

ALJ/JCM/sid

Mailed 4/22/99

Decision 99-01-041 April 22, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Anthony Ricco,

Complainant,

vs.

MCI Telecommunications Corporation,

Defendant.

BRUNNEN

Case 98-08-002
(Filed August 5, 1998)

O P I N I O N

Anthony Ricco alleges that MCI Telecommunications Corporation (MCI) wrongfully transferred ownership of an 800 number telephone line away from him for a four-month period. Ricco states the issue to be considered as, "The ownership of the 1-800 telephone line after December 11, 1997 and until March, 1998 when the line was again transferred to Ricco's company." Ricco requests an order indicating that the telephone line was wrongfully transferred and that MCI breached its contract with Ricco by doing so.

MCI's Answer to Complaint requests that the complaint be denied and dismissed. Among its affirmative defenses, MCI alleges that the complaint fails to state a claim because it has not set forth facts that MCI has violated any provision of law or any order or rule of the Commission.

Complaints are brought before the Commission under Public Utilities (Pub. Util.) Code § 1702 and Rule 9 of the Commission's Rules of Practice and Procedure. A complaint must:

set]) 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. (Pub. Util. Code § 1702.)

Telecommunications utilities do not typically provide 800 number service under contract but rather pursuant to their filed tariffs. The complaint in this case does not allege that MCI failed to provide Ricco 800 number service during the period in question, that MCI overcharged for such service, or that MCI violated any part of its tariffs under which 800 number service is provided. A review of MCI's current intrastate tariffs on file with the Commission reveals no readily apparent requirement under which MCI's alleged conduct would constitute a tariff violation. It is similarly not clear that the complaint cites any other violation of any provision of law within the Commission's jurisdiction or of any Commission order or rule.

The complaint also does not state that Ricco seeks any relief beyond a Commission order that MCI's transfer of the 800 number was wrong and constituted a breach of contract. If Ricco seeks monetary relief, it is important to specify its nature since the Commission has no jurisdiction to award damages, only reparations. Actions for breach of contract must generally be taken to the courts, not the Commission, and the Commission does not entertain complaints solely to make findings for that purpose.

The assigned Administrative Law Judge issued a ruling on December 12, 1998 outlining these concerns and directing Ricco to file an amended complaint within 30 days clarifying (a) what specific provision of law or order or rule he alleges MCI has violated; and (b) what specific relief within the Commission's jurisdiction he seeks, if any. Absent a satisfactory amendment, an order would

be prepared dismissing the complaint for failure to state a cause of action. Ricco did not respond. The complaint will be dismissed.

The Instructions to Answer sent to defendant MCI on August 21, 1998, a copy of which was served on complainant Ricco, designated the assigned Commissioner and Administrative Law Judge, and stated that this would be categorized as an adjudicatory proceeding and set for hearing. Neither party appealed the categorization as permitted under Rule 6.4(a), so we see no need to disturb that designation. Because we have decided to dismiss the complaint, no scoping memo is necessary, nor is a hearing required.

The assigned Administrative Law Judge's draft decision was served on the parties and made available for public review and comment as required by Pub. Util. Code Section 311(g)(1). No comments were filed.

Findings of Fact

1. Ricco alleges that MCI Telecommunications Corporation (MCI) wrongfully transferred ownership of an 800 number telephone line away from him for a four-month period, and seeks an order indicating MCI breached its contract with him by doing so.
2. The complaint as framed does not define what violation of any provision of law or any order or rule of the Commission MCI is alleged to have committed.
3. The complaint as framed does not sufficiently define what relief Ricco seeks that is within the Commission's jurisdiction to grant.
4. MCI's Answer to Complaint requests that the complaint be denied and dismissed because it has not set forth facts that MCI has violated any provision of law or any order or rule of the Commission.
5. Ricco has been offered a reasonable opportunity to perfect the complaint and has not done so.

Conclusions of Law

1. The complaint fails to state a cause of action as required by Pub. Util. Code § 1702 and Rule 9 of the Commission's Rules of Practice and Procedure.
2. The complaint should be dismissed.
3. No hearing is required.

O R D E R

IT IS ORDERED that:

1. The complaint in Case 98-08-002 is dismissed for failure to state a cause of action.
2. This proceeding is closed.

This order is effective today.

Dated April 22, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners