

ORIGINAL

Decision No. 90251

MAY 8 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORTIZ REALTY AND INVESTMENTS,
INC.,

Complainant,

v

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY

Defendant.

Case No. 10680
(Filed October 10, 1978)

William R. Ortiz, for Ortiz Realty and Investments,
Inc., complainant.

Margaret deB. Brown, Attorney at Law, for The
Pacific Telephone and Telegraph Company.

O P I N I O N

This is a complaint by Ortiz Realty and Investments, Inc. (Ortiz) against The Pacific Telephone and Telegraph Company (PT&T). Ortiz contends that PT&T assessed improper and unreasonable charges. The Commission has received \$937.50 from Ortiz as a disputed bill deposit.

A duly noticed public hearing was held in this matter before Administrative Law Judge Donald B. Jarvis in San Francisco on January 17, 1979. It was submitted subject to the filing of transcript which was filed on January 26, 1979.

Ortiz changed its business location in November 1977. The previous tenant at the new location had caused to be installed by PT&T a telephone system which included cable, panels, 10 jacks, and 10 telephones. The 10 telephones were removed about the time the

previous tenant vacated the premises. Ortiz contends that PT&T's service consultant misrepresented to it that Ortiz would only be charged for the hookup of the 10 phones.^{1/} Ortiz also contends that the installation of the 10 telephones which it ordered took three to four hours and that the charge of \$937.50 is unreasonable.

Misrepresentations

There is conflicting testimony as to whether any misrepresentations occurred. It is unnecessary to resolve that conflict herein. Assuming for the sake of discussion that there were misrepresentations, Ortiz could not be awarded reparation because the misrepresentations related to tariff charges.

The applicable statute is discussed in Empire West v Southern California Gas Co. (1974) 12 C 3d 805, 809-810:

"Section 532 forbids any utility from refunding 'directly or indirectly, in any manner or by any device' the scheduled charges for its services. In addition, a public utility 'cannot by contract, conduct, estoppel, waiver, directly or indirectly increase or decrease the rate as published in the tariff....' (Transmix Corp. v. Southern Pac. Co., 187 Cal.App.2d 257, 264 [9 Cal.Rptr. 714]; accord South Tahoe Gas Co. v. Hofmann Land Improvement Co., 25 Cal.App.3d 750, 760 [102 Cal.Rptr. 286].) Scheduled rates must be inflexibly enforced in order to maintain equality for all customers and to prevent collusion which otherwise might be easily and effectively disguised. (R. E. Tharp, Inc. v. Miller Hay Co., 261 Cal.App.2d 81 [67 Cal.Rptr. 854]; People ex rel. Public Util. Com. v. Ryerson, 241 Cal.App.2d 115, 120-121 [50 Cal.Rptr. 246].) Therefore, as a general rule, utility customers cannot recover damages which are tantamount to a preferential rate reduction even though the utility may have intentionally misquoted the applicable rate. (See Transmix Corp. v. Southern Pac. Co., *supra*, p. 265; Annot. 88 A.L.R.2d 1375, 1387; 13 Am.Jur.2d, Carriers, § 108, p. 650; United States v. Associated Air Transport, Inc., 275 F.2d 827, 833.)

^{1/} PT&T denies that any misrepresentations occurred.

"These principles are most commonly applied in cases which involve mistaken rate quotations whereby the customer is quoted a lower rate than set forth in the published tariff. Upon discovery of the error, the utility may initiate an action against the customer to recover the full legal charges for the service, as filed and published in rate schedules. (See, e.g., Gardner v. Basich Bros. Construction Co., 44 Cal. 2d 191 [281 P.2d 521]; R. E. Tharp, Inc. v. Miller Hay Co., supra, 261 Cal.App.2d 81.) In granting recovery to the utility, the courts usually rely on the fact that the rates have been filed and published and have thereby become part of the contract between the utility and the customer. (Gardner v. Basich Bros. Construction Co., supra, p. 193; Transmix Corp. v. Southern Pac. Co., supra, 187 Cal.App.2d 257, 265.) Under these circumstances the customer is charged with knowledge of the contents of the published rate schedules and, therefore, may not justifiably rely on misrepresentations regarding rates for utility service. (See Transmix Corp. v. Southern Pac. Co., supra, p. 265; 13 Am.Jur.2d, supra, § 108, p. 649; Annot. 88 A.L.R.2d, supra, 1375.)"

The Alleged Unreasonableness Of the Charges

We next consider whether the charges assessed were unreasonable or unreasonably applied.

