

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Thomas A. Nerswick,

Complainant,

v.

Cincinnati Bell Telephone Company,

Respondent.

Case No. 00-1597-TP-CSS

OPINION AND ORDER

The Commission, considering the complaint, the evidence of record, the arguments of the parties, and the applicable law, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Mr. Thomas A. Nerswick, complainant, 2059 Harrison Avenue, Cincinnati, Ohio 45343.

Frost, Brown & Todd, by Jack B. Harrison, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202, on behalf of Cincinnati Bell Telephone Company.

OPINION:

I. Background

On August 31, 2000, Thomas A. Nerswick filed a complaint against Cincinnati Bell Telephone Company (CBT) alleging that, when he attempted to use his telephone, someone on the line was on a conversation and threatened him if he continued to use his telephone. As a result of the crosstalk, Mr. Nerswick claims he was unable to use his telephone. He claims that he reported this incident to CBT, but CBT failed to be present at a scheduled repair appointment. Mr. Nerswick also contends that CBT failed to provide him with a new scheduled date and time for the repair and failed to issue him a credit for missing the scheduled appointment. On September 26, 2000, CBT filed an answer denying that it knowingly failed to provide Mr. Nerswick with adequate service or to respond to any request for repair of his service. On December 8, 2000, a settlement conference was held; however, the parties failed to resolve this matter informally. A hearing on this complaint was held on May 1, 2001. At the hearing, Mr. Nerswick testified on his own behalf, and Mike White, Richard Fieger, and Donna Luloff testified on behalf of CBT. Both parties filed post-hearing briefs.

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II. The Law

Section 4905.26, Revised Code, requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any service rendered is in any respect unjust, unreasonable, or in violation of law. CBT is a telephone company as defined by Section 4905.03(A)(2), Revised Code, and a public utility by virtue of Section 4905.02, Revised Code. CBT is, therefore, subject to the jurisdiction of the Commission pursuant to Sections 4905.04 and 4905.05, Revised Code. In complaint proceedings such as this one, the burden of proof lies with the complainant. *Grossman v. Pub. Util. Comm.* (1966), 5 Ohio St. 2d 189.

III. Summary of the Evidence

Mr. Nerswick testified that, on August 17, 2000, he reported his crosstalk problem to CBT and that a repair appointment was scheduled for August 19, 2000, between 8:00 a.m. and 12:00 p.m. (Tr., 48). He stated that, on the 19th, he waited at his home until 1:30 p.m., after which he left because CBT had not arrived (Tr., 49). He claimed that he called CBT on August 21, 2000 and again reported his crosstalk problem. According to Mr. Nerswick, CBT advised him to stay at home that morning because it scheduled a repair technician to go to his house that morning. Mr. Nerswick acknowledged that a CBT repairman arrived the morning of August 21, 2000, and he acknowledged that his crosstalk was eliminated (Tr., 52, 62). He also noted that, at no time, was he without telephone service (Tr., 57). Mr. Nerswick testified that he could not remember contacting the police about the crosstalk threats, but he knew he never completed a police report (Tr., 60). He claims that he advised CBT about this problem as soon as he knew about it and denied that he had experienced these threats for at least one month before he notified CBT (Tr., 61). He also testified that he requested compensation damage for his trouble and was told by Ms. Luloff that he had to call back to discuss the matter with her supervisor (Tr., 62).

Richard T. Fieger, repair supervisor of CBT, indicated that Mr. Nerswick's line was tested from the central office at 5:02 p.m. on August 17, 2000, and it was determined that there was trouble in the cable that could cause crosstalk (Tr., 80; CBT Ex. 2). Mr. Fieger testified that Mr. Nerswick was given the first available repair appointment on August 19, 2000, between 8:00 a.m. and noon (CBT Ex. 2). According to Mr. Fieger, the field technician for CBT missed the scheduled appointment. Mr. Fieger stated that, when the field technician arrived at Mr. Nerswick's residence later that day, he conducted tests on the telephone line, but the line became clear before any trouble could be isolated (CBT Ex. 2). According to Mr. Fieger, the technician was unable to gain access to the inside wire, and he left a no-access note advising the customer to call back if he still experienced the trouble on his line. Mr. Fieger noted that he learned from Donna Luloff that Mr. Nerswick reported his crosstalk problem still existed on August 21, 2000. As a result, he indicated that a second repair appointment was scheduled on August 21, 2000, between 8:00 a.m. and noon. Mr. Fieger indicated that a repair technician was dispatched at 8:53 a.m. on August 21, 2000, and the line was repaired that morning (CBT Ex. 2).

