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Decision 91-04-044 April 24, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MDS Nuclear Incorporated,

Complainant,

vs.

PacTel Cellular and Cellular Service Inc.,

Defendants.

ORIGINAL

Case 90-08-012
(Filed August 8, 1990)

W. D. Fitzgerald, for MDS Nuclear, Incorporated, complainant.
Steven N. Wilson, Attorney at Law, for Los Angeles SMSA Limited Partnership and PacTel Cellular; and Peter A. Casciato, Attorney at Law, for Cellular Service, Inc.; defendants.

O P I N I O N

Complainant seeks connection of its cellular telephone without monthly surcharges and return of funds collected by overbilling.

A duly noticed public hearing was held before Administrative Law Judge Orville I. Wright in Santa Ana on November 15, 1990 and the matter was submitted on February 24, 1991 upon the receipt of additional correspondence from the parties.

At the hearing, counsel for PacTel Cellular requested that the record be augmented to show that PacTel Cellular is the general partner of the Los Angeles SMSA Limited Partnership (PacTel). The request was granted.

Complainant's Evidence

Complainant's evidence consists of a chronology of events, correspondence, and telephone conversations from February

1990 to October 1990 during which time complainant was engaged in attempting to transfer its cellular service from defendant Cellular Service, Inc. to another carrier. Because of misunderstandings between complainant and defendants, complainant did not have cellular telephone service for approximately eight months.

At the time of hearing, complainant had obtained service from a new carrier, Cellular for Less, and its cellular telephone was operational.

Following complainant's presentation, the parties agreed that PacTel would refund complainant's \$600 deposit less any applicable charges pursuant to this defendant's filed tariffs. It was further agreed that defendant Cellular Service, Inc. owed nothing to complainant.

The settlement was to include Informal Complaints No. 90220167 and No. 90222214.

Complainant requests that the complaint be dismissed without prejudice so that complainant may retain the option to pursue a civil claim for damages.

Findings of Fact

1. Complainant and defendant PacTel agree that complainant's deposit of \$600 will be refunded less any applicable charges pursuant to this defendant's filed tariffs.

2. Complainant and defendant Cellular Service, Inc. agree that this defendant owes nothing to complainant.

3. Complainant requests that the complaint be dismissed without prejudice so that complainant may retain the option to pursue a civil claim for damages.

Conclusion of Law

The complaint should be dismissed without prejudice.

O R D E R

IT IS ORDERED that:

1. Complaint 90-08-012 is dismissed without prejudice.
2. The proceeding is closed.

This order becomes effective 30 days from today.

Dated April 24, 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.


NEAL J. SHUMWAY, Executive Director
ps

