

Decision 90 11 026 NOV 09 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Chris Fischel, aka Nance DeLeo,)
 Complainant,)
 vs.)
 Pacific Bell,)
 Defendant.)

ORIGINAL

Case 89-10-042
(Filed October 26, 1989)

Chris Fischel, for herself, complainant.
Kristin Ohlson, for Pacific Bell, defendant.

O P I N I O N

Complaint was filed by Chris Fischel, also known as Nance DeLeo (Fischel or complainant), on October 26, 1989 against Pacific Bell (Pacific or defendant). The complaint alleged that Pacific wrongfully refused to reinstate complainant's business telephone number, (213) 275-7561, for the complainant's business, "Touch of Class". Complainant sought immediate reinstatement of that phone service.

On December 5, 1989, Pacific filed its "Answer to Complaint" (Answer), alleging that the business telephone service for "Touch of Class" at (213) 275-7561 (the number) was disconnected pursuant to order of the Superior Court. Touch of Class is an escort service licensed by the City of Los Angeles. Its services were advertised in Pacific's Yellow Page Directory. The court order, which was appended to Pacific's Answer, stated:

"TO: PACIFIC BELL TELEPHONE AND GENERAL
TELEPHONE COMPANIES.

"WHEREFORE, affidavit of probable cause in support of request to disconnect existing service to a customer having been submitted, the Court ... finds probable cause exists to

believe that the use made of or to be made of the service is prohibited by law, and that the service is being or is to be used as an instrumentality, directly or indirectly, to violate or assist in the violation of the law."

* * *

"GOOD CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED, (1) That the Pacific Bell Telephone and General Telephone Companies disconnect the existing service for telephone numbers (213) 275-7561, 471-0404, and (818) 609-9292 and not reissue these numbers for a one year period ending March 1, 1990.

"DATED: 3-1-89

(signature)
JUDGE OF ABOVE ENTITLED COURT"

For its Answer, Pacific asserted that its actions were taken to comply with CPUC Decision (D.) 91188, which sets out the procedure whereby service provided by a telephone utility is to be disconnected upon a finding of probable cause to believe that the service is being used for illegal purposes, and Pacific's Rule 31, which specifies the utility procedure for compliance with D.91188. Pacific requested that the complaint be dismissed for failure to state any act done in violation of any provision of law or of any order or rule of the Commission.

On February 27, 1990, a prehearing conference between the parties and the administrative law judge (ALJ) was held by telephone. Fischel asserted that Pacific had reconnected the number and that someone besides the complainant, who is the owner of Touch of Class, was receiving calls made to the Touch of Class number and operating an escort service with the benefit of the number and the advertisement in the Yellow Page Directory.

Since these assertions had not been made previously, the ALJ directed the complainant to file an amended complaint. An amended complaint was served on Pacific and the ALJ and subsequently filed on April 17, 1990. For her amended complaint,

Fischel sought compensation from Pacific for damage to the value of her business due to Pacific's "negligence in allowing other people to acquire (my) telephone number and to take over (my) business and run it in a way that is definitely not a Touch of Class."

Pacific responded to the amended complaint on March 16, 1990. The telephone company admitted that it assigned the number in error on four separate occasions, or about May 22, June 23, July 27, and December 21 1989. Pacific admitted that as of March 13, 1990, the number was assigned to another party, but stated that it would notify the party that the number was assigned in error, terminate the number, and reassign a new number to the party.

In addition, Pacific denied that it committed any wrong by permitting other people, such as complainant's competitors, to acquire complainant's phone number on the basis that its tariff Rule 17 - Telephone Directories, Listings and Numbers states, "The customer has no proprietary right in the number and the Utility may make such reasonable changes in telephone number or central office designation as the requirements of the service may demand."

Pacific stated that the Commission lacks jurisdiction to award damages for mental anguish, loss of value of her business, or any other form of reparations. It concluded that the complaint is moot because the number will be disconnected, and that complainant's request for reinstatement should be denied because the customer has no proprietary right in a number. Pacific's solution is to not permit use of the number for three years.

