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Decision 97-11-065 November 19, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Richard Kashdan,

Complainant,

vs.

Pacific Bell (U-1001-C),

Defendant.

Case 93-05-040
(Filed May 17, 1993)

ORIGINAL

OPINION

Background

Richard Kashdan (Complainant) filed his complaint against Pacific Bell (defendant) alleging that defendant has violated Public Utilities Code §§ 742.5(c),¹ regarding a customer-owned pay telephone (COPT) tariff, and 779.2,² regarding billing and collecting for Information Service (IS) providers.

¹ No telephone corporation which provides billing and collecting services for any call placed by a subscriber of the telephone corporation from a coin-activated telephone available for public use owned or operated by other than a telephone corporation shall transmit any charge which is in excess of the maximum tariff rate or charge for that call placed from the telephone, as determined by the commission. Any reasonable cost incurred by the telephone corporation in verifying any such charge may be included in the fees or charges for conducting the billing and collection services.

² No electrical, gas, heat, telephone, or water corporation may terminate residential service for nonpayment of any delinquent account or other indebtedness owed by the customer or subscriber to any other person or corporation or when the obligation represented by the delinquent account or other indebtedness was incurred with a person or corporation other than the electrical, gas, heat, telephone, or water corporation demanding payment therefor.

A prehearing conference (PHC) was held on November 9, 1993 in San Francisco to obtain clarification of the complaint and to identify issues. Subsequently, complainant filed a notice of intent to claim compensation, while defendant filed two motions. Defendant's first motion was to dismiss the complaint and the second was to compel complainant to respond to data requests. Oppositions to the motions were received. No evidentiary hearings have been held.

COPT Tariff Complaint

As to COPT service, complainant asserted that defendant violated Code § 742.5(c) and its tariff Schedule A.5.5.3.C.2.k³ by billing and collecting more than \$0.10 per call above AT&T's coin rate for interLATA intrastate nonsent paid calls made from COPTs.

Defendant acknowledged that complainant accurately cited defendant's tariff Schedule A5.5.3.C.2.k. However, defendant identified a different tariff schedule (Cal. PUC No. 175-T.8.2.1(B)(2)(j)) which complainant did not consider prior to filing the complaint on this issue. The tariff schedule identified by defendant authorizes defendant to charge for COPT intrastate originated messages so long as the charge does not exceed \$0.10 over the applicable Local Exchange IntraLATA rate or 11.0% over the applicable AT&T InterLATA rate if the overage is more than \$0.10 for such calls.

Complainant subsequently acknowledged that both tariff sections are active. However, he believes that the tariffs contradict each other and requested, in his opposition to defendant's motion to dismiss the complaint, that one or both of the tariffs be rewritten.

Both of the cited tariffs are in effect and, therefore, are deemed to be reasonable until modified. The tariff schedule cited by complainant pertains to the rates that defendant's COPT customers may charge, while the latter tariff cited by defendant

³ There is a maximum rate of not more than \$0.10 per call above AT&T Communications of California's authorized coin rate for an interLATA intrastate send paid and nonsent paid calls made from COPTs.

pertains to the rates that defendant may charge for its billing and collecting services applicable to COPTs.

Public Utilities Code § 1702 provides in part that:

"No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any...telephone corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such...telephone service."

Complainant neither obtained the support of any elected officials nor the signatures of 25 customers. Further, complainant has not asserted that defendant violated the later-identified COPT tariff. We therefore have no authority to entertain his complaint regarding COPT tariffs. The COPT complaint should be dismissed.

Information Services Complaint

In regards to the alleged Code § 779.2 violation, complainant asserted that defendant, acting as an IS provider billing and collecting agent, improperly threatens to disconnect local service to those customers who refuse to pay for IS billed services.

Complainant stated that some IS providers operate by allowing their customers wishing to listen to such service to dial a free 800 number. In turn, the IS records the caller's number and places a collect call back to the customer.

Complainant tried calling such an IS and was billed \$29.50 for a two-minute collect call by defendant acting as the IS billing and collecting agent. Complainant was also told by defendant that complainant's telephone service could be disconnected for failure to pay the collect charge.

Defendant acknowledged that some IS providers do place collect calls back to the customer as alleged by complainant. However, defendant asserted that it does not pass along real time charges to the IS providers and that it reverses collect charges for these types of calls, when discovered.

Subsequently, on November 5, 1993, defendant credited complainant's telephone bill for \$30.39, the actual amount of the disputed call. The crediting of complainant's account for the disputed amount makes the IS complaint moot. This issue should be dismissed.

With no complaint remaining to be resolved, a public hearing is not necessary. Complainant's request for a finding of eligibility and defendant's motion to compel complainant to answer data requests are moot and should be denied.

Findings of Fact

1. Complainant did not consider Tariff Schedule A5.5.3.C.2.k prior to the filing of his complaint.
2. The complaint is not signed by an elected official or by 25 customers.
3. Defendant credited complainant's telephone bill for the actual amount of a disputed call and has not disconnected complainant's telephone service.
4. Complainant's request for a finding of eligibility is moot.
5. Defendant's motion to compel complainant to answer data requests is moot.

Conclusions of Law

1. The Commission cannot entertain this complainant's charge that defendant's COPT tariffs contradict each other.
2. To the extent that defendant has satisfied complainant's demands regarding IS the complaint is moot.
3. This complaint should be dismissed.

O R D E R

IT IS ORDERED that Case 93-05-040 is dismissed.

This order is effective today.

Dated November 19, 1997, at San Francisco, California.

P. GREGORY CONLON
President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners