

ORIGINAL

Decision No. 89665 · NOV 28 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
COMMUNICORP,

Complainant,

vs.

GENERAL TELEPHONE COMPANY
OF CALIFORNIA,

Defendant.

Case No. 10556
(Filed April 26, 1978)

Benjamin H. Berkley, Attorney at Law,
for complainant.
Richard E. Potter, Attorney at Law,
for defendant.

O P I N I O N

The complainant, Communicorp, a California corporation, seeks an order requiring the defendant, General Telephone Company of California, to provide satisfactory telephone service immediately and that it be compensated a minimum of \$2,500 as remuneration, restitution, and/or damages for poor telephone service, nonusable telephone service, dead telephone lines, loss of potential clients due to their inability to complete a telephone call to the complainant's place of business, and/or getting a disconnected number recording when dialing the complainant's telephone number, and the inability of the defendant to correct the complainant's telephone service over a four-year period.

The defendant filed a motion to dismiss and a motion to strike along with its answer to complaint. In its motion to dismiss, the defendant argues that the Commission lacks jurisdiction to award damages (Madsen v PT&T Co. (1972 74 CPUC 153, 158, Decision No. 80450, Case No. 9272). Secondly, although

the defendant acknowledges the Commission's authority to award reparation of service charges, the complaint alleges no facts showing a right to such compensation. Alternatively, the defendant moved to strike the contents of pages 1 and 2 of the attachment to the complaint in their entirety and the first, second, third, and fifth full paragraphs of page 3 of the attachment to the complaint on the grounds that all but current service complaints are irrelevant and that allegations of actual service interruptions are noncompensable, other than pro rata credits, against service charges for periods of service interruptions exceeding 24 hours. Finally, in its answer, the defendant admits that the complainant has been a customer of the defendant since 1974; that the complainant has made a series of service complaints of which some were confirmed; and that the defendant has responded to such complaints in a reasonable manner in accordance with its established procedures, tendering all warranted credits against service charges to the complainant. The defendant sets forth three affirmative defenses; namely, that the Commission lacks subject matter jurisdiction of the complainant's request for damages; that the complainant's claim for damages, reparations, or other compensation for all occurrences prior to April 26, 1976 is barred by the provisions of Section 735 of the Public Utilities Code; and that all credits due and allowable to the complainant under the defendant's tariff Rule 26 have been made or tendered. In all other respects, the defendant denies each and every allegation of the complaint.

A hearing was held in Los Angeles on July 27, 1978 before Administrative Law Judge William A. Turkish, pursuant to Section 1702 of the Public Utilities Code, and the matter was submitted on August 2, 1978 upon the filing of the transcript.

Mr. Gene Bramson, president of Communicorp, the complainant in this action, testified on its behalf. Mr. Maxwell Hoiguin, the defendant's facilities manager, and Mr. Herbert McDaniel, the defendant's maintenance supervisor of the Mar Vista central office, testified on its behalf. Also called to testify by both the complainant and the defendant was Mr. Edward R. Delcoure, the defendant's former service manager of the complainant's telephone service area.

The defendant raised the statute of limitations under Section 735 of the Public Utilities Code with respect to any reparations sought by the complainant for the period prior to April 26, 1976. Section 735 reads in part:

" . . . All complaints for damages resulting from a violation of any of the provisions of this part, except Sections 494 and 532, shall either be filed with the commission, or where concurrent jurisdiction of the cause of action is vested by the Constitution and laws of this State in the courts, in any court of competent jurisdiction, within two years from the time the cause of action accrues, and not after."

The action herein does not relate to either Sections 494 or 532 and thus the statute of limitations is not applicable for any action by the defendant occurring during the two years prior to April 26, 1978, the date of filing of the complaint herein. ✓

Complainant first subscribed to telephone service from defendant in 1974 at which time he had only one line. A second line was added in 1975. At the time of the hearing complainant received service through nine separate instruments, each with three lines on a rotary system.

The president of Communicorp testified to experiencing a great number of telephone problems with the telephones located at his place of business since installation in 1974. Among the frequent problems experienced were: continuous dead lines when attempting to call out; unable to break the dial tone when calling out; unable to complete some calls because the system reverts back to dial tone while dialing or the line is dead after completing the dialing of the number; unable to get a

dial tone when the telephone is picked up; callers dialing the the complainant's number and receiving a recording indicating the complainant's number was disconnected or no longer in service; callers indicating they could hear the complainant's telephone ringing but not being answered; information operators not having the complainant's telephone number; and cross talk on the complainant's telephone lines. The witness stated that these problems have persisted since 1974, and that although the defendant has corrected the problems as they occur, they resume again a few days later. Overall, the complainant's witness has noticed some improvement in service since 1974 but he testified that he still experiences some of these same types of problems currently and that the service is still deemed poor. The witness related that it sometimes took days before a repairman would come out and repair the telephones after notifying the defendant's repair service. Following his complaint to the Public Utilities Commission he would receive many visits from the defendant's employees who called to make sure his telephone problems were being taken care of. The complainant further testified that he feels his company has lost considerable business from potential clients who were referred to it by its present clients, but who were unable to contact the complainant because of the telephone problems. Other than the generalized complaints enumerated above by the witness, no specificity as to actual times the telephones were out of service or of specific dates telephone problems were encountered was presented for the record. The witness testified that the \$2,500 figure he seeks by way of damages and/or remuneration was based on what he thought to be the minimum daily service expense of \$2.50 times 1,000 days.

