

APR 26 1991

Decision 91-04-069 April 24, 1991

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the Rules,  
Practices, and Procedures of all  
telephone corporations as listed in  
Appendix A attached to the O.I.I.  
concerning the billing of  
subscribers for telephone calls.

ORIGINAL

R.85-09-0085

(Filed September 5, 1985)

(See Appendix A for appearances.)

OPINION

This proceeding has a long and involved procedural history. It began in September, 1985, when the Commission issued this OIR in response to Section 766.5 of the Public Utilities (PU) Code, which requires the Commission to investigate the extent to which telephone corporations could not determine whether any telephone call is not actually completed, and whether telephone corporations rendered bills for uncompleted calls. This legislation provided that, in the event the Commission concluded that telephone corporations could not determine whether a call was actually completed, the Commission should order them to furnish written notice to their customers. The statute was enacted in 1984 and reads:

"The commission shall investigate the practices of every telephone corporation in billing its subscribers for telephone calls, including, but not limited to, whether a corporation is unable to determine whether any telephone call was not completed and as a consequence may charge the subscriber for that uncompleted call. If the commission finds that any corporation does not have the capability of determining in every instance whether a call placed by a subscriber was completed, the commission shall require the corporation to furnish written notice, in a form and manner approved by the commission, to

its subscribers of its billing practices, including, but not limited to, its practice of charging for calls placed but not completed."

After two rounds of written comments filed by numerous parties, the Commission issued Decision (D.) 86-12-025 (23 CPUC 2d 24), which took a number of actions, including ordering that hearings on the subject of billing for uncompleted calls should be held. Following a stay of D.86-12-025, we modified the decision and required interexchange carriers (IECs) to file certain information with the Commission regarding the practice of billing for uncompleted calls (D.87-03-043).

D.86-12-025, as modified by D.87-03-043 found, inter alia, that hearings were necessary to resolve the issue of billing by IECs of uncompleted interLATA calls of less than one minute duration. AT&T was held out as the standard by which other common carrier (OCC) billing for uncompleted calls should be judged, and was ordered to file evidence as to its error rate. The OCCs were ordered to submit evidence regarding the number of calls they carried of less than one minute in duration, their associated revenues, locations of the calls, numbers of complaints associated with the calls, company complaint treatment, and resolution policies and error rates.

AT&T filed its report on April 16, 1987. The report stated that the availability of hardware answer supervision<sup>1</sup> on Feature Group C and Feature Group D access facilities used to terminate all AT&T interLATA traffic, combined with use of the IECs' automatic message accounting systems, virtually guaranteed that no billing errors for uncompleted calls would be experienced by AT&T. Consequently, there was no specific need by AT&T to

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1 "Hardware answer supervision" consists of a signal passed by the local exchange company's (LEC) terminating switch to the long distance company's terminating switch.

maintain or track customer complaints regarding billing for uncompleted calls, and therefore no data was available to comply more precisely with the Commission's order.<sup>2</sup> (Report of AT&T at p. 4.)

A prehearing conference (PHC) was held on May 12, 1987. Discussion during the PHC regarding billing for uncompleted calls revolved around the extent to which the OCCs continued to use Feature Group A terminating access,<sup>3</sup> and whether this was by choice or by necessity for lack of available alternatives. It was agreed that the OCCs would provide additional data on or before June 10, 1987 which detailed for each end office served the following: (1) the feature groups available, (2) the proportion of terminating traffic by feature group, (3) the use of LEC answer supervision, and (4) the technology used if LEC answer supervision is not used. This data was considered necessary to better gauge the potential extent of the problem and therefore guide the Commission in determining the need for any additional action. AT&T was not required to provide this data.

Pre-filed testimony of all parties on OCC billing for uncompleted calls was scheduled for submission on July 6, 1987. MCI and Sprint were the only parties to file testimony. Three days of hearings were scheduled to begin July 20, 1987, but were taken

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2 Pacific Bell (Pacific) filed a similar report with the Commission on May 29, 1987 regarding its billing error rates for intraLATA calls. Pacific stated that its answer and disconnect supervision functions, in conjunction with its recording and billing systems, were designed to eliminate the potential of billing for uncompleted calls, thereby eliminating the need to track for calls that are incomplete yet billed. Pacific was therefore similarly unable to comply directly to the Commission's request for a precise billing error rate.

