

Background

Barcus purchased a house in Feather Falls in 1976. He alleges that at the time of purchase PacBell was providing telephone service to the previous owner. In the week following the purchase PacBell employees came to the property. The PacBell employees inquired whether complainants wanted to have the telephone service continued. Complainants said they wanted service but it would take them a few weeks to get the money for the installation fees and other charges. The PacBell employees proceeded to remove the existing telephone. Subsequently, the telephone lines were removed. When the complainants protested, the PacBell employees informed them that they were removing old lines and when complainants requested service new lines would be installed. Shortly thereafter complainants requested service. PacBell has refused to provide the service unless complainants pay the costs for line extension, easement, and trenching fees, which are more than \$3,000.

PacBell asserts that it has no records of the alleged events and that the first record of a request for service is on March 20, 1990. It contends that service to the property should be based on its current tariff requirements which call for the payment of line extension, easement, and trenching fees, which it demands.

Complainants presented evidence about their economic loss, physical, and emotional distress which resulted from their failure to obtain telephone service, as requested, since 1976. However, complainants acknowledge that the Commission has no jurisdiction to award damages therefore. This point need not be further considered. (Mark v. PT&T (1971) 72 CPUC 735, 738.)

The presiding ALJ who observed the demeanor of the witnesses and reviewed the documentary evidence, found the testimony of witnesses Barcus, Davis, and Bjork to be credible. Bjork was custodian of the property for the previous owner. His testimony corroborated that of complainants on the existence of telephone service at the time Barcus purchased the property. The following findings are based upon the determination of credibility by the ALJ. (Evidence Code § 780; Wilson v. State Personnel Board (1976) 58 Cal. App. 3d 865, 877; Kilstron v. Bronnenberg (1952) 110 Cal. App. 2d 62, 64-65.)

Findings of Fact

1. From 1971 to 1976, the property known as 151 Long Point Road, Feather Falls, was owned by Paul Shepard (Shepard). In June or July of 1971, Shepard arranged for telephone service from PacBell. A telephone line to the property was strung and a telephone installed in the house.

2. Barcus purchased 151 Long Point Road from Shepard on July 23, 1976. At that time PacBell was providing telephone service to the property.

3. Barcus and Davis moved into the house at 151 Long Point Road on or about July 23, 1976. A telephone was in place at that time. Within a week, employees of PacBell appeared at the house to remove the telephone which had been rented to Shepard by PacBell. The PacBell employees inquired of complainants whether they wanted service connected. The complainants said they wanted service, but it would be a couple of weeks before they had the money to pay for the installation fee and service charges. The telephone was removed from the premises at this time.

4. Within five days after the telephone was removed from 151 Long Point Road, Davis and a friend observed PacBell employees tearing down the telephone lines leading to the house. They demanded to know what was happening. One of the PacBell employees responded that the lines were being removed because they were old lines which contained valuable copper. He added that when the time came they would be replaced with upgraded lines.

5. Since 1976, complainants have on several occasions requested that PacBell provide telephone service to 151 Long Point Road. On each of these occasions PacBell has indicated that service would be provided if complainants paid line extension costs, easement fees, and other related costs. The amount demanded by PacBell exceeds \$3,000. Complainants contend that they should only be required to pay normal installation fees.

6. It was unreasonable for PacBell to remove the telephone lines to 151 Long Point Road in July 1976 within five days after it was advised that complainants desired to continue telephone service at that address and were in the process of obtaining money to pay the installation charges.

7. If PacBell had not removed the telephone lines to 151 Long Point Road in July 1976, it would have been financially responsible for any necessary upgrading of the lines or any easements or trenching required for their continued presence.

8. The property known as 151 Long Point Road is the dominant tenement for certain easements, including public utility easements. If these easements are not sufficient to provide access to PacBell for the installation of telephone service, easements from Louisiana Pacific Corporation and the United States Forest Service might be necessary.

9. On February 4, 1991, Louisiana Pacific Corporation granted PacBell an easement, at no charge, which would permit PacBell to use Louisiana Pacific land to provide telephone service to 151 Long Point Road. The United States Forest Service has indicated it would grant a permit for use of its land to provide telephone service to 151 Long Point Road.

Conclusions of Law

1. PacBell should not be permitted to benefit from its unreasonable removal of the telephone lines to 151 Long Point Road in 1976 by applying present tariff provisions which would require complainants to pay the costs for restoring those lines. (Civil Code § 3517; Shea - Kaiser - Lockheed - Hewley v. Department of Water & Power (1977) 73 Cal. App. 3d 679, 691 footnote 13; Post v. Jacobsen (1960) 180 Cal. App. 2d 297, 303; Southern Pacific Co. v. Grangers' B. Assn. (1931) 115 Cal. App. 256, 260.)

2. PacBell should be ordered to provide telephone service to 151 Long Point Road upon the payment by complainants of ordinary installation charges, which should not include charges for a line extension, easement costs, or trenching fees.

ORDER

IT IS ORDERED that:

1. On or after the effective date of this order Pacific Bell (PacBell) shall provide residential telephone service to Jan H. Barcus (Barcus) and Dawn A. Davis (Davis) at 151 Long Point Road, Feather Falls, within 60 days after Barcus and Davis pay to PacBell the ordinary installation charges required by PacBell's tariff for such service. The installation charges shall not include charges for a line extension, easement costs, or trenching fees.

2. This order shall expire on December 31, 1992 if Barcus and Davis have not requested residential telephone service and tendered the ordinary installation charges by that date.

This order becomes effective 30 days from today.

Dated December 18, 1991, at San Francisco, California.

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

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners


NEAL J. SHULMAN, Executive Director