

ORIGINAL

Decision No. 89862 JAN 16 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

W. M. DURHAM,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,

Defendant.

Case No. 10600
(Filed June 14, 1978)

O P I N I O N

W. M. Durham, complainant, filed this complaint on June 14, 1978. Pacific Telephone and Telegraph Company, defendant, filed its answer July 24, 1978. By letter dated August 24, 1978 defendant supplied the Commission with copies of two letters referred to in its answer. Copies were mailed to complainant.

On September 13, 1978 Administrative Law Judge Charles E. Mattson by letter advised the parties that he intended to recommend that the Commission issue its decision without public hearings. This recommendation was based upon the facts as set forth in the complaint, answer, and the two referenced letters. The parties were given until October 2, 1978 to present by letter any objection to such ex parte disposition and any written argument they desired to make. The parties were advised that if a party did not present written argument, the Commission would assume such party desired to stand on its complaint or answer.

Defendant did not respond. Complainant replied by letter dated September 25, 1978 objecting to an ex parte decision. Complainant's letter does not set forth or allege disputed facts which would require a public hearing.

A public hearing is not necessary. Our findings are based upon the facts as set forth in the complaint and answer, including the two letters referred to in the answer.

Findings

1. On May 11, 1978 a foreign attachment was found on complainant's premises attached to telephone lines of defendant.

2. Complainant did not place the attachment on defendant's line and the attachment was not made with complainant's knowledge or consent.

3. The foreign attachment discovered on May 11, 1978 consisted of wires connected directly to defendant's facilities and equipment. This attachment was not authorized under the tariffs of defendant and was an unauthorized attachment under defendant's tariff, Schedule Cal. P.U.C. No. 36-T, Original Sheet 61-I, Rule No. 16, IV, D.

4. Defendant, prior to June 14, 1978, represented to complainant that it was complainant's responsibility to remove the unauthorized attachment or telephone service would be suspended.

5. Prior to June 14, 1978, complainant demanded copies of defendant's tariffs regarding statements that defendant was responsible for the removal of the unauthorized attachment on complainant's premises.

6. Defendant failed to give copies of its applicable tariffs to complainant until sometime after June 14, 1978.

7. The written notice defendant alleges it hand-carried to complainant on June 16, 1978 states, in part, "If you... wish copies of the appropriate tariff sheets, please call..." Prior to June 16, 1978 complainant had, in fact, requested such tariff sheets.

8. Prior to June 14, 1978 complainant stated he would give defendant written permission to remove the unauthorized attachment and defendant rejected such offer.

9. On June 16, 1978 the unauthorized attachment was removed.

10. Defendant did not suspend or disconnect complainant's telephone service.

11. Defendant may only suspend or disconnect complainant's telephone service for an unauthorized attachment pursuant to its tariff, Schedule Cal. P.U.C. No. 135-T, First Revised Sheet 7-A. The defendant's written notice of threatened suspension of service was deficient since complainant had already requested copies of tariff rules relied upon by defendant and the written notice did not include copies of such tariff rules.

12. Complainant requests an order providing relief as follows:

- (a) For defendant to negotiate and work in good faith with complainant;
- (b) For non-termination of complainant's telephone service; and
- (c) For defendant to provide written complaint of future unauthorized attachments of alarms to: State Contractors Licensing Board; Department of Consumer Affairs, Bureau of Collection and Investigative Services; Alarm Company Licensee; prosecution through District Attorney's Office, County of Los Angeles; and notification of action to customer.

Conclusions

1. Complainant is entitled to telephone service subject to existing tariff rules.

2. Defendant is required to promptly notify a customer, upon discovery of an unauthorized attachment to its facilities on the customer's premises, that the customer must correct the

violation or the utility may suspend the customer's service (Schedule Cal. P.U.C. No. 135-T, First Revised Sheet 7-A).

3. The attachment to defendant's facilities discovered by defendant on complainant's premises on May 11, 1978 was an unauthorized attachment (Schedule Cal. P.U.C. No. 36-T, Original Sheet 61-I).

4. Complainant, under the circumstances of this case, was entitled to know what particular rules had been violated when he was threatened with suspension of telephone service (Schedule Cal. P.U.C. No. 36-T, Eighth Revised Sheet 53, Rule No. 11, A,7).

5. Defendant failed to give complainant complete and proper written notice of the violation of its tariff rules when such written notice failed to include copies of applicable tariffs which had been requested by complainant.

6. This complaint proceeding, and its record, is not an adequate basis for establishing new and different tariff rules for statewide application.

7. To the extent the complaint requests that this Commission alter or amend defendant's existing tariff rules, it fails to set forth matters that this Commission will consider in this complaint proceeding.

8. The unauthorized attachment involved herein was removed on June 16, 1978.

9. The dispute regarding removal of the unauthorized attachment has been resolved.

10. Defendant does not threaten to disconnect complainant's telephone service because of the unauthorized attachment discovered May 11, 1978.

11. The issues raised by the complaint are moot since there is no longer a controversy between complainant and defendant.

O R D E R

IT IS ORDERED that the complaint is dismissed.

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

Dated at San Francisco, California,
this 16th day of JANUARY, 1979.

Roland Bateman
President
Joseph W. Howell
Clair J. DeLoach

Commissioners