

Mailed
NOV 24 1997

Decision 97-11-069 November 19, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Vista Montana Apartments, et al.,

Complainants,

vs.

Pacific Bell,

Defendant.

ORIGINAL

Case 96-01-016
(Filed January 12, 1996)

Erleane Moore, for Vista Montana Apartments, complainant.
Colleen O'Grady, Attorney at Law, for Pacific Bell, defendant.

O P I N I O N

Summary

We herein grant the complaint of Vista Montana Apartments (Vista Montana) which contests Pacific Bell's (Pacific) policy that any work performed on utility "cross-connects" are considered to be unregulated inside wire. Consistent with our decision in Case (C.) 95-08-039, we find that the activity of connecting the tips of the inside wire which connect the individual units of the apartments to the utility's network access terminal is a utility function which Pacific must supply at no cost to the end-use customer. In this case, we direct Pacific to refund \$100.00, plus interest, to the complainant and refund to the complainant and its tenants any charges that were imposed upon them for work on connecting these tips to the utility's network access terminal, and which were paid to Pacific.

Procedural Background

Vista Montana and Mission Court Bungalows filed this complaint against Pacific on January 12, 1996. Pacific filed its response on February 20, 1996. The Commission held a day of hearing on April 23, 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.95-11-021, was filed against Pacific on November 15, 1995 by Ted Diethofer. 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.

On April 16, 1996, Mission Court Bungalows sent a letter to the assigned administrative law judge withdrawing from the complaint on the basis that its dispute with Pacific concerns matters unrelated to cross-connects and issues raised in the complaint.

The Complaint

The complaint alleges that Pacific is responsible for completing the cross-connects that attach the utility's network access terminal and the building entrance terminal at Vista Montana, a multi-unit apartment building located at 4830 Palm Avenue in Riverside. The complaint refers to the requirements of Decision (D.) 92-01-023 in asserting that the cross-connects are Pacific's responsibility.

During the hearing, Vista Montana's owner, Erleane Moore, testified that six of her tenants required work on cross-connects when they initiated telephone service, and that Pacific intended to charge each one of them \$75 for the work as "installation of a first jack."¹ Moore testified she believes the charges are in error because they were for work required to complete the cross-connects on her property. Moore testified that she subsequently paid an independent contractor on four separate occasions to reattach the cross-connects in the amount of \$25 for each connection. One of her other tenants was billed \$37.50 (half of the usual charge because the customer received a discount available to low income customers) by Pacific to have the cross-connect attached. This

¹ Pacific subsequently increased the charge from \$75 to \$85 for this kind of work, and changed the designation for this kind of work to read as follows: "Labor charge for installation or activation of first jack." (1 R.T. 69.)

tenant then deducted the \$37.50 from the monthly rent. Moore was also billed \$75 by Pacific for the same kind of work for another tenant's apartment. Moore testified that she did not authorize this work, and refused to pay this \$75 charge.²

Pacific's Position

Pacific's response to the complaint states that: "Customers are responsible for the completion of services beyond the demarcation point, including the installation of IW (inside wire) and cross-connects on the customers' side of the demarcation point." (Pacific's Answer, p. 1.) Pacific admits that it reuses cross-connects and moves them in order to provide service to another tenant or to another location. If, however, a new tenant of an apartment whose cross-connect was removed wants to initiate service, a new cross-connect must be attached. Pacific would then require the prospective customer to pay \$85 for Pacific to attach the cross-connect, or the tenant could elect to hire someone else to make this attachment.

Pacific's witness, Tom Sanz, who also testified on behalf of Pacific in C.95-08-039, testified that the wiring configuration at Vista Montana involves the use of a "ready access terminal." This kind of terminal does not have a fixed binding post number assigned to the terminal. Instead, the terminal uses a cable and pair designation system.

Pacific's LFAC tracking system is used to determine which pair of wires are available to provide service. However, the LFAC system does not have the ability to keep track of what cable pair is attached to which end-user on a ready access terminal. That is, the system does not recognize that pair 1 is connected through to a specific address such as apartment A, and that pair 2 is connected to apartment B. When a new tenant wants service at Vista Montana, Pacific's system will assign the first available pair, even if that pair is already connected to a different vacant apartment. Pacific will then provide dial tone to the available cable pair at its terminal, a Pacific technician will then put a tag on the pair to identify that dial tone is available, and then disconnect any

² At the hearing, Pacific agreed to remove the \$75 charge from Moore's telephone bill. (1 R.T. 159, 162.)

multiple wires that are connected to the same cable pair. Pacific will not connect the wire from the end-user's unit to the utility's terminal board where the dial tone is present unless the tenant authorizes Pacific to make the connection and pay the \$85 charge.

Sanz also testified that the wiring configuration for Vista Montana had the inside wire from the apartment units being directly connected to the utility's network access terminal. There were no intermediate connection points, i.e., a cross-connect, between the utility's terminal and a building entrance terminal. Instead, each of the wires appeared to run directly to each apartment.

