

Decision No. 89394 SEP 19 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

C. WAYNE COOMBS, JR.,
 Complainant,
 vs.
 PACIFIC TELEPHONE AND TELEGRAPH
 COMPANY,
 Defendant.

Case No. 10375
(Filed July 20, 1977)

C. Wayne Coombs, Jr., for himself, complainant.
Stanley J. Moore, Attorney at Law, for
defendant.

O P I N I O N

Complainant C. Wayne Coombs, Jr. (Coombs) complains that defendant The Pacific Telephone and Telegraph Company (Pacific) (1) provided him with inferior telephone service in that there have been "clicks and static" on his line, (2) wrongfully refused acceptance of a payment of his telephone bill, and therefore wrongfully terminated his service, and (3) refused legitimate requests to provide him with certain telephone directories.

Pacific's answer denies the allegations regarding the first two items. Regarding telephone books, the answer essentially states that Pacific refused to provide Coombs with directories free of charge, except for those to which he is entitled.

Coombs introduced no testimony or evidence on the quality of telephone service. In view of the evidence regarding the conduct of Coombs toward Pacific, the bill adjustment problem and the telephone directory issue should be considered together.

Coombs previously brought the issue of supplying free directories to him before the Commission. He took the stand in the most recently completed application for a rate increase for Pacific (Application No. 55492 and Case No. 10001). At that time,^{1/} he

^{1/} Specifically, at the hearing of March 23, 1976. He attempted to present similar testimony on the same subject later in that proceeding at the hearing of October 21, 1976 and was excused from the witness stand.

testified that he was the head of a statewide organization of persons owning citizens band (CB) radios, and he used telephone books for the purpose of compiling directories of emergency numbers which can be used by his members to assist other CB owners who are in difficulty (for example, someone who has had a car accident or whose car has broken down on the highway).

The answer in this proceeding, as well as his testimony in A.55492 and C.10001, shows that Coombs has requested all the directories in California on a standing order basis. For the sake of brevity at the hearing in this matter on March 30, 1978 before Administrative Law Judge Meaney in San Jose, the Commission took official notice of Coombs' testimony in A.55492 and C.10001. ✓

Mrs. Kathryn Sicard, business office manager for Pacific's San Jose office, testified to Pacific's practices regarding furnishing telephone books. Out-of-area books are furnished free of charge if a customer actually makes use of such directories for frequent toll calls. Coombs, she said, was denied his various requests because his admitted purpose was constructing from them an emergency directory of his own rather than making such calls. Coombs asked for the Morgan Hill directory, for example, and his record showed only one call there in a three-month period. ✓

Coombs' testimony showed that another person (an unidentified acquaintance of his whom he requested to call Pacific) was given certain out-of-local area directories which were refused to Coombs. Pacific's witness explained that the company has a computerized system which keeps records of requests for directories, so that when a customer has requested a certain limit, further requests are carefully screened and a determination is made as to whether such additional requests for free directories are justifiable (i.e., whether the requesting party is making a reasonable volume of toll calls to that area). If not, a charge for each such directory, based on the tariff schedule for such directories, is made (see late-filed Exhibit 7).

In Decision No. 88232 dated December 13, 1977 (A.55492 and C.10001) we commented:

"C. Wayne Coombs, Jr., of San Jose, who has organized a citizens band radio club designed to help motorists in emergency situations requested to be supplied with all of the Pacific telephone books. While we realize he can obtain most of such books indirectly from his organization's members, we consider the request as unreasonable since, if granted, it will lead to more such demands and the process will become burdensome. We believe that such requests would be obviated by Pacific giving more priority to public library distribution." (Mimeo. p. 144).

We see nothing in Coombs' presentation in this complaint which would cause us to change our opinion. The testimony of Pacific's witness and a review of Exhibit 7 convinces us that Pacific's directory practices are reasonable and were reasonably applied to Coombs' various requests.

