

Decision 87.12 036 DEC 9 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Raye E. Stiles,)
)
 Complainant,)
)
 vs.)
)
 Pacific Bell,)
 AT&T Communications,)
)
 Defendants.)

Case 86-06-056
(Filed June 30, 1986)

Raye E. Stiles, for herself, complainant.
Patricia Mahoney, Attorney at Law, for Pacific
 Bell; and Ruth D. MacNaughton, Attorney at
 Law, for AT&T Communications of California,
 Inc.; defendants.

OPINION

Background

Raye E. Stiles (complainant) filed a complaint against Pacific Bell and AT&T Communications of California, Inc. (defendants) on June 30, 1986. The complaint, consisting of 17 allegations, was filed under the expedited complaint procedure (ECP), pursuant to Rule 13.2 of the Commission's Rules of Practice and Procedure. The complaint was assigned to an Administrative Law Judge (ALJ) for hearing.

Subsequently, on August 6, 1986, complainant filed an amendment to the complaint adding four additional allegations. Included in the amendment was a handwritten addendum requesting that the complaint no longer be processed as an ECP.

The complaint was transferred to another ALJ and was converted from an ECP to a regular complaint, by ALJ ruling of October 10, 1986. The ruling also notified interested parties that

this change would enable parties to be represented by an attorney and would ensure the presence of a court reporter and availability of a hearing transcript.

Pacific Bell and AT&T Communications of California, Inc. (ATT-C) filed answers to the complaint and amendment on September 8, 1986. Also, on October 20, 1986, ATT-C filed a motion to dismiss ATT-C as a defendant on the grounds that complainant had failed to state a cause of action against ATT-C.

Summary of Complaint

Complainant's original complaint alleges:

- a. Misrepresentation and fraud.
- b. Being charged for the same minute twice.
- c. Illegal testing of the telephone line.
- d. Illegal disconnection of the telephone line.
- e. No notification of telephone lifeline charges.
- f. No itemization of local directory (411) calls.
- g. No itemization of long distance directory assistance calls.
- h. Improper method of applying late charges.
- i. Not informed of the procedures to file a claim or the application of the gross negligence provision.
- j. Breach of promise to make billing adjustments and applying payment.
- k. Refusal to identify customers exempt from taxes on communication services.
- l. Incorrect application of late charges after the billing cut-off date.
- m. Telephone bills being held in the utility's office six days past the bill date.

- n. Refusal to provide time to file a complaint after the conclusion of the utility's investigation of improper billings without interruption of service.
- o. Refusal to let complainant speak with a higher level employee.
- p. Refusal to provide the name of the utility's vice president and district manager.
- q. Termination of local service because of long distance charges.

The amendment to the complaint alleges:

- r. Refusal to make payment arrangements.
- s. Refusal to place an order for new service.
- t. Refusal to provide essential service.
- u. Failure to adhere to the Commission's rules of procedure during a formal complaint.

Prehearing Conference

A prehearing conference (PHC) was held on October 27, 1986 in Los Angeles. At the PHC, parties were reminded that because this proceeding was no longer an ECP, parties to the proceeding could be represented by an attorney. Complainant acknowledged that she would represent herself and defendants that they would be represented by legal counsel.

Because of the number of allegations in this complaint proceeding, a one-page sheet cross-referencing complainant's allegations to her requested relief was identified as Item No. 1 at the PHC. The allegations of being charged for the same minute twice, failure to notify complainant of lifeline charges, and failure to itemize long distance directory assistance calls (Items b, e, and g) were identified as complaints against ATT-C. The remaining items and Item b were identified as complaints against Pacific Bell.

As a follow-up to Item No. 1, complainant agreed to file tariff references to the individual allegations no later than November 17, 1987. Defendants were provided until December 3, 1986 to respond to complainant's filing. Complainant also agreed to respond to ATT-C's motion to dismiss ATT-C as a defendant by November 6, 1986. Evidentiary hearings were set for February 26 and 27, 1987 in Los Angeles.

Response to ATT-C's Motion

On November 10, 1987, four days past the date complainant agreed to file her response, the ALJ received, by mail, complainant's response to ATT-C's motion.

Although the response was not timely received or filed with the Commission's Docket Office, the ALJ accepted the response, and identified it as Item No. 2 on the first day of evidentiary hearings.

ATT-C, in its motion, requested that ATT-C be dismissed from the proceeding as a defendant because complainant failed to state a cause of action against ATT-C, pursuant to Rule 10 of the Commission's Rules of Practice and Procedure and Section 1702 of the Public Utilities (PU) Code.

Complainant contended that the motion should be denied because the three allegations against ATT-C are appropriate. Not only did these allegations directly pertain to ATT-C's portion of the telephone bill, but they fully comply with the Commission's rules because they allege violation of tariffs and the application of certain Commission decisions. Accordingly, complainant requests the motion be denied.

Subsequently, by ALJ ruling of December 16, 1987, ATT-C's motion to be dismissed as a defendant was denied.

