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Decision No. 89770 . DEC 19 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Richard A. Bard,
Complainant,

vs.

The Pacific Telephone and
Telegraph Company,
Defendant.

Case No. 10655
(Filed August 22, 1978)

ORDER OF DISMISSAL

The complaint alleges that defendant sent complainant an urgent (disconnect) notice without first sending a denial (notice of delinquency) one and that defendant has not notified complainant about agreed upon credit adjustments. Complainant also seeks modification of defendant's discontinuance of service rule to provide that denial notices should not be sent unless the "subscribers account is more than 60 days past-due, the due date being no less than 30 days from the receipt of the original billing...." Complainant also wants notices sent by defendant to be hand signed with the signer's telephone number or identification thereon.

Defendant filed an answer and moved for dismissal of the complaint on the ground that any actual dispute between the parties had become moot and that complainant had not alleged any facts to warrant relief under Section 1702 of the Public Utilities Code.

The record indicates that complainant's service was never disconnected. The verified answer states the following:

"A. Complainant's bill dated July 10, 1978, and mailed July 17, 1978, totalled \$159.27, including a balance from prior months of \$76.85. The bill stated 'current charges due by August 2.' Payment of \$75.78 was received on July 21, 1978 and, with subsequent adjustments of \$9.00 and \$5.00 for disputed

charges, a total of \$69.49 was past due from complainant as of August 2, 1978.

"A seven days' notice of delinquency would ordinarily have been sent to complainant on August 2, 1978; however, through error, no such notice was sent. Pacific's business office representative believed that such a notice had been sent; when no payment was received by August 16, 1978, the urgent notice was mailed to complainant as a final attempt to prevent denial of service to complainant.

"B. On August 18, 1978, apparently immediately after receipt of the urgent notice, complainant informed Pacific that he had received the urgent notice but had not received a prior notice. Pacific immediately investigated the matter, discovered its error in not sending the seven days' notice, and informed complainant that his service would not be disconnected that day.

"C. Apparently, complainant thought that a revised bill would be sent to him to reflect adjustments for disputed charges totalling \$14.00. After several more telephone calls concerning this matter, Mrs. Haskee, Administrative Staff Specialist and executive assistant to Pacific's President, agreed to have a letter sent to complainant setting forth all of the adjustments. This letter was sent on August 25, 1978; a copy is attached hereto as Exhibit A. As the result of a typographical error (a credit was listed as \$75.87 instead of the correct amount of \$75.78), the total balance due in this letter was given as \$69.40. Actually, the balance due on the July 10 bill was \$69.49.

"D. On or about August 21, 1978, Mr. Rice, Pacific's Division Manager, talked with complainant about the urgent notice that was sent in error and apologized for the error. . . ."

In the light of the foregoing, it appears that any controversy concerning the urgent notice and credit adjustment has become moot.

Defendant's challenged billing and discontinuance of service practices are contained in its tariffs, particularly in Rule 9(C) and Rule 11(A)(2)(a), Schedule Cal. P.U.C. No. 36-T, 7th Revised Sheets Nos. 46 and 49.

Public Utilities Code Section 1702 provides in part that: "Complaint may be made...by any corporation or person...by written petition or complaint, setting forth an act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation of any provision of law or of any order or rule of the commission." Rule 10 of the Commission's Rules of Practice and Procedure provides in part that: "The specific act complained of shall be set forth in ordinary and concise language. The complaint shall be so drawn as to completely advise the defendant and the Commission of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief which is desired."

The tariff provisions in question were authorized by Advice Letter No. 12440 effective August 9, 1977 and Advice Letter No. 12757 effective June 3, 1978. Nothing in the complaint sets forth "any act or thing done or omitted to be done...in violation or claimed to be in violation of any provision of law or of any order or rule of the Commission". In the circumstances the complaint should be dismissed for failure to state a cause of action. (Blincoe v PT&T (1963) 60 CPUC 432, 434.)

The Commission makes the following findings and conclusion.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. The portions of the complaint relating to the sending of an urgent notice and credit adjustment have become moot.
3. The remaining allegations of the complaint fail to state a cause of action because no violation or claimed violation of any provision of law or any order or rule of the Commission is alleged.

Conclusion of Law

The complaint should be dismissed.

IT IS ORDERED that the complaint in Case No. 10655 is hereby dismissed.

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

Dated at San Francisco, California, this 19th day of DECEMBER, 1978.

Robert B. Bahr
President
William J. Quinn
Victor L. Sturgeon
Robert C. Howell
Clair J. DeSilva
Commissioners