Mr. Delcoure testified that he first became aware of the complainant's telephone problems in August 1977 following an informal complaint made by the complainant to the Public

Utilities Commission. The witness testified that he met with Communicorp's president to personally discuss the type of problems being encountered, and that as a result of that meeting the defendant agreed to do continual tests of the complainant's telephone system in order to try to resolve the problems encountered. Among the procedures agreed upon was that instead of dialing the repair clerk number when problems were encountered, the complainant was to call the defendant's witness directly so that the defendant's response could be expedited. The witness testified further that of all the calls received by him from the complainant, approximately 20 to 25 percent of such calls would result in identifying and correcting some problem. Investigation of the remaining 75 to 80 percent of calls would result in finding nothing wrong. The witness stated that he would receive from two to as many as 10 trouble reports a month from the complainant.

Exhibit 1 (Customer Contact Summary) offered into evidence by the defendant indicates that the defendant's management personnel were in direct contact with the complainant's president from August through October 1975 and from August 3 through August 12, 1976. According to the Customer Contact Summary, which is a narrative summary of all contacts with the complainant taken from the defendant's records, and which was not disputed by the complainant, the defendant attempted to respond to all problems encountered by the complainant, from changing equipment where there was any indication of malfunction which could be causing problems to more frequent testing of the complainant's lines and central office equipment servicing the complainant's lines. On many occasions, the defendant could find no trouble during its testing. The summary indicates a pattern of complaints of service by the complainant in various intervals from 1975 through 1978. Likewise, it indicates that

the defendant responded to all complaints, correcting those instances where a problem was found. There is evidence that on several occasions the complainant expressed satisfaction with the telephone service and on other occasions, complete dissatisfaction. From December 12 through December 16, 1977 a total of 1,434 test calls were placed to various central office areas frequently called by the complainant through a dial line analyzer, and trouble was found on six occasions. From December 5, 1977 through February 17, 1978, 598 daily tests were conducted on central office equipment servicing complaint lines, and trouble on 18 occasions were encountered and corrected. The summary also indicates that based on the trouble history from August 1976 through December 1977, and desiring to give the complainant the benefit of the doubt, the defendant estimated there were possibly 25 out-of-service reports. Based on that estimate and on the complainant's \$65 basic monthly service rate the defendant offered the complainant an adjustment of \$54 which was refused by the complainant.

The defendant's Exhibit 3 (Trouble Report Summary), indicates the number of trouble reports received from the complainant for which a trouble ticket was prepared for the years 1976, 1977, and 1978 to the date of hearing. These reports show a total of 73 trouble reports received from the complainant in 1976, 42 received in 1977, and 26 received in 1978. In reviewing the nature of each trouble report, the defendant's witness testified that he first considered those which possibly could result in the complainant's telephones being out of service. In 1976, 16 possibilities existed which could have resulted in the complainant's telephone being out of service for any period of time and of those 16, one possibility existed which could have resulted in service being out over 24 hours. Trouble was found in 15 out of the 16 instances and in evaluating the

trouble found and the time involved, it was found that only seven instances occurred which could have resulted in the complainant experiencing an out-of-service condition and none which actually lasted 24 hours. In 1977, the complainant reported 17 instances of trouble which the defendant's witness initially considered could have possibly resulted in the complainant's telephones being out of service, with two possibilities that it existed for at least 24 hours. Trouble was located and corrected in 16 of the 17 instances, and from the trouble discovered and corrected it was found that only eight reports could actually have resulted in an out-of-service condition for less than 24 hours and only one situation where it could have lasted 24 hours. In 1978, of the 26 reports of trouble, eight were initially considered as possibly resulting in an out-of-service condition and none possibly lasting as long as 24 hours. The trouble was found and corrected in 10 instances, only four of which could actually have resulted in an out-of-service condition for less than 24 hours, and none were found which could actually have lasted for 24 hours.

Mr. Herbert McDaniel testified as to the various testing done with respect to the defendant's line equipment which is tied to the complainant's lines, and Exhibit 3 indicates that the dial tone speed (measuring the speed at which dial tones are received when picking up a telephone) in the central office servicing the complainant's telephone lines exceeds the required Public Utilities Commission standards. The exhibit also shows that the dial service (which measures the total calls completed without encountering an equipment malfunction or all paths busy condition) was lower than the company standard of 98.2 percent in the first three months of 1978 but exceeded the standard in the next three months.

