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Decision No. 89524 OCT 17 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Edward J. Vagin, dba Yosemite-
Sierra Mtn. Tours,)
Complainant,)
vs.)
Western Union Telegraph Co.,)
Defendant.)

(ECP)
Case No. 10545
(Filed April 18, 1978)

Edward J. Vagin, dba Yosemite-Sierra
Mountain Tours, for himself, complainant.
David Shimmel, for The Western Union
Telegraph Co., defendant.

O P I N I O N

Complainant Edward J. Vagin, dba Yosemite-Sierra Mountain Tours, (complainant) complains that defendant The Western Union Telegraph Co. (defendant) is wrongfully attempting to collect from complainant a total of \$270.57 for service charges and line access charges covering a period of five months following October 6, 1975, the date complainant allegedly canceled defendant's service. Defendant claims the assailed charges are proper in that complainant gave defendant no notification of termination and that it was not until March 6, 1976 that defendant terminated its service to complainant for failure of complainant to pay defendant's billings. The initial hearing date was postponed at the request of complainant. A hearing was held before Administrative Law Judge Pilling on September 25, 1978 in San Francisco.

Complainant, who resides at Wawona Village, Yosemite, California, purchased a TWX machine from defendant for \$3,000 in 1974 for use in his business and at the same time became a subscriber to defendant's TWX service. Complainant stated that no one from defendant came to show him how to use the TWX machine and when they

finally sent him a book of instructions on how to use the machine it turned out to be the wrong book. Finally, the correct book of instructions was secured by him and, with the help of the book and defendant's Reno operator, complainant taught himself how to use the machine, but not until three months had elapsed after the TWX had been hooked up. Complainant made minimal use of the machine thereafter, running up only \$131 worth of message charges between August 6, 1974 and February 6, 1976. Complainant became dissatisfied with defendant's handling of his account. In one instance he was improperly charged access line charges based on the longer Yosemite-Fresno mileage rather than on the shorter Yosemite-Modesto mileage, but was given credit for the difference in mileage when he called the matter to defendant's attention. He even received bills for service charges covering periods subsequent to March 6, 1976, the date defendant contends it cut off its service to complainant, but these billings were later canceled. Much correspondence passed between complainant and defendant relative to complainant's alleged dissatisfactions and inquiries. At the hearing complainant produced a copy of a letter dated October 6, 1975 which he wrote to defendant the sum and substance of which, as stated by complainant at the hearing, was that he told defendant that he "wasn't going to pay his bills anymore." Complainant stated he considered this letter a notice of cancellation of service. In the five months subsequent to October 6, 1975, complainant sent 11 or 12 messages out from his machine in defendant's service for which complainant has paid the message charges.

Defendant stated that complainant was invited to attend instruction classes on the TWX machine when complainant bought the machine, but complainant had stated that he was too busy to attend the classes. Defendant contends that complainant's letter to it dated October 6, 1975 is not a notice of cancellation of service.

Even if the Commission were of the opinion, which we are not, that the October 6, 1975 letter from complainant constituted a notification for termination of service, complainant's active use of the service in sending out messages off and on from October 6, 1975 up until March 6, 1976 resulted in his being liable for the payment of all tariff charges covering such service up until March 6, 1976.

ORDER

IT IS ORDERED that the relief requested in the complaint in Case No. 10545 is denied.

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

Dated at San Francisco, California, this 17th day of OCTOBER, 1978.

William J. Lyons ^{President}
Richard J. Sturgeon
Richard W. Storch
Clive J. Deibel
Commissioners

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