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Decision 97-11-068 November 19, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ted E. Dietenhofer,  
Complainant,  
vs.  
Pacific Bell,  
Defendant.

ORIGINAL

Case 95-11-021  
(Filed November 15, 1995)

OPINION

Ted E. Dietenhofer, for himself, complainant.  
Colleen O'Grady, Attorney at Law, and Nancy Hensley,  
for Pacific Bell, defendant .

Summary

We grant the complaint of Ted E. Dietenhofer (Dietenhofer) in which he contests Pacific Bell's (Pacific) policy that any work performed on utility cross-connects is considered to be unregulated work on inside wire. Consistent with our order in Case (C.) 95-08-039, we find that "cross-connects" which attach the utility's network access terminal to a building owner's building entrance terminal are not inside wire but utility facilities. In this case, we direct Pacific to refund to Dietenhofer the cost he incurred reattaching the cross-connect to his tenant's apartment unit, plus interest.

Procedural Background

Dietenhofer filed this complaint against Pacific on November 15, 1995. Pacific filed its response on December 6, 1995. The Commission held a day of hearing on April 22, 1996 and submitted the proceeding at the end of the hearing without briefs or oral argument.

This complaint is similar to two other complaints filed with the Commission. C.95-08-039 was filed on August 8, 1995 against Pacific by The Fillmore Center and North Point Apartments. The other, C.96-01-016, was filed against Pacific on January 12, 1996 by Vista Montana Apartments and Mission Court Bungalows. All three of these cases involve the issue of who is responsible for maintaining the wire which connects to the demarcation point at which dial tone is provided.

### The Complaint

Dietenhofer's complaint alleges that Pacific had removed "jumper wires" or "cross-connects"<sup>1</sup> at his property, an eight unit apartment building located at 1557 Hauser Boulevard in Los Angeles. Pacific subsequently refused to reconnect the cross-connect so that his tenant could receive telephone service. The complaint states his contractor had to undertake the work on a Saturday and charged him \$90 for the repair at overtime rates. Dietenhofer asks the Commission to require Pacific to reimburse him for this expense and to provide a billing notice which provides for reimbursement of such charges to customers.

During the hearing, Dietenhofer testified that someone, which he assumes was a Pacific employee, removed one or more cross-connects on his premises to reuse at another location. Dietenhofer testified that it was unlikely that anyone else removed the cross-connects because one tenant had lived continuously at the property and had continued to receive telephone service. Had someone maliciously removed the cross-connects, that person probably would have removed that other cross-connect as well.

Dietenhofer hired someone for \$90 to reattach the cross-connect for one of the units. In another unit, the inside wire from the unit was connected directly to Pacific's terminal but Dietenhofer did not know who made this connection. Since the cross-connects were in place before they were removed, Dietenhofer contends that Pacific should reattach the cross-connect at no charge. He testified that he has not had similar problems with other multi-unit properties he owns in areas that are served by GTE California Incorporated.

### Pacific's Position

Pacific's response to the complaint states that the work that Dietenhofer sought was for installation of inside wire, which is a deregulated service. Pacific states that when it received a trouble call from the complainant that the telephone service for one of his tenants was not working, a repair supervisor was sent to the complainant's property. The supervisor determined that the facilities on Pacific's side of the demarcation point were operating properly, that she informed the complainant that he was responsible for the installation of the inside wire to connect to Pacific's network, and that in order for Pacific to install the cross-connects it would have to charge a fee. Dietenhofer declined the offer.

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<sup>1</sup> The parties used the terms "jumper" and cross-connects" interchangeably in this proceeding. We refer to them as cross-connects.

