

Decision 90 05 026 MAY 04 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Nick Bode,

Complainant,

vs.

Pacific Bell,

Defendant.

ORIGINAL

Case 89-09-011
(Filed September 8, 1989)

Nick Bode, for himself, complainant.
Kristin A. Ohlson, Attorney at Law, for
Pacific Bell, defendant.

O P I N I O N

I. Summary

This decision denies the relief requested by Nick Bode (complainant).

II. Background

This complaint was filed on September 8, 1989. The complaint alleges that Pacific Bell (Pacific) has charged and continues to charge for calls complainant does not recognize. Complainant asserts he pays for calls to persons and places he recognizes. Complainant indicates he discussed this problem with Pacific's supervisors (Mrs. Herbert and Mrs. Robinson), but they ignored him. He made five payments to Pacific totaling \$353.02 between April 13 and August 31, 1989, but Pacific continued to place the previous balance on his next bill. Pacific disconnected service on September 1, 1989. Complainant seeks to have his

telephone reconnected by September 8, 1989, find out who is using his line, clear his telephone bills, and have the matter resolved. Complainant did not place the disputed balance on deposit with the Commission.

Pacific filed a motion to dismiss and an answer to complaint on October 13, 1989. Pacific moves that the complaint be dismissed since Pacific has done nothing more than comply with its tariffs. Pacific argues that there is no basis for this complaint since a customer is responsible for the payment of all calls from his or her service whether authorized or not, and Pacific has acted within its tariffs by disconnecting service for nonpayment.

Pacific answers the complaint by pointing out complainant made five payments totaling \$353.00 (not \$353.02) between April 13 and August 31, 1989, but these payments do not pay the charges for calls made and billed to complainant. The outstanding balance as of September 1, 1989 was \$277.31.

In its defense, Pacific alleges that complainant fails to state a cause of action because he does not set out any act or thing done or omitted to be done in violation of any provision of law or any order or rule of the Commission. Further, Pacific alleges that complainant seeks preferential treatment in violation of Public Utilities Code § 453, to the extent he seeks a refund of any charges not accorded other ratepayers. Finally, Pacific alleges that its action in disconnecting complainant's telephone service for nonpayment is in full compliance with its tariff. Therefore, Pacific requests that the requested relief be denied.

A hearing was held October 23, 1989. The parties expressed the following positions at the hearing.

III. Positions of Parties

A. Complainant

Complainant adopted the complaint as his testimony and testified further that he met with Pacific's representative Mrs. Rivers in September 1988 for 2 1/2 hours. Rivers authorized adjustments to complainant's bill, and complainant paid the bill through December 1988. The problem continued until service was discontinued, however, with calls being charged for numbers he does not recognize.

Complainant believes other people are using his line. Complainant discovered a neighbor with a telephone connected to complainant's line (at a box in the parking lot of the apartment building in which complainant lived). Pacific's Mr. Atchley investigated and disconnected a line in the neighbor's apartment. Complainant has since moved to a new address, but the problem of someone using his line continued. Complainant heard voices on his line and complained to Pacific.

Complainant received a "Call Details Request" report from Pacific, which identified the telephone number and listing information for some calls complainant disclaimed (Exhibit 1). Complainant spent over \$45 calling each number to see if the listed parties recognized his name or telephone number. Complainant testified that none of the parties recognized him or his telephone number. He learned that at least two numbers were disconnected, even though they were on his bill.

Complainant had between \$200 and \$300 of 976 calls on his bills that Pacific agreed to adjust. Complainant testified that Pacific continues to bring these charges forward.

Complainant spoke with Pacific and AT&T representatives in April 1989. Some adjustments were authorized. Complainant

offered to make partial payment, but Pacific required the full balance.

Complainant submitted copies of bill statements from September 22, 1988 through September 15, 1989, and testified that he does not recognize nearly all the itemized calls assessed on the bills, with limited exceptions.¹ He testified that most of the

¹ Complainant accepts between 16 and 21 calls, plus some on the 10/22/88 bill, out of over 286 itemized calls on these bills:

<u>Bill Statement Date</u>	<u>Total Itemized Calls</u>	<u>Itemized Calls Accepted</u>
9/22/88	10	None
10/22/88	several	Some
11/22/88	20	Maybe 1 to Hungary
12/22/88	32	2 to Sacramento
1/22/89	12	3 to Hungary 1 to Sacramento
2/22/89	6	None
3/22/89	47	None
4/22/89	69	1 to Simi Valley 5 to Beverly Hills
5/22/89	6	Maybe 2 to Sacramento Maybe 1 to Hungary
6/22/89	4	Maybe 1 to Simi Valley
7/22/89	1	None
8/22/89	68	4 to Washington, D.C.
9/15/89	<u>11</u>	<u>None</u>
Totals	over 286	16 to 21 plus some on the 10/22/88 bill

The October 22, 1988 bill summary shows current charges of \$42.98. This is above the basic and optional monthly service costs, so several itemized calls must have been made, but those pages were not submitted with the exhibit. Complainant's notes on the exhibit show that Mrs. Rivers authorized a payment of \$27.58 out of the total of \$42.98. Since the basic monthly service is less than \$27.58, some itemized calls must have been accepted and some rejected.

