

ALJ/VDR/gab

Decision 91-05-004 May 8, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Milton Cosbie Kelley,)

Complainant,)

vs.)

Pacific Bell (U 1001 C),)

Defendant.)

ORIGINAL

(ECP)

Case 90-09-036

(Filed September 13, 1990)

O P I N I O N

Complainant Milton Cosbie Kelley made telephone calls to several "900" service information providers (IPs) which, in return for the telephone charge, offered to assist the caller in obtaining a credit card. These programs were carried by Telesphere, U.S. Sprint, and MCI Telecommunications, which are interexchange carriers (IECs), but were billed to Mr. Kelley by defendant Pacific Bell, his local exchange carrier. He made these calls in reliance upon television advertisements which assured callers that they would not have to pay for the call if it did not result in issuance of the credit card for which the caller applied.

At the hearing Mr. Kelley testified that he received no credit cards in response to the calls, but that Pacific Bell continues to bill him for the calls despite his request for an adjustment of the charges. Pacific Bell also disconnected his telephone at about the time he incurred the charges, and required him to make a deposit in order to have his telephone service reconnected. He requests an order requiring Pacific Bell to refund his deposit and reconnect fee, and to cease billing him for the disputed 900-service charges.

It is clear from Pacific Bell's testimony that the deposit and reconnect fee were required solely as the result of Mr. Kelley's failure to pay his basic (i.e., non-900) service charges, because his April 14, 1990 check was returned for insufficient funds. Accordingly, we will not order Pacific Bell to refund those sums.

With respect to the disputed 900-service charges, the testimony showed that Pacific Bell serves only as a contractual billing agent for the IECs that carry the 900 programs in question. Pacific Bell may show any such charges on Mr. Kelley's bill until the underlying dispute is resolved between Mr. Kelley and the IECs. See Decision (D.) 91-03-021 (March 13, 1991), pp. 87, 98. We will therefore not order Pacific Bell to refrain from billing Mr. Kelley while those charges are the subject of a dispute between him and the IECs. Nevertheless, any action by Pacific Bell to compel payment must be consistent with the complaint procedure and adjustment policy set forth in Attachment D to D.91-03-021.

Although Mr. Kelley will risk the possibility that his access to 900 services will be blocked if he persists in refusing to pay the disputed charges, Pacific Bell has acknowledged that it may not disconnect Mr. Kelley's telephone service for nonpayment of these charges. If Pacific Bell or the IECs intend to seek payment of the outstanding charges, they must do so in the same manner as other creditors so as to afford Mr. Kelley his right to due process.

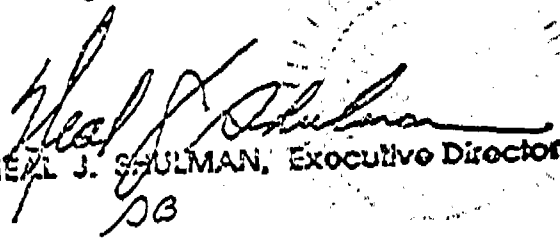
ORDER

IT IS ORDERED that:

1. Complainant's request for an order requiring refund of his deposit and reconnect fee is denied.
 2. Complainant's request for an order compelling Pacific Bell to refrain from billing him for the disputed 900-service charges while those charges are still the subject of a dispute between the complainant and the responsible interexchange carriers is denied.
 3. Any action by Pacific Bell to collect the sums in question must be consistent with the Complaint Procedure and Adjustment Policy set forth in Attachment D to Decision 91-03-021.
 4. This is a final order, and the proceeding is closed. This order is effective today.
- Dated May 8, 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. SHULMAN, Executive Director
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