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Decision 97-11-029 November 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bayside Village, The Fillmore Center and North Point
Apartments,

Complainants,

vs.

Pacific Bell,

Defendant.

ORIGINAL

Case 95-08-039
(Filed August 8, 1995)

Russell N. Goodman, for Fillmore Center Project Corporation; Denise Smith, for Bayside Village Associates; and Robin A. Ziegler, for Northpoint Apartments, complainants.
Colleen O'Grady, Attorney at Law, for Pacific Bell, defendant.

O P I N I O N

I. Summary

We find that Pacific Bell (Pacific) has violated Public Utilities (PU) Code § 532 and Decision (D.) 92-01-023 by charging customers and property owners for work on certain telephone facilities referred to as "cross-connects." The Commission has defined cross-connects as utility property and not, as Pacific asserts, "inside wire" which is unregulated. Pursuant to D.92-01-023, Pacific is responsible for all work on the cross-connects between the utility's network access terminal and the building owner's entrance terminal. Pacific's tariffs do not permit Pacific to charge customers for such work.

We direct Pacific to cease immediately from charging the complainants and their tenants for work on the cross-connects at issue, to proceed to refund past overcharges to the complainants and their tenants, and to propose a process for identifying and notifying other property owners and customers who may have been charged in error for work on these kinds of cross-connects.

II. Procedural Background

On August 8, 1995 Bayside Village Apartments, The Fillmore Center (Fillmore Center), and North Point Apartments (North Point) filed a complaint against Pacific. The complaint alleges that Pacific, and not its customers or their landlords, is responsible for attaching the cross-connects from the utility's network access terminal to a property's building entrance terminal. Pacific timely filed its answer on November 3, 1995. The Commission held a prehearing conference on January 25, 1996. On February 29, 1996 the General Manager of Bayside Village Apartments sent a letter to Pacific, copied to the presiding Administrative Law Judge, withdrawing from the instant case. We dismiss Bayside Village Apartments as a complainant from this proceeding. Evidentiary hearings commenced on March 4, 1996. The hearings were continued on March 18, 1996, and concluded on that date.

At this time, two related complaints against the defendant in the instant case are pending before the Commission: Case (C.) 95-11-021, *Dietenhofer v. Pacific Bell*, and C.96-01-016, *Vista Montana Apartments v. Pacific Bell*. While the individual cases present somewhat different circumstances, all three complaints raise the same general issue, namely, whether the utility, property owner or customer in multi-unit buildings should bear the financial responsibility for attaching cross-connects between the utility's network access terminal and the property's building entrance terminal.

III. The Complaint

The dispute concerns the wires located on multi-unit apartment buildings which connect the utility's facilities to those owned and controlled by the building owner. The complainant property owners argue that Pacific is responsible for attaching these cross-connects from the utility's network access terminal to the property's building entrance terminal. At both Fillmore Center and North Point, the equipment is located in closets in the buildings. At each location, the utility has a board, referred to as the "network access terminal" or the "network access termination point." This network access termination point is where the utility's binding post terminal or connector is located. In back of the terminal are the wires that come from Pacific's local loop. These wires are

soldered into the back of the terminal board. On the front of the terminal board are a series of connection pins which allow a person to connect a jumper wire onto the tip or face of a particular connection pin, so that a connection can be made to the connection pin on the terminal board of the building owner. The network access termination point is also referred to as the local loop demarcation point, the minimum point of entry, or the minimum point of presence.

Next to the utility's network access termination point is the building entrance terminal, which is owned by the building owner. The building entrance terminal consists of the building owner's binding post terminal board. On the back of the building owner's terminal board are the wires that go to each of the individual apartments to provide telephone service. The jumper wires which connect the two terminals are referred to as "cross-connects."

The complainants assert that the Settlement Agreement adopted by this Commission in D.92-01-023, as modified by D.93-05-014, assigns responsibility for these cross-connects to the utility because the facilities are on Pacific's side of the local loop demarcation point. Complainants infer, therefore, that the cross-connects are not part of inside wire and that Pacific may not charge extra for work associated with them as it may for inside wire. Complainants ask the Commission to order Pacific to take responsibility for all work required on cross-connects.

Complainants state that when their buildings were constructed, all of the cross-connects between the utility's terminal and the property's terminal were connected. Complainants maintain that Pacific must assume financial responsibility to reconnect any cross-connects that were disconnected by Pacific to provide service to another unit or location. Complainants aver that Pacific may not charge for services previously rendered and paid for.

The complainants cite Civil Code (CC) § 1941.4 in support of their argument. According to CC § 1941.4, the building owner is responsible for installing one "usable" jack per residence apartment, and for "placing and maintaining the inside telephone wiring in good working order." A tenant cannot receive dial tone at the jack unless the cross-connect between the utility's terminal and the property's terminal is attached.

Complainants contend that a jack which does not provide dial tone upon activation of service by the tenant is not "usable" within the meaning of CC § 1941.4. Complainants insist that Pacific's removal of cross-connects from the utility's terminal and refusal to replace cross-connects without assessing charges, impairs their ability as lessors to maintain a usable jack in each apartment. The complainants request that this Commission require Pacific to maintain or reestablish, without charge, cross-connects between the utility's terminal and the property's terminal.

IV. Pacific's Response

In response to the complaint, Pacific asserts that the complainant property owners do not have standing to file this complaint. Pacific claims that property owners are not billed for the attachment of cross-connects between the utility's terminal and the property's terminal. Rather, the customer requesting service bears responsibility for the charges. As a result, it is the complainants' tenants who have standing to pursue the complaint.

Additionally, Pacific claims that this Commission would be in violation of PU Code § 1708 if it found in favor of complainants without providing the signatories to the Settlement Agreement that was approved in D.92-01-023 with a notice and an opportunity to be heard.

