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Decision 92-08-028 August 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Westcom Long Distance, Inc.
(U5163C),
Complainant,

vs.

Citizens Utilities Company of
California (U87C),
Defendant.

ORIGINAL

Case 92-03-049
(Filed March 30, 1992)

J. Michael Sunde, for Westcom Long Distance,
Inc., complainant.
Ellen S. Deutsch, Attorney at Law, for Citizens
Utilities Company of California, defendant.

INTERIM OPINION

Introduction

Today's interim opinion denies Westcom Long Distance, Inc.'s (Westcom) request for a preliminary and permanent injunction. Westcom had requested an injunction to prevent Citizens Utilities Company of California (Citizens) from disconnecting the access services provided by Citizens to Westcom pending the resolution of the underlying billing disputes. The threatened disconnection arose as a result of Westcom's withholding of the disputed amounts.

Today's decision holds that Citizens may immediately terminate service to Westcom pursuant to its applicable tariff provisions for Westcom's failure to pay in accordance with the applicable tariff payment provision. Although Citizens is permitted to immediately terminate service for nonpayment, the Commission requests Citizens to exercise restraint for a period of two weeks so that the customers of Westcom can arrange for

alternate long distance carriers in the event Westcom decides to continue withholding the amounts in dispute.

Procedural Background

On March 30, 1992, Westcom filed a complaint with the Commission naming Citizens as the defendant. Citizens provides Westcom with Feature Group B (FGB) and Feature Group D (FGD) switched access service within Citizens' service territory. Westcom disputes a large portion of the FGB and FGD charges that Citizens has billed to Westcom. At the time the complaint was filed, approximately \$34,500 was being withheld by Westcom.

Westcom's complaint alleges that on March 12, 1992, Citizens threatened disconnection of its service connections for nonpayment of billings issued by Citizens to Westcom. Attached as Exhibit 1 to Westcom's complaint was a letter dated March 12, 1992 from Citizens to J. Michael Sunde of Westcom. That letter contained a notice at the bottom of the first page stating that if full payment of \$34,478.59 was not received by April 3, 1992, the FGB and FGD service would be disconnected. In the upper left hand corner of the first page, a typed notation indicated that the letter was sent by certified mail.

Exhibit 1 of the complaint also contains two letters from Citizens to Westcom dated February 26, 1992. The first letter described the overdue amounts for FGB service, while the second letter described the overdue amounts for FGD service. Both letters contained a notice that service may be discontinued if full payment was not received within thirty days. In the upper left hand corner on the first page of both letters, there was a typed notation that the letters were sent by certified mail.

Westcom's complaint requests, among other things, that the Commission find that Citizens not be allowed to disconnect any services provided by Citizens to Westcom, and that the Commission issue a temporary restraining order, a preliminary injunction, and a permanent injunction preventing Citizens from disconnecting any

services provided to Westcom pending the resolution of the disputed amounts withheld by Westcom.

On March 31, 1992, the Commission's Docket Office served a copy of the complaint on Citizens. Due to Westcom's request for a temporary restraining order, and the allegation regarding possible termination of service, the assigned Administrative Law Judge (ALJ) separately contacted both parties by telephone on April 1, 1992 to determine whether the Commission would need to consider the issuance of a temporary restraining order. As a result of those phone conversations, Citizens agreed to refrain from terminating its service connections to Westcom provided that an expeditious hearing be set regarding Westcom's complaint. Westcom agreed to deposit \$12,608.79 with the Commission pursuant to Rule and Regulation No. 11 of Citizens' tariffs. The assigned ALJ confirmed these arrangements with both parties in a letter dated April 2, 1992. The letter proposed hearings in mid May, and stated that a hearing date would be set once Citizens filed its answer.

