

ORIGINAL

Decision 89 12 007 DEC 6 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Business Communication Service)
 Corporation,)
)
 Complainant,)
)
 vs.)
)
 Pacific Bell (U 1001 C),)
)
 Defendant.)
 _____)

Case 88-08-061
(Filed August 29, 1988)

Christopher A. Gaal, for Business Communication
 Service Corporation, complainant.
Bonnie Packer, Attorney at Law, for Pacific Bell,
 defendant.

OPINION

Complainant requests that it be relieved from the payment of \$1,021.01 which accrued between December 1985 and April 1986 which it believes results from calls incorrectly charged or billed to the wrong account. It also requests that it be relieved from late charges that have been accruing on the account since May 1986. The \$1,021.01 was placed on deposit simultaneously with the filing of the complaint.

The complaint was originally docketed under the expedited complaint procedure (ECP). In its answer filed October 3, 1988, defendant pointed out that the amount of money involved is greater than \$1,500 and therefore should not be considered under the ECP procedure. On October 5, 1988, Administrative Law Judge (ALJ) O'Leary issued a ruling removing the matter from the ECP.

Public hearing was held before ALJ O'Leary at San Francisco on April 21, 1989. The matter was submitted with the filing of the transcript on June 23, 1989.

The evidence discloses that in April 1986 defendant included in its monthly bill to complainant an amount for services rendered during the period December 1985 to March 1986. The April bill totaled \$5,302.68. Upon receipt of the April bill, complainant paid \$4,002.68 leaving a balance due of \$1,300 and an employee of complainant contacted defendant concerning the back billed amount. As a result of that contact the defendant adjusted the back billing by a total of \$178.20 leaving a balance due of \$1,121.80. In November 1986 complainant paid \$100 more than the current bill. That amount was applied to the balance outstanding. There was a further adjustment to complainant's bill in the amount of \$.79 resulting in the present disputed amount of \$1,021.01 plus the accrued late payment charges prior to deposit of the disputed funds with the Commission of \$528.17.

Complainant presented a statistical hypothesis which is set forth in Exhibit 3. The witness testified that based upon the statistical hypothesis the calls for which complainant was back billed were above the limits of the statistical hypothesis method. No evidence was presented by complainant concerning the detailed billing submitted by defendant for the back billing during the period in question. Exhibit 3 is based upon a 22-month period (December 1985 to October 1987).

Exhibit 4 contains a debit and credit statement for the 33-month period September 1985 through May 1988. The exhibit discloses that complainant's monthly bills for telephone service were as follows:

<u>Year</u>	<u>Month</u>	<u>Amount</u>	<u>Year</u>	<u>Month</u>	<u>Amount</u>
1985	Sept.	\$4,248.31	1987	Jan.	3,757.75
	Oct.	3,320.03		Feb.	4,176.18
	Nov.	4,586.56		Mar.	3,797.39
	Dec.	3,394.02		Apr.	3,838.31
1986	Jan.	3,098.98	May	3,512.90	
	Feb.	3,134.62	Jun.	4,349.33	
	Mar.	3,820.53	Jul.	3,658.81	
	Apr.	5,302.68*	Aug.	3,702.55	
	May	3,660.55	Sept.	4,020.99	
	Jun.	3,627.47	Oct.	3,689.41	
	Jul.	3,483.57	Nov.	3,711.54	
	Aug.	3,948.12	Dec.	3,395.54	
	Sept.	3,589.77	1988	Jan.	3,187.50
	Oct.	3,602.30		Feb.	3,386.17
	Nov.	5,308.56		Mar.	3,536.79
	Dec.	4,111.53		Apr.	3,642.03
		May		3,572.98	

* Includes the \$1,021.01 disputed amount.

Since we do not have a detailed accounting of the distribution of the disputed amount by month, for purposes of analysis, we have reduced the April 1986 billing by the disputed amount and then added 25% of that amount ($\$1,021.01 \times 25\% = \255.25) to the four months (December 1985 to March 1986). The adjusted tabulation of charges for the 33-month period is as follows:

<u>Year</u>	<u>Month</u>	<u>Amount</u>	<u>Year</u>	<u>Month</u>	<u>Amount</u>
1985	Sept.	\$4,248.31	1987	Jan.	\$3,757.75
	Oct.	3,320.03		Feb.	4,176.18
	Nov.	4,586.56		Mar.	3,797.39
	Dec.	3,649.27		Apr.	3,838.31
1986	Jan.	3,354.23	May	3,512.90	
	Feb.	3,389.87	Jun.	4,349.33	
	Mar.	4,075.78	Jul.	3,658.81	
	Apr.	4,281.67	Aug.	3,702.55	
	May	3,660.55	Sept.	4,020.99	
	Jun.	3,627.47	Oct.	3,689.41	
	Jul.	3,483.57	Nov.	3,711.54	
	Aug.	3,948.12	Dec.	3,395.54	
	Sept.	3,589.77	1988	Jan.	3,187.50
	Oct.	3,602.30		Feb.	3,386.17
	Nov.	5,308.56		Mar.	3,536.79
	Dec.	4,111.53		Apr.	3,642.03
		May		3,572.98	

Analysis of the above tabulation discloses that the charges during the period of the billings range from a low of \$3,187.50 in January 1988 to a high of \$5,308.60 in November 1986. The arithmetic mean for the 33-month period is \$3,973.20, and the arithmetic median is \$3,660.55. The monthly charges for December 1985 and January and February 1986 are below both the mean and the median. The charge for March is below the highest charge which occurred in November 1986. Based upon this analysis the back billings are not out of line with other monthly billings.

Complainant in this proceeding bears the burden of showing that the utility did not follow its tariffs in rendering its bills, that it billed in error or that the complainant did not make the calls in issue. It has done none of these things. It has not addressed the specifics of the bills at all, preferring to rely on a statistical analysis with a questionable conclusion. We find that complainant has not carried its burden of proof in this case and will deny the complaint.

The evidence also discloses that complainant was purchased by TIE Communications in September 1985. The policy of the new owners is to pay all payables whether or not there is a dispute. As a result of that policy the disputed amount together with the late charges were paid by the new owners. This was confirmed by defendant; therefore, the \$1,021.01 on deposit will be returned to complainant.

Findings of Fact

1. Complainant disputed the back billing in the amount of \$1,021.01 for services rendered in the period December 1985 through March 1986.
2. Complainant has incurred late charges in the amount of \$528.17 for failure to pay the \$1,021.01 set forth in Finding 1.
3. Complainant presented a statistical hypothesis which, complainant believes, shows the back billed amount is above the limits of the statistical hypothesis method.

4. No evidence was presented concerning the detail of the \$1,021.01 back billing.

5. The disputed amount when averaged over the four-month period results in increased charges of \$255.25 per month.

6. By adding the \$255.25 to the current billings for the back billed months the resultant charges are as follows:

December 1985	\$3,649.27
January 1986	\$3,354.23
February 1986	\$3,389.87
March 1986	\$4,075.78

7. Exhibit 4 contains a tabulation of monthly billings for a 33-month period from September 1985 to May 1988.

8. The charges set forth in Exhibit 4 as adjusted by the amounts set forth in Finding 6, range from a low of \$3,187.50 in January 1988 to a high of \$5,308.60 in November 1986. The arithmetic mean and median for the 33-month period covered by Exhibit 4 are \$3,973.71 and \$3,660.55, respectively.

9. The monthly charges for December, January, and February set forth in Finding 6 are below both the mean and the median set forth in Finding 8. The charge for March set forth in Finding 6 is below the highest charge set forth in Finding 6.

10. The disputed amount and the late charges have been paid by complainant.

Conclusions of Law

1. Complainant has not carried its burden of proof in this matter.

2. The relief sought in the complaint should be denied.

3. The \$1,021.01 on deposit should be returned to complainant.

ORDER

IT IS ORDERED that:

1. The relief requested in the complaint is denied.
2. Complainant's deposit of \$1,021.01, and any other deposit made by complainant in connection with this complaint, shall be disbursed to complainant on the effective date of this order.

This order becomes effective 30 days from today.

Dated DEC 6 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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

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Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

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