Pacific's witness, Tom Sanz, admits that if there is a high demand for telephone service in a particular area, Pacific will reuse idle cable pairs and remove the cross-connect in order to provide service to another location. If, however, a customer from the original location subsequently wishes to initiate service and the cross-connect must be reconnected, Pacific charges the customer \$85 for inside wire installation work. He testified that if Pacific could not reuse the cross-connects, it could not efficiently manage its system. Specifically, it would not be able to track the lines and terminal locations. Pacific's usual practice, according to Sanz, is to bill the customer rather than the landlord for the charges associated with the work on the cross-connects.

Sanz did not know for sure if the facilities that appear at the complainant's building were being reused elsewhere. He also did not have any information about the utilization factor for the cable that serves that piece of property.

#### Discussion

The issues raised in this complaint are substantially the same as those raised in C.95-08-039. We addressed the law and its application to the facts of that case in a decision issued as D.97-11-029. D.97-11-029 finds that the cross-connects which attach the utility's network access terminal to the building owner's building entrance terminal are not inside wire, but are part of the utility's property. Pursuant to D.92-01-023, the utility is responsible for the "wire that connects the building entrance terminal to the utility-placed network access termination," a wire which is referred to in D.92-01-023 as a cross-connect. (D.92-01-023, Appendix A, pp. 10, 21-22.) We concluded in D.97-11-029 that Pacific may not charge the end-use customer for work on these kinds of cross-connects. That decision directs Pacific to cease immediately from charging all customers and property owners for work on these kinds of cross-connects, to proceed to refund past overcharges to complainants and their tenants, and to propose a process for identifying and notifying property owners and customers who it may have charged in error for work on cross-connects.

Pacific's witness was unsure whether the 25 pair cable at the property serves other locations as well. Dietenhofer's understanding, having met with Pacific's repair supervisor, is that the wire pairs from that cable are being reused. No evidence has been supplied to contradict Dietenhofer's understanding. Indeed, in Pacific's answer, it admits that it has a right to reuse its cable pairs. We can infer from the evidence before us, that the cross-connects serving the vacant units in Dietenhofer's property were probably removed by Pacific, and that the idle cable pairs were reused to serve another location.

We conclude, as we did in C.95-08-039, 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.92-01-023 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 a cross-connect as network terminating wire (NTW). The settlement agreement in D.92-01-023 provides:

"All other wire accounted for as NTW is not affected by the INC (intrabuilding network cable) 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. Such NTW will remain in Account 6362 and continue to be treated as part of the utility's network." (D.92-01-023, Appendix A, pp. 21-22.)

The cross-connects at issue in this case are the kind of NTW that is not affected by the INC demarcation point. Consequently, the cross-connects at issue are to be treated as part of the utility's network. This conclusion is supported by page 2 of Attachment A to Appendix A of D.92-01-023. As discussed in D.97-11-029, that page of the settlement agreement shows that the cross-connect between the protected building terminal and the connecting block is "NTW that remains bundled."

We conclude that the 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 the regulated utility facilities. Pacific may not charge building owners or their tenants for work on cross-connects which connect the utility's network access terminals with the building entrance terminals in multi-unit buildings.

Dietenhofer hired an independent contractor to reattach the cross-connect to his tenant's premises rather than hire Pacific to undertake the work. He paid \$90 to have the cross-connect reconnected. Although Pacific should have reattached the cross-connect without charge, Pacific would have charged Dietenhofer only \$85 to make the connection. As discussed in D.97-11-029, such a charge is in violation of D.92-01-023 and PU Code § 532. We will direct Pacific to refund \$85 of the \$90 amount, plus any applicable interest, to the complainant. We will also require Pacific to review its billing records for inside wire charges billed to Dietenhofer or his tenants at the Hauser Boulevard property since August 8, 1993, and to refund any charges for work on the cross-connects at issue.

