

ORIGINAL

Decision No. 91914 JUN 17 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FRED H. ARM, PAN AMERICAN
MARKETING SYSTEMS, INC.,
Complainant,

vs.

PACIFIC TELEPHONE COMPANY, A
Corporation,
Defendant.

Case No. 10835
(Filed February 11, 1980)

O P I N I O N

Complainant, Fred H. Arm, for Pan American Marketing Systems, Inc. filed this complaint pursuant to Section 1702.1 of the Public Utilities Code^{1/} alleging that when complainant moved his place of business from the seventh floor to the twenty-second floor of the same building that defendant, The Pacific Telephone and Telegraph Company,^{2/} billed complainant \$456 for moving his telephone service.

The complaint states:

"IV

"It is contended that the rate charged for said installation of one telephone instrument is confiscatory, excessive, unlawful, unjust, unreasonable, discriminatory as established in Code of Public Utilities §728 and as such pursuant to Public Utilities Code §729 may

1/ All references are to the Public Utilities Code.

2/ The real name of defendant is The Pacific Telephone and Telegraph Company although the complaint was filed against Pacific Telephone Company.

after hearing investigate such a single rate and thereafter establish a new rate that is more in line with acceptable and reasonable business practices.

"v

"The rate charged by the utility is further confiscatory and [denies] the Complainants of equal protection of law as guaranteed by the 14th Amendment to the Constitution of the United States and essentially amounts to a taking of private property without just compensation as prohibited by the United States and State Constitution. ✓

"WHEREFORE, the Complainants request an order to set aside the previous tariffs and instead to order a reasonable and just compensation for the services provided by a public utility that involve a de minimis expenditure of labor and that:

- "1. That the Complainant be compensated for the time he has expended in prosecution of the action;
- "2. For reasonable attorney's fees;
- "3. For costs in the bringing of this action; and
- "4. For whatever other appropriate relief is determined and adjudicated by the Commission."

Defendant's answer admitted that complainant was charged \$456 for nonrecurring charges for moving certain services from the seventh to the twenty-second floor on November 9, 1979. Attached to the answer, as an appendix, were copies of defendant's tariff pages itemizing the applicable charges. The answer states that complainant received a credit of \$15 in connection with touch-tone services previously paid and that the nonrecurring charges in question are thus \$441 rather than \$456.

For affirmative defenses, the answer states that the complaint cannot be maintained because it challenges the reasonableness of rates and charges but does not contain the signatures of 25 actual or potential customers as required by Section 1702; that the complaint fails to state a cause of action in that 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 order of the Commission; that any reduction in nonrecurring charges for complainant would be in violation of Sections 453 and 532 of the Code; and that the Commission has consistently found that it is without authority to award costs or attorney fees for bringing an action before the Commission. ✓

Defendant requests that the complaint be dismissed and that \$441 of the monies on deposit with the Commission be disbursed to defendant and the remaining \$15 be disbursed to complainant.

Careful reading of the complaint reveals that it is really a challenge to the reasonableness of the rates and charges for the service provided without the requisite 25 signatures of customers or potential customers as required by Section 1702. Construing Section 1702 in Decision No. 80507 dated September 19, 1979, we stated:

"This statutory requirement is, of course, mandatory. It has survived, substantially unchanged since the original Public Utilities Act became effective in 1912. Its purpose is obvious. Not every rate or tariff provision can please all segments of the public. This section of the Code tends to limit complaints as to reasonableness of rates and charges to those problems where there is some minimum level of public dissatisfaction. Some such limitation is required to keep the workload of the Commission within reasonable bounds."

Findings of Fact

1. The subject complaint involves the reasonableness of rates and charges of a telephone corporation.

2. The complaint has not been signed by the mayor, nor by the president or chairman of the board of trustees, nor by a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, nor by not less than 25 actual or prospective customers or purchasers of such telephone service.

Conclusion of Law

The complaint should be dismissed as not meeting the statutory requirements of Section 1702 of the Public Utilities Code.

O R D E R

IT IS ORDERED that Case No. 10835 is dismissed without prejudice.

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

Dated JUN 17 1980, at San Francisco, California.

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

John E. Ryan
President

James L. Stanger

Alvin J. ...
Commissioners