

Decision No. 89445 OCT 3 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROBERT KAHN,

Complainant,

vs

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,

Defendant.

Case No. 10290
(Filed March 17, 1977)

Robert Kahn, for himself, complainant.
Norah S. Freitas, Attorney at Law, for
The Pacific Telephone and Telegraph
Company, defendant.

O P I N I O N

By this complaint, Robert Kahn, who resides at 3684 Happy Valley Road, Lafayette, alleges that he is a customer of defendant; that a portion of his residence is used for an office and file room area; that he uses the office both for conducting his business and for numerous personal activities, including various community volunteer services in which he is engaged; that he subscribes to two business and two private residence telephone lines from defendant; that there are five telephone instruments in the building, two of which are in the office area, and the remaining three of which are in the residential area; that each telephone set has all four lines connected to it; that he subscribes to Optional Residence Telephone Service (ORTS) for both of his private residence lines, one of which is for the area of San Francisco in which his mother resides, and the other

of which is for the area of Palo Alto in which his sister resides; that he does not use the ORTS service for business calls; that except for an occasional minor error, all business calls are made on his business lines, and all personal calls are made on his private residence lines; that as a result of an inquiry to defendant regarding a listing of one of his business numbers in the Oakland Telephone Directory which has been continued for a number of years without his knowledge, exchanges of correspondence and meetings with representatives of defendant regarding his telephone service, and an informal complaint filed with the Commission staff regarding this, defendant informed him by letter dated August 9, 1976 that in accordance with its tariff rules, he could have answered only service on the private residence lines on the two telephones located in the business premises portion of his residence; that since he uses the office for personal as well as business purposes, he should be allowed to have private residence service for outgoing personal calls in this area; that if it were not for the ORTS service on his private residence lines, which he considers desirable, he would pay defendant the small additional amount to convert all lines serving his premises to business service; that he feels defendant is vindictive because of his inquiries and informal complaint and is treating him in an unjust manner; and that he is entitled to retain the exact service he now has. He requests that an order so stating be issued by the Commission.

In its answer filed April 20, 1977, defendant alleges that it is possible for business calls to be placed on complainant's private residence lines and vice versa; that complainant's current telephone service arrangement at his premises violates applicable tariff rules which prohibit the installation of a residence extension on a business premises except for answering purposes only; that it incorrectly allowed complainant's telephone service to be arranged in such a way that complainant has both incoming and outgoing use

of his private residence lines which terminate in the business section of his home; that it has attempted to correct this situation, but complainant has refused to comply with this request; and that to allow this situation to continue constitutes discrimination against other customers which is prohibited by Public Utilities Code Section 453. Defendant requests that the complaint be dismissed.

Public hearing was held before Administrative Law Judge Arthur M. Mooney in San Francisco on June 30, 1977 and was submitted upon the filing of the transcript on July 13, 1977.

Complainant

The following evidence was presented by complainant: He has resided at 3684 Happy Valley Road, Lafayette since 1955. He is a management consultant and also writes a newspaper column and publishes a national newsletter called "Retailing Today". He has conducted his business at his home since moving there. He has always had a business telephone at his home, telephone number 254-4434, and this is connected to an answering service in Lafayette. As this phone was used more frequently, he added an additional business line, telephone number 254-4435. When his children grew up, he added an unlisted 283 prefix private residence line, and as their use of the telephone increased, he added another unlisted 283 prefix private residence line. The 254 prefix business lines are listed in the white pages of the Central Contra Costa and the Oakland Directories and are foreign exchange lines. Since most of his business is in Oakland, his clients can, with the foreign exchange service, call his home from that area at no additional service charge. Exhibit 1 is a diagram of his home which is between 3,500 and 4,000 square feet and has nine rooms. One of the rooms is used for his office and includes a file room area. The diagram shows the location of the five telephone sets in the building. Two are in the office area, one on his desk and the other on the desk of his part-time

secretary. The three in the residence area are located in the master bedroom, another bedroom, and the breakfast room area. All of the telephone sets are the push-button, touch-tone type and have all four lines connected to them. He subscribes to ORTS for each of the two private residence lines, one is for the area of San Francisco where his mother, who is of advanced age, resides, and the other is for the area of Palo Alto where his sister lives. He is usually at his desk in his office at 7:00 a.m. where he spends a substantial amount of his time, which on many occasions is until the next 2:00 a.m. In addition to his business activities, he does a substantial amount of volunteer work. This includes holding offices and serving on various committees for the San Francisco Bay Girl Scout Council, the United Way, and Lafayette Forward. Of the total time he is in his office, approximately 20 percent is devoted to his volunteer services and a substantial amount is devoted to personal matters other than business. All of his personal papers and those relating to his volunteer activities are in his office. He uses the private residence lines in his office to make outgoing calls for these purposes. It would be extremely inconvenient if he could not make such calls from his desk and was required to go to another part of the house to make them.

