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Decision 92-03-092 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Medallion Real Estate Corporation,

Complainant,

vs.

Pacific Bell,

Defendant.

ORIGINAL
Case 91-05-012
(Filed May 1, 1991)

ORDER MODIFYING AND DENYING REHEARING OF DECISION 91-11-036

Pacific Bell (Pacific) has filed an application for rehearing of Decision 91-11-036 alleging that the Commission erred in ordering Pacific to recompute the \$3,128.89 representing charges apportioned to and collected from Medallion Real Estate Corporation (Medallion) as a condition precedent to superseding four telephone business lines previously assigned to Jack W. Huber, Jo Rita Huber, dba Century Medallion Realty aka Century Medallion (Huber). The decision also ordered Pacific to bill and institute appropriate collection procedures to Huber for the charges apportioned to Medallion for the period of September 6 through October 17, 1990.

Huber filed for relief under Chapter 11 of the Bankruptcy Code on September 5, 1990. On October 26, 1990 the bankruptcy court approved the sale of Huber's business to Medallion. Medallion and Huber had entered into an agreement pursuant to Pacific's Tariff Rule No. 23 concerning supersedure for the reassignment of Huber's business telephone numbers. Pacific required Medallion, as a condition of granting the supersedure, to pay Huber's debtor in possession balances on his former Pacific accounts to zero before the supersedure could be effected.

On October 26, 1992, the bankruptcy court issued a ruling apportioning telephone costs to Huber as debtor in possession through October 17, 1990, declaring October 18, 1990

as the date upon which Medallion assumes full responsibility for all obligations incurred thereafter. (See D.91-11-036 at 2-3.) Pacific apportioned one of Huber's accounts with Huber as debtor in possession from September 5 through November 7, 1990. For the remaining three accounts Huber's debtor in possession balance was apportioned from September 5, 1990 through January 7, 1991.

Medallion paid each account to zero, superseded the business line numbers and proceeded against Huber to recover some of the costs. After recovering part of the \$3,123.89 through settlement with Huber, Medallion filed the complaint herein seeking refund of \$848.52 plus interest it paid to Pacific. By the challenged decision, we determined that under the facts of this case it is equitable to use October 17, 1990 as the effective date of supersedure and accordingly ordered Pacific to carry out the recomputation described above. (D.91-11-036 at 12.)

Pacific argues that the Commission erred in finding that it deviated from its established tariffs without proper authority. Pacific's Tariff Rule No. 23 specifically requires the outgoing customer to be responsible for his debt to the utility. There is nothing in the relevant tariff that assigns the responsibility of an outgoing customer's debt to an incoming customer, such as Medallion. Further, while the relevant tariff assigns the outgoing customer's debt responsibility to him, the tariff does not require a zero balance before effecting a supersedure. Pacific also argues that Decision 91-11-036 deprives it of its rights under the federal Bankruptcy Code. However, the challenged decision does not prevent a creditor from pursuing collection from a debtor under the bankruptcy laws. Pacific is free to pursue its rights under section 366 of the Bankruptcy Code and all other relevant sections. The decision does, however, prevent Pacific from collecting Huber's pre-petition debt from Medallion.

Upon further reflection, we find the language of Finding of Fact number 8 confusing and we will modify it as set

forth below. No further discussion is required of applicant's allegations of error. Accordingly, upon reviewing each and every allegation of error raised by complainant, we conclude that sufficient grounds for rehearing of Decision 91-11-036 have not been shown.

Therefore, IT IS ORDERED:

- 1) That the application for rehearing of Decision 91-11-036 filed by Pacific Bell is denied.
- 2) That Finding of Fact number 8 is modified as follows:

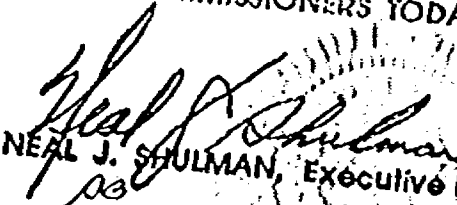
8. In accepting the supersedure form Pacific did not strictly adhere to the provisions of its filed tariff by permitting a deviation through the imposition of the condition that Medallion pay the Huber debtor in possession balance as of November 7, 1990 to zero before granting supersedure.

This order is effective today.

Dated March 31, 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