

Decision 99-04-055 April 22, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Michael Monasky, et. al.,

Complainant,

vs.

Citizens Communications,

Defendant.

Case 98-03-008  
(Filed March 4, 1998)

**ORIGINAL**

**OPINION**

**Summary**

The complaint of Mr. Michael Monasky is dismissed with prejudice to refile based on the same facts.

**Background**

On March 4, 1998, Michael Monasky filed this complaint alleging that:

"Citizens Communications refused to identify measured service calls to justify its high bills. I need to know this information to adjust phone use in my home. Citizens' rates are double those of its neighboring competitors. Measured service is not useful if it exceeds flat rate service rates, which are also double those of neighboring competitors. Citizens was unable and refused to explain the local surcharge. Citizens' monopoly is the only consumer barrier ensuring its high rates and profits. No one I spoke with, including Citizens' employees was satisfied with Citizens' high rates and poor service. Elk Grove is a booming metropolitan area. The days of Citizens' excuses for high rural rates are long gone. My service charges for local telephone usage should approach \$20 per month, not \$50 or \$60 per month."

Mr. Monasky sought a refund of \$30 per month since and including June, 1997 and included the signatures of at least 24 other customers of Citizens, as required by Pub. Util. Code § 1702. As requested by the complainant, the Commission designated the proceeding "ratesetting" on March 23, 1998.

On August 6, 1998, the assigned Administrative Law Judge (ALJ) issued a ruling setting a Prehearing Conference (PHC) for September 10, 1998, at the Commission's hearing rooms in San Francisco. At the request of Mr. Monasky, the PHC was subsequently reset for September 30, 1998, in Sacramento.

On September 30, 1998, Commissioner Neeper and ALJ Bushey convened a PHC with both parties present. At the conclusion of the PHC, Citizens Communications (Citizens) agreed to provide Mr. Monasky with copies of several Commission decisions, and to provide representatives to answer Mr. Monasky's technical questions. Mr. Monasky agreed to submit a letter to the assigned ALJ which concisely stated his causes of action, any violation of Commission rule or policy, and the relief he sought. Mr. Monasky also agreed to provide in the letter a description of the evidence he would present to carry his burden of going forward on the issues he delineated.

On November 20, 1998, Mr. Monasky submitted a two-page letter to the assigned ALJ which had four main subparts: "cause of action," "relief," "procedural schedule," and "evidence."

Mr. Monasky stated that his cause of action is requesting a hearing to question and determine the reasonableness of local service rates, charges and fees billed by Citizens. Under the heading "relief," Mr. Monasky focused on Extended Area Service (EAS), Local Surcharge, Citizens' status as a monopoly, access to direct dial long distance services, and giving customers the option to pay the lower of flat or measured service, retroactively determined. The

evidence Mr. Monasky stated that he would present addressed three topics: itemized billing for local measured service, public participation in EAS hearings, and justification for the Local Surcharge. Mr. Monasky named four Citizens' employees as witnesses, with the possibility of additional employees as witnesses.

On December 8, 1998, Citizens filed a motion to dismiss Mr. Monasky's case. Citizens stated the Mr. Monasky has failed to state a claim upon which relief can be granted because the Commission has specifically approved:

- Citizens' rates, and Mr. Monasky is not alleging that Citizens is charging other than tariffed rates,
- Citizens' EAS plan,
- the Local Surcharge, and
- that no statute or rule requires Citizens to provide the option of retroactive choice between measured or flat rate local service.

On January 26, 1999, Mr. Monasky submitted his response to Citizens' motion in which he stated that he has a cause of action because Citizens' rates are unreasonable, the EAS charge violates the 12-mile rule for local calling, the Local Surcharge violates the rule against retroactive ratemaking, competition for local service is nonexistent, and that residential customers should have the option of paying the lower of flat or measured local service. Mr. Monasky also contended that Citizens authorized rate of return was too high. Mr. Monasky also stated that Citizens was denying him access to information about Citizens' financial state and its billing systems which he required to present his case.

