

Decision 89 02 022 FEB 8 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

American Coin Exchange, Inc.)
and Sloan Dupont,)

Complainants,)

vs.)

Pacific Bell Telephone Company,)

Defendant.)

Mailed

FEB 10 1989

Case 88-04-033
(Filed April 11, 1988)

O P I N I O N

Complainants American Coin Exchange, Inc. and Sloan Dupont (complainants) allege that Pacific Bell (Pacific) purchased certain accounts from US Sprint Communications Company (Sprint) including the account of complainants; that Sprint negligently failed to bill complainants for numerous months and that such negligence resulted in an accrual of approximately \$32,000 in past due charges; and that Pacific made demands for the full amount of the bill in November 1987 and threatened to disconnect all telephone services, including exchange service of complainants if the bill was not paid in four monthly installments of \$8,000 each.

Complainants further allege that Pacific's Schedule Cal. P.U.C. No. A.2.1.9(I)(1) (Rule 9) restricts billing by Pacific to three months from the date the charges are incurred and that since Pacific purchased the Sprint accounts, is billing in the name of Pacific, receives the payment for the accounts it purchased, and can use the threat of discontinuance of exchange service in order to coerce payment of bills, the Sprint accounts purchased by Pacific should be governed by Pacific's tariffs. Complainants state they are no longer using Sprint toll service and that they should only be subject to ramifications from not paying their

Sprint account as they would have had Pacific not purchased the account. In other words, if Sprint believes it has a valid claim to the \$32,000 which is questioned because of its negligence in billing, Sprint should be required to file a civil suit for enforcement rather than employ the coercive threat of disconnection which Pacific wields.

Complainants seek an order staying the billing or a restraining order prohibiting Pacific from enforcing collection from complainants during the pendency of this complaint; that any and all billing for Sprint accounts that were not billed by Pacific within three months not be permitted; that Pacific refund all payments collected by them for all Sprint accounts billed over three months from the date of the service; and for compensation for emotional distress.

In its answer to the complaint, Pacific admits that under the terms and conditions of Schedule Cal. P.U.C. No. 175-T, Pacific purchased certain Sprint accounts receivable in connection with providing billing and collections services on Sprint's behalf and that complainants' account was among the accounts receivable purchased; that on November 18, 1987, it made payment arrangements with complainants to collect a balance due of \$10,238.40 in installments of \$2,000 each month (plus any current charges); that on December 30, 1987, it made payment arrangements with complainants to collect an additional \$21,800.52, making a total balance due of \$32,038.92, in installments totaling \$8,000 per month (plus any current charges); and that it informed complainants that the telephone lines provided defendant would be disconnected if payment was not received.

Pacific further avers that complainants have not alleged they are not responsible for incurring the charges Pacific billed on behalf of Sprint; that Schedule Cal. P.U.C. No. 175-T, Section 2.1.8(c) grants Pacific the right to disconnect complainants' service for non-payment of Sprint's interLATA charges billed by

Pacific; that Commission Decision No. (D.) 83-12-004, December 7, 1983, pp. 125-26 and D.85-01-010, January 3, 1985, pp. 80-83 have explicitly granted Pacific this right; that Pacific's current tariffs do not place a backbilling limit on Pacific's billing on behalf of Sprint; and that tariffs filed by Sprint which delineate any billing limitations on Sprint's services set out the rights and liabilities of customers of Sprint being billed by Pacific.

Pacific also avers that neither Schedule Cal. P.U.C. No. 175-T nor Schedule Cal. P.U.C. No. A.2 contain any limitation on Pacific's backbilling of Sprint's charges and that, absent a specific limitation in Schedule Cal. P.U.C. No. 175-T, any limitation period specified in Sprint's tariffs controls the backbilling of Sprint's charges by Pacific.

