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Decision 97-09-114 September 24, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Wilson Reid Ogg,

Complainant,

vs.

Pacific Bell,

Defendant.

ORIGINAL

Case 95-10-012
(Filed October 12, 1995)

OPINION

A Pacific Bell customer, Wilson Ogg, brought this complaint because he suspects that the company has blurred the lines between installation work and repair work and that it is systematically charging customers incorrectly. Mr. Ogg's suspicions stem from experience he has had observing Pacific Bell's work while installing and repairing lines at his Berkeley property, which is both his residence and a rental property. The focus of his complaint involves Pacific Bell's billing and collection practices related to installation and repair activities that occurred at Mr. Ogg's residence on March 24, 1995. We do not find evidence to support the suggestion that Pacific Bell deliberately tried to mislead, overcharge or intimidate Mr. Ogg. Nor, based on the limited record of this proceeding, can we conclude that Pacific Bell has a company practice or a suspicious pattern of overcharging or mischarging customers for installation and repair work. We find, however, that some of Pacific Bell's estimation, confirmation, billing and collection practices could foster confusion on the part of consumers and we order the company to take several steps to make it less likely that customers will be confused in the future.

Background

Sometime prior to March 24, 1995, Mr. Ogg ordered the installation of a new telephone line for his residence. Thereafter, he received a confirmation letter stating that

the connection charge would be \$34.75. Often, these installations can be completed without sending a technician to the site. However, on March 24, Bobby Cabras (a Pacific Bell technician) came to Mr. Ogg's house to install the new line at the point of interconnection outside the house. Mr. Ogg says he carefully tried to avoid having Mr. Cabras enter his home out of concern that Mr. Ogg would then be charged for inside wiring work. However, Mr. Cabras did eventually enter the house and performed some work on jacks.

These two individuals disagree as to what Mr. Cabras did while inside the house and why he did it. Mr. Cabras says that he entered the residence with Mr. Ogg to check the new line for dial tone and discovered that there was none. Mr. Ogg says that there was dial tone, but there was also static on the line. The jack at which Mr. Ogg wanted the new line to terminate was to the left of a jack for an existing line. Mr. Cabras says that Mr. Ogg asked to have the new line provide dial tone through the jack on the left and that he informed the customer that it would cost \$75 to install an initial jack and \$25 for each subsequent jack. Mr. Ogg says that Mr. Cabras removed the existing jack and determined that the problem with the new line was actually the result of a short in the wires for the existing line. The existing line was covered by an inside wiring repair plan, so Mr. Ogg says that he expected the repairs necessary to enable the new line to function properly would result in no extra charge.

Mr. Cabras says that after he determined that the new line was functioning properly, Mr. Ogg asked him to install an additional jack in another room for the new line. Mr. Cabras reports that he suggested replacing the existing single jack with a double jack. He says he informed Mr. Ogg that the installation charge would be \$3 for materials and \$25 for labor. Mr. Ogg says that he had merely asked the technician how much it would cost to replace a single jack with a double jack and that the technician informed him that the cost would be \$3. Regardless, Mr. Cabras performed the jack replacement.

Mr. Cabras says that before performing the additional work, he filled out a Statement of Labor form, indicating that there would be an additional labor charge of \$100, and that Mr. Ogg initialed the form before the technician performed the work. Mr.

Ogg says that Mr. Cabelas handed him a blank form to sign, and only did so after the work was done. He states that after signing the form, Mr. Cabelas filled in the numbers, handed Mr. Ogg a copy, and left. Regardless of the order in which this occurred, the form which Mr. Ogg signed indicated that there would be an additional labor charge of \$100.

Several days later, Mr. Ogg received a second confirmation letter, showing that the Service Connection Charges would total \$37.75 (\$34.75 for residential service and \$3 for a jack). This information was prominently displayed on the second page of a four page letter. The confirmation letter did not include the labor charges, although the following two sentences appeared in a non-prominent manner more than half way down the next page, after several paragraphs describing Universal Lifeline Telephone Service and before a sentence about inside wiring plans:

"If you have ordered installation or rearrangement of inside wire from Pacific Bell, labor charges are not shown. They will be provided by your installer during the visit."

