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ORIGINAL

Decision 88-04-077 April 27, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application for Rehearing of Resolution No. T-12015.	
In the Matter of Resolution No. T-12015: Commission Approval of Pacific Bell Advice Letter No. 15224 and Denial of Protests of Omniphone, Inc. and Sable Communications of California, Inc.	Application 87-05-049 (Filed May 26, 1987)

Earl Nicholas Selby, Attorney at Law, for Omniphone Inc; applicant.
William F. Anderson, Attorney at Law, for Pacific Bell; real party in interest.
Earl Nicholas Selby, Attorney at Law, for Information Providers Association; McDermott, Will & Emery, by Lee L. Blackman, Attorney at Law, for Sable Communications; and Richard E. Potter, Attorney at Law, for General Telephone Company of California; interested parties.
Kathleen Kiernan-Harrington, Attorney at Law, and Richard Shankey, for the Division of Ratepayer Advocates.

O P I N I O N

The genesis of this proceeding stems from our investigation (I.85-04-047) into the problems emanating with the introduction of Pacific Bell's (Pacific) 976 Information Access Service in 1983. In Decision (D.) 85-11-028 dated November 6, 1985, we authorized Pacific to amend its 976 IAS tariff to provide, on an interim basis and under specific conditions, for a one-time adjustment for 976 calls appearing on residential subscribers' bills. By D.87-01-042 dated January 14, 1987, we made permanent the policy adopted in D.85-11-028 except that:

a. The one-time adjustment per residence customer shall apply to all pending, past, and future claims when it is established that the (1) customer did not know that 976 billing charges applied, (2) for calls by a minor child, and the call was made by the minor child without parental consent, or (3) the calls were not authorized by the subscriber.

b. The adjustment policy shall remain in effect for 24 months from the effective date of this order, or until customer-initiated deletion of access to 976 service may become available to individual subscribers.

On February 13, 1987, pursuant to D.87-01-042, Pacific filed its Advice Letter 15224 whereby Pacific would be authorized to charge the appropriate IPs account the full amount of a 976 call credited to a residential subscriber. Protests to the Advice Letter were filed separately by Omniphone, Inc. (Omniphone) and Sable Communications of California, Inc. (Sable) on March 10, 1987. Pacific responded to the protests and Omniphone and Sable responded to Pacific's comments.

On April 22, 1987, we rejected the protests of Omniphone and Sable and by Resolution T-12015 approved Pacific's advice letter authorizing the full chargeback of adjustments to the information provider (IP).

Applications for rehearing were filed by Omniphone and Colter Corporation (jointly with several other IPs). D.87-08-064 dated August 26, 1987 rescinded the authorization granted in Resolution T-12015 for adjustment claims to reach back earlier than April 1985, and ordered a rehearing to develop evidence on the record relevant to the issue of how Pacific's billing and transport charges should be treated in the context of the 976 one-time adjustment policy. That decision also ordered that all billing and transport charges which Pacific and GTE California Incorporated (formerly General Telephone Company of California) (GTE) had

charged back to any IP's account pursuant to Resolution T-12015 be refunded to the IP and that on rehearing Pacific should submit evidence on its actual billing and transport costs as well as the actual costs of making each adjustment.

Hearing was held December 17 and 18, 1987 in San Francisco. The matter was submitted subject to the mailing of concurrent briefs on January 20, 1988. Briefs were received from Pacific, GTE, Information Providers Association (IPA), Sable Communications, and the Commission's Division of Ratepayer Advocates (DRA).

Position of Parties

IPA (Omniphone)

IPA asserts that the recharge policy ordered, and currently in effect by D.85-11-028 should be retained. IPA argues that D.87-08-064 put the burden of producing evidence concerning actual transport, billing, and adjustment costs on Pacific and that Pacific failed to meet this burden. IPA states that Pacific's evidentiary showing was unbelievable and completely unrealiable from start to finish and that there is no evidence in the record from which a compromise might be crafted since no compromise was ever discussed.

IPA states that the character of Pacific's showing suggests that Pacific simply threw together whatever numbers it could without seriously attempting to verify their accuracy or understand their source from within Pacific. IPA asserts that Pacific's witnesses displayed a seemingly reckless disregard for the impact of their recommendation with respect to the lives and investments of the hundreds of IPs or whether the subsidy for Pacific's general body of ratepayers was destroyed.

