

Decision 96-11-009 November 6, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rochelle Weston, Eloise Weston,  
Cherelle Howze, and Antwan  
Howze,

ORIGINAL

Complainants,

Pacific Bell, AT&T, MCI, and  
all others,

Defendants.

Case 95-09-026  
(Filed September 28, 1995)

OPINION

Summary

Complainants, Rochelle and Eloise Weston and Cherelle  
and Antwan Howze, dispute charges during the period January 1, 1993  
and February 11, 1996 for intrastate and interstate service  
from Pacific Bell (Pacific) and the following long distance  
carriers: AT&T Communications of California, Inc. (AT&T), MCI  
Telecommunications Corporation (MCI), Oncor, Sprint, IntegreTel  
and Zero Plus Dialing. Pacific bills for the long distance  
carriers under separate contracts. Complainants, represented by  
Rochelle Weston, request a total credit of \$1,975.74 from the long  
distance carriers and specific adjustments on Pacific bills.  
Prehearing conferences (PHC) were conducted by telephone  
on November 20, 1995, January 11, and May 14, 1996, to clarify the  
complaint, arrange for service of additional defendants, and  
outline the number of witnesses and their intended testimony at the  
hearing. At the first PHC Weston agreed to waive her right to have  
a hearing held within 30 days after the answer was filed, due to

the extent of additional documentation needed to clarify and classify the disputed charges among the numerous defendants.

Weston submitted written supplements to the complaint on December 16 and 19, 1995. Prior to the hearing, Oncor, Spring Integretel and Zero Plus Dialing ((representing US Long Distance), entered into settlement agreements with Weston and were dismissed as defendants. After hearing preparation was completed, the parties agreed to proceed with a hearing under the expedited complaint procedure, that is without a court reporter or attorneys participating. Weston, and defendants Pacific, AT&T, and MCI, participated in a hearing of the remaining disputed issues on June 6 and 7, 1996, in Chico, California.

We herein conclude that the complaint must be denied because Weston has not prevailed in showing that the disputed charges are in error.

Jurisdiction Over Disputed Interstate Charges

AT&T argues that this Commission has no jurisdiction over disputed interstate charges, which constitute the majority of disputed AT&T charges. However, we resolved this issue when we accepted Pacific's<sup>1</sup> plan to deny local service for nonpayment of charges for interexchange services billed by Pacific (Re PT&T (1983) 13 CPUC2d 331, 395r). One year later in May 1984, the Federal Communications Commission (FCC) granted a waiver of its complaint jurisdiction to permit exchange carriers to terminate local service for nonpayment of interstate toll charges where such terminations are permitted by state authority (Re PT&T (1985), 17 CPUC2d 6, 34.).

At the first PRC hearing, Weston agreed to waive her right to have additional defendants to service of process and their intended testimony at the hearing.

<sup>1</sup> Pacific is the successor of Pacific Telephone and Telegraph following the divestiture of the American Telephone and Telegraph Company.

We recently reaffirmed our policy regarding disputed interstate charges when termination of local service is at risk (Bauer v. GTE California, Inc. (1992) 45 CPUC2d 658, 659.) In Bauer, while discussing the complaint impound procedures adopted to enforce our policy on disputed interstate charges, we stated:

"1. Impounded money will be accepted only to prevent disconnection of local telephone service in disputed bill complaints where the dispute involves the use related charges of a monthly bill.

"2. Any case that money is impounded will cause a complaint to be filed against both the local and long distance carrier. Money will be disbursed based on Consumer Affairs' findings as in other money impound complaints.

"3. Where local service is not in jeopardy of being disconnected for non-payment of the complaint is other than the accuracy of the bill, the consumer will be instructed to take the complaint to the Federal Communications Commission (FCC) which has jurisdiction over interstate service.

"4. Consumer Affairs procedures concerning the acceptance of customer deposit checks will be in force.

In this proceeding, Weston disputes both local and interstate charges on bills sent by Pacific which were rendered under a billing contract with AT&T. Weston risked termination of local service without impounding monies at the Commission pending a resolution of the disputed charges in this proceeding. Under this billing scenario, we have jurisdiction to resolve the disputed interstate charges. However, since long distance carriers have the

business, these records are reliable. Therefore, Weston is responsible for charges to these accounts absent a credible showing

<sup>2</sup> Effective September 30, 1996, the Commission Consumer Affairs Branch is reorganized and renamed the Consumer Services Division.



It is irrelevant whether Weston had a roommate during the period of the disputed accounts, which Pacific asserted and Weston denied. Pacific presented a May 1993 billing record which indicates charges for direct dial calls from both 894-3419 and 894-0827 and collect calls terminating to 894-0827 (Exh. 87). These calls were placed between April 25 and May 10, 1993. Weston is liable for charges generating from and to her assigned telephone numbers. Weston contends she overpaid account 894-1111.

Weston argues that Pacific's policy of mailing a calling card with the security code in the same letter for each new TATA account, especially after she had moved on June 29, 1993, is unreasonable. She denies receiving a calling card for 894-3419. She contends it took Pacific an unreasonable period of time to record her change of address. However, Pacific's records show that her change of address was recorded on June 28, 1993, the same day Weston made the request, which is not an unreasonable time delay. Pacific acknowledged that a calling card is sent to each new TATA account; however, having recorded Weston's change of address in a timely manner, it does not appear that this calling card was misdirected by Pacific. Thus, under the prevailing legal presumption, we must conclude that the calling card was received at Weston's new address. Weston argues that malfunctions in recording her calls were caused by a change in the switch supplying service or by faulty jacks. However, Pacific tested Weston's service on June 25, 1992, November 17 and December 22, 1994, and on January 30, 1995, finding no malfunctions. (Exh. 167) The 1994 tests included Pacific's facilities outside Weston's premises and the switch supplying Weston's service. Pacific found no crossed wires or illegal traps on the lines. In October 1994, Pacific's notice to Weston regarding a change from electronic to digital switching as equipment in the Chicó central office (Exh. 14) does not prove the new equipment malfunctioned. An equipment upgrade alone does not

prove billing errors. Pacific's trouble report, which was made at or near the time the jacks were replaced on November 18, 1995, does not show any equipment or facility malfunctions. (Exh. 16.) These reports are made in the normal course of business for the purpose of recording equipment failure and repairs. Since no equipment failures are recorded for this visit, we cannot assume that there was one. Jacks are routinely upgraded during service calls.

Weston contends she overpaid account 894-1144. However, Pacific's witness testified that Weston received adjusted closing bills as payments were credited and incoming charges were billed, but all payments were credited. Weston produced no cancelled checks for which credit was not given. Therefore we cannot conclude that there are missing credits. She contends it took Pacific to record her change of address. However, Pacific's witness testified that Weston denies the assignment of 894-0827 and 894-3419, as discussed above, and a third telephone number, 893-4436. However, AT&T's billing records agree with those of Pacific. Both indicate that the disputed numbers were assigned to Weston at the time the disputed charges occurred. AT&T and Pacific's investigations of these numbers revealed active calling from and to these accounts. AT&T relies on Pacific's numerous service tests, discussed above, to show no malfunctions in Weston's service during the disputed period. Therefore, without persuasive evidence to the contrary, we must conclude that Weston is responsible for charges billed by AT&T to 894-0827 and 894-3419 between May and July 1993, and 893-4436 between June and September, 1995.

Weston disputes all collect calls billed by AT&T on the August 11, 1994, bill which shows irregular calling details. Pacific's witness explained that during this period AT&T experienced a formatting problem where the system inserted the terminating number as the originating number on the invoice. AT&T corrected the problem and on November, 1994 sent to Weston the correct originating telephone numbers associated with these 19 calls. Since AT&T was

investigated this problem promptly and the problem caused no erroneous charges and was corrected within a reasonable period of time, we conclude no credit adjustment for unreasonable service is warranted.

Weston presented a list of 45 telephone numbers for calls billed to her account which she does not recognize and allegedly never called to (Exhibit 2, Attachment B). However, without the dates of these calls, AT&T could not investigate. AT&T agrees to investigate the calls if Weston provides some time reference for them. We expect AT&T to honor this representation if Weston provides call details in the future.

Weston denies receiving numerous collect calls from Huntingdon and Greensburg, Pennsylvania (Exhibit 2, Attachment A). However, AT&T investigated the calls and found Weston's allegation that calls from the Huntingdon telephone number are restricted to 15 minutes to be untrue. Weston admitted that she does know someone at these telephone numbers whom she has called and received calls from in the past. AT&T and Pacific business records show that these calls were dialed from or received at Weston's telephone account, therefore, she is responsible for these charges.

**Disputed MCI Charges**  
Weston disputes MCI charges without call details. However, in the PHC and in its written testimony, MCI agrees to refund the disputed \$63.82. We expect MCI to honor this representation within a reasonable period of time and this issue is no longer in dispute.

Weston disputes MCI charges which she alleges are "repeated" on her bills. She does not deny making the calls, but alleges this is a billing error. MCI's witness explained that the system of billing calls in one minute increments means that several calls placed within seconds apart can be billed for the same minute. This is a correct explanation of this system, therefore, these charges are correct.

Weston disputes charges where two different carriers  
billed calls in the same billing minute. MCI's explanation for  
these charges is the same as above, the ability to bill several  
calls within the same one-minute increment. In addition, Weston  
has a three-way calling feature which allows this pattern of  
billing. (This is true even if a different interexchange carrier is  
accessed by the calling party for each number connected.) Moreover,  
these calls were directly dialed from Weston's accounts creating her  
liability for the charges.

Weston alleges MCI has confused her telephone number  
(894-1487) with that of her sister's (894-1847). Weston presented  
one page of her bill for August 11, 1994 as evidence that she was  
assigned this telephone number on this date. However, without the  
first page of the bill we cannot agree that this account was  
assigned to Weston on August 11, 1994. Pacific's account history  
does not show this telephone account assigned to Weston at this  
time. MCI explained that the bill reflects collect calls from a  
calling card assigned to 894-1847 which were accepted by someone at  
Weston's telephone number, 894-6174. MCI's witness stated that the  
calling party chose MCI as the carrier, even though MCI was not  
Weston's selected carrier. This is the correct interpretation of  
the charges on this bill. There is no confusion between Weston and  
her sister's telephone numbers.

IT IS ORDERED that Weston's charges for MCI are denied.  
Complaint 95-09-026 is denied. The \$500 on impound with the Commission is disbursed as follows based upon the disputed charges in this proceeding: Pacific Bell, \$200; AT&T Communications of California, Inc., \$200; and MCI Telecommunications Corporation, \$100.

3. This proceeding is closed.

This order is effective today.

Dated November 6, 1996, at San Francisco, California.

P. GREGORY CONLON

President

DANIEL Wm. FESSLER

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners