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Decision 99-06-019 June 3, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Bell (U 1001 C) and Pacific Bell Public
Communications,

Complainant,

vs.

AT&T Communications Company of California,
Inc. (U 5002 C),

Defendant.

Case 98-06-008
(Filed June 9, 1998)

Colleen O'Grady, Attorney at Law, for
Pacific Bell, complainant.

Randolph W. Deutsch and Julian Chang,
Attorneys at Law, for AT&T
Communications of California, Inc.,
defendant.

Nossaman Guthner Knox & Elliot, LLP, by
Martin A. Mattes, Attorney at Law, for
California Payphone Association,
intervenor.

O P I N I O N

Summary

This decision orders AT&T Communications of California, Inc. ("AT&T"), to remit to Pacific Bell and Pacific Bell Public Communications (referred to collectively as "Pacific")¹ the Pay Station Service Charge ("PSSC") that AT&T billed and collected for non-coin calls² made from Pacific's payphones during the period of April 1, 1997, through October 6, 1997. This decision also authorizes AT&T to subtract the PSSC it is ordered to remit to Pacific from the compensation that AT&T must pay to Pacific for non-coin calls pursuant to federal regulations.

Regulatory and Procedural Background

The PSSC is a 25¢ fee that telephone companies ("carriers") bill and collect from payphone users for each non-coin intraLATA call. The carriers then remit the PSSC to the owners of the payphones from which the calls originated. The purpose of the PSSC is to compensate payphone owners for the use of their equipment to originate non-coin intraLATA calls.

In Decision (D.) 94-09-065, the California Public Utilities Commission ("Commission") adopted a policy that required every carrier providing intraLATA service to bill, collect, and remit the 25¢ PSSC to all payphone service providers (PSPs), including Pacific Bell. AT&T promptly complied by filing a tariff to bill, collect, and remit the PSSC ("PSSC tariff"). In Resolution T-15782,

¹ Pacific Bell is a local exchange carrier. Pacific Bell Public Communications owns and operates pay telephones within Pacific Bell's service area. AT&T provides interLATA, intraLATA, and local exchange telecommunications services throughout the State of California.

² A non-coin call is a call from a payphone that is completed without depositing coins (e.g., collect calls and credit card calls).

issued on March 13, 1996, the Commission ordered AT&T and other designated carriers to file PSSC tariffs. Resolution T-15782 also authorized Pacific Bell to file a tariff which required carriers to bill, collect, and remit the 25¢ PSSC to Pacific and other PSPs. AT&T did not file a PSSC tariff in response to Resolution T-15782 since AT&T's PSSC tariff had been in place since January 1995. Pacific, as authorized by Resolution T-15782, filed a tariff which required carriers to bill, collect, and remit the PSSC to Pacific and other PSPs.

In February of 1996, Congress enacted the Telecommunications Act of 1996 ("the Telecom Act"). Section 276(b)(1) of the Telecom Act required the Federal Communications Commission (FCC) to devise regulations to ensure that PSPs are fairly compensated for the use of their payphones to make non-coin calls, including calls subject to the PSSC.³ The FCC issued the regulations required by the Telecom Act ("FCC payphone regulations") in a series of orders issued *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128.⁴ In general, the FCC's payphone regulations require AT&T to pay 24¢ to Pacific for every non-coin call carried by AT&T, including non-coin calls subject to the

³ Section 276 (b)(1) requires the FCC to "to prescribe regulations that...ensure that all payphone service providers are fairly compensated for each and every completed interstate and intrastate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing impaired individuals shall not be subject to such compensation." (Emphasis added.)

⁴ The FCC's payphone regulations are set forth in several orders issued in CC Docket No. 96-128, including: Report and Order (FCC Order 96-388); Order on Reconsideration (FCC Order 96-439); Second Report and Order (FCC Order 97-371); Memorandum Opinion and Order (FCC Order 98-481); and Third Report and Order, and Order on Reconsideration of the Second Report and Order (FCC Order 99-7).

