

ORIGINAL

Decision No. S0977 NOV 6 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN E. CLARK, et al.,
Complainants,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,
Defendant.

Case No. 10715
(Filed February 1, 1979)

John E. Clark, Raymond V. Baudot, and
George J. Dolan, for themselves,
complainants.
Harold R. Crookes, Attorney at Law,
for defendant.

O P I N I O N

Complainants request relief from an obligation to pay delinquent telephone charges in the amount of \$2,920.73. Complainants allege that they notified defendant by letter mailed April 3, 1977 of a change in ownership of their business. Defendant alleges that it did not receive a copy of that letter until July 7, 1978, several months following the disconnection of the telephone service for nonpayment. After due notice, public hearing in this matter was held before Administrative Law Judge Main in Los Angeles on July 31, 1979.

Complainants' Evidence

Testimony presented on behalf of complainants indicated that:

1. In September 1971, Boll Enterprises was purchased from William Boll by the complainants, Ray Baudot, John Clark, and

George Dolan. At that time, the new owners applied for telephone service from defendant; telephone number 546-8720 was assigned; the business was located at 2708 So. Grand Avenue, Santa Ana, California.

2. In June 1972, a Charles Rose purchased a one-quarter interest in the business and an application was filed to incorporate. In September 1972, the business attained its corporate status: Grandeza, Inc., DBA Boll Enterprises and DBA Production Equipment and Tool Co., a California corporation.

3. In October 1974, the business was moved to 1329 E. Warner Avenue, Santa Ana. At that time, complainants requested the billing name and responsibility for telephone service be changed to Grandeza, Inc., but the request was denied. The reasons given for the denial were: past collection problems and a shut-off of services in March 1973 for a 30-day past due bill.

4. In early 1977, the stockholders of Grandeza, Inc. decided, because of pressing financial problems (i.e., liabilities were about double the assets), to sell the company to Hamst, Inc., a California corporation to be formed. A conditional sale took place on February 21, 1977. The conditional new owners moved the business to 2011 So. Susan Street, Santa Ana.

5. By mid-March 1979, Hamst, Inc. obtained its corporate status. Complainants were assured by the principals of Hamst, Inc. that they were released of all liabilities as of March 29, 1977.

6. Complainant Ray Baudot recalls a Richard Murray (now deceased), who was an officer and stockholder of Hamst, Inc. at the time, told him that he had notified defendant, Southern California Edison Company, and Southern California Gas Company

that Boll Enterprises had been acquired by Hamst, Inc., and that defendant wanted a letter from the former owners advising defendant of the change. A copy of a letter dated April 3, 1977 by Ray Baudot to defendant to that effect is in evidence as Exhibit 2. Ray Baudot recalls placing that letter, on or about April 3, 1977, on the front of his mailbox for pickup by the mailman. Ray Baudot does not recall any contacts with defendant during October and November of 1977, but he has been seriously ill and may have lapses of memory.

7. After the business was sold, a telephone credit card was issued to the 546-8720 telephone number. A review of copies of the unpaid telephone bills for the service periods spanning September 19, 1977 through January 14, 1978, totaling \$2,920.73, which complainants had obtained from defendant, disclosed that about 60 percent of that total was for credit card calls. Many of those calls were from cities in California to cities in Florida, and vice versa, and from cities in California or Florida to cities in New Hampshire, and vice versa. Complainants contend that such a calling pattern would not fit the business at the time they ran it and probably indicates non-business or fraudulent use of the telephone credit card.

8. The bill dated September 19, 1977 was the last bill paid. A check for \$1,087.02 in payment of that bill was received by defendant October 18, 1977. The check did not clear because of insufficient funds. Payment was finally effected on November 3, 1977.

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9. The unpaid bills, summarized by months, are as follows:

October	(9/19-10/18)	Unpaid	\$ 631.45	Credit Card	\$ 162.74
November	(10/7-11/17)	Unpaid	637.23	Credit Card	206.08
December	(11/10-12/18)	Unpaid	1,247.69	Credit Card	1,038.94
January	(12/23-1/14)	Unpaid	509.45	Credit Card	412.29
February	(Closing)	Credit	62.01		
February 23	(Revised Closing)	Unpaid	3.74		
April 21	(Revised Closing)	Unpaid	2.34		

Total Due \$2,920.73

10. Hamst, Inc. went bankrupt. Its creditors included Southern California Edison Company and Southern California Gas Company.

