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Decision 92-11-037 November 23, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Walter Teubner,
 Complainant,
 vs.
 Pacific Bell (U 1001 C),
 Defendant.

ORIGINAL

Case 92-02-036
(Filed February 19, 1992)

O P I N I O N

Summary

This decision addresses the complaint filed on February 19, 1992 by Walter Teubner (complainant) against Pacific Bell (defendant). The complaint revolves around the actions taken by the defendant in connection with two telephone accounts, that the complainant established in his name, when the complainant was unable to pay the amount due on one of the accounts. After evaluating the evidence, we conclude that Pacific Bell's actions did not violate any rule, order, or law of the Commission, and that the relief sought by the complainant should be denied.

Background

On February 19, 1992, the complainant filed a complaint with the Commission against the defendant. The complaint, which contains vague allegations, essentially alleges that the complainant had no phone service at a critical time; that there was no timely action nor assistance to correct the matter; that the credit and collection actions of the defendant do not comply with federal and state credit protection laws; that the billing practices of the defendant are inefficient and inconsistent; that the tariff of the defendant regarding disconnection of service for nonpayment of a bill is being misapplied and misused; and that the

defendant's provisions for hardship and life threatening illness are poor or nonexistent, and in this case are being abused by the defendant to the detriment of the complainant.

The defendant filed its Motion to Dismiss and Answer to the Complaint on March 26, 1992. In an Administrative Law Judge's Ruling of April 16, 1992, the defendant's motion to dismiss was denied and an evidentiary hearing was noticed for May 18, 1992.

At the evidentiary hearing, held on May 18, 1992, the complainant testified on his own behalf, and two witnesses testified on behalf of the defendant. The evidence established the following facts. The complainant opened up two telephone accounts with Pacific Bell. The first account was opened in July 1989 for the telephone number (213) 834-2410, which was the number that the complainant and his wife used. The physical address of the 834 account was located inside the complainant's own personal residence at 439 East Double Street in Carson, California.¹ The complainant does not dispute any of the amounts owed on the 834 account.

The second account that the complainant established was for the telephone number (213) 518-6581. That account was opened on or about October 31, 1990. This telephone number was also located at the 439 East Double Street address, but in a different rental unit. According to the complainant, he arranged for telephone service to serve this unit out of friendship and kindness to the tenant of this unit. The complainant admits that the 518 account was opened under his name, and that he was responsible for the bills arising from that account.

¹ According to the testimony of the complainant, the 439 East Double Street address is divided into three separate residential areas. The complainant and his wife occupied one of the units.

The 518 account incurred substantial long distance telephone bills before service was permanently disconnected at the request of the complainant in April 1991. The complainant testified that all of those calls were made by the tenants living in that unit, and that he did not make any of those calls. At the time the 518 account was permanently disconnected, the outstanding amount was \$769.87.

The complainant testified that he contacted the defendant in late February or early March of 1991 to explain the circumstances regarding the 518 account, and that he would try to pay at least \$100 per month toward the account. The complainant testified at the hearing that he was obligated for the entire amount due on the 518 account.

On or about April 22, 1991, the defendant mailed a letter to the complainant, which was received in evidence as Exhibit 1, informing him that his 834 account would be disconnected if full payment was not received on the 518 account. The complainant testified that this was the first time he realized that the defendant would cut off his 834 account for failure to pay the 518 account. The complainant testified that immediately upon receiving that letter, he called the defendant and explained the circumstances about the 518 account and told the defendant's customer service representative about the health problems he and his wife are suffering. He also testified that he told the defendant that he would try to the best of his ability to pay off the delinquent account with \$100 per month payments. The complainant stated that he believed his initial offer in February or March to make payments of \$100 had been agreed to by the defendant, but was now receiving pressure in the form of Exhibit 1 to pay the amount in full.

The complainant testified that there were months when he did not make any payments, and other months where he paid more than \$100 on the 518 account. He did not make a \$100 payment on

July 15, 1991, and service on his 834 account was cut off on August 29, 1991. Shortly thereafter, while service was cut off except for 911 calls, the complainant had to dial 911 to get his wife to the hospital after she suffered a stroke.