At this point, one may question why the complaint was not dismissed without a hearing as res judicata. Coombs also alleged trouble with his telephone line, and that Pacific improperly disconnected his telephone for failure to pay charges. He additionally appears to claim that Pacific deliberately provided him with inferior service and disconnected his telephone in retaliation for his directory requests. The evidence not only shows that this is not true, but strongly supports the inference that Coombs filed this complaint in bad faith and without probable cause, for the purpose of harassing and annoying Pacific (and this Commission as well), and putting Pacific to the time, effort, and expense of defending it.

First, Coombs alleged clicks and static on his line. He made no effort to introduce evidence or testimony in this regard.

Second, he already had a determination on the telephone book issue in Decision No. 88232.

Third, and most significantly, there is the matter of the alleged billing dispute. The complaint alleges that Coombs attempted to pay an amount due on July 15, 1977 and such payment was refused; whereupon his service was disconnected.^{2/}

The complaint's allegations do not begin to describe Coombs' bizarre and unreasonable methods of paying his bill for the period in question, and why his attempted payment of \$32.10 on July 15, 1977 was refused.

Coombs candidly stated, on direct examination, that "sometime last year" (1976) he "got a little impatient with the telephone company" because Pacific would not give him without charge all the directories he requested. "I started paying my bill in an unorthodox fashion, to show my frustration with them." (Transcript p. 3.) Coombs' own direct testimony continues:

"I was paying in pennies, nickels, dimes, quarters, and various denominations, in an envelope, depending--well, sending them to other offices and delivering them in person, things like that."
(Transcript pp. 3-4.)

This statement is true, but hardly illustrates the extent of Coombs' conduct. Exhibit 6, introduced by Pacific, shows that from January 18, 1977 to July 1, 1977 Coombs paid his bill as follows:

^{2/} Pursuant to a request of Commission staff personnel, Coombs' service was reconnected without payment of a reconnection charge on condition that he would refrain from making any more small payments as hereafter described. The account carries a balance of \$32.10 pending resolution of this complaint.

DATE	TOTAL THAT DAY	AMT OF PAYMENT	HOW PAID	# OF ENVELOPES	WHERE PAID
1/18	\$ 1.00	\$.50	2 Quarters ea.	2	San Jose Main
1/19	.50	.50	2 Quarters ea.	1	San Jose Main
1/20	2.00	.50	2 Quarters ea.	4	San Jose Main
1/24	2.00	.50	2 Quarters ea.	4	San Jose Main
1/25	1.00	.50	2 Quarters ea.	2	San Jose Main
1/26	1.50	.50	2 Quarters ea.	3	San Jose Main
1/27	.50	.50	2 Quarters ea.	1	Salinas
1/27	3.00	.50	2 Quarters ea.	6	San Jose Main
1/28	.50	.50	2 Quarters ea.	1	Salinas
1/28	.50	.50	2 Quarters ea.	1	San Jose Main
1/31	1.00	.50	2 Quarters ea.	2	Sacramento
1/31	.50	.50	2 Quarters ea.	1	Fairfield
1/31	.50	.50	2 Quarters ea.	1	Hayward
1/31	.50	.50	2 Quarters ea.	1	Richmond
1/31	.05	.05	1 Nickel ea.	1	Richmond
1/31	3.50	.50	2 Quarters ea.	7	San Jose Main
2/1	1.00	.05	1 Nickel ea.	20	San Jose Main
2/3	1.00	.05	1 Nickel ea.	20	San Jose Main
2/4	.75	.05	1 Nickel ea.	15	San Jose Main
2/7	1.00	.01	1 Penny ea.	100	San Jose Main
2/8	.50	.05	1 Nickel ea.	10	San Jose Main
2/10	.50	.50	2 Quarters ea.	1	San Jose Main
2/10	.50	.05	1 Nickel ea.	10	San Jose Main
2/11	.45	.05	1 Nickel ea.	9	San Jose Main
2/14	.65	.01	1 Penny ea.	65	San Jose Main
2/14	.75	.05	1 Nickel ea.	15	San Jose Main
2/14	.50	.50	2 Quarters ea.	1	Monterey
2/14	1.00	1.00	\$1 Check	1	Glendale
2/14	1.00	1.00	\$1 Check	1	No. Hollywood
2/15	.50	.50	2 Quarters ea.	1	San Jose Main
2/15	1.00	1.00	\$1 Check	1	Torrance
2/15	1.00	1.00	\$1 Check	1	Burbank
2/15	1.00	1.00	\$1 Check	1	Montebello
2/16	.50	.50	2 Quarters ea.	1	San Jose Main
2/17	.50	.01	1 Penny ea.	50	San Jose Main
2/18	.50	.10	2 Nickels ea.	5	San Jose Main
2/22	2.00	.10	2 Nickels ea.	20	San Jose Main
2/23	.50	.05	1 Nickel ea.	10	San Jose Main
2/23	1.00	1.00	\$1 Check	1	Selma
2/24	.50	.05	1 Nickel ea.	10	San Jose Main
2/25	.50	.01	1 Penny ea.	50	San Jose Main
2/28	1.00	.05	1 Nickel ea.	20	San Jose Main
2/28	.50	.50	2 Quarters ea.	1	Alameda
2/28	.45	.45	9 Nickels ea.	9	Vallejo
2/28	.13	.13	13 Pennies	1	Fairfield
2/28	.37	.37	37 Pennies	1	Fairfield
3/1	.50	.05	1 Nickel ea.	10	San Jose Main
3/1	.50	.50	2 Quarters ea.	1	Sunnyvale
3/1	1.00	1.00	\$1 Check	1	Burbank
3/2	.50	.05	1 Nickel ea.	10	San Jose Main
3/3	.50	.50	1 Penny ea.	50	Sunnyvale
3/4	.02	.02	2 Pennies	1	Sunnyvale