As affirmative defenses, Pacific alleges that the backbilling limitations in Pacific's tariffs apply only to the services Pacific provides, that the terms and conditions for Sprint's services are those in Sprint's tariffs, and Pacific as the assignee of the debt due Sprint is entitled to the rights of the assignor Sprint. Pacific states that Sprint's tariffs do not include a three-month backbilling limitation, and Pacific's current tariffs do not limit backbilling by Pacific of Sprint's charges.

On August 1, 1988, Pacific filed a Motion to Dismiss on grounds that Pacific's billing of Sprint charges to complainants was proper. According to Pacific, the only violation of law, tariff, or Commission decision that complainants allege is that Pacific's billing and threat to disconnect for failure to pay Sprint charges billed more than 90 days after the call was made is in violation of Rule 9. Pacific argues that the backbilling limitation of Rule 9 expressly applies only to "exchange services", and that exchange service is defined in Schedule Cal. P.U.C. No. A.2.1.1 as a "general term used for Basic Exchange Service and other services which are identified in the tariff schedules as exchange service or exchange telephone service, as opposed to

Private line, message toll, and other special services." Pacific states that if there are backbilling limitations for services other than exchange services, they are in the tariffs for the particular service. There is no limit on backbilling in Pacific's interLATA access tariff (Schedule Cal. P.U.C. No. 175-T) and Pacific backbills such access service beyond three months.

Pacific points out that Sprint is a long distance company providing interLATA service and is not authorized to offer exchange service. When customers use Sprint's service, Sprint's tariffs define the rights and liabilities for their obligation to pay for the service. Pacific's tariff limitations for the services it provides does not control Sprint's customer's obligation to pay for using Sprint's service. When Pacific bills end users on behalf of Sprint, Pacific is Sprint's billing agent and Sprint's billing limitations are applicable. Sprint's intrastate tariff does not contain a three-month backbilling limitation.

On May 4, 1988, Pacific filed Advice Letter No. 15388 requesting modification of Pacific's billing and collection tariff (Schedule Cal. P.U.C No. 175-T, Section 8.2.1(B)(2)) so that Pacific could refuse to provide billing and collection service for interLATA charges which are greater than 90 days old. Despite numerous protests from long distance carriers, including Sprint, the Commission approved Pacific's tariff change in Resolution T-12091 on July 8, 1988. Pacific contends that the Commission's action confirms that Pacific's backbilling on behalf of Sprint did not violate any tariff, law, or Commission decision and is further acknowledgment that absent the amendment to Pacific's tariff, Pacific could bill end users for interLATA charges over 90 days old.

Pacific also points out that it is permitted to discontinue service to an end user for nonpayment of a bill that includes billings for services billed by Pacific but provided by an

interexchange carrier. In its most recent review of this issue in D.85-06-115 dated June 12, 1985 at page 160, the Commission stated:

"We have only recently determined that it is lawful for us to authorize Pacific's local service termination procedure. (D.85-01-010, mimeo. at 80-84.) We gave Pacific that authority in order to enhance the value of its billing and collection services, and to 'preserve a portion of the efficiencies of an integrated local and toll network for the benefit of local subscribers.' (D.83-12-024, mimeo. at 126 (emphasis added).) We should not have permitted Pacific to disconnect customers' local service for nonpayment of IECs' charges merely as a convenience to IECs. Rather, we find that, as a means of limiting need for local rate increases, it is fair for Pacific to extract substantial revenues in excess of costs from the provision of a Bill Processing Service incorporating the local service termination procedure."

Discussion

For the periods encompassing the objected-to billing by complainants, the arguments presented by Pacific in its Motion to Dismiss are compelling.

