

Decision 98-07-029 July 2, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Chryl Pittman,

Complainant,

v.

Pacific Bell,

Defendant.

ORIGINAL

(ECP)

Case 96-11-035

(Filed November 22, 1996)

Chryl Pittman, complainant.  
Adrian Tyler, for Pacific Bell, defendant.

OPINION

Chryl Pittman, complainant, alleges that Pacific Bell (Pacific or defendant) is unlawfully refusing to restore telephone service in her name until she pays a previous bill for charges incurred in 1990 (\$92.31) and outstanding charges (\$387.68) incurred in May 1996 on the telephone account of a friend who established telephone service at complainant's residence.

Pacific contends complainant is liable for these charges because the third party, Lee, still resided at complainant's residence or, in the alternative, that complainant fraudulently established the second account in a friend's name at her residence to avoid paying outstanding charges.

A hearing was held under the Commission's expedited complaint procedure in San Francisco, California on January 29, 1997. After the hearing, the assigned Administrative Law Judge requested comments from the parties on the applicability of Public Utilities (PU) Code § 737 to this case. PU Code § 737 provides in relevant part,

that "All complaints for the collection of the lawful tariff charges or any part thereof, of public utilities may be filed in any court of competent jurisdiction within three years from the time the cause of action accrues, and not after . . . ." In its comments, Pacific withdrew its demand for payment of the 1990 bill because it was beyond the three-year statute of limitations for the collection of lawful charges in PU Code § 737. The case was submitted on February 24, 1997, the date reply comments were due. We herein conclude that the complaint must be denied because complainant allowed a third party to establish service at her residence making complainant jointly and severally liable for the telephone charges of \$387.68 incurred by her visitor.

#### **Denial of Reconnection**

Complainant admits that she knowingly allowed a young adult student, Pamela Lee, whom she tutored, to maintain telephone service at complainant's residence. The service was initially established on January 30, 1996 without complainant's knowledge. Complainant denies that she needed a telephone or requested that Lee have it installed. However, when she discovered the telephone in her home, she did not object. Complainant testified that in early 1996 she was looking for work in Los Angeles since she was often out of town, she had no need for a telephone. She testified that she allowed the telephone service because Lee had a strict home environment and little privacy.

In May 1996, after Lee's service was terminated for non-payment, Pittman requested reconnection of her previous account. Initially, Pacific agreed to restore service in complainant's name, but before the installation date, Pacific declined service. Complainant argues that it was unfair for Pacific to agree to restore telephone service in her name, and then, days later, retract this approval based upon Lee's unpaid bill. Pittman alleges this denial of service was unlawful. She contends that subsequently Pacific also based the denial of service on Pittman's outstanding 1990 bill.

Pacific argued that the denial was lawful based upon three grounds which establish the violation of tariff provisions discussed below: Lee's residence at Pittman's address; Pittman's unpaid bill; and Pittman's fraud in establishing Lee's account. However, Pacific withdrew its demand for payment of the 1990 bill due to the statute of limitations for lawful charges. (PU Code § 737.)

### **1990 Charges**

Because Pittman has no lawful prior unpaid balance, she cannot be held responsible for the 1990 charges. However, Pacific must abide by the appropriate credit rules and regulations governing the retention of this information in Pittman's account.

### **The May 1996 Charges**

In reviewing Pacific's actions with regard to the May 1996 charges, which are not time barred, we analyze Tariff Rule 11.A.2.j.(1) and Tariff Rule 11.A.5.b.

### **Residence of Delinquent Customer (Tariff Rule 11.A.2.j.(1))**

Pacific's witness testified that Lee admitted to Pacific's investigator that she lived at Pittman's address from "time to time." Based upon this admission, Pacific denied service under its tariff Rule 11.A.2.j (1), Discontinuance and Restoration of Service, which provides that:

"The Utility may not discontinue or deny service at a premises where services provided to a prior customer were disconnected for non-payment, except where it is found that the delinquent customer still resides at that same premises. (Except as provided in Paragraph 5. following.)"

At the hearing, Pittman denied that Lee ever lived at her residence. Lee was not present at the hearing. Pittman testified that Lee frequently visited and produced her rental agreement to show that Lee's name is not on the lease. Pittman stated that Lee no longer visits and her whereabouts are unknown. However, we must evaluate Lee's residency at the time Pacific refused to restore Pittman's service, rather than a later period.

At the time restoration of service was denied, the record shows that Lee frequently visited Pittman, had access to the premises and mailbox and had telephone service installed. These acts constitute a dual residency by Lee, even if she did not spend the night, as argued by Pittman. The rental agreement evidences the arrangement between Pittman and the landlord. However, Pittman controls access to her premises, not the landlord. Therefore, we agree that Lee resided at Pittman's residence at the time Pittman requested restoration of service. To conclude otherwise would allow a customer to circumvent payment for telephone service by alleging service was established by an occasional visitor who has since moved. This interpretation would not be in the best interest of other ratepayers who pay through rates for uncollectible accounts.

The delay in discovering Pittman's responsibility for Lee's bill was inconsequential and not unreasonable given the circumstances.

In sum, for purposes of tariff Rule 11.A.2.j(1), Lee resided at Pittman's residence, and Pacific's denial of service was lawful on that basis.

#### **Fraudulent Acts (Tariff Rule 11.A.5.b)**

Pacific also relied on the following section of Rule 11 to support its denial of service:

#### **11.A.5.b.**

"The Utility shall have the right to refuse or discontinue telephone service if the acts of the customer, including providing false credit information, or the conditions at the address are such as to indicate intention to defraud the Utility."<sup>1</sup>

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<sup>1</sup> This may include those instances where it is confirmed that a new business or residence customer, (a) previously obtained service at the same address by fraudulently using another party's name to qualify for service; and/or (b) with intent to defraud, continued to use services provided to (sic) a customer no longer occupying the address. (Except as defined in A2.11.5.A., preceding.)

After Pacific denied service, it attempted to discuss the bills with both complainant and Lee; however, complainant provided no information to locate Lee and denied knowledge of Lee's whereabouts. Pacific contends complainant fraudulently caused service to be established at her residence based upon the proximity of calls from Lee and Pittman to Pacific to restore service. However, we find that this pattern of conversations—requests from Lee and Pittman to restore service—does not specifically show the willful, intent required to prove fraudulent conduct. Therefore, Pacific's reliance on Rule 11:A.5.b. is misplaced.

In sum we determine that Pacific correctly applied its Tariff Rule 11.A.2.j(1) in denying service to complainant due to nonpayment of the May 1996 charges incurred by Lee while residing at complainant's residence.

**O R D E R**

**IT IS ORDERED** that this complaint is denied and this proceeding is closed.

This order is effective today.

Dated July 2, 1998, San Francisco, California.

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