Pacific maintains that its disconnection and reuse of cross-connects from vacant units in multi-unit buildings is necessary to provide new or additional service to customers. Pacific claims authority under its Tariff Schedule A2.1.11.A.4 to disconnect cross-connects attached to idle cable pairs.

Pacific contends that the cross-connects between the utility's terminal and the property's terminal are inside wire. Pacific claims that the face or tips of the utility's binding post represents the local loop demarcation point which separates the utility's responsibility from the property owner's responsibility. All wire beyond the demarcation point, including the jumper wire or cross-connect, is inside wire and remains the responsibility of the customer.

Pacific asserts that the attachment of cross-connects between the utility's terminal and the customer's terminal is an inside wire installation service and no longer regulated by the Commission. Pacific states that the complainants must either attach the cross-connects themselves or pay Pacific or another vendor for this service.

V. Factual Background

A. *Pacific's Practices*

In multi-unit buildings, Pacific sometimes reuses cable pairs from vacant units to provide new or additional service to customers. In order to reuse an idle cable pair, Pacific disconnects the vacant unit's cross-connect from the utility's terminal board and attaches a new cross-connect to the tip of the same idle cable pair and attaches it to the building's entrance terminal for use by another unit. When a new tenant moves into the vacant unit and wants to establish service, the cross-connect must be reattached to the utility's terminal board in order to provide dial tone to the tenant. Pacific charges the customer \$85 to reattach the cross-connect. Pacific considers this to be unregulated inside wire work. Pacific is permitted to price inside wire installation at its discretion because the Commission has found inside wire work to be a Category III service. Pacific characterizes the reconnection of the cross-connects as an "installation service" required to initiate service to the customer.

Pacific states it needs to reassign the idle cable pair in order to make efficient use of its facilities. That is, if Pacific could not reuse and reallocate the idle cable pairs by disconnecting the cross-connects serving the vacant units, it might have to build additional facilities to provide basic service.

Pacific's reuse of idle cable pairs comes about when a new tenant in a multi-unit building requests service, or when an existing customer orders an additional line. Although the number of lines serving North Point were sized at one and a half lines per living unit, and the lines for Fillmore Center were sized at two lines per living unit, the number of lines per living unit has been growing in recent years due to customer demand for dedicated telephone lines for facsimile machines and for computer access.

The reuse of idle cable pairs is not a problem when there are sufficient facilities serving the building, and when customers are ordering residential lines. In that situation, the cross-connect serving the recently vacated apartment remains connected to the utility's terminal board, and provides "warm line" to the vacant apartment in accordance with PU Code § 2883. Warm line allows anyone using a telephone in the vacant apartment to access emergency help on 911. Pacific's practice is to keep warm lines available to vacant apartments if there are sufficient facilities to serve the rest of the building. Pacific's LFAC system keeps track of the assignment of the utility's binding post terminals which serve residential customers. If a cable pair is needed to provide service, the LFAC system will reassign the binding post terminals that have been idle the longest.

The reuse of idle cable pairs becomes a problem when business lines are ordered by customers of a multi-unit building. This problem occurs because the LFAC system does not keep track of idle cable pairs that were previously used as a business line. That is, idle cable pairs that previously served a business customer are reused immediately. This immediate reuse causes a ripple effect in the cross-connects that are detached and reattached. This can be illustrated by the following. Assume at the outset that each unit only has one cross-connect in place to the utility terminal board. The tenant moving into Apartment 5 then orders a business line from Pacific and is provided with that service. After six months, the tenant of Apartment 5 moves out of the complex and terminates service. At the time Apartment 5 was vacated, Apartments 2 and 8 were vacant as well. Shortly after Apartment 5 was vacated, a new tenant moves into Apartment 8 and orders residential service. In establishing service to Apartment 8, Pacific would use the LFAC system to determine which idle cable pairs are available for assignment. The cable pairs serving the other existing tenants would show up on the LFAC as being assigned. If Apartments 2 and 8 previously had residential service, the LFAC system would note that the utility binding post serving Apartments 2 and 8 could be used as a possible option for providing service to Apartment 8. However, since the idle cable pair that was previously used to serve a business account is not tracked in the LFAC, the LFAC system would choose the utility

binding post that previously served Apartment 5 as available for reassignment. Pacific would then dispatch a technician and remove the cross-connect from the tip of the utility's terminal that is serving the now vacant Apartment 5, and attach a new cross-connect at the tip of the utility's terminal that previously served Apartment 5, to the tip of the building's terminal which serves Apartment 8. When someone subsequently moves into Apartment 5 and orders residential service, there is no cross-connect in place because the utility binding post that had previously served Apartment 5 has now been reassigned to serve Apartment 8. Thus, in order to get dial tone, the new tenant of Apartment 5 must have a cross-connect established. As one can see, the reassignment of idle cable pairs that were previously used as business lines causes a ripple effect because it causes subsequent changes in the placement of cross-connects, i.e., a churning of the cross-connects.

B. Problems Raised by North Point

North Point was constructed in 1966 and consists of 514 apartments. Western Telephone originally installed all of the property's telephone wiring. The telephone facilities serving North Point were engineered to provide one and a half lines per unit.

Pacific's terminal at 250 Stockton cannot accommodate all of the demand for service at North Point. Pacific's witness testified that in one instance, within four hours of a North Point resident's line being disconnected, the facility was reassigned to another location. Some customers in the North Point neighborhood were waiting for telephone service at the time of hearing.¹ The facilities located at the 250 Stockton Street building has a utilization factor that is close to 100 percent. The other North Point building located at 180 Stockton Street has a utilization factor of less than 70 percent.

¹ Pacific had planned to mitigate the problem within sixty days from the time of the hearing. We will order Pacific to provide proof to the Telecommunications Division that it has upgraded service to North Point consistent with its statements here.