Pacific argues that some of the inside wire work undertaken at Vista Montana and billed to the owner or the tenants may not have been for attaching the wire or cross-connect to the point at which dial tone was available because the bills did not specify the type of inside wire work that was undertaken.

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 today 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.

The facts of this case differ somewhat from the facts found in C.95-08-039. The differences are that there are no cross-connects connecting the utility's network access terminal with the building's entrance terminal, and the manner in which Pacific's system tracks available pairs when a ready access terminal is used. Instead of using a cross-connect, Pacific's witness testified that the wires from each unit were directly connected to the cable pairs on Pacific's terminal. Thus, the issue is not whether the tip of the cross-connect must be connected to the utility's terminal board by the utility without charge, but rather whether the tip of the inside wire must be connected to the utility's terminal board by the utility without charge.

The manner in which Pacific's LFAC system tracks available pairs when a ready access terminal is used is almost identical to how the LFAC system tracks idle cable pairs that previously served as business lines, as discussed in C.95-08-039. In both instances, the system does not track the connect through to the end user, i.e., the system does not keep track of the physical location of the unit where the cable pair has been hooked up to. Instead, the system assigns the first available pair whenever someone requests service. When there is a turnover of apartments, such as what was experienced at the Vista Montana apartments from June 1995 to January 1996, this results in the reuse of the first available pair, removal of the wires from the utility's terminal board serving the unit where the telephone service was terminated, and a ripple effect on subsequent units that are vacated and on new tenants initiating service whose tips of the inside wire have been removed from the utility's terminal. Anyone who wants to reestablish service to the unit in which the connection was removed, must arrange for Pacific or someone else to connect the tips of the wire pair to the utility's terminal.

The tips of the wire pairs that attach to the utility's terminal, and which are at issue in this case, should be viewed in the same light as the cross-connects at issue in C.95-08-039. In C.95-08-039, Pacific's LFAC system caused the cross-connects to be disconnected from Pacific's terminal so that Pacific could reuse its facilities to serve another unit or location. Pacific's system fails to recognize that these cross-connects are already connected through to individual apartments. Through no fault of the property owner or of the future tenants, Pacific's LFAC system causes a disruptive, ripple effect

with regard to the connections to Pacific's terminal at the Vista Montana apartments. The result is that prospective end-use customers who want telephone service, must pay Pacific or someone else to reestablish a connection which was disconnected as a direct result of Pacific's inability to track where the connect throughs are attached to.

The Commission in deciding on the demarcation points noted the following in D.90-10-064 at page 6:

"Determining the demarcation points for several classes of customers under various circumstances raises several concerns. As the parties suggest, our objectives in this undertaking should be fairness, simplicity, and flexibility. The utilities should not be permitted to use demarcation points to leverage one product over another or discriminate for or against any class of customer."

It should be the responsibility of Pacific to connect the tips of the wire pairs that connect the jack in the individual apartments to Pacific's network access terminal at no charge. Fairness dictates this outcome. An inequitable result would otherwise occur because the tenant moving in would end up paying to reconnect even though it was Pacific who was responsible for breaking the connect through to the apartment. Furthermore, Pacific should not be able to use the ripple effect caused by its LFAC system and the demarcation point to essentially force tenants who want service to pay Pacific to reattach the end of the wire pair, which Pacific was responsible for disconnecting in the first place.

We find, as we did in C.95-08-039, that Pacific may not charge building owners or their tenants for work on connecting the tips of the wire pair to the utility's network access terminal. That responsibility is a utility function which Pacific must supply at no cost to the end-use customer. The connection of the wire pair to the utility's network terminal is not considered to be an inside wire responsibility of the customer.

Pacific disputes whether the six instances in which this connection problem occurred actually involved a cross-connect situation, i.e., having someone make the connection of the wire pair to the utility's terminal. Pacific argues that the six instances could have involved jack related work instead. However, according to the testimony of Henry Jacobsen, who maintains the Vista Montana units, he did not see the technicians

string any wire from the telephone closet to the apartments. Jacobsen testified that the technicians played with the terminal board, and may have installed wires on the terminals located inside the telephone closet. We have no reason to doubt Moore's testimony that the work undertaken on her premises by her contractor was to complete the connections to enable the individual apartments to receive dial tone. Her testimony suggests that at the time she hired the contractor, she understood the work that Pacific would have billed her for and for which the contractor ultimately completed and billed.

