified that because of the recurrent failure to contact customers and the recurrent failure of his customers to reach Pollock by telephone due to poor telephone service complainant was practically put out of business. Pollock also claims that complainant lost business because the telephone company did not list complainant's name in the white pages of General's telephone directory as General promised to do when complainant took out yellow page advertisements and because General misspelled the last name in the yellow pages, spelling it "Pollack", thus preventing people from finding complainant in the directory. Pollock asks \$50,000 damages for this oversight by General.

Glenn A. Dies (Dies) testified that he operated a brokerage office in Los Angeles and frequently worked with complainant in putting together certain deals. Dies stated he frequently had trouble dialing complainant's number because the line always seemed to be busy. In an emergency he would ask the operator to try to get through for him. Reaching complainant by telephone became so trying that starting in September 1974 Dies spent some part of each business day working out of complainant's office until around May 1975. Dies testified that he knew a lot of complainant's customers who told Dies that they were disgusted in trying to get through by telephone to complainant and because of this refused to do any more business with complainant. Dies stated he talked with General's repairmen who came to fix complainant's telephone during the period Dies was using complainant's office and they told him in substance that the slow dial tone speed meant that something was sticking and when that happened the previous call was still ticketing.

The service manager for General's Long Beach division testified that his first involvement with complainant was in December 1974, when after receiving a complaint call from Pollock about complainant's phone going dead after Pollock hung up and after checking Pollock's service complaint history, he had the equipment changed in Pollock's office and building and ordered an inspection to be made of central office equipment. He stated that the old equipment in complainant's building and office was checked out before it was removed and that no trouble was found. He said newer equipment was substituted because the company was phasing out the old equipment. The inspection of central office equipment revealed a few unsoldered wires, referred to in the excerpt of a letter (below) in common equipment having to do with local calls. His office records reveal that Pollock made four service complaints in November 1974 of a nature similar to those Pollock voiced in this proceeding excepting those dealing with excessive charges. A letter dated April 28, 1975 from an attorney for General to Pollock's attorney stated in part as follows:

"With respect to his December 12th complaint, we found during an inspection of our central office equipment that he might have been overcharged for the call in question because of a wire that was not properly soldered."

A senior engineer for General explained that the Long Beach central office has two types of ticketer circuits, one which handles only message unit calls and the other which handles both message unit and long distance calls. A ticketer receives and stores all data concerning the call as well as times the call. This data is relayed to the ticketer from the director, which analyzes all the dialed digits and routes the call either locally or to the appropriate ticketer. The director is the device that returns the dial tone to the calling telephone when the handset is initially lifted from the switch hooks. Both the director and the ticketer are common equipment, that is, they are not dedicated to a particular subscriber's line;

many subscribers have access to them. The witness stated that when the calling party hangs up the ticketer immediately stops timing the call. If the party called hangs up first and the calling party does not hang up the ticketer continues to hold the switch train open for 18 seconds after which it releases the switch train set up by the calling party. The 18 seconds are not charged for. The witness stated that it would be impossible for a failure in the ticketer or in the equipment on the customer's premise to make the ticketer continue to time a call after one of the parties hangs up. The witness testified that the term "latch relay" is completely unfamiliar to the telephone industry. He stated that the company's local repairmen are not ordinarily familiar with central office equipment unless they have been schooled in its operation.

A regional manager for the company which prints General's telephone directory introduced copies of the directory's white pages listing complainant's name for the years 1972, 1973, 1974, and 1975. The listings show that complainant is listed under the "W's" as "William B. Pollack & Associates Inc". In all but the year 1972 complainant's name was preceded in the listing by "Willhoite Wincer L" and followed by "William George Co" and in the 1972 listing it was preceded by "William Alexander Properties" and followed by "William C J". In the yellow pages complainant was alphabetized under the "W's" with the word "Pollock" spelled as "Pollack". The witness for the directory stated that before publication of the directory a letter is sent out to customers who advertise in the yellow page to verify the listing and asking for the correction of any inaccuracies. The witness introduced a copy of the original document used in the solicitation of yellow page advertising, a duplicate of which was given to Pollock on April 18, 1974 showing on it the words "William B Pollack and Associates Inc" as the listing.

