

Decision 87 12 029 DEC 9 1987**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

INDEPENDENT CONSULTING SERVICES,
 a Division of INDEPENDENT
 COMMUNICATIONS SERVICES, INCOR-
 PORATED, a California corporation,

Complainant,

vs.

PACIFIC BELL,
 A California corporation,

Defendant.

Case 85-07-008
 Petition for Modification
 (Filed March 20, 1987)

OPINION MODIFYING DECISION 86-09-025

On March 20, 1987, Independent Consulting Services (ICS) filed a Petition to Modify Decision (D.) 86-09-025, regarding notice provisions; accuracy of interest calculations, and termination date for refunds of unnecessary charges associated with protective connecting arrangement (PCA) equipment. ICS requested the appointment of an appropriate Commission staff person to oversee the administration of the remainder of the refund program. Pacific Bell (Pacific) on April 13, 1987 filed a reply opposing the petition.

Background and Historical Summary

D.86-05-071 issued May 28, 1986 contained a historical summary of the prior events and proceedings that led up to Case (C.) 85-07-008, as follows:

"Under a tariff filed in or about 1970, Pacific required all subscribers who owned independently manufactured telephone equipment to use utility-provided PCAs to connect their equipment to the Pacific network. Pacific, at the time, claimed that this connecting arrangement was necessary so as to prevent possible disruption of the Pacific telephone

system by the independently manufactured equipment. Pacific required subscribers owning such equipment to pay an installation charge, as well as a monthly service charge, for the PCA equipment.

"In D.87620 [issued on July 19, 1977 in C.8625 et al. (82 Cal. PUC 262)] the Commission found that PCA's required by telephone utilities were not necessary for telephone customers who owned independently manufactured equipment which had been certified or registered in accordance with standards set either by the Commission or by the Federal Communications Commission (FCC), and rejected the utilities' assertion that independently manufactured phone equipment, which has been certified, poses a threat to the telephone utility network. (Reference to 82 Cal. PUC 262 added.)

"The Commission ordered the utilities to provide refunds to eligible subscribers for all amounts collected after February 17, 1974 for PCA equipment. Utility subscribers who qualified for such refunds had to meet the following criteria: (1) they had to own their own independently manufactured telephone equipment connected to a telephone utility network by a PCA; and (2) their telephone equipment had been certified or registered in accordance with standards set by the Commission or by the FCC. The amount of the refund was to include installation charges and monthly service charges and taxes collected by the utility for the PCA, plus interest computed at the rate of 7% per annum..."

The balance of the historical background and summary which follows has been abridged in the interest of brevity:

In C.85-07-008 ICS alleged that prior to August 1, 1984, Pacific issued full refunds for charges associated with PCA equipment from February 17, 1974 (for PCAs installed on or before February 17, 1974) to the date the refund request was submitted or from the date of installation of the PCA, if it was installed after February 17, 1974. However, since August 1, 1984, Pacific refused

to provide full refunds to approximately 200 ICS clients who paid unnecessary PCA charges and who submitted requests for refunds to Pacific after August 1, 1984. ICS alleged that Pacific informed ICS on August 1, 1984 that it had decided to apply a two-year statute of limitations to all PCA fund claims submitted after July 31, 1984, apparently believing that Public Utilities (PU) Code Section 735, which provides for a two-year statute of limitations, was applicable to all PCA refund claims. Accordingly, Pacific decided to apply the two-year limit only to claims received after July 31, 1984. Under Pacific's policy, a subscriber who submitted a refund request on or after August 1, 1984 was issued a refund only for the two-year period immediately preceding the refund request rather than for the entire period during which the subscriber had an unnecessary PCA.

ICS contended that its 200 clients submitted refund requests after August 1, 1984 and have not received full refunds for their unnecessary PCA equipment because of Pacific's application of a two-year statute of limitations to the PCA refund program. ICS alleged that, as a general rule, Pacific did not reject each request for refund made by ICS on behalf of a client in writing, but instead informed ICS orally that the claim had been rejected or partially denied based upon Pacific's application of the two-year statute of limitations.

