

DEC 16 1992

Decision 92-12-038 December 16, 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.

Westcom Long Distance, Inc.
(U5163C),

Complainant,

vs.

Citizens Utilities Company of
California (U87C),

Defendant.

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(U5163C),

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Citizens Utilities Company of
California (U87C),

Complainant,

vs.

Westcom Long Distance, Inc.
(U5163C),

Defendant.

ORIGINAL

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

Case 92-09-006
(Filed September 3, 1992)

Case 92-09-011
(Filed September 8, 1992)

Case 92-09-025
(Filed September 16, 1992)

INTERIM OPINION

This decision denies the interim relief sought by Westcom Long Distance, Inc. (Westcom) in Case (C.) 92-09-006, one of three complaint cases filed by Westcom against Citizens Utilities Company of California (Citizens), and denies the motion of Citizens to dismiss C.92-09-006. The Commission also denies the interim relief sought by Citizens in the complaint case filed by Citizens against Westcom (C.92-09-025). This decision also grants Citizens' motion to dismiss Westcom's complaint in C.92-09-011.

In C.92-03-049, hearings have been held and the matter has been submitted. An interim opinion, Decision (D.) 92-08-028, was issued by the Commission in connection with that proceeding. D.92-08-028 authorized Citizens to terminate access service to Westcom if Westcom failed to pay Citizens the amounts due in disputed access service billings rendered by Citizens to Westcom or to deposit those sums with the Commission. A final decision in that proceeding is forthcoming.

After D.92-08-028 was issued, certain events took place concerning the termination of access service to Westcom and the effects of that termination on Westcom's then existing interexchange customers. Those events gave rise to the filing of C.92-09-006 by Westcom against Citizens, and the filing of C.92-09-025 by Citizens against Westcom. Westcom also filed C.92-09-011 against Citizens during the same time period.

On October 2, 1992, the assigned Administrative Law Judge (ALJ) issued an ALJ Ruling consolidating the following four proceedings: C.92-03-049, C.92-09-006, C.92-09-011, and C.92-09-025. On October 5, 1992, Westcom filed a motion to consolidate C.92-09-025 with C.92-09-006. Westcom's motion is moot in light of the action taken in the October 2, 1992 ruling.

Case 92-09-011

Westcom filed C.92-09-011 with the Commission on September 8, 1992. Westcom's complaint names Citizens as the

defendant, and alleges that Citizens wrongfully double billed both Westcom, and Citizens' customers, when the customers dialed Westcom's Feature Group B's (FGB) 950-1459 number allowing them access to Westcom's interexchange network. That is, Westcom alleges that Citizens charged its customers for dialing Westcom's FGB 950 access line. Westcom's complaint seeks an order requiring Citizens to research all illegally applied 950 charges and to refund all such charges. Attached to Westcom's complaint are copies of bills from two customers of Citizens reflecting calls made to Westcom's FGB 950 access number.

In Citizens' answer to C.92-09-011, Citizens admits that in one instance it billed both Westcom and Citizens' customers for access to Westcom's FGB 950 access number. However, Exhibit C, attached to Westcom's complaint, reveals that no charges were assessed by Citizens on the 258-3000 account for those 950 calls. The only other customer (257-8720) who was apparently charged for 950 access calls was credited for the calls by Citizens as reflected in Citizens' Exhibit A, attached to Citizens' answer. (See Exhibit E of Westcom's Complaint.) As part of Citizens' answer, Citizens moves to dismiss C.92-09-011 on the basis that the complaint is frivolous, an abuse of process, and is part of Westcom's "continuing pattern of harassment of CUCC [Citizens] and its employees." Citizens also alleges that the complaint is without merit because any alleged mistake was corrected over three years ago. In addition, Citizens asserts that a search of all customer records going back to 1989 would cost Citizens and its customers hundreds of thousands of dollars and hundreds of hours of employee time.

Westcom filed a response in opposition to Citizens' motion to dismiss.

Westcom originally made those same allegations as part of a complaint which it filed against Citizens in C.89-10-027. C.89-10-027 was dismissed by the Commission without prejudice in

D.91-07-025 upon the written request of Westcom and the concurrence of Citizens.

A review of the file in C.89-10-027 reveals that Westcom alleged that the same two telephone accounts of Citizens' customers (257-8720 and 258-3000) were being charged by Citizens for making calls to Westcom's 950-1459 access number. Although Westcom's complaint in C.89-10-027 requested an accounting by Citizens of all 950 billings, Westcom did not supply any other bills, besides the two accounts, to support its allegations that other Westcom customers were also being billed for 950 access number calls.