IPA urges that Pacific's fully allocated cost showing of $.08 per adjusted call be rejected. IPA argues that the Pacific witness acknowledged that the marginal cost of transport is infinitesimally small and that Pacific earns $.70, or almost nine

times the fully allocated transport cost. Given that Pacific is earning such a phenomenal return, IPA states it would be inappropriate to accept the fully allocated cost figure of $.08 presented by Pacific.

IPA states that the argument of Pacific and DRA that the IPs are the cause of the need for adjusting calls is no more valid than the argument that a bank incites robberies because it accepts customers deposits. IPA asserts that Pacific's reliance on the pseudo-plausibility of the "cost-causer" concept is out of touch with the basis on which the two limited categories of adjustments were first to be allowed. IPA states that underlying the stipulation which led to D.85-11-028, was the idea that adjustments would be permitted - and would only be required - where IPs had failed to comply with advertising guidelines and that it was assumed that failure or refusal to comply with the advertising guidelines was responsible for callers making 976 calls without being aware of the charges for doing so, or led to children making 976 calls without parental consent. IPA states these assumptions for adjustments in these limited categories were accepted by the IPs as a deterrent to misleading advertising.

IPA argues that when D.87-01-042 added the "unauthorized" category, the overwhelming majority of the requests for adjustments were and still are on this basis. IPA states that when a call is adjusted on this basis it is not because the IP has failed to comply with the advertising guidelines but rather the customer is using this category as a way of obtaining information services without paying.

In analyzing the Pacific witness testimony regarding development of the cost of making an adjustment, IPA asserts that the estimate of 20 minutes of time per adjustment is clearly excessive since surveys conducted by employers by questionnaire are always susceptible to being biased by the respondents' desire to answer the question according to the expectation of the

respondents' superior, making such a process suspect and not worthy of acceptance.

With respect to toll, ZUM, and local usage charges, IPA states that because there is no adjustment for these charges, it is reasonable to believe that a very large proportion of 976 calls fully recover underlying transport costs through generation of associated toll and ZUM revenue since such rates are set well above cost.

IPA states further that to adopt Pacific's recommendation would give Pacific an incentive to adjust a subscribers 976 calls rather than attempt collection of the charges and thus lead IPs into believing that on all adjusted calls Pacific had simply elected to make the adjustment rather than to verify the legitimacy of the adjustment request.

IPA states that the only argument advanced by Pacific that the IP should be recharged for transport, billing, and collection costs on adjusted 976 calls was the unsubstantiated claim that failure to do so would lead to Pacific's general body of ratepayers subsidizing IPs and that this assertion was stricken from the record.

Finally, IPA asserts that the answer to the problem of transport, billing and adjustment costs associated with adjusted 976 calls is not to place new costs on IPs struggling to survive such matters as additional newly applied federal excise taxes and the costs of blocking, but rather to implement a coherent adjustment policy reducing the number of requests for adjustments to a legitimate level. IPA recommends that, after proper notice, the Commission (1) eliminate the availability of adjustments for so called "unauthorized" 976 calls and (2) limit adjustments to a period no longer than 60 days prior to the date that an adjustment was requested by the subscriber.

Sable

Sable states that D.87-08-064, which granted rehearing of Resolution T-12015, placed a burden on Pacific to justify a departure from the policy adopted in D-85-11-028, and that Pacific failed to support any such change. Sable states that D.85-11-028 approved a negotiated set of 976 IAS tariff revisions while recognizing that the "billing and transport" charge included a provision for processing bills and dealing with subscribers seeking adjustments, with the understanding that the differences between the amounts paid by 976 callers and the amount remitted to IPs created a substantial contribution or subsidy flowing from the 976 service to basic telephone services.

Sable states that in D.87-08-064 we stated that the language of D.87-01-042 did not indicate that we intended to change the adjustment policy or the matter of the chargeback of billing and transport charges, and that Pacific's action in filing its tariff authorizing the IPs account to be charged for the transport and billing share of each adjusted call thereby unilaterally increased the amount of the 976 subsidy to other aspects of Pacific's business.

Sable states that the decision to grant rehearing also placed the burden on Pacific to justify a departure from the permanent adjustment policy adopted in D.87-01-042 and that Pacific failed to present any evidence which supports either charging the IP for the billing and transport share of an adjusted call, or charging the IP for the purported cost of making adjustments. Sable urges that the matter be resolved by ordering that the status quo for adjustments be maintained. Sable also argues that the evidence presented by Pacific was wholly inadequate. It states that Pacific's witness, though arguing that to not charge the IP for an adjusted 976 call would result in a subsidy from other Pacific services to the IPs, was unable to quantify the subsidy or to provide any basis for increasing it above current levels.

Sable argues that there was no evidence presented to support the implicit assertion of Pacific that it bears no responsibility for the calls that are ultimately adjusted, let alone any evidence supporting Pacific's underlying assumption that the level of 976 contribution should be increased by making IPs pay a part of the overall cost of the service which, up to the present, has been paid for by the not inconsiderable income received by Pacific in excess of cost.

Sable states that the evidence does not establish what Pacific's actual costs for making adjustments are. It argues that the testimony was fundamentally flawed in that the figures presented to support the costs submitted would require no new service representatives, but that, if the numbers are correct, almost 50 people were working full time during the last half of 1987 to adjust 976 calls. (Twenty minutes per adjustment per month during the second half of 1987 (Exhibit 4, p. 1) equals about 5,000 person-hours per month of adjusting by individuals who work about 4-6 hours of actual "work-time" per day (Exhibit 7, p. 5) during months with an average of about 22 business days a month).

Finally Sable argues that the evidence of Pacific's actual billing and transport costs were also flawed particularly since the costs reported may or may not have included expenses which are not reversed when a 976 call is adjusted (i.e., ZUM and toll charges) and the costs are based on assumptions as to the number of 976 calls.

Pacific

Pacific asserts that it should be allowed to recover from the IP, on a per call basis, its combined cost of billing and transport and the cost to process such adjustment, in addition to the original amount of the 976 call remitted to the IP. Pacific states that the combined cost of billing and transport and the cost to process an adjustment is identical whether the 976 call is $2.00 or $.55 per call.

Pacific states that its recommendation for recovering its costs on a per call basis will more fairly place the burden of such costs on those IPs that are directly involved with specific calls being adjusted and recharged. Pacific states that by adopting its recommended policy, those IPs not responsible for the adjustment would not be penalized.

Pacific argues that the business and advertising practices of certain IPs incite minors and unauthorized parties to make 976 calls and are thus responsible for the mounting number of adjustments. Because the number of adjustments has escalated, Pacific believes that the IPs responsible for making the adjustment should also be responsible for the costs involved, including any costs for transport and billing.

With respect to the IP position that to chargeback the entire transport and billing charge for an adjusted call would put many IPs out of business, Pacific asserts that it is a business decision on the part of an IP to set the charge for a 976 call and should it become necessary, to charge more for a call to cover any costs for making adjustments. It is also a business judgement to change business and advertising practices in order to minimize or eliminate the need for adjusting calls. Pacific asserts it has no more control over these business decisions than it has over control of the content of the IPs' message.

GTE

GTE supports the position of Pacific. GTE states that the cost to transport a "local" call should be treated the same as the cost to transport a toll call. GTE states that in D.87-01-042 the Commission made clear that customers seeking 976 adjustments would not be excused from paying toll charges. It states that under the 976 tariff rate structure, usual "local" usage charges such as ZUM and MMU are not separately billed, but are included in the telephone company's billing and transport charge (i.e., the portion of the vendor charge which the telephone company retains),

and thus if the telephone company did not recover its local transport cost in the 976 adjustment, the anomalous situation would be created where the telephone company would recover its transport costs for a long distance (or "toll") call but not on a local call. It states such a result would be unjust.

GTE argues that there are costs incurred by the utility in making adjustments that were not contemplated with the introduction of 976 service and consequently not built into the rate structure. Because the adjustments were not caused by the 976 service but rather by the conduct of several IPs, GTE states that it would be more just to have the IPs make the 976 revenues whole with respect to adjustment costs as opposed to diminishing the contribution of the service to the defrayal of costs for basic telephone service.

GTE states that Pacific's methodology to derive its cost estimates was reasonable and that the $.60 estimate for transport and adjustment of a call is not unreasonable. GTE states that the IP argument that to allow the utilities to recover their costs of processing an adjustment would give them an incentive to adjust a call and recharge the IP is incorrect in that none of the operating expenses used in the analysis contain any profit margin.

DRA

DRA recommends that the IPs be obligated to pay for the full amount of credit given by the carrier to the residential subscriber under the one-time adjustment policy enunciated in D.87-01-042. DRA states that this method is the fairest and simplest to administer. DRA states that since Pacific incurs a cost to make an adjustment, to charge back the total cost only insures that Pacific does not sustain a loss. DRA asserts that its recommendation is a reasonable compromise between the expected position of the IP industry and Pacific.

