

DEC 12 1978

Decision No. 89707

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ernest Leon Willette,
Complainant,

vs.

Pacific Telephone and Telegraph
Company,
Defendant.

(ECP)
Case No. 10633
(Filed July 20, 1978)

Ernest L. Willette, for himself, complainant.
V. Henderson, for defendant.

O P I N I O N

This matter was heard under the expedited complaint procedure and submitted September 27, 1978 before Administrative Law Judge Thompson at San Jose.

The complaint arises from disconnection of complainant's telephone. The essential facts are not in issue. Complainant has been a customer of defendant since October 1965 and at his current address since September 1977. There is no evidence of any disconnections prior to June 1978 and the evidence shows that complainant has made payment of his telephone bills for at least 12 months prior to the alleged cause of action herein.

On May 16, 1978 defendant mailed to complainant its bill for charges through May 7, 1978 totaling \$102.18 and consisting of \$9.65 for monthly service, \$85.33 for long distance calls, and \$7.20 for taxes. The bill stated that the charges were due May 31. Complainant received the bill a few days after May 16. On May 31, 1978 defendant mailed to complainant a "denial notice" which complainant received some days later. The denial notice states:

"Your telephone service will be temporarily disconnected unless payment of your bill is in our office by 5:00 p.m. on June 7, 1978. Amount due \$102.18. If your service is temporarily disconnected you will be required to pay the following charges in addition to the full

amount due before the telephone will be reconnected: Restoral charge \$11.00, Deposit \$125.00."

On June 1 complainant made a check in the amount of \$102.18 payable to defendant but did not mail it until Wednesday, June 7. The check was not received by defendant until the business day of Monday, June 12.

On Thursday, June 8, defendant attempted to communicate with complainant by telephone and was unsuccessful. On Friday, June 9, complainant's telephone service was disconnected.

Complainant discovered that his telephone service was disconnected on Saturday, June 10. On Monday, June 12, he communicated with defendant and was informed that he would have to pay an additional \$136 or make such deposit with the Public Utilities Commission before telephone service could be restored. That same day complainant mailed a letter of protest to the Commission containing the \$136 deposit. Nine days later, on June 21, defendant received notice by telephone from the Commission that the deposit had been received and that service should be restored. That same day defendant restored complainant's telephone service. On June 22 the Commission mailed to defendant its notice of the receipt of the \$136.

On its next monthly bill defendant charged the full amount of its monthly service charge together with the appropriate charges for long distance calls and taxes.

Complainant objects to what he terms the "meat-cleaver" disposition taken by defendant. He protests the demand for deposit in the light of being a customer since 1965 with a record of having paid defendant's charges, and in light of his credit rating generally. He also objects to the payment for the full charge for telephone service when he received no such service from June 9 to June 21.

Complainant also assails the short time span afforded by defendant in the payment of bills. He asserts that his need is for a reasonable interval of between 10 to 15 days after receipt of the bill in which to verify and collect long distance charges from the five adults in his household and to cycle the writing of his checks into his regular payment of obligations. In this instance, and in most other instances, the bill is mailed by defendant fifteen days before the bill is delinquent. He points to the fact that while he mailed the remittance to defendant on date specified on the denial notice, the remittance was not in defendant's office until Monday, June 12. He also points to the fact that on that date, which was the earliest date he could seek restoral of service after he knew of the actual disconnection of service, he complied with the requirements of defendant for restoral of service by mailing his deposit with the Commission; nevertheless his service was not restored until nine days thereafter.

First of all, complainant's contentions regarding the reasonableness of defendant's tariff rules for collection of charges, extensions of credit, and temporary disconnection of service may not be considered here by reason of the provisions of Section 1702 of the Public Utilities Code.^{1/} We are required to give effect to the defendant's tariff as it stands, although we may give consideration to the circumstances in the application of the tariff provisions. Certainly, the facts related show that complainant has a grievance and from any standard of equity or justice it would appear that he may be entitled to redress. However, the tariff rules are binding upon complainant and defendant alike.

^{1/} Section 1702, in part:

" . . . No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, or telephone corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service."

Looking at the facts from defendant's point of view, it had not received the payment of \$102.18 on May 31 which was the fifteenth day after issuance of the bill. It thereupon issued the denial notice as provided in Rule No. 11 of its tariff. On June 7 it still had not received payment and on June 8, when under that rule the telephone service was subject to disconnection, attempted to reach complainant by telephone. It disconnected the service the next day when the attempt to communicate with complainant had failed. From the defendant's point of view, it faithfully adhered to the requirements of its tariff.

Looking at the facts from complainant's point of view, he cannot act in response to the issuance of defendant's bills and notices until he receives them. While he had not acted to pay the bill, other than to write the check, before June 7, on that date, which was before telephone service could be disconnected under the provisions of defendant's tariff, he had deposited the check in the U.S. Mail with postage prepaid and, therefore, had constructively complied with defendant's requirements. He had no control over the fact that the mail was not received by defendant until June 12 anymore than defendant had control over when the bills and notices it issued would be received by complainant.

Both points of view have validity. The evidence does not show, and complainant did not recall, the exact date when the denial notice was actually received by complainant, but a reasonable inference may be made that it was subsequent to June 1. Had the mail service in the case of the denial notice been the same as the service of complainant's remittance, the receipt thereof would have occurred on Monday, June 5. Assuming complainant made remittance by posting by mail on June 6 the remittance could not have been received prior to June 7, and a reasonable inference can be made that receipt would not have occurred prior to actual disconnection of the telephone service.

The issue before us then is narrowed down to whether, under the circumstances presented, defendant's tariff required complainant to take time from work to physically present the remittance at the office of defendant on or before June 7. Our attention has not been directed to any such requirement in the tariff, nor can we find any. Complainant had done all that he could have been reasonably required to do under the provisions of the tariff. By reason of the particular and peculiar circumstances in this case, the telephone service was inadvertently disconnected without any culpability on the part of defendant.

Accordingly, complainant is entitled to a refund of the temporary disconnection charge and the deposit, which amounts have been deposited with the Commission. He is also entitled to a refund of the proportion of the defendant's charge for exchange service during the June billing period for the time complainant's service was temporarily disconnected, plus interest.

O R D E R

IT IS ORDERED that:

1. Deposits by complainant in the sum of \$136, and any other sums deposited with the Commission by complainant with respect to this complaint, shall be disbursed to Ernest L. Willette, the complainant herein.

2. Defendant, The Pacific Telephone and Telegraph Company, shall refund to Ernest L. Willette the proportionate portion of the charge for exchange service collected from complainant for the period complainant's telephone service was temporarily disconnected during June 1978, together with interest at the rate of seven percent per annum.

3. Defendant shall notify the Commission in writing of the amount refunded pursuant to the preceding ordering paragraph and the date such refund was made.

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

Dated at San Francisco, California, this 12th day of DECEMBER, 1978.

Roluit Babine
President

William Symons Jr
William L. Sturgeon
Richard D. Howell
Clare T. Mahall
Commissioners