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MAIL DATE  
7/10/98

Decision 98-07-038

July 2, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**ORIGINAL**

Wilson Reid Ogg,

Complainant,

vs.

Pacific Bell,

Defendant.

Case 95-10-012  
(Filed October 12, 1995)

**ORDER MODIFYING AND DENYING  
REHEARING OF D.97-09-114**

On October 27, 1997 Pacific Bell filed an application for rehearing of Decision (D.) 97-09-114. D.97-09-114 ("Decision") resolved the complaint of Wilson Ogg which contested Pacific Bell's imposition of certain inside wire charges. The decision concludes that Pacific Bell incorrectly imposed inside wire charges for the installation of a new line for Mr. Ogg, and that the apparent confusion relating to Pacific Bell's inside wire charges warranted further investigation by the Consumer Services Division.

We have carefully considered all the arguments presented by Pacific, and are of the opinion that good cause for rehearing has not been demonstrated. We will, however, modify the decision slightly to remove the holding that Pacific charged for work that it did not do. This holding is not essential to the decision's ultimate conclusions.

We note that this is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in Public Utilities Code section 1757.1.

In D.97-09-114, we concluded that Pacific did not perform inside wire work in connection with the installation of Mr. Ogg's new line. Pacific argues that the decision errs in not allowing Pacific to impose inside wire charges for work it did on wiring which is on the customer side of the inside wire demarcation point.

We reaffirm the decision's conclusion that no work that Pacific performed for the installation of Mr. Ogg's new line constitutes inside wire work. In its application, Pacific does not specify exactly what it did that should have been chargeable as inside wire work. In the proceeding, Pacific's "toning" was the only handling of inside wire on Mr. Ogg's new line in evidence. Toning involves using a device at the jack to generate a tone down the wire. This assists the technician in locating where the line needs to be connected to initiate service. As the decision states, toning does not constitute inside wire work because it is not work on the wire itself, and does not alter the wire in any way. Therefore it does not qualify as "installation, change, determination, rearrangement, activation, move or removal," or maintenance of inside wire under Pacific's tariff definition of inside wire work. (See Schedule Cal.P.U.C. No. A3.2.2.A.) Rather, toning is done to assist the technician in the arrangement of wire within Pacific's network.

We allow the possibility that in addition to the toning, Pacific may be concerned about compensation for the cross-connect work it performed for Mr. Ogg's installation. In installing Mr. Ogg's new line Pacific likely needed to attach a cross-connect between Pacific's network and Mr. Ogg's line. However, there is no evidence of any cross-connect work since all evidence concerning the cross-connects was excluded from the proceeding.

To the extent Pacific believes that the cross-connect work is chargeable inside work, its argument cannot succeed. The cross-connect cases we

recently reviewed definitively resolved that these cross-connects are on Pacific's side of the inside wire demarcation point. (See Bayside Village v. Pacific Bell, D.98-06-029; D.97-11-029.) Therefore, the cross-connects are not inside wire and Pacific cannot impose inside wire charges for its work connecting them.

Pacific also objects to the decision's holding that Pacific charged for work it did not do. Although we are not convinced that holding is erroneous we agree that it is not the best word choice to describe the situation. It is more precise to say that Pacific mischaracterized the work it performed. Because this holding is not essential to the decision's ultimate findings, we will delete the holding from the decision.

**THEREFORE IT IS ORDERED that:**

1. The phrase on p. 6, "Pacific Bell has charged for work it did not do..." is deleted and replaced with, "Pacific Bell has mischaracterized work it performed..."
2. The phrase in Finding of Fact 1, "Pacific Bell has charged for work it did not do..." is deleted and replaced with, "Pacific Bell has mischaracterized work it performed..."
3. Rehearing of D.97-09-114, as modified herein, is denied.
4. Case 95-10-012 is closed.
5. This order is effective today.

Dated July 2, 1998, at San Francisco, California.

I will file a concurrence.

/s/ HENRY M. DUQUE  
Commissioner

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

D.98-07-038  
C.95-10-012

Commissioner Duque, concurring:

While I approve of the resolution of Mr. Ogg's dilemma in the original decision that D.98-07-038 upholds, I do not approve of the reasoning used to reach this conclusion. Because I believe that justice has been done for Mr. Ogg, I will concur in the decision not to grant rehearing, rather than dissent. Instead I voice my disagreement over how the Commission reached its result by way of concurrence.

D.98-07-038 relies on D.98-06-029 (June 4, 1998) in which Commissioner Neeper and I filed dissents disputing D.98-06-029's definition of the demarcation point for inside wire. D.98-07-038 uses the rationale of D.98-06-029 to uphold the underlying decision in favor of Mr. Ogg. Not only was this policy as to inside wire not in effect when Mr. Ogg's case was decided, the policy is an oversweeping outcome, arrived at without notice and opportunity to be heard, as detailed in the dissent to D.98-06-029. Relying on D.98-06-029's definition of inside wire in this rehearing order further extends the implausible result reached in that decision and compounds its due process error. I again urge the Commission to open an Order Instituting Investigation to fully explore these inside wire issues which will come to haunt the Commission and all telecommunications competitors if these errors are not rectified promptly.

For these reasons, I must concur in the result but reject the rationale of today's decision.

/s/ HENRY M. DUQUE

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Henry M. Duque

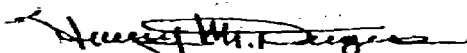
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C.95-10-012

Commissioner Duque, *concurring*:

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Henry M. Duque