

ORIGINAL

Decision No. 92913 APR 21 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARC TOSCA,)
)
 Complainant,)
)
 vs)
)
 WESTERN UNION,)
)
 Defendant.)

Case No. 10855
(Filed April 28, 1980)

Marc Tosca, for himself, complainant.
Larry Dick, for Western Union Telegraph Company, defendant.

O P I N I O N

Marc Tosca, complainant, requests that defendant Western Union be ordered to accept mailgram^{1/} messages placed by telephone. The complaint alleges that, on November 16, 1979 through the Commission's Consumer Affairs Branch (CAB), complainant was advised by defendant that he owed \$2,700 but that the amount was subsequently reduced by defendant to \$609.16. Complainant states that he is only requesting defendant to provide a statement with the details of any outstanding balance to enable him to determine the amount he owes.

^{1/} Mailgrams are messages placed by telephone with defendant. The cost of the mailgram appears on the customer's telephone bill. The telephone utility forwards the amount collected to the defendant. If the customer deducts mailgram charges from his telephone bill, the telephone utility charges back those amounts to defendant. Defendant then bills the customer.

Defendant answered the complaint stating that on February 7, 1980 it supplied copies of all of the messages sent by complainant together with itemized billing to the Commission's CAB. It states that original bills had been tendered to complainant in the past but to no avail. It also states that complainant should deposit the sum of \$609.16 with the Commission as an act of good faith prior to defendant's being required to provide service on open terms. Further it states that its filed tariff provides that prepayments for service may be required because of unpaid bills. Finally, it stated that complainant has not provided any copies of canceled checks or other evidence to show payment of the amount in dispute.

Hearing was held June 6, 1980 at San Francisco before Administrative Law Judge Banks under the Commission's Expedited Complaint Procedure.^{2/} At the conclusion of the expedited hearing, complainant requested that the matter be recalendared for hearing under the Commission's regular complaint procedure. Complainant's request was granted July 21, 1980 and hearing was held September 8, 1980. The matter was submitted on September 8, 1980 subject to filing of late-filed Exhibits 1 and 2. Exhibit 1 was to be defendant's

^{2/} Rule 13.2 of the Commission's Rules of Practice and Procedure is applicable to complaints for less than \$750. The parties are not represented by counsel; no pleading other than a complaint and answer is necessary; the hearing is without a reporter; and when the public interest requires, the matter may be recalendared for hearing under the Commission's regular procedure.

documentation of the bills and messages in dispute. Exhibit 2 was complainant's response to Exhibit 1.

Exhibit 1 was filed October 3, 1980. It contained 16 cover sheets together with the messages sent by complainant. It showed that complainant owed a total of \$788.10. After requesting an extension of time, complainant filed Exhibit 2 on November 11, 1980. It noted that the amount claimed due had changed from \$869.99^{3/} to \$788.10. It also questioned \$85.42 of the \$788.10 alleged in Exhibit 1 as the amount due stating that this amount covered mailgrams sent to defendant and its collection agencies regarding this dispute and that it should be deducted from any amount owing. Finally, it stated that a further adjustment was due on \$23.59 of the \$788.10 because this amount covered mailgrams which were "personal opinion" messages subject to a lower rate.

In testifying, complainant stated that he did not dispute the fact that he owed defendant for past service but took exception to defendant's position that all charges claimed due had appeared on his telephone bills. He also objected to defendant's assigning his billing statements to collection agencies stating this is a form of harassment. He stated that defendant had failed to produce copies of bills or respond to his many mailgrams concerning this dispute.

^{3/} Under direction of the assigned Administrative Law Judge defendant on June 25, 1980 documented outstanding charges totaling \$461.01. On September 8, 1980 defendant documented further charges in the amount of \$408.98. These two items total \$869.99.

He stated that the amount defendant claims he owes has varied from \$600 to \$2,700. He stated that he believed many of the bills were duplicate billings and thus not an accurate accounting of the amount due. He also objected to the time and expense incurred in defending himself against defendant and its collection agencies. On cross-examination complainant stated he had used defendant's services for some 20 years but has had trouble only the past three years. He admitted that he had nothing from defendant which stated he owed \$2,700 stating that that figure was supplied him by the Commission's CAB.