According to the complainant, service to the 834 account was restored on or about September 7, 1991 when a payment of \$200 was paid toward the 518 account balance. On or about September 23, 1991, service to the 834 account was interrupted again for failure to make another payment toward the 518 account. On or about September 30, 1991, service to the 834 account was permanently disconnected.

After reconnection charges were paid by the complainant, service to the 834 account was restored on or about October 21, 1991. When the complainant and his wife moved to another part of town in November 1991, his 834 account was closed.

The complainant also testified that he and his wife have life threatening illnesses, and that the defendant has been aware of this since 1988 when the complainant filed a prior complaint case. (See Decision 89-03-005.) The complainant alleges that despite the defendant's knowledge of their health, phone service on the 834 account was terminated during the time he and his wife needed phone service the most, i.e., when his wife suffered a stroke on September 1, 1991. However, he testified that although his phone service on the 834 account was disconnected, he could still dial the 911 emergency services number.

The evidence presented by the defendant's witnesses shows that on February 26, 1991, the complainant called to make payment arrangements on the 518 account. According to the defendant, the complainant agreed to pay \$84.60 on March 4, 1991, and \$383 on March 15, 1991. The complainant paid \$90 on March 1, 1991, and an additional \$90 on March 11, 1991. On April 9, 1991, service to the 518 account was disconnected for nonpayment. On April 10, 1991, the complainant called Pacific Bell and stated that he could not

pay the 518 account bill. Service to the 518 account was permanently disconnected on April 22, 1991. When the 518 account was disconnected, the defendant sent the complainant written notification that the 518 account would have to be paid or his service on the 834 account would be interrupted. A final bill for the 518 account was issued on April 24, 1991 in the amount of \$769.87.

According to the defendant's records, upon receipt of the disconnection notice, the complainant called on April 25, 1991 to make payment arrangements on the 518 account. The complainant agreed to make a \$100 payment on May 3, 1991, and another \$100 payment on May 15th. The May 3rd payment was not met, and on May 7, 1991 a final collection notice was sent to the complainant. On May 8, 1991, the complainant called Pacific Bell to make new payment arrangements as follows: \$100 on May 13th; \$100 on June 3rd; \$100 on June 14th; \$100 on July 3rd; \$100 on July 15th; \$100 on August 3rd; \$100 on August 14th; and on September 30, 1991 the remaining balance of \$69.87 would be paid.

On May 13, 1991 a \$170 payment was received. On June 11th, another \$100 payment was received. Also on that date, the complainant called to make new payment arrangements of \$100 per month beginning July 15, 1991. No payment was received on July 15, 1991. Pacific Bell then sent a reminder notice to the complainant regarding the missing payment. On August 7, 1991, the complainant called and questioned whether the account balance on the 518 account was correct, although no specifics were given. The complainant stated in that call that he would make a \$100 payment.

No payments were made by the complainant on July 15, 1991 or on August 15th. Upon review of the complainant's account on August 29, 1991 by William Vogel, the manager of the defendant's

Final Accounts Collection Center (FACC),² the 834 account was temporarily disconnected on that same day. On September 5, 1991, the complainant spoke to Vogel and told him about the circumstances regarding the 518 account and about their health problems. Vogel testified that up until this phone call, there was no indication on either the 518 or the 834 accounts that the complainant and his wife had medical problems. On September 6, 1991, the complainant called and made new payment arrangements of \$200 on September 6th, \$100 on September 16th, and the balance on September 30, 1991. A payment of \$200 was received on September 6th, and service was reconnected on the same date.

No payment was received on September 16, 1991. On September 24, 1991 service to the 834 account was temporarily disconnected for nonpayment of the September 16th payment. On September 30, 1991 the service to the 834 account was permanently disconnected and a final bill issued for \$488.79 for the 834 account. The outstanding balance on the 518 account at that time was \$299.87.

On October 8, 1991, the final bills were sent to an outside collection agency. On October 9, 1991, the complainant paid \$185 on the 834 account. On October 12, 1991, the \$299.87 balance on the 518 account was paid off in full. On October 21, 1991, the complainant paid \$176.17 on the 834 account, and also paid reconnection charges. Service was then restored to the 834 account.

