

ALJ/DBJ/jac

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Decision 92-02-066 February 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Partnership of Dave Smith and
Ron Engman et al.,

Complainants,

vs.

Pacific Bell (U 1001 C),

Defendant.

ORIGINAL

Case 90-06-020
(Filed June 11, 1990)

Partnership of David Smith and Ron Engman,
by William E. Johnson, complainants.
Adrian M. Tyler and Colleen O'Grady,
Attorneys at Law, for Pacific Bell,
defendant.

O P I N I O N

This is a complaint by the Partnership of Smith & Engman (partnership) against Pacific Bell (Pac Bell). The complaint seeks the cancellation of charges for the transfer of a foreign exchange line or, in the alternative, reduction of those charges.

A duly noticed public hearing was held in this matter before Administrative Law Judge (ALJ) Donald B. Jarvis in Garden Grove on March 20, 1991. The matter was submitted subject to the filing of the transcript and late-filed exhibit by Pac Bell.

The transcript was filed. The presiding ALJ provided for Pac Bell filing Late-Filed Exhibit 10 "which will contain the appropriate reference of which you wish me to take official notice of FCC Docket 88-57, with the appropriate certificate of counsel that it is a true and correct copy of that which was in existence in November of 1989...." (RT 115.)

Pac Bell tendered a Late-Filed Exhibit 10 which did not contain the certificate of counsel as directed by the ALJ. Partnership objected to the receipt of the exhibit. Since Exhibit 10 did not comply with the ALJ's ruling, it has been marked for identification, not received in evidence and not considered in the disposition of this case.

Background

Partnership is an accounting firm. In November 1989, it conducted its business at 822 Anaheim Boulevard in Anaheim. It was located on the same parcel of real property as an unattached, separate building known as 842 Anaheim Boulevard. Partnership decided to relocate from 822 to 842 Anaheim Boulevard. For several years Partnership had employed Timothy Withers (Withers), a self-employed installer of telephone systems, to handle its internal telephone communication needs. On November 21, 1989 Partnership hired Withers to move their telephone system from 822 to 842 Anaheim Boulevard. Prior to November 21st, Withers telephoned Pac Bell to inquire about its charges for relocating telephone lines including two 213 lines. Withers testified that he was given an estimate of \$380 per line. He communicated the amount of the estimate to Partnership. In the telephone conversation on November 21st, Withers tried to arrange for Pac Bell to relocate its telephone lines by November 25, 1989.

On November 25th, Withers, his brother and Dave Smith, a Partnership partner, arrived at the property at 8:00 a.m. Pac Bell had moved one line within 822 Anaheim Boulevard but had not relocated its lines to 842 Anaheim Boulevard at that time. Withers and his brother, who was assisting him, moved the internal telephone system from 822 to 842 Anaheim Boulevard. A Pac Bell installer had not arrived by 1:00 p.m. when Withers and his brother had completed the internal installation at 842 Anaheim Boulevard. Withers testified that he called Pac Bell and inquired why the installer had not arrived. The person to whom he talked advised.

him that he had seen a work order for the job but no one was scheduled to do it that day. Withers protested that the internal wiring was already done and the Pac Bell lines had to be moved to accommodate it. Withers further testified that he advised the person at Pac Bell that there was a B-Box (the connection between the internal wiring and Pac Bell's system) in front of the property and all that was necessary to relocate the Pac Bell lines was to change some jumpers in the B-Box. Withers claims that the person at Pac Bell told him if he knew what he was doing, he could change the jumpers, but he was to call back afterwards and give him the position of the numbers he put on the RJ21X (the terminal board inside the B-Box). Withers testified that he notified Pac Bell of the positions on the RJ21X the following Monday.

Pac Bell produced evidence which indicated that on November 20, 1989 it received an order for an inside move at 822 Anaheim Boulevard. An inside move is one within a limited area of the same building. Pac Bell's tariff provides that a retermination of a primary service from one premise to another in the same or a different building is considered as a disconnection and a new connection of service. Pac Bell's evidence was that it committed to do the work for an inside move on Monday, November 27th, with the proviso that it would try to have the job done on the 25th. A Pac Bell witness testified that the only charge of \$380 in its tariff relates to a type of foreign exchange service which is not relevant to the facts here presented.

