

ORIGINAL

Decision No. 90978 NOV 6 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LAWRENCE I. ERDOS,

Complainant,

vs.

PACIFIC TELEPHONE CO.,

Defendant.

(ECP)  
Case No. 10752  
(Filed June 8, 1979)

Lawrence I. Erdos, for himself,  
complainant.  
Lindell R. Brumley, for defendant.

O P I N I O N

Defendant, The Pacific Telephone and Telegraph Company (Pacific), provides telephone service to an apartment occupied by complainant, Mr. Erdos, and by his mother, Ms. Neumann.<sup>1/</sup> The service contains two telephone numbers in each of three telephone instruments equipped with key selectors and separate bells. Pacific advised affected customers (a) of a change in its tariffs requiring payment for indicator lights on telephone equipment whether the lights were installed or not, (b) of its intent to promptly install such lights upon request without installation charges, and (c) of its intent to charge for light installations made at a late date.

1/ Pacific avers that complainant has no standing to raise service issues since Ms. Neumann has billing responsibility for telephone service. We will consider billing responsibility in cases where nonpayment of bills is an issue and/or in cases filed by outside parties. These issues are not present in this proceeding. Complainant shares payment for telephone service with Ms. Neumann.

In response to that notice, complainant requested that lights be installed on the phones in his apartment. Pacific installed the lights on May 18, 1979. The equipment malfunctioned after the installation was made. Complainant was unable to determine which number was being called. He testified that bells rang even after the correct line was answered and that lines went dead. Complainant was dissatisfied with Pacific's efforts to correct these problems and filed the subject complaint.

Hearings were held in the city of Los Angeles on September 14, 1979<sup>2/</sup> before Administrative Law Judge Jerry Levander. The matter was submitted on that date.

Complainant's Position

Complainant testified that: (a) Pacific agreed to send repair personnel to correct the difficulty between 1:00 p.m. and 5:00 p.m. on May 25, 1979; (b) he made a follow-up noontime call on May 25, 1979 and was initially advised that no repair was scheduled for that day and that a repair service supervisor subsequently advised him that the repair would be made that afternoon; (c) at 4:40 p.m. that afternoon, he called Pacific's repair service and was unable to determine where the expected repairperson was or how the repairs could be completed by a normal quitting time of 4:30 p.m. to 5:00 p.m.; (d) he immediately called Pacific's business office to advise them that he would file a complaint with this Commission; and that (e) at 4:50 p.m. a repairman arrived, stated that several hours of work would be required, and incompetently performed some work on the equipment until

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<sup>2/</sup> Complainant requested a delay in the scheduling set out in Rule 13.2(d) of the Commission's Rules of Practice and Procedure.

5:10 p.m., at which time complainant had him leave because complainant had another appointment and did not wish to leave the repairman in the apartment with his dogs.

Complainant seeks the following relief from the Commission:

- (a) Find and declare Pacific a private nuisance.
- (b) Order Pacific to provide the necessary repairs in a competent manner forthwith on a date and at a time mutually agreeable to complainant and Pacific.
- (c) Award complainant his damages in the sum of \$300.
- (d) Adjust the current bills to reflect the loss of use of complainant's telephones.
- (e) Order Pacific to continue to maintain said telephones at complainant's residence in a proper and competent manner without the need for further order of the above-entitled Commission.

Complainant contends that Pacific is a private nuisance (item (a), above) because its malfunctioning equipment caused continuous ringing of his phone during hours the apartment was not occupied, which in turn kept his dogs barking and annoyed his neighbors.

The necessary repairs were completed and service problems cleared up on June 8, 1979. Therefore, the relief sought in item (b), above, has been satisfied.

Complainant, an attorney, seeks \$75 per hour for four hours he could have been working at his profession instead of waiting for a repairman.

Pacific and complainant have agreed that a one-month credit for all basic exchange charges would satisfy item (d), above.

Pacific's Position

Pacific contends that: (a) it cannot give a caller an estimate of time to complete a repair over the telephone because it does not know the scope of work required; (b) its normal business practice is to inform its customers of a time frame during which its repair personnel will arrive at a customer's premises (e.g., between 1:00 p.m. and 5:00 p.m.) and not to commit itself to a specific time (although it will exclude certain hours at a customer's request); (c) its repairman arrived at complainant's premises within the promised time frame on May 25, 1979; (d) its repairman was asked to leave before he had completed the repair job; (e) the service problems were cleared up on June 8, 1979; and (f) since complainant's service had been inadequate for two to four weeks, it offered a one-month credit of complainant's basic service charges pursuant to Rule 14, paragraph (4)B of its filed tariffs.

Pacific's witness, a repair supervisor for complex equipment, believed that complainant's 4:40 p.m. call strongly influenced the person receiving his call to dispatch a repairman. He testified that: (a) since the problem had not been previously satisfied, he and another repairman went out on June 8, 1979 to clear up the problem; (b) the work performed on June 8, 1979 not only included making the required repairs (which would have taken 1-1/2 to 2 manhours) but also encompassed preventive maintenance and training work for a total of over 10 manhours; (c) the repairman who went out on the May 25, 1979

call was instructed to complete the repair, even if he had to work overtime, but complainant did not permit him to finish his work; (d) the latter repair included a wiring error causing complainant's service problem and some of the work done did not meet expected workmanship standards; (e) he was unaware of any correspondence from complainant on the earlier work or of complainant's intent to file the subject complaint at the time he left for complainant's apartment; and (f) Pacific should have but did not make a call to complainant to advise him of the May 25, 1979 delay.

Discussion

The delays, errors, and malfunctioning of equipment were a source of vexation to complainant, but they do not provide a basis for declaring Pacific a "private nuisance". Pacific should review its internal communication procedures to avoid losing information on scheduled repair visits and to promptly advise customers of unexpected delays. No further order is needed to compel Pacific to maintain the equipment in question.

We cannot determine if Pacific's repairman would have corrected his errors if he had been permitted to complete the job on May 25, 1979.

Pacific's expenses would increase if it guaranteed to have a repairperson and/or installer visit a customer at a specific time during normal working hours because of less efficient use of personnel and equipment needed to meet such commitments. This would be a premium service, but some of Pacific's customers might be willing to pay for such a service. Pacific should consider the possibility of providing such premium service--with possibly a penalty provision for not providing the service on time.

Pacific cites decisions in which the Commission held that it is without jurisdiction to award damages. Complainant contends that we should utilize the broad authority conferred on the Commission in Section 701 of the Public Utilities Code to award the requested damages. He cites no other authority for such action. Our authority to "do all things whether specifically designated...or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction" applies only to areas where we have jurisdiction. We do not have jurisdiction to award damages. Therefore, no damages will be awarded to complainant.

The agreed upon billing adjustment is reasonable. The equipment repairs requested by complainant have been satisfactorily completed. No other relief is warranted. Complainant deposited \$138.76 with the Commission pending resolution of this dispute.<sup>3/</sup> We will disburse the \$138.76 to Pacific.

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<sup>3/</sup> Another check for \$16.71 was returned to complainant for direct payment to Pacific.

O R D E R

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company shall provide a one-month credit for basic exchange service to complainant's apartment.
2. Deposits by complainant in the sum of \$138.76 and any other sums deposited with the Commission by complainant and retained by the Commission with respect to this complaint shall be disbursed to The Pacific Telephone and Telegraph Company.
3. All other relief requested in this complaint, except for the already completed equipment repairs, 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. Boyer  
President  
James L. Stanger  
Richard D. Kovalik  
Robert J. ...  
James W. ...  
Commissioners