On February 3, 1999, Kelly Boyd, Senior Telecommunications Analyst of the Commission's Office of Ratepayer Advocates (ORA), submitted a letter to the

assigned ALJ, copied to all parties, which detailed her investigation of Mr. Monasky's claims. Analyst Boyd stated that she participated in Citizens' last general rate case as well as all New Regulatory Framework proceedings. She stated that she informed Mr. Monasky that if ORA determined that the complaint had merit, it would assist him in resolving the matter.

Analyst Boyd stated that she explained to Mr. Monasky that the EAS rates are toll discounts, providing larger local calling areas on specific call routes. The fees for this service vary by monthly usage. She also explained that Citizens' rates are set based on their costs and without reference to Pacific Bell's.

Analyst Boyd then recounted her explanation to Mr. Monasky of the purpose of flat and measured local service. She concluded that offering all customers that option of obtaining complete local call detail, and the prerogative to retroactively select the least expensive option, would be "prohibitively costly and would result in much higher access line charges for all of Citizens customers." Establishing such an option for Mr. Monasky alone, Boyd concluded, would be discriminatory and thus illegal.

### **Discussion**

The Commission may entertain complaints against public utilities where such complaints set forth "any act or thing done or omitted to be done . . . in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission." (Public Utilities (Pub. Util.) Code § 1702.) If the asserted violation is of § 451, then the complaint must also include the signatures of 25 customers. Where a complaint fails to allege a violation, the complaint will be dismissed for failure to state a claim upon which the Commission has jurisdiction to act.

Mr. Monasky's letter includes a reference to "reasonableness" of Citizens' rates, charges, and fees. The Commission has previously and explicitly determined that those rates, charges, and fees are reasonable, after lengthy hearings. To the extent Mr. Monasky is suggesting that the monthly service charges or EAS are based on an error of fact or law, then a petition for modification of the decision which found those charges reasonable is appropriate, as was pointed out by ORA Analyst Boyd.

Returning to the proceeding which first considered these charges is particularly important when, as here, the history of the charges is long and complicated. For example, in Citizens' last rate case, the Commission adopted a three-tier pricing plan for extended area service. Citizens Utilities Company of California, 62 CPUC2d 244, 303-8 (D. 95-11-024). The first tier allowed for up to 120 minutes of calls within the extended area for no extra charge. Calls over 120 minutes would be charged \$0.02 per minute up to a maximum for \$6. Under the block plan, customers would pay an additional fee of \$2 per month and receive up to 300 minutes, with an extra charge for additional minutes. This pricing structure appears to be that to which Mr. Monasky objects.

One of the basis for Mr. Monasky's objections is his contention that prior to that Commission decision, there was no charge at all for these calls. In his view, these "extended area" calls were included in his local calling area and the 1995 decision simply started charging for what had been a free service.

A review of the Commission's record on this issue shows that Mr. Monasky's contention is a conclusion which would appear to be supported by the billing information he received before and after the decision was implemented. Prior to D.95-11-024, the fee for EAS was included in the monthly fee; that is, there was no separate line item on a customer's bill. Any customer, unfamiliar with all the components of the monthly fee, had no reason on the face

of the bill to conclude that it contained an extra charge for EAS. After the decision was implemented, the separate charge appeared. Although the Commission ordered Citizens to undertake a consumer education program about this change, a consumer that was unaware of this change could reasonably conclude, looking only at the "before and after" bills, that a new charge had been imposed.

The Commission's rationale for changing the way EAS is charged was to allow customers that use less of this service to pay less. The three-tier system allows those customers that use less than 120 minutes to pay nothing for the service. Those that use more, pay more. Previously, all customers paid the same fee, based on the type of local service.

As this history illustrates, the rate issues Mr. Monasky raises are complicated and, to the extent Mr. Monasky alleges that the decisions contain error, are best considered with the lengthy record already compiled at the Commission.

