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Decision 97-06-062 June 11, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Toward Utility Rate Normalization,)
)
Complainant,)
)
vs.)
)
Pacific Bell,)
)
Defendant.)

Case 91-03-006
(Filed March 1, 1991)

ORIGINAL

OPINION

This decision directs Pacific Bell (Pacific) to submit to the State Treasury approximately \$5 million plus the interest which has accrued since January 1, 1996. The amount represents late payment overcharges Pacific was unable to refund to individual customers pursuant to a refund program ordered by the Commission.

Background

Decision (D.) 93-05-062 found that Pacific violated Public Utilities Code Section 532 in its processing of late payment charges. The decision ordered Pacific to refund \$34.2 million in overcharges and to pay a \$15 million penalty. It also found that unclaimed refunds would escheat to the state. D.94-04-057 addressed several issues on rehearing, among them, the disposition of unclaimed refunds. D.94-04-057 amended D.93-05-062 to provide that the Commission had equitable powers to determine the ultimate disposition of unclaimed refunds and specified that "the residue of refund amount will be distributed for the benefit of Pacific's customers in a manner to be determined by the Commission after the amount of the residue, if any, is known."

The refund program ordered by D.93-05-062, as amended by D.94-04-057, concluded on October 31, 1995. Pursuant to Commission order, Pacific subsequently deposited the unclaimed funds into a

separate account bearing interest at the commercial paper rate. In a letter to the Commission's Executive Director, dated January 2, 1996, Pacific stated that it had been unable to refund approximately \$5 million of the overcharges associated with the late-payment charges. The amount continues to accumulate interest.

On June 7, 1996, the assigned administrative law judge solicited comments from the parties on how the Commission should distribute the unclaimed funds. On July 5, 1996, Division of Ratepayer Advocates (DRA) filed comments.¹ Toward Utility Rate Normalization (TURN),² Utility Consumers Action Network, and Public Advocates (jointly, Consumer Groups) also filed comments. Pacific did not file comments.

Subsequently, the assigned administrative law judge drafted a proposed decision for the Commission's consideration which was listed on its business meeting agenda. That proposed decision was withdrawn so that the Commission could consider additional uses for the funds. In a ruling dated December 18, 1996, the Commission inquired as to the wisdom of using the funds for a variety of purposes and solicited comments from a number of parties to pending telecommunications proceedings. Only TURN responded to this second ruling.

DRA's Position

DRA proposes that the unclaimed funds be returned to ratepayers by reducing the surcharge adjustment governed by Pacific's Rule 33. DRA believes this resolution of the matter is consistent with the Commission's intent to benefit Pacific's customers.

¹ The Division of Ratepayer Advocates is now referred to as the Office of Ratepayer Advocates.

² Toward Utility Rate Normalization is now referred to as The Utility Reform Network.

Consumer Groups' Position

Consumer Groups propose that the Commission use the unclaimed funds to support the advocacy efforts of groups representing telecommunications customers. Consumer Groups observe that small customers have been underrepresented in some vital telecommunications proceedings, such as the implementation of the Telecommunications Act of 1996 and the Caller ID proceeding at the Federal Communications Commission (FCC). Consumer Groups state that customer advocacy is deterred in some proceedings because advocates must wait long periods to recover their costs if in fact they are ultimately recoverable.

With that in mind, Consumer Groups propose that the Commission order that the funds be used to provide "upfront" funding to nonprofit customer representatives in proceedings where they would otherwise be unable to participate. Consumer Groups propose the Commission use the skills of an existing foundation to administer the funds over a designated period.

TURN's second filing on this matter reiterates its view that the funds should be used for advocacy.

Discussion

Consumer Groups propose to use the unclaimed refunds for "upfront" funding of advocacy work. As Consumer Groups' observe, intervention in Commission proceedings may be a risky venture. Some proceedings require considerable investments of time and effort before the Commission's resolution of contested issues. After investing the time and effort to participate in Commission proceedings, intervenors are not guaranteed that they will be recompensed. Consumer advocates must make substantial contributions to Commission decisions in order to be reimbursed for their costs. Moreover, customer advocates cannot qualify, under existing California statutes (PU Code § 1801 et seq.), for intervenor compensation following their successful participation in

federal proceedings even though their efforts may benefit California customers.

We recently issued Rulemaking (R.) 97-01-009 and Investigation 97-01-010 to consider refinements to our intervenor compensation program. The final round of comments in that proceeding were due April 30 and should present the parties' views of the existing program and proposals for change. We hope to resolve there some of the issues Consumer Groups raise here.

In the interim, we are not convinced that we have discretion to commit the funds to advocacy activities given the circumstances in this proceeding. Civil Code of Procedure § 1519.5 provides that refunds which remain unclaimed for more than one year escheat to the state. As we recognized in D.94-04-057 § 1519.5 does not affect the Commission's authority to order equitable remedies. Here, however, we do not believe "equitable remedies" are required. In this case, all types of customers were equally vulnerable to overcharges and all were provided the same opportunity for redress. Most customers received an appropriate refund, although some customers either did not understand their right to a refund or did not choose to assert that right. The allocation of the unrefunded charges to advocacy activities serves no equitable function connected with this proceeding. While advocacy activities are essential to our processes, we are not convinced that § 1519.5 gives us the discretion to use unclaimed refunds to finance such activities.

We direct Pacific to submit unrefunded overcharges to the State Treasury.

The distribution of unclaimed funds is the only remaining issue in this proceeding. With this order, we therefore close this proceeding.

Findings of Fact

1. Pacific has been unable to refund the total amount of overcharges which the Commission estimated in D.93-05-062. As of January 1, 1996, Pacific reported to the Executive Director that it had a residue of about \$5 million of unclaimed funds.

2. Code of Civil Procedure § 1519.5 provides that refunds which remain unclaimed for more than one year escheat to the state and that the Commission has authority to fashion "equitable remedies" with such funds.

3. The allocation of the unrefunded charges to advocacy activities serves no equitable function connected with this proceedings.

Conclusion of Law

The Commission should order Pacific to submit the unclaimed refunds remaining in its escrow account to the State Treasury.

ORDER

IT IS ORDERED that:

1. Pacific Bell shall pay into the State Treasury, to the credit of the General Fund, late payment overcharges which it was unable to refund pursuant to Decision (D.) 94-04-057 and D.93-05-062, including interest which has accrued since January 1, 1996.

2. This complaint is closed.
This order is effective today.
Dated June 11, 1997, at San Francisco, California.

HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

I dissent.

/s/ P. GREGORY CONLON
President

I dissent.

/s/ JESSIE J. KNIGHT, JR.
Commissioner