North Point's witness testified that its management is unable to ensure that its tenants have operational telephone service as a result of the problems with cross-connects unless Pacific is hired to undertake the work. This circumstance has occurred because Pacific's employees will not provide North Point with information about the connections at the terminals with regard to the cross-connect when customers order new service, or because the mapping information that Pacific provides is incomplete. In some of these cases, Pacific determined that the cross-connect was not connected to a tenant's apartment. Pacific is willing to attach a cross-connect, but the tenant must request this service and be responsible for paying the inside wire charge of \$85. According to the witness, Pacific has characterized the service as "installation of the first jack" in cases where the work was not on the tenant's jack but on the cross-connects. In each case, the tenant's apartment was originally hooked up to Pacific's facilities but the apartment was subsequently disconnected as a result of the churn in cross-connects.

North Point's witness testified that these circumstances have created significant public relations problems between the North Point management and its tenants. Tenants are angry that they cannot get telephone service without the additional work and charge. North Point estimates that it has received about 29 complaints from tenants about the charges for work on cross-connects.

C. *Problems Raised by Fillmore Center*

Fillmore Center is comprised of 1113 apartment units with the capacity to provide four lines to each unit. Pacific's facilities are sized to provide the property with two lines per unit on average.

The circumstances at Fillmore Center are similar to those at North Point. The complainant emphasized the problems which have arisen as a result of tenants having business lines provisioned to serve their units. In such cases, Pacific often disconnects the cross-connect serving a vacant unit and reassigns it to the unit requiring more cable pair. This process disturbs subsequent service orders by the new tenants of the units whose cross-connects were disconnected in order to provide service to another

unit. As a result, although the facilities at Fillmore Center are only at seventy percent utilization, new tenants often need to have a cross-connect attached to the utility's terminal board in order to receive dial tone at the jack in their unit.

At the hearing, the parties addressed several variations on the problems. According to Fillmore Center's witness, tenants who seek telephone service installation have been informed by Pacific employees that the tenants' jacks were not functioning and had to be repaired before service could be installed. Fillmore Center engineers would check the condition of the jacks and determine that the jacks were working but the cross-connects were disconnected. At the time of hearing, Fillmore Center had received a number of tenant complaints which involved cross-connects or binding posts.

VI. Discussion

The facts in this complaint are not in dispute. The parties dispute the application of the facts to the law. This complaint alleges that certain facilities are the responsibility of the telecommunications utility. Specifically, we are asked to determine whether certain facilities referred to as cross-connects are defined by our rules as inside wire or utility equipment. In so doing, we must determine whether Pacific is properly handling those facilities and charging for work on them. In deciding this issue we must consider the meaning and effect of CC § 1941.4 regarding a lessors' responsibility for telephone jacks and inside telephone wiring.

We address the outstanding procedural matters first.

A. Complainants' Standing

The complainant property owners have standing to bring their complaint. The issues raised by the complaint involves the complainants in two ways.

First, the telephone closets which contain the network access facilities which provide telecommunications access from Pacific to Fillmore Center and North Point are located on the complainants' property, and the complainants control physical access to the cross-connects at issue. The complainants also own the inside wire which is located on their properties. The complainants question Pacific's claim that certain

property belongs to the complainants rather than the utilities. The complainants have standing because the issues raised in this complaint concern the use of wire on their premises and access to their property.

Second, the complainants have the responsibility as lessors under CC § 1941.4 for "installing at least one usable telephone jack and for placing and maintaining the inside telephone wiring in good working order." This complaint raises the issue of whether a lessor's duty to install a "usable jack," and to maintain the jack "in good working order" includes the responsibility for attaching a cross-connect between the utility's binding post and the property's binding post.

B. *Applicability of PU Code § 1708*

Pacific claims that if we were to modify D.92-01-023, we would violate PU Code § 1708 by failing to provide notice to the parties in OII 84, the proceeding which led up to that decision. PU Code § 1708 provides:

"The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision."

Pacific's claim is without merit. We are not asked to modify the settlement adopted in D.92-01-023 or any other order or rule. Rather, we are asked to interpret provisions of the settlement which are unclear or not addressed with specificity. Complaints such as this one frequently require us to interpret rules or previous orders. PU Code § 1708 does not obligate the Commission to confer with every party in past proceedings in order to interpret rules or orders for the purpose of resolving a complaint case. In any event, Pacific's rights would not be in any way compromised with regard to D.92-01-023 because it has had notice and opportunity to be heard here on related topics.

C. Responsibility for Cross-Connect Facilities

Over the years, this Commission has issued numerous decisions relating to local exchange company inside wire. Our decisions have been motivated by rulings of the Federal Communications Commission and a desire to promote a competitive market for inside wire.

In D.92-01-023, the Commission adopted a Settlement Agreement which unbundled certain wiring facilities in multi-unit buildings. The settlement established that intrabuilding network cable (INC) is the responsibility of the building owner, and that all other network terminating wire (NTW) not affected by the INC demarcation point remain the responsibility of the utility. Among the facilities unbundled by the settlement were the cross-connects and related facilities on the premises of the building owner.¹ The settlement transferred liability for the installation and maintenance of INC from local exchange companies to property owners effective August 8, 1993. Installation of service and work on the NTW on the utility's side remains regulated and subject to tariff provisions. (D.92-01-023, Appendix A.) Under Pacific's tariffs and our rules, maintenance and installation of NTW is not assessed separate charges but is included as part of the customer's package of basic services.

The complainant property owners assert that the cross-connects at issue are the responsibility of Pacific. In their complaint, the property owners cite language from the settlement that occurs in Appendix A of D.92-01-023. Section VI of Appendix A of the Settlement Agreement at page 21 states in part:

"All other wire accounted for as NTW is not affected by the INC Demarcation Point and will remain the utility's responsibility. This NTW is that wire referred to in Section II.B.1 as 'cross connects' at a building entrance terminal."

