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Decision 97-04-06S April 23, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CLOVERDALE CHAMBER OF COMMERCE, an
Unincorporated Association,

Complainant,

vs.

PACIFIC BELL,

Defendant.

ORIGINAL

Case 96-05-011
(Filed May 3, 1996)

OPINION

This decision denies the complaint filed by the Cloverdale Chamber of Commerce (complainant) alleging that Pacific Bell (Pacific) violated Public Utilities (PU) Code Sections 453(a) and/or 453(c).

I. Procedural Background

Cloverdale filed Case (C.) 96-05-011 against Pacific on May 3, 1996. Attached to the complaint were the signatures of 25 ratepayers¹ as required by PU Code Section 1702 and Rule 9(a) of the Commission's Rules of Practice and Procedure (Rule). Pacific filed its answer to the complaint on June 6, 1996. Subsequently, assigned Administrative Law Judge (ALJ) Kenney issued a ruling on August 9, 1996, which ordered Cloverdale to file an amended complaint specifying which law or Commission order or rule it was alleging had been violated by Pacific. The ALJ ruling also required Cloverdale to identify and describe all evidence supporting its assertion that a law, order, or rule had been violated by Pacific. In addition, the ALJ ruling required both parties to provide additional information on topics identified by the ALJ. Cloverdale filed its amended

¹ Each of the signatories to C.96-05-011 represented a business in the Cloverdale area.

complaint on September 23, 1996, and Pacific filed its answer to the amended complaint on October 15, 1996.

II. Description of Complaint

Complainant alleges that unlike many other communities, the telephone subscribers in and around the City of Cloverdale must make toll calls in order to reach many essential government, medical, and business services. For example, calls from Cloverdale to Santa Rosa, the Sonoma County seat, are rated as toll calls, as are calls from Cloverdale to Healdsburg, the location of the nearest general hospital.² Complainant asserts this result is discriminatory and in violation of PU Codes Sections 453(a) and/or 453(c).

To remedy the alleged discrimination, complainant seeks toll-free calling from Cloverdale to Healdsburg and Santa Rosa. Complainant does not seek toll-free calling from Healdsburg or Santa Rosa to Cloverdale. Alternatively, complainant believes that a reasonable solution would be to move the rate center for the Cloverdale Exchange to the south so that the Cloverdale Exchange would encompass both Healdsburg and Santa Rosa. Cloverdale also believes that Extended Area Service (EAS)³ may constitute a reasonable and workable solution. Complainant states that Decisions (D.) 96-08-039, 93-09-083, and 93-04-039 support the relief being requested since each of these decisions approved a settlement that resulted in a new EAS. Complainant also believes that D.93-09-081 is precedent for the requested relief since that decision approved a

² Pacific's service territory is divided into exchanges, and each exchange has a point designated as a rate center which is used to measure the distance of calls. If the rate centers for Pacific's exchanges are within 12 miles of one another, the calls between those exchanges are local calls, while calls between rate centers greater than 12 miles apart are toll calls. Since the rate centers for the Cloverdale Exchange and the Healdsburg and Santa Rosa Exchanges are 16 and 31 miles apart, respectively, calls from Cloverdale to Healdsburg or Santa Rosa are toll calls.

³ EAS is a service which allows one exchange to extend its local calling area to another exchange. To offset the lost toll revenue, the utility charges an additional monthly flat fee. EAS is not available in metropolitan areas that have zone usage measurement (ZUM) calling plans.

settlement moving the boundaries between two exchanges so that calls between the two exchanges would be local calls.

III. Pacific's Answer to the Complaint

Pacific denies that it has discriminated against complainant. Pacific states that the toll rates charged to its Cloverdale customers are not only in full compliance with its tariff, but are the same as the toll rates charged to all of its other customers. Pacific also asserts that Cloverdale customers may use local calling to access a full range of essential services such as schools, doctors, dentists, police, fire, numerous government agencies, and a host of businesses.⁴ Furthermore, Pacific states that at least three communities totaling 11,085 telephone lines must place toll calls to reach the nearest hospital: Campo and Jacumba in San Diego County, and Brawley in Imperial County. According to Pacific, these three communities are all served by Scripps East Valley Hospital which is outside of the communities' local exchange area. Pacific states that the Scrips East Valley Hospital has a toll-free number, and that Healdsburg General should likewise set up a toll-free number to meet the needs of its Cloverdale customers.

Pacific asserts that moving the Cloverdale rate center is not a reasonable solution. According to Pacific, D.96-01-010 and D.94-01-015 make clear that rate centers, once established, should not be changed due to the costs, administrative burdens, and investment recovery issues associated with rate center changes.

Pacific also believes that establishing an EAS is not a reasonable solution since it would not comport with the principle established in D.91-01-011 that EAS is only appropriate where essential services cannot be reached via local calling- a situation which Pacific believes does not exist for Cloverdale.

Pacific acknowledges that D.93-04-039 approved a settlement whereby one-way EAS was established from Watsonville to Santa Cruz. However, Pacific believes that D.93-04-039 can be distinguished from the current case since the Watsonville and Santa

⁴ Pacific provided a three-page list of agencies and services available to Cloverdale customers on a local and/or toll-free calling basis.

Cruz exchanges are only 16 miles apart, while the Cloverdale and Santa Rosa Exchanges are 31 miles apart. In addition, while the Cloverdale and Healdsburg Exchanges are only 16 miles apart, Pacific believes that EAS is unnecessary since Cloverdale residents have access to a myriad of services through local and toll-free calling.

Pacific likewise disputes Cloverdale's assertion that D. 96-08-039 and D.93-09-083 are applicable precedent even though both of these decisions approved a one-way EAS from a small community to a larger community. Pacific states that both of these decisions were predicated on a finding by the Commission that customers were forced to make toll calls in order to reach essential services. Pacific, however, believes Cloverdale telephone subscribers can access all essential services without the need to make toll calls.

Finally, Pacific argues that Cloverdale's reliance on D.93-09-081 is misplaced. According to Pacific, D.93-09-081 involved a relocation of a Local Access and Transport Areas (LATA)³ boundary so that residents within a single community would not be billed different rates for identical calls depending upon which side of the LATA boundary they lived. Pacific states that since Cloverdale is not split between two LATAs, D.93-09-081 provides little guidance for this proceeding.

IV. Discussion

PU Code Section 1702 and Rule 9 require that a complainant must allege that the defendant has violated one or more of the following: (1) a law; (2) a Commission rule,

³ California is divided into ten LATAs of various sizes, each containing numerous local telephone exchanges.

order, general order; or (3) a tariff rule.⁶ In addition, the complainant has the burden of proving that the defendant has violated any law, rule, order, or tariff.⁷

In the current proceeding, complainant alleges that Pacific has violated PU Code Sections 453(a) and/or 453(c) by requiring telephone subscribers in and around Cloverdale to pay toll charges for calls to Healdsburg and Santa Rosa in order to reach essential services. PU Code Section 453(a) and 453(c) state as follows:

453(a): No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

453(c): No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

In alleging discrimination under PU Code Section 453, complainant must show that Pacific has not only provided service to Cloverdale that is different from the service provided to other customers, but that the difference in service is unreasonable or unfair.⁸ Discrimination forbidden by Section 453 "must be undue, taking into consideration all of the surrounding facts and circumstances."

⁶ Section 1702 of the PU Code requires that a complaint must set forth "any act or thing done, or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed violation, of any provision of law or of any order or rule of the Commission." Similarly, Rule 9(a) states that "[a] complaint may be filed by any corporation or person...setting forth 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."

⁷ D.91-01-011, mimeo., p. 9; D.91-12-014, Conclusion of Law 2; and D.93-09-027, 50 CPUC2d, 644 at 645.

⁸ Hansen v. City of San Buenaventura (1986) 42 Cal.3d 1172 at 1180. ("It is only unjust or unreasonable discrimination which renders a rate or charge unreasonable.")

⁹ In re Atchison, Topeka and Santa Fe Railway Company (1940) 43 CRC 25at 34.

We find that Cloverdale has failed to demonstrate that Pacific has violated PU Code Sections 453(a) or 453(c) by engaging in undue discrimination. Pacific presented persuasive evidence that Cloverdale telephone customers, like most of Pacific's customers, do not have to make toll calls in order to telephonically access a wide range of business, government, and other services. Attached as Appendix A to this order is a list compiled by Pacific of the business, government, and other services available to Cloverdale telephone subscribers within their local calling area or through toll-free numbers (i.e., 800/888).¹⁰ Although Cloverdale telephone customers must place a toll call to reach the nearest general hospital, we do not find this to be grounds for concluding that Pacific has violated PU Code Sections 453(a) or 453(c). As Appendix A demonstrates, Cloverdale subscribers can use local calling to reach emergency medical services (i.e., 911), dentists, pharmacies, physicians, and psychologists.¹¹

We emphasize that our denial of Cloverdale's complaint is based solely on the facts of this case and should not be construed as setting a new precedent for the resolution of other complaints currently before us regarding the adequacy of local exchange service. We stand ready to order EAS or other appropriate remedies in cases where subscribers do not have telephonic access via local or toll-free calling to essential business, government, and other services.

We are sympathetic to rural and semi-rural communities such as Cloverdale whose telephone subscribers may have to make more toll calls than do subscribers in suburban and urban areas. While we cannot change the geographic circumstances of Cloverdale, we have opened the market for toll calls to competition in order to reduce costs and increase the range of services available to consumers. As a result, Pacific Bell now has many competitors for calls made from Cloverdale to Healdsburg and Santa Rosa. If Cloverdale subscribers believe they are paying too much for service from

¹⁰ Appendix A is a copy of Exhibit A appended to Pacific Bell's (U 1001) Answer to Amended Complaint.

Pacific Bell, they may wish to investigate whether any of Pacific's many competitors can provide similar service for less money.

Findings of Fact

1. The complainant filed C.96-05-011 against Pacific on May 3, 1996. Pacific filed its answer to the complaint on June 6, 1996. An amended complaint was filed on September 23, 1996, and Pacific filed its answer to the amended complaint on October 15, 1996.

2. Pacific's telephone subscribers in the Cloverdale Exchange must place toll calls in order to reach the Healdsburg and Santa Rosa Exchanges.

3. Complainant alleges that it must pay higher telephone rates than other similarly situated communities in order to reach essential services. Complainant asserts this result is discriminatory and, therefore, in violation of PU Codes Sections 453(a) and/or 453(c).

4. To remedy the alleged discrimination, complainant seeks toll-free calls from Cloverdale to Healdsburg and Santa Rosa. Alternatively, complainant asks that: (a) Pacific be required to move the Cloverdale Exchange rate center to the south so that the Cloverdale Exchange would encompass both Healdsburg and Santa Rosa; or (b) Pacific be required to establish EAS from Cloverdale to Healdsburg and Santa Rosa.

5. Pacific denies that it has discriminated against its Cloverdale customers and opposes each of complainant's proposed remedies to the alleged discrimination.

6. The toll rates that Pacific charges to its Cloverdale customers are in compliance with Pacific's tariffs.

7. The toll rates that Pacific charges to its Cloverdale customers are the same as the toll rates that Pacific charges all of its other customers.

" No evidence was presented regarding the number of calls made from Cloverdale to the general hospital in Healdsburg.

8. Pacific's Cloverdale customers may use local calling and toll-free calling (i.e., 800/888) to access basic and necessary services such as schools, doctors, dentists, police, fire, numerous government agencies, and a host of businesses.

9. Pacific faces competition in the provision of toll calls from the Cloverdale Exchange to the Healdsburg and Santa Rosa Exchanges, and Cloverdale subscribers may wish to investigate whether any of Pacific's many competitors can provide the same service for less money.

Conclusions of Law

1. Cloverdale, as the complainant, has the burden of proving its allegation that Pacific has violated PU Code Sections 453(a) and/or 453(c).

2. In alleging discrimination under PU Code Sections 453(a) or 453(c), Cloverdale must show that Pacific has not only provided service to Cloverdale that is different from the service provided to other customers, but that the difference in service is unreasonable or unfair.

3. Cloverdale failed to demonstrate that Pacific has violated PU Code Sections 453(a) or 453(c).

4. The complaint should be denied.

O R D E R

IT IS ORDERED that:

1. The complaint in Case 96-05-011 is denied.

2. This proceeding is closed.

Dated April 23, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

APPENDIX A:

**LIST OF GOVERNMENT, BUSINESS AND OTHER
SERVICES THAT MAY BE TELEPHONICALLY ACCESSED BY
TOLL-FREE CALLING BY CLOVERDALE TELEPHONE
SUBSCRIBERS**

Appendix A

Cloverdale Chamber of Commerce vs. Pacific Bell
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LOCAL/TOLL-FREE CALLING FOR CLOVERDALE CUSTOMERS¹

Government Offices

City of Cloverdale -	911 (Emergency) Fire Police/Ambulance City Hall Water Department Bus Memorial Pool Library Planning Department Refuse Pick-up & Disposal	894 prefix ² ↓ (800 #) ³
Sonoma County -	Agriculture Burn Info United Airlines Assessor Maternal & Health Care Mental Health Services Satellite Outreach Program Women/Infants Nutrition Child Protective Service Fraud Investigation GAIN Program Jury Service Office Mosquito Abatement Sonoma County Transit Schools - Auto Technology Small Claims Court	(800 #) ↓ 894 prefix (800 #) ↓ 894 prefix (800 #)

¹ Source: Sonoma County Pacific Bell Directory (expires April 1997), Pacific Bell Smart Yellow Pages.

² 894 is the prefix for the Cloverdale Exchange. All calls within an exchange are local calls.

³ 800 numbers are toll-free for the calling party.

Appendix A

Government Offices (cont'd)

State of California -

- Automotive Repair
- Conservation Dept.
- Consumer Affairs
- Contractors License Board
- Board of Equalization
- Fair Employment & Housing
- Forest Fire Stations
- Franchise Tax Board
- Health Services Dept
- Medi-Cal Fraud Hotline
- Highway Patrol
- Homeowners Assistance
- Housing & Community
Development
- Insurance Dept.
- Lottery
- Medical Board of Calif.
- Motor Vehicles
- California State Board of
Nurses
- Public Utilities Commission
- State Bar of California
- Franchise Tax Board
- Toxic Substances
- Transportation - Dept of
CalTrans
- Veterans Affairs

(800 #)

↓
894 prefix
(800 #)

U.S. Government -

- Internal Revenue Service
- Medical Information
- Postal Service
- Cloverdale Post Office
- Social Security Admin.
- Dept. of Transportation
- Dept. of Veterans Affairs

(800 #)

↓
894 prefix
(800 #)

Appendix A

Schools

- Cloverdale High School
- Jefferson Elementary School
- Johanna Echols Hansen
Memorial Continuation H.S.
- Washington Elementary School

894 prefix



Businesses

- A-1 Traffic School
- Accountants
- Adoption Services
- Airlines
- Architects
- Attorneys
- Churches
- Delicatessens
- Dentists
- Florists
- Funeral Directors
- Grocery Stores
- Hardware Store
- Library
- Medical Center
- Motels
- Optometrist
- Pharmacy
- Physicians
- Psychologist
- Real Estate Brokers
- Restaurants
- Travel Agency
- Veterinarians

(800 #)

894 prefix

(800 #)



894 prefix



(END OF APPENDIX A)