25¢ PSSC.⁵ AT&T has compensated Pacific for non-coin call pursuant to the FCC's regulations since October 7, 1997.⁶ The FCC's payphone regulations also require AT&T to compensate Pacific for non-coin calls made during the period of April 15, 1997, through October 6, 1997. However, due to legal challenges, the FCC has not yet finalized the total amount of compensation that AT&T must pay to Pacific for non-coin calls during this period. As a result, AT&T has postponed remitting the FCC-mandated compensation to Pacific for non-coin calls during this period until the FCC finalizes what AT&T must pay to Pacific.⁷

AT&T remitted the PSSC to Pacific from January 1995 through March 31, 1997. Then, without notice, AT&T ceased remitting the PSSC effective April 1, 1997, even though AT&T continued to bill and collect the 25¢ PSSC for non-coin intraLATA calls made from Pacific's payphones. Pacific repeatedly asked AT&T why it was not remitting the PSSC, but Pacific received only vague and contradictory responses from AT&T.

On December 16, 1997, AT&T filed Advice Letter (AL) 1273 which reflected the FCC's payphone regulations by (1) increasing the amount of PSSC that AT&T would bill, collect, and remit from 25¢ per call to 30¢ per call (i.e.,

⁵ On February 4, 1999, the FCC released FCC Order 99-7 which reduced the compensation that carriers must remit to PSP from 28.4¢ per non-coin call to 24¢ per non-coin call. The FCC's order applies retroactively to non-coin calls beginning on October 7, 1997. AT&T and Pacific did not have an opportunity to address the impact of this latest FCC order since the order was issued after this case was submitted. Our review of FCC Order 99-7 indicates that it does not affect our decision in this proceeding.

⁶ Exhibit 101, pp. 8 and 13.

⁷ In FCC Order 99-7, the FCC stated that it would address in an upcoming order the amount that IECs must pay to PSPs for non-coin calls during the period of November 7, 1996, through October 6, 1997; and that the FCC anticipated using 24¢ per non-coin call as the "starting point" for determining compensation during this period. (FCC Order 99-7, ¶ 197.)

28.4¢ plus an administrative fee 1.6¢)⁸; and (2) expanding the applicability of the PSSC to include non-coin *inter*LATA calls in addition to the non-coin *intra*LATA calls already subject to the PSSC.

Pacific Bell filed a protest to AL 1273 on May 5, 1998. In its protest, Pacific alleged that AT&T, by filing AL 1273, had ceased remitting the PSSC to Pacific in violation of D.94-09-065 and Resolution T-15782. On May 11, 1998, AT&T filed a response to Pacific's protest in which AT&T stated:

Pacific ... does not understand AL 1273. Advice Letter 1273 increased AT&T's surcharge to \$.30 ... to reimburse [PSPs], and applied it to *inter*LATA as well as *intra*LATA calls. It is ... incredible ... for Pacific to protest [AL 1273] on the basis that 'AT&T has disregarded a valid Commission decision ordering it to bill and remit the PSSC to all [PSPs] that request it.' [AL 1273] reflected a recognition that the [FCC] has ordered...carriers to pay ... compensation to ... [PSPs who] ... will now receive compensation for *intra*LATA calls and in an amount higher than the original \$.25.

The Commission took no action on Pacific's protest of AL 1273. AT&T has compensated Pacific for non-coin calls in accordance with AL 1273 since December 24, 1997.

Pacific filed the instant complaint on June 9, 1998. In its complaint, Pacific alleged that AT&T has failed to remit the PSSC from April 1, 1997, though December 23, 1997, in violation of D.94-09-065, Resolution T-15782, AT&T's tariff, and Pacific's tariff. On June 16, 1998, the Commission served AT&T and Pacific with the Instructions to Answer. This document notified the parties that (1) Commissioner Duque and Administrative Law Judge (ALJ) Watson were assigned to this matter; and (2) the complaint was categorized as "Adjudicatory."

⁸ Exhibit 101, p. 9. AL 1273 also changed the name of the "Pay Station Service Charge" to the "Payphone Use Service Charge."

No party appealed the category of this proceeding within the allotted time pursuant to Rule 6.4, or petitioned for the automatic reassignment of the ALJ pursuant to Rule 63.2.

AT&T filed its answer to Pacific's complaint on July 16, 1998. In its answer, AT&T acknowledged that it owes the PSSC to Pacific for non-coin intraLATA calls made during the period of April 1, 1997, through April 14, 1997, but AT&T denied any violation of Commission orders or utility tariffs.

On September 23, 1998, a Notice of Reassignment was served on the parties. This document notified the parties that Case (C.) 98-06-008 had been reassigned from ALJ Watson to ALJ Kenney.

A prehearing conference was held on November 2, 1998. As required by Rule 6.3, assigned Commissioner Duque issued a ruling on November 6, 1998, which determined the scope, schedule, and need for hearing in this proceeding. An evidentiary hearing was held on December 17, 1998. The case was submitted upon the receipt of reply briefs on January 22, 1999.

On November 19, 1998, the Commission issued D.98-11-063 in C.97-02-027, Pacific Bell vs. MCI Telecommunications Corporation. In D.98-11-063, the Commission found that MCI had failed to remit the PSSC to Pacific as required by Commission orders and Pacific's tariff. The Commission also found that MCI was not required to remit the PSSC to Pacific once MCI began to compensate Pacific for non-coin calls in accordance with the FCC's payphone regulations. The basis for the Commission decision was that both the PSSC and the FCC's payphone regulations provide PSPs with fair compensation for non-coin intraLATA calls. The Commission reasoned that if carriers were paying the FCC-

mandated compensation of 28.4¢ per non-coin call to PSPs, it was not necessary for carriers to also pay the 25¢ PSSC to PSPs.⁹

Commission Jurisdiction to Decide Complaint

The Commission's authority to decide this complaint case stems from Pub. Util. Code § 1702¹⁰ which states, in pertinent part, as follows:

Complaint may be made by ... any corporation ... by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established of fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.

Position of the Parties

Pacific alleges that AT&T billed and collected \$1,743,900 in PSSC for non-coin intraLATA calls made from Pacific's payphones from April 1, 1997, through December 23, 1997, but that AT&T failed to remit this money to Pacific.¹¹ Pacific states that AT&T, by failing to remit the PSSC, violated D.94-09-065, Resolution T-15782, AT&T's tariff, and Pacific's tariff. Pacific also states that AT&T, by failing to comply with its PSSC tariff, violated § 532 which requires utilities to adhere to their tariffs.¹²

Pacific further alleges that from April 1, 1997, through December 23, 1997, AT&T remitted the PSSC to other PSPs while simultaneously withholding the PSSC from Pacific. According to Pacific, AT&T's conduct was discriminatory,

⁹ D.98-11-063, mimeo., page 14 and Conclusion of Law 9.

¹⁰ All statutory references are to the Public Utilities Code unless otherwise indicated.

¹¹ AT&T and Pacific stipulated that AT&T billed and collected \$1,743,900 in PSSC during the period of April 1, 1997, through December 23, 1997. (Exhibit 2, p. 2)

¹² Pacific also alleged that AT&T violated § 451. Because Pacific's testimony and briefs do not mention violations of § 451, we shall assume that Pacific has dropped this allegation.

and thus violated § 453(a) which prohibits utilities from subjecting corporations or persons to any prejudice or disadvantage.

Pacific asks the Commission to order AT&T to remit \$1,743,900 in PSSC to Pacific, plus interest equal to the federal commercial paper rate.¹³ Pacific adds that AT&T should not be allowed to offset the PSSC it is ordered to remit against any compensation that AT&T must pay to Pacific for non-coin calls pursuant to the FCC's payphone regulations. If the Commission decides that Pacific is not entitled to \$1,743,900 in PSSC, then Pacific recommends that the Commission order AT&T to refund the PSSC to the customers from whom it was collected.¹⁴

AT&T admits that it billed and collected \$1,743,900 in PSSC for non-coin calls made from Pacific's payphones during the period of April 1, 1997, through December 23, 1997. AT&T further admits that it has not remitted this money to Pacific. AT&T states that it will remit \$43,900 in PSSC to Pacific for the period of April 1, 1997, through April 14, 1997, plus interest equal to the 3-month commercial paper rate.