Cross-Reference of Allegations

Since complainant did not formally file her cross-reference of allegations to tariffs with the Docket Office as agreed at the PHC, and Pacific Bell did not receive a copy of such

reference data, Pacific Bell requested additional time to respond to complainant's pending filing, by letter of November 26, 1986.

By letter of December 1, 1986 complainant objected to Pacific Bell's requested extension of time. However, because the filing was not formally filed with the Commission's Docket Office and Pacific Bell had not seen a copy of the proposed filing, the ALJ ruled that Pacific Bell should have 15 days from the date complainant formally filed with the Docket Office to respond.

Subsequently, on February 20, 1987, complainant filed her cross-reference of allegations to tariffs. Misrepresentation and fraud (Item a) was identified with Tariff Section A.2, 2.1.10 and Rule 10(A)(3); refusal to place an order for new service (Item s) was identified with Rule 11 and Section 779.1 of the PU Code. Although complainant did not identify any other tariff provisions pertaining to the allegations, the filing represented that a separate letter would be filed identifying federal and state laws prohibiting discrimination applicable to each allegation. No such letter was received.

Additional Issues

By letter of December 1, 1986, complainant requested that two matters, discussed off the record at the PHC, be considered during the evidentiary hearings. These matters were the issue of telephone service for complainant's mother and clarification of language in the complaint pertaining to low-income and minority groups.

The ALJ granted complainant's requests, however, he clarified that language in the complaint discussing low-income and minority groups should be applicable only to complainant as an individual, not to low-income or minority groups in general (ALJ ruling of December 16, 1986).

Evidentiary Hearings

As agreed at the PHC, evidentiary hearings were held in Los Angeles on February 26 and 27 of 1987. Complainant presented two witnesses, Pacific Bell seven witnesses, and ATT-C none.

Of the two days of hearing, approximately a half-day was used for direct examination and cross of complainant's witnesses and one-and-a-half days for direct examination and cross of defendants' witnesses. The second day of evidentiary hearings scheduled to run from 9:00 a.m. to 1:00 p.m. without a lunch break did not end until 2:00 p.m.

Although complainant stated on the record that she "did not get an opportunity to finish questioning" Pacific Bell's last witness, Mallon, complainant cross-examined her for almost three hours, covering 47 pages of transcript, providing more than an ample opportunity to cross-examine the witness.

The filing of a complaint proceeding does not afford a person unlimited hearing time. All parties to the proceeding knew prior to the start of the evidentiary hearings that the hearings were scheduled for two days, and should have scheduled their examination of witnesses accordingly. Not only did the ALJ extend the hearing an additional hour, the ALJ provided complainant several opportunities to review her notes in order for her to consolidate her questions and examine the last witness on points important to the various allegations. The ALJ exercised proper administrative judgment in extending the evidentiary hearing and restricting complainant's examination of Pacific Bell's final witness.

The matter was submitted upon the receipt of concurrent briefs on April 24, 1987. Timely filed briefs were received from defendants. No brief was received from complainant.

Subsequently, by letter of April 29, 1987 received on May 4, 1987, complainant represented to the ALJ that she was unable to file a brief because of health and financial problems.

Complainant requested an opportunity to respond to defendants' briefs because she believed that the briefs contained inconsistencies and errors warranting a response.

Complainant also attached to the April 29, 1987 letter a motion for a ruling on complainant's credit standing. Although the motion was not filed with the Docket Office, copies were served on defendants.

By ALJ ruling of May 5, 1987 complainant's motion for a ruling on complainant's credit standing was denied because the motion was received ten days past the submission date and went beyond complainant's request to reopen the proceeding for the limited purpose of responding to alleged inconsistencies and errors in defendants' briefs.

The May 5 ruling reopened the proceeding for the limited purpose of receiving complainant's comments on alleged inconsistencies and errors in defendants' briefs. Complainant's response was to be filed with the Docket Office by May 22, 1987 and defendants were provided an opportunity to respond to the limited comments, by June 5, 1987, at which time the matter would be submitted in its entirety.

Complainant did not take advantage of this extraordinary opportunity to provide additional comments and the proceeding was again submitted on June 5, 1987. Although a letter from complainant and a reply letter from Pacific Bell were received subsequent to June 5, 1987, neither letter is considered here because the matter had already been submitted.

Discussion

The burden of proof in a complaint case rests with complainant. Therefore, complainant has the burden to present evidence to demonstrate that defendants have acted in violation of the law, of their respective tariffs, and/or of Commission's rules and procedures.

Misrepresentation and Fraud

Complainant alleges that three of Pacific Bell's employees erroneously represented themselves as managers; one of these employees represented herself as a district manager. Complainant represents that because these employees misrepresented their position she was not able to talk to a manager. Therefore, Pacific Bell violated Tariff A.2., Section 2.1.10 which requires a manager to review disputes at a customer's request. According to complainant the employees' misrepresentation was deliberate with the intent to commit fraud.