DRA also recommends that the charge back policy be prospective and only apply to calls (which are later adjusted) made

after the effective date of the order in this proceeding. DRA states that a prospective approach will alleviate the IPs predictions of "doom" to their industry if the IP is required to pay the full adjustment made to residential subscribers.

DRA states that the concerns of the IPs regarding abuse of the adjustment policy will also be mitigated by the availability of mandatory blocking provided in D.87-12-038.

DRA argues that there are sound policy reasons for supporting an adjustment system where the billing and transport charges are entirely absorbed by the IPs. DRA states that in D.87-08-064, wherein we ordered rehearing, we stated that one of the options available after receipt of the evidence was adopting the approach Pacific advocated in Advice Letter 15224, where billing and transport charges are entirely absorbed by the IPs. DRA states that 976 IAS is a "transport and billing" service which Pacific provides to IPs and once a call is completed, the utility has fulfilled its obligation to the IP. If the residential subscriber is dissatisfied with the product for whatever reason and meets the criteria for an adjustment, DRA argues that the burden of that adjustment should fall on the IP who provided the programming since the utility has performed its contractual duty and there is no rational basis not to compensate the utility for the service it has provided.

DRA states that it is appropriate to put the adjustment risk on the providers of the product, the IP. DRA argues that the subscriber asking for an adjustment is not unhappy with the service provided by Pacific but rather with the IP's product. Accordingly, the cost of the full credit or adjustment should fall on the IP.

With respect to Pacific's showing of data on its costs, DRA states that even though the data introduced had some flaws, some valid conclusions may be drawn after allowing for a margin of error. Pointing out that Pacific incurs the same administrative costs to adjust a $2.00 call and a $.55 call ($.53 as contrasted to

only $.08 for transport and billing), DRA recommends that an effective compromise would be to allow Pacific to chargeback only the total amount of the 976 call. That is, Pacific would not recover its total costs on all calls adjusted. DRA states that such an approach would be much more practical and easier to administer since there would be no necessity to concoct a formula for adding up costs that are something less than precise.

DRA recommends that its proposed change in the chargeback policy be prospective only and that calls made by subscribers after the date of this order in this proceeding would be eligible for full chargeback. DRA states that this approach would be fundamentally more fair than having all requests for adjustments handled under a new policy after the date of the order. DRA favors this approach since adjustment requests can involve calls made some time before a change in the adjustment policy and would alleviate any hint of retroactive ratemaking.

Finally, DRA states that the IPs concerns regarding the high rate of adjustments should be mitigated by the availability of mandatory blocking to be imposed on subscribers refusing to pay 976 charges after receiving a one-time adjustment as provided in D.87-01-042.

Discussion

The ultimate question to be resolved in this controversy is whether the utility should absorb the cost of transport and billing and the cost of adjusting 976 calls or whether the IP responsible for the adjusted call should absorb this cost.

The adjustment policy adopted in D.85-11-028, and made permanent in D.87-01-042, was made after extended public hearings regarding all facets of 976 IAS service.

In granting rehearing of Resolution T-12015, in D.87-08-064 we stated;

> "Therefore, we will order that in this rehearing, Pacific shall submit evidence on its actual billing and transport costs, as well as

> its actual costs of making each adjustment. Should we find, after rehearing, that we still have insufficient data upon which to craft a compromise, we may be compelled to return to our original approach". (Emphasis added.)

To alleviate the potential abuse of the adjustment policy as alleged by the IPs, that decision also ordered Pacific and GTE to file revised tariff sheets reinstating the one-time adjustment policy existing prior to the adoption of Resolution T-12015.

After carefully reviewing the record herein, we are convinced that there are compelling reasons for returning to the adjustment policy enunciated in D.87-01-042 and approved by Resolution T-12015.

In subscribing to 976 service, an IP agrees that the utility should be fully compensated for furnishing the transport and billing of a 976 call. Once the call has been completed, the utility has performed the service it agreed to perform. Should the utility not satisfactorily complete the call, subsequently bill the caller and remit to the IP the agreed amount for the call, it should be required to refund the agreed amount of compensation.

The IPs are businessmen who presumably entered into the business of providing 976 IAS service with their eyes open. They are solely responsible for the message content of a 976 call and the price of the call. Just as the IP exercises its business judgment to set the price of a 976 call, it is free to exercise that same discretion when faced with the necessity of recovering additional costs of doing business.