AT&T argues that it should not have to remit the PSSC to Pacific for non-coin calls made after April 14, 1997, the date that AT&T became obligated to compensate Pacific for these calls pursuant to the FCC's payphone regulations. According to AT&T, if Pacific were to receive the 25¢ PSSC in addition to the FCC-mandated compensation of 28.4 ¢ per call, then Pacific would be compensated twice for non-coin intraLATA calls. AT&T states that it will not

¹³ Pacific's Reply Brief, p. 9.

¹⁴ Pacific also requested in its complaint that the Commission order AT&T to: (1) withdraw AL 1273, and (2) bill, collect, and remit the PSSC after December 23, 1997. (Exhibit 1, p. 14.) Because Pacific did not mention these two requests in its testimony or briefs, we shall assume that Pacific has dropped these requests.

profit by keeping the 25¢ PSSC for non-coin intraLATA calls made after April 14, 1997, since AT&T will pay 28.4¢ to Pacific for these very same calls.

AT&T admits that it has not yet compensated Pacific under the FCC's payphone regulations for non-coin calls made during the period of April 15, 1997, through October 6, 1997.¹⁵ AT&T claims this is because the FCC has not yet finalized the amount of compensation that AT&T owes to Pacific for this period. AT&T states that it will compensate Pacific once the FCC has finalized the amount that AT&T owes to Pacific.

AT&T admits that it remitted the PSSC to other PSPs while simultaneously withholding the PSSC from Pacific. AT&T states this was purely an accident, and that it has already notified the other PSPs that any PSSC remitted by AT&T after the FCC's payphone regulations went into effect would be used by AT&T to offset the compensation that AT&T must pay to these PSPs under the FCC's payphone regulations.

AT&T denies its violated § 453(a) by failing to remit the PSSC to Pacific while continuing to remit the PSSC to other PSPs. AT&T argues that its conduct was caused by administrative errors and oversights, and that it had no intent to discriminate against Pacific. AT&T also states that any harm it caused to Pacific by failing to remit the PSSC was minimal and inconsequential.

Finally, AT&T claims that this case is similar to the one decided by the Commission in D.98-11-063. In that decision, the Commission held that MCI did not have to remit the PSSC to Pacific once MCI was obligated to compensate Pacific for non-coin intraLATA calls pursuant to the FCC's payphone regulations. AT&T argues that the Commission should resolve this complaint as

it did in D.98-11-063, that is, by finding that AT&T's obligation to remit the PSSC to Pacific ended when AT&T became obligated to compensate Pacific for non-coin calls pursuant to the FCC's payphone regulations.

Discussion

The parties agree that AT&T owes \$43,900 in PSSC to Pacific for the period of April 1, 1997, through April 14, 1997. We don't know why AT&T has not yet paid this amount to Pacific, but there is no reason for AT&T to wait any longer. Therefore, we shall order AT&T to remit \$43,900 to Pacific within 30 days from the effective date of this decision.¹⁶

The central issue in this proceeding is whether AT&T should remit to Pacific the PSSC that AT&T billed and collected for non-coin intraLATA calls made from Pacific's payphones during the period of April 15, 1997, through December 23, 1997. AT&T and Pacific have stipulated that the amount of PSSC billed and collected by AT&T during this period was \$1,700,000.¹⁷ In resolving this dispute, we shall rely on AT&T's tariff which states that the PSSC was "collected on behalf of the pay phone owner."¹⁸ We interpret this statement to mean that the PSSC collected by AT&T belongs to the Pacific and, therefore, is to be remitted to Pacific. Under normal circumstances, a utility has to comply with its tariff; any deviation by a utility from its tariff is "unlawful unless authorized

¹⁵ AT&T billed and collected \$1,224,700 in PSSC for non-coin calls from Pacific's payphones during the period of April 15, 1997, through October 6, 1997. (Exhibit 2, p. 2.)

¹⁶ AT&T and Pacific stipulated that AT&T owes \$43,900 in PSSC to Pacific for the period of April 1, 1997, through April 14, 1997. (Exhibit 2, p. 2.) However, the record is unclear if this stipulated amount is net of AT&T's costs to bill, collect, and remit the PSSC. If the stipulated amount does not reflect AT&T's costs, then AT&T may deduct from the \$43,900 its costs to bill, collect, and remit the PSSC, as set forth in its tariff that was in effect during the period of April 1, 1997, through April 14, 1997.