(Footnote continues on next page)

charges for directory assistance are wrong, and that tax and late-payment charges should be reversed. Also, the telephone was disconnected on September 1, 1989, but Pacific charged through September 11, 1989.

Finally, complainant testified that he seeks to have the matter clarified so no one can use his line. He has a 75-year-old mother seriously ill in Hungary, and seeks to have his telephone reconnected as soon as possible.

Under cross-examination complainant was reluctant to answer questions regarding other family members in his home and their ages. Further, complainant acknowledged making two calls to Sacramento on the December 22, 1988 bill statement that he had previously disclaimed.² (Tr. 47.) Complainant testified that his 17 1/2-year-old son did not use the telephone unless he had permission, and then only for local calls.

Mrs. Bode testified that after the telephone was disconnected she received four incoming calls for persons she does not know, plus one telephone call from a Pacific investigator. This appears to be in support of the claim someone else is using complainant's line.

B. Defendant

Defendant presented two witnesses: Cheryl Tallers (Service Representative in charge of billing for 18 years) and Robert Torres (Supervisor of the Canyon district for assignment,

(Footnote continued from previous page)

The bill statements for November 22, 1988, May 22, 1989, and June 22, 1989 do not make clear if some calls were accepted as noted above.

² These calls were to the same telephone number called and recognized on the January 22, 1989 bill statement.

installation, and maintenance of the field telephone facilities and technicians serving all business and residential customers in the areas of Reseda, Chatsworth, and Northridge for 18 years). Tallers primarily testified on the billing history and contacts with complainant since April 1987. Torres primarily testified on the equipment and facilities.

Tallers testified that Pacific's records show contacts from complainant going back before April 13, 1987. The first recorded complaint was on April 13, 1987. That complaint dealt with hearing voices on the line plus not recognizing any of the itemized calls on the bill statement, with some exceptions. Because of prior contacts by complainant, the matter was referred to the Executive Department. Pacific's Atchley investigated and determined there was a possibility someone may have plugged into the line because the terminal protector was in an unlocked area. Complainant's calls were adjusted and a lock was placed on the terminal.

Complainant next contacted Pacific on July 15, 1987, reporting no knowledge of billed calls, including 976 calls. On August 3, 1987 Security advised the Customer Service Representative that there was no tampering with the lock, but a jack in a downstairs apartment could have possibly been connected to complainant's line. An adjustment was authorized and the line to the downstairs apartment fixed so there could be no possibility of someone using complainant's line. Pacific agreed to delay collection of the bill for one month at the request of complainant.

Complainant contacted Pacific on October 21, 1987 regarding calls still appearing on his bill. On November 2, 1987 Pacific's Security Department reported the terminal had been broken into, and an adjustment was authorized.

Complainant continued to dispute calls and the need for further adjustments, including charges for 976. Pacific installed 976 blocking on February 24, 1988. Pacific mailed a notice on

April 19, 1988 denying further adjustments and requesting payment of \$1,133.82, along with a security deposit, by April 26. On May 4, 1988 Pacific received copies from complainant of bill statements from December 1987 through March 1988 showing calls in dispute. Pacific issued an adjustment based on the customer's records.

Service was transferred to a new address with the same telephone number on July 5, 1988. Contacts continued for the next few months with complainant and AT&T over bills, adjustments, and balances due. On December 19, 1988 Pacific issued an adjustment of \$711.16, which included \$191 of 976 charges.

Contacts continued with complainant and AT&T over the next several months. On April 7, 1989 complainant, Pacific, and AT&T discussed the bills in several calls, including two conference calls. AT&T eventually agreed to adjust \$6 of calls. Complainant then denied knowledge of any calls on the Pacific bill. Pacific advised complainant all adjustments had been posted and Pacific required at least \$200 towards the bill, with the balance due by April 17, 1989. Pacific rejected complainant's offer to pay \$100. Complainant paid \$208.18 as a partial payment on April 13, 1989.

