

Decision 00-01-006 January 6, 2000

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Gene H. Whitmore,

Complainant,

vs.

Pacific Bell,

Defendant.

Case 99-02-011  
(Filed February 10, 1999)

**ORDER OF DISMISSAL**

**Summary**

We grant the unopposed motion of defendant Pacific Bell (PacBell) to dismiss the complaint for want of prosecution.

**Discussion**

Complainant Gene H. Whitmore (Whitmore) filed this complaint against PacBell for a Commission order requiring PacBell to pay him \$79,844.74 pursuant to the terms of its California 900 tariff. PacBell denied liability on grounds, inter alia, of fraud.

The administrative law judge (ALJ) held a telephonic prehearing conference (PHC), on June 10, 1999.<sup>1</sup> Whitmore appeared through his

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<sup>1</sup> The PHC had been postponed from May 6, 1999, to this date at Whitmore's personal request.

representative, Antolin Andrews (Andrews) of the Crenshaw Community Center. At this PHC the ALJ established guidelines for discovery and indicated that he would set the matter for a second telephonic prehearing conference in early September.

The second telephonic PHC was scheduled for September 9, 1999 and duly noticed. Neither Whitmore nor Andrews attended the PHC. PacBell also served a notice that it would take the deposition of Whitmore for September 10, 1999 in Los Angeles. Whitmore did not appear for this deposition.

Following these two incidents the ALJ attempted to contact Andrews, first by telephone, and then by letter faxed to her on September 13. In response, Andrews called the ALJ to inform him that a serious medical condition had prevented her from attending both the PHC and the deposition. In light of this, the second telephonic PHC was rescheduled for October 5, 1999. Again, Andrews was notified telephonically and in writing of the date and time for the PHC. At the same time, PacBell and Andrews agreed telephonically to reschedule the deposition of Whitmore to October 7, 1999 in Los Angeles.

Neither Whitmore nor Andrews appeared at the rescheduled PHC, nor did Whitmore attend his deposition on October 7. The evidentiary hearing (EH), which had originally been set for September 27 and then postponed to accommodate the new discovery schedule, was set for Tuesday, November 2, 1999, in Los Angeles. Notice was served on the parties on October 1, 1999. Both Whitmore and Andrews were served.

The ALJ convened the EH at the appointed time and place. Again Whitmore failed to attend. After recessing briefly to allow for the possibility that Whitmore may have been tardy, the ALJ adjourned the proceeding without swearing any witness or taking any testimony.

It is evident from these facts that Whitmore has either abandoned his claim, or has no intention of pursuing it in accordance with our orderly procedures for disposition of complaint cases. The Commission has neither the resources nor the willingness to accommodate Whitmore's unexplained absences, and cannot tolerate his conduct toward PacBell, which has imposed upon it substantial unwarranted expenses for defending the complaint.

We will grant PacBell's motion.

### **Comments on Draft Decision**

The draft decision of ALJ Victor D. Ryerson in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments were filed.

### **Findings of Fact**

1. Complainant filed this complaint on February 10, 1999.
2. Complainant appeared at the June 10, 1999 PHC through his representative, Andrews.
3. Complainant failed to attend a duly noticed telephonic PHC on September 9, 1999.
4. Complainant failed to attend, or object to, a deposition in Los Angeles noticed by PacBell for September 10, 1999.
5. Complainant failed to attend a duly noticed telephonic PHC on October 5, 1999.
6. Complainant failed to attend, or object to, a deposition in Los Angeles noticed for October 7, 1999. Andrews had previously agreed to produce the complainant for this deposition.

7. Complainant failed to attend the duly noticed EH set for November 2, 1999, in Los Angeles.

8. Neither the complainant nor his representative has attempted to contact the ALJ or PacBell since before the October 5 PHC to explain his absences from these proceedings.

9. Complainant has either abandoned his complaint, or has acted with such disregard for the orderly procedures of this Commission that we are unable to bring this proceeding to a conclusion without imposing unwarranted expense and hardship upon the Commission, its staff, and the defendant.

**Conclusion of Law**

Case 99-02-011 should be dismissed with prejudice, effective immediately, to prevent further expense and hardship from being incurred by the Commission and the defendant.

**O R D E R**

**IT IS ORDERED** that:

1. Defendant Pacific Bell's Motion to Dismiss is granted.
2. Case 99-02-011 is dismissed with prejudice.

3. This proceeding is closed.

This order is effective today.

Dated January 6, 2000, at San Francisco, California.

RICHARD A. BILAS  
President  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
CARL W. WOOD  
Commissioners

I abstain.

/s/ LORETTA M. LYNCH  
Commissioner