Extensive examination of the record fails to support Ortiz's contention that part of the charges were for installations previously paid for by the former tenant. Uncontradicted testimony clearly establishes that every item for which a charge was assessed was necessary to institute the service requested by Ortiz and was installed on the premises or done at PT&T's central office.

Ortiz ordered the following equipment: six lines; line hunting for six lines; six line lights, six line touch-tone equipment; one dial intercom with touch-tone; eight ten-button telephones with touch tone; one station busy with visual; and one bell chime.

It is undisputed that there were no telephones on the premises at the time service was instituted. As indicated, Ortiz

ordered eight ten-button telephones with touch-tone. At the time of the events in question, the basic tariff charge for installing one of these telephones was \$55. It is also undisputed that the telephone service of the previous tenant had been disconnected. The six telephone lines, with new numbers, and attendant wiring at the central office were necessary to establish service. The applicable tariff charge for each line was \$45. The charges for the eight telephones and six lines which were necessary to provide service totaled \$710. Analysis of the remaining charges encompassed in the bill for \$937.50 indicates that each item was necessary for the establishment of the requested service, was actually installed, and Ortiz was charged at the applicable tariff rate. It is clear from the foregoing that each of the charges was for work actually done or new equipment installed and that Ortiz was not double-billed for equipment or work paid for by the previous tenant.

Finally, Ortiz contends that even if it has not been double-billed and the charges are consonant with PT&T's tariff, they are unreasonable. Ortiz argues that: "They came in and hooked up our phones, and for that—and they turned on a button at the main office, and for that, they want to charge us over a thousand dollars. I just don't feel that's fair."

Ortiz's characterization of what was done at PT&T's central office is not accurate. The record clearly indicates that it was necessary to wire new lines at the central office for the new service. Furthermore, the tariff charges here involved are not based on the actual time expended on a particular installation. They are average charges authorized by the Commission and applicable to all customers. The specific charges here involved were considered

by the Commission and found to be reasonable. (PT&T Co. (1975) 79 CPUC 240, see Appendix D.) Public Utilities Code Section 734 provides in part that: "No order for the payment of reparation upon the ground of unreasonableness shall be made by the commission in any instance wherein the rate in question has, by formal finding, been declared by the commission to be reasonable, ...". Thus, reparation cannot be awarded to Ortiz in this case.^{2/}

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. In November of 1977 Ortiz's president inquired of PT&T about a change of service from a former place of business in Campbell, California, to a new location at 5120 West Campbell Avenue, San Jose, California.

2. In November 1977 a PT&T service consultant had several conversations with Ortiz's president with respect to changing telephone service to the new location. Ortiz contends that the service consultant misrepresented to its president that there would be savings on installation charges because of equipment left on the premises by the previous tenant. Even if it be assumed that such misrepresentations were made, the misrepresentations dealt with tariff charges for which reparation cannot be granted.

3. On November 16, 1977 the PT&T service consultant sent Ortiz an estimate for the requested telephone service. The estimate was mailed to the new location before Ortiz occupied the premises and was not received by Ortiz. Neither the mailing of the estimate nor the failure of Ortiz to receive it is determinative of any issue in this matter.

^{2/} Because Section 734 is controlling, it is unnecessary to consider whether Ortiz alone has standing under Section 1702 to challenge the reasonableness of these rates.

4. At the time Ortiz took possession of the premises, there were telephone panels, cable, and jacks which had been used to provide service to the former tenant. There were no telephone instruments on the premises.

5. Ortiz ordered the following equipment: six lines; line hunting for six lines; six line lights, six line touch-tone equipment; one dial intercom with touch-tone; eight ten-button telephones with touch tone; one station busy with visual; and one bell chime.

6. Each item of equipment ordered by Ortiz was actually installed in addition to any PT&T equipment which remained on the premises after they were vacated by the previous tenant and work necessary to provide the requested telephone service was done at PT&T's central office.

7. The total charges for the service and equipment requested by Ortiz, as provided in PT&T's tariffs which were in effect at the time of the events here under consideration, were \$937.50.

8. In Decision No. 85287, entered on December 30, 1975, the Commission authorized and found to be reasonable the charges which were in effect at the time of the events here under consideration.

Conclusions of Law

1. Ortiz is entitled to no relief in this proceeding.
2. The disputed bill deposit of \$937.50 should be disbursed to PT&T.

O R D E R

IT IS ORDERED that:

1. Ortiz Realty and Investments, Inc. is not entitled to any relief in this proceeding and the complaint in Case No. 10680 is denied.

2. Deposits by complainant in the sum of \$937.50, 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 8th day of MAY, 1979.

John E. Boyson
President
Norman L. Sturgeon

Clair T. DeWitt
Richard D. Gravello
Commissioners

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