DATE	TOTAL THAT DAY	AMT. OF PAYMENT	HOW PAID	# OF ENVELOPES	WHERE PAID
3/7	1.00	\$.50	2 Quarters ea.	2	San Jose Main
3/8	.50	.01	1 Penny ea.	50	San Jose Main
3/8	.50	.05	1 Nickel ea.	10	San Jose Main
3/9	.01	.01	1 Penny ea.	1	San Jose Main
3/10	.49	.01	1 Penny ea.	49	San Jose Main
3/10	1.40	.05	1 Nickel ea.	28	San Jose Main
3/10	.10	.10	\$.10 check (not endorsed)		San Jose Main
3/11	.50	.05	1 Nickel ea.	10	San Jose Main
3/14	1.00	.05	1 Nickel ea.	20	San Jose Main
3/15	.50	.05	1 Nickel ea.	10	San Jose Main
3/15	.50	.01	1 Penny ea.	50	San Jose Main
3/16	1.00	1.00	\$1 Check	1	Beverly Hills
3/16	.50	.01	1 Penny ea.	50	San Jose Main
3/16	.50	.05	1 Nickel ea.	10	San Jose East
3/17	.50	.01	1 Penny ea.	50	San Jose Main
3/21	.50	.01	1 Penny ea.	50	San Jose Main
3/21	1.00	1.00	\$1 Check	1	Merced
3/21	1.00	1.00	\$1 Check	1	No. Lake Tahoe
3/21	1.00	1.00	\$1 Check	1	Fresno
3/21	1.00	1.00	\$1 Check	1	Ukiah
3/21	1.00	1.00	\$1 Check	1	Tulare
3/21	1.00	1.00	\$1 Check	1	Grass Valley
3/21	1.00	1.00	4 Quarters ea.	1	Richmond
3/21	1.00	1.00	\$1 Check	1	Beverly Hills
3/21	.50	.50	2 Quarters ea.	1	San Jose East
3/21	1.00	1.00	\$1 Check	1	Sonoma
3/21	1.00	.50	2 Quarters ea.	2	Sonoma
3/22	1.00	1.00	4 Quarters ea.	1	Concord
3/22	1.00	.50	2 Quarters ea.	2	CLR
3/22	1.00	1.00	\$1 Check	1	Madera
3/22	1.00	1.00	\$1 Check	1	El Centro
3/22	1.00	1.00	\$1 Check	1	Eureka
3/22	1.00	1.00	\$1 Check	1	Fresno
3/22	1.00	1.00	\$1 Check	1	Calxico
3/23	1.00	1.00	\$1 Check	1	Fort Bragg
3/23	1.50	1.50	6 Quarters ea.	1	San Jose East
3/23	1.00	1.00	4 Quarters ea.	1	Walnut Creek
3/24	1.00	1.00	\$1 Check	1	Bakersfield
3/24	1.50	.75	6 Quarters ea.	2	Placerville
3/24	.49	.49	1 Penny ea.	49	San Jose Main
3/24	.50	.05	1 Nickel ea.	10	San Jose Main
3/28	.50	.05	1 Nickel ea.	10	San Jose Main
3/28	1.00	1.00	\$1 Check	1	Hanford
3/29	.50	.01	1 Penny ea.	50	San Jose Main
3/29	1.00	.05	1 Nickel ea.	20	San Jose Main
3/31	.50	.05	1 Nickel ea.	10	San Jose Main
4/1	.50	.01	1 Penny ea.	50	San Jose Main
4/4	1.00	1.00	1 Penny ea.	100	San Jose Main
4/5	.50	.01	1 Penny ea.	50	San Jose Main
4/6	.50	.01	1 Penny ea.	50	San Jose Main
5/4	49.18	.01	1 Penny ea.	4918	San Jose Main