Complainant stated that he recently became aware of a listing he had requested in the Oakland Telephone Directory approximately nine years ago and which he had forgotten about; that defendant had continued the listing in all subsequent issues of the directory without consulting him for his approval; that he was being charged for this on his bill and had paid for it without realizing what the charge represented; that had defendant brought this matter to his attention, he would have canceled the listing long ago. He testified that as a result of inquiries to defendant

and an informal complaint filed with the Commission staff regarding this and related matters, he was informed by defendant by letter dated August 9, 1976 that his service and equipment had been checked to make sure that it was functioning correctly and that he was being billed properly; that this review disclosed that he had private residence service in his office; that the office portion of his home is a business premises; that defendant's tariffs provide that outgoing calls cannot be made on any private residence line serving a business premises; and that it would be necessary to equip the telephone sets in his office to prevent dialing out on the residence lines connected to them. Complainant asserted that he does not agree with defendant that the residence lines in his office should be so restricted. In this connection, he referred to the introductory paragraph in Rule 22 of defendant's Schedule Cal. PUC No. 36-T which states in part that "the applicability of business and residence rates is governed by the obvious or actual use made of the service". He stated that since the office is used a good part of the time for other than business purposes and since the private residence lines connected to the telephones there are used, except for occasional minor errors, for personal calls only, it is clear that the obvious or actual use of these lines is for private and not business related purposes.

Complainant pointed out that the copies of defendant's June 1977 billings in Exhibits 2 and 3 for his two unlisted private residence lines show a total charge of \$58.92 for this service. He explained that with the exception of several business calls, all of the long distance and message unit charges shown on both billings were for personal calls. He stated that, as shown in Exhibit 4, defendant's total billing for the same period for his two business lines was \$437.19; that while the majority of these charges were for business calls, some were for personal calls; and

that some of the message unit business calls on this billing could have been made on ORTS on his private residence lines, but he realizes that such calls are not to be made on ORTS and has refrained from doing so. Complainant asserted that these billings clearly establish that he does not abuse his private residence service, including ORTS, by using it for business calls. He stated that his combined monthly billing for all lines has been averaging between \$400 and \$500 per month.

Complainant is of the opinion that the reason defendant is now attempting to change the telephone system he has had for a number of years and which is a good, convenient system for him is not based on any actual or potential abuses of the private residence lines in his office but is a vindictive approach on its part because of his inquiries and informal complaint regarding his aforementioned, forgotten about listing in the Oakland Telephone Directory and defendant's policy of continuing such listings without contacting the customer for his approval. He urges the Commission to issue an order prohibiting defendant from making any changes in the service he now has on the telephones in his office.

Defendant

The following evidence was presented by the defendant's district manager for Residence Service in Lafayette and surrounding communities: Complainant subscribes to two private residence lines. Due to either a clerical and/or installation error, these lines were installed in the business premises portion of complainant's home in such a way that he has the use of both incoming and outgoing service on the two lines. This is in violation of defendant's Schedule Cal. PUC No. 36-T, Rule No. 2(D)1 and 3 on 5th Revised Sheet 24 and 7th Revised Sheet 25 which provide as follows:

"DESCRIPTION OF SERVICE"

* * *

"(D) Off-Premises Extension and Private Branch Exchange Stations

"Extension stations or private branch exchange stations, except those of subsidiary dial private branch exchanges, will be installed off the premises on which the primary station or private branch exchange is located, in accordance with following:

"1. Same Customer:

"An off-premises extension station or private branch exchange station will be installed on a premises of the customer provided, however, that a residence extension or residence private branch exchange station will not be installed on a business premises, except under the special conditions shown in 3., below."

* * *

"3. Secretarial line extension service in connection with residence individual line and two-party line primary stations will be installed on a business premises for answering purposes only and will be equipped to prevent outgoing calls.

