

Decision No. 89330

SEP 6 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RICHARD STYPMANN and TIMOTHY ALLEN)  
ALBERTSON, Individually and on  
behalf of all other persons who  
are or will be similarly situated,

Complainants,

vs.

PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, a public utility, and,  
DOES ONE through FIFTY, inclusive,  
Defendants.

Case No. 10505  
(Filed February 21, 1978)

Richard Stypmann and Timothy Allen Albertson,  
for themselves, complainants.  
Norah Freitas, Attorney at Law, for The Pacific  
Telephone and Telegraph Company, defendant.

O P I N I O N

Richard Stypmann and Timothy Allen Albertson (complainants) request the Commission to order The Pacific Telephone and Telegraph Company (Pacific) to restore complainants' service, that service be restored without payment of a security deposit, that complainants be afforded a preferred payment date of the 15th day of each month for the immediately preceding monthly period, that the complaint be prosecuted as a class action, and for costs, litigation, expenses, and compensation for services rendered in prosecuting this complaint.

Complainants allege that service to telephone number 621-4865 was improperly and unlawfully disconnected without a hearing by Pacific, that Pacific has refused to provide a preferred payment date, and that Pacific has demanded a deposit and reconnection charge as a prerequisite for the reinstatement of service.

In the complaint, complainants state that they have "both been active for a number of years in the 'Counter-Culture' known as 'freaks' and 'hippies' as well as in certain radical, legal, political, and social activities. Among such activities have been litigation, complaints, and political actions directed toward the 'Ma Bell' telephone system of which defendant Telephone Company is a part", that the actions of Pacific were committed maliciously with a class based "invidio animus" toward complainants for reasons of their activities and membership in the counter-culture.

The complaint also states that complainants operate a small mercantile enterprise known as the White Rabbit and that Albertson is a disabled person who engages in litigation and political activities as a means of making a contribution to society and to attempt to rehabilitate himself into a gainful member of society.

In its answer, Pacific admits disconnecting complainants' service, alleging that disconnection was proper under lawfully filed tariffs for nonpayment of lawfully assessed and properly billed telephone charges, that the request for payment of the remaining balance and deposit for reconnection and a reconnection charge is proper, and that complainants were using their residence telephone for business purposes in violation of filed tariffs. Pacific prays that the complaint be dismissed.

Hearing was held at San Francisco on June 12, 1978 before Administrative Law Judge Banks at which time the matter was submitted subject to the filing of briefs within 15 days.

The record discloses that complainants' telephone service was temporarily disconnected by Pacific on February 14, 1978 for nonpayment of a residential bill dated January 8, 1978 in the amount of \$126.81. The bill had a due date of February 1, 1978. The back of the bill contained a notice setting forth procedures to follow should complainants dispute all or any portion of the bill.

The outlined procedure includes provision for a deposit of the disputed amount with the Commission in order to avoid disconnection.<sup>1/</sup> The amount of the bill is not in dispute.

When payment of the bill in question was not received by February 1, 1978, Pacific notified complainant Stypmann by mail on February 1 that unless payment was received within seven days, service would be temporarily disconnected. The February 1 notice set forth the restoral and deposit requirement should disconnection become necessary. Upon receipt of the February 1 notice, complainants contacted Pacific on February 3, 1978 to make payment arrangements. It was agreed that complainants would have until 5:00 p.m. February 13, 1978 to make a payment of \$100, the balance of \$26.81 to be paid by March 12, 1978. A letter confirming payment arrangements was sent to complainants on February 3, 1978. This letter advised complainants that compliance with the arrangements agreed upon would prevent temporary disconnection of service. Had complainants not contacted Pacific, Pacific states that under existing practices it would have contacted complainants prior to disconnection in order to arrange for payment. Pacific did not receive payment by 5:00 p.m. on February 13, 1978 and service was temporarily interrupted. Payment of the \$100 amount was not received until February 15, 1978.