¹⁷ Exhibit 2, p. 2.

by the Commission.¹⁹ Thus, AT&T must comply with its tariff and remit the PSSC to Pacific. Except as discussed below, we see no reason to authorize AT&T to deviate from its tariff.

Although AT&T is required by its tariff to remit the PSSC to Pacific, we are aware that AT&T must also compensate Pacific for non-coin calls in accordance with the FCC's payphone regulations. If Pacific were to receive the PSSC in addition to the compensation mandated by the FCC, Pacific would be compensated twice for non-coin intraLATA calls.²⁰ To avoid the unjust result of Pacific being compensated twice, we shall use our authority under § 532 to allow AT&T to deviate from its PSSC tariff by not remitting the PSSC to Pacific for those non-coin intraLATA calls which AT&T must also compensate Pacific under the FCC's payphone regulations. Section 532 states, in relevant part, as follows:

[N]o public utility shall charge, or receive a different compensation ... than the rates...and charges...specified in its schedules on file and in effect at the time...**The commission may by rule or order establish such exemptions from the operation of this prohibition as it may consider just and reasonable to each public utility.** (§ 532, Emphasis added.)

AT&T has already compensated Pacific under the FCC's payphone regulations for non-coin intraLATA calls during the period of October 7, 1997, through December 23, 1997. For the reasons discussed previously, we shall not

¹⁸ AT&T Schedule Cal.P.U.C. No. A.6-T.2.1.E.2(c). (Reference Item A.)

¹⁹ Dyke Water Co. v Public Utilities Commission, (1961) 56 Cal. 2d 105, 123.

²⁰ The purpose of the PSSC is to compensate PSPs for the use of their payphones to make intraLATA calls (D.98-11-063, mimeo., pp. 13-14; D.96-10-079, mimeo., pp. 2, 4; D.95-09-126, mimeo., pp. 2, 13; and D.95-06-062, mimeo., pp. 3, 5, and Conclusion of Law 1.) The FCC's payphone regulations likewise require carriers to fairly compensate PSPs for the use of their payphones to make non-coin intraLATA calls (47 U.S.C. §276(b)(1); and FCC 97-371, ¶¶ 6, 8, 9, 24-28, 41-63, 68, 99-108, 111, 117-122).

require AT&T to remit the PSSC to Pacific for these calls.²¹ Nor shall we require AT&T to refund to customers the PSSC that AT&T billed and collected for these calls as requested by Pacific.²² AT&T will not profit by keeping the PSSC since its costs to bill and collect the PSSC, when added to the amount that AT&T must pay to Pacific pursuant to the FCC's payphone regulations, easily exceeds the PSSC collected by AT&T.²³

AT&T has not yet paid any compensation to Pacific for non-coin calls made during the period of April 15, 1997, through October 6, 1997. Parties have stipulated that the amount of PSSC billed and collected by AT&T during this period was \$1,224,700.²⁴ AT&T states that there is no need for it to remit this amount of PSSC to Pacific since AT&T will eventually compensate Pacific for the associated calls in accordance with the FCC's payphone regulations. We disagree. According to AT&T's own tariff, the PSSC belongs to Pacific. We believe it is unfair for AT&T to keep Pacific's money until some unspecified time in the future when AT&T is finally compelled by the FCC to compensate Pacific. Therefore, we shall order AT&T to comply with its tariff and remit \$1,224,700 in PSSC to Pacific within 30 days from the effective date of this decision. We reiterate that Pacific should not be compensated twice for non-coin intraLATA calls. Thus, if the FCC does not allow AT&T to subtract the PSSC it remits to Pacific from the payments that AT&T ultimately makes to Pacific pursuant to the

²¹ AT&T and Pacific stipulated that the amount of PSSC billed and collected by AT&T from October 7, 1997, through December 23, 1997, was \$475,300. (Exhibit 2, p. 2.)

²² Requiring AT&T to refund the PSSC to customers would result in customers having had free use of Pacific's payphones to make non-coin intraLATA calls.

²³ Exhibit 101, pp. 9-11.

²⁴ Exhibit 2, p. 2. The amount stipulated to by the parties is net of AT&T's costs to bill, collect, and remit the PSSC. (Pacific's Appeal of the Presiding Officer's Decision, pp. 2-3.)