Exhibit D of Westcom's complaint in C.92-09-011 contains a letter dated October 3, 1989 from Citizens to Westcom wherein it states in pertinent part:

"We have investigated the charges [that Citizens billed customers for calling Westcom's FGB 950 number] and found them to be false. The account which you identified [258-3000] was not billed any charges by CUCC for Westcom-provided services. The 950 calls were listed by date, time of day, and access code; however no charges were applied. Moreover, no other accounts were billed charges for Westcom-provided 950 access calls."

Citizens' answer to the C.92-09-011 complaint admits that the above letter was sent by Citizens, and that the 258-3000 account was not billed for any of the calls made to Westcom's FGB 950 access number. With respect to the 257-8720 account, Citizens' answer alleges that it credited the account for the 950 calls in November 1989, two months after the 257-8720 account was charged for the 950 calls. Attached to Citizens answer in C.92-09-011 was a copy of bill crediting the 257-8720 account for the calls made to Westcom's FGB 950 access line. (See Exhibit A of Citizens' Answer.)

Westcom has not provided any new information that other Westcom customers were billed by Citizens for making calls to Westcom's FGB 950 access line. Instead, the same two bills that

made up part of the complaint in C.89-10-027 make up the basis of Westcom's allegations in the C.92-09-011 complaint. If there were indeed other customers of Westcom who experienced this "double billing" problem, it is likely that it would have been brought to the attention of Westcom or Citizens during the three years from the original filing date of C.89-10-027.

Given the acrimonious nature of these consolidated proceedings, the time period between the filing of the double billing allegations in C.89-10-027 and C.92-09-011, and the lack of any new information pertaining to the possibility of widespread double billing, we do not believe that Citizens should be required to research its customers' accounts to determine if other 950 billing problems occurred. The only account that had a double billing problem was corrected by Citizens after it became aware of the problem. Westcom, whose customers are likely to have contacted Westcom if, in fact, they were billed for making the 950 calls, has not produced any new evidence in support of its allegation that other Westcom customers may have been charged for 950 access calls. For those reasons, Citizens' motion to dismiss C.92-09-011 is granted with prejudice. Any other person who may have been charged by Citizens for dialing Westcom's 950 access number can file a complaint with the Commission so long as the complaint is filed within the time period provided for in Public Utilities Code Section 736.

Case 92-09-006 and Case 92-09-025

Westcom's complaint in C.92-09-006 alleges that on or about August 20, 1992, Westcom sent Citizens equal access change requests for all Westcom customers in Citizens' service territory. Westcom alleges that these changes were to change current Westcom customers to Westcom's new network and that no carrier change was involved. On August 25, 1992, Westcom alleges that Citizens disconnected circuits on Westcom's former network, and that as of August 28, 1992, Citizens still had not processed the equal access

change requests submitted by Westcom. As a consequence, Westcom alleges that Westcom's customers in Citizens' service territory were unable to place any interexchange calls because of Citizens' refusal to process the equal access change requests.

Westcom further alleges that on August 25, 1992, Westcom advised its customers to call Citizens directly and request that Citizens change their interexchange carrier (IEC) to Westcom's new network, which Westcom refers to as Com Systems 266. Westcom alleges that Citizens refused to process those direct customer requests; advised the customers that Westcom was out of business; that the list of possible IECs read off by Citizens did not mention Com Systems as a possible carrier; that Citizens informed some customers that the charge to make this change would be \$13.50, and told others that the charge would be \$11.00; and that because Com Systems did not have facilities out of the Susanville area, Citizens would not process the customers' equal access change requests.

Westcom alleges that Citizens' actions are in violation of the antitrust laws, Business and Professions Code Sections 17095 and 17096, as well as various sections of the Public Utilities Code. As part of its request for relief, Westcom requests that on an interim basis pending hearings in this case, the Commission issue a temporary restraining order, and a preliminary injunction enjoining Citizens from the following: refusing to make any equal access changes requested by Westcom customers; telling any customer that Westcom is out of business; telling any customer that Com Systems does not have facilities in the Susanville area; discriminating against any IEC by not advising its customers of all the IECs that are capable of providing service to its customers; and quoting incorrect charges for changing the equal access provider.

Citizens filed its answer to C.92-09-006, denying any violation of the Business and Professions Code or any section of

the Public Utilities Code. Citizens also moved to dismiss C.92-09-006 on the basis that the complaint is frivolous and an abuse of the Commission processes. Westcom filed a response in opposition to Citizens' motion to dismiss, and incorporated its answer to C.92-09-025 as the reason why C.92-09-006 should not be dismissed.

Citizens' complaint against Westcom in C.92-09-025 tracks essentially the same events as alleged in C.92-09-006, but is drafted from Citizens' point of view. Citizens alleges that the notice that the Commission required Westcom to send in D.92-08-028 was never sent to Westcom's customers in the form required by the Commission, and that the letter that Westcom did send contained substantial misinformation. Citizens alleges that the letter sent by Westcom caused great confusion and denied customers their right to freely choose their IEC as specified in the Federal Communications Commission's rules and in Pacific Bell's 175-T tariff in which Citizens concurs.

After Citizens terminated its access services to Westcom on August 25, 1992, Citizens began to receive Primary Interexchange Carrier (PIC) requests for movement of former Westcom customers to Com Systems. According to Citizens, those PIC requests did not have the customer signature as required by the applicable tariffs and rulings. Citizens alleges that when it tried to verify those change requests prior to completing the changes, Westcom mailed out another customer notice declaring that Citizens had refused to honor the change orders, and urged its subscribers to complain to the Commission regarding their "inability to make long distance calls through Westcom's new, assigned carrier." Citizens has also attached to its complaint some calling data documents that allegedly show that more than "incidental" intraLATA usage is being carried over Westcom's network to the detriment of Citizens.

Citizens alleges that Westcom has violated the Commission's order in D.92-08-028; that Westcom's actions

unlawfully deny customers their rights by attempting to change an IEC without the individual authorization and verification of the customer; that Westcom is in violation of D.88-09-009, D.89-10-031 and D.84-06-113 by reselling switched access services that Westcom obtained from Com Systems; and that Westcom is unlawfully holding itself out to the public as a provider of intraLATA services. Citizens seeks, in part, a preliminary injunction enjoining Westcom from doing the following: purchasing and reselling switched access services; holding itself out to the public as a provider of intraLATA services and requiring Westcom to advise its subscribers that intraLATA communication should be placed over the facilities of the local exchange carrier; providing incorrect information to Citizens' local customers regarding Westcom's service and informing Westcom's customers of the unlawful nature of its prior notices; and soliciting intraLATA business from the public. Citizens also wants Westcom to be directed to inform the public and all of Westcom's customers of the unlawful nature of Westcom's past advertising.

Westcom's answer to C.92-09-025 essentially denies the allegations made by Citizens. Westcom alleges that when the Commission issued D.88-09-009, the Commission implicitly authorized Westcom's request to resell switched access services. Westcom also admits that the letter that it sent to its customers was not in the form required by D.92-08-028, and alleges that D.92-08-028 was in error by requiring Westcom to leave the long distance business in Citizens' territories when Westcom had other options available to it.¹ Westcom alleges that due to time constraints, Westcom was

¹ Westcom's answer suggests that one of the options available to it was to obtain switched access service in Citizens' service territory by purchasing switched access service from Com Systems.

(Footnote continues on next page)

unable to appeal the wording in D.92-08-028, and instead went ahead with its own mailing advising its subscribers that interexchange access would be over Westcom's new network.

Westcom's answer further alleges that Citizens refused to process the PIC code changes even though Westcom had advised Citizens that no carrier change was involved. In addition, Westcom alleges that Citizens told dozens of Westcom customers that Westcom was out of business, and that Com Systems did not have service with Citizens. Westcom also alleges that Citizens took other actions detrimental to Westcom's subscribers.

The events which allegedly occurred in C.92-09-006 and C.92-09-025 are, for the most part, an outgrowth of the Commission's decision in D.92-08-028. Although we are very concerned about Westcom's seemingly deliberate disobedience of a Commission order,² the changeover of Westcom's customers to a new IEC or to Westcom's new network via Com Systems appears to have been completed.³ It is unlikely that any problems like those alleged in C.92-09-006 and C.92-09-025 will occur in the future

(Footnote continued from previous page)

Thus, Westcom's switched access is now provided to Westcom by Com Systems, instead of by Citizens directly, and Westcom remains the IEC of the customer.

2 We are not persuaded by Westcom's argument that it did not have time to appeal the wording in D.92-08-028. Given the numerous filings that Westcom has made recently in several different proceedings, Westcom appears to have no problem in availing itself of the Commission processes. Westcom's failure to obey a Commission order will be one of the issues that will be taken up at the evidentiary hearing.

3 Whether Westcom was authorized in D.88-09-009 to resell switched access services will be examined at the evidentiary hearing.

because any Westcom customer in Citizens' service territory prior to August 25, 1992, in all likelihood has secured Westcom or another IEC to carry the customer's interLATA calls. For that reason, the Commission denies Westcom's request for a temporary restraining order and preliminary injunction in C.92-09-006, and denies Citizens' motion to dismiss C.92-09-006. In addition, Citizens' request for a preliminary injunction in C.92-09-025 is denied. If either Citizens or Westcom engages in any future activity relating to this dispute which appears to violate any rule, order, or law of the Commission, the Commission will examine such activities at the evidentiary hearing, and take that into consideration in reaching a final decision in these two cases.

