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Decision No. 20957 FEB 14 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bennet Olan,

Complainant,

vs.

Pacific Telephone and Telegraph
Co.,

Defendant.

Case No. 10567
(Filed May 11, 1978;
amended June 29, 1978)

O P I N I O N

Complainant, a subscriber to a large key telephone service provided by defendant, alleges that on or about June 23, 1977 he requested that defendant immediately take the necessary steps to bill other attorneys occupying the same suite of offices as complainant, but who are not associated with complainant, for the telephone service utilized by those attorneys and for charges incurred by them. Complainant further alleges that defendant has either refused, procrastinated, or otherwise failed to comply with complainant's request in a timely manner and that, as a result, complainant was billed for the telephone service utilized and for charges incurred by the other attorneys for a period of approximately four months. Complainant also alleges that he has not been reimbursed by the individual attorneys involved and seeks an order entitling him to a credit for the telephone charges he has paid to defendant on behalf of the other attorneys. Complainant further requests an order awarding him a sum of money representing the value of time he and his office staff

have expended in order to rectify this situation. Complainant has deposited sums of monies representing the protested bills with this Commission until the matter is resolved.

Defendant, by way of answers to the complaint and complainant's amended complaint, denies that complainant is entitled to a credit for any sums of monies as alleged by complainant and denies generally all other allegations contained in the complaint as originally filed or amended. Defendant alleges that complainant was a subscriber to a large key telephone service and that pursuant to tariff Schedule Cal. P.U.C. No. 36-T, Rule 9, 6th Revised Sheet 44, complainant was responsible for all charges incurred on that key telephone system even though other persons in complainant's office suite jointly used portions of the key telephone system with complainant. Defendant further alleges that for complainant's convenience, defendant mailed separate bills to complainant for some of the telephone numbers associated with his key system. Such separate bills included the monthly service charge for the individual lines as well as long-distance and multi-message unit charges associated with those lines.

Defendant alleges that on or about June 23, 1977 complainant requested a breakdown of his telephone bill so as to show an allocation to the other users of portions of the equipment used in the key telephone system and that defendant provided such breakdown of equipment charges by letters to complainant dated August 8 and August 31, 1977. In September 1977, pursuant to complainant's request for individual billing responsibility among the various users in complainant's office suite, defendant suggested the supersedure

of certain services, including key telephone equipment, from complainant to the other users and provided such supersedure forms to complainant to be executed by complainant and each of the users in the suite. Defendant alleges one such form was executed in September 1977 and thereafter defendant superseded service on the appropriate lines and equipment which previously had been part of complainant's key telephone service.

In February 1978 defendant alleges that it again provided complainant with supersedure forms and that all but one of the remaining users of complainant's key telephone system executed such forms. Defendant further alleges that as the individual forms were executed, it superseded service on the appropriate lines and equipment, which in each case had previously been part of complainant's key telephone service.

By way of separate and affirmative defenses, defendant alleges that the complaint fails to meet the requirements of Rule 10 of the Commission's Rules of Practice and Procedure in that the complaint fails to set forth sufficient facts constituting the grounds of the complaint and, in particular, fails to set forth which charges complainant alleges should have been billed to the other attorneys rather than to complainant. Defendant further asserts that complainant is not entitled to collect any damages for alleged loss of income in that the Commission is without jurisdiction to award damages. Defendant finally alleges that the complaint fails to state a cause of action because it does not set forth any act or thing

done or omitted to be done which is claimed to be in violation of any provision of law or of any order or rule of the Commission as required by Section 1702 of the Public Utilities Code and requests that the complaint be dismissed.

The matter was scheduled for hearing in Los Angeles on November 7, 1978 before Administrative Law Judge William A. Turkish, pursuant to Section 1702 of the Public Utilities Code. Complainant, in telephonic communication with Judge Turkish, elected to submit the matter on the pleadings and defendant, when notified of complainant's election, also elected to submit on the pleadings. As a result, no hearing was conducted and the matter was submitted on the pleadings on November 7, 1978.

A careful examination of the complaint as filed and the contents of complainant's letter dated June 29, 1978 wherein complainant submitted two paragraphs to serve as an amendment to paragraphs 2 and 3 of the complaint fails to add any facts or allegations other than as set forth previously above. In essence, complainant does not challenge the accuracy of any bills tendered by defendant for the charges incurred in connection with the key telephone system to which he is the subscriber, but instead challenges his responsibility for them.

According to defendant's pleadings, which is not denied by complainant, complainant was the subscriber to the entire key telephone service and is deemed by defendant to be responsible for all charges incurred on the key telephone system in accordance with its filed tariff. Schedule Cal. P.U.C. No. 36-T, Rule 9, 6th Revised Sheet 44, provides, in pertinent part, that "[a] customer for service shall be

responsible for the payment of all exchange, toll, and other charges applicable to his service in accordance with the Utility's schedules of rates and rules."

Schedule Cal. P.U.C. No. 36-T, Rule 23(B), 8th Revised Sheet 72, states, in pertinent part: "An applicant... may supersede the service of a customer discontinuing that service when...a 'Request for Supersedure' form signed by the customer and applicant is presented to the Utility. The outgoing customer is responsible for charges for service to the date of supersedure. The applicant is responsible for charges for service beginning with the date of supersedure. . ."