Defendant's manager-customer services, Larry Dick, testified that in addition to the original billing, defendant had supplied complainant with duplicates of all messages and bills. He stated that it is very costly to research their records to determine the exact amount of money complainant owes and that the amount claimed due was not a frozen figure because a longer search of complainant's record could establish a different amount. Finally, he stated that it was defendant's position that it expects payment of outstanding bills before extending further credit, that the amount complainant owes justifies the refusal to extend any credit, and that defendant has complied with its filed tariffs in refusing credit. On cross-examination he stated when full payment of complainant's account is made, defendant would consider making charge services available.

Discussion

With complainant's acknowledgment that he owes defendant for past service, the issue before us is whether defendant has acted responsibly and in compliance with its tariffs in refusing service to complainant without prepayment.

Defendant's Tariff Schedule P.U.C. No. 2-T VII(D) (2) provides:

"Messages are accepted without prepayment from any person or firm of apparent responsibility. Prepayment will be required from a person or firm indebted to the Utility for service previously furnished, or whose credit standing for any other reason is unsatisfactory to the Utility. Payment of bills is expected within two weeks after date of rendition." (Emphasis added.)

Clearly once a party is in arrears, the utility can demand prepayment as a condition for providing service. Defendant made no demand on complainant until his account was in arrears. Thus when complainant refused to pay his outstanding obligation, defendant properly closed the account and demanded prepayment pursuant to its filed tariffs.

Complainant's objection to the assignment of his account to collection agencies and his allegation of harassment are without merit. Good business practice dictates collection of past due accounts and assignment to collection agencies when necessary.

In this instance complainant was first billed by the telephone utility. When complainant deducted these amounts from his telephone bill, they were charged back to defendant. Defendant then billed complainant directly. It was only after receiving at least two bills plus delinquent notices that the account was assigned for collection. In addition, complainant did not furnish any documentation to support his contention that defendant's bills were duplicates or that any bill had been paid.

Because complainant did not deposit any funds with the Commission, there are no funds to release to defendant in satisfaction of the outstanding debt. However, a review of Exhibits 1 and 2 leads to the conclusion that complainant owes \$788.10 less a credit of \$23.59 as an adjustment for personal opinion messages sent that enjoy a special rate. This leaves a total of \$764.51 due and owing.

We reject complainant's contention that charges for messages to defendant and/or its collection agencies should be charged back to defendant. It is unreasonable to expect defendant to absorb such costs. Complainant could be just as effective through correspondence.

While we have determined from the record the amount complainant owes defendant, we point out that we are without a deposit from complainant from which we can direct payment of the amount due defendant. Collection therefore becomes a civil matter between

defendant and complainant. Accordingly, complainant must accept defendant's requirement for prepayment prior to receiving service as provided in its tariffs.

Findings of Fact

1. Defendant's service allows the sender to charge the cost of the message to his home telephone.

2. Telegrams charged to a telephone number are billed by the telephone company to the subscriber.

3. Charges for telegrams that are deducted from the telephone bill and not paid by the subscriber are charged back to defendant by the telephone utility.

4. Charges deducted from telephone bills and charged back to defendant are billed to the sender by Western Union.

5. Complainant charged telegrams to his home telephone and deducted the charges from his telephone bill.

6. Complainant acknowledges owing defendant for past services but questions the exact amount due.

7. Complainant requested documentation of outstanding charges. Defendant's Exhibit No. 1 shows outstanding charges of \$788.10. Complainant did not provide details of his account or any proof of payment.

8. Of the charges shown in Exhibit No. 1, complainant questions only \$85.42 for those mailgrams sent to defendant or its agents regarding their differences, and \$23.59 for charges for messages enjoying a special rate.

9. It is unreasonable to expect defendant to absorb charges of complainant for messages concerning his account when a letter from complainant would be as effective.

10. Complainant's account should be credited for \$23.59 for public opinion messages entitled to a special rate.

11. Complainant did not deposit any disputed funds with the Commission.

12. Defendant complied with its filed tariffs in refusing complainant open credit terms.

13. The Commission has no deposit from which to order payment to defendant of any outstanding obligations, and collection is therefore a civil matter between defendant and complainant.

Conclusion of Law


No violation of the defendant's tariff has been demonstrated and the complaint should be denied.


O R D E R

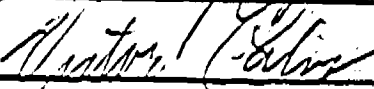
IT IS ORDERED that Case No. 10855 is denied.


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

Dated APR 21 1981, at San Francisco, California.



President


Leonard M. Spivey


Anthony C. Collins


Pamela C. Hester
Commissioners