11. Defendant, especially after initially receiving a bad check in payment of the September bill, obviously should have disconnected service for nonpayment long before January 1978. ✓

Defendant's Evidence

Testimony presented on behalf of defendant indicated that:

1. On September 15, 1971, complainant Ray Baudot signed a business service application agreeing to pay for the telephone service to The Boll Enterprises, 2708 So. Grand Avenue, Santa Ana, California (Exhibit 3). Telephone number 714-546-8720 was assigned. Billing was established in the name of R. Baudot, J. Clark, and G. Dolan.

2.a. Defendant's records indicate that the telephone service associated with 714-546-8720 was moved to 2011 So. Susan Street, Santa Ana, in March 1977 and that the billing name remained unchanged.

b. At the time of this move, there was no indication that the billing responsibility (i.e., responsibility for paying the telephone bills) was to change. Accordingly, there was no super-seure form processed by complainants as required by defendant's tariff Rule 23 which, in pertinent part, reads:

"(B) SUPERSEDURE AND CHANGE IN BILLING*

"An arrangement for supersedure or change in billing of a working service may be made under the following conditions:

"The applicant qualifies for the establishment of service under these Rules and other applicable tariff schedules. The form "Request to Transfer Customer Responsibility" is signed by the outgoing customer and the applicant, and received by the Utility. The outgoing customer is responsible for charges for the service and other obligations such as contracts and basic termination charges through the effective date of supersedure or change in billing. The applicant is responsible for charges for the service beginning the day after the effective date of supersedure or change in billing. Continuing obligations, such as contracts or basic termination charges became the obligation of the incoming customer at the same time. Supersedure and Change in Billing are not applicable while a service is temporarily discontinued, temporarily suspended, partially or permanently discontinued by the Utility."

"*Refer to Schedule Cal. P.U.C. No. 28-T, IV, for application of charges, and to Rule No. 1 for definitions."

3.a. Defendant's records also indicate that a telephone credit card was issued to a Richard A. Murray on April 27, 1977. This credit card was issued in accordance with defendant's normal business practices. It was issued to telephone number 714-546-8720 and not necessarily for the use of any one particular individual. The credit card was mailed directly to complainants at their billing address.

b. It is defendant's policy to accept an oral request for credit cards, but upon issuance they may only be sent directly to the authorized billing location.

4.a. On October 18, 1977, complainant's account first came to the attention of defendant's business office as being delinquent. On that date defendant's computer generated a notice showing the September 19 bill had become overdue for the amount of \$1,123.46 and on that same date a check was received for \$1,087.02. (The reason for the difference between the bill and the payment was that on October 5 someone with the name Ray -- which is the first name of one of the complainants -- called the business office to disclaim \$49.16 for unidentified calls.)

b. On November 1, 1977, one of defendant's service representatives spoke with Ray to inform him that the check for \$1,087.02 had been returned because of insufficient funds. Defendant's notes indicate that Ray said he would come to the Santa Ana business office on November 2 to pay the bill. He did not do so.

c. On November 3, 1977, Ray called the business office to say that he had sent someone to the office with the check, but that defendant had refused to accept it. The outcome of this conversation was that defendant agreed to verify with Ray's bank that the check was good. The check cleared this time. This brought the account current.

5.a. Shortly thereafter the account again became delinquent; on November 17, 1977, a Denial Prevention Call (DPC) Notice was automatically generated by the billing computer; the account had become delinquent in the sum of \$582.29.

b. On November 18, 1977, a service representative called the account and spoke with a Mr. Baudot. Mr. Baudot advised
defendant he would pay the bill by 8:00 a.m. on Monday,
November 21, 1977.

c. Payment was not received on November 21. Pacific did not temporarily interrupt service at this time because of the account's six-year established payment history and the fact that defendant had been negotiating with the responsible billing person.

6.a. The account became further delinquent. The amount of the November bill was \$1,219.52. A November payment of \$637.23 was due on December 16, 1977. When payment was not received by this date, the computer generated to the business office a notice of a carry-over delinquent amount. This notice requires immediate payment to prevent loss of service.

b. After the notice was received in the business office, an attempt to contact the customer was made on December 28, 1977. Defendant's business office personnel were unable to reach anyone. After further attempts to contact the customer were to no avail, a service order was issued by the business office to disconnect the service on January 13, 1978 for nonpayment.

7. On January 23, 1978, a business office supervisor spoke with Mr. Baudot who said another company by the name of Hamst, Inc. bought the business about a year ago. When asked who there is responsible, he gave the name of Richard Murray. Mr. Baudot said he had no knowledge of the whereabouts of J. Clark or G. Dolan. At this time it was explained to Mr. Baudot that he signed for the service. He denied responsibility for any debts of the company.

