

ORIGINAL

Decision No. 89460 OCT 3 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LOUIS R. LAURIA, representing
Lauria's Telephone Answering
Service, Inc.,

Complainant,

vs.

Pacific Telephone and Telegraph
Company,

Defendant.

(ECP)
Case No. 10393
(Filed August 15, 1977)

Louis R. Lauria, for himself, complainant.
Ed Neal, for The Pacific Telephone and
Telegraph Company, defendant.

O P I N I O N

Louis R. Lauria (Lauria), doing business as Lauria's Telephone Answering Service, Inc., complains that numerous service difficulties with equipment furnished him by defendant The Pacific Telephone and Telegraph Company have resulted in excessive service interruptions to his customers. Lauria requests that the Commission award a sum of money which will be a reasonable rebate which at least partly compensates him for the numerous service interruptions.

Defendant denies the substantive allegations of the complaint and further alleges as an affirmative defense that the statute of limitations period of two years in Public Utilities Code Section 735 applies to the allegations of the complaint.

A second affirmative defense claims that the complaint fails to state a cause of action.

The second affirmative defense has no merit and will not be further discussed. The first affirmative defense is a bar to any claim for damages for actions or omissions of the defendant occurring

prior to August 15, 1975. However, we must still consider the merits of this complaint for the period from August 15, 1975 to the date of hearing, which was held in Los Angeles before Administrative Law Judge Meaney on December 9, 1977.^{1/}

Mr. Lauria owns and operates a comparatively large telephone answering service in the Hollywood area. It is equipped with six concentrator identifier (CI) systems with a combined capacity for 600 lines for clients.^{2/} A CI requires a 100-line switchboard. Mr. Lauria's monthly bill for the CIs, the switchboards, the talking paths, and mileage charges averages about \$3,500 a month. Lauria stated he averages approximately 40,000 message units per month.

Lauria's answering service has been at its present location since 1941. The CIs were installed on various dates in the 1950s as his business grew. According to Lauria, the CIs worked properly until 1972 or 1973 when defendant converted them from four to six talking paths. Since then the company has been unable to rectify service problems with them, according to Lauria.

From the point of view of Lauria's customers, their complaint is, "You are not picking up my line and I'm losing message units". Lauria estimates that over the last several years he has lost approximately \$50,000 of billings when customers quit his service for a competitor because of failure to record messages.

^{1/} This matter was filed as an expedited complaint. However, the detail of the evidence and the necessity for late-filed material made it impossible to process the matter within the time frame normally provided for expedited complaints. While this is a statement based on hindsight, we consider a complaint with this much detailed evidence more properly filed as a regular complaint. The ALJ took detailed notes of the testimony entered at the hearing and transcribed these notes into a Summary of Testimony one day later. We rely on this Summary of Testimony as well as the exhibit material in reaching our determination.

^{2/} A CI is a device which, in effect, takes a large number of lines to an answering service and concentrates them into a relatively few number of trunks, and performs the reverse function for outgoing lines. It contains facilities to identify the lines after concentration takes place.

(Lauria did not attempt to document this because he is not seeking general damages for loss of business, and he merely wished to place this estimate in the record to illustrate the extent of the problem.)

Lauria appeared in our most recent investigations of defendant's rate and services (Application No. 55492 and Case No. 10001) at the hearing in San Francisco on November 4, 1976 at which time Lauria and many other telephone answering service owners and managers presented their problems. At that time he introduced Exhibit 246 in that proceeding, which was reintroduced here as Exhibit 1. This exhibit is a breakdown of service repair calls on his six CIs, showing the repair calls necessary for the CIs on a monthly basis from 1973 through 1975. In that three-year period there was a total of 580 line interruptions.

Lauria stated that the problem continues at the same level. For instance, he said, on November 30, 1977 one board was dead and then the whole board lit up. Usually, according to Lauria, it takes a matter of hours to restore service to non-functioning lines; however, there have been occasional instances when two weeks have been required. One line was continually out of order intermittently for over two to three years. Finally the customer discontinued his service.

In addition to a rebate of rates, Lauria recommends that defendant install a new type of CI manufactured by the Delphi Corporation which has a capacity of 640 lines. Because of this capacity and the expense connected with it, the installation must be shared by several answering services. Lauria said, however, that in the Wilshire-Beverly Hills-West Los Angeles area there is the highest concentration of answering services in the State and therefore it was his opinion that defendant should investigate installing such a CI in that general area.

While the Delphi Corporation CI is a tariffed service (see late-filed Exhibit 7, which is defendant's Advice Letter

No. 12423 dated June 23, 1977), it is unclear whether defendant's policy is to purchase the CI itself, place it in rate base and charge for it in rates, or to require that several answering services in the same general area should share the expense of its purchase, with defendant permitting it to be installed in an appropriate location at a central office and maintaining it for a fee.