The assigned ALJ is directed to hold a prehearing conference in the remaining unheard consolidated cases of C.92-09-006 and C.92-09-025. The time and place of the prehearing conference will be set by the ALJ.

Findings of Fact

1. Westcom filed C.92-09-011 against Citizens on September 8, 1992 alleging that Citizens billed its customers for dialing Westcom's FGB access number.
2. Attached to Westcom's complaint are copies of bills from two customers of Citizens which show that calls were made to Westcom's FGB 950 access number.
3. The 258-3000 account was never charged by Citizens for dialing Westcom's 950 access number.
4. Although the 257-8720 account incurred charges by Citizens for dialing Westcom's 950 access number, those charges were reversed by Citizens two months later.
5. Westcom has not provided any new information since 1989 that other customers may have been charged for dialing Westcom's 950 access number.

6. Given the lack of any new information, Citizens should not be required to research its customers' accounts to determine if other 950 billing problems occurred.

7. Westcom's complaint in C.92-09-006 alleges, among other things, that Citizens failure to timely process equal access change requests submitted by Westcom and by its customers resulted in customers being unable to place interexchange calls in Citizens' service territory.

8. As part of its request for relief in C.92-09-006, Westcom seeks a temporary restraining order and a preliminary injunction enjoining Citizens from engaging in certain alleged activities detrimental to the interests of Westcom.

9. As part of Citizens' answer to C.92-09-006, Citizens has moved to dismiss C.92-09-006.

10. Citizens' complaint against Westcom in C.92-09-025 alleges, among other things, that Westcom has violated several Commission decisions and laws, and that Westcom's customers have been prevented by Westcom from choosing the IEC of their choice.

11. As part of its request for relief in C.92-09-025, Citizens seeks a preliminary injunction enjoining Westcom from engaging in certain alleged activities.

12. Westcom admits that the letter that it sent to its customers was not in the form required by D.92-08-028.

13. The changeover by Citizens of Westcom's customers to Westcom's new network or to a new IEC appears to have been completed.

14. Any future activity of the parties relating to this dispute that appear to violate any Commission rule, order, or law, should be examined at the evidentiary hearing and taken into consideration when a final decision is issued.

Conclusions of Law

1. D.92-08-028 authorized Citizens to terminate access service to Westcom if Westcom failed to deposit with the Commission or to pay Citizens the amounts due in disputed billings rendered by Citizens to Westcom.

2. Westcom's motion to consolidate C.92-09-025 with C.92-09-006 is moot in light of the October 2, 1992 ALJ Ruling consolidating all four complaint cases.

3. Westcom's complaint in C.92-09-011 was part of the allegations made in C.89-10-027, which was dismissed without prejudice in D.91-07-025.

4. C.92-09-011 should be dismissed with prejudice.

5. Any other person who may have been charged by Citizens for dialing Westcom's 950 access number can file a complaint with the Commission if it is filed within the time period provided for in Public Utilities Code Section 736.

6. Westcom's request for a temporary restraining order and a preliminary injunction in C.92-09-006, and Citizens' motion to dismiss C.92-09-006, should be denied.

7. Citizens' request for a preliminary injunction in C.92-09-025 should be denied.

INTERIM ORDER

IT IS ORDERED that:

1. The motion of Citizens Utilities Company of California (Citizens) to dismiss the complaint filed by Westcom Long Distance, Inc. (Westcom) in Case (C.) 92-09-011 is granted with prejudice.

2. Westcom's request for a temporary restraining order and a preliminary injunction in connection with C.92-09-006 is denied.

3. Citizens' motion to dismiss C.92-09-006 is denied.

4. Citizens' request for a preliminary injunction in C.92-09-025 is denied.

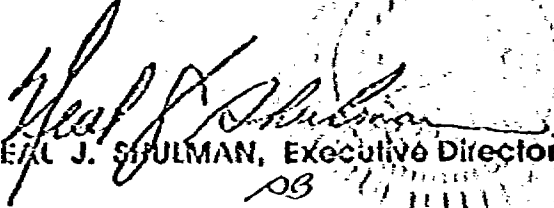
5. The assigned Administrative Law Judge is directed to hold a prehearing conference in the remaining unheard consolidated cases of C.92-09-006 and C.92-09-025.

This order is effective today.

Dated December 16, 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. SPULMAN, Executive Director
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