Section II.B.1. of Appendix A refers to utility-owned NTW as follows:

¹ "Unbundled" here refers to the identification of various parts of the network and liability for each between customers and local exchange companies.

"1. Definition and Function: NTW is the wire between the distribution terminal on the floor and the network interface (utility-provided jack), and serves Centrex, PBX and private line services. NTW also includes wire that connects the building entrance terminal to the utility-placed network access termination. This wire connection is called a 'cross-connect.'"

In response, Pacific argues that cross-connects may be located on either side of the "demarcation point." Pacific argues that the cross-connects at issue in this case are on the customer's side of the demarcation point. Pacific also believes complainants have confused the cross-connects on Pacific's side of the demarcation point with cross-connects which are on the property owners' side of the demarcation point.

Pacific's witness, Tom Sanz, is the product manager for inside wire. He described a cross-connect as follows:

"Cross-connect is really a generic term. It's a point of connection between any one part of a telephone line, or actually any type of circuit, and another. So when you bring a circuit from one location to another, any intermediate point where you need a connection to bridge that service would be considered a cross-connect.

"There are cross-connects on both sides of the demarcation point. And you can have multiple cross-connects on both sides of the demarcation point, just depending on how that particular circuit or line is laid out." (2 R.T. 154.)

The demarcation point is defined in Rule No. 1 of Pacific's tariffs under the term "local loop demarcation point." The local loop demarcation point is defined as follows:

"The physical location that separates the responsibility for installation and repair of telecommunications facilities between the Utility, building/property owner/landlord/agent, and the end-user customer. The local loop demarcation point is generally located at the first point of entry to a single or multi-story building and includes the main entrance facility. The Utility is responsible for the installation and maintenance of its facilities up to and including those located at the Utility's local loop demarcation point. This point may also be referred to as the Minimum Point of Entry (MPOE) or the Minimum Point of Presence (MPOP).

Installation and maintenance of facilities and equipment beyond the Utility's local loop demarcation point is the responsibility of the building/property owner/landlord/agent, or end-user customer. Where a local loop demarcation point lacks sufficient power and/or space to support provisioning of new service, such service will be provisioned as close as practicable to the existing demarcation point." (Pacific Schedule A2.1.1; See 2 R.T. 150.)¹

We agree with Pacific that depending on the configuration of a particular building, cross-connects can be found on the utility's side or the property owner's side. However, in the situations which confront us in this proceeding, we conclude that the cross-connects at issue in this case are the responsibility of the utility. D.92-01-023 sets forth how the demarcation point is determined. Section II.B.1. of Appendix A in D.92-01-073 refers to a cross-connect as "wire that connects the building entrance terminal to the utility-placed network access termination." In so doing, it defines cross-connects as NTW and the responsibility of the utility.

Pacific has not distinguished the cross-connects at issue here from those addressed in D.92-01-023. Pacific contends that when the network access termination point includes protection to avoid a shock hazard, that the cross-connect between the protection and the utility's terminal board is NTW and the responsibility of the utility, and that the cross-connect between the utility's terminal board and the building's terminal board is inside wire which is the responsibility of the building owner. (2 R.T. 158, 298-299, 302; Ex. 20.) If there is no protection in place, the cross-connect between the utility's terminal board and the property owner's terminal board is considered to be inside wire and the property owner's responsibility. (Ex. 17 and Ex. 23.) Pacific argues that what is labeled in Exhibits 17, 20, and 23 as "IW Cross Connect" would have been considered NTW prior to August 8, 1993, but with the unbundling of INC in the settlement agreement adopted in D.92-01-023, the cross-connects at issue have been "reclassified as inside wire." (2 R.T. 162.)

¹ The local loop demarcation point is also described in Rule No. 20 of Pacific's General Regulations tariffs. (Schedule A2.1.20.)

However, we find no reference in any Commission decision or in the adopted settlement agreement to support Pacific's view. To the contrary, D.92-01-023 adopted a settlement which provides that the cross-connects at issue are the responsibility of the utility. The adopted settlement agreement specifically provides that unaffected NTW includes the NTW that is referred to Section II.B.1. of the settlement agreement. Section II.B.1. states that NTW includes the cross-connect "wire that connects the building entrance terminal to the utility-placed network access termination." This kind of NTW continues to be treated as part of the utility's network. (D.92-01-023, Appendix A, pp. 10, 21-22.)

Our view of this cross-connect issue is also supported by page 2 of Attachment A to Appendix A of D.92-01-023, and the division of responsibility in a situation involving a standard network interface (SNI) serving a single residence dwelling. Attachment A to Appendix A consists of six illustrative diagrams of the demarcation points discussed in the settlement agreement. (See D.92-01-023, Appendix A, p. 15.) Page 2 of Attachment A, which was received in evidence as Exhibit 38, shows that the cross-connect between the protected building terminal and the connecting block is "NTW that remains bundled." In the situation of an SNI, Pacific's tariffs provide: "The standard network interface will be placed at the Utility's local loop demarcation point and will be maintained by the Utility at the rates and charges specified in Schedule Cal. P.U.C. No. A8.2.1." (Pacific A2.1.1.) Pacific remains responsible for the SNI. (2 R.T. 228-230.)⁴

The SNI configuration separates the inside wire responsibility at the point where the modular jack plugs into the utility provided SNI. Any wires within the SNI are the responsibility of the utility. This allows the residential customer to plug into the SNI and receive dial tone. The same kind of treatment should apply to the cross-connects in a multi-unit apartment building regardless of whether there is protection in

⁴ This is shown at page 3 of Attachment A of Appendix A to D.92-01-023.

place. That is, the cross-connects between the utility's terminal board and the building owner's terminal board should be viewed as the equivalent of a SNI, and that the tenant's wire jack is "plugged in" at the back of the building owner's terminal board. Exhibit 38 and the language at the bottom of page 21 continuing to page 22 of Appendix A of D.92-01-073 support this interpretation.