Pacific Bell acknowledged that one of the three employees is not always designated a manager. However, at the time complainant talked with the employee, the employee was acting in the capacity of a manager. Pacific Bell clarified that as the need arises this employee acts as a temporary manager and is paid a rate differential to compensate for the additional responsibilities.

Pacific Bell also clarified that although the employees in question are sometimes called supervisors, the title of supervisor is interchangeable with the title of manager. Therefore, when complainant was talking to a supervisor, complainant was speaking to a manager.

Pacific Bell disputes complainant's allegation that one of its employees held herself out to be a district manager. Pacific Bell's Merrill, the employee in question, testified that the title of district manager is not used in her work group, and that she goes by the title of office manager.

Complainant's allegation of misrepresentation and fraud is unfounded and should be dismissed.

Charged for the Same Minute Twice

Complainant alleges that several of her telephone bills showed that she was billed for the same minute twice. That is, she would be billed for two calls which began during the same minute or

one call ending and another beginning during the same minute. This allegation is made against Pacific Bell and ATT-C.

Pacific Bell's witness, Merrill, testified that a caller could be billed for two or more calls within a specific minute. Since Pacific Bell bills in increments of one minute, it is possible for a caller to place a call at 4:40 p.m., speak for 30 seconds before the call is terminated, and immediately place another call. In this instance, the caller would be billed twice for the 4:40 p.m. minute.

Complainant presented no evidence to show that in those instances where she was billed twice for the same minute that one or both calls were not hers. Pacific Bell demonstrated that not only could a caller engage in more than one call during a specific minute, but that Pacific Bell is authorized to charge a full minute for the utilization of a fraction of a minute (Tariff A.6, Section 6.2.1,A4.a(10)) resulting in a caller being billed twice for the same minute for different calls. Complainant's allegation is without merit and should be dismissed.

Illegal Testing and Disconnection of the Telephone Line

Complainant alleges that Pacific Bell violated the law by interfering with her conversation when it tested her telephone line. Further, she alleges that Pacific Bell illegally disconnected her telephone line on May 21 and June 12, 1986.

Pacific Bell acknowledged testing complainant's line on June 17, 1986. However, Pacific Bell's service person tested the line only after he spent approximately three hours attempting to reach complainant at complainant's request. The service person kept receiving a busy signal during this time period and became concerned that there was trouble on complainant's line, and therefore tested the line.

The test, done by a computer, tells the tester if the busy condition is the result of speech. The tester cannot hear or monitor conversations because at no time during the test is the

tester connected to the line. The only noticeable effect a customer may hear while the test is in progress is a single, faint click. Since Pacific Bell tested the line to determine whether there was trouble on complainant's line so any necessary repairs could be made, Pacific Bell represents that the test is in compliance with its tariffs.

Pacific Bell's Tariff A.2, Section 2.1.14 authorizes Pacific Bell to temporarily interrupt service to make necessary repairs or changes in its system. Since complainant did not substantiate her allegation that Pacific Bell illegally tested complainant's line or interrupt her conversation, this allegation should be dismissed.

Pacific Bell acknowledged that complainant's line was seized on May 21, 1986 and temporarily disconnected on June 12, 1986. The seizure, an occurrence when a repair person accesses a line to test the line, was in response to a prior request of complainant to check for other persons using complainant's dial tone illegally.

Pacific Bell's repair person temporarily seized complainant's line at the telephone pole junction to test for voices. Tariff A.2, Section 2.1.14, A.6 provides that in those instances when suspension or interruption of service will affect a customer for an appreciable period of time, prior notice must be given. However, in this instance, complainant's line was interrupted only a few minutes. Although the repair person told complainant that he was going to test the line, the above-mentioned tariff does not require prior notice for such a short interruption.

Pacific Bell represents that a temporary disconnection of complainant's service occurred on June 12, 1986 because of complainant's failure to pay her telephone bills. Although the temporary disconnection date was changed, disconnection took place because the notice cancelling the disconnection order was overlooked by Pacific Bell's repair department. Service was

restored and complainant (in accordance with Tariff A.2. Section 2.1.14, A.3) was given a pro-rated credit of the monthly service charge for the service interruption.

Pacific Bell acted in accordance with its scheduled tariffs regarding the temporary interruption of service and disconnection; complainant has received credit for the interruption, therefore, these allegations should be dismissed as moot.

No Notification of Lifeline Charges

Although complainant alleged that ATT-C did not notify her of telephone lifeline charges, in existence since 1984, this matter was not addressed during the evidentiary hearings. By brief, ATT-C concurred with complainant that it did not notify complainant of such charge. However, ATT-C represented that there was no statute, rule, or general order requiring notice of the telephone lifeline tax. Although Commission Decision (D.) 84-04-053, dated April 18, 1984, required local exchange companies, such as Pacific Bell, to mail notices to customers announcing the availability of the telephone lifeline program, there was no requirement that interexchange carriers, such as ATT-C, notify their customers of the tax being established to fund the lifeline program.

Since complainant presented no evidence to show that defendant ATT-C acted in violation of its tariffs or Commission rules and procedures, this issue is without merit.

No Itemization of Local or Long Distance Directory Calls

Complainant alleges in her original complaint that Pacific Bell and ATT-C do not itemize calls made to directory assistance (411) on her monthly bills. Subsequently, complainant testified that directory assistance calls are similar to a hidden charge. If such calls were itemized complainant would be able to review the calls to determine whether they were valid calls. Since

defendants have the capability to itemize such calls they should be available to a customer.

Defendants do not dispute that they have the capability to track directory assistance calls. However, Pacific Bell's Mellon testified that directory assistance calls, similar to local calls, are bulk billed to keep costs down. Procedures are in place to obtain a list of a customer's directory assistance calls; however, the procedures are not designed or intended to be used as a monthly report, resulting in additional cost to Pacific Bell.

Pacific Bell's and ATT-C 's directory assistance tariffs, Tariff A.5, Section 5.7.2 and A.5, respectively, do not require directory assistance calls to be itemized on a customer's bill. Should we require defendants to itemize directory assistance calls at this time, it would not be equitable unless defendants are provided a mechanism to recover their additional costs through rates.

Since defendants are complying with their respective tariffs and complainant has not met her burden of proof, the allegations are without merit.

Improper Method of Applying Late Charges

Complainant recognizes that Pacific Bell is authorized to apply a late payment charge on the unpaid portion of a customer's bill. However, complainant believes that Pacific Bell is erroneously applying the late payment charge on prior late payment charges, thereby causing the total late payment charge to be more than the authorized 1.5%. Further, complainant believes that a late payment charge should not be imposed on past due balances which a customer has agreed to clear via arranged payments.

Complainant represents that the above-mentioned procedures discourage the timely payment of telephone bills and are inconsistent with the intent of implementing a late payment charge.

Pacific Bell's witness, Mallon, testified that Pacific Bell's Tariff A.2.1.1 defines an unpaid balance as the total amount

of the previous month's bill less payments and adjustments. There is no provision in the tariff to exclude late payment charges on either late payment charges or bills under a payment arrangement. Therefore, Pacific Bell applies a late payment charge on the entire unpaid balance of \$20 or more.

By D.84-06-111 it was found that a penalty, or late payment charge, should be imposed on those bills which are not paid on a timely basis. Subsequently, by D.85-12-017, it was found that the 1.5% late payment charge provides ratepayers an incentive to pay their bills on a timely basis. The subsequent decision also provides two exceptions to the imposition of a late payment charge. The exceptions are bills not exceeding \$20 and bills of large telephone users who utilize a level payment plan, neither of which is applicable to complainant.

Complainant presented no evidence showing that Pacific Bell improperly applied late payment charges to complainant's unpaid balance due. Therefore, complainant's allegations regarding late payment charges are without merit and should be dismissed.

Not Informed on How to File a Claim
or How Gross Negligence Applies

According to the original complaint, complainant wanted to file a claim for damages against Pacific Bell. However, Pacific Bell refused to provide tariff information explaining how to file a claim for damages. Complainant testified that she had to call the Commission to find out how to file such a claim. After being directed to the front of the telephone book she noted that there were special provisions on gross negligence and wilful misconduct. On questioning Pacific Bell of the special provisions, complainant contends that Pacific Bell merely stated that they didn't believe any gross negligence occurred.

Pacific Bell's witness, Lopez, testified that in response to complainant's request to file a complaint, complainant was told to look on the back of her monthly telephone bill. Pacific Bell's

witness, Merrill, represented that it is standard procedure for Pacific Bell's service representatives to tell customers that they may contact the Commission to protest a billing dispute.

Further, Merrill testified that such information is readily available in the telephone book under the title "Consumer Rights and Responsibilities" and on the backside of every other page of each customer's monthly telephone bill. According to Merrill, complainant was advised of these facts and was advised where the applicable tariff sheets are available for inspection.

Complainant's own exhibit, Exhibit 2, included a copy of the tariffs, telephone book, and back of the telephone bill applicable to procedures in filing a claim.

Since complainant was informed of the claim procedures and Pacific Bell presently has in place procedures to inform customers of their claim procedures, complainant's allegation should be dismissed.

Breach of Promise to Make Billing Arrangements
and Termination of Local Service Because of
Long Distance Charges

Complainant alleges that Pacific Bell's Lopez agreed to adjust complainant's telephone directory calls from 64 calls to 20 calls and to credit complainant's account with the difference. Further, complainant agreed to pay past due local charges and current local charges. However, contrary to the agreement there was no adjustment to the number of directory calls, and payments made to Pacific Bell were applied to both local and long distance charges.

Pacific Bell's witness, Lopez, testified that she agreed to an equipment check, not to an adjustment of telephone directory calls. Another witness, Merrill, testified that subsequent to the equipment check the directory calls were adjusted. Since the directory calls were adjusted this allegation is moot.

