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ORIGINAL

OCT 17 1978

Decision No. 89522

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILSON REID OGG, an individual, )  
 Complainant, )  
 vs )  
 PACIFIC TELEPHONE AND TELEGRAPH )  
 COMPANY, a corporation, )  
 Defendant. )

Case No. 10462  
(Filed November 10, 1977)

William Reid Ogg, Attorney at Law, for himself,  
 complainant.  
Mrs. Norah S. Freitas, Attorney at Law, for  
 The Pacific Telephone and Telegraph  
 Company, defendant.

O P I N I O N

The complaint of Wilson Reid Ogg (complainant) against The Pacific Telephone and Telegraph Company (Pacific) was heard May 22, 1978, before Administrative Law Judge Robert T. Baer and submitted subject to the receipt of certain late-filed exhibits, which have now been received. The matter is ready for decision.

The facts are not in dispute. In June 1977 complainant placed an order with Pacific for certain work to be done at his residence in Berkeley. Pacific's installers performed the work on June 16 and 17, 1977. The work consisted of installing two modular jacks on preexisting wiring on line 845-4463 and installing five modular jacks on preexisting wiring on line 845-7155. For this service complainant was billed \$141. Pacific later adjusted the

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billing by a credit of \$58, making the total billed to complainant \$83. The components of the billing are as follows:

## LINE 845-4463

Service order charge	\$10
Interior wiring charge (2 @ \$7)	14
Station handling charge (2 @ \$4)	8
	<u>\$32</u>

## LINE 845-7155

Service order charge	\$10
Interior wiring charge (3 @ \$7)	21
Station handling charge (5 @ \$4)	20
	<u>\$51</u>

Total	\$83
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Portions of each bill are disputed by complainant. First, he alleges that only one service order charge is payable since all work was encompassed within a single service order and was performed at a single premise. Second, he alleges that the interior wiring charges were inappropriate since "all work done consisted of connecting phones or modular jacks to previously wired terminal blocks" and that "all interior work constituted premises station handling, as defined by Schedule Cal. P.U.C. No. 28-T." Thus, the disputed charges are:

Service order charge	\$10
Interior wiring charge (5 @ \$7)	35
Total	<u>\$45</u>

Discussion

Complainant argues that on June 13, 1977, he placed a single telephone call to Pacific to order work done on two lines at his residence. He contends that only one service order charge should

apply under these circumstances. The relevant tariff provision is Special Condition 5 of Schedule Cal. P.U.C. No. 28-T, Original Sheet 31, which states:

"One service order charge applies to each service order issued for each customer request for service and work as shown in charges above. Only one service order charge applies for all items included on that service order."

In the instant case two service orders were issued by Pacific, No. 112316 pertaining to 845-4463 and No. 112315 pertaining to 845-7155. Copies of these service orders in both draft and typewritten form, are in evidence as Exhibits 3-A and 3-B respectively. Accordingly, it is proper for Pacific to assess one service order charge of \$10 for each service order issued, notwithstanding that the two orders were placed during a single telephone call, that they pertained to a single subscriber at a single residence, and that the work was performed by a single installer during a single visit to that residence. As Exhibit 5 shows, each service order is separately taken, prepared, typed, processed, and billed; and the service order charge is intended to defray the costs of these operations.<sup>1/</sup>

Complainant also argues that interior wiring charges are inappropriate since no interior wiring work was done on June 15 and 16, 1977, when the installation work was accomplished. Pacific argues that the interior wiring charges reflect wiring work done at complainant's request in 1970, when complainant was remodeling his residence.

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<sup>1/</sup> "2. Multi-element service charges include four basic elements:  
a. Service Order [-] Service order charges apply to the taking and processing of a customer's request for the establishment of service and for moves, changes, or additions to existing service.  
. . ." (SCHEDULE CAL. P.U.C. No. 28-T, 1st Revised Sheet 30.)

At that time concealed wiring was installed by Pacific but no charges have ever been assessed as to that wiring work. It was not until June 15 and 16, 1977, that such wiring was activated.

The relevant tariff provisions are as follows:

"CHARGES

"(1) Elements for new and additional service, move and changes and in place connections"

\* \* \*

"(c) Premises Interior Wiring

Initial or subsequent wiring and/or termination of the wiring for each station or other terminal equipment or facility . . . [S]7.00"

(SCHEDULE CAL. P.U.C. No. 28-T, 1st Revised Sheet 29; Exhibit 1.)

"SPECIAL CONDITIONS

"2. Multi-element service charges include four basic elements:"

\* \* \*

"b. Premises Interior Wiring

Premises interior wiring charges apply to interior wiring work on the customer's premises. Premises interior wiring consists of exposed or concealed, or a combination of exposed and concealed wiring. It includes the placement and/or termination of new or additional interior wiring and/or the termination of previously placed wiring for each station or other terminal equipment or facility. It also includes the relocation of existing interior wiring and/or termination of the wiring in connection with connecting, moving, rearranging, or changing a telephone station or other terminal equipment or facility."

