

ORIGINAL

Decision No. 89119 JUL 25 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VAL A. THOMAS,  
 Complainant,  
 vs.  
 PACIFIC TELEPHONE,  
 Defendant.

Case No. 10351  
(Filed June 17, 1977)

Val A. Thomas, for himself, complainant.  
Stan Moore, Attorney at Law, for The  
 Pacific Telephone and Telegraph  
 Company, defendant.

O P I N I O N

The complainant is Val A. Thomas, 8452 Hamilton Way, Stockton, California 95209. Defendant is The Pacific Telephone and Telegraph Company.

Complaint

Complainant is in the home and business security business and employs telephone lines of various types to transmit signals from various customers' locations to his place of business. In his trifurcated complaint, as clarified at hearing, complainant alleges that:

1. On November 20, 1976, the telephone at his place of business at 16 North Stanislaus Street was to be moved to his residence at 8452 Hamilton Way.<sup>1/</sup> On December 23, 1976, that line (351-0002) was not in operation. During that period complainant's inability to receive signals from his customers' locations required complainant to physically patrol those locations at great expense to himself. Defendant charged complainant for monthly use during this period as well

1/ All street addresses stated herein are located in Stockton.

as charging complainant for service calls related to the move to 8452 Hamilton Way.

2. Complainant maintained service at the home of an employee at the Van Buren Apartments at 339 West Oak. Billing for this service (464-4472) was to be sent to the complainant at Box 391 in Stockton. The location of this phone was changed without complainant's approval and he stopped receiving a bill. Unauthorized charges on that number were later submitted to him.

3. Complainant originally ordered a single business line at 16 North Stanislaus Street. After the service was installed (948-1755) and the number published in the telephone directory, "a decision was made...and we cancelled all orders on this particular line because we decided to stick with our primary number and rotate rather than to have two numbers". (RT p. 13.) Defendant billed complainant for service on that number after complainant directed that service be discontinued.

Complainant also raised several directory errors at the hearing. Since those allegations were not within the scope of the formal complaint, Administrative Law Judge Doran directed the defendant to informally investigate those complaints. Counsel for the defendant agreed to do so. (RT p. 36.)

Complainant requests that (1) the charges for 351-0002 be adjusted and credit given for patrol work done, (2) the charges for 464-4472 be eliminated, and (3) the charges for 948-1755 be corrected.

Answer

Defendant alleges that the complaint does not meet the requirements of Rule 10 of the Commission's Rules of Practice and Procedure. That rule provides, in part:

"The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired."

Defendant alleges that the Commission is without authority to award damages. (Schumacher v Pacific Telephone and Telegraph Company (1965) 64 CPUC 295.) Defendant alleges that the complaint fails to state a cause of action because it does not set forth any act or thing done or omitted to be done which is claimed to be in violation of any provision of law or of any order or rule of the Commission. Section 1702 of the Public Utilities Code provides in part that a complaint must set forth:

"...any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission."

Rule 9 of the Commission's Rules of Practice and Procedure provides, in part:

"A complaint may be filed by any corporation or person, ...setting forth any act or thing done or omitted to be done by any public utility... in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission."

Further defendant denies that the complainant is entitled to any relief and requests that the complaint be dismissed.

A duly noticed public hearing was held in this matter before Administrative Law Judge John J. Doran in San Francisco on March 6, 1978 and the matter was submitted upon receipt of a late-filed exhibit and opportunity for comments on the exhibit to be filed by April 13, 1978.

351-0002

Complainant testified that telephone number 351-0002 was installed in late 1973 or early 1974 and operated as a full-duplex line between his central station and defendant's nearest wire center. The line is apparently used to provide alarm service to complainant's clients. After initial setup problems, he had very little trouble over the next three years. In late November 1976, complainant requested a change in the termination location of the line, from his office to his residence. He states the line never functioned properly at the new location. In mid-December defendant was requested to change the full-duplex line to a switch-line system. Complainant believes he does not owe defendant anything for the late November to mid-December billings for the number and further believes that if he is liable for the charges, then defendant is liable for his expenses for guard services and changing his communications system.

Defendant testified that service change was completed on November 29, 1976. On December 13, 1976 defendant's repairman in response to a trouble report found that customer-provided

equipment was wired incorrectly and improperly adjusted. No problem was found with the circuit; therefore, there was no billing adjustment. The circuit was discontinued on December 22, 1976 in response to complainant's December 21, 1976 request, because he converted over to using defendant's switched network. A \$386.33 final closing bill was rendered on January 28, 1977 for which defendant has never received payment. The witness testified that all charges were in accordance with the tariffs and there is no justification for a billing adjustment.

After evaluating the evidence with regard to this number, we concluded that no relief is required. <sup>1000 P. 4472</sup> The work requested by complainant was completed by defendant. The charges were correct as stated in the tariffs. There is no justification for a billing adjustment due to service impairment. Further, the Commission is without authority to award damages for complainant's alleged costs of physically patrolling his customers' locations.