Regarding the payment arrangement, Lopez testified that a five-part payment arrangement was agreed to by complainant. The first payment was made on time and the second payment was made two days late. However, the remaining payments were not made.

According to Lopez the payment program was as follows:

May 21, 1986	\$200
May 27, 1986	\$ 50
June 10, 1986	\$225
June 24, 1986	\$225

Balance due to be paid with the June 1986 bill.

Further, Lopez testified that she did not agree to complainant's request that payments apply only to the local exchange service charges because all payments are applied against the total amount due minus any disputed charges, consistent with Pacific Bell's tariff provisions.

By D.83-12-024 Pacific Bell was specifically authorized to deny local service for nonpayment of charges for interexchange services billed by Pacific Bell. Since, by tariff, a customer is responsible for all of the charges on the telephone bill, Pacific Bell applies payments against the total bill due, not against a specific component of the bill. Again, we find complainant's allegation without merit.

Identification of Customers Exempt
From Taxes and Services

Complainant's original allegation states that Pacific Bell refused to provide information as to which customers are exempt from taxes on communications services. However, a discussion on this matter in the complaint alludes to "employees" not customers.

Subsequently, this matter was clarified in complainant's direct testimony when she testified that she "read somewhere that certain customers are exempt from taxes." Complainant contends that

Pacific Bell would not respond to her inquiry for information and clarification on the alleged exemption.

Contrary to complainant's allegation, Lopez testified that complainant was advised that it would be necessary for complainant to ask the appropriate taxing agencies whether complainant could be exempt from taxes.

Pacific Bell represents that complainant received all the information it had available on customers being exempt from taxes on communications services. We concur.

Telephone Bills Being Held in the Utility's Office

Complainant represents that although her billing date is the seventh of the month, the bill isn't mailed until the thirteenth of the month. According to complainant the holding of her bill for up to seven days before mailing is in violation of Pacific Bell's tariffs.

Pacific Bell's witnesses clarified the distinction between billing date and mailing date. The billing date identified on a customer's bill represents the last date to which the bill reflects charges for a customer's telephone usage. To properly bill a customer for this telephone usage, it takes several days subsequent to the bill date to process the necessary data to produce a bill and to print and mail the bill. The mailing date is the date the bill is mailed. Consistent with D.85-12-017, a customer has at least 22 days from the mail date to pay the bill before a late payment charge is applicable.

Beyond her mere allegation, complainant did not present any evidence to show that Pacific Bell is either holding bills in its office or violating any of its tariffs on this matter. Therefore, this allegation should be dismissed.

Refusal to Provide Time to File a Complaint

Complainant alleges that Pacific Bell intentionally violated Tariff A.2, Section 2.1.10 (Rule 10) by trying to mislead complainant into believing that she was not entitled to seven days

from the date Pacific Bell concluded its investigation of disputed amounts to file a formal complaint and deposit the disputed amount with the Commission.

However, Pacific Bell states in its direct testimony that not only was complainant twice given a seven-day notice of disconnection, complainant did not pay the undisputed amounts. Pacific Bell even granted an additional extension of time until June 30, 1986 to pay the undisputed amounts. Finally, on July 3, 1986 complainant's service was disconnected. Not until September 18, 1986 did complainant deposit any money with the Commission. Presently, complainant has \$178 on deposit with the Commission, the disposition of which is discussed in a subsequent section of this opinion.

Refusal to Place an Order for New Service

Complainant represents that Pacific Bell agreed to install a new telephone service at complainant's residence in complainant's mother's name if her mother met the credit criteria. However, complainant alleges that Pacific Bell required complainant's prior service to be permanently disconnected, and intimidated complainant's mother into believing that the tariffs allow Pacific Bell to disconnect the new service and make complainant's mother liable for complainant's unpaid bill if complainant is living at the residence of the new service.

Complainant believes that the tariff (Rule 11) only addresses the situation where Pacific Bell determines after a new service has been connected that the person who has an outstanding bill is residing at the residence. She does not believe the tariff is applicable in this situation because Pacific Bell knew in advance that complainant is living at the location of the new service.

Pacific Bell represents that at the time the request for a new service was placed, complainant's service was temporary disconnected and, therefore, Rule 11 did not apply. However,

defendant informed complainant's mother that if the charges on the prior service were not paid in a timely manner, the new service would be disconnected and complainant's mother would be responsible for payment of the charges on the outstanding amount due on complainant's disconnected account.

Concurrently, by agreement between Assemblywoman Hughes' office and Pacific Bell, telephone service was connected on condition that the doctor of complainant's son notify Pacific Bell that the son's health would be in significant danger without telephone service. Further, complainant was to discuss payment arrangements for the unpaid balance due.

Complainant's interpretation of Rule 11 is incorrect. We find that Pacific Bell acted in accordance with its tariffs on file with the Commission. Since Pacific Bell acted in accordance with its tariffs, and telephone service was restored, this allegation is moot and should be dismissed.

Refusal to Provide Essential Service

Complainant represents that although her telephone service was classified as "essential service," Pacific Bell refuses to recognize her classification. To substantiate her claim, complainant introduced a May 22, 1984 letter from Pacific Bell confirming that her service was classified as essential service.

The letter represents that such classification means that her service would be on a priority list for restoration in the event of a disaster, such as a flood or earthquake. Further, the letter represented that it does not, in any way, have any effect on the payment of her telephone bill.

Pacific Bell asserts that complainant does not have essential service and could not qualify for such service if she wanted to. This is because essential service is available only to customers whose occupations affect public health, public safety, public welfare, or national defense and have a critical need to make calls. Even if complainant qualified, such a classification

does not require Pacific Bell to negotiate or accept a payment plan for the unpaid portion of a customer's bill.

Pacific Bell was unable to dispute the May 22, 1984 letter. However, it represents that the letter is over three years old, and there are no records available to indicate why she received such classification of service. Irrespective, Pacific Bell contends that its present tariffs preclude complainant from obtaining essential service.

The evidence presented substantiates complainant's allegation that her service was classified as essential service in 1984. However, this does not guarantee the classification of essential service for life. For whatever reason complainant's service was classified as essential service in 1984, complainant does not qualify under existing tariffs for such classification. Further, as Pacific Bell points out, such classification does not relieve complainant of the responsibility to pay her bills on a timely basis.

Since complainant has not established that she meets the tariff requirements for essential service, complainant's service should not be classified as essential service, and the essential service allegation should be dismissed.

Discrimination

Both complainant and her mother allege in their direct testimony that Pacific Bell discriminates against them. Complainant contends that she is being discriminated against because of her race, social-economic group, and living environment. Complainant's mother believes that Pacific Bell's business office provides poor service to the poor and minorities.

Complainant's witnesses represent that the local business office misinformed and/or lied to complainant regarding Pacific Bell's tariffs. Complainant represents that the local business office has no chairs for its customers to sit and no "human help" to give instructions. Instead a customer must stand in one of two

cashier lines, and either read instructional wall signs or use a wall telephone to obtain instructions.

Further, complainant represents that Pacific Bell's tariffs are not available where complainant resides.

Pacific Bell contends that the allegations regarding the business office do not specifically relate to claims of discrimination against complainant. Rather, they relate to claims of a more generalized discrimination. Irrespective, Pacific Bell represents that no evidence was presented showing that a customer is more likely to stand in line in the business office in complainant's area than in a business office in another area. Nor was there any evidence presented to show discriminatory intent on Pacific Bell's part in determining where copies of its tariffs should be located.

The allegation that Pacific Bell does not have available in its business office a copy of its tariffs is a new allegation. Although PU Code Section 489 requires Pacific Bell to have copies of its tariffs available for public inspection, it does not specifically state that the tariffs must be available in Pacific Bell's business offices. We take official notice of Pacific Bell's Tariff A.1 which provides a list of offices where tariffs are available for public inspection, as well as an address to write for copies. Complainant could have but did not. This allegation is without merit.

Although complainant alleges discrimination, complainant's testimony on this matter, as stated in Pacific Bell's brief, was based on belief and not on facts. Each of Pacific Bell's witnesses testified that they did not discriminate against complainant, and all but one witness didn't even know complainant's race until all contacts with complainant were completed. Complainant has not demonstrated that she was discriminated against; therefore, this allegation should be dismissed.

Other Allegations

Allegations, such as Pacific Bell's failure to make payment arrangements, not disposed of above, were similarly unsupported by complainant and, therefore, all remaining allegations should be dismissed.

Deposit

On January 28, 1987, Pacific Bell filed a motion for the release of \$162.92 of the \$178 complainant has on deposit with the Commission. Pacific Bell requests that the funds be released to settle complainant's unpaid bill for the telephone number which has been permanently disconnected.

Pacific Bell alleges that all billing disputes with complainant have been resolved and that neither the complaint or amended complaint allege any dispute regarding specific items of billing which the deposit could represent. Therefore, Pacific Bell represents that it is entitled to payment.

Complainant responded to the motion on February 26, 1987, the first day of evidentiary hearings. According to complainant the deposit represents the amount in dispute and was deposited in accordance with the Commission rules.

The ALJ took Pacific Bell's motion under consideration. Now, after considering all the evidence in this proceeding and concluding that complainant's allegations are without merit, the deposit should be distributed. Pacific Bell should receive \$161.91, the total unpaid balance of complainant's final bill, and complainant should receive the remaining \$16.09.

Findings of Fact

1. At complainant's request, the complaint was changed from an ECP to a regular complaint.
2. All parties were notified that parties may be represented by an attorney and that the matter would be officially reported.
3. Interested parties were reminded that they could be represented by an attorney at the PHC.

