

lc/dcp

Decision No. 89332 SEP 6 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BEN A. ENNIS AND HARLAN E. BENTZ
dba ENNIS AND BENTZ REALTY,

Complainants,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 10547
(Filed April 21, 1978)

ORDER OF DISMISSAL

By their complaint, Ben A. Ennis and Harlan E. Bentz, doing business as Ennis and Bentz Realty, allege that prior to commencing business in July 1977 they consulted a representative of defendant regarding the cost and feasibility of installing six-button telephone sets as opposed to 10-button sets; that six-button sets were installed; that in November 1977 they found it necessary to convert to 10-button sets at a cost of over \$1,100; that at the time of installing the 10-button sets they were informed by the same representative that the cost of converting to a 20-button set would be only \$5 a set or a total of \$100; that because of the continued growth of their business they now find it necessary to convert to 20-button sets, but have been advised by defendant that because of an authorized rate change effective December 1977, a charge of \$1,100 would have to be paid. Complainants request an order of the Commission requiring defendant to honor the commitment of its representative that there would be no charge.

By its answer filed May 30, 1978, defendant alleges that on June 23, 1977 its representative, a communications consultant located in Visalia, talked to Mr. Ben Ennis concerning

the type of installation required by complainants, the cost of installation, and the feasibility of six-button sets versus 10-button sets; that defendant's representative recommended 10-button sets with an intercom feature, but Mr. Ennis decided on six-button sets without an intercom; that on November 1, 1977, when Mr. Ennis decided to change to 10-button sets, defendant's representative recommended 20-button sets, but did advise Mr. Ennis that there would be no charge to change from 10-button sets to 20-button sets; that on December 27, 1977 a Com Pak Rate Change, which provided that a charge of \$55 per set would be made to change from 10-button to 20-button sets, became effective; and that on or about February 1, 1978 complainants inquired about changing from 10-button sets to 20-button sets and were advised of the new rates.

On June 14, 1978, defendant filed a motion to dismiss with prejudice, alleging that the pleadings show that there is no significant dispute as to the facts in the case; that when complainants had 10-button telephone sets installed in their place of business they were told by defendant's representative that there would be no charge for converting from 10-button to 20-button telephone sets at a later date; that subsequently the rates were changed requiring a \$55 charge per set to change; that the charge has been held to be reasonable by the Commission and was authorized; that by demanding the conversion of their 10-button sets to 20-button sets without charge, or at a charge less than the charge set in the present tariffs, complainants are requesting a preference or advantage in conflict with Section 453(a)^{1/} of the Public Utilities Code; that the complaint

^{1/} Section 453(a). "No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage."

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 any order or rule of the Commission.

After consideration, the Commission concludes that the complaint fails to state a cause of action for the following reasons:

- (1) Defendant's representative made no misrepresentation of charges when she informed complainants on November 1, 1977, that there would be no charge for converting 10-button sets to 20-button sets, because as of that date defendant's tariffs did not provide for any charge.
- (2) On February 1, 1978, when complainant requested a conversion from the 10-button sets to the 20-button sets, they were correctly advised of the tariff change, which became effective on December 24, 1977, and provided for a \$55 charge per set for changing from 10-button sets to 20-button sets.
- (3) There is no allegation of any act or omission on the part of defendant in violation of law or of any Commission rule or order.

Therefore, IT IS ORDERED that Case No. 10547 is hereby dismissed with prejudice.

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 Batizovich
President
William J. Lyons Jr.
Vernon L. Sturgeon
Michael D. Kovalchuk
Commissioners

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