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Decision 90-10-064 October 24, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Pacific Bell, a corporation, for)
authority to increase certain)
intrastate rates and charges)
applicable to telephone services)
furnished within the State of)
California.)

) Application 85-01-034
) (Filed January 22, 1985;
) amended June 17, 1985 and
) May 19, 1986)

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) I.85-03-078
) (Filed March 20, 1985)

And Related Matters.)

) OII 84
) (Filed December 2, 1980)

_____)

) Case 86-11-028
) (Filed November 17, 1986)

(See D.86-12-099 for appearances.)

O P I N I O N

This decision resolves issues related to demarcation points for local telephone companies which were initially addressed in the proposed decision of the administrative law judge (ALJ), issued in May 1990. The general approach proposed by the ALJ was to set the demarcation point at the distribution terminal on each floor of multi-unit buildings.

In Decision (D.) 89-06-069 we endorsed the approach by the ALJ. However, we deferred a decision on this issue because the Federal Communications Commission (FCC) issued establishing demarcation points rules (CC Docket No.88-57, Report and Order and Further Notice of Proposed Rulemaking, Adopted June 8, 1990) just ten days before we adopted D.90-06-069. As we stated, because of the timing of the issuance of the FCC's rules, we were unsure about the effect they might have on state regulation of inside wire.

Since issuance of D.90-06-069, we have had an opportunity to review the FCC's order. The rules do not appear to preclude the treatment of demarcation issues which we tentatively endorsed in D.90-06-069.

I. Background

FCC and Commission policy that utilities charge customers for inside wire repair services and the shift in responsibility for repairs and installation of inside wire to the utility customers requires that a "demarcation" point be determined beyond which the utility's responsibility lies. In D.36-07-049, we defined demarcation points:

"The demarcation point for the purpose of determining the subscriber's responsibility for maintaining and repairing inside wiring shall be the subscriber's side of the utility's protector or of the SNI, if an SNI is installed."

II. Positions of the Parties

A. Division of Ratepayer Advocates

Division of Ratepayer Advocates (DRA) suggests that utility tariffs need to be more clear regarding demarcation points for existing buildings, to reduce the possibility of anti-competitive behavior and customer confusion. DRA suggests the utilities file, by way of advice letters, tariffs clearly describing demarcation point policies within 30 days of the effective date of this decision.

For new buildings, DRA suggests a standard demarcation point should be adopted for all local exchange carriers. It proposes the proper point for most services is the Minimum Point of Presence (MPOP), which is the point of entry of the network

facilities onto the customer's premises. DRA submitted tariff language for the adoption of its proposal.

DRA believes its standard is simple to understand and administer and will maximize the amount of inside wire open to competition. DRA does not agree with the utilities' proposals which move demarcation points closer to the first jack on the customer premises because those proposals would increase rate base and reduce the inside wire which is subject to competitive services.

DRA recommends its MPOP proposal be implemented 18 months after the effective date of the Commission's decision in order to give the building industry an opportunity to adjust to the change.

B. Pacific Bell

Pacific Bell (Pacific) recommends the Commission accept its current demarcation points which differ for different types of structures but which are consistent within a particular class of service. For example, for single service customers in single-family dwellings, the demarcation point is at the protector usually located on an outside building wall. For Centrex customers, the demarcation point is the RJ21X jack, located on an inside wall and used to connect equipment to inside wire. For existing multiple-unit residential dwellings, the demarcation is located where network facilities terminate and the individual customer's wire begins. Pacific believes its existing points of demarcation are consistent with FCC orders and simple to understand.

Pacific objects to DRA's MPOP proposal as unpredictable because customers could negotiate agreements in advance as to the location of the MPOP. It advanced its own "MPOP" language:

"The MPOP for all new and fully renovated buildings (should) be at the distribution terminal on each floor of any such commercial multi-floor, single and multi-tenant building for all services provided by Pacific Bell where Pacific Bell does not provide the terminal equipment (i.e., Centrex, single business lines, etc.)."

Under Pacific's proposal, it would provide wiring for services for which it provides terminal equipment, including 911 services, coin telephone services, semi-public phones, and non-modular handicapped services.

C. GTE California Incorporated

GTE California Incorporated (GTEC) set forth its proposals for the demarcation points for various types of services. GTEC argued that there should be a uniform standard statewide establishing demarcation points to avoid customer confusion. GTEC's proposal for establishing demarcation points differs from DRA's proposal in that GTEC would place the demarcation points for multi-tenant buildings on each floor, as Pacific suggests.

D. Contel

Contel supports DRA's MPOP proposal with the exception that it seeks some flexibility in applying it by conferring with customers in certain cases.

E. Small Telephone Companies

Small Telephone Companies generally agree with DRA's MPOP proposal.