Further, with the availability of optional residential blocking of 976 service and mandatory blocking for customers who refuse to pay 976 charges after receiving a one-time adjustment as ordered by D.87-12-038, the high rate of adjustments should subtantially decline. With the decline in adjustments, the

concerns of the IPs regarding the possibility of being driven out of business because of the dollar amounts involved, should be substantially reduced.

With respect to the IPs' allegation that Pacific's showing of costs was totally inadequate, Pacific incurs the same cost for the billing and transport of a call, be it a $.55 call or a $2.00 call. The cost to adjust a call is also the same. Though the Pacific witness was unable to quantify the number of low price calls adjusted versus the higher priced calls, it is clear that Pacific does not recover all of its costs in adjusting a low priced call. Accordingly, we agree with DRA that since Pacific does not recover its costs on all adjustments, an effective compromise would allow Pacific its original charge to the IP for each adjusted call. Such a procedure would be much easier and less costly to administer without the need of concocting a convoluted formula involving costs that are something less than precise.

Pursuant to Section 311 of the Public Utilities Code, the Administrative Law Judge's (ALJ) proposed decision was served on the participating parties on March 17, 1988. Comments on the proposed decision were received from IPA and the Commission's DRA. (The DRA's comments delivered to the Commission's Docket Office were not accepted for filing because the certificate of service was inadvertently omitted from the original and 12 copies. On April 8, 1988, DRA filed its motion to accept the comments for filing pursuant to Rule 77.5 of the Commission's Rules of Practice and Procedure. The filing should be accepted since no party would be prejudiced with their acceptance.)

In its comments, IPA noted that the Proposed Decision did not address the 60-day limitation on adjustments discussed in D.87-08-064. That decision required that the parties confer and propose an appropriate form of customer notice concerning the 60-day time limit on the one-time adjustment policy. The parties subsequently held meetings, but no proposal was submitted to the

Commission. Thereafter, on September 25, 1987, DRA filed a Petition for Modification of D.87-08-064 requesting that the implementation of the 60-day time limit on adjustments be reconsidered or at least postponed, pending availability of blocking. We agree with DRA that the item should be postponed pending further hearings.

Given the range of new developments regarding these services (including the availability of 976 blocking and the widespread publicity associated with it), we would like to reexamine whether our refund policy itself may require revisions. We will permit parties to raise the issue of whether the policy requires refinements during the hearings we will schedule to address the allocation of blocking costs (in I.85-04-047). In particular, we are concerned about the extent to which uninformed customers continue to need a liberal refund policy as well as the potential opportunities for abuse that such a policy may afford.

In its comments and in an "Emergency Motion" filed April 20, 1988, IPA challenges the references to 900 service contained in the ALJ's proposed decision, on the grounds that these references are based on matters outside the record.

We have considered the comments submitted, and are of the opinion that the ALJ's proposed decision should be modified to delete references to Pacific's 900 service; in all other respects, the ALJ's proposed decision is adopted.

Findings of Fact

1. D.85-11-028 dated November 6, 1985 authorized Pacific, on an interim basis, to provide for a one-time adjustment for 976 calls appearing on residential subscribers' bills.

2. D.87-01-042 dated January 14, 1987 made the adjustment policy enunciated in D.85-11-028 permanent while adding the availability of a one-time adjustment when (1) the customer did not

know that 976 billing charges applied, (2) for calls by a minor child without parental consent, and (3) the calls were not authorized by the subscriber.

3. Pursuant to D.87-01-042, Pacific filed Advice Letter 15224 on February 13, 1987. Advice Letter 15224 was approved by Resolution T-12015 on April 22, 1987.

4. D.87-08-064 dated August 26, 1987 rescinded the authorization granted by Resolution T-12015 and ordered rehearing to develop evidence relevant to the issue of how Pacific's billing and transport charges should be treated in the context of the 976 one-time adjustment policy.

5. Whether to allow the telephone utility to recover its combined cost of billing and transport and the cost of making an adjustment is a policy decision.

6. The problem of adjustments is a problem related to the business conduct of a segment of the IP industry and is not related to the 976 service as a whole.

7. The business practices, including advertising and message content, of the IPs were the prime reason for the complaints received and consequent need to adjust the complaining subscribers bill.

8. The agreement with the utility under the terms of the filed tariff is that the utility will provide "billing and transport" service for completion of an IP's 976 call.

9. The utility providing 976 service is not responsible for the requests for adjustments from complaining subscribers.

10. There are costs incurred by the utility in making adjustments that were not contemplated with the introduction of 976 service and consequently not built into the 976 rate structure.

11. Given the availability of blocking, it is reasonable to allow the utility to adjust the total amount of a 976 call on a prospective basis since the demands for adjustments should be substantially reduced or entirely eliminated.

Conclusions of Law

1. Without regard to the cost to adjust a 976 call and the cost of transport and billing, the decision of who should bear the cost is a policy decision.

2. The business practices of certain IPs are responsible for mounting requests for adjustments.

3. The IP responsible for the adjustment request should pay for the full amount of the adjustment credit given to a residential subscriber for a 976 call.

4. Pacific should refile its advice letter to provide debiting the particular IP account for the amount of a 976 call adjusted on a residential subscriber's bill.

5. DRA's Petition for Modification of D.87-08-064 should be granted, pending further hearing.

O R D E R

IT IS ORDERED that:

1. Pacific Bell and GTE California, Inc. shall file not later than 10 days after the effective date of this decision an advice letter revising the associated tariff sheet to prospectively provide that all one-time adjustments for 976 calls shall be recharged in full to the appropriate Information Provider's account.

2. The advice letter shall be effective 5 days after filing.

3. DRA's Petition of Modification of D.87-08-064 is granted, consistent with the preceding discussion.

This order is effective today.

Dated April 27, 1988, at San Francisco, California.

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

I will file a concurring opinion.

/s/ G. MITCHELL WILK
Commissioner

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

[illegible] Wolcott, Executive Director

A. 87-05-049
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G. MITCHELL WILK, Commissioner, Concurring:

Our policy decisions regarding 976 have been difficult to reach. We have attempted to balance the desires and complaints of consumers along with those of the information providers and the local telephone companies in trying to develop a viable information age service. I believe that we still have a distance to go before we will have a product that serves consumers well while providing a legitimate and stable opportunity for investors.

I believe that it is economically appropriate for the information providers to bear the costs of legitimate refunds. In this way, individual providers can determine which programs or business practices are too troublesome to be worth pursuing given the social protections we must offer. Therefore, I am supporting this decision.

However, the advent of blocking has given consumers a new and useful tool for controlling access to 976. Also, our refund policy has been widely publicized along with the problems that some consumers have encountered. This publicity and our policies have presumably armed many consumers against the risks they faced in the early days of 976. On the other hand, the continuing protests of the information providers point to the real possibility of substantial abuse of the refund policy, a problem that publicity may be accentuating.

I look forward to the upcoming hearings at which we will examine whether modifications to the refund policy may be appropriate due to changed circumstances. I believe that such a reexamination is the logical next step to follow today's decision as to how to allocate the costs.

G. MITCHELL WILK, Commissioner

April 27, 1988
San Francisco, California

ALJ/BEB/fs

Item 2
Agenda 4/27/88

Decision 88 04 077 APR 27 1988

ORIGINAL

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O P I N I O N

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concerns of the IPs regarding the possibility of being driven out of business because of the dollar amounts involved, should be substantially reduced.

With respect to the IPs' allegation that Pacific's showing of costs was totally inadequate, Pacific incurs the same cost for the billing and transport of a call, be it a $.55 call or a $2.00 call. The cost to adjust a call is also the same. Though the Pacific witness was unable to quantify the number of low price calls adjusted versus the higher priced calls, it is clear that Pacific does not recover all of its costs in adjusting a low priced call. Accordingly, we agree with DRA that since Pacific does not recover its costs on all adjustments, an effective compromise would allow Pacific its original charge to the IP for each adjusted call. Such a procedure would be much easier and less costly to administer without the need of concocting a convoluted formula involving costs that are something less than precise.

Finally, on November 16, 1987 Pacific filed its new 900[1] Information Calling Service tariff which is designed to provide callers with access to live and adult entertainment service on specifically designated prefixes. A subscriber would be able to delete access to a prefix and its associated subcategory of information services. If this tariff offering is approved and service is introduced, the need for adjusting 976 calls should diminish or be eliminated entirely since the majority of residential complaints involve this type of service.

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Pursuant to Section 311 of the Public Utilities Code, the Administrative Law Judge's (ALJ) proposed decision was served on the participating parties on March 17, 1988. Comments on the

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With respect to the IPs' allegation that Pacific's showing of costs was totally inadequate, Pacific incurs the same cost for the billing and transport of a call, be it a $.55 call or a $2.00 call. The cost to adjust a call is also the same. Though the Pacific witness was unable to quantify the number of low price calls adjusted versus the higher priced calls, it is clear that Pacific does not recover all of its costs in adjusting a low priced call. Accordingly, we agree with DRA that since Pacific does not recover its costs on all adjustments, an effective compromise would allow Pacific its original charge to the IP for each adjusted call. Such a procedure would be much easier and less costly to administer without the need of concocting a convoluted formula involving costs that are something less than precise.