FCC's regulations for the same non-coin intraLATA calls, then Pacific shall refund to AT&T the PSSC associated with those calls.²⁵

AT&T should not profit from the time value of money associated with the PSSC that it withheld from Pacific. Therefore, we shall also order AT&T to pay interest on the amount of PSSC it remits to Pacific pursuant to this decision. As we have often done in circumstances where one party owes another for the time value of money (see, e.g., D.98-11-063, D.98-02-010, and D.98-01-022), we shall require AT&T to pay interest based on the 3-month commercial paper rate as published in Federal Reserve Board Statistical Release G.13. The amount of interest paid by AT&T shall be based on the period of time that (1) began on April 1, 1997, the date that AT&T ceased remitting the PSSC, and (2) ends on the date that AT&T remits to Pacific the amount of PSSC ordered by this decision.

We find no merit in Pacific's claim that AT&T, by remitting the PSSC to other PSPs but not to Pacific, discriminated against Pacific in violation of § 453(a). AT&T demonstrated that any PSSC it remitted to other PSPs after the FCC payphone regulations went into effect will be subtracted from the compensation that AT&T ultimately pays to these other PSPs under the FCC's regulations.²⁶ Thus, if there was discrimination, Pacific was not harmed since AT&T will eventually pay all PSPs, including Pacific, the same amount for each non-coin intraLATA call (i.e., the PSSC until the FCC's payphone regulations went into effect, and thereafter the amount of compensation mandated by the FCC).

²⁵ If AT&T compensates Pacific for non-coin calls during the period of April 15, 1997, through October 6, 1997, pursuant to the FCC's payphone regulations prior to remitting the PSSC for this period, then there is no need for Pacific to remit the PSSC for this period.

²⁶ Exhibit 101, pp. 4, 11, 12; and Hearing Transcript, pp. 24-25.

We also find no merit in Pacific's allegation that AT&T's failure to remit the PSSC violated Commission orders, Pacific's tariff, and § 532. To the extent there were violations, Pacific was not harmed since Pacific has been or will be fairly compensated by AT&T for every non-coin call at issue in this proceeding.²⁷

We recognize that our actions today appear to differ from those we took in D.98-11-063. In that decision, we did not require MCI to remit the PSSC to Pacific once MCI was obligated to compensate Pacific for non-coin intraLATA calls pursuant to the FCC's payphone regulations. Our actions in D.98-11-063 were due to the fact that MCI, unlike AT&T, never collected the PSSC on behalf of Pacific. Thus, MCI, never held any money that belonged to Pacific. However, the end result of D.98-11-063 and today's decision is the same: AT&T and MCI will both pay the exact same amount of money to Pacific for every non-coin intraLATA call they carried from Pacific's payphones.

Pacific's Appeal of Presiding Officer's Decision

On April 9, 1999, the presiding officer's decision (POD) was served on the parties in accordance with § 1701.2 and Rule 8.2 of the Commission's Rules of Practice and Procedure (Rules). On May 6, 1999, Pacific filed an appeal of the POD pursuant to Rule 8.2. In its appeal, Pacific states the POD erred by subtracting AT&T's costs to bill, collect, and remit the PSSC from the \$1,224,700 in PSSC that AT&T is ordered to remit to Pacific for the period of April 15, 1997, through October 6, 1997. According to Pacific, the \$1,224,700 in PSSC that AT&T is ordered to remit already reflects the deduction of AT&T's costs. Because of

²⁷ Although AT&T is required to pay Pacific only 24¢ for each non-coin intraLATA call under the FCC's payphone regulations, this is more than Pacific would receive from the PSSC since the net amount of PSSC remitted by AT&T was typically 21¢ per call, i.e., 25¢ less AT&T's cost of 4¢ per call to bill, collect, and remit the PSSC. (Exhibit 101, p. 2.)

this, Pacific states that the POD should be modified to order AT&T to remit \$1,224,700 in PSSC without any reduction for AT&T's costs. On May 10, 1999, AT&T filed a response to Pacific's appeal in which AT&T agreed with Pacific's proposed modification of the POD.