2 The FACC is the Pacific Bell unit which handles the final bill on an account once the telephone service has been discontinued. According to Pacific Bell witness Vogel, the 518 account was disconnected on April 9, 1991 for nonpayment, and on April 22, 1991, service was permanently disconnected. The 518 account was referred to the FACC on May 29, 1991.

Pacific Bell's witness Vogel testified that the normal policy of making payment arrangements with customers is that it attempts to accommodate every customer based on the customer's credit history, the amount of the bill, and when the customer made the last payment. Some delinquent accounts are referred directly to an outside credit agency based on the history of the particular account.

Issues Raised By The Complainant

The central issue of the complaint is the way in which the complainant's 834 account was disrupted as a result of the complainant's attempt toward making payments on the 518 account. The complainant believes that the defendant's tariff is unclear regarding what can be done to a customer's telephone service where the customer has an unpaid bill for another account. Instead, the complainant asserts that his 834 phone service should not have been cut off when he made no calls on the 518 account. In addition, the complainant argues that his situation did not put the defendant at risk for losses because he acknowledged the debt and was trying to make payments to pay the account off. Despite his arrangements and efforts to pay down the 518 account balance, the complainant appears to argue that the defendant lacked compassion and understanding, and a willingness to extend the time for payment. The complainant also feels that due to undue pressure from the defendant in requiring that payment on the 518 account be made in full, he had to agree to make more payments than he was capable of. The complainant is not seeking any monetary refund as a result of the complaint, but instead seeks changes in the way the defendant conducts business.

One change proposed by the complainant is that when a notice of possible disconnection is mailed out to a customer, the disconnection date should be a set number of days after the nonpaying customer receives the notice. The complainant believes

that such a revision would make it clearer as to when the service would be terminated.

Another part of the complaint relates to the collection practices of the defendant. The complainant alleges that he was being billed for what he had already paid, and that the information that the collection agency had was in error. In addition, the complainant alleges that before an account is sent to a collection agency, there should be another reason for sending it for collection besides the fact that a debt is owed. The complainant alleges that the defendant's collection practices violate the "secured and unsecured credit and consumer credit regulations of the Federal Government..." as well as state laws.

The complainant also alleges that the defendant's provisions for customers who face hardship and life threatening illnesses are poor or nonexistent. In particular, he does not believe that allowing access to 911 emergency services during the temporary cut off of telephone service is an adequate protection to those with life threatening illnesses.

The complainant also disputes the amounts listed as outstanding on the two accounts described in an October 9, 1991 letter from Duane Filer of the Commission's Consumer Affairs Branch to the complainant. The complainant believes that those amounts did not reflect what was owed, and that the Commission could not conduct a proper investigation without the correct amounts before it.

The complainant also alleged at the hearing that he was told by the defendant that he would have to pay off his disconnected business service before he could get his residential service restored. However, he did not allege any problems with his business telephone accounts in his complaint nor did he provide any specific evidence in this proceeding regarding this allegation. For that reason, we do not address that allegation in this decision.

The complaint also alleges that the defendant is inefficient in its business practices. The complainant provided Exhibit 7 as an example of how inefficient Pacific Bell is. Exhibit 7 shows that a refund check was issued to the complainant, but the explanation for the refund was not issued until a later time.

Discussion

Paragraph 2.1.3. A.1. of Rule 3 of Pacific Bell's tariff provides in part that "An applicant for service agrees to pay all exchange, toll and other charges against such service made in accordance with the provisions of the tariffs." The complainant admitted during the hearing that he obtained the service for the 518 account in his name, and that he was responsible for all the calls from that account. We find that the complainant, as the "applicant"³ for service on the 518 account, is the party who remains obligated to pay all amounts on that account. Although the complainant's gesture of friendship toward his neighbor was commendable, that did not relieve the complainant of his responsibility for the outstanding amounts on the 518 account.

The telephone billing problems faced by the complainant, and addressed in this decision, could have been avoided had the complainant simply chosen not to obtain service in his name for his neighbor, or arranged to have the service disconnected at an earlier date. Instead, the complainant allowed the service to continue, and he paid the bills on the 518 account until he could no longer pay the bill in April 1991.

3 The term "applicant" is defined in Rule 1 of the tariff as "An individual or concern making application to the Utility for new or additional telephone service or installation of facilities or for moves or changes of existing service."