The testimony of Pacific's witness also supports a view that the cross-connects are not inside wire, but utility facilities. The witness stated that if Pacific is unable to remove or reuse cross-connects at its discretion, Pacific would have to deny service to some customers or construct additional facilities to serve those customers, even when facilities were available. If, as Pacific asserts, the cross-connects are inside wire, Pacific should not have the discretion to modify or tamper with the cross-connects without the express authorization of the building owner or the owner's representative.

It would be an absurd exercise for the Commission to deregulate a portion of the utility network which is required in order for Pacific to provide dial tone service. Pacific would have us implement contradictory policies by finding that the cross-connects are both inside wire and a portion of the network which Pacific must control in order to provide basic service in an efficient manner. Such an absurd result is illustrated by the situation encountered at Fillmore Center apartments with the ordering of business lines. Pacific will supply a business telephone line to anyone requesting a business line, even if the business phone is located in a residential apartment. By detaching a cross-connect from a vacant apartment to serve the unit requesting a business line, Pacific causes problems for subsequent tenants of Fillmore Center apartments. Not only does the reuse of the idle cable pair affect the future tenant of the vacant apartment whose cross-connect has been disconnected, but Pacific's LFAC's system causes further disruptive effects when the customer of the business line discontinues service, and the idle business line is subsequently reused as a residential or business line before any warm lines that are recognized in the LFAC system are reused. Through no fault of the property owner or of the future tenants, Pacific's cross-connect policy has the adverse effect of causing prospective end-use customers to incur a charge

of \$85 to attach a cross-connect that was removed by Pacific to serve Pacific's own purposes. Such a situation cannot be tolerated.

Finally, Pacific's interpretation of the law and its practices make it almost impossible for landlords to fulfill their statutory duty, as we discuss below.

D. Effects on Landlord Compliance with CC § 1941.4

In D.90-10-064, we recognized that relocating the point of demarcation for multi-tenant buildings "could result in disputes between landlords and tenants, confusion as to their responsibilities, delay of repairs, or unfair assumption of cost by individual tenants for equipment which is used by all tenants." (D.90-10-064, p. 7.) At the time, California law did not specify liability for inside wire maintenance repair in rental properties. D.90-10-064 stated the Commission's intent to seek legislation to clarify the respective responsibilities of landlords and tenants.

In response, in 1992 the California Legislature enacted CC § 1941.4 which states:

"The lessor of a building intended for the residential occupation of human beings shall be responsible for installing at least one usable telephone jack and for placing and maintaining the inside telephone wiring in good working order, shall ensure that the inside telephone wiring meets the applicable standards of the most recent National Electrical Code as adopted by the Electronic Industry Association, and shall make any required repairs. The lessor shall not restrict or interfere with access by the telephone utility to its telephone network facilities up to the demarcation point separating the inside wiring.

"'Inside telephone wiring' for purposes of this section, means that portion of the telephone wire that connects the telephone equipment at the customer's premises to the telephone network at a demarcation point determined by the telephone corporation in accordance with orders of the Public Utilities Commission."

CC §1941.4 requires that landlords provide and maintain the wiring needed for basic telephone service. Pacific's interpretation of our rules would make the fulfillment of this responsibility almost impossible for landlords unless they hire Pacific to attach the cross-connects. When Pacific disconnects the cross-connects at vacant

apartments to serve another customer, it leaves the vacant apartment without dial tone. Pacific then refuses to attach a new cross-connect to serve the formerly vacant apartment unless the \$85 charge is paid. In some instances, Pacific has failed to provide the building owner with information about the location of the binding post terminals so that the building owner or outside vendor can attach the cross-connect.

Pacific responds that Schedule A2.1.11.A.4 authorizes the utility to disconnect and reuse cross-connects from a disconnected service as needed to provide new or additional service to customers. We need not interpret that tariff provision because we find that the cross-connects between the utility's binding post terminal and the building owner's binding post terminal are considered NTW on Pacific's side of the demarcation point and therefore part of its regulated business. Such a finding is consistent with CC § 1941.4 because the building owner is not restricting or interfering with Pacific's ability to detach and reuse idle cable pairs to serve other locations. However, in order for the telephone jack in the vacant apartment to be reactivated and usable, the cross-connect which was detached by Pacific, must be reattached by Pacific at no charge.

Moreover, if, as Pacific claims, the cross-connects are inside wire, it would be the building owners, and not their tenants, who are responsible for maintaining them in a way that permits the provisioning of basic telephone service. Assuming that the cross-connects were inside wire, the only circumstance under which Pacific could charge for working on the cross-connects is if Pacific was explicitly hired by the building owner or authorized agent of the building owner. Cross-connects are not inside wire, and Pacific's tariffs do not permit it to charge end-use customers for work on cross-connects as part of installation services.

VII. Conclusion

Pursuant to D.92-01-023, cross-connects between the building entrance terminal and the utility's network access terminal are not inside wire and are not detariffed. These cross-connects are considered NTW and are part of regulated utility facilities. PU Code § 532 requires that for regulated services a utility may not "charge, or receive

different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable thereto as specified in its schedules on file and in effect at the time..." Pacific has imposed on its customers and complainants charges for work on cross-connects that are not tariffed. By characterizing the cross-connects at issue as utility facilities, D.92-01-023 imposes responsibility for these cross-connects on Pacific rather than its customers or the owners of multi-unit buildings. By charging customers and property owners for work on cross-connects, Pacific is in violation of D.92-01-023 and PU Code § 532.

