

Decision 97-09-018 September 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Raman N. Patel, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 Pacific Bell, )  
 )  
 Defendant. )

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Case 95-08-019  
(Filed August 15, 1995)

O P I N I O N

By complaint filed August 15, 1995, Raman N. Patel (complainant) seeks an order of this Commission directing Pacific Bell (PacBell or defendant) to cease and desist from assessing him charges for calls made from telephones located at his premises when the calling card used for the calls is not valid, and "to reimburse all hotels and motels involved in these types of calls in the past two (2) years when Pacific knows that it was fraudulent and it was doing something wrong. Also heavy penalty for this type of practice to teach a lesson." (Complaint, p. 2, para. G.).

A Prehearing Conference was scheduled to be held at the Commission's courtroom in San Francisco, but was cancelled when the complainant objected to the conference location. Because of our disposition of this matter on the law, it is unnecessary to reschedule the PHC or to hold a hearing on the merits of the complaint.

We find the complaint fails to state a claim upon which the relief requested may be granted; therefore, the complaint must be dismissed. Because we dismiss the complaint, we must also deny the requests for reimbursement and penalties.

Background

Complainant is the owner of two motels located in San Jose, California, and, in connection therewith, is a subscriber to telephone service provided by defendant. Telephones for guest's use are located in each motel room, and each guest has the option of charging calls to the motel room, a calling card, home, or business number, etc. In instances where the call is charged to the room, the charge for the call is added to the room bill and the guest pays all charges at checkout. When other modes are used, the charges for the call are assessed against the number called or the calling card's number. Unfortunately, on occasion, guests at complainant's motels have placed long distance calls utilizing invalid calling cards or have billed charges to numbers which, for one reason or another, cannot be collected. In those instances, PacBell has, pursuant to its tariff on file with the Commission, billed those charges back to complainant's account, and it is those types of charges to which complainant objects and from which he seeks our protection.

Position of the Parties

It is complainant's position that PacBell is in the best position to determine whether a proffered calling card is valid or whether charges for a call will be paid or accepted by the party called, and therefore the utility, rather than the owner of the hotel/motel from which the call was placed, should be the party to bear any loss occasioned by the transaction.

PacBell, on the other hand, takes the position that its actions are authorized by and in strict compliance with the provisions of its filed tariff Schedule Cal. P.U.C. Nos. A2.1.9.A and A6.2.1.A.4.a(8), and that the complaint fails to allege any violation of law, order, or rule of the Commission, and therefore must be dismissed without the imposition of sanctions.

Discussion

Pursuant to § 1702 of the Public Utilities Code, and Rule 9 of the Commission's Rules of Practice and Procedure, in order for a complaint to be considered by the Commission, the complaint must allege facts setting forth any act or thing done or omitted to be done by a utility in violation of, or claimed to be in violation of, any provision of law or of any order or rule of the Commission. Here, complainant does not allege that billing him for calls originating from his service for which other methods of payment are unavailable violates some identifiable provision of law, or a Commission order or rule; he merely complains that PacBell, not him, should absorb the loss arising from the actions of his guests in failing to pay for phone calls made from the rooms in complainant's motel.

Under the circumstances here present, which of the parties is best able to investigate the validity of a calling card or absorb any loss occasioned by fraudulent use of the same is immaterial. The action of PacBell in billing such uncollectible charges to the subscriber of the service from which the calls were made is clearly and specifically authorized by provisions of tariffs it has filed with the Commission, and those tariffs, once filed, are controlling.

We do not, at this point in time, deem the problem of which complainant complains to be of sufficiently broad and compelling interest to warrant the institution of a Commission investigation. Rather, we will continue to monitor and review the practices of all telephone utilities under our jurisdiction, and, if abuses of authority are noted, we will not hesitate to take appropriate action to correct the same.

In order to avoid any misconception that we are not sympathetic to complainant's plight, we take this opportunity to advise complainant and others serving the public that we recognize that on occasion certain individuals will cause harm to others by

not dealing fairly or honestly. We realize that tradesmen are subject to being defrauded and must take steps to protect themselves from loss. PacBell has so protected itself by the provisions of its tariffs. Complainant may protect himself by taking steps to insure payment for all calls made from rooms at his motel, such as requiring that all calls be charged to the caller's room or be operator assisted collect calls which require the called party's acceptance of responsibility for payment before the call is completed. Other, more advanced technology solutions are no doubt available to complainant. In this case, complainant must accept the responsibility for protecting against abuse of the telephone service to which he subscribes.

Findings of Fact

1. Complainant is the owner of two motels in San Jose, which motels are provided telephone service by PacBell.

2. PacBell is a public utility under the regulatory jurisdiction of this Commission.

3. PacBell has on file with the Commission tariffs governing the terms and conditions of service it provides to its subscribers.

4. In instances where guests at complainant's motels make calls for which PacBell cannot collect from the party making or receiving the call, PacBell bills the charges for such calls back to complainant as subscriber of the telephone service from which the call originated.

5. PacBell's charge-back as described in Finding of Fact 4 above is authorized under PacBell tariff Schedule Cal. P.U.C. Nos. A2.1.9.A and A6.2.1A.4.a(8).

6. Complainant objects to the practice described in Finding of Fact 4 above, and alleges that the same is not fair to him and requests the Commission to issue an order directing PacBell to cease and desist, and to further make restitution of the preceding two-year back-charges, as well as impose a heavy penalty "to teach a lesson."

7. Since the issue involved is solely one of law, no hearing is required.

Conclusions of Law

1. PacBell's charge-back for unpaid telephone calls made from complainant's guest rooms is authorized under PacBell's tariffs on file with the Commission.

2. The complaint fails to state a claim upon which the remedy requested may be granted.

3. The complaint should be dismissed and the relief sought denied.

ORDER

IT IS ORDERED that:

1. The complaint be and the same hereby is dismissed.
2. The relief sought in the complaint is hereby, in all respects, denied.

This order is effective today.

Dated September 3, 1997, at San Francisco, California.

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