Our next inquiry is whether service to the complainant's 834 account was properly disconnected in accordance with the defendant's tariffs.

Paragraph 2.1.11 A.2.a of Pacific Bell's Rule 11 provides in pertinent part that:

"Bills shall be considered past due (delinquent) and service to a particular premises, separately served and billed, may be temporarily or permanently discontinued for the nonpayment of a bill for the service furnished, provided:

"(1) The bill has not been paid within the period specified below:

"By the 'Due By Date' shown on the bill or, if not shown, by fifteen calendar days after date of presentation of monthly bills....

"(2) The Utility first gives notice of such delinquency and impending termination at least 7 calendar days prior to the proposed termination by first class mail addressed to the customer to whom the service is billed, or delivered in person or delivered to the customer's billing address." (Pacific Bell, Schedule Cal. P.U.C. No. A2.)

Paragraph 2.1.11 A.2.d of Pacific Bell's Rule 11 provides that:

"A customer's telephone service may be temporarily or permanently discontinued for nonpayment of a bill for the same class of service (residence or business) previously or concurrently furnished at a location served by the Utility, provided said bill is not paid within 15 days after the date of presentation and written notice at the location of the new or existing service." (Pacific Bell, Schedule Cal. P.U.C. No. A2.)

We agree with the defendant's interpretation of paragraphs 2.1.11 A.2.a and 2.1.11 A.2.d of Rule 11 that the

purpose of the tariff is designed to prevent a customer from obtaining service and running up a bill on that account until it is disconnected, and placing another order for new service and running up a bill on a second account, without having paid the amount due on the first account. Without such a restriction, the utility would be exposed to an ever increasing bad debt risk.

Applying the two tariff provisions to the situation in this case, the "customer"⁴ on both the 518 and 834 accounts was Walter Teubner. There is no dispute that the 518 account was not paid by the due date shown on the bills. The evidence shows that a notice of the type required in paragraph 2.1.11 A.2.a. of Rule 11 was mailed to the complainant on or about April 22, 1991. Although the defendant agreed to a series of different schedules to pay down the 518 account, the complainant was unable to make those payments as agreed upon.⁵ It was not until August 29, 1991, that the Pacific Bell representative in the FACC handling the complainant's account asked for manager authorization to interrupt the complainant's working telephone service for failure to meet the July 15th and August 15th scheduled payments.

During the hearing, the complainant argued that the use of the term "premises" in paragraph 2.1.11 A.2.a. of Rule 11 was unclear, and therefore service to his 834 number should not have been disrupted.

4 The term "customer" is defined in Rule 1 as "An individual or concern regularly receiving exchange telephone service other than that from public telephone stations."

5 Even though some of the payments that the complainant made were higher than what the complainant had agreed to pay, the complainant also skipped other payment due dates as well. Indeed, two payment due dates passed before the defendant terminated service to the 834 account.

The term "residence premises" is defined in Rule 1 of Pacific Bell's tariff as follows:

"That portion of an individual house or building entirely occupied by one family, or one flat or apartment occupied by one family or individuals functioning as one Domestic Household. Private garages and caretakers; quarters and other locations, such as private laundries, patios, garden houses, and private swimming pools, which are a part of the customer's domestic establishment and used in connection with an individual residence will be considered as a part of the premises of that residence if located on the same continuous property and not separated from the residence by a public highway."

The complainant testified that the East Double Street building was divided into three separate living areas. Since Teubner's 518 account was already delinquent, and he was being separately billed for the 834 account located in his own household, we find that Pacific Bell's actions terminating the 834 account for nonpayment of the 518 account was entirely proper and in accordance with its tariffs.

The complainant suggested the defendant date the notice of possible disconnection from the date the customer receives the notice. However, this is a matter entirely in the hands of the post office. To calculate the date of disconnect from the date of receipt would be difficult for the defendant to ascertain and administer. Also, the notice of delinquency and impending termination, as well as the tariff, is quite clear on when the proposed termination of service will take place. In the complainant's own situation, he was not misled as to the date of the proposed termination, and understood that his service would be terminated on a date certain if no payments were received by the defendant.