Discussion

Was General in error in using the first word of complainant's official corporate name as the key word in alphabetizing the listing in the directory or should General have selected "Pollock" as the key word in alphabetizing the listing as done in the case of a listing seen for an individual? Unless General had been instructed otherwise, which it had not been, we hold that General did not err in using the word "William", which was the first word of complainant's official corporate name, as the key word to the listing. Had the listing been for William B. Pollock, the individual, obviously his name should have been listed as Pollock William B. But the listing was that of a corporation and the official name of the corporation was not "Pollock William B. etc." but "William B. Pollock etc.". Hence no error was committed by General in listing the corporation by its official name. Admittedly, telephone directories are replete with listings of personalized corporate names wherein the name is alphabetized using as the key word the word which would otherwise be the surname of an individual, and there is nothing improper in this. All the corporate customer has to do to get such a listing is to request it. Evidently, complainant did not so request. It therefore has no cause to complain. Nor should the spelling of "Pollock" as "Pollack" in this case give rise to any reparations. The misspelled letter is far enough down the line of lettering so that the relative position of complainant's name among other names in the directory was not changed because of the misspelling. We seriously doubt that anyone looking at the listing was misled into believing that the listing was other than the listing of complainant's name.

Exhibit 1 lists a total of 523 outgoing message unit and toll calls to 112 different telephone numbers for a one-month period in 1972. Assuming 523 is the average number of such monthly outgoing calls made by complainant during the 42-month period it was serviced

by the old equipment complainant would have made 21,966 (42 x 523) such calls during the 42-month period. Complainant asks the Commission to give credence to Pollock's asserted extraordinary ability to go through a list of many thousands of outgoing telephone calls, some calls being made as long as 3-1/2 years before, and, with some degree of accuracy, to recall the actual chargeable time he spent in making each call. We have grave reservations in giving credence to this recall based alone on Pollock's ipse dixit statement that he has such ability without other evidence. Since that other evidence does not appear in the record we are unable to give credence to Pollock's extraordinary recall ability and will accord little weight to his testimony as to the time he allegedly remembers he spent on the calls.

Pollock testified that on many occasions when he lifted the handset from the switch hooks minutes after he had made a long distance or message unit call he found he was still "connected". He did not say what audible sound, if any, he heard that made him believe the line was still "connected". We can only surmise that what Pollock meant was that there was a perceptible interval between the time Pollock lifted the handset and put it to his ear and the time the dial tone first commenced, or, in other words, that he was not getting close to instantaneous dial tone speed. Paragraph 3.5 of the Commission General Order No. 133, which sets forth uniform standards of service to be observed in the operation of telephone utilities and of which we take official notice, considers the dial tone speed to be adequate if the dial tone is provided within three seconds after the caller lifts the handset off of the switch hooks. One of the devices required by the general order to be used to measure the dial tone speed is the Timed All Trunks Busy Meter. The required use of this meter in connection with the testing of dial tone speed indicates that one of the reasons for inadequate dial tone speed may be that the equipment is operating at full capacity and

cannot handle any more outgoing calls until some circuits become open. The fact that General's repairmen did not mention this probability to either Pollock or Dies does not eliminate this as a cause for the slow dial tone speed. Indeed, the senior engineer witness for General stated that it would be impossible for a failure in the ticketer or in the equipment on the customer's premise to continue to time a call after one of the parties has hung up. Complainant was unable to come forward with an explanation why placing the handset on the switch hooks did not break the previous call's circuit but that the subsequent picking up of the handset eventually caused the circuit to break. More than likely the slow dial tone speed was caused by busy circuits rather than previous circuits remaining open.

But it is evident that complainant's rotary service was faulty in some respect, so faulty as to render the service worthless to complainant. For such poor rotary service complainant should not have to pay any service charge. We will order General to refigure complainant's telephone bills and refund to complainant the difference between the service charge as made on the bills and the service charge for two telephones without rotary service. However, in view of Section 735 of the Public Utilities Code limiting causes of actions for reparations to two years General need only go back to November 7, 1973 in making the rotary service reparations.

It is evident that complainant had knowledge that his rotary service was not functioning properly for some time before he filed this complaint. Just how long a time is not in evidence. Even if, as contended by complainant, the statute of limitations did not start to run until complainant was aware of the malfunction, we have no date in the record at which time complainant became aware of the malfunction. Hence, the two-year period is measured back from the date of the filing of the complaint. The amount of the service charge is not in evidence.

General contends that the Commission lacks jurisdiction to award compensatory damages other than by way of reparations citing Walker v Pacific Tel. & Tel. Co. (1971) 71 CPUC 778, Sonnenfeld v General Telephone Company of California (1971) 72 CPUC 419, and Kasprzycki v Pacific Tel. & Tel. Co. (1972) 72 CPUC 571. We agree. The power to award compensatory damages other than by way of reparations has been vested in jurisdictions other than the Commission. While complainant had trouble with outgoing direct distance dial calls the trouble resulted in an inconvenience rather than in any actionable cause for reparations. For instance, Pollock testified that between 20 percent and 25 percent of his direct distance dialed calls had to be placed through the operator when the number could not be reached by his dialing. This was an inconvenience, but at the same time he received a higher class of service - an operator-assisted call - at direct distance dial rates.

