

ORIGINAL

Decision No. 88824 MAY 16 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM VICTOR,

Complainant,

Case No. 10153T

(Filed August 3, 1976)

PACIFIC TELEPHONE AND TELEGRAPH CO.,

Defendant.

W. A. Victor, for himself, complainant.

Duane G. Henry, Attorney at Law, for

The Pacific Telephone and Telegraph Company, defendant.

O. P. I. N. L. O. N.

Rather than paraphrasing the allegations of William Victor's (Victor) complaint we shall set it forth verbatim for the sake of clarity.

The complaint of William Victor, P.O. Box 3198, San Francisco, California 94119, (415) 567-3000, respectfully shows:

- "1. That defendant is The Pacific Telephone & Telegraph Co. 140 New Montgomery Street, San Francisco, California 94111.
- "2. I have since December, 1974, been the subscriber of telephone service billed to me under the number (415) 567-7000 in the City of San Francisco, California;

"3. An investigation preliminarily was made into questions of charges made on this telephone by the utility by the Public Utilities Commission under file No. U-30449-T without knowledge of the full facts, if such investigation was executed as stated in the Commission's letter dated July 15, 1976;

"4. The utility was continually questioned from the first months of 1975 with regard to (1) failure to supply bills, (2) incomplete duplicates, (3) failure to supply duplicates as promised, (4) improper charges with regard to toll calls and message unit calls, (5) failure to explain statements, (6) sending correspondence and statements and duplicates to wrong addresses, (7) failure to maintain equipment and adjust statements during failure periods, (8) failure to cooperate by checking equipment during convenient times when I was on premises, (9) failure to indicate credits when promised or when statements were paid, and (10) harassing and defaming subscriber directly and through its answering service by leaving messages such as 'we shall discontinue service if you do not pay today' and suggestions that my delays in ascertaining what is properly due, the utility 'impair my credit rating,' (11) explaining toll call charges by stating that tariff rate sheet from which rates are derived may be purchased from an organization in New Jersey who was contacted and which organization charges a minimum of approximately \$300-400 for a year's subscription, and (12) when not able to explain toll calls, the official, a Mr. Guzman and Ms. Tuttle of Utility (spelling may be incorrect) stated that was what the operator had told them when they checked the rate, (13) failure to explain and break down monthly telephone charges, including other failures which will be separately stated at the

formal hearing requested at this time, at which time the Commission will be supplied with additional copies of records, correspondence and photocopies of statements to supplement this complaint and show that the findings of the Commission were not based on accurate facts as supplied to the Commission's investigator by the Utility; one statement which implies clearly false findings is: 'It must be further noted that our investigation of the Utility's records has failed to disclose any instance during 1975 in which you disputed toll or message unit calls.' I am in a position to supply proof that this finding is erroneous and this is the predictable result of relying on only one side of a dispute for the basis of investigation and fact-finding, as apparently has been the case with regard to this matter.

"The investigation continued to produce no evidence to support (my) contention that these payments were made "blindly" or that they were the result of being "continuously threatened with the loss of telephone privileges," and I shall supply said evidence, and respectfully request the Honorable Public Utilities Commission of the State of California to permit me to submit evidence to supplement this complaint at a formal hearing, and further respectfully request that the Commission order Defendant not to discontinue service until complaint has been determined by the Commission, especially since there shall be no outgoing service on that telephone during the period of review by the Commission, but the telephone will be required for incoming service.

"WHEREFORE, complainant requests an order for the below stated relief:

"(a) That defendant refrain from terminating telephone service for non-payment for the duration of this proceeding.

"(b) That a formal hearing be ordered to hear evidence and enable the Public Utilities Commission to fairly determine the issues of fact at which time Defendant is to reveal all correspondence and memoranda concerning service to complainant, billing, credits, telephone conferences and any other matters related thereto.

"(c) That defendant cease and desist from giving any credit information concerning complainant to any party.

"(d) That defendant pay over to complainant all monies due complainant for overcharges in excess of any amount properly found to be due defendant.

"(e) That defendant indicate all charges and credits, indicating the dates and reasons for each, taking care to reflect all payments since installation of telephone service.

"(f) That defendant correct all statements, issue clear copies of statements including all amounts billed including taxes indicating which are state and which are federal.

"(g) That defendant remove from said bills, and adjust totals to reflect charges which were not incurred by complainant including credits for failure of service.

"(h) That the Public Utilities Commission make such other order that it deems will afford justice to complainant.

"(i) A formal hearing in Los Angeles, California is requested."

The Pacific Telephone and Telegraph Company's (Pacific) answer admits that the Commission's staff made an investigation; that the alleged wrong address consisted of using zip code number 94111 rather than 94119, but that Victor never denied receiving the two invoices involved; and that Victor has continually questioned his bills. All other allegations are generally denied. For an affirmative defense Pacific asserts that the complaint does not conform to Rule 10 of our Rules of Practice and Procedure in that it is vague and does not permit proper investigation in view of the fact that it is alleged that other failures will be presented at the hearing, thus denying Pacific of an opportunity to prepare its defense. The second affirmative defense alleges that Pacific has consistently provided Victor with the information he requested; that several checks on Victor's telephone service were made to insure that there was no billing malfunction; and that Victor refused admittance to his premises on three different occasions in two days when Pacific tried to make on-premises tests of its billing equipment and wiring. Pacific denies that Victor is entitled to any relief and requests that the complaint be dismissed.

Hearings on the matter were held on June 2, 1977 and March 17, 1978 in Los Angeles before Administrative Law Judge Bernard A. Peeters. The matter was submitted on the latter date.

Discussion

At the hearing on June 2, 1977 the administrative law judge placed the following on the record:

"Let the record show that the Complainant is not in the courtroom at the appointed time for the hearing; and after waiting a half hour, the Complainant still has not appeared.

"Let the record also show that this matter was originally scheduled for hearing December 17, 1976; that the Complainant originally refused to assent to a prehearing conference, but did agree to the exchange of interrogatories.

"The Defendant sent interrogatories to the Complainant three times before the Complainant acknowledged receipt thereof. By this time it was too late to complete the exchange before the hearing scheduled for December 17th, so the matter was put over to February 11, 1977.

"At the Complainant's request, the matter was set over from February 11th to April 22nd, 1977, and again to June 2, 1977.

"The Administrative Law Judge has been informed that the Complainant called the Commission's office in Los Angeles late yesterday afternoon to contact the assigned Administrative Law Judge.

"He would not leave a message.

"It is also the understanding of the Administrative Law Judge that the Complainant called the Commission's San Francisco office just before 5:00 p.m. last evening and requested that the matter be put over until next week, when, he stated, he would be feeling better.

"The docket clerk called the Defendant to advise that the Complainant would not be present at the hearing on June 2nd and therefore it would not be necessary for the Defendant's attorney to travel from San Francisco to Los Angeles.

... ..

"This matter pertains to a problem with the Complainant's telephone service in San Francisco; however, the Complainant, apparently lives in Los Angeles and requested that the hearing be held in Los Angeles.

"Prior attempts by the Administrative Law Judge to reach Complainant by telephone at the San Francisco number resulted in having to leave a message with an answering service.

"The Complainant has refused to provide a number where he can be reached by telephone.

"His mail is addressed to a San Francisco post office box.

"Since the Complainant has not appeared at the time and place scheduled for hearing his complaint and has already had three continuances, it will be the Administrative Law Judge's recommendation to the Commission that this matter be dismissed for lack of prosecution. The Commission is adjourned."

At 10:50 a.m. the administrative law judge reopened the matter since Victor had shown up at the Commission's office. Victor was permitted to make a statement of his reason for not being at the hearing on time and the administrative law judge informed Victor to attempt to work out a settlement with the defendant. Victor agreed to make a good faith effort to effect a settlement and withdraw his complaint if he was successful. The matter was then taken off calendar.

Another hearing was set for March 17, 1977, Victor appeared late and refused to sign an appearance slip or give his address. Victor moved to put over the hearing to another date since certain Pacific employees whom he wanted as witnesses were not present. Victor had not subpoenaed them. Victor then moved to continue the hearing because he had not received a copy of the transcript of the June 2 hearing, although he had not ordered one. Victor also moved that the administrative law judge disqualify himself. All motions were denied by the administrative law judge.

Victor's case in chief consisted of a discourse on his negotiations with Pacific and raising questions on each of the items set forth in his complaint. At no time did Victor point out where Pacific had violated the law, its tariffs, or any order of the Commission. Victor identified two exhibits, but would not give them up for inclusion in the record. Victor's evidence generally consisted of argument in a highly emotional and antagonistic manner. He left the hearing at noon stating he did not desire to waste his time listening to Pacific's case.

Pacific presented its defense through one witness and three exhibits. The evidence generally refuted Victor's claims; showed that Pacific had negotiated and offered reasonable adjustments where justified; that Pacific's employees were refused entrance to Victor's premises three times when they attempted to check the functioning of the equipment on the premises; that there was no billing malfunction; and that Victor's current account is \$230.84 in arrears.

Finding of Fact

The evidence does not show that Pacific has violated any law, tariff provision, or order of the Commission.

Conclusion of Law

The complaint should be dismissed for lack of evidence proving any violations of law, tariff, or order of the Commission.

O R D E R

IT IS ORDERED that the complaint of William Victor is dismissed for lack of proof of any violation of law, tariff, or Commission order by The Pacific Telephone and Telegraph Company.

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

Dated at San Francisco, California, this 16th day of MAY, 1978.

Robert B. Fennell
 President

William S. Moore Jr.

James L. Sturgeon

Charles D. Howell

Clair D. DeWitt
 Commissioners