464-4472

Complainant testified that he requested that telephone number 464-4472 be installed in the Van Buren Apartments for one of his employees. The bills were sent to his office. Afterwards that employee was discharged and moved, and the bills stopped. Several months later complainant received a telephone bill for calls and installation on a couple of moves of the subject telephone. When the telephone was moved from the Van Buren Apartments the billing address was changed to follow the telephone location. Complainant does not believe defendant had the right to change the billing address without notifying him and he should not be responsible for the bills.

Defendant's witness testified that originally complainant requested service for 464-4472 at 515 E. Camache, which was changed to the Van Buren Apartments at 339 W. Oak prior to completion of the order. The Van Buren service was moved to 525 N. Lincoln (Apt. 9)

and the billing address was changed from P.O. Box 391 (business office mail) to 525 N. Lincoln (Apt. 9) on January 4, 1977. The witness also stated that this transfer was confirmed with the complainant. Service was transferred again on February 14, 1977 to 4304 Manchester Avenue (Apt. 31) and the telephone number changed to 951-2519. This service was discontinued on March 8, 1977 and the \$170.78 closing bill was sent to the Manchester address. Payment has never been received.

Again, a review of the evidence persuades us that no relief is required. Complainant ordered and accepted service at the premises of one of his employees. In so doing, he became responsible for all calls and charges by that employee on that service, regardless of whether he specifically authorized each individual call or charge. At no time did complainant order termination of that service.

There is no basis for complainant's claim that he is not responsible for charges incurred after the last change of address ordered by his employee. The applicable tariff specifically provides that a "customer for service shall be responsible for the payment of all exchange, toll, and other charges applicable to his service..." (Schedule Cal. PUC No. 36-T, Rule 9, 4th Revised Sheet 44). (Emphasis added.) There is no limitation to charges made with his "permission".

948-1755

Complainant testified telephone number 948-1755 was an individual flat-rate business line at 16 N. Stanislaus Street with an off-premises extension. When the telephone was first installed, complainant was going to use it as an additional incoming customer line. Subsequently, complainant decided to rotate his primary number rather than have two numbers and canceled this telephone number in November 1976. Further, complainant has a billing problem stating he was not able to receive information on additional large

billing charges. Complainant then stated that the 1977 and 1978 directories contained an error by showing 948-1755 as a second number instead of 477-7336, his residence telephone.

Defendant's witness testified that the 16 N. Stanislaus account was established in September 1976 and billed to complainant. The account was listed as Vertex Science Industries with two additional listings: (1) Profile Security Systems and (2) Central Valley Process Service.

He further testified that on October 21, 1976, a service representative called complainant to obtain payment of \$87.58 for the September 14, 1976 bill that day to prevent temporary disconnection of service. Payment was not received that day as agreed, but was received on November 9, 1976. On November 12, 1976, a notice was sent stating service would be disconnected if the \$131.00 bill dated October 14, 1976 was not paid. There were then telephone calls between defendant and complainant's office regarding the bill. Subsequently, on December 14, 1976 a notice for the November 14, 1976 bill in the amount of \$185.49 for two months' service was sent to defendant. Finally, on December 30, 1976 complainant requested a disconnect. On December 30, 1976 a disconnect order was issued for nonpayment. On January 6, 1977 a final bill of \$224.69 was rendered. The account was referred to Associated Collection Agency on February 24, 1977. The witness concluded by stating there never was any indication there was a question about the bill, but that complainant repeatedly avoided payment.

Evidence of defendant's inability to contact the complainant permeates the record in this proceeding. Complainant conceded that "there were a lot of times I was out of town". (RT p. 44.)

There is no justification for a billing adjustment to this account.

In late-filed Exhibit 1, transmitted by letter dated March 31, 1978, defendant shows outstanding balances on complainant's accounts as follows: (1) number 351-0002, \$354.13; (\$386.33 less \$32.20 payment after date of closing bill); (2) number 464-4472/951-2519, \$170.78; and (3) number 948-1755, \$224.69.

Findings

1. Defendant's closing bill for number 351-0002 adjusted to reflect late payment in the amount of \$354.13 is in accordance with its filed tariffs.

2. Defendant's closing bill for number 464-4472/951-2519 in the amount of \$170.78 is in accordance with its filed tariffs.

3. Defendant's closing bill for number 948-1755 in the amount of \$224.69 is in accordance with its filed tariffs.

4. The number 351-0002 operated properly until disconnected on December 22, 1976. Complainant's service problems stemmed from improper connection of customer-provided equipment.



5. The alleged directory error in number 948-1755 is not part of this formal complaint and, as of submission, was being processed informally as described in the opinion.

Complainant is not entitled to any relief in this proceeding.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 25th day of JULY, 1978.

Robert R. Kohn  
President

William J. Lyons, Jr.

Vernon L. Sturgeon

Charles W. Howell

David L. DeWitt  
Commissioners