Evidentiary hearing was held on June 20, 1990 at the Commission Courtroom in Los Angeles. Fischel appeared and testified that she could not understand how on four separate occasions, third parties were able to obtain the number for their own use, while during the same period of time, whenever she or her attorney contacted Pacific and requested reinstatement of the

service, they were told that a court order barred Pacific from providing service with that number.

Ms. Ohlson, customer service manager of the Central Los Angeles Pacific Bell business office, testified on behalf of Pacific. She is Pacific's coordinator for escort and massage parlor accounts and is familiar with the types of telephone services sought by such business customers. She speculated as to how the number could have been reconnected on four separate occasions despite the existence of the court order. Each time, the number was requested as a remote call forwarding number. Each time, Fischel, who was dialing her former business number to verify that it was in service, contacted Pacific and requested it to be disconnected pursuant to the court order. Pacific disconnected the number promptly each time.

Ms. Ohlson testified that the most recent reconnection occurred on December 20, 1989, that the number has been disconnected since March 27, 1990, and that Pacific has given that customer a three-month referral, which will be discontinued on June 27, 1990. Pacific proposes that the number not be used for three years - this would be the fairest solution for both the most recent customer and the complainant, according to Ms. Ohlson.

Pacific's witness stated that the company has instituted changes in its customer services practices that are intended to ensure that a telephone number that is not to be used is not placed in service. The "COSMOS" data bank indicates whether use of a number has been restricted for some reason. It has been in existence for at least seven years. However, customer service representatives responding to a change of service order were not in the practice of checking COSMOS to verify the availability of a telephone number. This contributed in part to the improper reinstatements of the number, according to Ms. Ohlson. Under procedures instituted during the pendency of this complaint proceeding, whenever a specific telephone number is requested, the

service representative will now inquire of its COSMOS data bank whether or not the use of that number is restricted.

Ms. Ohlson stated that Pacific also recognizes that in cases where more than one person makes use of a telephone number, a third party might request a change in service, to the dissatisfaction of the original customer. To mitigate this problem, Pacific now has a billing ID program, which requires all persons requesting service to provide their legal name, social security number, and California driver's license number. This program is intended to limit the number of billing collection problems and to prevent anyone other than the true customer from altering the telephone service. Ms. Ohlson said that Pacific will "attempt to find out who owns the number" through the billing ID program before making any changes in service.

Discussion

Pacific admits that the number was reconnected and in service during May 1989, June 1989, July 1989, and December 1989. This constitutes a violation of the March 1, 1989 order of the Superior Court. Section 1702 of the Public Utilities Code authorizes the filing of a complaint alleging any act done or omitted to be done by a public utility in violation of any provision of law or any order or rule of the Commission. Clearly, Pacific's argument that the complaint is moot and should be dismissed lacks merit.

The Court's one-year prohibition of the use of the number has expired. Pacific did not state that under ordinary circumstances it would have refused to reassign the number to complainant. Pacific offered no reason why it should not reinstate the number for the complainant, particularly since the referral period for the last user of the number expired on June 27, 1990. Pacific's proposal to mothball the number for three years was allegedly intended to reach a "fair" result as between the last user and complainant. This is a situation created by Pacific's

repeated violation of the court order. Complainant should not be penalized for Pacific's acts. Therefore, upon request by complainant, Pacific should immediately reinstate use of (213) 275-7561 under the name chosen by complainant.

Pacific argues that Fischel is not entitled to the use of the number because Pacific's tariff states that a customer has no proprietary right to a telephone number. Yet, Pacific's witness testified that it was Pacific's policy to accommodate customer requests for a specific number. Pacific has tariffed a "Personalized Telephone Number Service" (PTN) to accommodate customers who request a specific number. A business customer such as Touch of Class is charged \$38 to initiate the service and \$3.50 a month to continue PTN service.

It appears that Pacific accommodated requests by third parties for the number formerly used by complainant. The last subscriber was "The Wild Company". Fischel testified that each time the number was reconnected, she determined that it was being used by her "competitors", that is, other escort services.

Pacific should not deny Fischel the accommodation it has provided others who sought to use the number. There is no presumption against Fischel, since the Court ordered disconnection for one year and that term has expired. The three-year mothballing proposed by Pacific is unreasonable, particularly since the phone company frustrated the Court's intent to deactivate the number for the period of one year.

Pacific's witness was candid in admitting that the number was in use during the one-year period. She detailed the results of her investigation. The Commission can understand how the number could have been reinstated erroneously once or twice. However, Pacific's failure to rectify this problem within a year's time, particularly given the existence of the court order and given Pacific's familiarity with practices in the complainant's business, is troubling. It appears that Pacific did not acknowledge the

problem at an organizational level until the February 27, 1990 prehearing conference at the earliest.

This failure resulted in Pacific's noncompliance with the court order as well as some injury to Fischel's business. Pacific's witness testified that the June 1989 reconnection was for "Touch of Class". Although Fischel held the City of Los Angeles license for an escort service by that name, she was not the customer for whom the service was reconnected.

It appears that Pacific's failure to comply with the disconnection order allowed others to use the business good will that complainant had developed for her business, "Touch of Class". For this proceeding, we make no finding as to whether complainant was damaged by Pacific's wrongful connection of the number for other parties during the period prohibited by court order and subsequent delay in restoring service under that number to her.

The Commission's jurisdiction to award compensation is limited to reparations for wrongfully charged rates. The injury Fischel complains of does not arise from Pacific charging her improper rates because Pacific in fact was not providing her with service. Thus, we cannot order Pacific to compensate Fischel for injury to her business or for mental anguish. However, the complainant may avail herself of other venues, particularly small claims court, to recover damages she feels she has sustained as a result of Pacific's acts.

Pacific's tariffs should be interpreted to authorize use of the number by the individual who first requested service with that number after the court's yearlong moratorium expired. The record shows that complainant was the first such person. She made her demand during the telephone prehearing conference in March 1990, and subsequently during informal discussions with Pacific prior to the evidentiary hearing. Therefore, service under the number should be restored to the complainant.

The complainant's testimony indicates that there is an interest in obtaining and using her business telephone number. That is, during the year the number was made unavailable by order of the court, at least four other parties sought to use the number. It appears that these entrepreneurs could take advantage of the business goodwill the complainant had developed through advertising the number.

Since there appears to be a goodwill value in a telephone number such as the complainant's, and there was probable cause to believe that the number was used for illegal purposes, we wonder if the goodwill exists merely to further an illegal activity. If so, we ask whether such use of the public utility system should be tolerated. It might be desirable to discontinue usage of a number such as complainant's.

It would be premature to discontinue complainant's number at this time, since we have not had the benefit of input from parties potentially interested in this issue. However, we believe our staff should investigate whether public policy requires the "mothballing" of numbers for which there is probable cause to believe were used in illegal activities. ✓

The tariffs adopted by Pacific and General for the disconnection of numbers based on probable cause were the result of Commission Decision 91188. There, the Commission formulated the procedure by which a telecommunications utility must refuse service and disconnect service upon receipt from a law enforcement agency of a court order. That order must consist of a magistrate's finding that probable cause exists to believe that the use of the telephone service is prohibited by law, or that the service is used as an instrument to violate the law. The magistrate must also find that the character of the act is such that, absent immediate action, significant dangers to public health, safety, or welfare will result.

This standard for deprivation of telephone service is grounded in Constitutional law. If we are to enlarge the circumstances under which telephone service is denied, our rule must be crafted carefully to respect Constitutional principles. Our staff should prepare appropriate recommendations to allow us to consider the removal from circulation of numbers for which probable cause was found to believe that the number was used as an instrument to violate the law.