When Mr. Ogg received this letter, it confirmed his assumption that he would not be charged labor for the work done in his house, especially since he was under the impression that the inside wiring work would have been covered by his Inside Wire Repair Plan contract. Thus, when he subsequently received the first bill for his new line, he did not agree with all of the charges. The bill totaled \$186.97 and included a charge of \$137.75 for the installation of his new line and jacks. Mr. Ogg called Pacific Bell to complain. In addition, he did not pay his bill when it was due. Pacific Bell responded on May 23, 1995, by sending him a letter stating that he owed \$186.97 and emphasized, in capital letters that if his payment was not received, his telephone would be disconnected. In the following two sentences, in type that is not capitalized, Pacific Bell states, "[t]his amount due may include charges for enhanced services. Withholding amounts due solely for these services will not stop your basic service." Later in the letter, using type that was not capitalized and was contained in the middle of a longer paragraph, Pacific Bell informed Mr. Ogg that "the California Public Utilities Commission has ordered that basic service will not be disconnected for non-payment of

other services such as voice, mail, electronic mail, voice store and forward, fax store and forward, directory advertising, and inside wire installation that may be included in the 'Amount Due.'" The notice did not break down the charges to identify those that would result in disconnection if left unpaid and which would not.

On June 2, 1995, Mr. Ogg responded to this notice by sending a check for \$171.11 (the amount of the original, disputed bill) to the Commission to initiate an informal complaint. Of this total, the actual amount in dispute was \$100, representing the charge for installation of an original jack and an additional jack. Nonetheless, Mr. Ogg received a second disconnection notice from Pacific Bell on July 8, 1995. In response to this notice, Mr. Ogg sent a check to the Commission for \$112.25 and initiated a second informal complaint. Pacific Bell later notified the Commission that it had resolved the first complaint and acknowledged that it sent the second disconnection notice by mistake. The Commission returned both checks to Mr. Ogg, who filed this formal complaint on October 12, 1995.

Discussion

Mr. Ogg accuses Pacific Bell of adopting and implementing a policy of charging customers non-regulated rates for regulated work. Specifically, he argues that Pacific Bell charges its customers for an inside wiring installation (a competitive, unregulated activity) when it is merely activating new service (at the time, a monopoly, regulated activity).

When Pacific Bell sends a technician to the customers' site to perform regulated installation or repair work, that technician is also ready and able to perform inside wiring installation work. This is understandable as a practical matter, since it is reasonable to expect that a customer may discover that he or she wants additional work done, once the technician has come to the site. In such circumstances, it might be inconvenient for both the customer and the telephone company to insist that any additional work be done on a separate occasion. Mr. Ogg strongly suspects that Pacific Bell takes advantage of this situation by having its technicians "create" a need for inside wiring work by persuading the customer to allow the technician to enter the home and check the wiring. Mr. Ogg reports that his suspicions have been confirmed in

conversations he has had with Pacific Bell managers and other employees. In addition, Mr. Ogg accuses Pacific Bell of charging for inside wiring installation work when it is merely performing repair work which, in his case, would be covered by a service agreement.

Installation Charges

Mr. Ogg is not seeking anything for himself in this complaint. Instead he is asking us to order Pacific Bell to cease and desist from the alleged inappropriate conduct and to order refunds to any customers that may have been overcharged as a result of these practices. His concern is most directly prompted by the two labor charges that were included on his bill: \$75 for the installation of an initial jack and \$25 for the installation of a subsequent jack.

The first charge relates to the original service request: the provision of dial tone to a jack located to the left of an existing line. Mr. Ogg lives in the building where he was requesting service, but he also has various tenants in the complex at the same location. He reports that there is a sizable and frequently-changing need for telephone lines at this location. To serve this need and to increase the availability of lines in the neighborhood, Pacific Bell had run a thick cable to Mr. Ogg's property. The box attached to the end of the cable on Mr. Ogg's property would enable Pacific Bell to tie down as many as 50 different telephone lines.

According to Mr. Cabras, when he arrived to provide Mr. Ogg's new service, Mr. Ogg told him which wires should be tied down in order to provide dial tone to the jack in question. Mr. Cabras testified that he tied down the requested wires, but found that there was no dial tone available at the jack. Mr. Ogg recalls the events differently. He states that the requested tie-down did produce a dial tone, but that there was static on the line. Mr. Cabras stated that he responded to the alleged lack of dial tone by opening the jack and placing a device on the wires that generates a tone. By then going back to the box outside of the house, he states he was able to trace the tone to the appropriate pair of wires and then tie down those wires, completing the connection. He reports that in this way, he was able to deliver dial tone to the requested jack. Mr. Ogg states that none of this happened and that Mr. Cabras cleared the alleged static by

repairing a problem in the wires leading to an existing telephone line. If the facts were as Mr. Ogg remembers them, then Pacific Bell should not have charged him for the labor, since the repair work would have been covered by an existing service contract. If the facts were as Mr. Cabelas remembers them, then the charge would only be appropriate if the work that he did is reasonably defined as "installing" a jack. However, even accepting Pacific Bell's interpretation of what took place, the jack was in place prior to its technician's arrival. Pacific Bell did not change the wires or put any new equipment in place. The work that it performed was directly related to delivering a dial tone across existing wires to an existing jack. This relates to the initiation of service and not to the installation of inside wiring.

Pacific Bell has charged for work it did not do, which raises the concern that the utility may have done so in other instances, as well. We will direct the Consumer Services Division to review Pacific Bell service and billing records to determine whether or not there is a pattern of such mischarging and report back to us within 180 days. If the Consumer Services Division reports such a pattern, we will institute an investigation to consider other evidence and to pursue appropriate remedies.

The remaining contested portion of the bill is the \$25 charge for pulling wires to add the new line at a second existing jack location. It is appropriate for Pacific Bell to charge for this work, since Mr. Cabelas did change the wiring. However, since this was actually the first and only jack installation, a \$75 charge would have been appropriate.

Explaining the Boundaries Between Installation, Repair and Service Initiation

Once a Pacific Bell technician is at a customer's service site, he or she can provide services that were not part of the original order. The additional services may be of a different type than those originally requested. What began as the initiation of new regulated service may eventually include inside wiring work, which is a competitive, untariffed offering. It makes sense for the technicians to be prepared to do whatever is needed to give customers the telephone service that they want. However, this dual role provides opportunities for competitive advantage and for abuse. That is why the Commission requires Pacific Bell to inform its customers that, for some aspects of their service, they can hire a competitor, or do the work themselves. However, the record in

this complaint demonstrates that there is still potential for customers to be left uncertain about their rights and obligations, the nature of the work that needs to be done (as to whether or not it is inside wiring work) and the charges that will apply.

In terms of the knowledge about the distinction between regulated and unregulated services, Mr. Ogg is not an average customer. He is an attorney and frequently oversees the commencement of service on his property. However, the record shows that he was not able to understand where Pacific Bell was drawing the line between inside wiring and service initiation, between competitive offerings and regulated services, between installation and repair. We could hardly expect the average customer to make more sense of these distinctions under similar circumstances. We will require Pacific Bell to work with our Telecommunications Division and the Public Advisor's Office to develop a better way to communicate these distinctions. Perhaps part of the answer will involve developing a single sheet of paper with all of the regulated, flat-charge offerings on one side and all of the competitive activities and charges listed on the other and a clear labeling of which is which. We will ask Pacific Bell to report back to us with its proposal, in this docket, within 60 days.

Disconnection Notice

We are also troubled by the wording of the company's disconnection notice. Pacific Bell is not allowed to disconnect a customer's basic service for failure to pay charges for enhanced services or inside wiring work. There is an opportunity for customer confusion because charges of all three types are often lumped together in a single bill. Although a careful reading of all of the language in the notice should inform the customer that he or she may need only pay some of the overdue charges in order to avoid disconnection, there are challenges. A quick reading of the disconnection notice provides an opposite impression. In capital letters, the customer is informed of the total amount due and that "if your payment has not been received or charges disputed" by a certain date, service will be disconnected. In smaller type, the notice says that withholding amounts due solely for enhanced services will not stop basic service. Later, there is language that adds other things, such as inside wiring charges, to this list. This information is provided in regulatory terms, not in common English. Yet, even if the

customer knows what this means, there is no way for the customer to know, by reading the notice, whether some or all of the past due charges fit in this category.

The disconnection notice could be made significantly clearer. For instance, it could state that "our records show that \$(total) is now due on your account. Of this amount, \$(subtotal) reflects charges for basic telephone service. If your payment of \$(subtotal) is not received, or disputed, by (a certain date), your service will be temporarily disconnected." We will direct Pacific Bell to work with the Commission's Public Advisor to develop new wording for this notice and submit proposed new notice language to this Commission by advice letter within 90 days.

Confirmation Letter

As discussed earlier, Pacific Bell automatically sends a confirmation letter to customers ordering new service. In the current case, since Mr. Ogg supplemented his order on-site by requesting a new jack plate, Pacific Bell sent out a new confirmation letter after the work was completed. This process is automated. The technician punches certain information into a hand held computer while still in the field. The information is relayed to the home office where it is used to generate a confirmation letter and update billing records.

The portion of the confirmation letter at issue, here, reads as follows:

SERVICE CONNECTION CHARGES

Telephone Number	Quantity	Description	Charge
841-9663	1	Residence Service Flat Rate	34.75
	1	Jack(s)	3.00

There is no itemization or reference to the \$25 or \$75 labor charges that subsequently appeared on Mr. Ogg's bill as the result of the same service connection. As mentioned earlier, the confirmation letter did include the following disclaimer, located in the middle of a full page of text on a separate sheet of paper: "If you ordered installation or rearrangement of inside wire from Pacific Bell, labor charges are not shown. They will be provided by your installer during the visit."

From the company's perspective, this disclaimer would seem to explain why the work it performed that related to jacks would appear as a \$3 charge in the confirmation letter, but as a \$103 charge on the actual bill. However, it is reasonable to expect that a customer would remain confused. In a situation such as this, the confirmation letter is not even generated until after the work has been done. A \$3 charge for a jack made sense to Mr. Ogg, since he assumed that any wiring-related work would have been covered by his Inside Wire Repair Plan. It made no sense to Mr. Ogg that the company would claim that the charge for the work was \$3 if it was actually much more. It is certainly not logical to state that the charge for connecting a jack is \$3 if that amount only pays for the materials. The confirmation letter does not state that this is a materials charge. To the contrary, the \$3 charge is listed next to the charge for connecting a residential service line (\$34.75), which is not specifically a charge for materials.

There are various ways in which the confirmation letter could be more informative and less confusing. It would be best if the letter simply provided all of the charges for the work. When the letter is sent out after the work is completed, it could report on all actual charges. When it is sent out before the work is completed, it could provide the applicable material and labor rates. For instance, if it costs \$75 to install a jack and \$3 for the materials, then the confirmation letter should so state. At the very least, if a stated charge for something like a jack is only for materials and if the company is likely to impose an additional labor charge, then the confirmation letter should say so -- not in two different places within a longer document, but in one place. For example: "Charge for the Connection of One Jack: \$3 Plus Labor." To do less is potentially misleading.

