

ORIGINAL

Decision No. 89953 FEB 14 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

IRVING H. KAYE,

Complainant,

vs.

PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,

Defendant.

Case No. 10366
(Filed July 5, 1977)

Stanley J. Moore, Attorney at Law, for
The Pacific Telephone and Telegraph
Company, defendant.

ORDER OF DISMISSAL

The complaint of Irving H. Kaye (complainant) alleges that "the Pacific Tel. & Tel. Co. & numerous of their employees and some of their officials, have repeatedly over the past 23 years in San Mateo improperly charged and forced the Complainant to pay unending unwarranted charges for calls NOT made by Complainant and for fantastic amounts of overtime on charges for calls made because of FAILURE of the Pac. Tel. & Tel. equipment to function properly, and when Complainant has reported same, he has been subjected to RUDE, - discourtesy."

The complainant further alleges that The Pacific Telephone and Telegraph Company (Pacific) should be required to "...answer these charges in open hearing at which time the complainant will present testimony and evidence on numerous specific cases and incidents with times and dates and names to clearly illustrate the abuses that have been and are being practiced by the company at the expense of the complainant..."

No facts are alleged which would identify the specific telephone calls which are disputed by complainant. Since the filing of his complaint on July 5, 1977, complainant has deposited with the Commission (as of December 12, 1978) a total of \$985.37. This sum appears to be the total of Pacific's billings to him during that period. It is unknown what portion of the \$985.37 is actually disputed by complainant.

Hearings were originally set for January 26 and 27, 1978, but were continued to May 11 and 12, 1978, due to the illness of Pacific's witness. Hearings were subsequently continued to August 28, 1978, at complainant's request, since he was "unavoidably... called out of state." On August 28, 1978, complainant failed to appear. The records of the Commission show that the complainant was personally advised by telephone of the hearing date and time by a member of the Commission staff and that he approved of the date and time. The same member of the Commission staff mailed notices of hearing to complainant both by regular and certified mail. The notice sent by certified mail was returned stamped "unclaimed". The notice sent by regular mail was not returned. In a subsequent telephone conversation with the administrative law judge, complainant alleged that he did not receive notice of the hearing. The matter was reset to December 11, 1978.

The proceeding came on regularly for hearing on December 11, 1978, at 10:30 a.m. in the Commission Courtroom, 350 McAllister Street, San Francisco, California, pursuant to notice duly given. The complainant failed to appear. However, on December 11, 1978, before the hearing commenced, complainant by messenger delivered to Administrative Law Judge Robert T. Baer one copy of a motion for continuance of the proceeding. The motion did not allege credible facts requiring a continuance and was, therefore, denied. Pacific's motion to dismiss for lack of prosecution was taken under submission.

The Commission concludes that the complaint should be dismissed for lack of prosecution and that deposits totaling \$985.37 should be disbursed to Pacific.

IT IS ORDERED that:

1. Case No. 10366 is dismissed for lack of prosecution.
2. Deposits by complainant in the sum of \$985.37 (see Appendix A), and any other sums deposited with the Commission by complainant with respect to this complaint, shall be disbursed to The Pacific Telephone and Telegraph Company.

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

Dated at San Francisco, California, this 14th day of FEBRUARY, 1979.

Commissioner Leonard M. Grimes, Jr.,
being necessarily absent, did not
participate.

Commissioner Richard D. Gravelle, being
necessarily absent, did not participate
in the disposition of this proceeding.

John E. Burns
President
Donna L. Sturgeon
Chas. T. DeLoach

Commissioners

APPENDIX A

Deposits made by complainant are as follows:

<u>Date</u>	<u>Amount</u>
6/3/77	\$265.27
7/14/77	64.53
9/20/77	80.15
3/2/78	264.69
5/16/78	100.00
9/15/78	154.39
11/7/78	<u>56.34</u>
Total (as of 12/12/78)	\$985.37