8.a. On February 9, 1978, the account was referred to the credit manager's office for collection of the closing bill in the amount of \$2,920.73.

b. On March 24, 1978, collection efforts were turned over to Credit Bureau Central, a collection agency.

9.a. On July 7, 1978, Mr. Baudot called. He said that he had been out of the business since February 1977, that he wrote defendant a letter to this effect, and that the letter notified defendant he was no longer responsible for telephone service billing.

b. Defendant's search of its records did not locate that letter or give any indication of defendant's having received such a letter.

c. Defendant obtained a copy of that letter, which was dated April 3, 1977, from complainants on September 12, 1978.

d. Defendant's witness testified the letter struck her as unusual in that the address on the letter is that of the Credit Manager's Office and not defendant's Business Office, which maintains complainants' account records. It was not until February 1978 that defendant began sending correspondence to the subscribers from that address, yet Mr. Baudot's letter was dated April 3, 1977.

Discussion

It is complainants' position that (a) defendant was notified by the April 3, 1977 letter of the change in responsibility for the account; (b) complainants were no longer involved in the business after it was sold; and (c) complainants never used or benefited from the telephone services for which bills in the amount of \$2,920.73 were rendered and remain unpaid.

It is defendant's position that it did not receive the April 3, 1977 letter notifying defendant of a change in ownership of the business; that receipt of that letter by

defendant in April 1977, or any other request by complainants regarding a change in ownership, would have resulted in forwarding to complainants of a supersedure form; that defendant has never received an executed supersedure form from complainants; and that, absent receipt of such form from complainants, defendant's filed tariffs require that complainants continued to be responsible for payment of all charges for the telephone service involved.

In our view, the evidence raises serious questions as to the validity of the April 3, 1977 letter. In that regard, the letter was not sent by certified or registered mail, if, in fact, it was mailed, nor did its contents include a request to have its receipt acknowledged, despite complainants' experience several years earlier of having their request to shift billing responsibility to a corporation turned down. In addition, either a misrepresentation was made to defendant, presumably by the purchasers of complainants' business, or complainant Ray Baudot participated in the arrangements made from time to time concerning the delinquent bills, as one ostensibly having responsibility for payment of the bills.

It is our assessment that complainants have failed to sustain their burden of proof that defendant was notified of (1) the change of ownership of the business, and, consonant therewith, (2) their disclaimer of responsibility for payment of charges for telephone service rendered after February 21, 1977. We are persuaded, however, that defendant should have acted sooner to disconnect service for nonpayment.

In the latter regard, allowing service to continue up through December 16, 1977 was not unreasonable in light of the six-year payment history of the account and of defendant's belief that it had been negotiating with a person responsible

for payment of the account. On that date, however, the computer, according to defendant's witness, "generated to the business office a carry-over delinquent amount. This notice requires immediate payment to prevent loss of service." Nonetheless, it was not until January 13, 1978, after a number of unsuccessful attempts to contact the customer, that service was disconnected for nonpayment.

It is our assessment that it would be inequitable to burden the complainants with unpaid bills for service rendered after December 18, 1977 in light of (1) defendant's failure to implement its requirement of "immediate payment to prevent loss of service", and (2) complainants' not using or benefiting from that service. The record indicates that \$453.43 of the \$2,920.73 total in unpaid bills was for service rendered after December 18, 1977.

Findings of Fact

1. The billing responsibility (i.e., responsibility for payment) for this account rested, according to defendant's records, with R. Baudot, J. Clark, and G. Dolan from mid-September 1971 until service was terminated in January 1978.

2. Complainants have not shown that defendant was notified, prior to the service termination, of either the change of ownership of the business, or their disclaimer of responsibility for payment of charges for telephone service rendered after February 21, 1977.

3. Complainants have not complied with requirements of defendant's Rule 23 for supersedure or change in billing of a working service.

4. Defendant should have disconnected service to this customer for nonpayment on or about December 19, 1977. Had this been done, the delinquent telephone charges would have been \$453.43 less.

Conclusions of Law

1. Complainants, by their failure to sustain the burden of proof that defendant was notified of the change of ownership of the business, bear the responsibility for the payment of telephone bills for this account.

2. Except for the reparation for the downward adjustment in amount of \$453.43 specified in Finding 4 above, the relief requested by complainants should be denied.

O R D E R

IT IS ORDERED that the obligation of complainants to pay delinquent telephone charges be reduced from \$2,920.73 to \$2,467.30. In all other respects, the relief requested by complainants is denied.

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

Dated NOV 6 1979, at San Francisco, California.

John E. Byrne
President
Vernon L. Stanger
Richard D. Howell
Clare J. ...
Francis W. ...
Commissioners