Zoel Turnbull (Turnbull), Pac Bell's control foreman in Anaheim at the time the events here involved occurred, testified that on November 20th he received a call from Pac Bell's Central Order Group requesting expedition of a service order for an internal move at 822 Anaheim Boulevard on November 25th. He advised the caller that the move was scheduled for Monday, November 27th, but he would try to get to it on the 25th. About 2:30 p.m. on November 25th, Turnbull received a call from Withers

who stated he had been waiting all day and wanted to know when Pac Bell's technician would arrive. Turnbull advised Withers that the technician had an exceptionally heavy workload and he didn't expect him to get to the site until 5:00 p.m. At that time Withers told Turnbull that he had already run the jumpers into the B-Box and service was already established at 842 Anaheim Boulevard. At this time Turnbull realized that the requested change in service was not for an internal move but one for a disconnection and new connection of service. This was the first time Pac Bell became aware of the situation. Turnbull then paged the technician, advised him of the situation and asked him to check what had been done when he went to the property. The technician arrived at the site around 5:30 p.m. He inspected the B-Box and found that the jumpers had been half-tapped and there were additional runners for Pac Bell's underground cable to a new aerial feed to 842 Anaheim Boulevard. The old jumpers to 822 Anaheim Boulevard were left in place. Turnbull testified that only Pac Bell personnel and authorized contractors are authorized to enter B-Boxes. This was only the second time in 10 years that he was aware of a vendor entering a B-Box. On November 27th Turnbull send another technician to the property who had to verify where the cables were run, verify the service as placed on the RJ21X call assignment and verify that the new cable terminal installed at 842 Anaheim Boulevard was proper. He then reported all the telephone numbers involved to Turnbull. On November 27th Turnbull also notified Pac Bell's Order Discrepancy Desk of what had happened at 822 and 842 Anaheim Boulevard. Thereafter, Pac Bell billed Partnership \$580 in accordance with its tariff for the charges in connection with the transfer of the foreign exchange line.

Material Issue

The material issue presented in this proceeding is whether Pac Bell's charges for transferring the foreign exchange line should be reduced or cancelled.

Discussion

Partnership first contends that Pac Bell is entitled to only \$380 because the alleged telephone quotation constituted an oral contract. There is no merit in this contention. Assuming arguendo that such a quotation was given, Pac Bell was required by law to charge its tariff rate for the transfer charges.

"It is a well established principle of public utility law that a utility 'cannot directly or indirectly change its tariff provisions by contract, conduct, estoppel, or waiver....' [Citations.] The principle and its rationale has recently been restated by the California Supreme Court:

'Section 532 forbids any utility from refunding "directly or indirectly, in any manner or by any device" the scheduled charges for its services. In addition, a public utility "cannot by contract, conduct, estoppel, waiver, directly or indirectly increase, or decrease the rate as published in the tariff...." [Citations.] Scheduled rates must be inflexibly enforced in order to maintain equality for all customers and to prevent collusion which otherwise might be easily and effectively disguised. [Citations.] Therefore, as a general rule, utility customers cannot recover damages which are tantamount to a preferential rate reduction even though the utility may have intentionally misquoted the applicable rate. [Citations.]

'These principles are most commonly applied in cases which involve mistaken rate quotations whereby the customer is quoted a lower rate than set forth in the published tariff. Upon discovery of the error, the utility may initiate an action against the customer to recover the full legal charges for the service, as filed and published in rate schedules. [Citations.] In granting recovery to the utility, the courts usually rely on the fact that the rates have been filed and published and have thereby become part of the contract between the utility and the customer. [Citations.] Under these

circumstances the customer is charged with knowledge of the contents of the published rate schedules and, therefore, may not justifiably rely on misrepresentations regarding rates for utility service." [Citations.] (Van Ness Restaurant v PG&E (1975) 78 CPUC 299, 300-01.)

