

Decision No. 89328 SEP 6 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jon J. Visel,

Complainant,

vs.

PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,

Defendant.

Case No. 10425
(Filed September 23, 1977;
amended January 18, 1978)

Jon J. Visel, Attorney at Law, for himself,
complainant.

Stanley J. Moore, Attorney at Law, for The
Pacific Telephone and Telegraph Company,
defendant.

O P I N I O N

Complainant is an attorney in private practice in Santa Ana, California, and has used the equipment and services of defendant in such business since at least 1970. It is alleged that complainant has used telephone number (714)835-1636 since 1970 in his business. In addition it is alleged that complainant has been either the sole or joint user or has exercised his control over the use of telephone number (714)835-1641 in his business since 1971. Complainant alleges that in December of 1976 The Pacific Telephone and Telegraph Company (Pacific) inventoried the telephone equipment in his office and determined, as a result of that inventory, that complainant was being undercharged by the sum of \$3 per month for the use of an illumination light on one of complainant's telephones; that Pacific attempted to collect this amount for the future but complainant refused to pay the charge; that Pacific threatened to discontinue service if all accrued charges were not paid; that Pacific knew or should have known exactly what equipment it was furnishing complainant and therefore the charges were correct; and that Pacific is now estopped from assessing this charge. Complainant seeks

an order stating that the rates and charges for telephone service provided by Pacific prior to December 1976 were true and correct; that Pacific be prohibited from charging different rates and amounts to complainant; and to restrain Pacific from threatening to disconnect service for nonpayment of charges.

Pacific filed its answer on October 21, 1977 admitting that complainant is one of its customers with assigned telephone numbers (714)835-1636 and (714)835-1641 during the periods of time involved here; that it inventoried its equipment in complainant's office December 13, 1976 and advised complainant by letter and telephone that a \$3 monthly charge for an illuminated line, which had not appeared on complainant's bill previously, would be billed in the future; and denies all other allegations. Four separate affirmative defenses are asserted. First, that the \$3 monthly charge is in accord with its applicable tariff; second, that Pacific offered to remove the equipment for the illuminated line and discontinue billing, but complainant refused said offer; that by demanding an illuminated line without charge amounts to a request for a preference or advantage in direct conflict with Section 453 of the Public Utilities Code; third, the complaint fails to state a cause of action, in that it does not set forth any act or thing done or omitted to be done in violation of any provision of law or of any order or rule of the Commission; and fourth, that the complaint cannot be maintained in that it challenges the reasonableness of Pacific's rates and charges, but does not contain the 25 signatures required by Section 1702 of the Public Utilities Code before the Commission can entertain such a complaint.

On January 13, 1978 Pacific filed a Motion To Dismiss With Prejudice. On January 18, 1978 complainant filed his opposition to the Motion To Dismiss and also filed an Amended Complaint which incorporated all the allegations of the original complaint and further alleged that on December 9, 1977 complainant changed office locations and requested Pacific to move two of his three telephone numbers,

(714)835-1636 and (714)835-1637, to his new address and to remove and eliminate his third line, (714)835-1641; that the illumination light in question was on the (714)835-1641 line which no longer is assigned to complainant; that the illumination light and comline light on (714)835-1636 and (714)835-1637 at the new location were inoperable and continued to be causing much inconvenience, loss of time, and money; that Pacific at the time of the move, December 9, 1977, caused complainant's main telephone number (714)835-1636, to become disconnected and inoperable for undetermined periods causing a recording to inform callers that said telephone was no longer in service and that there was no new listing through which to reach complainant; that complainant's name was removed from directory information service operator's list; and that this conduct and/or omissions of Pacific are arbitrary, capricious, discriminatory, done in utter disregard of complainant's rights, are continuing, and have caused, and will continue to cause complainant great anxiety, consternation, inconvenience, loss of time, loss of work, and loss of money. Complainant seeks an order requiring Pacific to immediately correct the problem with the illumination lights; the lack of a listing in the directory information service; the recording advising callers with erroneous information; and that Pacific be ordered to reimburse complainant for all loss of time and money according to proof, incurred as a result of its conduct as alleged.

Pacific did not file an answer to the amended complaint.

On June 2, 1978 the Commission staff filed a Motion To Quash The Subpoena mailed to Commission employee, Mrs. Frances Canning, by complainant.

A duly noticed public hearing was held in Santa Ana on June 6, 1978 before Administrative Law Judge Bernard A. Peeters. The matter was submitted on said date.

Motion

At the hearing the ALJ advised the parties that Pacific's Motion To Dismiss would be taken under submission; that argument would be heard from complainant on the staff's Motion To Quash, and would be ruled upon by the ALJ at the hearing.

At the hearing complainant also filed with the ALJ three additional subpoenas and a certificate showing service upon three Pacific employees. Pacific orally moved to quash the subpoenas because the three employees were voluntarily in attendance. In its Motion To Quash, staff argued that the employee was the assistant docket clerk and any testimony elicited from the employee would have no relevancy to the matter in issue. The ALJ granted the two motions to quash. We affirm his action. With respect to the Motion to Dismiss by Pacific, we will deny this motion.

The Evidence

Complainant's testimony showed that Pacific billed the \$3 monthly charge for an illuminated line for approximately 10 months. Upon complainant's change of service in December 1977 and the cancellation of service on (714)835-1641, Pacific discontinued billing the disputed \$3, since the illuminated line involved was on the instrument for the number (714)835-1641. Complainant's final billing for service prior to this move to new quarters in December 1977 was \$179.16, of which he paid \$140.92, withholding \$38.24 (\$30 for 10 month's accrual of the \$3 charge, and \$8.24 for a disputed long distance call). This amount is still unpaid. In the latter part of November 1977, complainant ordered the transfer of his business telephone numbers (714)835-1636 and (714)835-1637 to his new office location and the cancellation of service on (714)835-1641 which was part of complainant's prior rotary service number group. Pacific admitted committing an error in the programming of its electronic switching system (ESS) with respect to (714)835-1641. Because of this error, when lines (714)835-1636 and (714)835-1637 were busy and the ESS hunted for the other number in the rotary group it reached (714)835-1641. Since this number had been terminated by complainant a recording was activated in the ESS system which informed the caller that this number was no longer in service and there was no referral number listed. A further error admitted by Pacific resulted in complainant's name being left out of the directory assistance listings from December 5, 1977 to January 30, 1978. There is uncontradicted evidence that there was trouble with the line illumination lights and comline function on the telephone instruments installed

in the new office quarters. These problems have been resolved as has the error with respect to (714)835-1641 and the directory assistance listing. Complainant admits that he has had no problems with his telephone service since the above problems were corrected the latter part of January 1978. Complainant also testified that both he and his secretary spent several hours trying to work with Pacific trying to get the above errors and omissions corrected; that these errors and omissions resulted in an unknown number of callers and clients to be informed that complainant had no business telephone service for approximately two months. Complainant asks that Pacific be prohibited from trying to collect the \$30 owing for the line illumination charge. He also seeks damages, if the Commission can award them.

Pacific presented two witnesses and one exhibit which contained the tariff pages showing the applicable tariff charge for line illumination during the period involved here. The witnesses generally explained the sequence of events leading up to the problems complained of and admitted that the errors and omissions on the part of Pacific caused the complained of problems. They also pointed out that these problems have now been corrected and that credit was given for the long distance call.

Discussion

Complainant's argument that Pacific is estopped from collecting the \$30 due for the accumulated line illumination charge is without merit. Pacific, being a regulated public utility, is bound by the terms conditions, rates, and charges contained in its filed tariffs as a matter of law. It cannot deviate from its tariff without prior approval of the Commission.

The issues with respect to ordering Pacific to immediately correct the problems complained of are moot since they have all been corrected.

As the ALJ pointed out to complainant, we do not have the jurisdiction to award damages for tortious conduct. However, we do have the power to award reparations. In view of Pacific's errors and omissions in connection with the cancellation of service on (714)835-1641, it is obvious that the value of complainant's telephone service was diminished in that certain numbers of callers and clients were unable to reach complainant during the period December 5, 1977 to January 30, 1978. The record is not sufficient to enable us to make an accurate determination of the diminished value of complainant's telephone service during this period of time. It does appear, however, that complainant is entitled to something for the diminished value of his telephone service and in view of the \$30 charge which complainant seeks to have eliminated, it would appear that the cancellation of this debt and requiring Pacific to pay an equal amount as reparations would be a reasonable determination of the diminished value of telephone service, under the circumstances.

Findings of Fact

1. Complainant is liable to defendant for accumulated charges for line illumination in the amount of \$30.
2. Pacific admits that its errors and omissions caused the problems occurring subsequent to December 9, 1977 change order request.
3. The service problems complained of have been corrected and credit for the disputed long distance call has been given.
4. Complainant's telephone service was diminished in value by \$60 as a result of Pacific's errors and omissions.

Conclusion of Law

1. Complainant is liable to defendant for accumulated line illumination charges in the amount of \$30.
2. Complainant is entitled to reparations in the amount of \$60.

O R D E R

IT IS ORDERED that:

1. The Motion to Dismiss by The Pacific Telephone and Telegraph Company is denied.

2. The Pacific Telephone and Telegraph Company shall cancel the \$30 charges against Jon J. Visel and shall pay to Jon J. Visel the sum of \$30 plus interest at the rate of seven percent per annum from the date of first billing for a line illumination charge to date of payment.

3. In all other respects the complaint is denied.

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

Dated at San Francisco, California, this 6th day of SEPTEMBER, 1978.

Robert Bateman
President
William J. Brown - Jr
Joseph L. Stinson
Charles D. Howell
Commissioners

Commissioner Clair T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.