We will direct Pacific to reimburse Vista Montana \$100 for the four charges that Moore was billed for by her contractor to complete the connections, plus interest. Vista Montana's owners would not have incurred these charges if Pacific had complied with D.90-10-064 and D.92-01-023. The charge to Vista Montana's tenant in the amount of \$37.50 was unlawful because it was for work on a connection related issue. The Commission may not reimburse Vista Montana for charges unlawfully billed to a customer even if the tenant deducted the amount from the monthly rent. We will, however, direct Pacific to reimburse any customer who resided at Vista Montana who may have paid for work on this kind of connection activity. It shall be the responsibility of Vista Montana to recover anything owed to it by its tenants. Consistent with our decision regarding The Fillmore Center and the North Point Apartments in C.95-08-039, Pacific will have the burden of demonstrating that any "inside wire installation" billings were not for work on these kinds of connection and cross-connect issues. The customer will have the benefit of the doubt where any ambiguity exists. Pacific should not be held responsible for reimbursing Vista Montana for Jacobsen's time spent monitoring the work activities of Pacific's technicians or of the other technicians because his primary purpose was to allow access and to ensure that no tools were removed from the telephone closet area.

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. Mission Court Bungalows submitted a request that it be allowed to withdraw as a complainant from this complaint.

3. Vista Montana's owner testified that she hired an independent contractor to complete the connections for four of her new tenants at a total cost of \$100, that Pacific billed her \$75 for unauthorized work to complete the connection in another apartment, and that another tenant was billed \$37.50 for work on the connection issue in dispute, which the tenant deducted from a subsequent rent payment and which was never recovered by Vista Montana.

4. Pacific admits that it reuses and removes unused cross-connects connecting the network access terminal to the building in order to provide service to another tenant or to another location.

5. The new tenant moving into an apartment in which the connection was detached by Pacific, must pay \$85 to Pacific to reestablish this connection as a "labor charge for installation or activation of first jack" or hire someone else to make this connection.

6. Vista Montana has a ready access terminal.

7. When a ready access terminal is used, Pacific's LFAC system does not have the ability to keep track of where the cable pairs are connected through to the end-users.

8. When a ready access terminal is used, Pacific's LFAC system will assign the first available pair, even if that pair is connected through to a vacant apartment.

9. 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.

10. The manner in which Pacific's LFAC system handles cable pairs on a ready access terminal are similar to the way in which the LFAC system tracks idle cable pairs that previously served as business lines.

11. The turnover of apartments at Vista Montana caused the LFAC system to reuse the first available cable pair which disrupted and caused a ripple effect on the subsequent connections to Pacific's terminal.

12. Pacific's LFAC system fails to recognize that the cable pairs serving its terminal are connected through to individual apartments when a ready access terminal is used, or when the cable pair previously supplied business line service.

13. D.90-10-064 stated that in determining the demarcation points, the Commission's objectives should be fairness, simplicity, and flexibility, and that utilities should not be permitted to use the demarcation points to leverage one product over another.

14. There is no reason to doubt that Vista Montana paid \$100 to have the tips of the wire pairs reconnected to Pacific's network access terminal.

Conclusions of Law

1. D.92-01-023 requires Pacific to retain responsibility for installation and maintenance of the wire that connects the building entrance terminal to the utility-placed network access termination.

2. The tips of the wire pairs that connect to Pacific's terminal should be the responsibility of the utility to connect it to the utility's network access terminal at no charge.

3. An inequitable result would occur if the tenant moving in ends up paying to reattach a connection to the utility's terminal when it was the utility who was responsible for breaking the connect through to the apartment.

4. Pacific should not be able to use the ripple effect caused by Pacific's LFAC system and the designation of the demarcation point to force tenants to pay a charge in order to reestablish the connection so that the tenant can receive dial tone at the jack.

5. Pacific may not charge building owners or their tenants for work on connecting the tips of the wire pair to the utility's network access terminal.

6. Pacific should be directed to reimburse Vista Montana \$100, plus interest, for the four connections made by Vista Montana, and to reimburse any customer who resided at Vista Montana who may have paid Pacific for work on this kind of connection activity.

7. The Commission cannot order Pacific to refund to complainant charges which were billed to complainant's tenant.

8. The Commission should dismiss this complaint with respect to Mission Court Bungalows.

O R D E R

IT IS ORDERED that:

1. The complaint of Vista Montana Apartments (Vista Montana) is granted to the extent set forth herein.

2. Pacific Bell (Pacific) shall pay to the complainant \$100 plus interest to begin accruing on January 12, 1996. 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 billing records for any customer currently or formerly living at 4830 Palm Avenue, Riverside, to determine the extent to which it may have charged other tenants or the building owner since August 1993 for work on these kinds of connection issues, and to refund to these customers all improperly billed charges consistent with this decision.

4. Pacific shall to refund complainant's tenant, whose account number is reflected in Exhibit 4, \$37.50 plus interest accruing beginning January 12, 1996.

5. Pacific shall submit to Telecommunications Division within 60 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 1993 for work that Pacific considered to be inside wire.

6. Mission Court Bungalows is dismissed as a complainant from this proceeding.

C.96-01-016 ALJ/JSW/wav

7. Case 96-01-016 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.96-01-016

D.97-11-069

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

C.96-01-016
D.97-11-069

H-3

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.



Henry M. Duque
Commissioner

November 19, 1997

San Francisco