

JUN 4 1992

Decision 92-06-025 June 3, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
SPORTS MATCH, INC.,

Complainant,

vs.

PACIFIC BELL, (U 1001 C),

Defendant.

ORIGINAL
(ECP)

Case 91-11-052

(Filed November 12, 1991)

OPINION

Complainant Sports Match, Inc. alleges that it was overcharged for telephone service it could not use, due to lack of timely and accurate information from defendant Pacific Bell (PacBell). The amount in dispute is \$1,931.89, which complainant has deposited with the Commission.

Positions of Parties

Complainant

Complainant, represented by its president Morton G. Rodin, disputes the monthly service charges of PacBell for telephone lines installed for complainant's new traffic violator schools. Complainant is in the business of operating these schools for people who elect to attend in order to remove violations from their driving record.

In this instance, Rodin ordered 43 lines plus six remote-call-forwarding (RCF) lines for 7 new offices. The new offices would open after the Department of Motor Vehicles (DMV) published its new list of approved schools on November 1, 1990. However, because of a lawsuit and court injunction against DMV, publication of the list was delayed. Without availability of the new list, people would not be aware of the new schools, rendering the new phone lines useless to complainant. Rodin informed PacBell

representative Chris Fink of the delay, and asked that the lines not be put in service until January 1, 1991, when the new DMV list was expected. Shortly afterwards, Rodin discovered that the new RCF lines were installed and operating. Rodin notified Fink, who agreed that the activation of the lines was a mistake, and that PacBell would correct it and waive the monthly charges for those lines.

On January 2, 1991, Rodin told Fink to start service on the 43 lines, which was done. Shortly after, Rodin learned that an injunction was in effect which prevented the DMV from distributing or using the new list. Rodin called Fink, explaining that he did not want to risk losing the numbers because the new list had already been printed, and would be distributed shortly. Any changed numbers would not be on the list until the next revision. Rodin asked Fink what he could do to hold the numbers for probably 60 but possibly 90 days until the injunction was settled. Rodin was concerned that the monthly service charge was about \$820 per month, but thought that cancelling his order would jeopardize retaining the numbers. Fink replied that he would help Rodin out. Rodin assumed this meant that the monthly charges would be waived as they had been earlier for the RCF lines.

In February 1991, Rodin received a bill for January, and assumed it would be waived. In March, when he received a bill for January and February, Rodin had his office manager Ms. Chamberlain contact Fink to see if the bills should be sent to him for handling. Fink replied that the matter was now out of his hands.

Rodin also contacted Fink to see if PacBell could give him another 30 days of waiving monthly charges, since the resolution of the injunction against the DMV was not progressing as anticipated. Fink again replied that the matter was out of his hands, and that Rodin would have to talk to his supervisor, Ms. Hunsaker. She advised Rodin that Fink did not have authority to change the rules of PacBell, and that the charges could not be

waived. As a result Rodin owed PacBell \$1,931.89 as billed. Hunsaker also informed Rodin that PacBell could disconnect and reconnect the lines for a total charge of \$282. There is no cost to disconnect, while reconnection costs \$282 for the 43 lines. Hunsaker further informed Rodin that although it isn't guaranteed, PacBell's policy is to hold and not reassign business numbers for one year.

Shortly thereafter, Rodin received a notice that if he did not pay the \$1,931.89, all his phones would be disconnected. He then filed this complaint and deposited that amount with the Commission.

Rodin argues that had he been properly informed by PacBell, he could have avoided the disputed charges of \$1,931.89 by paying \$282. Although retaining the lines wasn't guaranteed, chances are most if not all would be available when he needed them. Considering the difference in cost, Rodin would be willing to risk losing a few lines. Rodin believes that Fink misled him by not responding to his question of whether the monthly charges could be waived, and by not adequately and timely informing him of the disconnect and reconnect option.

Chamberlain testified that she talked to Fink on several occasions, but that he only wanted to talk to Rodin. She stated that Fink never told her to pay the January and February 1991 bills.

Rodin subsequently had the lines disconnected until the DMV list was distributed, when he had them reconnected.

Defendant

Defendant PacBell responds that it cannot guarantee that lines will be kept when service is disconnected, that they are frequently reassigned. In provisioning lines, four separate departments of PacBell are involved. Fink testified that PacBell Rule 17 B. clearly states that a customer has no proprietary right to a number, which may be assigned at the discretion of PacBell.

In fact, between November 1990 and January 1991 nine of Rodin's numbers had been reassigned to residential customers, the reassigning occurring on an almost daily basis because of scarcity of lines. Upon discovering the reassignments, PacBell contacted those customers and offered incentives for them to agree to change numbers. Otherwise the business calls for defendant's schools could go to residential customers, at considerable irritation to both the caller and recipient.

Fink testified that he had pushed hard to get the monthly charges waived for the November-December 1990 period. He indicated that this was a business decision based on the cost to PacBell for disconnecting, reconnecting, and recovering the lines that had been reassigned. It was more economical to leave the lines in service and waive monthly charges than to disconnect, recapture the reassigned lines, and reconnect. Fink testified that he could not get the charges waived for the later period because another PacBell person adamantly opposed doing so. Fink subsequently informed complainant that the matter was out of his hands.

Fink further testified that he informed Rodin in early January 1991 that the numbers could not be held for him unless he paid the monthly charges. Fink also discussed the disconnect and reconnect option. Late in January Rodin asked if the monthly charges could be written off; Fink said he didn't think so, but would have to find out from his supervisor. On January 21, Fink informed Rodin that he could not waive the charges; Fink also testified that when Rodin asked him "to handle" this, he said he would. Fink believes that this may have caused the confusion about whether the charges could be waived. Fink testified that again the length of time until the service would be needed was critical to deciding whether it would be cost-effective for PacBell to leave the lines in service and waive charges. It appeared to Rodin at this time that the DMV list would be issued shortly, in a matter of a few weeks or a month.