Findings

1. Complainant is a corporation whose official corporate name is "William B. Pollock & Associates, Inc."
2. Complainant maintained an office at Long Beach which was furnished with telephone service by General starting in June of 1971.
3. The telephone service which complainant subscribed for beginning in June of 1971 until the service was disconnected for nonpayment of telephone bills in October 1975 consisted of two telephones on rotary service and the listing of complainant in the yellow and white pages of General's telephone directory.
4. The application for directory advertising for the years 1974 and 1975 was made in the name of "William B. Pollack & Associates Inc" and the listings were alphabetized under "W", being the first letter of the first word in complainant's name.
5. Had the word "Pollack" been spelled "Pollock" the relative position of complainant's names in the directory would not have been changed where the names were alphabetized as they were under the "W's".

6. Ninety percent of complainant's business was conducted by telephone through long distance or message unit calls.

7. Complainant's rotary service frequently malfunctioned allowing the busy signal to flash when the called line was busy and the other line was open.

8. As a result of the malfunctioning of the rotary service many of complainant's customers became frustrated in trying to reach complainant and took their business elsewhere.

9. Complainant had paid an increased service charge to secure the rotary service.

10. Complainant paid General an estimated \$25,000 in telephone charges between June 1, 1971 and December 1974.

11. In December 1974 Pollock became suspicious that complainant was being charged for excessive time on message unit and toll calls because of a remark made by one of General's local repairmen and the fact that many times in the past after he had hung up from a charge call and then lifted up the handset to make another call he found the set to be dead.

12. In December 1974 Pollock reviewed complainant's telephone bills on a call-by-call basis from June 1972 through December 1974 and for each call listed allowed for the time he felt he had talked and estimated the time he did not talk and concluded that he had been overcharged from 35 percent to 40 percent during that period.

13. For instance, during a one-month period in 1972 - April 24 to May 25 - Pollock made a total of 523 outgoing message unit and toll calls to 112 different telephone numbers and he estimated from memory that General charged complainant for various specified excess times on each of 121 message unit calls and 56 toll calls out of the 523 calls listed on the bill.

14. Pollock did not actually time any of the calls he made between June 1972 and December 1974.

15. No showing was made by complainant that local telephone repairmen are competent to diagnose from afar what may be wrong with central telephone office equipment.

16. Pollock's asserted ability to recall with some degree of accuracy the time he spent on each of thousands of telephone calls over a 42-month period is beyond belief.

17. No connection has been shown to exist between the slow dial tone speed experienced by Pollock and the possibility or probability that it was caused by an open circuit.

18. The Commission lacks jurisdiction to award damages.

19. Complainant's trouble with outgoing direct distance dialed calls resulted in an inconvenience which does not justify reparations.

20. In October 1975 General disconnected complainant's telephone service for nonpayment of \$1,474 telephone charges.

21. Complainant did not deny he owed such charges but claimed an offset against such charges of \$7,018.47.

22. General's Tariff Rule 11, Schedule Cal. PUC No. D & R A.2 provides that if a telephone bill is in dispute and "if such question or dispute cannot be adjusted with mutual satisfaction, the customer may deposit with the Public Utilities Commission...the amount claimed by the utility to be due". If a timely deposit is made General will not discontinue the customer's service.

23. Complainant did not make the deposit described in Finding 22.

24. General did not wrongfully disconnect complainant's telephone service.

25. General should not be made to pay complainant reparations covering service prior to November 7, 1973 due to the operation of Section 735 of the Public Utilities Code.

Conclusions

1. General should be ordered to make reparations to complainant of the amount of service charge, plus seven percent interest, attributable to the rotary service, for the period between November 7, 1973 and the date of the installation of the new equipment in the building occupied by complainant in December 1974.
2. The Commission has no jurisdiction to award damages. ✓
3. The complaint in all other respects should be dismissed.

O R D E R

IT IS ORDERED that:

1. On or before thirty days after the effective date of this order General Telephone Company of California shall pay as reparations to William B. Pollock & Associates, Inc. an amount of money plus seven percent interest equal to the service charge for the rotary service furnished William B. Pollock & Associates, Inc. for the period of November 7, 1973 through December 1974.
2. The reparations ordered herein may, at the election of General Telephone Company of California, be offset against any unpaid portion of the \$1,474 described in Finding 20.

3. The relief requested in all other respects is denied.
The effective date of this order shall be twenty days
after the date hereof.

Dated at San Francisco, California, this 21st
day of JUNE, 1977.

President
William J. ...
...
...

Commissioners

Commissioner Robert Batinevich, being
necessarily absent, did not participate
in the disposition of this proceeding.