In R.85-09-008, filed September 5, 1985, we undertook an investigation into the rules, practices, and procedures of all telephone corporations concerning the billing of subscribers for telephone calls. One of the issues dealt with backbilling by telephone corporations of end users, including backbilling by interexchange carriers. As a result of this investigation, several interim opinions were issued. In D.86-12-025, we ordered all the respondent utilities to file tariff sheets which detailed the terms and conditions of their billing procedures to include a backbilling procedure which generally prohibited the rendering of a previously unbilled charge for service furnished prior to three months immediately preceding the date of the bill. There were three exceptions which would permit backbilling beyond the three months and two additional exceptions for interexchange carriers which

would permit a five-month limitation on calls which can not be billed due to the unavailability of complete billing information to the interexchange carrier and a one-and-one-half year limitation on bills involving toll fraud. The order in D.86-12-025 was stayed pending action on applications for rehearing by several respondents. In D.87-03-043 issued March 17, 1987 we granted a limited rehearing on two issues not relevant in the instant matter and lifted the stay except as to Ordering Paragraph 1 of D.86-12-025. In D.87-06-050 issued June 24, 1987, we clarified and modified our previous order in D. 87-03-043 by lifting the stay except as to the specific issues about which we had granted rehearing. In D.87-09-014, issued September 10, 1987, we issued an order reversing our previous lifting of the stays in D.86-12-025 and D.87-03-043 based on a timely petition of the California Association of Long Distance Telephone companies and placed a stay on the order in D.87-06-050 until resolution of related issues which were heard on July 6, 7, and 8, 1987 and until further order of the Commission.

In the most recent Interim Opinion issued on September 5, 1988 in D.88-09-061, we lifted the stay imposed by D.87-09-014, and the underlying order in this matter (D.86-12-025) became effective except as to interexchange carrier billing for uncompleted calls. Affected local exchange companies and interexchange carriers were ordered to file the tariffs described in D.86-12-025 within 15 days of September 28, 1988.

Since D.88-09-061 applied prospectively only and was not made retroactive, the backbilling of Sprint's charges by Pacific for periods prior to three months from the date the calls were made was proper and was not prohibited by any tariff, rule, or Commission order. For this reason, as well as the reasons argued by Pacific in its Motion to Dismiss, the complaint should be dismissed.

Findings of Fact

1. Complainants were subscribers of Sprint interexchange carrier service and of Pacific for local exchange service during the period covered by this complaint.

2. Pacific purchases certain Sprint accounts receivable in connection with providing billing and collections services on Sprint's behalf and was the assignee of complainants' account with Sprint during the period covered by this complaint.

3. Pacific billed complainants for Sprint charges incurred more than 3 months prior to the rendering of the bill by Pacific.

4. Complainants owed Sprint a total of \$32,038.92 in accrued charges for the interLATA exchange services furnished by Sprint.

5. At the time the accrued charges owed to Sprint by complainants were billed by Pacific, there were no limitations in Sprint's tariffs with respect to backbilling.

6. During the period in which complainants were billed by Pacific for the accrued Sprint charges, there were no Pacific tariffs which placed a limitation on backbilling for interexchange carrier services.

7. Pacific's tariffs which place a limitation of three months for backbilling apply only to exchange services furnished by Pacific during the period complainants were billed for interexchange services furnished by Sprint.

8. Exchange service is defined in Pacific's tariff Schedule Cal. P.U.C. No. A.2.1.1 as a "general term used for Basic Exchange Service and other services which are identified in the tariff schedules as exchange service or exchange telephone service, as opposed to Private Line, Message Toll, and other special services."

9. Pacific's tariff, Schedule Cal. P.U.C. No. 175-T, Section 2.1.8(c), provides Pacific the right to discontinue service to an end user for nonpayment of any portion of a bill, including charges billed by Pacific on behalf of interexchange carriers such as Sprint.

10. There are no triable issues of fact or law in this complaint such as to warrant the holding of a hearing.

Conclusion of Law

Pacific's Motion to Dismiss the complaint should be granted.

ORDER

IT IS ORDERED that the complaint in Case 88-04-033 is dismissed.

This order becomes effective 30 days from today.

Dated FEB 8 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. CHANTAN
Commissioners

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

Victor Weisler
Victor Weisler, Executive Director
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