<u>DATE</u>	<u>TOTAL THAT DAY</u>	<u>AMT. OF PAYMENT</u>	<u>HOW PAID</u>	<u># OF ENVELOPES</u>	<u>WHERE PAID</u>
5/5	1.00	.01	1 Penny ea.	100	San Jose Main
5/6	.01	.01	1 Penny	1	San Jose Main
5/9	.05	.01	1 Penny ea.	5	San Jose Main
5/10	.03	.01	1 Penny ea.	3	San Jose Main
5/11	.11	.01	1 Penny ea.	11	San Jose Main
5/16	.01	.01	1 Penny ea.	1	San Jose Main
5/17	.02	.01	1 Penny ea.	2	San Jose Main
5/18	.03	.01	1 Penny ea.	3	San Jose Main
5/20	.06	.01	1 Penny ea.	6	San Jose Main
5/26	.01	.01	1 Penny	1	San Jose Main
5/27	.02	.01	1 Penny ea.	2	San Jose Main
5/31	29.99	29.99*	1 Penny ea.	2999	San Jose Main
7/1	.01	.01	1 Penny	1	Fremont

* Payments actually applied to account on progressive basis as work load permitted, all applied by June 9, 1977.

"Number of envelopes" refers to Coombs' use of deposit envelopes furnished free of charge by Pacific at Pacific's offices for customers preferring to pay in person or by way of night depository slots. Pacific's witness estimates that, in the course of making such partial payments, Coombs accumulated a total of about 14,000 envelopes, which cost Pacific approximately two cents each to purchase.

It should be well noted that Coombs made payments at a variety of offices throughout the entire State, and on May 4 and May 31, 1977, Coombs made payments of \$49.18 and \$29.99, respectively, doing so by placing one penny in each of 4,918 envelopes on May 4, and one penny in each of 2,999 envelopes on May 31.