Pursuant to Section 311 of the Public Utilities Code, the Administrative Law Judge's (ALJ) proposed decision was served on the participating parties on March 17, 1988. Comments on the proposed decision were received from IPA and the Commission's DRA. (The DRA's comments delivered to the Commission's Docket Office were not accepted for filing because the certificate of service was inadvertently omitted from the original and 12 copies. On April 8, 1988, DRA filed its motion to accept the comments for filing pursuant to Rule 77.5 of the Commission's Rules of Practice and Procedure. The filing should be accepted since no party would be prejudiced with their acceptance.)

In its comments, IPA noted that the Proposed Decision did not address the 60-day limitation on adjustments discussed in D.87-08-064. That decision required that the parties confer and propose an appropriate form of customer notice concerning the 60-day time limit on the one-time adjustment policy. The parties subsequently held meetings, but no proposal was submitted to the

Findings of Fact

1. D.85-11-028 dated November 6, 1985 authorized Pacific, on an interim basis, to provide for a one-time adjustment for 976 calls appearing on residential subscribers' bills.

2. D.87-01-042 dated January 14, 1987 made the adjustment policy enunciated in D.85-11-028 permanent while adding the availability of a one-time adjustment when (1) the customer did not know that 976 billing charges applied, (2) for calls by a minor child without parental consent, and (3) the calls were not authorized by the subscriber.

3. Pursuant to D.87-01-042, Pacific filed Advice Letter 15224 on February 13, 1987. Advice Letter 15224 was approved by Resolution T-12015 on April 22, 1987.

4. D.87-08-064 dated August 26, 1987 rescinded the authorization granted by Resolution T-12015 and ordered rehearing to develop evidence relevant to the issue of how Pacific's billing and transport charges should be treated in the context of the 976 one-time adjustment policy.

5. Whether to allow the telephone utility to recover its combined cost of billing and transport and the cost of making an adjustment is a policy decision.

6. The problem of adjustments is a problem related to the business conduct of a segment of the IP industry and is not related to the 976 service as a whole.

7. The business practices, including advertising and message content, of the IPs were the prime reason for the complaints received and consequent need to adjust the complaining subscribers bill.

8. The agreement with the utility under the terms of the filed tariff is that the utility will provide "billing and transport" service for completion of an IP's 976 call.

9. The utility providing 976 service is not responsible for the requests for adjustments from complaining subscribers.

proposed decision were received from IPA and the Commission's DRA. (The DRA's comments delivered to the Commission's Docket Office were not accepted for filing because the certificate of service was inadvertently omitted from the original and 12 copies. On April 8, 1988, DRA filed its motion to accept the comments for filing pursuant to Rule 77.5 of the Commission's Rules of Practice and Procedure. The filing should be accepted since no party would be prejudiced with their acceptance.)

We have considered the comments submitted, which essentially reargued the parties' positions, and are of the opinion that the ALJ's proposed decision should be adopted.

Findings of Fact

1. D.85-11-028 dated November 6, 1985 authorized Pacific, on an interim basis, to provide for a one-time adjustment for 976 calls appearing on residential subscribers' bills.

2. D.87-01-042 dated January 14, 1987 made the adjustment policy enunciated in D.85-11-028 permanent while adding the availability of a one-time adjustment when (1) the customer did not know that 976 billing charges applied, (2) for calls by a minor child without parental consent, and (3) the calls were not authorized by the subscriber.

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5. Whether to allow the telephone utility to recover its combined cost of billing and transport and the cost of making an adjustment is a policy decision.

Commission. Thereafter, on September 25, 1987, DRA filed a Petition for Modification of D.87-08-064 requesting that the implementation of the 60-day time limit on adjustments be reconsidered or at least postponed, pending availability of blocking. We agree with DRA that the item should be postponed pending further hearings.

In its comments and in an "Emergency Motion" filed April 20, 1988, IPA challenges the references to 900 service contained in the ALJ's proposed decision, on the grounds that these references are based on matters outside the record.

We have considered the comments submitted, and are of the opinion that the ALJ's proposed decision should be modified to delete references to Pacific's 900 service; in all other respects, the ALJ's proposed decision is adopted.