The record suggests that this confusion may result from a blurring of the boundaries of tariffed and untariffed services within Pacific Bell. Tom G. Sans works for Pacific Bell as a product manager for inside wiring. He is responsible for setting the policies and prices and reviewing the procedures used in performing inside wiring installation and repair. According to Sans, the confirmation letter is intended to refer only to tariffed charges. He states that Pacific Bell keeps untariffed charges out of the confirmation letter so that it does not have to pay part of the cost of the underlying

computer system with unregulated revenues. The charge for labor related to installing a jack is not tariffed and therefore does not appear in the confirmation letter. However, the materials charge for the jack is in tariffs, so it does appear in the confirmation letter. Sans acknowledges that this materials charge is related to unregulated work and that it should be removed from the company's tariffs. He states that the only reason this has not been done is that the company has not performed the necessary paperwork.

This statement suggests that Pacific Bell has not successfully revised all of its tariffs to remove inappropriate references to competitive services. We will direct Pacific Bell to file a report with the Telecommunications Division within 90 days identifying the tariffs that should be changed in order to appropriately reflect the separation of regulated and unregulated services and stating the company's plans for removing or changing these tariffs. However, tariff changes, alone, will not eliminate the confusion that results when the same company performs various services for a customer and does not clearly define the applicable charges and explain the customer's rights and responsibilities. We note, for instance, that it is the company's practice to send to the customer a confirmation letter for installation work but not for repair work. The possibility that this practice can contribute to customer confusion is evident when a company representative makes a single visit to perform both installation and repair work.

While we do not want to guide the company's hand as it writes letters to its customers, we have reason for concern when a company practice has a tendency to mislead or confuse. For the reasons stated above, we find that Pacific Bell's order confirmation practices fit this description. We will direct the company to reconsider its confirmation practices and discuss its proposed changes with the Commission's Public Advisor and Telecommunications Division. We will further direct the company to report its proposed changes to the Commission within 90 days. If Pacific Bell fails to adequately address this concern, we will consider taking further action.

Taking Steps to Ensure Billing Accuracy

The record reflects that it is the company's practice to have its technicians use a hand-held, remote computer terminal to enter all relevant information about services provided to a customer and that the company's computers then automatically generate a bill for those services. This process puts heavy reliance on the accuracy of the information provided by the technician. For instance, the system offers two separate paths -- one for installation work and the other for repair work. A technician might mistakenly go down the wrong path and inadvertently charge the customer more or less than is appropriate for the work that was done. The technician is asked to make judgments about regulated versus unregulated service areas that may be influenced by misunderstandings or by incentives that are not revealed by the evidence currently before us. Pacific Bell does not appear to have a systematic program to audit these input decisions and ensure that they are accurate.

We will direct Pacific Bell to confer with the Telecommunications Division about its current auditing practices and changes necessary to ensure the accuracy of the record-keeping and billing practices addressed in this decision. This process should be completed within the next 90 days. We will direct the Telecommunications Division to report to us on its recommendations for further actions, if needed.

Conclusion

With the help of Mr. Ogg and Pacific Bell, this proceeding has caused us to identify several ways in which the company's current practices may contribute to customer confusion and a blurring of the boundaries between regulated and unregulated products and services. This decision initiates a series of activities that are designed to reduce this confusion and improve the company's accountability as it continues to offer both regulated and unregulated products and services.

Findings of Fact

1. Pacific Bell has charged for work it did not do, which raises the concern that the utility may have done so in other instances, as well.

2. The complainant is not seeking any billing adjustment for himself but requests an investigation of billing and notice practices.

3. It is appropriate for Pacific Bell to have charged Mr. Ogg \$75 charge for pulling wires to add the new line at a second existing jack location.

4. Under Pacific Bell's current practices, there is significant potential for customers requesting repair or installation service to be left uncertain about their rights and obligations, the nature of the work that needs to be done (such as whether or not the request involves inside wiring work) and the charges that will apply.