(SCHEDULE CAL. P.U.C. No. 28-T, 1st Revised Sheet 30.)<sup>2/</sup>

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<sup>2/</sup> The Commission takes official notice of the contents of this tariff sheet.

The foregoing tariff provision, particularly the words "includes...termination<sup>3/</sup> of previously placed wiring for each station or other terminal equipment or facility", is dispositive of the issue. Pacific's witness, Herbert J. Snegosky, a repair supervisor, testified that when he arrived at complainant's residence the installer was in the process of "terminating one jack...by a stairway on the third floor." (Tr. 98) Thus, when a customer's premise has been prewired, it is appropriate to assess a premises interior wiring charge when that wiring is terminated, or, in other words, activated by the installation of jacks (terminals). If this were not the case, the complainant would pay nothing for wiring and the labor costs and capital devoted to prewiring his residence would be a burden on Pacific's other ratepayers.

Having concluded that the service order charges and premises interior wiring charges were properly assessed, we must now deal with complainant's various procedural issues. Complainant first contends that Pacific's answer was not properly verified and that therefore the Commission lacks jurisdiction to hear the complaint on the merits. This motion was first made at the beginning of the hearing in an oral motion to dismiss, which was taken under submission.

It is obvious from a comparison of the language of the Commission's verification form (Rule No. 88, Form No. 1) and of Pacific's verification form (See Appendix A) that Pacific's verification is not in strict conformity to Rule No. 88. However, the Commission does not require verbatim adherence to its forms. Rule No. 88 states, in part:

"The following skeleton forms of applications, complaint, answer and protest are merely illustrative as to general form."

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<sup>3/</sup> "Termination" is a term of art referring to affixation of wiring to "terminals" (a term which includes, but is not limited to, wall jacks).

Pacific's verification is in substantial conformity with the Commission's suggested form. No more is necessary. Since no violation of the Rules of Practice and Procedure has been demonstrated, it is not necessary to discuss or decide the jurisdictional issue.

Complainant also contends that Pacific is bound by the estimates of charges made over the telephone by its service representative. He argues that he has an oral contract with Pacific, which Pacific breaches when it assesses to him more than the charges estimated by the service representative. The terms of the contract between Pacific and complainant are the tariff provisions themselves. Pacific is required to apply its tariff rules and charges uniformly. Exceptions can be made only with the approval of the Commission. Neither the employees nor the officers of Pacific have authority to modify the tariffs. Their statements regarding the effect of the tariffs, even if they prove to be erroneous, do not work an amendment to the tariffs nor do they result in a contract between Pacific and its customer.

At the hearing the complainant moved to strike various portions of Pacific's answer. The Rules of Practice and Procedure do not provide for such a procedural device. In any event, any such motion ought to have been directed to the Commission well in advance of hearing. It is essentially a matter to be handled during the pleading phase. The complaint has now been heard and decided on the merits. Complainant has been afforded due process of law. He does not cite any statute or rule which would require us to reach a different conclusion based upon a procedural or jurisdictional defect. The motions to strike should be denied.

#### Findings and Conclusions

1. Complainant placed two service orders; and thus, two service order charges are appropriate.

2. Pacific performed premises interior wiring, as defined by Pacific's tariffs, in complainant's residence; and thus, the disputed premises interior wiring charges were properly assessed.

3. The answer was properly verified. ✓

4. The representations of Pacific's employees to the contrary notwithstanding Pacific's tariffs constitute the terms of Pacific's contract with its customers.

5. Complainant's motion to strike various allegations of the answer should be denied. |

O R D E R

IT IS ORDERED that:

1. The relief requested in the complaint of Wilson Reid Ogg is hereby denied.

2. The motions to strike and to dismiss for lack of jurisdiction are hereby denied.

3. Deposits by complainant in the sum of \$562.04,<sup>4/</sup> and any other sums deposited with the Commission by complainant with respect

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<sup>4/</sup> The sum of \$562.04 is calculated as of August 23, 1978, the date of complainant's last deposit, and includes two deposits (\$57.81 and \$161.99) made prior to the filing of the complaint.

to this complaint, shall be disbursed to The Pacific Telephone and Telegraph Company.

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

Dated at San Francisco, California, this 17<sup>th</sup> day of OCTOBER, 1978.

William S. Grouse, Jr. President  
James L. Strayer  
Richard W. Howell  
Alvin T. Wilrich Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.



APPENDIX A

Rule No. 88, Form No. 1

VERIFICATION  
(See Rules 5 and 6)

(Where Applicant is a Corporation)

I am an officer of the applicant corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of city)

\_\_\_\_\_  
(Signature and Title of Corporate Officer)

Pacific's Verification

L. R. Waters, under penalty of perjury, certifies as follows:

I am an officer, to wit, Vice President of The Pacific Telephone and Telegraph Company, a corporation, and make this verification for and on behalf of said corporation. I have read the foregoing "Answer to Complaint" and know the contents thereof, and the facts therein stated are true to the best of my knowledge, information, and belief.

Dated at San Francisco, California, December 12, 1977.

L. R. WATERS