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ORIGINAL

Decision No. 91111 DEC 18 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Harold Halsey, an individual)
 doing business as:)
 PRESTIGE COFFEE SERVICE,)
 Complainant,)
 vs.)
 Pacific Telephone Company,)
 Defendant.)

Case No. 10713
(Filed January 23, 1979)

Jack A. Thompson, Attorney at Law,
 for complainant.
Duane G. Henry, Attorney at Law,
 for defendant.

O P I N I O N

Summary of Decision

The request of complainant Halsey that The Pacific Telephone and Telegraph Company (Pacific) be ordered to make a bill adjustment of approximately \$5,974.48 plus other amounts paid for telephone charges not incurred by him or on his behalf is denied. Halsey used customer-provided equipment (CPE), a Nova call diverter and an outside line access device, attached to his telephone lines without a protective device to prevent unauthorized access to his equipment.^{1/}

1/ The CPE permitted (a) calls made to Halsey's Los Angeles exchange number 873-3131 and from his Van Nuys exchange number 782-1212 to be transferred to his Agoura exchange number 991-3295; (b) calls made to Van Nuys exchange number 782-4933 (formerly 782-1213) to be transferred to his Los Angeles exchange number 873-3653 where the caller received a dial tone; and (c) permitted callers with touch-tone equipment to dial anywhere after getting the 873-3653 dial tone.

In late 1977 unauthorized calls were made using the CPE. Pacific made billing adjustments of \$241.09 early in 1978 on a one-time basis and advised Halsey to contact his vendor to install a protective device to prevent unauthorized access to his telephones. Further unauthorized calls were billed to Halsey beginning in August 1978.

Halsey did not install a protective device until after several thousand dollars of additional unauthorized calls were billed to him,^{2/} after Pacific stated that he either install a protective device and arrange for payment of all of his accounts or pay the accounts in full to avoid disconnection of his services. Pursuant to Pacific's tariffs, Halsey is responsible for payment of those billings.

Hearings

After notice a hearing was held in the city of Los Angeles on May 1, 1979 before Administrative Law Judge Levander. The matter was submitted on receipt of late-filed exhibits, which have been received.

Prior Notice and Adjustments

Pacific made bill adjustments of \$241.09, waiving charges for earlier unauthorized calls appearing on Halsey's December 8, 1977 bill.

^{2/} In late-filed Exhibit 5, Halsey claims unauthorized long-distance billings of \$5,250.60, unauthorized message units billings of \$929.27, and taxes of \$321.25, or a total of \$6,501.12. The complaint seeks relief in the amount of "\$5,974.48 plus all moneys paid to defendant on account of telephone charges not incurred by or on behalf of complainant".

One of Pacific's witnesses, Lowe (who handled CPE cases on business telephone accounts), testified that after these adjustments were agreed upon, she spoke to Halsey on the telephone and sent a December 1977 letter to Halsey which confirmed the adjustments, advised Halsey to contact his vendor to install a protective device to prevent unauthorized access to his telephones, and informed Halsey that no further unauthorized-billing adjustments would be made. Lowe testified that (a) the December 1977 letter would have been returned to her had it not been delivered, (b) the letter was not returned, and that (c) Pacific's copy of the letter was disposed of pursuant to Pacific's six-month retention policy on inactive matters.

Another Pacific witness, Kerns, testified that in December 1977 she had numerous telephone conversations with an employee in Halsey's office concerning adjustments for unauthorized calls. In processing the complaint, Kerns requested that Halsey's service be checked out by Pacific's installation department. No problem with Pacific's equipment was found. Pacific's records showed that Halsey had CPE. Kerns told Halsey's employee that adjustments for unauthorized calls on prior billings would be made, on a one-time basis, and that it would be necessary to modify the CPE to prevent unauthorized access. Kerns referred Halsey's complaint to Lowe, read Lowe's December 1977 letter to Halsey, and confirmed Lowe's description of the contents of that letter.