Contacts continued over the next several months. Pacific issued call detail reports for verification of calls by complainant, and conducted equipment checks. No trouble appeared on the line. On June 5, 1989 Pacific replaced the cable and aerial pair to insure there could be no problem. Partial payments were received from complainant, and a few additional adjustments issued.

Notice was mailed to complainant on August 24, 1989 denying further adjustments and requesting payment of \$261.70 by August 31, 1989. On September 1, 1989 Pacific issued a temporary disconnection of service, and on September 11, 1989 Pacific issued a complete disconnection of service. Pacific's policy is to hold a temporary disconnection for five working days before it is sent for

a complete disconnection. The fifth working day was September 11, 1989.

Tallers presented evidence summarizing the bills, payments, adjustments, and balances from January 15, 1987 to September 15, 1989. Pacific billed \$3,261.43, complainant paid \$1,015.18, and Pacific issued 18 adjustments for \$1,970.02 over this period, leaving a balance due of \$276.23.

Further, Tallers testified that Pacific adjusted the charges for the two numbers on the call detail report sent to complainant that were found to be disconnected. The numbers were likely to have been in service when first called and charged to complainant's bill, but subsequently changed or disconnected. That explains why complainant discovered the numbers not in service when he called during his own investigation, according to Tallers. Pacific adjusted these two calls rather than investigate further since the charges were minimal (8 cents for one, 10 cents for the other). Finally, Tallers testified that subscribers are required under Pacific's Tariff Rule 9 to pay the cost of all charges applicable to their service.

Under cross-examination Tallers testified that Pacific called several of the numbers on the call detail report. The numbers are mostly those of large businesses and they were not able to confirm whether complainant called them or not.

Torres testified that he supervised central office and field investigations of complainant's line six times from May 4, 1989 to October 19, 1989. No problems were ever discovered.

Torres testified further that the service was switched to a new line on June 5, 1989 to ensure that the old line would be out-of-service if someone else was on the line. Complainant was given a new line, but the complaints continued.

Torres also testified that Pacific can temporarily reactivate a disconnected line to place an incoming call. Torres placed a test call to complainant on September 28, 1989. Further,

an inspection was made on October 19, 1989 of the inside wire of the apartment house in which complainant lives. The wire is a single, not multiple line, and there is no possible way it could be crossed with the line to another apartment.

It is very remote that someone else could have tampered with complainant's service to make unauthorized calls given the quantity of calls, according to Torres. The complainant's previous address is in Torres' area of responsibility. Torres testified that the previous address is in a location where the cable and pairs are not even remotely close or accessible to those of the new address. There is no way the same problem could occur on the two different lines to the two addresses due to a crossing of the lines.

C. Closing Arguments

In closing, complainant argued that someone is using his line, he does not have any privacy, and he would like his telephone reconnected because of his sick mother.

Pacific argued that the complainant has not met his burden of proof to show that the calls he disclaims are not applicable to his service. Pacific has made 18 adjustments for over \$1,900 since January 1987. Pacific stated that other ratepayers pay the bill when Pacific adjusts complainant's charges. Pacific claimed complainant has not introduced any evidence that shows the calls are not applicable to his service. Complainant has complained at two addresses. Pacific has changed the service, tested, and retested the equipment and no flaws have been found, according to Pacific. Pacific charged that the key is the credibility of complainant and complainant's credibility is nil. Pacific stated that its adjustments do not admit that anyone has tapped into complainant's line. Pacific's tariffs require disconnection for nonpayment so the rest of Pacific's ratepayers are not burdened with poor credit risks. Pacific's tariffs require

that the cost of all calls are the responsibility of the subscriber, whether authorized or not.

D. Late-Filed Exhibits

Complainant was granted the opportunity to serve six late-filed exhibits by November 6, 1989, including five bill statements that were not brought to the hearing. The Administrative Law Judge (ALJ) determined that the record was not clear and ask complainant to serve as the sixth late-filed exhibit a summary of the calls and dollar amount in dispute, and a clarification of the complaint and relief being sought. Pacific was given until November 20, 1989 to comment on the late-filed exhibits.

The six late-filed exhibits were served timely. Complainant's summary changed his testimony to say he called only some, not all, of the numbers during his own investigation of the calls identified on the call detail report. Further, complainant stated payments were made that are not reflected in Pacific's exhibits. Complainant stated that he owes only \$20.97 for the August 1989 bill and the service charge from August 22, 1989 to September 1, 1989. Complainant asked that the matter be resolved before the end of November because the complainant needs the telephone. Finally, complainant asked the Commission to penalize Pacific so the problem will not happen again.