Citizens filed its answer to the complaint on April 21, 1992. In Citizens' answer to the complaint, Citizens "admits the allegation that notice was sent to Westcom stating service would be disconnected if payment was not received." At pages 2 and 3 of the answer, Citizens described the late payment notices sent by Citizens to Westcom on February 26, 1992 and March 12, 1992. Attached to Citizens' answer were Exhibits D and G, the three letters described earlier. Exhibit D consists of the two letters dated February 26, 1992, and the return receipts signed by a Westcom employee indicating receipt of the two letters by Westcom via certified mail on March 3, 1992. Exhibit G is a copy of the letter dated March 12, 1992 from Citizens to Westcom regarding the past due FGB and FGD accounts, and a copy of the return receipt. According to the return receipt, Westcom received this letter via certified mail on March 16, 1992.

Following the filing of the answer, an ALJ Ruling was issued setting the evidentiary hearings for June 2, 1992 through June 4, 1992. On May 18, 1992, Westcom filed an amended complaint. Although the amended complaint made several changes to the complaint, the changes do not have an effect on the outcome of this interim opinion.

On May 27, 1992, Citizens filed its answer to Westcom's amended complaint, and a cross complaint for payment of past due amounts. Citizens' cross complaint alleges that as of May 26, 1992, the amount owed to Citizens by Westcom is \$49,866.71. Citizens alleges that Westcom continues to utilize Citizens' facilities, which produces revenues for Westcom, while Citizens continues to receive no payment for the services that it provides. Citizens' cross complaint requests that the Commission issue an order requiring Westcom to pay the outstanding amount to Citizens, or to pay the outstanding amount to the Commission pending the outcome of the hearing. Citizens also filed a Motion to Strike certain allegations in Westcom's complaint relating to the FGB service. Citizens' motion was based on the theory that Westcom had declared in its access service requests that the FGB services are 100 percent interstate.

On the first day of hearing, Westcom provided a written opposition to Citizens' motion to strike. After oral argument on the motion to strike, the assigned ALJ denied Citizens' motion.

At the beginning and at the end of the evidentiary hearings, the assigned ALJ stated that it appeared that an interim decision in this proceeding would be necessary for a variety of reasons. The first reason stated is that approximately \$47,000 in billings is in dispute, of which \$12,608.79 is on deposit with the Commission, and the remainder is being withheld by Westcom. Second, Citizens is continuing to provide service to Westcom, although Citizens believes it has a right to terminate service if the disputed amount is withheld by the customer. Third, the

disputes over the billings are likely to continue and the amount in dispute is likely to increase if service is continued. Fourth, Westcom's complaint seeks a preliminary and permanent injunction preventing Citizens from terminating service pending the resolution of the disputed amount withheld by Westcom. Fifth, Citizens' cross complaint requests the Commission to order Westcom to pay the disputed amount to Citizens or to the Commission. And sixth, due to the out of town hearings, a transcript will not be available until late July, and the matter will not be submitted until concurrent closing briefs are filed on August 25, 1992.

An opportunity was given to both parties at the conclusion of the hearings to argue in support or in opposition to the need for such a decision. Westcom opposed, while Citizens supported the issuance of an interim decision. After arguments were heard on the necessity of an interim decision, the ALJ stated that such a decision would be prepared for the Commission's consideration.

Issues Presented

The main issue raised by Westcom's complaint revolves around the appropriate charges for services that Citizens provides to Westcom. The evidence presented at the hearing reflects disputes over timing differences, where the calls are originated and terminated, and over which facilities the traffic is carried. An integral part of the dispute concerns the appropriate charges that apply to the access services that Citizens provides to Westcom. Some of these differences may be resolved by joint testing of both Westcom's and Citizens' switching and billing

systems.¹ The other differences will have to be resolved in a Commission decision after a careful review of all of the exhibits, the testimony, and the briefs.

In the interim, Citizens continues to provide service to Westcom. As of May 27, 1992, Westcom is withholding \$47,751.05 as the disputed amount. (Exhibits 30, 32.) Of this disputed amount, \$12,608.79 has been deposited with the Commission. The immediate question that needs to be addressed is whether Westcom can withhold payment of the disputed amount without the risk of Citizens terminating its services provided to Westcom.

Westcom takes the position that under the access service tariffs of Citizens, Westcom can withhold the disputed amount, and that Citizens cannot terminate its services for that reason. Citizens takes a contrary position, and argues that if the disputed monies are not paid to Citizens, that its tariffs permit the termination of service.