In several conversations with Rodin in February and March, Fink was again asked whether the monthly charges could be written off. On March 22, Fink talked to his superiors who indicated that no such consideration could be made; upon relaying this information to Rodin, Rodin asked why he was not given this answer earlier so he could have made a rational business decision without incurring nearly \$2,000 in charges for phones he couldn't use. Fink believed he had conveyed the message earlier; if he did, Rodin didn't understand.

Discussion

We consider whether defendant properly responded to complainant with regard to two basic questions:

1. Can the monthly charges be waived for the period from January 1, 1991 until the lines are needed?
2. How can the numbers be normally retained until needed?

Regarding the first question, Fink's testimony is conflicting. He testified that he informed Rodin both that the matter was out of his hands and that the charges could not be waived. Later, under questioning by Rodin he testified that he never stated that "no we can't adjust the charges" because of the uncertainty of when the lines would be needed. Fink further testified that if he had a specific date for need of the service, he could have argued for an adjustment, due to the cost to PacBell of disconnecting, reconnecting, and recapturing lines that may have been reassigned.

Hunsaker testified that the tariffs and rules do not allow waiving charges, but offered no specific reference to the tariffs or rules that preclude adjustments of this type. Fink believed there was room for adjusting, depending on the costs of disconnecting and reconnecting to PacBell. If Hunsaker is correct,

the lengthy discussions of this issue among her, Fink, and another PacBell representative were irrelevant.

This conflicting testimony concerns us: we have insufficient evidence to determine whether either Fink or Hunsaker is correct. Yet PacBell believes that Rodin should have understood his options. PacBell offers no justification for not properly and timely informing Rodin. If the time period was the critical consideration, then PacBell should have so advised Rodin and indicated what time period could be considered.

PacBell weakly tries to justify its actions by the fact that it never said yes to Rodin's request; but it also never said no. PacBell also tries to justify the lack of timely response based on the uncertainty in time period until the lines would be needed by Rodin. Yet if Hunsaker is correct in stating that the tariffs and rules do not allow waiving the monthly charges, the time period had no significance. In either case, there is no reason for PacBell to not have conveyed an answer to Rodin in January 1991. A customer cannot be expected to understand the intricacies and interpretations of a utility's rules and tariffs. A customer is entitled to a response. In the absence of a negative response it would not be unreasonable for Rodin to assume that the monthly charges could be waived, especially since they had been waived earlier.

Apparently neither Fink, Hunsaker nor anyone else from PacBell ever directly responded to Rodin's question until March 22, 1991, just prior to the March 26, 1991 letter notifying Rodin that all his phone services would be disconnected if he did not immediately pay the \$1,931.89 bill.

We conclude that PacBell erred in handling complainant's service, by not responding in a timely manner to Rodin's request regarding possibly waiving the monthly charges. By not answering Rodin, PacBell precluded him from exercising the disconnect and

reconnect option at a time that would have avoided most or all of the \$1,931.89 monthly charges.

With regard to the question of retention of numbers, we also have conflicting PacBell testimony. On the one hand, PacBell's policy is to retain and not reassign business lines for a year, although it cannot guarantee this. On the other hand, Fink testified that due to the involvement of four different departments, the lines cannot be retained and in fact are reassigned on a nearly daily basis. This requires PacBell to recover the business lines from residential customers at a cost to PacBell. We find this difficult to understand. Apparently, there is a lack of communication and control among PacBell departments. We observe that active lines are not reassigned; we believe similar controls could be used to keep business lines from being reassigned. An occasional exception might be tolerable, but reassigning these lines on a daily basis, when the policy is to not reassign business lines for a year, indicates a basic lack of control by PacBell.

We conclude that PacBell did not properly inform Rodin of the disconnect and reconnect option. Fink did not correctly inform him of PacBell's policy on reassigning business lines. When Hunsaker informed him, it was too late for Rodin to practically exercise that option for the early 1991 period.

We cannot be sure what action Rodin would have taken had he been properly informed. Rodin testified that he would have accepted the lowest cost option, along with its risks. That option would have been to disconnect the lines until he needed them, then have them reconnected. The testimony of Rodin and Chamberlain is consistent and credible. It is reasonable to assume that he most likely would have taken that option, had he been accurately and timely informed by PacBell.

We conclude that complainant should not be held responsible for the \$1,931.89 in question. Complainant should be

responsible only for the \$282 reconnection charge, but he has already paid that amount when he exercised the disconnect and reconnect option later. Had he been properly informed and exercised the option earlier, he would have incurred the \$282 charge only once, since the lines would not have been reconnected until the DMV list was released. Therefore, we will order the \$1,931.89 to be disbursed to complainant.

Since this complaint is filed under our expedited complaint procedure, no separate findings of fact or conclusions of law will be made.

O R D E R

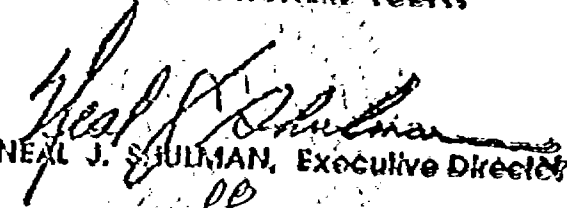
IT IS ORDERED that the \$1,931.89 deposited with the Commission shall be disbursed to Sport Match, Inc.

This order becomes effective 30 days from today.

Dated June 3, 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. SULMAN, Executive Director