On June 2, 1977, Pacific notified Coombs that if he did not desist from such practices, legal action would be taken (Exhibit 1). Matters were finally brought to a head when Coombs attempted to pay a delinquency of \$32.08 by appearing at Pacific's San Jose main office at 190 North Fifth Street, San Jose, on July 15, 1977 with a cardboard box apparently containing 3,208 deposit envelopes, each envelope, in turn, containing one penny. Pacific's witness Sicard, the customer operations manager at that location, instructed her personnel to refuse such payment. Coombs dumped the box over the counter and departed. On July 18, 1977, Mrs. Sicard wrote to Coombs that his telephone service was interrupted for nonpayment; that he should pay the \$32.08 in arrears, plus \$11 for reconnection and a \$95 deposit; and that the envelopes he left at the office would be held for his disposal (Exhibit 2).^{3/}

Coombs apparently contends that Pacific should accept the \$32.08 payment in the form it was offered, and that his service should be continued with no reconnection charge or deposit. At the same time, he offers no rationale for his conduct other than his disingenuous statements on direct examination (quoted previously) in which, in effect, he admits he engaged in a campaign of harassment because he was (and, apparently, still is) dissatisfied with Pacific's limitations on the number of free directories to which he is entitled.

^{3/} As mentioned, service was restored pendente lite. See footnote 2.

There is no Pacific tariff regulating what minimum payment Pacific is obliged to accept. This is not controlling.^{4/} Tariffs are constructed and filed on the assumption that persons will act reasonably. The facts in this case are beyond the pale of such an assumption. Besides, Pacific must deal with many people who are genuinely indigent, and a specific tariff on the subject might destroy flexibility and result in more temporary service disconnections for poor people.

Coombs' contentions concerning his billing dispute and service interruption have no merit and should not be dignified by further review. It is graphically evident that Coombs commenced and maintained this complaint for the same reason that he embarked upon his course of making a multitude of small partial telephone bill payments - to harass Pacific and Pacific's personnel, and possibly to harass this Commission as well. Coombs and others similarly inclined are warned that we will not tolerate the abuse of the Commission's process for such a purpose, and are further warned that we have the power, in appropriate cases, to initiate contempt proceedings and to punish for contempt of the Commission (California Constitution, Article XII, Section 6; Public Utilities Code, Sections 312 and 2113).

Findings

1. Coombs, a resident of San Jose, is, and was during the course of this complaint, a customer of Pacific.
2. Coombs offered no testimony or evidence regarding unsatisfactory telephone service.
3. Coombs testified in A.55492 and C.10001 in 1976 concerning his claimed need for out-of-local area directories. The Commission disposed of his request in Decision No. 88232 dated December 13, 1977.

^{4/} Pacific need not accept more pennies, nickels, etc., in payment than required by federal law. See Title 31 U.S. Code, Section 460.

4. Coombs attempted, in this complaint, to seek essentially the same relief from Pacific's general policies as to providing free directories as he sought in A.55492 and C.10001.

5. Pacific's practices regarding limitations on the amount of free directories which it will supply to customers are reasonable and were reasonably applied in the case of the complainant.

6. The direct testimony of Coombs, as well as other evidence, shows that Coombs, being dissatisfied with Pacific's practices regarding supplying free directories, engaged in a course of harassment against Pacific by making multitudinous fractional payments of amounts due Pacific for telephone service.

7. The evidence demonstrates that Coombs brought this complaint in bad faith and without probable cause for the purpose of harassing and annoying Pacific and Pacific's personnel, and causing Pacific to expend the time, money, and effort necessary to defend itself. ✓

8. Pacific rightfully refused to accept payment of \$32.10 on July 15, 1977 in the manner complainant attempted to make it, and therefore rightfully terminated Coombs' telephone service.

9. Pacific is not required to accept similar payment from Coombs in the future, nor is Pacific required to accept from him a large number of small partial payments.

10. Coombs is not entitled to relief from any reconnection charges or deposits which Pacific may properly and lawfully impose under its tariffs, as a result of disconnection of Coombs' service on or about July 15, 1977.

11. Coombs is not entitled to any other relief in this proceeding.

O R D E R

IT IS ORDERED that:

1. The relief requested is denied.
2. Case No. 10375 is dismissed with prejudice.

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

Dated at San Francisco, California, this 19th day of SEPTEMBER, 1978.

Robert Bateman
President
William Emerson J.
Verdon L. Livingston
Charles W. Howell
Clare D. DeBrick
Commissioners