"Extension station service, other than secretarial line extension service, in connection with residence individual line and two-party line primary stations served from a dial central office will be installed on a business premises for answering purposes only and will be equipped to prevent outgoing calls."

Pacific was unaware of this arrangement prior to complainant's filing an informal complaint with the Commission regarding his listings and equipment and the charges for the equipment. As

a result of this, an interdepartmental check of his equipment was made. This revealed the unrestricted private residence lines on the business premises. Defendant then advised complainant of the tariff violation involved and that it would be necessary to add a restriction on the private residence lines in the business premises to prevent outgoing calls on them. Complainant objected to this. There were various exchanges of correspondence and meetings between the parties regarding this. Complainant would not authorize defendant to make the changes. In response to complainant's informal complaint to the Commission and his request that his service arrangements be excluded from the tariff requirements, the Commission staff informed complainant that his service was in violation of the tariffs and that he would have to either comply with the tariffs or file a formal complaint. ORTS is only available to residence customers. In this regard, Schedule Cal. PUC No. 131-T, Special Condition 1(e) states as follows:

"Optional residence telephone service will not be furnished for business telephone service."

Since ORTS cannot be provided with business service, it is apparent that such service cannot be provided in an area designated as business premises.

Defendant's attorney argued that the service arrangement in issue violates her client's filed tariffs; that defendant is precluded by Section 491 of the Public Utilities Code from voluntarily allowing this to continue; and that such an arrangement is discriminatory against other customers and expressly prohibited by Section 453 of the Code. She urged the Commission to issue an order that would allow defendant to correct the tariff violations that exist in connection with complainant's telephone service.

Discussion

The issue for our determination is whether complainant should be authorized to continue to make outgoing calls on the two private residence lines connected to the two telephone sets in the part of his family residence which he has designated as his office and file room area on the diagram in Exhibit 1. Based on the facts and circumstances herein, we are of the opinion that it would be unfair to complainant if these lines were restricted to outgoing calls from the office telephones as urged by defendant.

We have before us a unique situation. While complainant has conducted all of his business activities from the office in his home since moving there in 1955, this is not the typical business office that is used primarily, if not exclusively, for business purposes. As pointed out by complainant, a substantial amount of the time he spends in this area of his home is devoted to the numerous volunteer services in which he is actively engaged and to everyday personal matters. These personal matters require extensive use of the telephone. The evidence clearly establishes that complainant has made a conscientious effort to make all business calls from his office on the business lines and to make only calls relating to ~~volunteer~~ and personal matters from the office on the private residence lines and the ORTS service; that the errors he has made in the use of these lines have been few in number if not de minimus; and that any errors that have occurred have probably been inadvertent, unintentional mistakes. This certainly establishes that complainant is not abusing the private residence service he now has in his office. ABA

We recognize that in accordance with defendant's Rule No. 2(D)1 and 3 of its Schedule Cal. PUC No. 36-T quoted above, a private residence line extension installed on a business premises must be equipped to prevent outgoing calls. Although the term business premises is not defined in the rule, it is obvious that

it would include an office used primarily for business purpose. It is not entirely clear, however, if it would include combined residence-office such as the one complainant has (which has substantial use for personal matters as well as for some business activities). Furthermore, Rule No. 22 of Schedule Cal. PUC No. 36-T provides in part that "the applicability of business and residence rates is governed by the actual and obvious use made of the service". The rule then goes on to point out specific locations at which business rates will apply, and included in this list are offices. The term office is not further defined. Again it is obvious that it would include an office used primarily for business purposes, but it is not entirely clear if it would include the multi-purpose type of office that complainant has. In this connection, it is a general rule of tariff interpretation that any ambiguities that exist in a tariff will be resolved in favor of the ratepayer.

Furthermore, it is the duty of the responsible employees of defendant to carefully check situations where an office is located in a private residence to assure that telephone installations comply with all applicable rules and regulations. Complainant, as stated above, has had the same telephone arrangement in his office for a long period of time. All of his papers relating to personal matters are in his office. As he stated, it would be extremely inconvenient, because of this, for him to go to another part of the house to make an outgoing call on a private residence line. Also, he pointed out that he is at his office from very early in the morning until very late at night and that it would disturb his family if he were to make any calls from the telephones in other parts of his house during these early and late periods. Even if we had not determined that there are certain ambiguities in defendant's tariff rules, the evidence and equity do not support defendant's attempt to now rearrange the telephone system

its employees installed in complainant's office and on which he has relied for a substantial period of time.