Pacific filed comments November 15, 1989 on the late-filed exhibits. Pacific asked that substantial portions be disallowed as going beyond what was authorized and rearguing the case in brief. The ALJ ruled on November 20, 1989 that the entire complainant late-filing would be allowed, and that Pacific would be given until December 5, 1989 to file additional comments.

Pacific filed additional comments December 4, 1989 which summarized Pacific's closing arguments from the hearing. Further, Pacific argued that a penalty would be preposterous. Pacific stated that it acted only in compliance with its tariffs by

disconnecting complainant's service for nonpayment and requiring the necessary deposit and restoral charges for reconnection. Pacific pointed out that the Commission has repeatedly held it is without jurisdiction to award damages. Schumacher v. Pacific Tel. & Tel. (1965) 64 Cal. PUC 295; Edward L. Blincoe, et al. v. Pac. Tel. & Tel. Co. (1963) 60 Cal. PUC 432. Pacific asserted that if the complainant seeks damages by way of the penalty, the Commission has no jurisdiction to award damages even if there were a violation of law, which Pacific argued there is not.

IV. Discussion

The issues before us are: (1) is complainant due an adjustment on his bill, and (2) what is the balance due, if any, before service can be restored?

There is a long history of problems and alleged problems with complainant's service going back before April 13, 1987. Complainant argues that these problems contribute to or are the cause of his being overcharged. These problems and alleged problems include static, cross-talk, tampering with terminals, tapping and/or crossing of the lines, and billing for calls not made.

The evidence shows that Pacific has taken reasonable action. Pacific's actions included placing a lock on a terminal box, fixing a neighbor's line to ensure it was not connected to complainant's line, blocking access to 976 prefixes, making adjustments in charges, allowing delays in payments, checking facilities, and replacing the aerial and cable pairs to be certain the problems and alleged problems could not continue to occur. Complainant testified that the problems continued and he disclaims itemized calls billed even through the final bill dated September 15, 1989 (for calls from August 24 through August 31, 1989).

It is extremely unlikely that complainant's line could be tapped or crossed with another line. If it were tapped or crossed at his old address, the problem would almost certainly have been cured upon Pacific's actions to lock the terminal and prevent any crossing with a neighbor's line. If that were not enough, complainant's move to a new residence would have cured the problem. If it were tapped or crossed at his current address, Pacific's repeated tests and connection to a new aerial and cable pair would have discovered and cured the problem.

Complainant's frustration is understandable. Among other calls, complainant disclaims 976 calls. Access to 976 prefixes via his telephone was blocked on February 24, 1988. Pacific's Tallers testified that complainant did not receive \$191 of 976 adjustments until December 18, 1988, or nearly ten months after blocking was installed. Even if only the \$191 was in dispute, to have \$191 brought forward on each bill with demands for payment would be stressful to any customer. The record shows that Pacific did make the adjustment, however, even if it took several months.

Complainant testified that he is due more adjustments because Pacific continues to bring forward the charges for past calls he did not make, as well as charges for current calls he has not made. Complainant presents insufficient evidence and no corroborating testimony (other than that of his wife) to support this claim, however.

Complainant's documentary evidence to support his claim is primarily handwritten notes on bill statements and his own summaries of events. These notes are of conversations with Pacific employees and show reduced amounts due. Complainant did not produce any corroborating evidence that adjustments were authorized but not given (e.g., a letter from Pacific or AT&T authorizing a credit which complainant could trace through the subsequent bills to demonstrate that it was not applied).

Complainant did not produce any witness(es) who could testify that complainant did not call the witness(es) as indicated on the bill, for example, or present any evidence why he or someone in his home could not have made the calls (other than his claim that they did not). Complainant did not produce any evidence that his line(s) was tapped or crossed, other than raising the possibility that it were tapped based on an encounter with a neighbor in 1987. Complainant produces no documentary evidence or corroborating testimony (other than that of his wife) that even if it were tapped or crossed in 1987 it continues to be so.

Complainant's claim is based on his testimony that he did not make the calls, and the testimony of he and his wife that they believe their lines were and are tapped or crossed. On cross-examination complainant admitted making two calls he had previously disclaimed.

Complainant claims in his late-filed exhibit that he made more payments to Pacific than was revealed at the hearing. Yet he provides no proof, such as cancelled checks or receipts from Pacific.

Complainants have the burden of proof in complaint cases. Complainants must establish their case by a preponderance of the evidence. Complainant did not produce sufficient evidence in this case to support his claim.

It would be easy for complainant to get confused over the status of bills since January 15, 1987, with so many calls in dispute, so many payments and so many adjustments. But it is complainant's responsibility to keep track of these items and present them clearly to the Commission if complainant seeks relief from us. Complainant has not only failed to present his case and information clearly but, complainant has failed to meet his burden of proof to establish that Pacific has done anything wrong.

