

Decision 98-06-059 June 18, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Alexander Gee,

Complainant,

vs.

Pacific Bell, (U 1001 C)

Defendant.

ORIGINAL

Case 87-07-033
(Filed July 11, 1987)

O P I N I O N

Alexander Gee, (complainant) alleges that Pacific Bell's (defendant) telephone rates for the Rialto, Colton, and Fontana calling areas are unjust, discriminatory, and unreasonable. He claims that the toll-free calling areas in the three communities are not the same. He requests that the boundaries be changed so that Fontana will be able to call, toll free, the same number of exchanges that Rialto and Colton callers are now able to call. Complainant also alleges, in an unclear manner, that he has been injured in some way by defendant's Yellow Pages advertising. Finally, complainant alleges that defendant removed the requirement of dialing "1" for nearby calls solely to profit from the mistakes of subscribers. This is a complaint case which challenges the reasonableness of rates or charges. Therefore, this is not an "adjudicatory proceeding" as defined in Public Utilities (PU) Code Section 1757.1.

Defendant moved to dismiss the complaint for failure to state a cause of action. On November 12, 1987, the presiding Administrative Law Judge ruled that the complaint would be dismissed unless complainant cured its defects. On November 30, 1987, complainant filed his amended complaint, restating his

original complaint, but adding at least 25 signatures of subscribers. (PU Code § 1702.) Defendant again moved to dismiss for failure to state a cause of action. Hearing on the motion was held February 27, 1998 and the matter submitted.

For the reasons stated, we dismiss for failure to state a cause of action. The complaint does not recite facts which establish an issue of fact as to whether defendant's rates or practices are unreasonable, discriminatory, or unjust. The rates complainant attacks were approved as reasonable in Decision (D.) 84-06-011, June 13, 1984. Complainant wants certain calling area boundaries changed but the Commission has made clear that calling area boundaries will be modified only upon a strong showing that modification is necessary; no such showing has been made here. The portion of the complaint which seeks relief due to Yellow Pages Directory advertising is beyond the jurisdiction of this Commission (PU Code § 728.2).

Complainant has not alleged facts which establish that defendant either committed or failed to commit some act which is in violation of any provision of law or order or rule of the Commission. Paragraph two of the complaint is a conclusory statement that defendant's rates violates §§ 451 and 453(b) of the PU Code. It contains no facts which establish an issue as to whether the conclusory statements have merit. Paragraph four is also a conclusory statement that the rates for the Colton subscribers violate and are prohibited by § 453 of the PU Code. It too contains no facts which establish an issue as to whether the statement has merit. Paragraph eight is an unsupported allegation which we interpret to mean that complainant is alleging that there is an unlawful difference between defendant's charges for calling the same number from phones in different calling areas. No supporting facts are alleged. Paragraph nine appears to allege in conclusory fashion, and without supporting facts, that defendant's rates are noncompetitive and do not reflect technological savings or access

charges savings. Other paragraphs in the complaint are equally without supporting facts to show a violation of law by defendant.

Complainant wants calling area boundaries changed so that Fontana callers will be able to call, toll free, the same number of exchanges that Rialto and Colton callers are now able to make. We have often faced subscriber requests to change calling area boundaries, and we have enunciated a standard of review in deciding whether to grant these requests. We attach great weight to the close scrutiny given to rates and calling area boundaries as part of the general ratemaking process, and have held that the individual rates and boundaries set by that process should be left undisturbed absent the showing of a compelling need to make such a change (Fremont Customers v. Pacific Telephone, 68 CPUC 203 (1968)).

The removal of the "dial '1'" requirement occurred in June 1984. A complaint objecting to the removal filed in July 1987, is fatally out of date. No facts are alleged which establish that defendant acted in violation of a rule, order, or law. The sparse conclusory statements which are alleged do not constitute grounds sufficient to establish violations. The complaint is defective and should be dismissed (Blincoe v. Pacific Tel. & Tel. Co., 60 CPUC 432 (1963)).

Finding of Fact

The rates and practices of defendant as set forth in this complaint are just and reasonable.

Conclusions of Law

1. The complaint does not set forth any act or thing done or omitted to be done by defendant in violation of any provision of law or of any order or rule of the Commission.

2. This is a complaint case challenging the reasonableness of rates or charges, and so this decision is not issued in an "adjudicatory proceeding" as defined in PU Code Section 1757.1.

O R D E R

IT IS ORDERED that:

1. The complaint is denied.
2. Case 87-07-033 is closed.

This order is effective today.

Dated June 18, 1998, at San Francisco, California.

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