The complainant alleges that due to the insistence of the defendant that the 518 account be paid in full, the complainant was

pressured into agreeing to a payment schedule. The complainant, however, admits to having made the payment arrangements, and that he may have been at fault for agreeing to greater payments than he was capable of making. He also admits his failure to make the payments as arranged. In addition, the evidence of the defendant's contacts with the complainant show that it was the complainant who called the defendant on at least six occasions to make, revise, or talk about payment arrangements. We are not persuaded by any of the evidence presented by the complainant on this issue that he was coerced into a payment arrangement with the defendant. Nor has the complainant shown that the defendant's actions violated any law, rule, or order of the Commission.

The complainant also contends that the defendant has been overzealous in its collection of unpaid accounts. The complainant argues that his account did not have to be referred to a collection agency because he was making partial payments on the account and had not skipped town, and that eventually the defendant would have been paid in full. There are no laws or Commission rules or orders, which provide that a utility should wait indefinitely to be paid for a past due account. As discussed above, the defendant properly followed its tariff in attempting to collect the past due account before service was terminated on the 834 account.

With respect to the complainant's allegations that the defendant's collection activities somehow violated federal or state collection activity laws, the complainant has not cited any specific authority in support of his allegations, nor has the complainant presented any evidence to support his claim that he was being billed for amounts which he had already paid. Instead, the evidence shows that the defendant entered into a series of payment arrangements which the complainant failed to live up to. The service to the 834 account was not disconnected until four months after the 518 account was permanently disconnected, and only after he had failed to make two scheduled payments. The complainant's

account was not referred to an outside collection agency for action until October 1991, about five and a half months after the 518 account had been terminated. Under the circumstances, it appears that the complainant was allowed plenty of opportunities to pay off the 518 account, but failed to do so.

The complainant also appears to be arguing that a creditor needs an additional reason, besides the outstanding debt, before the matter can be referred to an outside collection agency. However, such a notion runs counter to the idea that the whole purpose of a collection agency is to try and collect the debt. In this case, it appears that Pacific Bell exercised its patience by waiting nearly six months before it referred the delinquent account to an outside collection agency. We conclude that the defendant's collection activities did not violate any law, rule or order of the Commission, nor has the complainant proved that the collection activities of the defendant violated any federal or state statutes.

It is unclear from a reading of the complaint and the testimony presented at the hearing whether the complainant is alleging that persons who face economic hardship or cannot pay because of a life threatening illness should be given more time to pay, or whether persons who face those obstacles should be provided with a class of service to meet their needs. With respect to the former, Cynthia Crisan, a Pacific Bell manager of the business office resident account service center, testified that Pacific Bell will make payment arrangements on the customer's account based on the customer's ability to pay. If the customer does not meet the payment arrangements, and a disconnection notice has already been given, then the telephone service will be disconnected. Crisan testified that Pacific Bell made several payment arrangements with the complainant but he failed to fulfill those payment arrangements. Pacific Bell subsequently disconnected his telephone service.

Regarding Pacific Bell's policy on life threatening illnesses, the complainant did have access to 911 service when his phone service was temporarily cut off. In fact, the complainant was able to use the 911 service to call an ambulance for his wife when she fell ill during the cut off of service to the 834 account. The complainant has not shown that the defendant has violated any law or Commission rule or order regarding utility service concerning life threatening illnesses.

If the complainant's problem is with the availability of programs to meet the needs of low income or sick or disabled persons, there is an existing program in effect. Under the Moore Universal Telephone Service Act, found in Public Utilities Code Sections 871 to 880, telephone companies must provide for a level of residential service at reduced rates to meet the communication needs of the elderly, the handicapped, and the infirm. The complainant has failed to make any showing that the defendant discriminated against him and his wife regarding their eligibility for such a program.

Regarding the complainant's allegation that the letter from Duane Filer of the Consumers Affairs Branch did not contain the correct amounts owed on the two accounts, Exhibit 9 shows that as of September 30, 1991, a final amount of \$488.79 was owed on the 834 account, and \$299.87 was owed on the 518 account.

The allegation of defendant's inefficient business practices is more properly addressed in another forum that examines defendant's operations. The complaint procedure is available only to address "... any act or thing done or omitted to be done by any public utility ... in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission." (Pub. Util. Code § 1702; Cal. Admin. Code, tit. 20, § 9.)

Although we are sympathetic with the complainant's situation, there are no laws or rules or orders of this Commission

that compel us to find in favor of the complainant. Accordingly, the relief requested by the complainant should be denied.

Findings of Fact

1. The complainant established an account with the defendant in July 1989 for telephone number (213) 834-2410 located inside his unit at 439 East Double Street, Carson.

2. The complainant does not dispute any of the amounts owed on the 834 account.

3. On or about October 31, 1990, the complainant established an account with the defendant for telephone number (213) 518-6581 located in another unit located at 439 East Double Street, Carson.

4. The 518 account incurred substantial long distance telephone bills before service was permanently disconnected in April 1991.

5. The complainant admits that he was responsible for the bills arising from the 518 account, although he did not place any of the calls on that account.

6. When the 518 account was permanently disconnected in April 1991, the outstanding amount owed was \$769.87.

7. On or about April 22, 1991, the defendant mailed a letter to the complainant stating that the 518 account would have to be paid or his service on the 834 account would be interrupted.

8. The complainant called the defendant on several occasions in 1991 to schedule payment arrangements to pay off the 518 account balance, and to inform the defendant's representatives that he and his wife had life threatening illnesses.

9. The payment schedules agreed to by the complainant to pay off the 518 account balance were not met.

10. After the temporary disconnection on August 29, 1991, service was restored on September 6, 1991.

11. On September 30, 1991, service to the 834 account was permanently disconnected, and a final bill issued on that account for \$488.79.

12. At the time of the permanent disconnection of the 834 account, the amount outstanding on the 518 account was \$299.87.

13. During the temporary disconnections of the 834 account, the complainant could still dial 911 emergency calls.

14. On October 8, 1991, the final bills were sent to an outside collection agency by the defendant.

15. On October 12, 1991, the 518 account balance was paid off in full.

16. On October 21, 1991, the defendant paid a reconnection charge to reestablish service to the 834 account.

17. The amounts shown in the October 9, 1991 letter from the Commission's Consumers Affairs Branch to the complainant reflect the amounts owed by the complainant to the defendant as of September 30, 1991.

Conclusions of Law

1. The complainant, as the applicant for service on the 518 account, remains obligated under Rule 3 and Rule 11 of the defendant's tariffs for all calls made from that account.

2. Upon the failure of the complainant to make the July 15, 1991 and August 15, 1991 payments on the 518 account as agreed, the defendant, in accordance with Rule 11 of its tariffs, temporarily disconnected the complainant's 834 account on August 29, 1991.

3. Upon the failure of the complainant to make the September 16, 1991 payment as agreed, the defendant, in accordance with Rule 11 of its tariffs, temporarily disconnected the complainant's 834 account for a second time on September 24, 1991.

4. The defendant's notice of delinquency and impending termination, as well as Rule 11 of the defendant's tariff, provides adequate notice to customers of the possible telephone service termination date.

5. The complainant voluntarily entered into payment schedules with the defendant, and the payment schedule agreements

with the defendant did not violate any law or rule or order of the Commission.

6. The defendant's collection activities did not violate any law or rule or order of the Commission.

7. The Moore Universal Telephone Service Act provides that telephone companies must provide for a level of residential service at reduced rates to meet the communications needs of the elderly, the handicapped, and the infirm.

8. The complainant has failed to make any showing that the defendant discriminated against him and his wife regarding their eligibility for universal telephone service.

9. The complaint procedure is available only to address any act or thing done or omitted to be done by any public utility in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission.

ORDER

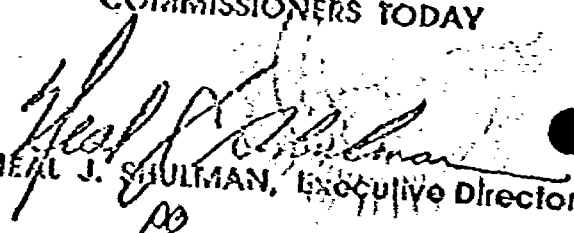
IT IS ORDERED that the relief sought by the complainant, Walter Teubner, is denied and this proceeding is closed.

This order is effective today.

Dated November 23, 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