

ORIGINAL

Decision No. 88518 FEB 22 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MICHAEL JIMENEZ AND OPAL JIMENEZ, )

Complainants, )

vs.

PACIFIC TELEPHONE COMPANY,

Defendant. )

Case No. 10451  
(Filed October 20, 1977)

Opal and Michael Jimenez, for  
themselves, complainants.  
E. F. Neal, for defendant.

O P I N I O N

The complainants allege that they are husband and wife, each of them is ill, they have had no telephone service since May 1977, a telephone is essential to them, there is an outstanding bill due the telephone company related to the husband complainant's business, and the complainants are unable to pay the bill. The complainants seek an order requiring the defendant to restore their telephone service and in addition seek \$100,000 punitive damage.

The defendant alleges that the complainants' residential service was temporarily disconnected on May 12, 1977 and permanently disconnected on May 18, 1977 for nonpayment of telephone bills in that there was an outstanding balance of \$2,312.96, which amount included unpaid monthly service charges and unpaid toll charges.

All parties have signed a proper consent and waiver, stated that they desire to use the Commission's expedited procedure, waived the presence of a court reporter at the hearing, and waived findings of fact and conclusions of law in the decision to be issued herein. A hearing was held in Los Angeles on January 11, 1978, before Administrative Law Judge James D. Tante pursuant to Rule 13.2 (expedited complaint procedure) of the Commission's Rules of Practice and Procedure, and the matter was submitted on that date.

The Commission is, without jurisdiction or authority to award punitive damages as requested by the complainants. (Schumacher v Pacific Telephone and Telegraph Company (1965) 64 CPUC 295.)

The defendant's tariff Schedule Cal. P.U.C. No. 36-T provides in part:

"Customer:  
"An individual or concern regularly receiving exchange telephone service other than that from public telephone stations." (Rule No. 4-1)

"Nonpayment of Bills:  
"Monthly bills shall be considered past due if they are not paid within 15 days after date of presentation.

"a. All Classes, Types and Grades of Exchange and Toll Service to a particular premises, separately served and billed, may be temporarily or permanently discontinued for the nonpayment of a bill for the service furnished, provided the bill therefor has not been paid within the period specified below and the Utility informs the customer with a written 5 day notice:

"Thirty calendar days after presentation when bills are rendered yearly;

"Five calendar days after presentation of special bills;

"Fifteen calendar days after presentation of all other bills." (Rule No. 11.A.2.)

\* \* \*

"A customer whose service has been discontinued for nonpayment of bills will be required to pay any unpaid balance due the Utility for the premises for which service is to be restored...." (Rule No. 6.D.1.)

\* \* \*

"The Utility shall have the right to refuse or discontinue telephone service if the acts of the customer including furnishing false credit information, or the conditions upon his premises are such as to indicate intention to defraud the Utility." (Rule No. 11.A.5.)

At the hearing the parties agreed that the facts hereinabove set forth are accurate.

The complainants had service on telephone number 636-7753 from March 1972 to May 1977 at 9741 Skylark Boulevard, Garden Grove, Orange County, California. The service was permanently disconnected on May 18, 1977 due to nonpayment of their April 4 and May 4, 1977 bills, as authorized in the Commission tariffs applicable to the defendant. During the period of telephone service at the residence the telephone bills were approximately \$75 to \$100 per month prior to the time the service was discontinued.

Michael and Opal Jimenez, the complainants, testified for the complainants. Mary C. Bachmann, Business Office supervisor, whose primary duty is supervising service representatives for the defendant, and Robert E. Pittsford, the defendant's credit manager in the Orange County area where the complainants' residence is situated, testified for the defendant.

Exhibit 1, defendant's Rule No. 6-D-1; Exhibit 2, bills submitted by the defendant to the complainants dated March 4, April 4, May 4, and May 23; Exhibit 3, revised closing bills submitted to the complainants by the defendant dated June 8, July 8, and August 8, 1977; and Exhibit 4, the defendant's results of investigation concerning this matter dated May 10 and 19, 1977, were received in evidence at the request of the defendant.

The bill of May 4, 1977, the last bill before the service was discontinued, was for \$293.04, but the failure of a check, which had been given in payment of a prior bill, to clear the bank for payment in the sum of \$290.22, brought the total amount due to \$583.26. The closing bill of May 23, 1977 was in the sum of \$660.48. (See Exhibit 2.) Other calls that were made from telephones other than the residence telephone of the complainants and charged to their residence telephone or the complainant husband's credit card increased the total allegedly due on August 8, 1977 to \$2,312.96. None of this amount has been paid. (Exhibit 3.)

The evidence is not sufficient to show that the amount of \$660.48 as set forth in the closing bill of May 23, 1977 is not due and unpaid. With respect to the difference between \$2,312.96 which the defendant claims is now due by the complainants and the \$660.48 set forth in the closing bill of May 23, the complainant husband did not deny that the calls were charged to his telephone, but testified that the calls causing the charges in this amount were third-party calls made from telephones other than the complainants' to telephone numbers other than the complainants' by Jim Townsend, whom the complainant husband had known for one and one-half years; Frank Roder, whom he had known for two to three years; David Mayfield, whom he had known for eight years; and Earl Harris, whom he had known for six years, and all of whom were business associates or business acquaintances of the

complainant husband, and whom he stated were not authorized to make such calls and charge them to his telephone number. The defendant's investigation (Exhibit 4) sets forth that at least one of the aforementioned persons and one Charles Parsons advised the defendant's representative that the complainant husband furnished them with his credit card number, authorized calls to be charged by them to his credit card, and advised them that such calls and other calls should be billed to his residence telephone number.

The complainant husband was previously vice president of Tri-Delta Corporation, whose telephone, number 539-8951, was disconnected April 18, 1977 because of an unpaid bill in the sum of \$5,508.17. Many of the telephone calls which the defendant contends constitute a part of the present billing were made after the corporation telephone was disconnected, and some were made after the residence telephone was disconnected.

It appears that the use of the telephone played an important part in the business of the complainant husband. It does not appear reasonable that several persons, whom the complainant husband had known for some time and who were business associates or business acquaintances of his, would violate the law by making telephone calls and charging them to his credit card or his telephone number without his authorization, and it is difficult to understand how these persons could know his credit card number unless it was provided to them by him. The investigation of the defendant indicating that the complainant husband gave such authorization appears reasonable.

The complainants were customers of the defendant; their telephone service was properly permanently disconnected on May 18, 1977; there is now due by the complainants to the defendant the sum of \$2,312.96 for residential telephone service at their residence for unpaid monthly service charges and unpaid toll charges;

the complainants are not entitled to have their telephone service reinstated until such sum is paid and the complainants comply with the defendant's tariffs pertaining to reconnection charges and reinstatement deposits; and the relief requested by the complainants herein should be denied.

O R D E R

IT IS ORDERED that the relief requested by the complainants is denied.

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

Dated at San Francisco, California,  
this 22nd day of FEBRUARY, 1978.

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President

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*Thomas L. Sturgeon*  
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*Philip D. Heath*  
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*Carle J. Daniels*  
Commissioners

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

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.