Defendant's witness, Dudley G. Stubbs, testified that his investigation showed that Lauria's experience with lines going out was no more than usual for equipment of this kind. Stubbs introduced Exhibit 6, defendant's letter to Lauria summarizing its investigation. According to the letter, the trouble incidence for the period July through December 1975 associated with the CIs was 14. In the same period 15 troubles were associated with the telephone answering service switchboards and 68 troubles were of a miscellaneous nature, such as receiver off the hook, replacement of head sets, and other troubles reported in which the equipment was found working properly when the repair person visited Lauria's premises. The letter further states:

- "2. No troubles were identified that can be isolated to inadequacies of design or manufacture of the Concentrator/Identifier equipment. A search of our records indicates that no Engineering Complaints have been registered in recent years. The absence of formal Engineering Complaints is, in itself, a signal that the origin of C/I troubles is attributable to human factors or use factors rather than design criteria."

The letter continues with an analysis of certain statistics designed to show that when Lauria's service is compared with other defendant locations and comparable locations in other Bell System companies, Lauria's trouble rate was not excessive.

Regarding the Delphi Corporation concentrator, Stubbs testified that there is one installed in San Francisco which

"functions very well". The company representative at the hearing, Mr. Neal, commented that not all of the options available for the Delphi Corporation concentrator have been completely tested and some are not available yet. The "basic hardware" was installed about a year ago, according to Mr. Neal. At that time, he said, what was available was the equipment necessary to perform the same basic functions as the presently installed CIs. Since that time, there is new software developed which will perform such functions as computer voice answer back, video display of the number called, and end-of-month computerized billing for the clients of the answering services. Mr. Neal pointed out that even with a Delphi Corporation concentrator there would still be some repair service reports if the Delphi Corporation concentrator is not installed in the central office.

In an effort to resolve the differences between Lauria and defendant, the ALJ directed the parties to engage in discussions regarding possible alternate equipment configurations to serve Lauria's answering service. The result of this order was late-filed Exhibit 8 (February 17, 1978) and late-filed Exhibit 9 (March 13, 1978). Exhibit 8 is a formal proposal made to Lauria concerning system configuration alternatives. Exhibit 9 contains a summary of the discussions between Lauria and defendant. Exhibit 8 will not be reviewed here because it is beyond the scope of this complaint to order defendant to furnish Lauria with a different system configuration. In any event, Exhibit 9 indicates that no meeting of the minds was reached.

Exhibit 9 takes issue with Mr. Lauria's assertion that the Delphi Corporation concentrator is necessarily the answer to his problems. The exhibit points out that a Delphi Corporation concentrator may technically be shared by up to four answering bureaus but the sharing of the costs between four separate bureaus is recognized as a difficult problem to overcome. The company's

assessment of the Wilshire area of the Los Angeles Exchange indicates that the company's opinion is not economically justifiable. "Each of the four bureaus would be required to have their own automated system at high capital investment", the exhibit comments.

Defendant also introduced its tariffs on the subject of monetary allowances for interruptions of service (Exhibit 5, consisting of Schedule Cal PUC No. 36-T Original Sheet 57-A). It is apparently defendant's contention that since this tariff requires allowance only for interruptions in exchange telephone service of 24 hours or more, and since Lauria's evidence does not establish how many of the interruptions were for such a period, that Mr. Lauria is not entitled to any relief.

Discussion

We believe that based on a preponderance of the evidence, Lauria is entitled to some reparation.

While Exhibit 1 illustrates the service interruptions for the period beginning January 1973 and ending December 1975, the only reasonable inference to be drawn from the evidence is that his service difficulties continued at this rate through the period of time which we may consider (that is, from August 15, 1975 to and including the date of hearing). Exhibit 1 indicates that for the three-year period illustrated, a total of 580 service calls were necessary, or an average of 193 service calls per year.

We believe the evidence in this case demonstrates consistent unreliability of the equipment installed for Mr. Lauria's operation, and an apparent inability of defendant to repair or modify the equipment so that it will function at a reasonable level of efficiency.

We will award Mr. Lauria a \$750 allowance against his bill for the service interruptions from August 15, 1975 to and including December 9, 1977.

Findings and Conclusions

1. Lauria is the proprietor of Lauria's Answering Service, Inc., 6087 Sunset Boulevard, Los Angeles.
2. The answering service is served by defendant.
3. Public Utilities Code Section 735 bars an award of reparations for alleged service inadequacies prior to August 15, 1975.
4. From August 15, 1975 to December 9, 1977, Lauria's CI equipment, supplied by defendant, functioned unreliably and inadequately for the purpose intended.
5. Defendant's efforts to repair and maintain Lauria's equipment were inadequate.
6. Exhibit 1, although it does not cover the period in Finding 3, illustrates a typical line outage pattern for Lauria. Most line interruptions were for less than 24 hours, although a few were for as long as two weeks.
7. Defendant's tariffs (Exhibit 5) cannot be interpreted, in the case of the special facts of this case to bar an award of reparations for service inadequacies.
8. Lauria is entitled to an award of \$750.

O R D E R

IT IS ORDERED that The Pacific Telephone and Telegraph Company shall pay to Louis R. Lauria, or deduct from his bill, the amount of \$750 within thirty days of the effective date of this order.

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
 President

William J. Gerson
 Vice President

Richard D. Howell
 Commissioner

Clive J. Deibel
 Commissioner