

Decision No. 88223 DEC 13 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SERV-ALL-TECH, INC., a
California corporation,

Complainant,

vs.

PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,

Defendant.

Case No. 10280
(Filed March 10, 1977)

Mark Sheppard, Attorney at Law, for Serv-All-Tech,
Inc., complainant.

John N. Howarth, Attorney at Law, for The Pacific
Telephone and Telegraph Company, defendant.

O P I N I O N

This is a complaint by Serv-All-Tech, Inc. (Serv-All) against The Pacific Telephone and Telegraph Company (PT&T) relating to the disconnection of telephone service. A duly noticed public hearing was held in this matter before Administrative Law Judges Donald B. Jarvis and Kenji Tomita in San Francisco on May 26 and October 31, 1977.

The hearing on May 26, 1977 was devoted to procedural matters and was continued to a date to be set. The complaint was subsequently recalendared for October 31, 1977.

On or about October 18, 1977, Serv-All secured a subpoena duces tecum from the Commission. The subpoena was not personally served in

accordance with the requirements of the Code of Civil Procedure. (C.C.P. § 1987.) It was served by mail. On October 27, 1977, PT&T filed a motion seeking to quash the subpoena. ✓

At the hearing on October 31, 1977, the motion to quash was first considered. The motion was granted because the record clearly indicates that service of the subpoena duces tecum was not made in accordance with the Commission's Rules and the Code of Civil Procedure, which requires personal service. (Rule 60; C.C.P. § 1987.) Counsel for Serv-All stated that in the absence of the material sought to be subpoenaed he had no evidence to present. PT&T moved that the proceeding be dismissed for lack of prosecution. The matter was submitted upon the motion.

Serv-All had the burden of proof on its complaint. (Fremont Customers v PT&T Co. (1968) 68 CPUC 203, 206; The Gray Line Tours Co. (1973) 74 CPUC 669, 700-01.) Its failure to present any evidence presents a total lack of meeting that burden. The complaint was filed on March 10, 1977. Since that time, discovery was available to Serv-All. (Public Utilities Code 1794; Case No. 9893, Ruling of ALJ filed June 20, 1977, at p. 2.) Serv-All had the responsibility for diligent prosecution of the complaint. (Hershman v Bernard Homes, Inc. (1969) 1 CA 3d 651, 655.) It failed to discharge this responsibility. The Commission makes the following findings and conclusion.

Findings of Fact

1. Serv-All has failed to sustain its burden of proof in this matter.
2. Serv-All has not prosecuted this complaint with reasonable diligence.

Conclusion of Law

The relief sought by the complaint should be denied.

O R D E R

IT IS ORDERED that the complainant is entitled to no relief in this proceeding and the complaint is denied.

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

Dated at San Francisco, California, this 13th day of DECEMBER, 1977.

Robert Batistoni

President

William J. Quinn

Reginald L. Sturgeon

Richard D. Howell

Clair T. Delbrick

Commissioners