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Decision 92-05-020 May 8, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Winer Industries, Inc.,  
Complainant,  
vs.  
Pacific Bell,  
Defendant.

(ECP)  
Case 91-12-042  
(Filed December 31, 1991)

Robert Schmalz, for complainant.  
Lea Jones, for defendant.

O P I N I O N

Complainant seeks a declaration that it is not responsible for the telephone bill of a predecessor company and a return of its \$2,673.79 deposit to obtain telephone service. Public hearing was held March 10, 1992.

Complainant's witness testified that Winer Industries, Inc. (complainant) is a New Jersey corporation that on April 1, 1991 purchased the name "Jumpstart" from Jumpstart Sportswear, Inc. and established a California operation under the name Jumpstart Sportswear Division of Winer Industries, Inc. Jumpstart Sportswear, Inc. then went out of business. Jumpstart Sportswear, Inc. had two officers, R. Schamlz and Pat McCormick, who become officers of Winer Industries.

Pat McCormick, on March 20, 1991, called defendant to obtain telephone service for Winer Industries at a new address (different from Jumpstart Sportswear's address) and requested referral service from Jumpstart Sportswear's old telephone number to Winer Industries' new telephone number. Defendant complied. On July 22, 1991, defendant discontinued the referral service because

there was an outstanding bill on the old number of \$2,673.79 and informed complainant that if it wasn't paid, the new number would be disconnected. Winer Industries disputed its obligation to pay the bill for the old number and deposited the \$2,673.79 with the Commission to forestall disconnection.

Defendant's witness testified that Winer Industries was not registered to do business in California until August 19, 1991. Therefore, according to defendant's tariff, it could not issue service in the name of Winer Industries. When Mr. McCormick called defendant in March 1991 to request telephone service at a new location, he requested service in the name of Jumpstart Sportswear, a division of Winer Industries. Defendant rendered service to the new number based on Mr. McCormick's request and the prior history of Jumpstart Sportswear. Under defendant's tariff, when calls to an old number are referred to a new number, the party requesting the reference is obligated to pay the delinquent charges from the old number. (Pacific Bell Tariff, Rule 23.) Further, if a final bill is not paid, other services, within the same class of service, for that customer may be disconnected. (Pacific Bell Tariff, Rule 11.)

We agree with defendant. When Mr. McCormick requested a new number in March 1991, Winer Industries was not doing business in California and could not receive service. Mr. McCormick was an officer of both the old company and the new company and he requested referral service from the old number to the new number. He used the name Jumpstart Sportswear to obtain the new service. The business under the new number was responsible for delinquent charges from the old number because (1) it was the same business and (2) it requested referral service and obtained the benefits of the old number. Under either theory, if Winer Industries wants to retain its new number, it must pay the charges on the old number.

O R D E R

IT IS ORDERED that the relief requested in the complaint is denied and the money on deposit with the Commission shall be paid to defendant.

This order is effective today.

Dated May 8, 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