In redirect, Halsey testified that he read all of his mail and could not recall receiving Pacific's December 1977 letter nor could he recall receipt of a telephone call from Lowe. He stated that his employee mentioned that Pacific would credit his 1977 bills, but that his employee did not mention anything about his CPE.

Background of Current Complaint

Halsey alleges that Pacific (a) delayed the installation of telephone service in a new building used for his business; (b) failed to follow through on his request for an analysis of telephone service needs at the new location; (c) disrupted his scheduling for occupying the new building for over a month due to the lack of telephone service; (d) did not honor an August 1978 request for a number change on the call diverter access line because the line sought to be disconnected was still active in December 1978; and that (e) some of his former employees, with knowledge of the access phone number, were not employed at his new office.

Halsey contends that (a) after he reported the unauthorized use of his telephone in August 1978, he was shuffled from person to person by Pacific employees promising to check into the problem; (b) Pacific unduly delayed the resolution of the problem; (c) he was informed that Pacific's security section had installed a surveillance device on the line in an attempt to apprehend the people using the line; (d) he had been advised to disregard the illegal telephone charges and told to pay the portion of his billings which were related to his business and that he would not be charged for the unauthorized calls; (e) he requested that his service be completely cut off since he could not use the affected lines and that this would give Pacific the opportunity to apprehend the culprits; (f) he was subsequently informed that since he was using equipment not owned by Pacific, he would be held liable for the charges for telephone service; (g) on December 14, 1978 Pacific informed him that surveillance

had never been used on his telephone because he had not signed the requisite form; and that (h) he had never been advised of the need to sign the form nor had he been sent a copy of the form.

Pacific contends that its actions have been lawful, reasonable, and proper and in complete accord with applicable tariff provisions, specifically Schedule Cal. P.U.C. No. 36-T, Sixth Revised Sheet 44, Rule No. 9, which states, in part:

"A customer for service shall be responsible for the payment of all...toll and other charges applicable to his service made in accordance with the Utility's schedules of rates and rules."

Pacific (a) denies allegations of its failure to adequately respond to Halsey's inquiries; (b) requests dismissal of the complaint because of the failure to state a cause of action as set forth in Section 1702^{3/} of the Public Utilities Code and in Rule 9^{4/} of the Commission's Rules of Practice and Procedure; (c) contends that it gave

3/ Section 1702 states, in part:

"Complaint may be made...by any corporation or person, ...setting 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. . . ."

4/ Rule 9 states, 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."

notice to complainant of the vulnerability of his CPE to unauthorized access and toll fraud; (d) provided bill credits for prior unauthorized calls; (e) recommended that the CPE be removed or that a protective device as required by Section 2.13 of the Commission's General Order No. 138 be used; and (f) states that it advised Halsey of his responsibility for unauthorized calls.

Pacific's witness Levine, a marketing office supervisor, reviewed Pacific's business records in checking out the subject dispute and the 1977 dispute. She prepared and utilized a log^{5/} of contacts with Halsey and with Mr. Schmidt, a representative of the vendor of his CPE, who was acting in Halsey's behalf. She testified that (a) Pacific objected to certification of the type of CPE used by Halsey because it would be potentially subject to fraudulent use and the Commission subsequently adopted an amendment to General Order No. 138 in May 1976; (b) Halsey's CPE was connected in March 1976; (c) on August 10, 1978 Schmidt requested a change of the number which provided access to the call diverter and that change was made on August 16, 1978; (d) on October 24, 1978 Halsey called Pacific's office and reported being billed for many calls in error and he reported hearing other voices on his line; (e) Pacific's representative ordered a test of

5/ Backup information (excluding intercompany communications) related to the contact log was made available for complainant's review. Pacific reviewed the business office contact memo files of customer representatives mentioned in Halsey's testimony and reported that it found no notation of additional contacts with Halsey. Pacific states that Levine's testimony covered all conversations documented by its records (see late-filed Exhibit 12).

its automatic machine accounting and register (AMA) to see if calls were being properly billed; (f) on October 27, 1978 Halsey said he would not pay for a number of the calls and requested a full adjustment for unauthorized toll calls on his bill; (g) Pacific's service representative said that if its pending equipment check showed its central office equipment was malfunctioning, an adjustment would be in order; (h) on November 9, 1978 Schmidt called and was informed that the equipment check had not been completed, but that Halsey would be notified of the results of the test; (i) on December 1, 1978 Pacific was not able to reach Halsey in regard to the equipment check; (j) on December 6, 1978 Halsey called back and spoke to her; (k) she informed him that Pacific's central office equipment was working properly and the billing was correct; (l) while performing the AMA checks, Pacific's security department made a routine line observation which suggested possible electronic fraud; (m) it appeared that a "phone freak" could be responsible for the toll fraud and that prosecution of this type of fraud was virtually impossible (RT 57, 58); (n) Halsey requested that Levine arrange for a premises visit to review his system; (o) on December 12, 1978 she called Halsey and discussed a September 17, 1975 letter from the manufacturer of Halsey's CPE, advising the Commission of its intent to put warning stickers on its equipment and a warning in its owner's instruction manual concerning potential toll fraud and the owner's liability for unauthorized calls; (p) Halsey's description of his CPE differed from that given by Schmidt; (q) Schmidt subsequently stated that he was aware of the required equipment modification to prevent equipment misuse,

and that Halsey had chosen to do nothing at that point; (r) on December 14, 1978 Halsey requested that the line to one of his CPE devices be disconnected (presumably to the line with outside access), but Pacific did not know which line to disconnect; (s) on December 15, 1978 Halsey requested that phone number 782-1212 be disconnected, and he was advised that no billing adjustment was warranted and that he was responsible for his delinquent bills and would have to pay them to avoid a service interruption; (t) on December 18, 1978 Halsey requested reconnection of 782-1212; (u) on January 5, 1979 Pacific advised Halsey to either make an arrangement to protect his lines by January 12, 1979 and make arrangements for payment of his bills or to pay the bills in full to avoid discontinuation of service; (v) Halsey has protected his CPE, has caused the CPE to be moved to his vendor's office in January 1979, and has made arrangements to fully pay current charges and to pay overdue amounts at the rate of \$365 per month; (w) the charges relating to Halsey's CPE were for installation of Pacific's lines to a connecting block and for service order work, but that the vendor, not Pacific, connected the CPE to the connecting block; and that (x) pursuant to Pacific's policy she did not volunteer information regarding the possible negative factors associated with the particular CPE.^{6/}

^{6/} Pacific feared antitrust implications if it volunteered such information.

Complainant (a) objected to Levine's testimony using a log compiled from Pacific's business records; (b) claimed that the log was incomplete, especially as to August and September 1978 calls, and self-serving; and that (c) the testimony of Pacific's witnesses on prior notice of potential fraud through CPE should not be relied on absent a purported confirming December 1977 letter.

Discussion

D.85791 dated May 11, 1976 in C.9625, et al., which adopted General Order No. 138, states, in part:

"It has been brought to our attention that unauthorized persons have, in several instances, misused the telephone network by gaining access through call diverters that lack security features. The subscribers owning these call diverters were faced with large bills for toll calls that they were not aware had been placed through their telephones. Obviously, subscribers are responsible for toll calls placed over their central office lines and billed to their number. While such equipment does not present a harm to the network in the technical sense, it nevertheless represents an undesirable feature. Even where the telephone company is able to collect from its subscriber for unauthorized toll calls, there arise many costs associated with investigating such calls and causing ill feeling toward the utility. We believe that it is consistent with the general objectives of GO 138 to provide restrictions on equipment which may possibly be fraudulently used by persons other than the subscriber. Accordingly,

we will add a new section^[*] to provide that the certifying engineer should determine if the equipment is capable of access to the network by unauthorized persons for fraudulent calls, which will be billed to an unknowing subscriber. Since the number of instances of this misuse are relatively few, we will require that after October 1, 1976 equipment must be manufactured in such a way as to prevent fraudulent use. In the meantime, we will require that the customer be placed on notice of the possibility that unauthorized calls can be made through his own equipment with resulting bills for which he is responsible."