F. American Telephone & Telegraph Company

American Telephone & Telegraph Company (AT&T) expresses concerns with DRA's proposal but agrees with its premise that local exchange companies should not be able to use the demarcation point as a marketing tool or in ways which would be discriminatory.

AT&T is primarily concerned with what it believes is disparate treatment of PBX and Centrex customers under Pacific's proposal. AT&T interprets Pacific's proposed guideline to characterize the Centrex demarcation at the customer's telephone jack. For PBX customers, however, the demarcation would be within 50 feet of the PBX equipment even if the equipment is located some distance from the customer's other telephone equipment and jack. This disparate treatment provides a marketing advantage to

Pacific's Centrex customers, according to AT&T. AT&T believes DRA's proposal would guard against discrimination by giving the customer, rather than the utility, the option to purchase cable.

AT&T also takes issue with GTEC's claim that Centrex customers require end-to-end service and therefore it is appropriate to establish the demarcation point at the customer's jack. According to AT&T, GTEC is free to negotiate an inside wire maintenance (IWM) service agreement with the customer. AT&T warns that utility ratepayers would, under GTEC's and Pacific's proposals, "subsidize GTEC's competitive position."

AT&T does not object to GTEC's and Pacific's identification of the demarcation point for multi-tenant high rise buildings.

G. Toward Utility Rate Normalization

Toward Utility Rate Normalization (TURN) objects to DRA's inclusion of house (or "riser") cable in IWM under its MPOP proposal. According to TURN, DRA's framework could lead to the untenable result that tenants in multi-unit apartments might not receive IWM repairs on a timely basis because a landlord refused to make such repairs or could not be reached for authorizing such repairs. Tenants should be responsible only for the wiring inside their units; beyond that point, the utilities should be responsible for repairs since the Commission cannot regulate the relationships between landlords and tenants.

H. Western Burglar and Fire Alarm Association

Western Burglar and Fire Alarm Association (WBFAA) proposes that the demarcation point be located at the "maximum penetration point," that is, at the walls of the unit occupied by the utility customers. WBFAA makes comments similar to TURN's regarding tenant confusion and cost if the demarcation is located at the MPOP of a multi-unit building.

I. Department of Defense and
Federal Executive Agencies

Department of Defense and Federal Executive Agencies (DOD/FEA) does not object to DRA's MPOP proposal but raises several concerns about its interpretation. First, DOD/FEA believes the DRA proposed language is not adequately flexible, and proposes that negotiation be permitted for determining the appropriate MPOP. Second, according to DOD/FEA, there may be circumstances where more than one demarcation point is necessary citing the need for duplicate demarcation points for security reasons at military installations. DOD/FEA suggests DRA's proposed tariff language reflect this possibility. Third, DOD/FEA agrees with the utilities that Centrex should be exempt from the MPOP.

Finally, DOD/FEA is concerned that large customers, like the military, not be treated differently from other customers. According to DOD/FEA, DRA's proposal may imply that military housing areas might be treated differently from other housing projects, a circumstance which would be discriminatory and unfair.

III. Discussion

Determining the demarcation points for several classes of customers under various circumstances raises several concerns. As the parties suggest, our objectives in this undertaking should be fairness, simplicity, and flexibility. The utilities should not be permitted to use demarcation points to leverage one product over another or discriminate for or against any class of customer. With this limitation, the utilities should be able to adapt the demarcation point in unusual circumstances. Customers should be able to understand where their demarcation points are without much trouble.

DRA's proposal is troublesome in the case of multi-tenant residential and commercial buildings. TURN and WBFPA point out

correctly that applying the MPOP in those cases could result in disputes between landlords and tenants, confusion as to their responsibilities, delay of repairs, or unfair assumption of cost by individual tenants for equipment which is used by all tenants. California law is unclear on liability for inside wire repairs in rental properties. We believe legislation should be passed to clarify the respective responsibilities of landlords and tenants, and we will work to that end. Until and unless the law clarifies these responsibilities between landlords and tenants for IWM, we will adopt Pacific's definition of the demarcation point for new multi-tenant buildings. Pacific describes its policy in testimony:

"The MPOP for all new and fully renovated buildings (should) be at the distribution terminal on each floor of any such commercial multi-floor, single and multi-tenant building for all services provided by Pacific Bell where Pacific Bell does not provide the terminal equipment (i.e., Centrex, single business lines, etc.)".

We adopt Pacific's definitions for each class of service with some exceptions. First, for new high-rise buildings, the MPOP shall be at the "distribution terminal" on each floor.¹ The utilities will treat new multi-tenant buildings the same whether they are commercial or residential. Except where customers or building owners provide their own cable or wire, the utilities shall install and maintain riser cable for both types of buildings. Customers who install their own cable should be responsible for its repair and maintenance. We see no reason to distinguish between these two types of customers for purposes of establishing who installs riser cable.