It is clear that complainants were given ample opportunity to present their position not only to Pacific, but also to the Commission. Complainants received three notices of possible termination of service; i.e., the January 8, 1978 bill, the denial notice of February 1, 1978, and the letter of February 3, 1978, which

---

<sup>1/</sup> The procedure outlined is contained in Pacific's filed tariffs Schedule Cal. PUC No. 36-T, Rules 10 and 11.

set forth the agreed to payment arrangements. Also it should be noted that complainants had had frequent conversations with Pacific personnel due to delinquencies in their payment of properly rendered bills for telephone service. The record shows that complainants' service had been temporarily disconnected for nonpayment in November of 1977. Thus complainants were aware of the consequences of nonpayment.

With respect to an extended payment date, we would first point out that granting or denying a preferred payment date is solely within the discretion of the utility and second, in this instance, there is no evidence that Pacific has refused to provide a preferred payment date for complainants. Further, there have been numerous discussions between complainants and Pacific regarding an extended payment date. On cross-examination Pacific's witness stated that its records indicate complainants were offered a preferred date of the 8th, that the bill is normally received by complainants on the 17th or 18th of the month, which is only three days after the date complainants state they usually have funds for paying current obligations, and that in any event Pacific would work with complainants to make special arrangements for payment if, and when, circumstances require. The record also discloses that Pacific has in the past, and immediately prior to disconnection, granted complainants extension of time in which to make payment of their bills.

With respect to complainants' prayer for an award of costs and fees for prosecuting this action, we have consistently held that we do not have jurisdiction to award such costs. (Toward Utility Rate Normalization v Pacific Telephone and Telegraph Co. (1978) in Decision No. 88532.)

With respect to class actions, in Estelle Nunemaker, et al. v Pacific Telephone and Telegraph Co. (1969) 70 Cal. PUC 38 we stated:

"Except as hereinafter indicated, there are no statutory provisions authorizing class actions before the Commission. As a general rule class actions are not necessary because the statutory provision dealing with discrimination (Public Util. Code §§ 453, 494, 532) make available the results of any Commission decision to all persons similarly situated. Section 1702 provides in part that any person can file a complaint 'setting 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 provisions of law...'..."

We conclude that the complaint should be dismissed.

#### Findings

1. Complainants are individuals.
2. Pacific's tariff Schedule Cal. PUC No. 36-T, Rules 10 and 11 provide the procedure to avoid disconnection of service for nonpayment of bills.
3. Complainants received telephone service at telephone number 621-4865.
4. A bill dated January 8, 1978 for telephone service for residential service for the month of December 1977 in the amount of \$126.81 with a due date of February 1, 1978 was sent by Pacific and received by complainants.
5. The telephone bill dated January 8, 1978 had a notice that service could be disconnected if payment was not received by February 1, 1978.
6. The reverse side of the telephone bill dated January 8, 1978 outlines the procedure for customers to follow should all or any portion of the bill be disputed. The procedure contains a provision for a deposit of the disputed amount in order to avoid disconnection.
7. Complainants do not dispute the amount of the bill.

8. Upon receipt of the January 8, 1978 bill, complainants on several occasions discussed with Pacific the need for an extended payment date.

9. Pacific agreed to an extended payment date of February 13, 1978 at 5:00 p.m. Complainants were to deposit \$100 with the balance of \$26.81 to be paid by March 12, 1978. Pacific confirmed the above dates by letter on February 3, 1978 advising that noncompliance would result in temporary disconnection.

10. The \$100 payment was not received until February 15, 1978. Pacific disconnected service on February 14, 1978.

11. The record supports the finding that disconnection of complainants' telephone service was made pursuant to lawfully filed tariffs.

12. The procedure to avoid temporary disconnection of telephone service for nonpayment of a telephone bill is reasonable and does not violate due process.

13. This Commission is without jurisdiction to award costs and attorneys' fees.

14. Complainants' service had been disconnected in the past for nonpayment of bills.

15. In the circumstances herein, the deposit requirement prior to reconnection and the reconnection charge are reasonable.

The complaint should be dismissed.

O R D E R

IT IS ORDERED that Case No. 10505 is dismissed.

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

Dated at San Francisco, California, this 6<sup>th</sup> day of SEPTEMBER, 1978.

Robert Bateman  
President

William J. Jones

James L. Higgins  
Charles W. Smith

Commissioners

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