The defendant's tariff Rule 26 relates to limitation of liability. Except for errors and omissions caused by willful misconduct, fraudulent conduct, violations of law, or gross negligence, it provides that the liability of the utility for damages arising out of mistakes, omissions, interruptions, delays, errors, or defects in any of the services or facilities furnished by the utility shall in no event exceed an amount equal to the pro rata charges to the customer for the period during which the services or facilities are affected by the mistake, omission, interruption, delay, etc. Where there are interruptions in service for 24 hours or more, not due to the conduct of the customer, an amount equal to the pro rata charges for each 24-hour period, or major or fraction thereof after the initial period of interruption, shall be allowed as a credit.

Discussion

The complainant seeks to have the defendant provide satisfactory service and to be ordered to pay the complainant the sum of \$2,500 for damages and/or remuneration or restitution due to the telephone service problems encountered. There is no doubt that the complainant has experienced problems with his telephone service over the years. There is, likewise, no doubt that the defendant has responded to all complaints in a reasonable manner and corrected those problems which it was able to find through its testing procedures. After reviewing the testimony and the evidence, we are also convinced that many of the problems encountered by the complainant were no more than minimal problems encountered daily by many telephone subscribers and not unique to the complainant, such as getting a busy path signal while dialing, or no immediate dial tone which can be corrected by merely breaking the connection and redialing. Satisfactory service to the subscribers by utility companies is a requirement

of this Commission. Our general orders set forth minimum standards of service consistent with the realities of service demands and the ability of the utility to reasonably meet such demands with the equipment available. Given the many judgment values possible of what constitutes "satisfactory service", we recognize that our standards may not be deemed sufficient by some. However, we deem the standards set forth in our general orders as being reasonable. Be that as it may, we will order the defendant to continue its efforts to improve its service to the complainant to the greatest extent possible.

With respect to the complainant's request for payment of damages in the amount of \$2,500, the complaint is devoid of the basis under which such amount was determined. The complainant's witness estimated its minimum daily service expense to be \$2.50 per day and then multiplied this amount by 1,000 days (of unsatisfactory service) to arrive at the \$2,500 amount. In his testimony, the complainant's president also alluded to lost business as a result of the poor telephone service. The Commission has long held that it does not have jurisdiction to award damages for alleged loss of business or faulty telephone service. If the complainant does not get adequate service from the telephone facilities furnished to him by the defendant, the Commission only has jurisdiction to order reparation of a portion of the charges paid by the complainant. (Glynn v PT&T Co. (1964) 62 CPUC 511, Walker v PT&T Co. (1971) 71 CPUC 778.)

Although it is concluded that the complainant has experienced problems with his telephone service, the evidence is insufficient to determine with any degree of certainty the frequency or nature of those problems which can be designated

as sufficient in degree as to constitute totally unsatisfactory service. There was no evidence presented that shows the complainant's telephone service as being interrupted for 24 hours or more. The evidence shows that of the trouble reports received from the complainant, only one possibility of interrupted service for longer than 24 hours could have existed in 1976, 1977, and 1978. There is evidence that the defendant, in considering all the possible episodes of interrupted telephone service, determined that a reasonable credit to the complainant would be \$54 and offered that amount to the complainant. The complainant refused the offer. Based on our review of all evidence of record, we find that \$54 is a reasonable reparation. Thus, the Commission makes the following findings and conclusion.

Findings

1. The complainant is, and has been for several years, 1974 to date, a business subscriber of telephone services furnished by the defendant through its Mar Vista central office.
2. During such period, the complainant has complained to the defendant of unsatisfactory telephone service. As a result of such complaints, the defendant has investigated each complaint, correcting any and all causes found and conducting numerous and various tests of all lines and equipment serving the complainant's telephone service. The number of problems found and corrected constitute a small percentage of the complaints.
3. The defendant's responses to the complainant's trouble reports have been reasonable. The complainant has on several occasions indicated that the service was satisfactory, but on other occasions continues to complain of the service. Many of the

complaints are of a minor nature. No evidence was presented to show that the complainant was actually without telephone service for 24 hours or more.

4. Some portion of the complainant's telephone service may be considered as having been less than reasonable and satisfactory.

5. The pro rata value of charges paid for the service, which is considered less than satisfactory telephone service, amounts to \$54.

Conclusion

The Commission concludes that the complainant should be awarded the sum of \$54 as reparation for telephone services which are considered as less than satisfactory service during the period involved herein.

O R D E R

IT IS ORDERED that:

1. The defendant, General Telephone Company of California, pay to the complainant, Communicorp, the sum of \$54 as reparation.

2. The defendant shall respond promptly to complaints of telephone service experienced by the complainant and shall make every reasonable effort to provide such satisfactory service as will help minimize the frequency of problems encountered by the complainant.

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

Dated at San Francisco, California, this 28th day of NOVEMBER, 1978.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Robert B. Reinisch
President
William Lyons-Jr.

Richard D. Howell
Clair T. DeWitt
Commissioners