Findings of Fact

1. D.85-11-028 dated November 6, 1985 authorized Pacific, on an interim basis, to provide for a one-time adjustment for 976 calls appearing on residential subscribers' bills.

2. D.87-01-042 dated January 14, 1987 made the adjustment policy enunciated in D.85-11-028 permanent while adding the availability of a one-time adjustment when (1) the customer did not know that 976 billing charges applied, (2) for calls by a minor child without parental consent, and (3) the calls were not authorized by the subscriber.

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4. D.87-08-064 dated August 26, 1987 rescinded the authorization granted by Resolution T-12015 and ordered rehearing to develop evidence relevant to the issue of how Pacific's billing and transport charges should be treated in the context of the 976 one-time adjustment policy.

10. There are costs incurred by the utility in making adjustments that were not contemplated with the introduction of 976 service and consequently not built into the 976 rate structure.

11. Given the availability of blocking and the possible introduction of new 900 tariffed service of Pacific for live and adult entertainment, it is reasonable to allow the utility to adjust the total amount of a 976 call on a prospective basis since the demands for adjustments should be substantially reduced or entirely eliminated.

Conclusions of Law

1. Without regard to the cost to adjust a 976 call and the cost of transport and billing, the decision of who should bear the cost is a policy decision.

2. The business practices of certain IPs are responsible for mounting requests for adjustments.

3. The IP responsible for the adjustment request should pay for the full amount of the adjustment credit given to a residential subscriber for a 976 call.

4. Pacific should refile its advice letter to provide debiting the particular IP account for the amount of a 976 call adjusted on a residential subscriber's bill.

O R D E R

IT IS ORDERED that:

1. Pacific Bell and GTE California, Inc. shall file not later than 10 days after the effective date of this decision an advice letter revising the associated tariff sheet to prospectively

6. The problem of adjustments is a problem related to the business conduct of a segment of the IP industry and is not related to the 976 service as a whole.

7. The business practices, including advertising and message content, of the IPs were the prime reason for the complaints received and consequent need to adjust the complaining subscribers bill.

8. The agreement with the utility under the terms of the filed tariff is that the utility will provide "billing and transport" service for completion of an IP's 976 call.

9. The utility providing 976 service is not responsible for the requests for adjustments from complaining subscribers.

10. There are costs incurred by the utility in making adjustments that were not contemplated with the introduction of 976 service and consequently not built into the 976 rate structure.

11. Given the availability of blocking and the possible introduction of new 900 tariffed service of Pacific for live and adult entertainment, it is reasonable to allow the utility to adjust the total amount of a 976 call on a prospective basis since the demands for adjustments should be substantially reduced or entirely eliminated.

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10. There are costs incurred by the utility in making adjustments that were not contemplated with the introduction of 976 service and consequently not built into the 976 rate structure.

11. Given the availability of blocking, it is reasonable to allow the utility to adjust the total amount of a 976 call on a prospective basis since the demands for adjustments should be substantially reduced or entirely eliminated.

Conclusions of Law

1. Without regard to the cost to adjust a 976 call and the cost of transport and billing, the decision of who should bear the cost is a policy decision.

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provide that all one-time adjustments for 976 calls shall be recharged in full to the appropriate Information Provider's account.

2. The effective date of the filing shall be 5 days after filing.

This order is effective today.

Dated _____, at San Francisco, California.

O R D E R

IT IS ORDERED that:

1. Pacific Bell and GTE California, Inc. shall file not later than 10 days after the effective date of this decision an advice letter revising the associated tariff sheet to prospectively provide that all one-time adjustments for 976 calls shall be recharged in full to the appropriate Information Provider's account.

2. The effective date of the filing shall be 5 days after filing.

This order is effective today.

Dated _____, at San Francisco, California.

4. Pacific should refile its advice letter to provide debiting the particular IP account for the amount of a 976 call adjusted on a residential subscriber's bill.

5. DRA's Petition for Modification of D.87-08-064 should be granted, pending further hearing.

O R D E R

IT IS ORDERED that:

1. Pacific Bell and GTE California, Inc. shall file not later than 10 days after the effective date of this decision an advice letter revising the associated tariff sheet to prospectively provide that all one-time adjustments for 976 calls shall be recharged in full to the appropriate Information Provider's account.

2. DRA's Petition of Modification of D.87-08-064 is granted, consistent with the preceding discussion.

3. The effective date of the filing shall be 5 days after filing.

This order is effective today.

Dated APR 27 1988, at San Francisco, California.

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

I will file a concurring opinion.

G. MITCHELL WILK
Commissioner