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Decision 92-03-016 March 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOSEPH WITHAM,

Complainant,

vs.

PACIFIC BELL (U 1001 C),

Defendant.

ORIGINAL

(ECP)

Case 91-08-051

(Filed August 26, 1991)

Joseph Witham, for himself, complainant.
Adrian Tyler and Lorraine Hussey, for
Pacific Bell, defendant.

O P I N I O N

Joseph Witham (complainant) contests \$1,400.46 in charges from Pacific Bell (Pacific) for telephone calls made during the month of June 1991. Mr. Witham, who operates a telemarketing business with the aid of an automatic dialer machine and other equipment, alleges that throughout the month he was charged for calls made to: (1) numbers not in service, (2) numbers not connected, and (3) numbers not answered. Pacific responds that Mr. Witham was properly charged.

Mr. Witham filed this expedited complaint on August 26, 1991 requesting that the overcharged amount of \$1,400.46 be refunded. He placed the disputed sum on deposit with the Commission. A hearing was held in Pleasanton on October 22, 1991.

At the hearing, Mr. Witham described his equipment as a computerized system to dial out. He explained that he or someone else sits at the machine, listens to the call and the answer, and either disconnects if there is no answer or plays a message to the person on the other end.

He testifies that his computer record of calls made and action taken differs from Pacific's records as evidenced by its billing statement. He asserts that the equipment that he uses in connection with his business is faster and records more detailed calling information than the equipment Pacific uses to register a party's calls. Specifically, Mr. Witham states that his documentation, the system's computer printout, indicates that on a number of calls in which Pacific charged him for a connection, no one answered on the other end. At the same time, his records also show that there were some calls that he did make for which he was not charged.

Mr. Witham surmises that some of the problem may be that his equipment connects and disconnects rapidly, within fifteen seconds, and Pacific's monitoring equipment may be connecting just as his equipment has disconnected and the party being called is picking up. While Mr. Witham acknowledges that he was aware that Pacific's "initial period rates...are for connections of one minute or any fraction thereof,"¹ he expresses frustration with a billing period rate which declines to measure in less than one minute increments. Notwithstanding, he maintains that of the more than 400 pages of calls for which he has been charged, many were to lines that simply were not in service or did not answer.

Pacific contends that it has reviewed Mr. Witham's complaint and allegations regarding the calls and cannot find any evidence of errors. It denies having billed him for calls made to telephone numbers not in service, for calls for which no connection was made or for calls not answered. Pacific states that, while it did not examine all the pages of Mr. Witham's printout, it investigated his claim by reviewing the first six pages of his June bill. It compared these pages with Mr. Witham's computer log

1 Pacific Bell Schedule Cal.P.U.C. No. A6.2.2.1.A(4).

detailing the same dates. The pages consisted of 275 telephone calls, of which 86 were billed by Pacific. Pacific maintains it also identified 21 calls, noted in the log as "incmp" or "lead,"² for which it did not bill him.

In addition, Pacific states that it performed an investigation of its switch by examining the "call supervision" equipment which looks at how the call is made and how it is completed. Then the billing was analyzed to see if it was in sync with the call supervision mechanism. Pacific asserts that the testing revealed no evidence that there was a problem either with call supervision or with the billing. Further, Pacific maintains that if there had been some billing discrepancy, it would have impacted everyone else with the same prefix (846-) as Mr. Witham. Pacific states that it received no additional customer complaints regarding similar problems.

Mr. Witham reports that as soon as he received the disputed bill he stopped using the automatic dialer machine out of the 846 prefix. Therefore, the problem should not recur. He also contends that he doesn't believe that this dispute is a matter of Pacific having done something intentional. He simply hopes that an agreement can be worked out.

While we can appreciate, given the nature of his business, Mr. Witham's frustration with Pacific's current tariffed billing period rate, the expedited complaint procedure is not the proper forum for this issue. Rather, the issue may best be explored, with the assistance of the Commission's Public Advisor's Office, through a petition in the Forum Investigation (I.90-02-047).

² Complainant defines these terms, respectively, as "connection made party hung up within 15 seconds" and "complete message given up to 2 minutes."

With respect to the telephone numbers for which Mr. Witham maintains he was improperly charged, we find that the weight of the evidence does not support the allegations.

O R D E R

IT IS ORDERED that:

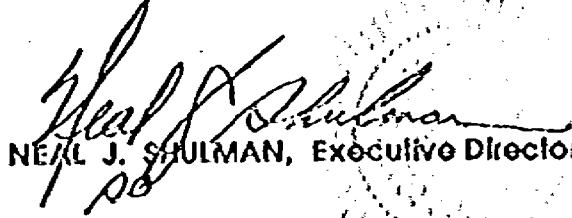
1. Case 91-08-051 is dismissed.
2. Complainant's deposit of \$1,400.46, and any other deposit made by complainant in connection with this complaint, shall be disbursed to Pacific Bell on the effective date of this order.
3. Since all issues raised in this proceeding have now been resolved, this proceeding is closed.

This order becomes effective 30 days from today.

Dated March 11, 1992, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director