Discussion

It is clear that immediate Commission action is necessary in this case. A large portion of the amount in dispute is being withheld by Westcom. Of the \$47,751.05 in dispute, only \$12,608.79 has been deposited by Westcom with the Commission. If the disputed amount is not paid directly to Citizens, or no further monies are deposited with the Commission pending resolution of this dispute, Citizens is likely to terminate service to Westcom. Any termination of access service will prevent Westcom's presubscribed customers from making interLATA calls. Thus, the Commission is faced with a billing dispute on the one hand, and the possible

¹ Prior to the hearing, Westcom and Citizens were unable to reach an agreement to allow joint testing of both companies. At the hearing, both parties were encouraged to reach a mutual agreement allowing joint testing with the aid of neutral Commission observers. This testing took place on July 28, 1992.

cutoff of service to customers of Westcom due to the billing dispute on the other. The Commission must act now to prevent the possible cutoff of service to Westcom customers.

At the outset, we must address the issue raised by the parties as to whether this Commission has jurisdiction over the dispute. This issue arises because when Westcom filled out the access service request forms for FGB and FGD service, Westcom specified on the forms that the FGB and FGD service would be 100 percent interstate use. All of the FGB billings are based on Citizens' interstate access service tariff rates. Although the FGD access service request forms also indicated 100 percent interstate usage, Citizens was able to separately account for the interstate and intrastate usage.

Although Citizens moved to strike Westcom's allegations concerning FGB service, that motion was denied on the first day of hearings. The reason the motion was denied was that Westcom's complaint alleged that it was providing interLATA service to its customers on an intrastate basis. Westcom's President, J. Michael Sunde, testified at the hearings that approximately 70 to 80 percent of the FGB usage was intrastate in nature, and that approximately 70 percent of the FGD service was intrastate usage. Citizens' witnesses testified that Citizens cannot determine if the FGB service is being used on an interstate or intrastate basis because Westcom's customers access the FGB service over a 950 prefix number. Due to the fact that the 950 number is routed to Westcom, Citizens cannot trace the call once the 950 number is accessed. Therefore, Citizens must rely on Westcom's records to determine if an FGB call was made intrastate.

Due to the foregoing reasons, and because Westcom filed its complaint with this Commission, as opposed to the Federal Communications Commission, the Commission has jurisdiction over the intrastate billings. Those billing disputes will be addressed in the near future, after the parties have submitted their closing

briefs. In the interim, the Commission is in a position to issue an order determining whether Citizens can terminate service if the disputed amounts are withheld by Westcom. Such power is contained in Public Utilities (PU) Code § 701,² and by virtue of the fact that Westcom and Citizens are public utilities subject to the jurisdiction of the Commission.

Citizens' position that it can terminate its access services if the disputed amount is not paid appears to be in conflict with Citizens' Rule and Regulation (Rule) No. 11.³ Rule 11 provides that if the "subscriber" and Citizens fail to agree on a bill for telephone service, and the disputed amount is not paid by the date due shown on the bill, Citizens will notify the customer in writing that disputed amounts may be deposited with the Commission within 15 days of the notice. If the disputed amount is deposited with the Commission within that time period, service will not be disconnected. Failure to make that deposit will warrant discontinuance of service without further notice. Rule No. 11 also provides that if additional bills become due which the subscriber wishes to dispute, those additional amounts must be deposited with the Commission before the due date or discontinuance of service may occur.

In order to determine if Rule No. 11 applies in this case, we must refer to Rule No. 11 and the definitions contained elsewhere in Citizens' tariffs. The term "subscriber," as used in Rule No. 11, is defined in Rule No. 1 of Citizens' tariffs. A

2 PU Code § 701 states: "The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

3 This is a Commission approved tariff on file with the Commission.

subscriber is defined as a "customer." A customer is "an individual or concern regularly receiving exchange telephone service other than that from public telephone stations." The term "exchange service" is defined as "Telephone service furnished between subscribers within an exchange area." An "exchange" is defined as "A telephone system providing service within a specified area as shown on maps filed elsewhere in the tariff schedules and within which communications are considered as exchange messages, except those messages between toll points."