4. Complainant acknowledged that she would represent herself in this proceeding.

5. Defendants acknowledged that they would be represented by attorneys in this proceeding.

6. Only Items b, e, and g were identified as complaints against ATT-C.

7. All items except Items e and g were identified as complaints against Pacific Bell.

8. Complainant's response to ATT-C's motion to dismiss ATT-C from this proceeding was received four day past the agreed upon date.

9. ATT-C's motion to be dismissed as a defendant in this proceeding was denied.

10. Pacific Bell was granted additional time to respond to complainant's allegations because complainant did not file her cross-reference of allegations to tariffs on a timely basis.

11. Approximately a half-day of evidentiary hearings was used for direct examination and cross of complainant's witnesses and one-and-a-half days for direct examination and cross of defendants' witnesses.

12. The second day of evidentiary hearings scheduled from 9:00 a.m. to 1:00 p.m. without a lunch break did not end until 2:00 p.m.

13. The filing of a complaint proceeding does not afford a person unlimited hearing time.

14. This proceeding was submitted on April 24, 1987.

15. Complainant did not file a brief.

16. At complainant's request, the proceeding was reopened so complainant could address alleged inconsistencies and errors in defendants' briefs.

17. Complainant requested a ruling on her credit standing.

18. Although the proceeding was reopened at complainant's request for the purpose of allowing her to comment on defendant's briefs, complainant did not provide such comments.

19. A letter pertaining to this proceeding was received from complainant and a reply letter from Pacific Bell subsequent to the June 5, 1987 submission date.

20. The burden of proof in a complaint case rests with complainant.

21. As the need arises Pacific Bell's employees act as temporary managers.

22. Pacific Bell's title of supervisor is interchangeable with the title of manager.

23. A caller could be billed for the same minute twice because Pacific Bell bills in accordance with its tariffs, in increments of one minute.

24. The only noticeable effect a customer may hear while the line is being tested from the office is a slight, faint click.

25. Tariff A.2, Section 2.1.14 authorizes Pacific Bell to temporarily interrupt service to make necessary repairs or changes in Pacific Bell's system.

26. Complainant's line was seized on May 21, 1986 and temporarily disconnected on June 12, 1986.

27. A seizure occurs when a repair person accesses a line to test the line.

28. Tariff A.2, Section 2.1.14, A.6 provides that in those instances when suspension or interruption of service is to affect a customer for an appreciable period of time, prior notice must be given.

29. A temporary disconnection of complainant's line took place because the notice cancelling the disconnection order was overlooked by Pacific Bell's repair department.

30. Complainant's service was restored and complainant was given a pro-rated credit of the monthly service charge for the service interruption as provided by tariff.

31. There is no requirement that interexchange carriers, such as ATT-C, notify their customers of the lifeline tax.

32. Defendants have the capability to track directory assistance calls.

33. Pacific Bell's and ATT-C's directory assistance tariffs, Tariff A.5. Section 5.7.2 and A.5, respectively, do not require directory assistance calls to be itemized on a customer's bill.

34. Pacific Bell's Tariff A2.1.1 defines an unpaid balance as the total amount of the previous month's bill less payments and adjustments.

35. There is no provision in Pacific Bell's tariff to exclude late payment charges on either late payment charges or bills under a payment arrangement.

36. D.84-06-111 found that a penalty, or late payment charge, should be imposed on those bills which are not paid on a timely basis.

37. D.85-12-017 found that the 1.5% late payment charge provides ratepayers an incentive to pay their bills timely.

38. It is standard procedure for Pacific Bell's service representatives to tell customers that they may contact the Commission to protest a billing dispute.

39. Bill dispute information is readily available in the telephone book under the title "Consumer Rights and Responsibilities" and on the backside of every other page of each customer's monthly telephone bill.

40. Complainant's Exhibit 2 includes a copy of the tariffs, telephone book page, and back of the telephone bill applicable to the procedures to follow in filing a claim.

41. Complainant agreed to pay past due local charges and current local charges.

42. Complainant's directory calls were adjusted.

43. Pacific Bell did not agree to complainant's request that payments apply only to the local exchange service charges.

44. D.83-12-024 authorized Pacific Bell to deny local service for nonpayment of charges for interexchange services billed by Pacific Bell.

45. Complainant "read somewhere that certain customers are exempt from taxes."

46. Pacific Bell advised complainant that it would be necessary for complainant to ask the appropriate taxing agencies whether complainant could be exempt from taxes.

47. The billing date identified on the bill represents the last date to which the bill reflects charges for a customer's telephone usage.

48. It takes several days subsequent to the bill date to process the necessary data to produce a bill and to print and mail the bill.

49. The mailing date is the date the bill is placed in the mail.

50. Complainant was twice given a seven-day notice of disconnection.

51. Pacific Bell granted an additional extension of time until June 30, 1986 to pay the undisputed amounts.

52. Complainant's service was disconnected on July 3, 1986.

53. Complainant has \$178 on deposit with the Commission.

54. By agreement between Assemblywoman Hughes' office and Pacific Bell, telephone service was connected.

55. Complainant misinterpreted Rule 11.

56. Complainant introduced a May 22, 1984 letter from Pacific Bell confirming that her service was classified as essential service.