Partnership next contends that Pac Bell is not entitled to collect any charges because Withers did all the work in connection with the transfer of the foreign exchange service. The contention is not correct.

Withers was not authorized by Pac Bell to enter the B-Box and place additional runners for the aerial feed for new service to 842 Anaheim Boulevard. However, even if he had been authorized to do this, it was still necessary for Pac Bell to send personnel to check the installation to verify that the new cable was proper, verify the service as placed on the RJ21X call assignment and report all the telephone numbers involved to ensure the accuracy of Pac Bell's records and billing. Pac Bell was required to apply its tariff charges in these circumstances.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Partnership is an accounting firm. In November 1989 it conducted its business at 822 Anaheim Boulevard in Anaheim. It was located on the same parcel of real property as an unattached, separate building known as 842 Anaheim Boulevard. Partnership decided to relocate from 822 to 842 Anaheim Boulevard.

2. For several years Partnership had employed Withers, a self-employed installer of telephone systems, to handle its internal telephone communication needs. On November 21, 1989, Partnership hired Withers to move their telephone system from 822 to 842 Anaheim Boulevard.

3. Under Pac Bell's tariff an inside move is one within a limited area of the same building and has a specified tariff rate.

Section 3.1.1 E.5. of Pac Bell's Tariff Schedule CAL. P.U.C. No. A3. provides in part that:

"5. Retermination - Complex Services

A retermination of a primary service from one premises to another in the same or a different building will be considered a disconnection and new connection of that service and 'new' dual element charges are applicable."

4. The relocation of the telephone line from the premises at 822 Anaheim Boulevard to the separate premises at 842 Anaheim Boulevard to the separate premises at 842 Anaheim Boulevard came under the provisions of Section 3.1.1 E.5. of Pac Bell's tariff.

5. On November 25th Withers, without authority from Pac Bell, entered Pac Bell's B-Box and half-tapped the jumpers and installed additional runners for Pac Bell's underground cable to a new aerial feed to 842 Anaheim Boulevard.

6. About 2:30 p.m. on November 25th, Turnbull received a call from Withers. At that time Withers told Turnbull that he had already run the jumpers into the B-Box and service was already established at 842 Anaheim Boulevard. At this time Turnbull realized that the requested change in service was not for an internal move but one for a disconnection and a new connection of service. This was the first time Pac Bell became aware of the situation.

7. On November 27th Turnbull sent another technician to the property who had to verify where the cables were run, verify the service as placed on the RJ21X call assignment and verify that the new cable terminal installed at 842 Anaheim Boulevard was proper. He then reported all the telephone numbers involved to Turnbull. On November 27th Turnbull also notified Pac Bell's Order Discrepancy Desk of what had happened at 822 and 842 Anaheim Boulevard. Thereafter, Pac Bell billed Partnership \$580 in 1980.

accordance with its tariff for the charges in connection with the transfer of the foreign exchange line.

8. Partnership has deposited with the Commission \$580 as a disputed bill deposit in connection with this matter.

Conclusions of Law

1. Pac Bell was required by law to apply its lawful tariff charges to the relocation of the line from 822 to 842 Anaheim Boulevard.

2. The amount of \$580 is the correct tariff charge for the move of the line from 822 to 842 Anaheim Boulevard.

3. Partnership should not be granted any relief in this proceeding.

4. The disputed bill deposit of \$580 should be disbursed to Pac Bell.

O R D E R

IT IS ORDERED that:

1. Complainant, the Partnership of Smith & Engman, is entitled to no relief in this proceeding and the complaint is denied.

2. Complainant's deposit of \$580, and any other deposit made by complainant in connection with this complaint, shall be disbursed to Pacific Bell on the effective date of this order.

This order is effective today.

Dated February 20, 1992, at San Francisco, California.

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


NEAL J. SHULMAN, Executive Director

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

Commissioner Patricia M. Eckert,
being necessarily absent, did not
participate.