We order Pacific to immediately cease its practice of charging any customer in any location for work on cross-connects between the utility's network access terminal and the building owner's entrance terminal. Failure to comply with this order will represent contempt of a Commission order and willful violations of PU Code § 532. We will require Pacific to submit to the Telecommunications Division a plan for informing its operations, marketing and billing employees of the status and appropriate treatment of work on these kinds of cross-connects, and for implementing changes to its system to accomplish our order to cease billing for work on cross-connects. Pacific shall also modify its tariffs to clarify that work on the cross-connects at issue in this case are the responsibility of Pacific and is not considered to be inside wire. Pacific should also explore ways in which its LFAC system can be modified to reduce the amount of cross-connects that are detached and reattached, yet provide for efficient reuse of its facilities.

We cannot determine from the record before us the extent to which Pacific improperly charged complainants or their tenants for work on these types of cross-connects. We therefore direct Pacific to review its billing records and to identify all customers, past and current, whom Pacific may have charged, since August 8, 1993, for work on these kinds of cross-connects. We will direct Pacific to refund to those customers and complainants all charges associated with work on cross-connects, plus interest. Pacific will be accountable for this process by submitting to the Telecommunications Division a list of all billings to complainants or customers located at complainants' property who have been charged since August 8, 1993, for work that

Pacific considered to be inside wire. Where records do not clearly identify whether the inside wire work included work on cross-connects or where a dispute arises, Pacific will have the burden to demonstrate that the charges were proper and consistent with this order.

Pacific shall begin the process of identifying from its billing and repair records customers and building owners who may have been charged for work on cross-connects. It shall construct and propose to the Commission a plan for identifying and notifying customers and building owners that they may have been overcharged. The plan shall include a proposal for refunding any of these unlawful charges.

Findings of Fact

1. Bayside Village Apartments sent a letter withdrawing as a complainant from this proceeding.
2. Pacific detaches cross-connects to reuse idle cable pairs to provide new or additional service to customers.
3. Pacific has charged the complainants' tenants \$85 for reattaching the cross-connects which are located between the utility's network access terminal and the building's entrance terminal.
4. The reuse of idle cable pairs becomes a problem when business lines are ordered by customers of a multi-unit building because of the ripple effect caused by the subsequent detachment and reattachment of the cross-connects.
5. In some circumstances, Pacific has not provided the information to its customers or to the complainants that is necessary for the customers or complainants to reattach the cross-connects.
6. Pacific justifies its charges to complainants' tenants for reconnecting cross-connects on the basis that the cross-connects are inside wire installation services which are unregulated.
7. Pacific has been provided notice and opportunity to be heard with regard to the Commission's interpretation of D.92-01-023.

8. D.92-01-023 adopted a settlement which unbundled certain wiring facilities in multi-unit buildings.

9. The Settlement Agreement adopted by D.92-01-023 provides that all other NTW that is not affected by the INC demarcation point will remain the responsibility of the utility.

10. Section II.B.1. of Appendix A of D.92-01-023 refers to utility-owned NTW as including "wire that connects the building entrance terminal to the utility-placed network access termination."

11. The cross-connects at issue in this case are the responsibility of the utility.

12. Pacific has not distinguished the cross-connects at issue from those addressed in D.92-01-023.

13. Our view of the cross-connect issue is supported by Exhibit 38, which was an attachment to the Settlement Agreement, and which shows that the cross-connect between the protected building terminal and the connecting block is "NTW that remains bundled."

14. Contradictory policies would result if the cross-connects at issue are considered to be both inside wire, and a portion of the network which Pacific must control.

15. Through no fault of the property owner or the tenants, Pacific's cross-connect policy has the adverse effect of causing prospective end-use customers to incur a charge of \$85 to attach a cross-connect that was removed by Pacific to serve Pacific's own purposes.

16. The cross-connects at issue are not inside wire, and Pacific's tariffs do not permit it to charge end-use customers for work on cross-connects as part of its installation service.

Conclusions of Law

1. Pursuant to the request of the complainant, the Commission should dismiss the complaint filed in this docket by Bayside Village Apartments.

2. D.92-01-023 requires Pacific to retain responsibility for installation and maintenance of utility facilities that are not identified as inside wire, effective August 8, 1993.

3. D.92-01-023 identifies the cross-connects at issue in this complaint as NTW which remain the responsibility of the utility.

4. The same kind of treatment that applies to an SNI configuration should apply to cross-connects in a multi-unit apartment building.

5. If the cross-connect at issue is considered to be inside wire that is the responsibility of the property owner, Pacific should not have the discretion to modify or tamper with the cross-connects without the building owner's consent.

6. CC § 1941.4 requires that building owners provide and maintain certain inside wire on behalf of their tenants.

7. Our finding that the cross-connects at issue are NTW on Pacific's side of the demarcation point is consistent with the requirement of CC § 1941.4 that the building owner not restrict or interfere with the telephone utility's ability to detach and reuse its network facilities.

8. PU Code § 532 prohibits a utility from charging customers for work on utility facilities unless those charges are approved by the Commission and included in tariff schedules.

9. By imposing charges on customers for work on utility facilities which are not tarified, Pacific is in violation of PU Code § 532.

10. Pacific should immediately cease from charging any customer or property owner for work on cross-connects which are the subject of this complaint.

11. Pacific should review its billing records for customers living at the properties which are the subjects of this complaint to determine the extent to which it may have charged tenants or the building owner for work on cross-connects, and to refund to those customers any improperly billed charges, plus interest, consistent with this decision.

12. Pacific should submit to the Telecommunications Division within 60 days of the effective date of this order, a list of all billings to complainants or customers located at

complainants' properties who may have been charged since August 8, 1993 for work that Pacific considered to be inside wire.

13. Where Pacific's records do not clearly identify whether the inside wire included work on cross-connects or where a dispute arises, Pacific shall have the burden to demonstrate that the charges were proper and consistent with this order.