¹ The distribution terminal is the closest practicable point to where the wiring enters a multi-unit building or buildings. Second, the MPOP for a residential building is the closest practicable point to where the wiring crosses a property line.

Second, the utilities should treat Centrex customers and PBX customers the same for purposes of establishing a demarcation point in order to promote competition and fair treatment of PBX customers. Accordingly, the utilities should include in their filed tariffs language regarding the demarcation points for these two services which is substantially the same and which is consistent with the framework we adopt today. The utilities may, of course, offer their Centrex customers inside wire maintenance services by way of separate agreements to cover facilities beyond the demarcation point.

For both new and existing buildings some flexibility may be warranted. We agree with DOD/FEA that the utilities should be permitted to negotiate the demarcation point in unusual circumstances. Further, we do not intend that, as in DOD/FEA's example, military housing be treated any differently from privately developed housing. Finally, we agree with Pacific and DRA's comments that the utilities should be responsible for IWM in cases where the utilities provide customer premises equipment, such as, 911 services provided to emergency service providers, coin telephone services, and non-modular services for the disabled.

As DRA suggests, we will require the utilities to modify their tariffs to set forth demarcation points consistent with this decision. Finally, to address concerns over customer confusion, we will order the utilities to notify affected customers of tariff changes required by today's decision. We also encourage the utilities to identify demarcation points (with, for example, adhesive-backed labels) whenever their in maintenance workers are at customers' premises.

Findings of Fact

1. D.90-06-069 in this proceeding deferred to a subsequent decision resolution of issues related to utility demarcation points in order to review an FCC order which addresses the same set of issues.

2. The FCC's order in CC-Docket No.88-57 adopted June 8, 1990, sets forth certain rules for identifying utility demarcation points. The FCC rules do not appear to preclude adopting rules proposed in the ALJ's proposed decision.

3. There is no reason to treat residential and commercial customers differently for purposes of identifying the demarcation point in multi-unit buildings.

4. DRA's proposal to use the MPOP in new multi-unit, multi-tenant buildings may result in disputes between landlords and tenants, cause delay in IWM repairs, and cause confusion regarding landlord and tenant responsibilities.

5. Pacific's proposed treatment of demarcation points for Centrex and PBX customers would provide Pacific's Centrex operations with an unreasonable competitive advantage over PBX providers.

Conclusions of Law

1. The Commission should adopt policies regarding demarcation points which would mitigate the risk to tenants of multi-unit buildings that they would be responsible for maintenance and repairs of inside wire which is jointly used.

2. Definitions of demarcation points should not permit the utilities to discriminate for or against any class of customer, should be flexible, and should be easy for customers to understand.

3. The utilities should be ordered to include in their tariffs, which should be filed by way of advice letter, the demarcation point policies set forth in this decision. Utilities should treat owners of both commercial and residential buildings the same for purposes of providing options for riser cable installations and payment of such installations. Utilities should treat Centrex and PBX customers the same for purposes of defining a demarcation point. The utilities should have flexibility to

negotiate demarcation points on multi-unit buildings where necessary.

O R D E R

IT IS ORDERED that:

1. The respondent utilities shall amend their tariffs, by way of advice letters filed within 60 days of the effective date of this order to effect the demarcation point policies set forth in this decision. Specifically, the tariffs shall be amended to provide that:

1. The minimum point of presence for all new and fully renovated buildings, whether residential or commercial, shall be at the distribution terminal on each floor of any such multi-floor, single and multi-tenant building for all services provided by local exchange companies, except as provided in other rules.
2. The utilities shall install and maintain riser cable or wire in new and fully renovated buildings except where customers or building owners provide their own cable or wire. Customers and buildings owners who install their own cable will be responsible for its repair and maintenance.
3. For purposes of establishing demarcation points, Centrex customers and PBX customers shall be treated alike.
4. The utilities may negotiate demarcation points with building owners and customers where unusual circumstances exist.
5. The utilities shall be responsible for IWM in cases where the utilities provide customer premises equipment, such as 911 services, coin telephone services, and non-modular services for the disabled.

These tariff modifications shall become effective by way of Commission resolution.

2. Respondent utilities shall notify affected customers of tariff changes required by this order. Notices shall be mailed to affected customers in the next available billing cycle following the effective date of the tariff changes. Respondent utilities shall consult with the Commission's Public Advisor to determine the needed scope of the mailing.

This order is effective today.

Dated October 24, 1990, at San Francisco, California.

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

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SCHULMAN, Executive Director
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