57. By tariff, essential service is available only to customers whose occupations affect public health, public safety,

public welfare, or national defense, and who have a critical need to make a call.

58. An essential service classification does not relieve a customer of the responsibility to pay bills timely.

59. Complainant's mother believes that Pacific Bell's business office provides poor service to the poor and minorities.

60. Complainant represents that the local business office has no chairs for its customers to sit and no "human help" to give instructions.

61. Complainant's business office allegations do not specifically relate to claims of discrimination against complainant.

62. There was no evidence showing that a customer is more likely to stand in line in the business office in complainant's area than in a business office in another area.

63. PU Code Section 489 requires Pacific Bell to have copies of its tariffs available for public inspection; however, it does not specify that such tariffs must be available in Pacific Bell's business offices.

64. Official notice is taken of Pacific Bell's Tariff A.1 which provides a list of offices where the tariffs are available for public inspection.

65. None of Pacific Bell's witnesses discriminated against complainant.

Conclusions of Law

1. Parties to this proceeding were properly notified of their right to be represented by an attorney through an ALJ ruling and at the PHC.

2. Although the filing of a complaint does not afford a person unlimited hearing time, the ALJ exercised proper administrative judgment in extending the evidentiary hearing and restricting complainant's examination of defendants' witnesses.

3. Complainant's motion for a ruling on her credit standing should be denied because the motion was received ten days past the submission date and goes beyond complainant's request to reopen the proceeding for the limited purpose of responding to alleged inconsistencies and errors in defendant's briefs.

4. Complainant's letter pertaining to this proceeding and Pacific Bell's reply letter received subsequent to June 5, 1987 should not be considered because they were received subsequent to the submission date.

5. Complainant's allegation of misrepresentation and fraud should be dismissed because complainant did not substantiate her allegation.

6. The allegation of being charged for the same minute twice should be dismissed because Pacific Bell has substantiated that a customer could place and be billed for more than one call during the same minute, pursuant to its tariffs, and because complainant did not establish that in those instances where she was billed twice for the same minute that one or both calls were not hers.

7. The allegation of illegal testing of complainant's line and interruption of her conversation should be dismissed because Pacific Bell's Tariff A.2, Section 2.1.4 authorizes temporary interruptions, and complainant did not substantiate her allegation.

8. The allegation of temporary interruption of service and disconnection should be dismissed because Pacific Bell acted in accordance with its tariffs.

9. Complainant's allegation that ATT-C did not notify her of telephone lifeline charges should be dismissed because, not only have such charges been in existence since 1984, there is no tariff provision requiring ATT-C to notify its customers.

10. Defendants should not be required to itemize directory assistance calls because defendants' directory assistance tariffs do not require such calls to be itemized on a customer's bill.

11. It would not be equitable to require defendants to itemize directory assistance calls on a customer's bill unless defendants are authorized to recover the additional costs to provide such service.

12. Late payment charge allegations are without merit and should be dismissed because the late payment charges have been applied in accordance with D.84-06-111, D.85-12-107, and the filed tariffs.

13. Complainant's allegation of not being informed about how to file a claim or how gross negligence applies, should be dismissed because complainant did not substantiate her allegations.

14. Pacific Bell should not be required to adjust complainant's directory assistance calls because Pacific Bell has already adjusted such calls.

15. Pacific Bell should not be required to apply payments against local calls only because, by tariff, customers are responsible for all of the charges on the telephone bill and therefore payments received are applied against the total bill due.

16. The allegation that Pacific Bell refused to provide information as to which customers are exempt from taxes on communications services should be dismissed, because Pacific Bell provided all the information it had available.

17. The allegations that Pacific Bell held telephone bills in its office, refused to provide complainant time to file a complaint, and refused to place an order for new service, should be dismissed because complainant did not substantiate her allegations.

18. Complainant did not establish that she meets the tariff requirements for essential service; therefore, complainant's service should not be classified as essential service.

19. Allegations of discrimination should be dismissed because complainant's allegations were unsupported by any evidence that Pacific Bell's employees discriminated against complainant.

20. All remaining allegations in this proceeding should be dismissed because complainant did not carry her burden of proof to show that the allegations were valid.

21. Pacific Bell should receive \$161.91 of the \$178 on deposit to settle complainant's unpaid bill. The remaining \$16.09 should be refunded to complainant.

ORDER

IT IS ORDERED that:

1. Case 86-06-056 is denied.
2. \$161.09 of the \$178 complainant has on deposit with the Commission shall be disbursed to Pacific Bell.
3. \$16.09, or the remaining balance, on deposit with the Commission shall be disbursed to complainant.

This order becomes effective 30 days from 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

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



Victor Weissor, Executive Director