The services that Citizens provides to Westcom are not exchange telephone services. Instead, the services provided by Citizens to Westcom are for the purpose of originating and terminating interLATA exchange access. Therefore, we find that Citizens' Rule No. 11 is not applicable to its access service tariff.

The tariff governing Citizens' intrastate access service is contained in Schedule No. B-2 of Citizens' tariffs. That schedule applies to access service within a LATA for connection in interLATA communication facilities for intrastate interLATA carriers within the operating territory of Citizens. In Schedule No. B-2, Citizens "assents to, adopts, and concurs in" the following Pacific Bell tariffs, along with any amendments and successive issues, "for the purpose of furnishing intrastate Access Services...":

"Schedule Cal. P.U.C. No. 175-T, Access Services within a Local Access and Transport Area (LATA) or equivalent Market Area (MA) for connection to Interlata Communications services for Intrastate Interlata carriers, Sections 1 (one) to 7 (seven), Section 8.6 and 9 (nine) to 15 (fifteen) with the exception of Section 3, Paragraph 7.(H), Section 6.2.9(B)(2), Section 8.6.1(K)(3), Section 13.3.3(c), Presubscription, and Section 13.3.12, Paragraphs D., E., F., G., and H., High Voltage Protection. The rates charged by the Utility for High Voltage Protection Services are found

in Schedule C-1 of the Utility's filed tariffs."

Sections 1.1 and 1.3 of Pacific Bell's Schedule Cal.P.U.C. No. 175-T (175-T) tariff provides in pertinent part:

"1.1 This tariff contains regulations, rates and charges applicable to the provision of Carrier Common Line, End User Access, Switched Access and Special Access Services, and other miscellaneous services, hereinafter referred to collectively as service(s), provided by Pacific Bell, hereinafter referred to as the Utility, to customers.

"All services available to customers for the purpose of originating and terminating intrastate interLATA exchange access are contained herein. In addition, provisions for intraLATA High Capacity Service are set forth in Section 7 following.

[Section 1.2 omitted.]

"1.3 The regulations, rates and charges contained herein are in addition to the applicable regulations, rates and charges specified in other tariffs of the Utility which are referenced herein."

A reading of Sections 1.1 and 1.3 of Pacific Bell's 175-T tariff, as well as a review of the other sections within the schedule, lead us to conclude that all of the regulations, rates and charges applicable to Citizens' provision of access services are contained within the 175-T tariff, and in the other Pacific Bell tariffs that are specifically referenced in the 175-T tariff. Thus, in order to determine whether Citizens has a right to terminate its access services for nonpayment, we must focus in on the 175-T tariff.

There is no provision in the Schedule No. 175-T tariff that is similar to Citizens' Rule No. 11 regarding the disputed amount. Instead, Section 2.1.8 (B) of the 175-T tariff provides,

in pertinent part, that if a customer⁴ fails to comply with Section 2.4 (Payment Arrangements and Credit Allowances) of the 175-T tariff:

"... including any payments to be made by it on the dates and times herein specified, the Utility may, on a thirty (30) days written notice, by Certified U.S. Mail to the person designated by that customer to receive such notices of noncompliance, discontinue the provision of the services involved to the non-complying customer at any time thereafter. In the case of such discontinuance, all applicable charges, shall become due. If the Utility does not discontinue the provision of the services involved on the date specified in the thirty (30) days notice, and the customer's noncompliance continues, nothing contained herein shall preclude the Utility's right to discontinue the provision of the services to the non-complying customer without further notice."

Westcom contends that it has a right to withhold payment of the disputed amount. Westcom relies on the language contained in Section 2.4.1(B)(3)(b) of the 175-T tariff which reads as follows:

"Further, if any portion of the payment is received by the Utility after the payment date as set forth in (a) preceding, then a late payment penalty shall be due to the Utility. The late payment penalty shall be 1.5% of the entire unpaid balance for each month or portion thereof that an outstanding balance remains.

