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Decision 91-05-017 May 8, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Oakland Recycling Association, )  
Incorporated, )

Complainant, )

vs. )

Pacific Bell (U 1001 C), )

Defendant. )

**ORIGINAL**

Case 91-01-007  
(Filed January 4, 1991)

OPINION

Facts

In the early 1980's, defendant Pacific Bell (PacBell) installed service (telephone number 655-5373) at 5544 Kales Avenue, Oakland, in Mr. Arthur Boone's name. Later, in February 1988, the service was moved to 5116 Manila Avenue, Oakland, and the billing name was changed to Oakland Recycling Association. In January 1990, Oakland Recycling Association requested that PacBell move the service to 3868 Howe Street, Apt. 3, Oakland. This location is the home of Susan A. Bluestone. Both parties to this proceeding appear to concede that Ms. Bluestone was, at this time, an agent of the Oakland Recycling Association. Ms. Bluestone called PacBell on April 4, 1990 and added a password to the account of the Association. A password allows a customer to control access to its records and its service. In June of 1990, Mr. Boone called to have the service moved from Ms. Bluestone's home to 5116 Manila Avenue, Oakland. PacBell refused to make this change since Mr. Boone did not know the password.

During part of this time, Ms. Bluestone held the title of General Manager of the Association. The matter may further be complicated by the fact that there have been two corporations, one

named Oakland Recycling Association and the other Oakland Recycling Association, Inc. According to the complaint, the latter is a successor of the former.

Position of the Parties

Mr. Boone identifies himself in the verification clause of the complaint as the President of complainant Oakland Recycling Association, Inc., a California non-profit corporation.

Originally, both Oakland Recycling Association and Susan A. Bluestone, General Manager were named as co-defendants. Those names were stricken, apparently by the Commission's Docket Office.

The complaint alleges that Ms. Bluestone was fired as General Manager of the corporation in June 1990. The complaint alleges that Ms. Bluestone refuses to consent to moving the phone to a location under control of Mr. Boone. The complaint further alleges that she embarrasses the Association by giving out incorrect information in its name.

The essence of the complaint is that PacBell has refused to recognize Mr. Boone's exclusive authority to speak for the corporation. The complaint says:

"They seem unable to discern the truth and pussy-foot around to our detriment."

Complainant seeks compensatory and punitive damages and the right to move the telephone number and listing to another address.

PacBell has filed a timely answer and motion to dismiss. According to PacBell's answer it has received conflicting information from Ms. Bluestone and Mr. Boone concerning who owns the right to use the Oakland Recycling Association name.

PacBell has offered to provide a split referral from the number 655-5373 so that both parties (Mr. Boone and Ms. Bluestone) will receive calls intended for them.

Summary

The facts stated in the complaint do not indicate that PacBell violated its duties as a public utility by imposing

password control on the Association's number or by remaining neutral in the dispute over control of the Association and its telephone listing. PacBell is simply a bystander in this intracorporate dispute, which should be resolved in the courts, not before this Commission.

PacBell's motion will be granted.

### Discussion

#### Damages

PacBell correctly points out that this Commission has no jurisdiction to award either compensatory or punitive damages.

#### Authority

The complaint contends that defendant should not have allowed an employee who had no actual authority to place a password on a corporate telephone number.

The law is otherwise. §§ 2317, 2318 Civil Code.<sup>1</sup> Anyone dealing with a corporation is entitled to assume that a person entrusted with the title and function of General Manager has wide authority to govern the corporation's affairs. By allowing Ms. Bluestone to use such a title, the Association gave her ostensible authority to obligate it in such a routine matter as obtaining communications services. The appearance of authority was only strengthened by the fact that the corporation allowed her to install the phone service in her home.<sup>2</sup>

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1 Unfortunately, PacBell has no tariff provision on file to define its rights and obligations with respect to password protection. It appears, however, that we can determine its obligations under the general law of California for the purposes of this transaction.

2 The complaint does not allege that PacBell had notice of any special facts that would cause it to suspect that Ms. Bluestone did not have actual authority.

We have concluded that PacBell could lawfully impose password protection on a corporate telephone number in response to directions from the corporation's designated General Manager. It had no obligation to determine the scope of her actual authority.

Who Should Judge?

One of Mr. Boone's grievances is that PacBell refused to decide the dispute over custody of the password in his favor. The complaint implies that this refusal was a violation of PacBell's duties as a utility.

However, it appears that the utility's decision was to remain as neutral as possible in this intra-mural dispute. According to the answer, PacBell did enough investigation to determine that there is a colorable dispute over which of the individuals had the right to govern the corporation. Once it assured itself that Ms. Bluestone's refusal to disclose the password was something other than mere obstructionism by a discharged employee, the utility had little real choice but to assume a neutral position. Any other action could have exposed it to an action for possibly significant damages.

In this instance, PacBell has offered split referral to each of the individuals. This service, in effect, would allow callers to decide for themselves which of the disputing parties to deal with. This is an appropriate offering, one which attempts to mitigate the damages caused by the unresolved dispute.

We therefore determine that the utility acted properly and wisely in refusing to side with either of the disputants. It also acted properly and wisely to reduce the damage that either side might incur by offering the split referral.

Parties and Jurisdiction

We note that Ms. Bluefield was originally named as a defendant. In one sense, this was correct. The central dispute in this proceeding is over the right to govern the corporation's affairs; that is a dispute which cannot be determined without

determining her rights and obligations. On the other hand, striking Ms. Bluestone as a defendant was correct in a broader sense, since it reflects a limitation on this Commission's powers.

While the Commission may act judicially under the Public Utilities Code, and Article XII of the California Constitution, the scope of its quasi-judicial power is limited to cases in which the special responsibilities of public utilities or carriers are at issue.

It appears that Mr. Boone drafted the complaint to include Ms. Bluestone, on the assumption that the Commission would rule that she no longer has any authority over the corporation's telephone service. However, we conclude that it would be in excess of our jurisdiction to decide this question. Rather, this is a dispute which should be tried in another tribunal, not before the Commission. Consequently, Ms. Bluestone was properly removed as a party defendant.

In this decision, the Commission has determined what the utility's duties were. Since neither the utility or this Commission should attempt to determine who controls the customer's communications, the dispute between Mr. Boone and Ms. Bluestone will not be resolved. No evidentiary hearing or findings are required, since no relief would be given even if all the facts alleged in the complaint were proven.

#### What Next?

We expect that the defendant will maintain its neutrality by refusing to make any change in the telephone service except by persons who know the password. This neutrality should last until Mr. Boone and Ms. Bluestone resolve their dispute so that one of them is clearly authorized to speak for the corporate entity which is defendant's customer. We also expect that defendant will keep open its offer of a split referral.

For our purposes, the dispute would be effectively resolved by a settlement executed by the customer's board of

directors, by Mr. Boone and by Ms. Bluestone. Alternatively, defendant can rely on a final judgment by a court or an award by an arbitrator.

Conclusions of Law

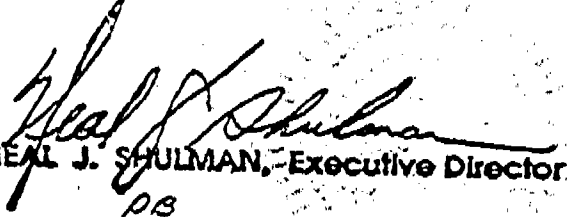
1. Ms. Bluestone is a necessary party to this dispute.
2. Under the Commission's Rules, Ms. Bluestone cannot be compelled to become a party to this complaint.
3. The intracorporate dispute should be tried in the courts, which could assert full jurisdiction over all parties, including Ms. Bluestone.
4. Defendant has no special responsibility as a utility to decide which of two factions has the authority speak for a corporation.
5. Defendant could lawfully impose password protection on a corporate telephone number in response to directions from the corporation's designated General Manager. It had no obligation to determine the scope of her actual authority.
6. The corporation gave Ms. Bluestone ostensible authority to change corporate telephone service, by allowing her to use the title General Manager and by placing the telephone in her home.
7. Defendant should not be ordered to change the corporation's telephone service, except at the request of a person who knows the password, until and unless the dispute between the individuals is resolved against Ms. Bluestone.
8. The Commission has no jurisdiction to award damages against the defendant utility or against any other party.
9. The complaint should be dismissed without evidentiary hearing.

ORDER

IT IS ORDERED that this complaint is dismissed.  
This order becomes effective 30 days from 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  
PB