14. Pacific should submit to the Telecommunications Division a plan for informing its operation, marketing and billing employees of the status and appropriate treatment of work on cross-connects, and for implementing changes to its system consistent with this order.

15. Pacific should begin the process of identifying from its billing and repair records all other customers and building owners who may have been charged for work on the cross-connects at issue on or after August 8, 1993, and to present to the Commission a proposal for refunding those unlawful charges.

O R D E R

IT IS ORDERED that:

1. Bayside Village Apartments is dismissed as a complainant to this proceeding.
2. To the extent set forth herein, the complaint of North Point Apartments (North Point) and The Fillmore Center is granted.
3. Pacific Bell (Pacific) shall cease and desist immediately from charging any customer or property owner for work on cross-connects between the utility's network access terminal and the building owner's entrance terminal.
4. Pacific shall submit to Telecommunications Division, within 45 days of the effective date of this order, a plan for informing its operation, marketing and billing employees of the status and appropriate treatment of work on cross-connects, and for implementing changes to its system to accomplish the requirement in Ordering Paragraph 3. The plan shall be made available to any person requesting it.
5. Pacific shall review its billing and repair records to identify all customers who resided at the complainants' buildings that Pacific may have charged since August 8,

1993, for work on the cross-connects at issue in this case, and to identify each time since August 8, 1993 that Pacific may have charged these customers or the complainants for work on the cross-connects at issue in this proceeding. This review shall be completed within 90 days of the effective date of this order.

6. Pacific shall, within 120 days of this order, refund to those complainants and their tenants, past and current, all charges associated with work on the cross-connects at issue. Those refunds shall include interest from the date payment was received at the three-month commercial paper rate as reported in the Federal Reserve's Statistical Release G-13.

7. Pacific shall submit to Telecommunications Division, no later than 90 days of the effective date of this order, a list of all billings to complainants or customers located at complainants' property who may have been charged since August 8, 1993 for work that Pacific considered to be inside wire.

8. Pacific shall begin the process of identifying from its billing and repair records all other customers and building owners who may have been charged for work on cross-connects that are at issue in this proceeding.

a. Pacific shall construct and propose to the Commission a plan for identifying and notifying all other customers and building owners that they may have been charged in error for work on the cross-connects at issue. The plan shall include a proposal for refunding unlawful charges.

b. The plan shall be filed in this proceeding no later than 90 days from the effective date of this order and shall be made available to any individual who requests it.

9. Pacific shall, within 30 days of the effective date of this order, provide evidence to the Telecommunications Division that it has upgraded the facilities at North Point to mitigate the backlog of service initiation requests as discussed herein.

10. Pacific shall, within 30 days of the effective date of this order, file tariff amendments which clarify that the cross-connects between the utility's network access terminal and the building entrance terminal are the responsibility of the utility and not part of inside wire.

11. This proceeding shall remain open pending the actions ordered herein.

This order is effective today.

Dated November 5, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
RICHARD A. BILAS
Commissioners

I will file a dissent.

/s/ HENRY M. DUQUE
Commissioner

I dissent.

/s/ JOSIAH L. NEEPER
Commissioner

Henry M. Duque, Commissioner, dissenting:

The decision adopted today is wrong on the law and wrong on the procedures used to reach its conclusion.

Today's decision quotes from a part of D.92-01-023 that states: "All other wire accounted for a NTW is not affected by the INC Demarcation Point and will remain the utility's responsibility. This NTW is that wire referred to in Section II.B.I as 'cross connects' at a building entrance terminal. (D.92-01-023, Appendix A, Section VI, page 21) It then concludes that this resolves the issue. I disagree.

Over the years, this Commission has issued numerous decisions relating to local exchange company inside wire. In D.92-01-023, the Commission adopted a Settlement Agreement which unbundled certain wiring facilities in multi-unit buildings. A full reading of D.92-01-023 and the settlement that it adopts shows that they are contradictory and unclear, as are the tariffs adopted to implement the settlement.

The scheme of inside wire deregulation was to establish demarcation points to determine who was responsible for the care of wire -- the utility, the building owner, or the occupant. Several points were established: the local loop demarcation point, separating utility property from non-utility property; and the intrabuilding network cable demarcation point, separating the building owner's responsibility from that of the tenant's responsibility. Moreover, the local loop demarcation point is referred to as the "Minimum Point of Entry" or "Minimum Point of Presence."

The settlement adopted by D.92-01-023, moreover, defines the demarcation points as "critical" and explicitly refers to the tariffs and illustrative diagrams. Thus, they are an integral part of D.92-01-023, and only a selective reading can ignore them.

A more balanced decision would seek to determine what cross connects are referred to in Section II.B.I, a key reference in the decision's argument that the status of inside wire is clear. Pacific's testimony claimed that this section of the settlement was referring to cross connects on the utility's side of the demarcation point, not cross

connects on both sides. If one turns to the diagrams attached to the settlement, that is exactly what we find: cross connects appear on both sides of the demarcation point. Those on the utility's side of the network termination board are always identified as utility property. Those on the other side are sometimes deemed utility property, and sometimes clearly deemed to be non-utility property.

A close examination of attachment A to the settlement adopted in D. 92-01-023 makes this conclusion incontrovertible. It shows six illustrative diagrams of the demarcation points discussed in the settlement agreement. Page 2 of Attachment A, which was received in evidence as Exhibit 38, shows that the cross-connect between the protected building terminal and the connecting block is "NTW that remains bundled" – indicating that they are utility property. On page 4 of Attachment A, the cross-connects are identified only as "NTW", providing no indication as to who is responsible. On page 5 of Attachment A, a network diagram appears to show cross-connects on both sides of the local loop demarcation point. On the network side of the local loop demarcation point, the cross-connects are identified as "NTW", while those linking the utility's terminal board to the building's terminal board are identified as "IW" or inside wire, denoting that these cross-connects are not the responsibility of the utility. On page 6 of Attachment A, the designations on page 5 are repeated, once again indicating that cross-connects linking the utility's terminal board to the building's terminal board are inside wire – not the responsibility of the utility. Thus, in the space of four pages, cross-connects are identified once as utility responsibility, once with no clear responsibility, and twice as not the utility's responsibility. These illustrative diagrams illustrate one thing: that the issue is not clearly resolved.