"In the event that a billing dispute concerning any charges billed to the customer by the Utility is resolved in favor of the Utility, any payments withheld pending settlement of the

4 The term "customer" as used in Section 2.1.8 (B) of the 175-T tariff is defined to include interexchange carriers who subscribe to the services offered under the 175-T tariff. (Pacific Bell Schedule No. 175-T, Section 2.6.)

dispute shall be subject to the late payment penalty.

"If the customer disputes the bill and pays only the undisputed amount on or before the payment date, and the dispute is resolved in favor of the Utility, late payment charge for the disputed amount will start from the payment due date until the disputed amount is paid.

"If the billing dispute is resolved in favor of the customer, no late payment penalty will apply to the disputed amount."

Westcom argues that Section 2.4.1(B)(3)(b) of the 175-T tariff controls in this case because it contains language in the second and third paragraphs that allow the customer to withhold payment for any disputed amount. Citizens contends that the tariff provision cited by Westcom only pertains to when a late payment charge should apply, and that service can be terminated if no payment is made.

To determine if the tariff provisions cited by Westcom and Citizens are in conflict, we must turn to the law as it relates to tariff interpretation. Where there is room for construction as to the meaning of a tariff, the Commission has the authority to determine what construction shall be followed. (1 CRC 56, 57 [Decision (D.) 30].) Usually tariff ambiguities are to be resolved in favor of the customer and against the utility. (4 CPUC2d 26, 33 [D.91934]; 60 CPUC 74, 75 [D.64022].) However, an interpretation of tariff language which is strained or that produces an absurd or unreasonable result are to be avoided. (80 CPUC 806, 814 [D.86714]; 78 CPUC 201, 204 [D.84266]; 64 CPUC 590, 596 [D.69499].) As the Railroad Commission, the forerunner to the Commission, noted:

"Under generally recognized rules of tariff interpretation the tariff should be given a fair and reasonable construction and not a strained or unnatural one; all the pertinent provisions of the tariff should be considered together, and if those provisions may be said to express the intention of the framers under a

fair and reasonable construction, that intention should be given effect; and constructions which render some provisions of the tariff a nullity, and which produce absurd or unreasonable results, should be avoided." (46 CRC 147, 149 [D.38329].)

Section 2.1.8(B) and Section 2.4.1(B)(3)(b) of the 175-T tariff should be considered together. Section 2.1.8(B) clearly provides that if payments are not made in accordance with Section 2.4, the utility may discontinue service upon thirty days written notice sent by certified mail.

The section which Westcom relies on is in the context of when the late payment charge arises. Indeed, in every paragraph of Section 2.4.1(B)(3)(b), the late payment penalty is discussed. Although the second and third paragraphs of the late payment penalty section mentions withheld payments and disputed bills, those two passages relate to when the late payment penalty applies. It is noteworthy that the section which Westcom relies on does not contain any language which prohibits the serving utility from terminating service in the event the customer decides to withhold payment.

An absurd and unreasonable result would occur if the Commission were to interpret Section 2.4.1(B)(3)(b) as providing that service should remain in effect during the period that disputed monies are being withheld by the customer. Such an interpretation would mean that the access service provider remains obligated to provide service for an indefinite period of time while the customer could withhold payment and still receive service. The customer would be generating revenues from its customers who subscribed to its interLATA service, but the local exchange carrier who provides the access service would not see any of those revenues paid over to it for providing the access service. This could lead to a situation where the interexchange carrier disputes the access service charges every month, withholds payment, and continues to

receive access service without any threat of having its service terminated. That means the access service provider would have to bear the cost of providing the service to the nonpaying customer. Such a result is absurd and unreasonable.

For all of the reasons discussed above, we find that Section 2.1.8(B) permits a local exchange carrier providing access service to an interexchange carrier to discontinue service after a thirty-day notice has been sent by certified mail, if the interexchange carrier fails to comply with any of the payment provisions contained in Section 2.4 of the 175-T tariff.

It is clear from a review of Westcom's complaint and Citizens' answer to the complaint, that on February 26, 1992, two notices regarding the possible disconnection of service were sent to Westcom from Citizens via certified mail. Citizens received those letters on March 3, 1992. The threatened termination date of April 3, 1992 was 31 days after the notice was received. In accordance with Section 2.18(B) of the 175-T tariff, the access service provider has the right to discontinue service after the 30 days without further notice if the noncompliance continues and if the provider did not terminate service on the date specified.