Pacific has acted reasonably. Pacific installed a lock, changed wires, inspected facilities, installed blocking, allowed

complainant delays in making payments, and made adjustments. In fact, Pacific has made adjustments for AT&T and Pacific charges totaling \$1,970.02 (60 percent of the billed calls) since January 15, 1987.

Complainant asks that we apply a penalty to Pacific so the problem does not happen again. We do not find any evidence that Pacific has done anything to warrant a penalty. Even if Pacific were late in making the 976 adjustments by up to ten months, this would not warrant a penalty. To the extent a penalty is equivalent to awarding damages, Pacific is correct that we do not have jurisdiction to award damages.

Complainant asks that his service be restored as soon as possible. If complainant had wanted continuous telephone service, he could have placed the disputed amount on deposit with the Commission. Complainant did not do so. The telephone was properly disconnected. To reconnect service as soon as possible, we find that complainant must pay the outstanding balance plus a reconnection fee and a deposit consistent with Pacific's tariffs.

The outstanding balance on the September 15, 1989 bill statement is \$276.23 (Exhibit 14). This balance includes an assessment of the monthly service charge through September 11, 1989. Complainant testified he understood the disconnection would be effective September 1, 1989. Complainant seeks a refund of the service charges assessed through September 11, 1989. This request is denied. Pacific's tariffs provide that Pacific can assess the monthly service charge for a period up to 15 days after a temporary disconnection (Schedule No. A2, Rule 9.G). Thus, Pacific's charge is in compliance with its tariffs.

Findings of Fact

1. There is a long history of problems or alleged problems with complainant's telephone service going back before April 13, 1987, including static, cross-talk, tampering with terminals, tapping or crossing of lines, and billing for calls not made.

2. Pacific has taken action to address the problems or alleged problems, including placing a lock on a terminal box, fixing a neighbor's line to ensure it was not connected to complainant's line, blocking access to 976 prefixes, making adjustments in charges, allowing complainant to delay payments, checking and rechecking facilities, and replacing aerial and cable pairs.

3. A tapping or crossing of complainant's line would have been cured by Pacific's placing a lock on the terminal box, fixing the neighbor's line, complainant moving to a new address, and/or the connection to a new aerial and cable pair. Further, Pacific would have discovered a tapping or crossing of the line in at least one of Pacific's repeated tests.

4. Complainant's claim is based on documentary evidence consisting primarily of handwritten notes on bill statements of conversations with Pacific employees that show reduced amounts due, plus his testimony he is due adjustments not given.

5. Complainant presents no documentary evidence tracing authorized and applied adjustments (such as a letter from AT&T and/or Pacific authorizing credits which complainant can trace through the bill statements to demonstrate have not been applied).

6. Complainant presented no documentary evidence that he made more payments to Pacific than are revealed in Pacific's records.

7. Complainant presented insufficient evidence to support his claim that Pacific continues to bring forward charges for past calls he did not make and charge for current calls he has not made.

8. Total bills from Pacific from January 15, 1987 through September 15, 1989 are \$3,261.43.

9. Pacific has made adjustments of AT&T and Pacific charges totaling \$1,970.02 from January 15, 1987 through September 15, 1989, which is 60 percent of the total charges during this period.

10. Pacific has done nothing that warrants a penalty.

11. Pacific assessed the monthly service charge on complainant's service through September 11, 1989, consistent with Pacific's tariffs.

12. The total balance due on complainant's bill statement from Pacific dated September 15, 1989 is \$276.23.

Conclusions of Law

1. Complainant has not met his burden of proof.
2. Pacific acted reasonably.
3. Complainant should pay the \$276.23 outstanding balance, plus reconnection costs and a deposit consistent with Pacific's tariffs, to reconnect service.
4. The complaint should be denied.

O R D E R

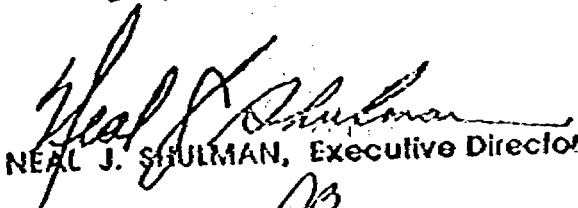
IT IS ORDERED that this complaint is denied and this proceeding is closed. Nick Bode must pay \$276.23, plus applicable reconnection charges and a deposit consistent with Pacific Bell's tariffs, to reconnect service.

This order is effective 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
PB