Findings of Fact

1. Chris Fischel filed a complaint against Pacific on October 26, 1989 alleging that Pacific wrongfully refused to reinstate complainant's business telephone number (213) 275-7561. The complainant sought immediate reinstatement of phone service with (213) 275-7561.

2. Pacific answered on December 5, 1989. It alleged that (213) 275-7561 was a business telephone service for "Touch of Class" and had been disconnected by order of the Superior Court.

3. On March 1, 1989, the Superior Court ordered Pacific to disconnect (213) 275-7561 and not reissue that number for a one-year period ending March 1, 1990.

4. By amended complaint filed April 17, 1990, Fischel alleged that Pacific had reconnected the phone number for someone other than complainant. Fischel requested compensation for harm to her business and for mental anguish.

5. In its response to the amended complaint, Pacific admitted that it assigned (213) 275-7561 in error on four separate occasions. This occurred on about May 22, 1989, June 23, 1989, July 27, 1989, and December 21, 1989. Pacific admitted that as of March 13, 1990, the number was assigned to another party, but stated that it would notify the party that the number was assigned in error, terminate the number, and reassign a new number to the party.

6. Pacific tariff Rule 17 states, "The customer has no proprietary right in the number and the Utility may make such reasonable changes in telephone number or central office designation as the requirements of the service may demand."

7. Pacific has tariffed a PTN to accommodate its customers who wish a specific seven-digit number. This service is available to business customers at an initial change order charge of \$38 and a continuing monthly service charge of \$3.50.

8. Evidentiary hearing was held on June 29, 1990. The complainant appeared and testified on her own behalf. Pacific presented the testimony of the business office manager for the Los Angeles metropolitan area who is the contact person for problems regarding escort services and massage parlors.

9. Pacific connected service to (213) 275-7561 in error because its customer service representatives were not required to check Pacific's data bank for any restrictions on the use of the number.

10. Pacific did not know that the persons requesting (213) 275-7561 as their business service number were not the owners of "Touch of Class" because it did not require prospective customers to verify their identities at the time of service.

11. Since the filing of this complaint, Pacific has revised its customer service practices to avoid improper use of a restricted telephone number. Service representatives now check Pacific's COSMOS data bank to verify the availability of a requested phone number. Representatives also require prospective customers to provide some means of identification to minimize problems with unauthorized use of a phone number and billing and collection problems.

12. (213) 275-7561 was wrongfully assigned to another party. Pacific stated that it would disconnect the service to that number in March of 1990. The referral period for that number expired on June 27, 1990.

13. The one-year prohibition against the use of (213) 275-7561 expired on March 1, 1990. There is no reason why Pacific should not reinstate service on (213) 275-7561 to complainant.

14. But for Pacific's wrongful assignment of the number, complainant would have been eligible for service on (213) 275-7561 on March 2, 1990. She was denied service at that number from March 2, 1990 through June 27, 1990.

Conclusions of Law

1. Pacific violated an order of the Superior Court by reconnecting (213) 275-7561 during the 12-month period the court ordered the number to be disconnected.

2. There is no reason that complainant should be denied Personalized Telephone Number Service for (213) 275-7561.

3. Section 734 limits the Commission's ability to order reparations to cases where the Commission has found that the public utility has charged an unreasonable, excessive, or discriminatory amount in violation of any of the utility's established rates. Since the complaint is not based on Pacific charging complainant with any amount, the Commission lacks jurisdiction to order Pacific to pay reparations for its failure to properly serve complainant.

4. The Commission lacks jurisdiction to order compensation for complainant's alleged loss of business and mental anguish.

O R D E R

IT IS ORDERED that Pacific Bell shall reinstate service at (213) 275-7561 on behalf of complainant at her request and upon payment of the applicable service connection charges.


This order is effective today.

Dated NOV 08 1990, at San Francisco, California.

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

Commissioner Stanley W. Hulett,
being necessarily absent, did
not participate.

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


NEAL J. SAULMAN, Executive Director