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Decision 96-07-049 July 17, 1996

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jere Green, dba)
 Jere's Interiors,)
)
 Complainant,)
)
 v.)
)
 Cherry Communications, Inc.,)
)
 Defendant.)

Case 96-02-025
(Filed February 7, 1996)

INTERIM OPINION

Procedural Background

On February 7, 1996, Jere Green, dba Jere's Interiors (Ms. Green), filed a formal complaint against Cherry Communications, Inc., (Cherry), alleging that Cherry had become her long distance provider without her authorization and that Cherry had overbilled her for the services she did use. Ms. Green had previously filed an informal complaint with the Commission regarding Cherry but was dissatisfied with the progress made on the informal complaint.

In her complaint, Ms. Green requested that the Commission order Cherry to reimburse her for all expenses incurred in prosecuting the complaint, including compensation for all time spent by Ms. Green and her representative, compensation for stress and anxiety caused by Cherry's aggressive collection efforts, compensation for the alleged forgery of a letter of authorization, compensation for four months of allegedly faulty line usage and loss of business, and finally for interest on these amounts. Ms. Green

also sought a thorough investigation of Cherry by the Commission for a wide range of potential violations of law and policy.

On April 4, 1996, Cherry filed its answer to Ms. Green's complaint. In the answer, Cherry denied the substantive allegations and interposed five affirmative defenses. First, Cherry alleged that the complaint failed to state a cause of action. Second, Cherry alleged that the relief sought by Ms. Green constituted damages and that the Commission had no authority to award damages. Third, Cherry alleged, and provided a supporting declaration, that the letter of authorization which Ms. Green alleged to have been forged was signed by Ms. Green's son-in-law, who had represented himself as being authorized to make such a change. Fourth, Cherry alleged that the then-on-going investigation by the Commission of Cherry's overall operations, Investigation 95-10-007, obviated the need for another investigation as requested by Ms. Green. Finally, Cherry alleged that it had reached a full settlement of the differences between them when, in the informal settlement process, Cherry credited her account for the full outstanding balance.

On April 19, 1996, the assigned administrative law judge (ALJ) held a prehearing conference. The ALJ explained to Ms. Green that the majority of her requests for relief were for damages, which are beyond the Commission's jurisdiction. The ALJ also described the Cherry investigation, which at that point was awaiting filing of a settlement agreement between Cherry and the Commission's Safety and Enforcement Division (S&E). After reviewing the monetary relief requested by the complainant, the ALJ determined that the maximum amount the Commission could award the complainant was \$240.88. With the ALJ's encouragement, the parties agreed to attempt to settle

this matter. The parties agreed to report to the ALJ on their settlement efforts at a later date.

On May 24, 1996, the parties reported to the ALJ the disappointing news that they were unable to reach a mutually acceptable settlement.

Discussion

There have been no hearings in this proceeding; thus, no factual record has been developed. The allegations and relief requested in the complaint, however, provide a sufficient basis for this decision.

As described at the prehearing conference, Ms. Green requests (1) compensation to reimburse her for all expenses incurred in prosecuting the complaints, including compensation for all time spent by Ms. Green and her representative; (2) compensation for stress and anxiety allegedly caused by Cherry's aggressive collection efforts and alleged forgery; and (3) compensation for loss of business. All of the relief requested constitute damages. The Commission has no authority to award damages. See, e.g., A.J.'s Communications v. Pacific Bell and GTE California, D.94-07-010 (1994). Thus, this portion of Ms. Green's complaint is dismissed.

In contrast to Ms. Green's requests discussed above, Ms. Green's request for compensation for faulty line usage is not a request for damages but rather a request for reparations. Reparations are refunds of or adjustments to the utility charge for service. In the Matter of Alternative Regulatory Frameworks for Local Exchange Carriers, D.94-09-065, mimeo. at 160 n.37 (1994). As stated by Ms. Green, the total amount that she has paid to Cherry is

\$240.88. (Tr. at 11.) This amount, thus, forms the upper bound for her request for reparations.

Ms. Green has also requested that the Commission open an investigation into Cherry's operations. Ms. Green filed a motion for intervention in the on-going investigation. After reviewing the settlement agreement, she asked to withdraw her motion on the condition that if the Commission rejects the agreement, she be allowed to participate in any further proceedings. The assigned ALJ granted her request. Because the Commission already has an investigation of Cherry underway, this portion of Ms. Green's complaint is dismissed as moot.

Therefore, the only matter outstanding is the potential for reparations for faulty line usage.

Cherry's counsel has suggested that Cherry may be willing to pay Ms. Green \$240.88 plus interest to resolve this matter. (Tr. at 25.) Should Cherry make such a payment to Ms. Green, this final aspect of this proceeding would become moot and, therefore, subject to dismissal.

Findings of Fact

1. No evidentiary hearings were held in this matter.
2. No findings of fact can be made with regard to the allegations contained in any and all of the pleadings.
3. The amount Ms. Green has paid to Cherry is \$240.88.
4. The Commission is currently investigating Cherry in proceeding I.95-10-007.

Conclusions of Law

1. The Commission has no authority to award damages.
2. The Commission has authority to order reparations.

3. The maximum reparations possible in this case is \$240.88.
4. The portion of Ms. Green's complaint which requests an investigation is moot.
5. If Cherry pays Ms. Green \$240.88 plus interest, the reparations portion of her complaint will be moot and subject to dismissal.

INTERIM ORDER

THEREFORE, IT IS ORDERED that:

1. The portion of Ms. Green's complaint which requests damages is dismissed.
2. The portion of Ms. Green's complaint which seeks an investigation of Cherry is moot and, therefore, dismissed.
3. If Cherry pays Ms. Green \$240.88 plus interest at the commercial paper rate within 30 days, upon submittal of proof of such payment, the Executive Director is authorized to dismiss the remaining portion of this complaint and close this proceeding.

This order is effective today.

Dated July 17, 1996, at Sacramento, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEPPER
Commissioners