### Findings of Fact

1. This complaint is similar to the two other complaints filed with the Commission because they involve the issue of who is responsible for maintaining the wire which connects to the demarcation point at which dial tone is provided.
2. Dietenhofer testified that someone, which he assumes was a Pacific employee, removed one or more cross-connects connecting the network access terminal to the building entrance terminal at Dietenhofer's property.
3. Dietenhofer hired an independent contractor to reattach the cross-connect at the property in order to provide telephone service to his tenant.
4. Pacific's repair supervisor visited the site and informed the complainant that he was responsible for the installation of the inside wire in order to connect to Pacific's network access terminal.
5. Pacific admits that it will reuse idle cable pairs and remove the cross-connect in order to provide service to another location.
6. Pacific charges customers \$85 for work on cross-connects on the basis that cross-connects are inside wire and therefore unregulated and the responsibility of property owners to install and maintain.
7. D.97-11-029 finds that the cross-connects which attach the utility's network access terminal to the building owner's building entrance terminal are not inside wire, but are part of the utility's property.
8. Pacific's witness was unsure whether the cable at the subject property serves other locations as well.
9. The evidence suggests that the cross-connects serving the vacant units were probably removed by Pacific, and the idle cable pairs were reused to serve another location.
10. Page 2 of Attachment A to Appendix A of D.92-01-023 shows that the cross-connect between the protected building terminal and the connecting block is NTW that remains bundled.

### Conclusions of Law

1. D.92-01-023 requires Pacific to retain responsibility for installation and maintenance of the wire that connects the utility's network access terminal to the building owner's building entrance terminal.
2. The cross-connects at issue in this case are the responsibility of the utility.
3. The cross-connects at issue in this case are the kind of NTW that is not affected by the INC demarcation point.

4. Pacific may not charge building owners or their tenants for work on cross-connects which connect the utility's network access terminal with the building entrance terminal in a multi-unit building.

5. Pacific should refund to Dietenhofer \$85 plus interest for the amount he spent to reattach the cross-connect.

6. The Commission should order Pacific to review its billing records for the property which is the subject of this complaint to determine the extent to which it may have charged the tenants or the building owner for work on cross-connects, and to refund any improperly billed charges consistent with this decision.

#### O R D E R

IT IS ORDERED that:

1. The complaint of Ted E. Dietenhofer (Dietenhofer) is granted to the extent set forth herein.

2. Pacific Bell (Pacific) shall pay to Dietenhofer \$85 plus interest to begin accruing on November 15, 1995. The interest rate shall be the three-month commercial paper rate as reported in the Federal Reserve's Statistical Release G.13.

3. Pacific shall review its billing and repair records to identify all customers who resided at this property to determine the extent to which Pacific may have charged the tenants or the building owner for work on the cross-connects at issue in this case, and to refund these improperly billed charges consistent with this decision.

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

b. Within 120 days of the effective date of this decision, Pacific shall refund to Diethofer, or any customer who resides at or formerly resided at 1557 Hauser Boulevard, Los Angeles, all improper charges for work undertaken on cross-connects, as discussed herein,

4. Case 95-11-021 is closed.

This order is effective today.

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

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

I will file a dissent.

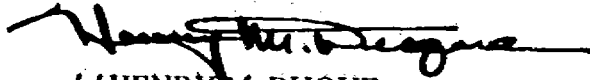
/s/ HENRY M. DUQUE  
Commissioner

C.95-11-021  
D.97-11-068

Commissioner Duque, dissenting:

Although I do not disagree with this decision's order that Pacific reimburse the complainants for the expenses that are at dispute, I would reach this result because Pacific's tariffs are ambiguous – not because Pacific has violated the law. I do not find that the record shows that Pacific has violated the law, the key proposition in today's decision and one that drives the entire analysis.

The reasoning of this decision is linked closely to that of D.97-11-029, a decision which I found faulty and concerning which I filed a detailed dissent. The analysis of my dissent to D.97-11-029 is relevant to this decision, I to dissent to it as well.



/s/ HENRY M. DUQUE

Henry M. Duque  
Commissioner

November 19, 1997

San Francisco



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Henry M. Duque  
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November 19, 1997

San Francisco