ICS further alleged that on or about August 2, 1984, Pacific issued a written memorandum to its marketing personnel, advising that the Utility's PCA refund policy had been changed and that effective August 1, 1984, PCA refund requests received on or after August 1, 1984 would be retroactive to two years only. Additionally, ICS alleged that Pacific applied its policy change to follow-up inquiries and to claims for additional refunds from subscribers who had previously received partial refunds on the basis that this involved a reopening of the old claims.

In C.85-07-008 ICS contended that the Commission had not established any termination date for the PCA refund program in D.87620 and that despite Pacific's desire to limit its obligation to pay refunds, D.87620 did not apply any limitation period as to when claims may be advanced or when refunds must be paid to subscribers. ICS claimed, based on its belief, that the amount due and owing to its approximately 200 clients totaled in excess of \$1 million and unless Pacific was ordered immediately to cease and desist from applying a two-year statute of limitations to all applications for refund submitted on or after August 1, 1984, Pacific would continue to profit unjustly at the expense of its subscribers.

ICS sought an order directing Pacific to cease and desist immediately from applying the limitation periods of Section 735 to the PCA refund program ordered in D.87620 and to declare that the two-year limitation period set forth in Section 735 does not apply to refunds unless or until Pacific specifically rejects refund applications for PCA charges.

ICS further requested that the Commission declare that there was no termination date for the PCA refund program contemplated by the Commission at that time (July 1, 1985).

In its answer to the complaint, Pacific admitted that beginning August 1, 1984, it applied the two-year limitation period of Section 735 to requests for refunds of PCA charges and that the dispute underlying this complaint involved interpretation of the proper statute of limitation period to be applied to claims under D.87620. Pacific further admitted that it does not provide written responses to applications for refunds, but instead notifies applicants of its determination by telephone, and that since August 1, 1984 it has made refunds to eligible applicants for the two-year period immediately preceding the refund request. Pacific denied that its application of the two-year statute of limitations to requests for refund of PCA charges had created a windfall of

illegal or unjust profits to Pacific. Pacific then argued at length in support of halting then (1985) any further claims for refunds under the 1977 decision and requested that the Commission declare that Pacific's responsibility for making refunds had been extinguished.

The Commission issued D.86-05-071 on May 28, 1986 in which it expressed concern and caution that D.87620 did not set a specific termination date for refunds to eligible customers and thus it would not be possible for customers to know "...when their rights to refunds ceased to exist." However, the Commission in D.86-05-071 made very clear its position that the refund period would not be continued indefinitely by stating in part:

"We agree with Pacific in this case that it should not be required to operate under the uncertainty presented by the program in terms of planning. Because Pacific mailed notices to potential program participants for a three year period, and because our order was issued nine years ago, we believe subscribers have had ample opportunity to become aware of the program and notify Pacific of their eligibility for refunds.

"Accordingly, we will order the program to be terminated as of December 31, 1986. Pacific shall, within thirty days of the effective date of this order, mail a final notice to appropriate subscribers, informing them of the termination date of the program and of their right to refunds if they notify Pacific by the date of program termination.

"For the remainder of the program period, Pacific shall notify customers in writing of rejection of claims. It shall make refunds, when appropriate, for charges dating to February 1974, as required by D.87620." (Page 15, mimeo.).

D.86-05-071 also required Pacific to review the records of the subscribers represented by ICS and make refunds of all PCA charges directly to those subscribers who qualify.

On June 9, 1986 Pacific filed an application for rehearing of D.86-05-071 claiming that: "...the Commission had erred in holding that the Statute of Limitations set forth in Section 735 of the PU Code does not apply to the PCA refunds sought by complainant on behalf of its clients."

On September 4, 1986 the Commission issued D.86-09-025 denying Pacific's application for rehearing. D.86-09-025 also modified and clarified part of the discussion on Page 13 of D.86-05-071, and extended the program termination date of December 31, 1986 specified in D.86-05-071 to March 31, 1987, due to the delay occasioned by the application for rehearing. Issues Raised in the Current ICS Petition for Modification of D.86-09-025

Ten days before the March 31, 1987 program termination date set forth in D.86-09-025, ICS filed its petition for modification of that order asking the Commission to:

1. Extend the program termination date well beyond March 31, 1987;
2. Mandate that Pacific pay the full amount of interest owed to its customers; and
3. Appoint a Commission staff member to oversee the administration of the program.