Since complainant has elected not to make any showing by way of testimonial or documentary evidence but has instead elected to submit the matter entirely on the pleadings, we must necessarily look to the pleadings to determine initially whether or not it states a cause of action under Section 1702 of the Public Utilities Code. If so, we must then determine whether or not it contains sufficient facts and evidence necessary to establish the requisite degree of belief as to the existence or non-existence of each fact in issue and finally, if each of the above determinations have been decided affirmatively, we must decide whether complainant has met his burden of proof which, as a rule, requires proof by a preponderance of the evidence.

The allegations in the complaint as filed and as amended are brief general assertions which are nonspecific in nature. As an example, complainant alleges that he has

repeatedly requested of defendant that it provide him with an accurate breakdown of charges incurred by the other attorneys occupying the same suite of offices as complainant who are not, in fact, associated with complainant. He further alleges that these charges of the other attorneys have been billed to him when, in fact, they should have been billed to each individual attorney. In an attempt to cure apparent deficiencies in the original complaint, complainant amended his complaint by alleging that on or about June 23, 1977 complainant requested that defendant immediately take the necessary steps to bill the other attorneys for the telephone service which was primarily their lines; that defendant either refused, procrastinated, or otherwise failed to comply with said request in a timely manner; and that, as a result, complainant was billed for the telephone service of the other attorneys, when, in fact, they should have been billed for a period of four months in which complainant paid the charges.

We believe the complaint as originally filed and as amended is still deficient in several respects and thus fatal to a determination in favor of the complainant. First, the complaint fails to state a cause of action because it does not set forth any act or thing done or omitted to be done which is claimed to be a violation of any provision of law or of any order or rule of the Commission. Section 1702 of the Public Utilities Code provides, in part, that a complaint must set forth "any 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 9 of the Commission's Rules of Practice and Procedure provides, in part:

"A complaint may be filed by any corporation or person...setting forth any act or thing done or omitted to be done by 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."

A complaint which does not allege a violation by a utility of a provision of law or order of the Commission should be dismissed. L. J. T. Industries, Inc. and R. H. Mitman v. Pacific Telephone Company, Decision No. 86740 (December 14, 1976).

Even if we were to assume that under the most liberal construction given Section 1702 and Rule 9 we could find a cause of action contained in the pleadings, complainant would be unable to avoid an unfavorable ruling simply because his pleadings are void of any facts or evidence upon which one may make any findings. For example, he presents no facts or evidence in his pleadings to show that any occupant in his suite, other than himself, subscribed to defendant's telephone service and that he was incorrectly billed for charges incurred by such other subscriber or subscribers.

Under defendant's Schedule Cal. P.U.C. No. 36-T, Rule 9, 6th Revised Sheet 44, the subscriber or customer is responsible for all charges incurred on the telephone system furnished by defendant. Thus, since complainant alone was the subscriber to his telephone system as alleged in defendant's pleadings and not disputed or placed in issue by complainant, he alone was responsible for all charges

incurred on his telephone system. If complainant had intended for others in his suite to assume responsibility for charges incurred by them, he could have either terminated all or part of his service, retaining only that for which he wanted to be responsible, and caused the other occupants of his suite to subscribe to their own telephone service by way of defendant's supersedure procedure or worked out some internal system of repayment to him by the other occupants for their portion of the charges incurred by them.

According to defendant's pleadings, such supersedure forms were provided to complainant by defendant. So long as he remained the subscriber and until he obtained the signatures of the other persons in his suite who were willing to supersede the service he wished to relinquish, he was responsible to defendant for all charges attributed to the service provided him by defendant. Thus, there is no basis for his claim that he is not responsible for charges for the telephone service prior to supersedure.

Findings

1. Complainant was a subscriber to a large key telephone system provided by defendant for use in complainant's suite of offices.
2. Other attorneys occupying offices in complainant's suite, but not otherwise associated with complainant, jointly used complainant's key telephone system, apparently with complainant's consent.
3. Upon complainant's request, defendant provided complainant with breakdowns of complainant's bill showing an allocation to the other users of portions of the equipment used in the key telephone system.

4. Defendant provided complainant with supersedure forms pursuant to his request for individual billing responsibility among the various users, for execution by such other users, and return to defendant.

5. As individual supersedure forms were executed and submitted to defendant, defendant superseded service on the appropriate lines and equipment which had previously been part of complainant's key telephone service.

6. Complainant fails to state in his complaint a cause of action under Section 1702 of the Public Utilities Code and Rule 9 of the Commission's Rules of Practice and Procedure in that it fails to set forth "any act or thing done or omitted to be done by 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."

Conclusions of Law

Inasmuch as the complaint fails to state a cause of action, the relief requested should be denied and the complaint should be dismissed.

O R D E R

IT IS ORDERED that:

1. Case No. 10567 is dismissed and the relief requested is denied.

2. Deposits by complainant in the sum of \$4,269.68, and any other sums hereafter 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.

John E. Coyne
President
James L. Sturgeon

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

Richard D. Gravelle

Commissioners

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