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Decision 91-03-041 March 22, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CLARISE J. FOREMAN,

Complainant,

vs.

PACIFIC BELL,

Defendant.

ORIGINAL

(ECP)
Case 90-09-018
(Filed September 7, 1990)

OPINION

For the past two years, Clarise J. Foreman, a widow who lives alone in the Los Angeles home where she reared her family, has waged an unrelenting battle against the telephone billing practices of Pacific Bell.

Foreman claims that Pacific Bell has billed her for more calls than she actually made and for more time on the phone than she actually spent. She believes that Pacific Bell promised her adjustments when she complained, but then repeated the same erroneous charges or added unjustified penalties on subsequent bills.

Pacific Bell claims that Foreman does not understand the adjustment portion of her telephone bill and is impatient with attempted explanations. The company states that it has checked Foreman's phone lines on three occasions and found no problem. The company states that, as an accommodation, it has made numerous adjustments in Foreman's bills since 1988, issuing \$145 in credits.

Pacific Bell states that as of December 31, 1990, Foreman owed Pacific Bell \$389.52.

Foreman has on deposit with the Commission a total of \$389.96. The money is in Trust Impound Account No. 6830. It has

been on deposit since September 19, 1990, awaiting disposition of this complaint.

Early in 1990, Foreman filed several informal complaints with the Commission's Consumer Affairs Branch (CAB). After investigation, the CAB advised Foreman that it had found no irregularities in Pacific Bell's service or billing. In fact, the CAB stated that a number of adjustments made by Pacific Bell were not justified by the facts. The CAB returned to Foreman a number of checks she had delivered to the Commission in lieu of payment to Pacific Bell, advising her that the checks should be sent to the telephone company.

Dissatisfied with this result, Foreman filed her formal complaint on September 7, 1990. Under Public Utilities (PU) Code § 779.2(b) and Pacific Bell tariffs, she deposited with the Commission the amount that she deemed to be in dispute.

Foreman's complaint was accepted under the Commission's expedited complaint procedure (Rules of Practice and Procedure 13.2), entitling complainant to a hearing within 30 days of the utility's answer. Because Foreman was out of state visiting family during the holidays, she asked that the hearing be scheduled after January 27, 1991.

A hearing was held in Los Angeles on January 29, 1991. Foreman appeared on her own behalf. Pacific Bell was represented by Phyllis J. Conran, regulatory manager, who presented two witnesses. Sandra Ruffalo, customer service manager, testified that Foreman averaged 99 local calls per month between December 1989 and December 1990, and that Foreman had declined an unlimited local call option and had elected a less costly service that permits her 60 local calls per month. The company has dealt with Foreman at least once a month during the relevant period and has made frequent adjustments to her bills. Paul Sonico, installation supervisor, stated that he had supervised three inspections of Foreman's telephone lines. While no problem was

found, the company in September 1989 changed the line serving Foreman's home as a precaution.

Foreman testified that, because of the billing problems, she now maintains a log of all calls made or received from her telephone. She stated that she had changed telephone instruments twice on the chance that the telephone itself was defective. She alerted neighbors to watch for strangers who might be tampering with phone lines. She said that on any extended trip, she now disconnects and takes her telephone with her so that it cannot be used in her absence. She denied that any visitors use her telephone without her permission, noting that her most frequent guests are two infant grandchildren who had not yet learned to talk, much less use the telephone.

While Foreman brought with her to the hearing voluminous records, including copies of telephone bills and her personal logs, she was unable to state how much of the \$389.52 claimed by Pacific Bell was, in her judgment, erroneous. However, she did report that her telephone service had been disconnected for a period of time in October 1990 for nonpayment. Pacific Bell responded that the service was disconnected in error on October 11, 1990, but that service had been restored on October 12, 1990, when the company was advised by Foreman that she had deposited her check with the Commission pending formal hearing. Foreman stated that she also had received several notices from Pacific Bell warning her of impending disconnection for nonpayment. Pacific Bell responded that it now has made an entry in Foreman's computerized record advising service representatives that a complaint is pending and that no disconnection may take place.

Discussion

With an average of 99 calls per month over a year-long period, it would seem prudent for complainant to subscribe to an unlimited local call service (as she did prior to December 1989), and thus avoid the charges for calls over her 60-call allotment.

Her complaints since December 1989 are directed primarily at these "extra" calls and the duration of these calls. It is in Pacific Bell's interest to encourage unlimited call service for complainant, since it has incurred substantial costs in dealing with this customer, checking the telephone lines, and granting adjustments.

Computerized telephone bills are not a model of clarity. Adjustments appear without explanation and, depending on the billing cycle, may show up several months after the customer has been told that a credit will issue. It is not surprising that complainant, and Pacific Bell, have difficulty in tracking individual credits.

With that said, we conclude that the evidence before us does not demonstrate erroneous charges, and Foreman has been unable to present evidence that the \$389.52 claimed by Pacific Bell (through December 31, 1990) is in error, other than her general statements that she believes that she has been charged too much. As we have stated in the past, complainants have the burden of proof in complaint cases. Complainants must establish their case by a preponderance of the evidence. (See, e.g. Decision 90-05-026, at 13 (May 4, 1990).) Complainant here did not produce sufficient evidence to support her claim.

However, the evidence is clear that Pacific Bell erroneously disconnected Foreman's telephone service on October 11 and 12, 1990. This disconnection for nonpayment was contrary to PU Code § 779.2(b) and to Pacific Bell Tariff Rule 2.1.10. (Schedule Cal.P.U.C. No. A2.) The tariff rule provides that the utility will not disconnect a customer's service for nonpayment if the customer has deposited the disputed amount with the Commission. Tariff Rule 2.1.14 limits liability for an erroneous disconnection to "the pro rata charges to the customer for the period during which the services or facilities are affected by the mistake..."

The record shows that charges to complainant for the month preceding the erroneous disconnection were \$177.60. We elect to use September 1990 as the period in which to calculate pro rata charges, since Foreman was out of town during much of October 1990 and charges in that month do not reflect the value of normal service. Crediting complainant with two days of lost service, and rounding to the nearest dollar, we find that the pro rata value of two days of lost service (based on September 1990 billings) was \$12, pursuant to Tariff Rule 2.1.14. Our order, therefore, requires Pacific Bell to credit complainant's account (as of December 31, 1990) in the amount of \$12, and it directs Commission staff to pay \$377.52 of Foreman's impound account to Pacific Bell, and to return \$12.44 of the impounded amount to complainant.

While this order assesses liability on Pacific Bell, we are constrained to add that the record as a whole convinces us that both parties have proceeded in good faith in this dispute, and that Pacific Bell has for the most part done its best to deal fairly and courteously with a most determined customer. Since this case was heard under our expedited procedure, we dispense with findings of fact and conclusions of law. (Rule 13.2.) Because this matter has been pending for some time, we make the order effective immediately.

ORDER

IT IS ORDERED that:

1. Pacific Bell shall credit the account of Clarise J. Foreman (effective as of December 31, 1990) in the amount of \$12.00 as compensation for an erroneous disconnection of service on October 11 and October 12, 1990.
2. The Commission's staff is directed to release Trust Impound Account No. 6830 in the amount of \$389.96 deposited by Foreman.

3. Staff is directed to release \$377.52 of the impound account to Pacific Bell in full payment of Foreman's adjusted account as of December 31, 1990. Staff is directed to release the amount of \$12.44 to Foreman as a refund of the balance of her 1990 deposit.

4. This proceeding is closed. This order is effective today.

Dated March 22, 1991, at San Francisco, California.

PATRICIA M. ECKERT

President

G. MITCHELL WILK

JOHN B. OHANIAN

DANIEL WM. FESSLER

NORMAN D. SHUMWAY

Commissioners

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

[Handwritten Signature]
Executive Director