The lack of clarity is documented by the testimony of Pacific's witness, Tom Sanz, is the product manager for inside wire. He described a cross-connect as follows:

"Cross-connect is really a generic term. It's a point of connection between any one part of a telephone line, or actually any type of circuit, and another. So when you bring a circuit from one location

to another, any intermediate point where you need a connection to bridge that service would be considered a cross-connect.

"There are cross-connects on both sides of the demarcation point. And you can have multiple cross-connects on both sides of the demarcation point, just depending on how that particular circuit or line is laid out." (2 R.T. 154.)

If we turn to the narrative definition of the demarcation point, contained in D. 92-01-023 and repeated in Rule No. 1 of Pacific's tariffs we find it defined as follows:

"The physical location that separates the responsibility for installation and repair of telecommunications facilities between the Utility, building/property owner/landlord/agent, and the end-user customer. The local loop demarcation point is generally located at the first point of entry to a single or multi-story building and includes the main entrance facility. The Utility is responsible for the installation and maintenance of its facilities up to and including those located at the Utility's local loop demarcation point. This point may also be referred to as the Minimum Point of Entry (MPOE) or the Minimum Point of Presence (MPOP). (emphasis added).

Installation and maintenance of facilities and equipment beyond the Utility's local loop demarcation point is the responsibility of the building/property owner/landlord/agent, or end-user customer. Where a local loop demarcation point lacks sufficient power and/or space to support provisioning of new service, such service will be provisioned as close as practicable to the existing demarcation point." (Pacific Schedule A2.1.1; See 2 R.T. 150.)'

As we see, the tariffs contain no explicit discussion of cross-connects. Depending on the configuration of a particular building, cross-connects can be found on the utility's side or the property owner's side. The tariffs contain no explicit discussion of the cross-connections and their status.

' The local loop demarcation point is also described in Rule No. 20 of Pacific's General Regulations tariffs. (Schedule A2.1.20.)

The tariffs, however, do state that the utility is responsible for facilities up to and including the local loop demarcation point, which is also the "minimum point of entry." Facilities beyond the local loop demarcation point are not the responsibility of the utility. This language leaves ambiguous the status of cross connects on the property owner's side of the utility's network access termination board. Are these cross-connects located at the demarcation point, which would make them utility property? Or beyond, which would make them the responsibility of someone else? Also, what does "minimum point of entry" mean? Can wires attached to a network access terminal be part of "minimum point of presence"? Or are they more than is needed for a "minimum point of presence." Clearly, the tariff provides no clear guidance on the status of these cross-connects.

Even the section of the settlement adopted in D.92-01-073's Section II.B.1. of Appendix A which appears to indicate that the cross connects are inside wire should only be reach in full context – not just the snippet included in today's decision. A fuller review of the settlement than that made in today's decision shows that this portion of the Settlement Agreement seeks to define the status quo prior to the unbundling of intrabuilding network cable. Indeed, the Settlement Agreement precedes this oft cited definition of cross-connects with the following qualifying statement: "The parties agree that the following definitions of intrabuilding network cable, network terminating wire, simple inside wire and complex inside wire accurately describe the current status of the cable and wire address, directly or indirectly, by this Settlement Agreement" (emphasis added). Thus, even this section appears open to interpretation. The decision adopted today fails to confront this ambiguity.

I conclude that the designation of responsibility for these cross-connects is unclear in the tariffs adopted by D.92-01-023, in the narrative of the settlement, and in the diagrams attached to the settlement.

The responsibility for the cross-connects is further muddled by the testimony of Pacific's witness concerning Pacific's practices concerning these cross-connects. Although the decision adopted today places great significance on the fact

Pacific routinely disconnects these wires from Pacific's network box when they are not being used, this action does not strike me as providing conclusive evidence concerning who owns these wires. Presume that the cross connects are the building owners, while the network termination box is the utility's. Would it not also be reasonable for Pacific to allow the building owner to attach wires to its network pins in conjunction with the provision of telecommunications service, but reserve the right to detach wires from their terminal when they are not in use? This strikes me as an equally plausible explanation of the actions that occurred at the Bayside Village building.

In addition to these issues of interpretation, the decision adopted today raises important procedural issues.

First, the decision expands a complaint about the actions of Pacific to produce what may be a new boundary point for the local network. The procedural practice commonly followed by this Commission when such an important issue with consequences across many proceedings and involving millions of dollars is to launch an investigation that permits the briefing of the record and the legal issues, as well as liberal opportunities for affected parties to participate. Today's decision may have made a multi-million dollar decision without the benefit of such a full investigation.

Second, there is no notice to others affected by this decision, including the providers of inside wire services. If Pacific must adopt new practices, these may significantly affect their business.

Third, the terms "minimum point of presence," used to determine the demarcation point, are taken from FCC orders, yet there is no evidence of any effort on the part of today's decision to determine whether California's practice is consistent with federal guidelines.

Despite the infirmities of the decision adopted today, I do not object to the decision to decide for the complainants. A standard practice of this Commission is to construe ambiguous tariffs strictly against the utility. The resolution of this complaint

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in favor of the complainants is the appropriate outcome, but the sweeping decision taken today exceeds what the record in this proceeding will prudently support.

/s/ HENRY M. DUQUE

Henry M. Duque
Commissioner

November 5, 1997

San Francisco

Henry M. Duque, Commissioner, dissenting:

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