

Decision No. 91270 JAN 29 1983**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ALFRED BERGER dba COLUMBUS PRESS,)

Complainant,

vs

PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY,

Defendant.

Case No. 10786  
(Filed September 19, 1979)ORDER OF DISMISSAL

Alfred Berger doing business as Columbus Press located at 693 Mission Street, Room 305, San Francisco, 94105, (complainant) is questioning Rule 22 contained on 1st Revised Sheet 70, Schedule Cal PUC No. 36-E of The Pacific Telephone and Telegraph Company (defendant) as follows:

"This is questioning your Rule #22, to wit:

"The applicability of business and residence rates is governed by the actual or obvious use made of the service. The use which is to be made of the service will be ascertained from the applicant at the time of application for service.' Then there are five paragraphs defining what constitutes 'business' rates.

"We then have a general explanation of what constitutes 'residence' rates.

"This is a contrivance manufactured by PT&T simply in order to obtain much higher rates as against 'residence' rates. There is absolutely no difference between one and the other. The same telephone handles both calls.

"Actually, when the telephone company received its exclusive franchise to give service in the State of California, the Legislature never spelled out a difference between these. Perhaps because there is no difference.

"It is not sufficient for the telephone company to arbitrarily establish a so-called difference, if indeed, there is one by any stretch of the imagination.

"The rule is obviously not a correct one and is also probably unconstitutional from a legal standpoint.

"I maintain that when I, as a prospective customer, apply for telephone service, I should receive the lowest possible rate. The use to which the telephone will be made is irrelevant. When I get my phone I may not know what kinds of calls will be made. The way the rule now reads if I have a so-called 'residence' phone and make so-called 'business' calls I am in violation of the Rule #22 and am 'breaking the law.' This is a ludicrous situation and should be corrected immediately.

"Wherever the term 'residence' and 'business' appears it should be expunged and just use the term 'telephone'.

"Also, I feel that I have been overpaying my telephone bills these many years, and seek compensation from PT&T of the difference between the higher rate I have been paying as against the lower rate I should have been charged, and in the future, all telephones should take the lower rate.

"Also, I am seeking punitive damages against both defendants."

Complainant states that according to instructions from two members of our staff he is not required to obtain 25 additional signatures on his complaint as required by Section 1702 of the Public Utilities Code because he is not requesting a change in tariffs per se, but is questioning the rule that uses the incorrect terminology as stated in his complaint. That is a correct application of Section 1702 to the issue raised by complainant. Complainant indicates that he has asked the Commission staff to help him resolve this matter informally.

Defendant filed its Answer and Motion to Dismiss on October 25, 1979. Defendant denies the allegations generally and specifically and raises seven affirmative defenses as follows:

1. Different rates for business and residential telephone service have been published by defendant since before 1900. Such difference in rates has been approved by the Commission in every general rate decision issued concerning defendant. The distinction is justified by the increased costs associated with business service, the greater value of telephone service to businesses, and the importance of encouraging the maximum number of residential customers.
2. The refunds sought by complainant for the difference between the higher rate he has been paying and the lower rate he seeks would, if granted, violate the provisions of Section 453(a)<sup>1/</sup> of the Public Utilities Code.
3. 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.<sup>2/</sup>

---

<sup>1/</sup> "453(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage."

<sup>2/</sup> See Section 1702 of the Public Utilities Code and Rule 9 of the Rules of Practice and Procedure.

4. The complaint challenges the reasonableness of the distinction in defendant's tariffs between business and residence services but the complaint fails to contain the requisite 25 signatures.<sup>3/</sup>
5. Section 735 of the Code contains a two-year limitation on actions which is applicable to the present complaint, thus precluding complainant from asserting any claim prior to September 19, 1977.
6. The complaint is frivolous and it would be an unwarranted waste of the Commission's and defendant's time and effort to further investigate or hear this matter.
7. The Commission is without jurisdiction to award damages.

Defendant's Motion to Dismiss makes the following points:

In the early days of the telephone, the only subscribers were business firms and professional men. The first San Francisco directory, of June 1, 1878, lists only two residential stations. It was early realized that until people began to acquire telephones in their homes, businesses would have no great need for them. In order, therefore, to encourage the use of telephones in residences, a lower rate was provided for residence subscribers;<sup>4/</sup> the value of service to business customers is greater; lower residence rates will maximize the number of residence customers and thus increase the value of service for everyone; and costs are greater for business services primarily because of greater demand during peak hours.

---

<sup>3/</sup> "1702. . . . No complaint shall be entertained by the commission, except upon its own motion as to the reasonableness of any rates or charges of any...telephone corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such...telephone service."

<sup>4/</sup> So far as we (defendant) can determine, the original rate for all customers was \$5.00 per month plus 5 cents a switch; the rates for residence service were then lowered by eliminating the 5 cents per switch charge.

We have reviewed and considered the pleadings and are of the opinion that it would serve no useful purpose to proceed to hearing on this matter. At the outset we note that nowhere are any facts set forth which would show defendant's tariff rule classifying telephone service is unreasonable.

Assuming arguendo that complainant was successful in this undertaking, his claim would be limited to the period beginning September 19, 1977 under the statute of limitations in Section 735.<sup>5/</sup> Furthermore, we have repeatedly held that the

---

<sup>5/</sup> "735. . . . All complaints for damages resulting from a violation of any of the provisions of this part, except Sections 494 and 532, shall either be filed with the commission, or where concurrent jurisdiction of the cause of action is vested by the Constitution and laws of this State in the courts, in any court of competent jurisdiction, within two years from the time the cause of action accrues and not after."

Commission is without jurisdiction to award damages. (Schumacher v Pacific Telephone & Telegraph Co. (1965) 64 CPUC 295; Blincoe, et al. v Pacific Telephone & Telegraph Co. (1963) 60 CPUC 431; Warren & Hollander v Pacific Telephone & Telegraph Co. (1966) 54 CPUC 704.) Therefore, complainant would not be able to collect punitive damages.

For all of the above reasons,

IT IS ORDERED that the complaint is dismissed.

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

Dated JAN 29 1980, at San Francisco, California.

John E. Bryson  
President  
Veronica L. Stinson  
Charles H. Howell  
[Signature]  
Commissioners