Discussion

In its petition, it appears that ICS is no longer representing only the approximately 200 subscribers with pending claims for refunds as of July 1, 1985 when it filed C.85-07-008, but instead alludes to 800 additional applications for refunds it submitted to Pacific from June 1986 to March 20, 1987. ICS states that Pacific has fully satisfied only three of these many applications to the satisfaction of ICS and its customers. Therefore, ICS requests that the Commission direct that the program be extended still further and another termination notice be broadly disseminated by Pacific setting forth the new termination date.

This request is based on ICS' claim that Pacific's notice setting forth the March 31, 1987 program termination date was sent only to its then (May 28, 1986) current customers of record with PCA devices, and should have been more broadly disseminated.

In its April 13, 1987 response, Pacific claims that the ICS Petition is untimely, and that the parameters of the noticing procedure were known to the Commission in June 1986 when ICS requested a Commission finding of their inadequacy, nonetheless, Pacific states: "With ICS' specific request to modify Pacific's notice plan before it, the Commission let stand Pacific's notice plan as described in the Application for Stay, making no reference to the notice requirement in either the decision granting the stay (D.86-06-085) or the decision denying rehearing (D.86-09-025)."

Pacific also opposes assignment of a Commission staff member to oversee the administration of the program, given Pacific's own established system for processing refund claims. Pacific acknowledges that its system is time consuming, but asserts it is functioning well, and sees no need to impose this additional task on the Commission staff. Pacific acknowledges that there have been some instances of errors in computing interest on refund claims, but states that its practice is to correct those errors brought to its attention as claims are being processed. Pacific also states that it informed ICS that the miscalculated refunds would be corrected as part of the final wrap-up of the PCA refund program, in order to avoid interrupting the current program to correct past interest calculations. Pacific also states that ICS has exaggerated the number of claims involving interest errors.

Pacific further alleges that its PCA Register information is accurate, that refund eligibility is determined to the best of its ability using available information, that it has not improperly retained funds owed to customers, and that it does not discriminate against ICS in processing claims. Finally Pacific concludes that "ICS' petition is nothing more than a last minute effort to

continue its somewhat parasitic existence despite the Commission's intent that the program should end." (Page 17 of Pacific's April 13, 1987 response to ICS Petition to Modify D.86-09-025.)

While we are in agreement that the program should end, we are still concerned that all valid claims filed before the established termination date, be processed promptly, with all accrued interest paid in full from the time of installation, or February 17, 1974, whichever date is later, to the date the refund is paid in full.

Concerning the claim of inadequate or inappropriate notice, we are somewhat surprised that ICS would raise this issue at this late date (March 20, 1987), when in its original complaint (C.85-07-008) which was docketed as this case on July 1, 1985, it stated at page 10:

"The only obligation set forth in Decision No. 87620 which was extinguished in 1980 was Pacific Bell's obligation to send out notice about the refund program."

We see no reason to require Pacific to broadly disseminate new notices today, seven years later, to again commence this refund program solely for the purpose of alerting noncurrent customers of record with PCA equipment about a potential refund that they failed to request during the 10-year period following issuance of D.87620. The notice issue, specifically Pacific's plan to notify only current customers with PCA equipment on May 28, 1986, was included for the Commission's consideration in Pacific's application to stay D.86-05-071 filed on June 5, 1986. ICS vehemently opposed Pacific's proposal in its formal opposition to Pacific's application to stay D.86-05-071 filed June 17, 1986. In D.86-09-025 we did not find any flaw in the proposed notice, and we will not now revisit this matter and take issue with Pacific's method of sending program termination notices only to "all current PCA subscribers" under its interpretation of Ordering Paragraph 4 of D.86-05-071 which stated:

"4. Pacific shall notify within 30 days of the effective date of this order customers who may qualify for refunds under D.87620 of their possible eligibility for refunds and of the termination date of the refund program."

Notwithstanding any of the above discussion, Pacific is in no way relieved of its obligation to provide full refunds with interest properly computed, as set forth in our prior decisions, for all pending claims submitted by clients of ICS and/or any other customers on or before March 31, 1987.

