

fc/avm

Decision No. 89052 JUL 11 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
MICHAEL M. LEVINE,

Complainant,

v

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a California Corporation,

Defendant.

Case No. 10333
(Order Granting Reopening
dated November 29, 1977)

Michael M. Levine, for himself, complainant.
Stanley J. Moore, Attorney at Law, for The
Pacific Telephone and Telegraph Company,
defendant.

O P I N I O N

The complaint of Michael M. Levine (complainant) alleges that The Pacific Telephone and Telegraph Company (Pacific) dates its invoices for service to its customers approximately five to ten days prior to the actual date the invoice is prepared and mailed; that Pacific negligently or willfully lost or misplaced a check remitted to them by Asher Paper Company for service on telephone number (415) 822-2520; that Pacific used this as an excuse to disconnect service on said number for nonpayment for service; that \$112 was demanded for restoral of service; that Pacific failed to give credit for the period of time that service was disconnected; that Pacific fails to provide its customers with a notice in a form easily seen by the customer so they may prevent disconnection for nonpayment by depositing the disputed sum with the Commission; that Pacific's

practice of giving a 5-day notice before disconnection without first giving the customer a 15-day period to deposit the disputed bill is a violation of its tariff; that Pacific has failed to provide approved cable to carry its 100 volt A.C. electrical current used in the bell ringing circuit; and that Pacific demanded that complainant pay the current billing without deducting the disputed amount or service would again be disconnected.

Complainant seeks the refund of \$112 to Asher Paper Company and a payment to Asher Paper Company for the period service was disconnected. Complainant also requests that Pacific be required to show the actual billing and mailing dates on its billings; inform its customers of their right to deposit disputed bills with the Commission, with a notice in type and form clearly legible to the customer; give at least a 15-day notice that a customer may remit a disputed bill to the Commission before sending a 5-day notice to pay to prevent disconnection; advise the customer of his rights under the tariff by written notice that he has 15 days to deposit the disputed amount with the Commission with a copy of such notice being mailed to the Commission; and comply with all applicable electrical and safety codes in all new installations and bring present installations up to the required safety standards.

In its answer Pacific alleges that the calendar date by which payment is due is shown on each of its bills; that a bill was issued to complainant on September 13, 1976 in the amount of \$443.61 and said bill became delinquent on October 4; that on October 13, 1976 Pacific issued a bill for \$629.76 which included the unpaid balance of \$443.61; that on October 25, 1976 complainant paid \$329.76; and that on November 4, 1976 the balance of the October bill became delinquent

and a denial notice (a letter stating that service may be temporarily disconnected if payment is not received within five days) was sent to complainant on November 11. On November 19, 1976 Pacific telephoned complainant that payment had not been received (denial prevention call); that complainant agreed to make payment by November 24 which was not received; that on December 1, 1976 complainant advised Pacific that his check for the outstanding balance would be mailed that day; that no payment was received by December 8, 1976 whereupon Pacific again called complainant, but, not being available, a message was left for him to return the call; that the call was not returned whereupon Pacific temporarily disconnected the service later that day; that prior to the temporary disconnection, complainant did not claim he had sent a check for the unpaid balance; that on December 9, 1976 Pacific informed complainant by telephone and letter that to restore service and avoid permanent disconnection payments in the following amounts would be required: \$300 for the unpaid balance, \$340 for deposit, and \$112 for restoral of service; and that complainant paid these charges except the deposit which he requested be waived until the Commission determined his case. Pacific agreed to this arrangement. On December 16, 1976 Pacific received a check from complainant in the amount of \$300 which was credited to his account. In all other respects, Pacific denies the allegations. For affirmative defenses Pacific alleges that all of its actions were in accordance with its tariffs; that it could have temporarily terminated complainant's service any time after October 4, 1976, but instead it waited more than two months before terminating service; that complainant has no standing to request that Pacific be required to give at least 15 days' notice that a customer

may remit a disputed bill to the Commission before the 5-day termination notice is sent since he had 53 days' notice from his bill^{1/} before the termination notice was sent; and that the complaint does not set forth sufficient facts to state a cause of action. ✓

This matter was calendared for hearing on September 12, 1977. Complainant failed to appear. By D.87971 we dismissed the matter. On October 28, 1977 complainant filed a petition for rehearing which we granted in D.88184 dated November 29, 1977.

A hearing was held on May 8, 1978 in San Francisco before Administrative Law Judge Bernard A. Peeters. The matter was submitted on said date.

At the outset of the hearing, complainant requested that paragraph 7 of the complaint (alleging Pacific's failure to provide approved cable for its 100 volt A.C. current for the bell ringing circuit) be dismissed without prejudice. Pacific argued that the dismissal should be with prejudice since this is the second time they have been prepared to meet the issue and complainant should not have the opportunity to bring the same issue again at some indefinite future time.

Complainant's sworn testimony consisted primarily of a reiteration of the various allegations in his complaint. Upon being questioned with respect to his allegation that Pacific willfully or negligently lost a check complainant mailed to them, complainant was unable to produce the canceled check, stating that it was in the hands of his accountant and that he had looked for it, but could not find it. No further evidence was adduced by complainant. A closing statement was made, however.

^{1/} See Exhibit 2. The rule pertaining to depositing disputed bills with the Commission is printed on the back of the bill.

Pacific's defense was presented through one witness and two exhibits. The witness testified to the following events.

On September 13, 1976 Pacific sent complainant a bill for \$443.61 which became delinquent on October 5, 1976. The October 13 bill amounted to \$629.76 which included an unpaid balance of \$443.61 from the September bill. Complainant paid \$329.76 on October 25, 1976. The balance (\$300) became delinquent on November 4, 1976. On November 11 Pacific sent a denial notice to complainant which informs the customer that service may be temporarily disconnected if payment is not received within five days. Pacific followed up the written notice with a telephone call to complainant on November 19. Complainant promised to pay by November 24. No payment was received as promised. On December 1, 1976 complainant called Pacific stating that he was mailing a check for the outstanding balance. By December 8, 1976 no such payment had been received. Pacific attempted to contact complainant by telephone, but was unable to reach him. A message was left to contact Pacific. Complainant never returned the call. Complainant's telephone service was temporarily disconnected later the same day (December 8, 1976). Up to this date complainant had never asserted that he had forwarded a check for the outstanding balance of his bill. On December 9, 1976 Pacific informed complainant by telephone and by letter that to restore service and avoid permanent disconnection the following payments were required: \$300 unpaid balance, \$340 for deposit, and \$112 for restoral of service. Complainant paid \$412.50 the same day and requested a waiver of the \$340 deposit until this matter was considered by the Commission. Pacific agreed to this arrangement. Service was restored December 9, 1976. On December 16, 1976 a check from complainant was received in Pacific's accounting

office in the amount of \$300. The business office was notified of this payment and his account credited with \$300. Exhibit 1 contains the various tariff provisions under which Pacific acted in this matter. It has not been shown that Pacific violated any of its tariff provisions, nor that they are unreasonable or applied in a discriminatory manner. There is no dispute with the essential facts, except for Exhibit 2 which is a copy of the information printed on the back of the customer's monthly bill. Complainant believes the print is too light making it difficult to read and that there should be a bold type notice on the face of the bill referring to the rule on the back of the bill. It was pointed out that if darker type were used it would show through to the face of the invoice thus making the billing itself illegible and difficult to read.

Findings of Fact

1. Pacific's evidence concerning the sequence of events in connection with the delinquent bills is undisputed.
2. It has not been shown that Pacific violated any statute, law, order, or decision of the Commission.
3. Complainant withdrew paragraph 7 of his complaint.
4. Pacific complied with all applicable tariff provisions.

Conclusion of Law

The complainant has failed to prove a violation of any law, tariff, or order of the Commission by Pacific. Therefore, the complaint should be dismissed.

O R D E R

IT IS ORDERED that the complaint of Michael M. Levine is dismissed with prejudice.

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

Dated at San Francisco, California, this 11th day of JULY, 1978.

Robert Bateman
President

Richard P. Quake
Clarence T. DeLoach
Commissioners

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

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.