Defendant will be directed to review with representatives of the Commission staff the tariff rules in issue to fully determine the extent of ambiguities and what clarification is needed. It should make arrangements for the filing of any necessary revisions to these rules to eliminate ambiguity.

Our decision herein is based on the specific facts before us and is in no way to be construed as a general policy determination. Defendant will be directed to periodically investigate complainant's service to determine if there is any abuse by him, and if it finds evidence of such, it should take appropriate action.

Findings

1. Complainant's home is located at 3684 Happy Valley Road, Lafayette. One room of the building is used by complainant as his office and an adjoining area is his file room. The balance of the building is the residence of complainant and his family. Among other things, there are two desks in the office, one for complainant and one for his part-time secretary. Complainant has no other office.

2. Complainant is a customer of defendant. For a substantial period of time his home has been served by two business telephone lines and two private residence telephone lines. There are two telephone instruments in the office, one on each desk, and there are three telephone sets at various locations in the residence area of the building. All of the four lines terminate at each of the five telephone sets which are all equipped with buttons.

3. Complainant subscribes to ORTS for the area in San Francisco where his mother resides for one of his private residence lines and to this service for the area of Palo Alto in which his sister lives for his other private residence line.

4. Complainant is a management consultant and he also writes a newspaper column and publishes a national newsletter entitled "Retailing Today". All of these business activities are conducted

from his office. However, complainant also uses the office for his personal and other non-business matters, and these activities account for a substantial amount of the time he spends in the office.

5. The private residence lines in complainant's office may be used for both incoming and outgoing calls. Defendant was not aware of the situation until it checked his service after he had made inquiries to it and filed an informal complaint with the Commission staff regarding a directory listing and related matters. Defendant thereupon advised complainant that, in accordance with its applicable tariff rules, it would be necessary to modify the telephone sets in his office to prevent outgoing calls on the private residence lines connected to them, and complainant has objected to any such restriction.

6. The tariff rules to which defendant referred are Rule No. 2(D)1 and 3 and Rule No. 22 of its Schedule Cal. PUC No. 36-T. While these rules provide in part that a private residence line extension installed on a business premises must be equipped to prevent outgoing calls and that business rates apply at offices, the terms business premises and office are not further defined. These terms would obviously include the typical business office used primarily for business purposes. However, it is not entirely clear if they would include the multi-purpose home office of complainant which has substantial usage for other than business purposes.

7. Complainant has made a conscientious effort to avoid any outgoing business calls from his office on the private residence lines serving his building and to restrict such calls to personal and other non-business matters. Any errors he has made in this regard have been unintentional and relatively few in number, and are certainly not sufficient to establish that complainant is abusing the telephone arrangement he now has.

8. Complainant has relied on the telephone system he now has for a long period of time and, in light of the tariff ambiguities referred to above, it would be unjust to authorize defendant, at this time, to make any adjustments in this system.

9. It has not been established on this evidentiary record that defendant's attempts to modify complainant's telephone service were motivated by vindictive reasons.

Conclusions

1. Complainant's request that the present telephone arrangement in the office in his home not be modified should be granted.

2. Defendant should be directed to review with representatives of the Commission staff the tariff rules in issue to determine what ambiguities may exist and what clarifications may be needed in them and to make arrangements for the filing of any necessary revisions to these rules.

3. The order which follows is based on the specific facts before us and is not a policy determination for the future.

ORDER

IT IS ORDERED that:

1. Robert Kahn's request that no modifications be made in present telephone arrangement in the office in his home at 3684 Happy Valley Road, Lafayette, is granted.

2. The Pacific Telephone and Telegraph Company is directed to review with representatives of the Commission staff Rules 2 and 22 of Schedule Cal. PUC No. 36-T and any related rules therein to determine what ambiguities may exist and what clarifications may be needed in them and to make arrangements for the filing of any necessary revisions in these rules.

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

Dated at San Francisco, California, this 3rd day of OCTOBER, 1978.

Robert Bateman

*I dissent.
William Symons, Jr.*

*John P. Sturgeon
Richard W. Howell
Clair J. Daniels*