5. Although a careful reading of all of the language in Pacific Bell's disconnection notice should inform the customer that he or she may need only pay some of the overdue charges in order to avoid disconnection, a quick reading of the disconnection notice provides an opposite impression.

6. Pacific Bell has not successfully revised all of its tariffs to remove inappropriate references to competitive services.

7. Pacific Bell's installation-order confirmation practices have a tendency to mislead or confuse customers.

8. Pacific Bell does not appear to have a systematic program to audit and ensure the accuracy of the electronic-input decisions that technicians make when updating customer records with hand-held computers while working in the field.

9. The record in this proceeding does not demonstrate that Pacific Bell has willfully tried to deceive its customers by blurring the distinction between its service initiation, installation and repair offerings.

Conclusions of Law

1. The Commission should direct the Consumer Services Division to review Pacific Bell's service and billing records to determine whether or not there is a pattern of mischarging and report back to us within 180 days.

2. The Commission should require Pacific Bell to work with the Telecommunications Division and the Public Advisor's Office to develop a better way

to communicate the distinctions between service initiation, installation and repair work; and between tariffed and untariffed services.

3. The Commission should direct Pacific Bell to work with the Commission's Public Advisor to develop new wording for its disconnection notice and submit proposed new notice language to this Commission by advice letter within 90 days.

4. The Commission should direct Pacific Bell to file a report with the Telecommunications Division within 90 days identifying tariffs that should be changed in order to appropriately reflect the separation of regulated and unregulated services, and stating the company's plans for removing or changing these tariffs.

5. The Commission should require that Pacific Bell reconsider its confirmation practices and discuss its proposed changes with the Commission's Public Advisor; it should report its proposed changes to the Commission within 90 days.

6. The Commission should require Pacific Bell to confer with the Telecommunications Division about its current auditing practices and changes necessary to ensure the accuracy of the record keeping and billing activities addressed in this decision.

7. Although the record in this proceeding does not demonstrate that Pacific Bell has willfully tried to deceive its customers by blurring the distinction between its service initiation, installation and repair services, this docket should remain open to receive reports from the Consumer Services Division, the Telecommunications Division and the Public Advisor's Office that may be relevant to this inquiry.

O R D E R

IT IS ORDERED that:

1. The Consumer Services Division shall review Pacific Bell service and billing records to determine whether or not there is a pattern of mischarging, as discussed above, and report back to this Commission in this Docket within 180 days.

2. Pacific Bell shall work with the Consumer Services Division and the Public Advisor's Office to develop a better way to communicate the distinctions between service initiation, installation and repair work; and between tariffed and untariffed

services. Pacific Bell shall report to the Commission in this docket within 60 days as to its proposed means for doing this.

3. Pacific Bell shall work with the Commission's Public Advisor to develop new wording for its disconnection notice and to submit proposed new notice language to this Commission by advice letter within 90 days.

4. Within 90 days, Pacific Bell shall file a report with the Telecommunications Division identifying the tariffs that should be changed in order to appropriately reflect the separation of regulated and unregulated services, and stating the company's plans for removing or changing these tariffs.

5. Pacific Bell shall reconsider its confirmation practices and discuss its proposed changes with the Commission's Public Advisor. Within 90 days, the company shall report its proposed changes to the Commission in this Docket. If Pacific Bell fails to adequately address this concern, the Commission will consider taking further action.

6. Pacific Bell shall confer with the Telecommunications Division about its current auditing practices and changes necessary to ensure the accuracy of the record keeping and billing activities addressed in this decision. This process should be completed within the next 90 days. The Telecommunications Division shall report to us in this Docket on its recommendations for further actions, if needed.

7. The assigned Administrative Law Judge, in consultation with Director of Telecommunications Division shall advise the Commission by February 1, 1998, as to whether any further formal investigations is warranted.

This order is effective today.

Dated September 24, 1997, at San Francisco, California.

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

President P. Gregory Conlon, being necessarily absent, did not participate.