*i.e., Section 2.13, Prevention of Fraudulent Use, which states:

"The certifying engineer in examining equipment, such as call diverters, which may be accessed from the telephone network, shall determine if in any mode of operation the equipment is capable of access by unauthorized persons who may subsequently utilize the equipment to make calls into the telephone network which will be billed to the subscriber who has such equipment connected. If such unauthorized access is possible purchasers of such equipment must be informed of their responsibility for any charges resulting from unauthorized access to the network through their equipment. This notice must be given on a label attached to the equipment and in the instructions furnished with it. The certifying engineer shall include a statement in the certificate whether the equipment conforms with this requirement. All equipment manufactured on and after October 1, 1976, shall be constructed in such a manner as to positively prevent access to the toll network by unauthorized persons who may reach the customer-owned equipment on incoming lines. No certification may be made for equipment not meeting this requirement manufactured after such date."

We find that (a) Pacific did notify Halsey and his employee of the potential for toll abuse through his unprotected CPE in December 1977; and (b) Halsey failed to act on a timely basis to prevent a recurrence of such toll abuse; and we conclude that under Pacific's tariffs, Halsey would be liable for payment of these bills, absent notification from Pacific of the need to protect his CPE from toll abuse. Pacific's 1977 adjustments of Halsey's bills and its warnings to him concerning potential toll abuse utilizing his CPE are reasonable and sufficient actions on its part. Granting the relief sought by Halsey would unduly burden Pacific and/or its other customers for Halsey's failure to protect his CPE. The relief requested should be denied.

Findings of Fact

1. By letter dated September 17, 1975, the manufacturer of certain CPE advised the Commission of potential toll abuse using its equipment. The manufacturer stated that it would put a warning label on its equipment and would put a warning in its owner's instruction manual.
2. Halsey caused this type of CPE to be installed for his business in March 1976. No protective device was installed on this CPE to prevent toll fraud.
3. Fraudulent calls were placed through unauthorized access to Halsey's CPE in late 1977.
4. Pacific made a one-time billing adjustment of \$241.09 to eliminate charges for these fraudulently placed calls.
5. At the time the adjustment was made, Pacific put Halsey on notice to contact his CPE vendor to install a protective device to prevent future unauthorized access to

his CPE and further advised him that no future adjustments would be made for unauthorized calls.

6. Additional fraudulent calls made through unauthorized access to Halsey's unprotected CPE were billed to Halsey commencing in August 1978.

7. The placing of fraudulent calls ceased after Halsey caused protective devices to be placed on his CPE and relocated the CPE to his vendor's office in January 1978.

8. Rule 9 of Pacific's tariffs provides that Halsey is responsible for Pacific's billings to him related to the fraudulently placed calls.

9. D.85791, which permanently adopted General Order No. 138, Rules for Connection of CPE to Public Utility Systems, states that a customer is liable for unauthorized calls using his CPE.

Conclusions of Law

1. Halsey is liable for unauthorized calls using his CPE.

2. Halsey has not established any basis for adjusting his telephone bills commencing in August 1978, to eliminate charges for unauthorized calls.

3. The relief requested should be denied.

ORDER

IT IS ORDERED that the relief requested is denied.
The effective date of this order shall be thirty days
after the date hereof.

Dated DEC 18 1979, at San Francisco, California.

John E. Byron
President
William L. Steiner
Charles W. Howell
Charles J. Doherty
James M. Quinn
Commissioners