To the extent Mr. Monasky is alleging that the rates are currently unreasonable, but that the decision approving the rates does not contain error, then Mr. Monasky must state what intervening facts have arisen which render unreasonable the previously approved rates. Mr. Monasky has made no such allegations nor stated any rationale, other than a vague dissatisfaction with Citizens' prices, for re-litigating these complex issues. Having engaged in a lengthy public process, including evidentiary hearings, and developed a detailed record leading to a decision resolving rate case issues, the Commission is reluctant to expend public resources again to consider the same issues and evidence. Here, Mr. Monasky has not described any new evidence or recent development that, if proven at hearings, could result in a different outcome. Having filed the complaint, Mr. Monasky bears the burden of proving, by a

preponderance of the evidence, that Citizens' rates are unreasonable. Unsupported assertions of unreasonableness without even a description of potential evidence which might convince the Commission to alter its previous conclusions, are insufficient to justify the expense of hearings. Under these circumstances, Mr. Monasky has failed to sufficiently support his claim of unreasonableness and the complaint should be dismissed.

Similarly, the Commission lacks authority to make reparations, as Mr. Monasky seeks in this case, where a rate or charge has been previously found to be reasonable. (Pub. Util. Code § 734.) Should the Commission find that the EAS charge is unreasonable, the only remedy is prospective adjustment of the rate as would occur with a modified rate case decision. An individual refund, as Mr. Monasky seeks, would be discriminatory and is prohibited by Pub. Util. Code § 453.

#### Detailed Local Billing

One issue that Mr. Monasky discussed at length at the PHC was the reasonableness of Citizens failing to provide detailed local call information. Mr. Monasky stated that he requires the date, time, duration, and number called to determine which members of his household may be making an excessive amount of calls. Citizens stated that it does not routinely provide any local call detail, other than total minutes. Citizens offered to provide up to three months of information which includes date, time, duration and the prefix of the number called, but not the complete number. Mr. Monasky states that this was inadequate.

Citizens maintained that its computer billing system does not capture this information and to upgrade its system to do so would cost approximately \$3 million, plus \$250,000 of additional monthly costs to prepare and send the more voluminous bill. Mr. Monasky appears to be unsatisfied with the validity of this

estimate. Citizens certainly did not prepare a detailed cost study for this option but its estimates are based on some rough extrapolations of its costs for other related services.

Nevertheless, Mr. Monasky has presented no evidence nor described any potential evidence to counter these estimates. He apparently wishes to cross-examine Citizens' witnesses on these points.

He requests that the Commission order Citizens to institute a policy of allowing customers to retroactively pay the lower of measured service or flat rate local service. Mr. Monasky, however, has cited no evidence in support of his proposal. Despite the explicit direction of the ALJ to describe evidence and witnesses on each issue, Mr. Monasky's letter contains no outline of any evidence he would present. Nor does he address the means by which Citizens would recoup the lost revenue from instituting this policy.

Most importantly, Mr. Monasky has not stated how Citizens in failing to provide this detail is acting in violation of any provision of law or of any order or rule of the Commission. Further, ORA's Analyst Boyd states that such an outcome would be disadvantageous to Citizens' customers. Having failed to identify a violation of order or rule by Citizens, the Commission is without jurisdiction to entertain these issues in this complaint proceeding.

#### **Comments on Draft Decision**

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Both parties filed comments. Mr. Monasky contended that this complaint should be the subject of hearings although he presented no new evidence to support his allegation of unreasonableness, and



instead attached a copy of his response to Citizens' motion to dismiss. Citizens supported the decision.

**Findings of Fact**

1. Mr. Monasky has not stated any rationale for re-litigating issues resolved in Citizens' last rate case.
2. Mr. Monasky has not alleged that Citizens is violating a rule or order of the Commission.
3. No hearing is necessary.

**Conclusions of Law**

1. Pub. Util. Code Section 1702 requires that a complainant allege a violation of Commission rule or order as a prerequisite to the Commission exercising jurisdiction.
2. To support an allegation that recently approved rates are unreasonable, a complainant must state a rationale for re-litigating issues specifically addressed and resolved in the rate case.
3. This complaint should be dismissed.
4. Pursuant to Rule 6.6 of the Commission's Rules of Practice and Procedure, Article 2.5 ceases to apply to this proceeding.

**O R D E R**

Therefore, **IT IS ORDERED** that the complaint of the Mr. Monasky is dismissed with prejudice to refiling based on the same facts.

This order is effective today.

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

**RICHARD A. BILAS**

President

**HENRY M. DUQUE**

**JOSIAH L. NEEPER**

Commissioners