The period from the issuance of D.86-05-071 (May 28, 1986) to the program termination date of March 31, 1987 set forth in D.86-09-025 should have been more than ample for ICS to present any and all legitimate claims for refunds to Pacific, on behalf of its approximately 200 clients with pending claims, which formed the basis of C.85-07-008 filed July 1, 1985, and the approximately 800 additional customers it has filed refund claims for, during the period of June 1, 1986 and March 20, 1987.

Findings of Fact

1. Pacific's program to provide refunds of charges to its customers, subscribing to unnecessary PCA equipment, under D.87620 issued July 19, 1977 was in effect for nearly 10 years prior to its termination on March 31, 1987.

2. By D.86-05-071 Pacific was directed to honor valid requests for refunds including full interest, for all claims tendered to it on or before December 31, 1986.

3. D.86-09-025 extended the program termination date to March 31, 1987.

4. Pacific's interpretation of D.86-05-071 requiring a final notice to "appropriate subscribers" to mean its existing customers who still had PCA equipment, was not unreasonable.

5. No good or reasonable cause has been advanced to extend the previously established termination date of March 31, 1987 for this program.

6. Pacific should not be relieved of its obligation to honor fully, with interest, all valid claims for refunds presented to it under the program prior to March 31, 1987.

7. Since the PCA refund program under consideration herein is not being extended beyond March 31, 1987, all other requested modifications to D.86-09-025 except those set forth in Finding 6 above are moot.

8. The program extension provisions set forth in D.86-05-071 and D.86-09-025 should have been more than ample to allow ICS to present pending claims for refunds to Pacific on behalf of its clients, as requested in its prior complaint (C.85-07-008).

9. The method of computing interest on pending refunds was established in D.87620, dated July 19, 1977 and remains effective for all claims for refunds presented to Pacific prior to the March 31, 1987 program termination date.

10. The issues raised in the Petition for Modification of D.86-09-025 do not require evidentiary hearings.

Conclusions of Law

1. The March 31, 1987 program termination date set forth in D.86-09-025 provided ample time for ICS to present the pending (approximately 200) claims for refunds to Pacific on behalf of its clients in C.85-07-008, filed July 1, 1985, and approximately 800 additional applications for refunds which it states it submitted to Pacific after June 1986 and prior to March 20 1987.

2. Pacific should promptly and fully honor, with interest, all valid claims for refunds presented to it under the program prior to March 31, 1987.

3. Complainant has failed to set forth any reasonable cause for extending the previously established termination date of March 31, 1987 for this program.

ORDER

IT IS ORDERED that:

1. The program termination date of March 31, 1987 as set forth in D.86-09-025, shall remain unchanged.
2. Pacific Bell (Pacific) shall, on a timely basis, honor fully, with interest, all valid claims for refunds presented to it under the program prior to March 31, 1987.
3. On or before March 31, 1988, Pacific shall provide to the Commission Advisory and Compliance Division a report setting forth Pacific's compliance with Ordering Paragraph 2 above, and the date that such compliance was achieved.
4. The ordering paragraphs set forth in Decisions 87620, 86-05-071, and 86-09-025 dated July 19, 1977, May 26, 1986, and September 4, 1986 respectively, except as modified by Commission decision, will continue to apply to Pacific until all program requirements under those orders are fully complied with.
5. Except for the changes and clarifications set forth above, the petition for modification of Decision 86-09-025 is denied.

This order is effective today.

Dated December 9, 1987, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Victor Weiss

Victor Weiss, Executive Director

AB

ORDER

IT IS ORDERED that:

1. The program termination date of March 31, 1987 as set forth in D.86-09-025, shall remain unchanged.
2. Pacific Bell (Pacific) shall, on a timely basis, honor fully, with interest, all valid claims for refunds presented to it under the program prior to March 31, 1987.
3. On or before March 31, 1988, Pacific shall provide to the Commission Advisory and Compliance Division a report setting forth Pacific's compliance with Ordering Paragraph 2 above, and the date that such compliance was achieved.
4. The ordering paragraphs set forth in Decisions 87620, 86-05-071, and 86-09-025 dated July 19, 1977, May 26, 1986, and September 4, 1986 respectively, except as modified by Commission decision, will continue to apply to Pacific until all program requirements under those orders are fully complied with.
5. Except for the changes and clarifications set forth above, the Petition for Modifications of Decision 86-09-025 is denied.

This order is effective today.

Dated DEC 9 - 1987, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners