

Decision 97-09-026 September 3, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Samuel S. Mohabir, et al.,

Complainants,

vs.

Pacific Bell,

Defendant.

ORIGINAL

Case 97-06-020
(Filed June 12, 1997)

OPINION

1. Summary

Complainants ask the Commission to require Pacific Bell to provide telephone service to their homes outside the territory that Pacific Bell has filed to serve. The complaint fails to state a cause of action for which the Commission has jurisdiction to issue a remedy. The complaint is dismissed.

2. Background

Complainants occupy nine properties on Salinas Road between Salinas and San Juan Bautista. No telephone company has filed to serve the territory in which the properties are located. Pacific Bell declined to provide service to complainants, citing estimated costs of \$101,200 to erect telephone poles and overhead cable to the area. While the complaint shows that some of the complainants have cellular phones, complainants state that cellular reception is spotty. Moreover, without phone service, complainants state that they lack access to Internet and facsimile services.

Pacific Bell states that the properties lie outside the territory that it has filed to serve. It has not voluntarily provided service in that unfiled territory. Pacific Bell argues that, under California law, so long as it is not willing to extend its service territory to the area at issue, it cannot be required to do so. If service were to be

provided, Pacific Bell asserts that, under its tariffs,¹ complainants would be responsible for the cost and, to the extent complainants seek to avoid those costs, they are seeking an unlawful preference not accorded to other customers.

3. Discussion

Generally, it has long been the rule that a public utility may not be compelled to extend its service beyond the territorial limits of its dedication. (California Water and Telephone Company v. Public Utilities Commission (1959) 51 C.2d 478; see, generally 53 Cal. Jur. 3d § 68.) If a utility voluntarily provides service in a certain district, the utility may be required to extend service throughout the territory (Hollywood Chamber of Commerce v. Railroad Commission (1923) 192 C 307), but that is not the case here. As we stated recently in Houchen, et al. v. Pacific Bell and GTE California Incorporated, Decision (D.) 97-01-005 (January 13, 1997):

"[T]he law is clear that an order directing a public utility to devote its property to some other use than the public use to which the utility has dedicated the property cannot be justified as an exercise of the [state's] police power. In dealing with public utilities, regulation of use within the dedicated use is as far as the police power may be extended, and when exceeded, it is always void for unreasonableness and may, depending upon the form and character of the order, be also void as an attempt to take property without compensation."
(D.97-01-005, slip op. at 2; citation omitted.)

Complainants here do not allege that Pacific Bell has voluntarily extended service to the unfilled territory in which they live, nor have complainants set forth any facts that would permit us to require Pacific Bell to extend its service to a geographic area that Pacific Bell has not agreed to serve.

For these reasons, complainants have not set forth any act or thing done or omitted to be done in violation of any provision of law or rule or order of the Commission. No cause of action is stated for which the Commission can provide a

¹ Pacific Bell states that Schedule Cal. P.U.C. A2.1.9 makes complainants responsible for charges applicable to their service.

remedy. The complaint must be dismissed. (Rafidy, et al. v. GTE California Incorporated (1994) 56 CPUC2d 576.)

Findings of Fact

1. Pacific Bell is a telephone public utility within the control and regulation of this Commission.

2. Complainants have homes in an area that is outside of the dedicated service territory of Pacific Bell, but nonetheless seek an order from this Commission requiring that Pacific Bell extend its facilities to the unfiled territory so that complainants can obtain telephone service to their homes.

3. Pacific Bell is not willing to voluntarily extend service to the complainants' area, and Pacific Bell has not dedicated itself to serve that area.

Conclusions of Law

1. A public utility may limit dedication of its service to a territorial area.

2. The Commission has no jurisdiction to assign an area to a public utility, thereby extending the utility's dedicated service area, unless the utility is willing to serve such extended area.

3. The complaint, failing to state a cause of action for which the Commission has jurisdiction to issue a remedy, should be dismissed.

4. Absent any issue of law or fact, no public hearing is necessary.

O R D E R

IT IS ORDERED that the complaint is dismissed for failure to state a cause of action.

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