3 Feature Group A terminating access is the only feature group access connection which does not provide hardware answer supervision.

off calendar at the request of the Network Project (Network) and Center for Public Interest Law (CPIL) in order to provide them with more time to obtain additional data and resolve data confidentiality issues. Hearings were never rescheduled. MCI, US Sprint, Allnet, the California Association of Long Distance Telephone Companies and United States Transmission Systems, Inc. filed a joint petition on August 21, 1987 to terminate hearings and issue a final decision. Aside from the Commission's September 1988 access backbilling decision (D.88-09-061) in this proceeding, which noted that the billing for uncompleted calls issue remained open, no Commission action has been taken on this issue for over 3 years.

Network and CPIL filed a joint petition for modification of D.86-12-025 and D.87-03-043 on July 13, 1989. Network and CPIL argue that the problem of IECs erroneously billing consumers for calls not completed remains unresolved. Network and CPIL offer modifications that would address this problem by imposing certain reporting requirements, billing restrictions, customer notification requirements, and refund policies on IECs. All respondents oppose the petition of Network and CPIL, and recommend that the Commission close the proceeding by issuing a final decision based on the record now before the Commission.

PU Code § 766.5 recognized that a carrier may in certain limited circumstances bill a customer for an uncompleted call. It did not intend to guarantee that consumers would be held entirely harmless from the possibility of being billed for such calls, but rather sought a mechanism to inform consumers of any increased probability of a billing error where such a condition existed. Consumers could then weigh that possibility in their choice of an IEC. The parties have filed extensive data in compliance with the Administrative Law Judge's rulings and the Commission's orders. Further, we take official notice of the CPUC report "Telecommunications Comparison Statistics" issued by our Consumer Affairs Branch July 2, 1990. The record now established in this

proceeding is sufficient to allow the Commission to rule on all outstanding motions and to issue a final decision without the need for further hearings.

In D.87-09-063 we considered the petition of Network and CPIL for a request for a finding of eligibility for intervenor compensation under our Rule 76.51 et seq. We made the following Findings of Fact and Conclusion of Law:

"Findings of Fact

1. The Center and Network have not demonstrated that they represent a group or organization.

"2. The Center and Network have not demonstrated the basis upon which they have a right to be regarded as nonprofit public interest groups.

"Conclusion of Law

The Center and Network have not demonstrated the significant financial hardship necessary for a finding of eligibility to receive compensation under Article 18.7 of the Commission's Rules of Practice and Procedure."

We permitted Network and CPIL to make an amended filing to cure the deficiencies we found. The amended filing of Network and CPIL shows that they represent a group or organization and that they may be regarded as a nonprofit public interest group.

We note that CPIL has been found to have a financial hardship and has been granted eligibility to receive compensation in several previous Commission decisions, including D.88-12-085 where the Commission found that:

CPIL is a nonprofit public interest group which represents the interest of customers who would have been subject to San Diego Gas & Electric Company's customer charge when service is temporarily disconnected. CPIL represents the interests of the unorganized and underrepresented in State regulatory proceedings, provides an academic center of learning in administrative law, and teaches direct clinic skills in public interest

regulatory law. CPIL obtains financial support through grants, subscriptions to the California Regulatory Law Reporter, and legal advocate fees.

The amended filing shows that such is still the case, and supports our conclusion that Network and CPIL should be found eligible to receive compensation in this proceeding.

#### Findings of Fact

1. Commission records show the incidence of all billing complaints involving IECs for the years 1987, 1988, and 1989:

|                                | <u>1987</u>  | <u>1988</u>  | <u>1989</u>  |
|--------------------------------|--------------|--------------|--------------|
| Telephone Lines in Service     | 16.4 million | 16.8 million | 16.9 million |
| Billing Complaints             | 1819         | 2913         | 1261         |
| Complaints per Line in Service | .00011       | .00017       | .00007       |

2. The Commission does not have a subcategory within billing complaints for complaints which concern billing for uncompleted calls because so few complaints are received on this subject.

3. The great majority of billing complaints concern the amount of the bill for completed calls that allegedly were not made from the customer's telephone. Normal practices of the utility in these instances is to remove the charge because the cost of investigation far exceeds the cost of the call.

4. In the telecommunications industry of 1990 all major IECs and most of the small IECs utilize hardware answer supervision to determine whether or not a call is completed. As a result, there are so few billing errors for uncompleted calls that accurate statistics are not available.

5. To impose a system of monitoring and reporting on the IECs to determine the extent of a problem, which if it exists at all is insignificant, would create costs far in excess of any possible savings. Such costs, if imposed, would be an expense of the telephone companies passed through to ratepayers.