In Citizens' cross complaint, Citizens requests that the Commission order Westcom to pay the outstanding amount to Citizens, or to pay the disputed amount to the Commission to be held in escrow pending a final decision in this case. Although we believe equity demands that Westcom tender the disputed amount to Citizens or to the Commission to hold pending a final decision in this case, we are reluctant to order Westcom to do so. Our reasoning is that the Commission has no jurisdiction to make an order requiring

payment of an overdue bill.⁵ (2 CPUC2d 533, 540-541 [D:90997].) In the event Westcom does not voluntarily tender the entire amount to Citizens, or to the Commission to hold in escrow pending the outcome of this case,⁶ Citizens is permitted under its applicable intrastate access service tariffs to terminate service to Westcom without any further notice.

Due to the amount in dispute, the continuation of the access service, and the continuing nature of this dispute, this order shall be effective immediately. Although Citizens is authorized under the applicable tariff provisions to terminate service immediately, the Commission hopes that Citizens will refrain from terminating its service until fourteen days after this decision is mailed. The request for such restraint is due to the effect on Westcom's customers. If Citizens terminates service to Westcom, Westcom's presubscribed long distance customers may encounter a situation where they can no longer place their interLATA calls through Westcom if Westcom chooses to withhold payment.

Under PU Code § 451, every public utility has an obligation to furnish and maintain adequate, efficient, just, and reasonable service. Implicit in the granting of a certificate of public convenience and necessity is the duty of the utility to

⁵ This is distinguished from the Commission's power to determine if the billing practices of Citizens are in accord with its tariffs.

⁶ If Westcom tenders the monies to Citizens or deposits the monies with the Commission, the outstanding amount, including all late payment charges, should be tendered to avoid termination of service. In addition, any future disputed billings should be paid in the same manner to avoid termination of service. (See Pacific Bell Schedule No. 175-T, Sections 2.1.8(B), 2.4.1.) If the billing dispute is resolved in Westcom's favor, any overbilled amount will be refunded to Westcom. (See Pacific Bell Schedule No. 175-T, Section 2.4.1(B)(3)(c).)

provide service. (3 CRC 948, 956 (D.1109).) In addition, the utility has the general duty to exercise reasonable care in operating its systems and to avoid an unreasonable risk of harm to its customers and their property. (Langley v. Pacific Gas and Electric Co. (1953) 41 Cal.2d 655, 660-661.) As a public utility subject to the jurisdiction of this Commission, and to protect Westcom's customers from suffering undue harm, we will require Westcom to send a notice within seven days of the mail date of this decision to all of its California customers in Citizens' service territory if it decides not to pay the disputed amount to the Commission or to Citizens. The notice shall read as follows:

"Dear Customer:

"Due to a billing dispute with the access service provider, Westcom will be unable to process your long distance calls beginning [date fourteen days after the mailing date of this decision]. You should make arrangements with another long distance carrier before this date so that your long distance service will not be interrupted.

"We apologize for any inconvenience that this may cause you."

Such a notice will allow customers of Westcom an opportunity to arrange for an alternate long distance carrier in the event Westcom decides to withhold the amount in dispute.

Findings of Fact

1. On March 30, 1992, Westcom filed a complaint with the Commission naming Citizens as the defendant.
2. The complaint alleges that Citizens threatened disconnection of its services effective April 3, 1992, and that Westcom disputed the amount billed to it by Citizens for providing intrastate access services.
3. On April 1, 1992, the assigned ALJ contacted both of the parties to determine whether the issuance of a temporary restraining order would be necessary. It was determined that such

an order would not be necessary due to an informal agreement of the parties.

4. Shortly thereafter, Westcom deposited the sum of \$12,608.79 with the Commission.

5. On April 21, 1992, Citizens filed its answer to the complaint and admitted that it sent several notices to Westcom threatening disconnection of service if payment was not received.

6. An amended complaint was filed by Westcom on May 18, 1992.

7. On May 27, 1992, Citizens filed its answer to Westcom's amended complaint, and a cross complaint for payment of past due amounts.

8. Citizens' cross complaint alleges that as of May 26, 1992, the amount owed by Westcom is \$49,866.71, and requests the Commission to order Westcom to pay all outstanding amounts to Citizens or to the Commission pending the outcome of the hearing.

9. Citizens' motion to strike the FGB references from Westcom's complaint was denied on June 2, 1992.

10. Hearings were held from June 2, 1992 through June 4, 1992.

11. At the conclusion of the hearings, the parties were given an opportunity to argue in support or in opposition to the need for the issuance of an interim decision in this matter.

12. There is an immediate need to issue an interim decision as to whether Citizens has the right to terminate service to Westcom for withholding payment of the disputed amount.

13. Due to the amount in dispute, the continuation of the access services, and the continuing nature of this dispute, this order should be effective immediately.

Conclusions of Law

1. The Commission has jurisdiction over disputes regarding intrastate rates and charges.

2. The Commission has the power under PU Code § 701 to issue an order as to whether an access service provider can terminate service if monies are withheld by the customer.

3. Citizens' Rule and Regulation No. 11 applies to its exchange telephone service.

4. Citizens' access service tariff adopts and concurs with most of Pacific Bell's access service tariffs contained in Pacific Bell's 175-T tariff.

5. All of the regulations, rates, and charges applicable to Citizens' provision of access services are contained in Pacific Bell's 175-T tariff, and in the other Pacific Bell tariffs that are specifically referenced in the 175-T tariff.

6. There is no provision in the 175-T tariff that is similar to Citizens Rule and Regulation No. 11 regarding the disputed amount.

7. Although tariff ambiguities are to be resolved in favor of the customer and against the utility, an interpretation of a tariff that is strained or that produces an absurd or unreasonable result is to be avoided.

8. All the pertinent provisions of the tariff should be considered together, and tariff interpretation which renders some provisions of the tariff a nullity, and which produces absurd or unreasonable results, should be avoided.

9. The references to withholding of payment in Section 2.4.1(B)(3)(b) of the 175-T tariff relates only to the application of the late payment penalty.

10. Section 2.4.1(B)(3)(b) of the 175-T tariff does not prohibit the serving utility from terminating service if monies are withheld by the disputing party.

11. Section 2.18(B) of the 175-T tariff allows the access service provider to discontinue service, after a thirty-day notice has been sent by certified mail, if the customer fails to comply

with any of the payment provisions contained in Section 2.4 of the 175-T tariff.

12. Thirty-day notice of possible disconnection was mailed to Westcom by Citizens on February 26, 1992.

13. The Commission has no jurisdiction to issue an order requiring a customer to pay an overdue bill.

14. The Commission has the power to determine if the billing practices of the serving utility are consistent with its tariffs.

15. As a public utility subject to the jurisdiction of this Commission, Westcom has a duty to provide services to its customers.

INTERIM ORDER

IT IS ORDERED that:

1. Westcom Long Distance, Inc.'s (Westcom) request for a preliminary injunction is denied.

2. Westcom's request for a permanent injunction is denied.

3. Citizens Utilities Company of California's (Citizens) request for an order directing Westcom to pay the overdue bills to Citizens or to the Commission pending a decision regarding the billing dispute is denied.

4. Citizens may immediately terminate service to Westcom pursuant to its applicable tariff provisions for failure of Westcom to pay in accordance with Section 2.4 of the 175-T tariff. Although Citizens may immediately terminate service, the Commission urges Citizens to refrain from doing so until 14 days from the mailing date of this decision.

5. If Westcom decides to withhold payment of any portion of the amount in dispute, Westcom shall send a letter to all of its California customers in Citizens' service territory within seven days from the mailing date of this decision. Such a letter shall use the same text as described in the discussion portion of this

decision, and a copy of such letter shall be forwarded to the Telecommunications Branch of the Commission's Advisory and Compliance Division on the same date the letters are mailed to Westcom's customers.

This order is effective today.

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

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

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director