Donna Luloff, customer service representative for CBT, testified that Mr. Nerswick reported his crosstalk problem to her and that she believed him to be upset and verbally

demanding (Tr., 17-18). She also noted that, on August 21, 2000, she had a conference call with Mr. Nerswick and CBT's repair department and advised him that a repair technician had already been dispatched to his house (Tr., 19). She stated that she advised Mr. Nerswick that someone would have to be at the residence in order to complete the repair (Tr., 24). Ms. Luloff testified that Mr. Nerswick reported to her that he had received threats for approximately three to four weeks prior to contacting CBT (Tr., 110). On the subject of credits, she stated that Mr. Nerswick asked about compensation in general but was unaware of what he wanted (Tr., 122). She also testified that she informed him about the company's policy to issue half a month's credit for a missed repair and requested that he call back (Tr., 112). She noted that she never heard back from Mr. Nerswick (Tr., 122). She also indicated that in a conference call with the Commission she indicated that, since the customer was being threatened, the matter should be resolved. She indicated that Commission staff assured her that the issue of threats would be investigated (Tr., 117).

Mike White, repair technician for CBT, testified that he arrived at Mr. Nerswick's home about 8:53 a.m. on August 21, 2000, and observed that Mr. Nerswick was visibly upset (Tr., 65, 70; CBT Ex. 1). He claimed that Mr. Nerswick told him about the crosstalk problem and that it had existed for several days prior to his contact with CBT (Tr., 66). Mr. White stated that his review of the repair log revealed that someone from CBT had been to Mr. Nerswick's residence on August 19, 2000, had checked the line for voltage, but that no problems were detected on the line. The repair log also indicated that the repair technician was unable to gain access to Mr. Nerswick's residence and he left a no-access tag (Tr., 66). Mr. White stated that, on August 21, 2000, he conducted tests on the telephone line, but that no problems were identified. He further testified that Mr. Nerswick advised him about a nearby apartment building, which he believed to be the location of the person who was threatening him on his telephone. Mr. White stated that, upon investigation, he discovered the same line leading to Mr. Nerswick's home also was connected to the apartment building. He stated that, when he entered the apartment building, he discovered the same telephone wires serving Mr. Nerswick had been improperly accessed and cross-connected to a line serving a residence in the apartment building. Mr. White indicated that he disconnected the cross-connected wires, secured Mr. Nerswick's telephone line, and locked and secured the telephone box (Tr., 71). He noted that, without observing and testing the telephone line, he believed that it would be impossible for CBT to know someone tampered with the line (Tr., 72). Mr. White believed that Mr. Nerswick's problem with crosstalk should not be repeated because the wires leading to Mr. Nerswick's house are not color-coded and would be difficult to identify, the wires were shortened, and access to the wires would now require special tools (Tr., 76).

IV. Discussion and Conclusion

Following a review of the evidence, the Commission finds that Mr. Nerswick's complaint should be granted, in part, and denied, in part. The facts show that CBT missed a scheduled repair appointment. Rule 4901:1-5-24, Ohio Administrative Code (O.A.C.), sets forth the remedy for customers in the event a telephone utility schedules and misses a repair appointment.

Rule 4901:1-5-18(D)(2), O.A.C., provides that, upon request of the applicant or subscriber, where the LEC fails to meet an on-premise repair appointment the company shall credit the subscriber's bill in the amount of at least one-half of one month's charges. The evidence shows that CBT scheduled and missed a repair appointment. Accordingly, as CBT missed a scheduled repair appointment, Mr. Nerswick is entitled to and CBT should credit Mr. Nerswick in the amount of at least one-half of one-month charges for his basic local exchange service. While we are directing CBT to issue a credit to Mr. Nerswick, we do not believe that the company acted inappropriately in its attempt to issue him a credit. The facts show that CBT personnel advised him about his right to the credit, were unclear about whether Mr. Nerswick wanted greater compensation, advised him to call back to speak to a supervisor, but never received a return call from him about any credit.

The evidence in this case also demonstrates that CBT acted appropriately in responding to Mr. Nerswick's repair problem. Accordingly, CBT's actions in this case do not rise to the level of inadequate service. The facts show that, upon first receiving Mr. Nerswick's complaint, CBT scheduled Mr. Nerswick for the next available repair appointment. Despite missing the first scheduled repair appointment, CBT tested the line later that same day, but discovered no problems with his telephone line. CBT personnel left a message advising Mr. Nerswick that no problems were detected but that, if he continued to have any problems, to call CBT. When CBT learned that Mr. Nerswick's problem was still not corrected, CBT dispatched its repair crew to his residence that same day and eliminated Mr. Nerswick's telephone problem. Further, Mr. Nerswick has reported no similar problems since the repair. While CBT was ultimately able to repair Mr. Nerswick's line and eliminate his crosstalk problem without gaining access to his house, repair technicians reasonably believed, based on their testing, that access to Mr. Nerswick's residence was required in order to complete repairs.

Lastly, CBT requested the Commission order Mr. Nerswick to pay the witness fees for two CBT employees it claims that Mr. Nerswick subpoenaed without submitting witness fees. Rule 4901-1-25(F), O.A.C., provides, in part, that any persons subpoenaed to appear at a Commission hearing, other than a party or an officer, agent, or employee of a party, shall receive the same witness fee and mileage expenses provided in civil actions in courts of record. According to their affidavits, both Mr. White and Mr. Fieger are employees of CBT. Therefore, Mr. Nerswick was not required to submit witness fees when his subpoenas were served. Accordingly, CBT's request that the Commission order Mr. Nerswick to pay the witness fees should be denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On August 31, 2000, Thomas A. Nerswick filed a complaint with the Commission against CBT alleging that CBT failed to be present at a scheduled repair appointment, and failed to provide him with a new scheduled repair appointment.
- (2) On September 26, 2000, CBT filed an answer denying that it knowingly failed to provide Mr. Nerswick with adequate service or to respond to any request for repair of his service.

- (3) On December 8, 2000, a settlement conference was held; however, the parties failed to resolve this matter informally.
- (4) Pursuant to Section 4905.26, Revised Code, the Commission has jurisdiction to hear and determine the issues set forth in the complaint.
- (5) A hearing was held on May 1, 2001.
- (6) Based upon the record in this proceeding, Thomas Nerswick's complaint should be granted, in part, and denied, in part.
- (7) CBT's actions in this case do not rise to the level of inadequate service.

ORDER:

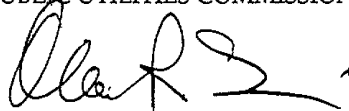
It is, therefore,

ORDERED, That this complaint is granted, in part, and denied, in part, as set forth above. It is, further,

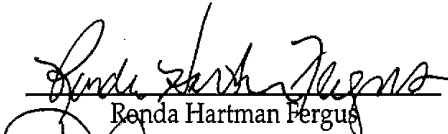
ORDERED, That CBT issue Mr. Nerswick a credit as set forth in this opinion and order. It is, further,

ORDERED, That a copy of this opinion and order be served upon all parties of record.

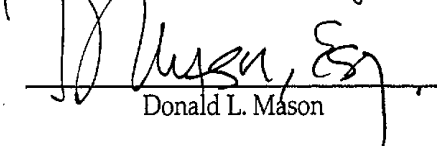
THE PUBLIC UTILITIES COMMISSION OF OHIO



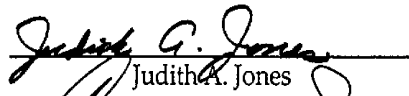
Alan R. Schriber, Chairman



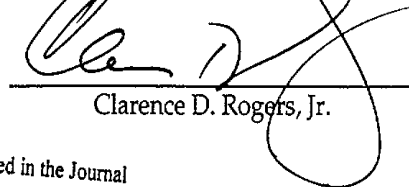
Ronda Hartman Fergus



Donald L. Mason



Judith A. Jones



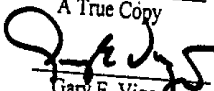
Clarence D. Rogers, Jr.

SEF:geb

Entered in the Journal

JAN 31 2002

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Gary E. Vigor
Secretary