6. The IEC marketplace is a highly competitive environment that provides compelling incentives to render timely and accurate bills, and to purchase equipment (such as Feature Group D) which will eliminate, for all practical purposes, billings for uncompleted calls.

7. The surest means for a customer to receive the best service available is to switch carriers when service is unsatisfactory. A customer requiring further relief may utilize the Commission's customer service personnel and the Commission's formal complaint procedures to seek redress.

8. All respondent carriers have notified the Commission that it is impossible to assure that "in every instance" a call has or has not been completed.

9. In D.87-09-063 we considered the petition of Network and CPIL for a request for a finding of eligibility under our Rule 76.51 et seq. We made the following Findings of Fact and Conclusion of Law:

"Findings of Fact

1. The Center and Network have not demonstrated that they represent a group or organization.

"2. The Center and Network have not demonstrated the basis upon which they have a right to be regarded as nonprofit public interest groups.

"Conclusion of Law

The Center and Network have not demonstrated the significant financial hardship necessary for a finding of eligibility to receive compensation under Article 18.7 of the Commission's Rules of Practice and Procedure."

We permitted Network and CPIL to make an amended filing to cure the deficiencies we found. That filing was made.

10. In D.87-09-063, we concluded that Network and CPIL did not demonstrate (1) that they represent a group or organization,

(2) that they are nonprofit public interest groups, and (3) that they have not demonstrated significant financial hardship.

11. The filing of Network and CPIL in response to D.87-07-063 persuades us that the two organizations represent customers and they have the right to be regarded as nonprofit public interest groups.

12. Network and CPIL have demonstrated the significant financial hardship necessary for a finding of eligibility to receive compensation under our Rules.

#### Conclusions of Law

1. To fulfill the requirements of PU Code § 766.5, all IECs should inform their customers of their billing procedure for uncompleted calls at least once each year either through bill inserts or on the customer's bill. This information should state the circumstances that will cause an uncompleted call to be billed and the method to obtain a credit or refund for the erroneous billing.

2. The requests of Network and CPIL for a finding of eligibility to receive compensation should be granted.

3. This rulemaking should be terminated.

#### ORDER

IT IS ORDERED that:

1. To fulfill the requirements of PU Code § 766.5, all IECs shall inform their customers of their billing procedure for uncompleted calls at least once each year either through bill inserts or on the customer's bill. This information shall state the circumstances that will cause an uncompleted call to be billed and the method to obtain a credit or refund for the erroneous billing.



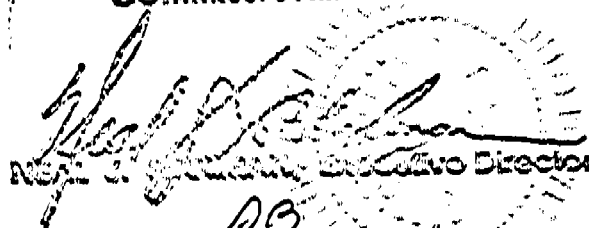
2. The requests of the Network Project and the Center for Public Interest Law for a finding of eligibility to receive compensation are granted.

This order is effective 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

  
Executive Director  
AB

APPENDIX A

List of Appearances

Respondents: Bless Stritar Young, Attorney at Law, for AT&T Communications of California; David Discher, Attorney at Law, for Pacific Bell; James L. Lewis, Attorney at Law, for MCI Telecommunications Corporation; Kenneth K. Okel and Kathleen S. Blunt, Attorneys at Law, for General Telephone Company of California; and Phyllis A. Whitten, Attorney at Law, for U. S. Sprint Communications Company; and William Leonard, Jr., for Continental Telephone Company of California.

Interested Parties: Thomas J. Mac Bride, Jr., Attorney at Law, for California Association of Long Distance Telephone Companies; Harvey Rosenfield, Attorney at Law, for Network Project; James Wheaton, Attorney at Law, for Center for Public Interest Law and Network Project; Ken Bell, for Telesphere Network, Inc.; Terrence B. Egan, for American Network, Inc.; Mary Lynn Gauthier, for Gauthier & Hallett; Jerry M. O' Brien and Diane M. Martinez, for API Alarm Systems; and Assemblyman Richard Katz and Cyrus Cardan, for themselves.

Commission Advisory and Compliance Division: Dean J. Evans.

(END OF APPENDIX A)