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MAIL DATE  
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Decision 97-08-071 August 1, 1997

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BARRY M. HARMAN,

Complainant,

vs.

PACIFIC BELL (U 100 C)

Defendant.

(ECP)  
Case 96-07-008  
(Filed July 11, 1996)

**ORDER DENYING REHEARING OF D.97-03-040**

Barry M. Harman (Applicant) filed an application for rehearing of our Decision (D.) 97-03-040 in which we dismissed his complaint against Pacific Bell concerning overdue payments for telephone service and procedures for restoring service. Upon review of the application for rehearing, and the response of Pacific Bell, we hereby deny rehearing of D.97-03-040. The application does not demonstrate legal error as required by Cal. Pub. Util. Code Section 1732.<sup>1</sup>

Applicant sets forth in the application for rehearing no less than 32 items of claims which purport to identify legal error in both the expedited proceedings and the decision resulting from those proceedings. The 32 items, however, consist of vague, repetitious, and conclusory accusations. They fail to present specific, comprehensible arguments that would demonstrate a misapplication of the law, a failure of procedure, or the absence of a rational basis for our decision denying the complaint against Pacific Bell.

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<sup>1</sup> Unless otherwise indicated, hereinafter all statutory references shall be to the California Public Utilities Code.

We will, nevertheless, address those arguments which we can discern in the application.

Several of the errors claimed by Applicant relate to a general contention that we did not consider the allegations of his complaint. The complaint, first of all, consists of rambling and confused allegations. However, because of the documentary evidence provided by Pacific Bell in its defense, and its thorough answer to the complaint, we were able to perceive that the complaint was based on Applicant's objections to Pacific Bell's billings and service responses.

The gravamen of the complaint is that Pacific Bell had wrongfully maintained a telephone line established for another customer in Applicant's residence, and improperly disconnected service to Applicant's several telephone lines when he did not pay the billings for the lines in his name. As we discussed in D.97-03-040, there was sufficient evidence for us to conclude that because the company had not received a request for disconnection from the other customer, who was still listed by the recorder's office as the owner of the premises, Pacific Bell acted properly in investigating the matter before disconnecting this other line three months after Applicant demanded that it be removed. (D.97-03-040, mimeo, p. 2, 4. See Pacific Bell's Answer to Complaint, pp.1-2.) We also found that the service records provided by Pacific Bell demonstrated that Applicant had not been billed for the other customer's telephone line. (D.97-03-040, mimeo, p. 4.) Finally, in our decision we considered Pacific Bell's actions in response to Applicant's demands for the restoration of his own telephone service, which had been terminated for payment delinquencies. We found Pacific Bell's actions reasonable and appropriate. (D.97-03-040, mimeo, pp.4-5.)

In the application for rehearing, Applicant does not identify any material evidence we did not consider and weigh in rendering our decision with regard to this matter. Simply to object to the weight given the evidence, as it appears Applicant does in

the application, does not establish legal error requiring rehearing of the case.<sup>2</sup>

Applicant also claims, generally, that he was not given a fair hearing. However, in response to a written request by Applicant, dated August 30, 1996, the Administrative Law Judge ("ALJ) assigned to the case issued a ruling on September 12, 1996 designating the case for hearing under the expedited complaint procedures.<sup>3</sup> The expedited procedures, similar to small claims hearings in the courts, are provided for in the Commission's Rule 13.2, and are authorized under Sections 1701 and 1702.1. The complaint was heard October 28, 1996 pursuant to the conditions set forth in Rule 13.2. Applicant knowingly elected the expedited, informal hearing, but now contends he was not given the opportunity to present his case. Applicant fails to identify, however, any violation of his due process rights.

For example, in Item I of the application for rehearing, Applicant states he was "denied rights and privileges in connection with discovery." This statement, however, is not supported by the identification of the specific discovery he sought which would have been material to his complaint. Nor does he provide any facts to substantiate that specific discovery requests were made to the presiding ALJ and were improperly denied.

Similarly, in Item 5, Applicant contends that prejudicial delays resulted because the "Commission actively or passively failed to enforce its own procedural rules

<sup>2</sup> Even upon review of a Commission decision by the California Supreme Court, the judgment of the Commission as to the weight accorded the evidence may not be second-guessed. See Camp Meeker Water System, Inc. v. Public Utilities Commission (1990) 51 Cal.3d 845, 864; Goldin v. Public Utilities Commission (1979) 23 Cal.3d 638, 652-653.

<sup>3</sup> In the Applicant's memorandum of August 30, 1996, Applicant requests "that the matter be immediately rescheduled for an informal hearing pursuant to Rule 10 and/or pre-printed CPUC Guidelines furnished to me." Rule 10 prescribes the form and content of complaints, not the form of hearing. The "CPUC Guidelines" referred to by Applicant are found in two documents, one headed "Explanation of Complaint Procedure" and the other, "Guide for PUC Intervenors," the latter containing a description of the types of proceedings and hearings available to complainants as well as other parties to the various proceedings conducted by the Commission. Both documents are given to customers who file complaints.

in Part IV and V, evidence, testimony and rules of witness conduct." We are perplexed by this statement since Applicant again does not intelligibly identify the specific errors in procedure which he claims occurred. Bootstrapping consecutive, vague accusations, as Applicant does in the application, does not constitute a demonstration of legal error in our decision, or provide grounds for requiring rehearing of the case.

We note, moreover, that Applicant has demonstrated a disregard for accuracy where he attacks the Commission for withholding his money and, according to Applicant, causing him to suffer late charges which purportedly were assessed by Pacific Bell. Items 25 and 26 of the application state:

"25. The Commission has now withheld funds for a period in excess of (1) one year, per evidentiary exhibits Complainant is assessed utility late charges per tariff and in concert with defendants alleged 'Office Policy'; all of which serve to require rehearing.

"26. Based upon 25 above, Defendant unilaterally disconnected for non-payment at the time of the hearing on or about October 23, 1996, the same allegation used previously and requiring rehearing as a matter of law (also due to Defendant's concealment.)"

The money referred to by Applicant was freely entrusted by Applicant to the Commission by his own choice pursuant to Section 1702.2. In fact, he made ongoing deposits with the Commission over the course of several months. Applicant made that choice rather than pay his telephone bills to Pacific Bell pending the conclusion of the proceeding. In D.97-03-040, we expressly dealt with this money, consistent with Section 1702.2, and ordered that it be disbursed to Pacific Bell finding the complaint against Pacific Bell unsubstantiated. (See Ordering Paragraph 2, and the relevant discussion on page 6 of D.97-03-040.)

Applicant's claim that we "withheld funds" is, therefore, a misrepresentation of the facts and does not advance the process provided by this Commission for fairly and effectively resolving his allegations. We will, nonetheless, direct our Consumer Services Division to review an accounting of those funds that were deposited under Section 1702.2 and ordered disbursed to Pacific Bell in order to assure that Pacific Bell has not charged Applicant late fees for the time the money was on deposit with the Commission.

Similarly, in Item 7 of the application for rehearing, Applicant contends, falsely, that we permitted Pacific Bell to be represented by counsel at the expedited hearing in violation of Rule 13.2. Pacific Bell was represented by Adrian Tyler. We have checked the membership roster of the State Bar of California and do not find an Adrian Tyler listed as an attorney.

Again, in Item 12 Applicant misleadingly complains of delays in processing his complaint. The fact is that Applicant made ongoing additions to his complaint after he first addressed his concerns to the mediators in the Commission's Consumer Services Division. Our records show the complaint was not formally filed until July 11, 1996. Our records also show that by a memorandum to the Commission dated August 30, 1996, Applicant requested his complaint be heard informally pursuant to the expedited complaint procedures provided for in the Commission's Rule 13.2. The ALJ's ruling of September 12, 1996 granted this request. The hearing of the matter was then conducted on October 28, 1996, less than four months from the filing of the complaint.

Applicant's claims in Item 12, therefore, not only misrepresent the procedural history of his case, but patently fail to establish any grounds to grant rehearing.

Finally, with respect to issues raised by Applicant regarding Pacific Bell's customer service responses, Pacific Bell's Answer to the complaint demonstrates,

with copies of the company's letters to Applicant, that it properly provided a detailed accounting of Applicant's several telephone lines and the charges attributable to them, as well as directions for having his service reconnected. We can discern nothing in the application for rehearing to convince us that we did not reasonably consider this evidence in denying the complaint.

In sum, like the complaint, the application for rehearing is based on unsupported, incoherent, and conclusory accusations. The Commission has expended considerable time and resources, nonetheless, in trying to decipher any allegations of Applicant which could possibly constitute a viable complaint, and in providing Applicant with a fair hearing. We now find no demonstration of legal error in our denial of the complaint in D.97-03-040 which would require rehearing of the case.

**IT IS THEREFORE ORDERED that:**

1. The application for rehearing of D.97-03-040 be denied.
2. The Commission's Consumer Services Division shall review the accounting of those funds deposited by Applicant pursuant to Cal. Pub. Util. Code Section 1702.2 and ordered disbursed to Pacific Bell in D.97-03-040 to assure compliance with the Commission's rules and procedures applicable to Section 1702.2 funds.
3. This docket is now closed.

This order is effective today.

Dated August 1, 1997, at San Francisco, California

**P. GREGORY CONLON**  
President  
**JESSIE J. KNIGHT, JR.**  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**  
**RICHARD A. BILAS**  
Commissioners