

Decision 90 05 012 MAY 04 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jonathon McKool, Frank McNeil
and Brenda McNeil,

Complainants,

vs.

Pacific Bell,

Defendant.

ORIGINAL
(ECP)

Case 89-09-041
(Filed September 28, 1989)

O P I N I O N

This complaint was filed September 28, 1989 by Jonathon McKool, Frank McNeil, and Brenda McNeil (Complainants) against Pacific Bell (Pacific) under the Expedited Complaint Procedure pursuant to Section 13.2 of the Commission's Rules of Practice and Procedure. The complaint alleges that Pacific improperly disconnected Complainants' residential telephone line and has failed to credit Complainants' bills for calls not made by them.

A hearing was held on March 2, 1990.

During the hearing, Complainants alleged that numerous calls have been made over their residential lines without their authority or knowlege. Sometimes these calls were made, according to Complainants, when they were on the premises and no one in the household was on the telephone.

Complainants took several steps to investigate the possible source of the problem. Complainants purchased several machines designed to monitor outgoing telephone calls and the dates and times they were made. The monitoring machines, according to Complainants, confirmed their view that Pacific was billing Complainants for calls not made by them. Complainants also hired an inside wire expert to determine whether the problem was on

customers' side of the protector, and to completely rewire its system.

Complainants currently have a business line which does not appear to have the same problems as the previous residential lines. Complainants assert the problem on the residential lines lies on Pacific's side of the protector. Accordingly, Complainants argue that Pacific should credit disputed calls and reinstate Complainants' residential service.

Pacific responds that it provided a one-time adjustment for disputed 976 calls on two of complainants' lines, and blocked 976 calls to the residential and business lines. It subsequently disconnected residential service for non-payment of non-976 call charges. Complainants still have use of a business line in their home because Pacific may not disconnect a business line for nonpayment of residential bills. The amount in dispute is about \$270.

Pacific also testified that it has, over the period in question, undertaken many tests of its equipment, including the lines from the residence to the central office. It has reprogrammed the line, changed the underground cable pair, and checked for site tampering on the premises and at the multi-link equipment. It has monitored the line with "originating traps," which are similar to the monitoring machines used by Complainants. Pacific also testified that, with the approval of Complainants, one of its maintenance employees spent a week at Complainants' premises to monitor their lines while Complainants were out of town. These tests and equipment changes have revealed no trouble on the line.

Pacific states it has considered whether fraudulent use of the phone could be perpetrated with cordless telephones or at the protector but has not found any evidence of such fraud. Pacific's documentation indicates its belief that fraud may be the

source of the calls and Pacific has therefore referred the matter to its Security Department and the local authorities.

During the hearing, it became clear that both Pacific and Complainants have made every reasonable effort to resolve Complainants' problem. Pacific has undertaken numerous tests in the field and in its central office, and has properly credited 976 calls. Complainant has been in frequent contact with Pacific and has undertaken its own investigation by hiring an independent expert and purchasing monitoring equipment.

The parties in fact appear to agree that some sinister force is at work in spite of their exemplary efforts to remedy Complainants' problem. Although the parties agree to much, they do not agree about who is liable for the disputed calls.

Generally, the Commission has held that subscribers are responsible for all calls over their lines, whether or not the calls are authorized. Pacific's tariffs state that:

"A customer for service shall be responsible for the payment of all exchange, toll, and the charges applicable to their service made in accordance with the Utility's schedule of rates and regulations." (Schedule Cal PUC No. A2.1.9, Rule 9.)

The evidence in this proceeding supports Pacific's claim that it has not violated any tariff or rule. In other cases where complainant seeks to be relieved of charges associated with disputed calls, the Commission would deny the complaint where the utility has not violated any tariffs or rules. In this case, however, where the evidence points to fraud by an unknown third party who is not acting on the premises of the subscriber and where the Complainants have worked so diligently to resolve the problem, we believe some relief should be granted as a matter of equity. Such relief is consistent with long distance carriers' treatment of long distance calls made by fraudulent means, and with laws

requiring that companies issuing credit cards assume liability for fraudulent use of those cards by third parties.

Pacific should reinstate Complainants' residential service and relieve Complainants of outstanding disputed charges in the amount of approximately \$270. Complainants should pay the tariffed charges for reinstituting service. They should also sign the authorization form in order to receive the one-time adjustment for 976 calls as Pacific requests.

O R D E R

IT IS ORDERED that:

1. Pacific Bell shall relieve Complainants of outstanding disputed charges in the amount of approximately \$270.

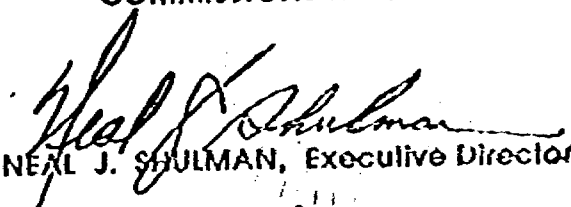
2. In all other respects, this complaint is denied.

This order becomes effective 30 days from today.

Dated MAY 04 1990, 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


NEAL J. SHULMAN, Executive Director