We agree with AT&T and Pacific that the POD should be modified so the \$1,224,700 in PSSC that AT&T is ordered to remit to Pacific for the period of April 15, 1997, through October 6, 1997, is not reduced by AT&T's costs to bill, collect, and remit the PSSC. We have revised the POD, as necessary, to incorporate this modification.

Findings of Fact

1. AT&T filed a tariff, effective January 1, 1995, to bill, collect, and remit the 25¢ PSSC. AT&T's tariff was in effect through December 23, 1997.
2. AT&T billed and collected \$1,743,900 in PSSC for non-coin intraLATA calls made from Pacific's payphones during the period of April 1, 1997, through December 23, 1997, but AT&T failed to remit this money to Pacific.
3. AT&T and Pacific stipulated that AT&T should remit \$43,900 in PSSC to Pacific for non-coin calls made from Pacific's payphones during the period of April 1, 1997, through April 14, 1997.
4. Since April 15, 1997, AT&T has been required by the FCC's payphone regulations to compensate Pacific for non-coin calls, including non-coin calls subject to the 25¢ PSSC.
5. AT&T has been compensating Pacific for non-coin calls in accordance with the FCC's payphone regulations since October 7, 1997. AT&T has not yet compensated Pacific pursuant to the FCC's regulations for non-coin calls made during the period of April 15, 1997, through October 6, 1997.

6. AT&T billed and collected \$1,700,000 in PSSC for non-coin intraLATA calls made from Pacific's payphones during the period of April 15, 1997, through December 23, 1997. Of this amount, \$1,224,700 was for the period of April 15, 1997, through October 6, 1997; and \$475,300 was for the period of October 7, 1997, through December 23, 1997.

7. To account for the time value of money, the Commission has often used the 3-month commercial paper rate as published in Federal Reserve Board Statistical Release G.13.

Conclusions of Law

1. AT&T's PSSC tariff in effect during the period of April 1, 1997, through December 23, 1997, required AT&T to remit to Pacific the PSSC that AT&T billed and collected on behalf of Pacific.

2. Any deviation by a utility from its tariff is unlawful unless authorized by the Commission.

3. AT&T should remit \$1,268,600 in PSSC to Pacific for non-coin intraLATA calls made from Pacific's payphones during the period of April 1, 1997, through October 6, 1997.

4. Pacific lost the time value of money associated with the PSSC that AT&T failed to remit to Pacific for the period of April 1, 1997, through October 6, 1997.

5. AT&T should pay interest on the PSSC that it is ordered to remit to Pacific. Interest should accrue from April 1, 1997, until AT&T pays the PSSC that it is ordered to remit to Pacific. The amount of interest should be determined in accordance with the 3-month commercial paper rate published in Federal Reserve Board Statistical Release G.13.

6. The following order requires AT&T to remit \$1,224,700 in PSSC to Pacific for non-coin intraLATA calls made during the period of April 15, 1997, through

October 6, 1997. If the FCC does not allow AT&T to deduct this amount from the compensation that AT&T must pay to Pacific pursuant to the FCC's regulations, then Pacific should refund \$1,224,700 to AT&T.

7. Pacific suffered no harm from AT&T's failure to remit the PSSC to Pacific for the period of October 7, 1997, through December 23, 1997, since Pacific was compensated by AT&T for non-coin intraLATA calls during this period in accordance with the FCC's payphone regulations.

8. AT&T should not be required to remit to Pacific the PSSC that AT&T billed and collected on Pacific's behalf from October 7, 1997, through December 23, 1997, because Pacific was compensated by AT&T for non-coin intraLATA calls during this period in accordance with the FCC's payphone regulations.

9. Pursuant to § 532, the Commission may authorize AT&T to deviate from its PSSC tariff which required AT&T to remit to Pacific the PSSC that AT&T billed and collected on Pacific's behalf during the period of October 7, 1997, through December 23, 1997.

10. Pub. Util. Code § 1702 provides the Commission with authority to decide this complaint case.

11. The presiding officer's decision should be modified so the \$1,224,700 in PSSC that AT&T is ordered to remit to Pacific for the period of April 15, 1997, through October 6, 1997, is not reduced by AT&T's costs to bill, collect, and remit the PSSC during this period.

12. The following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Within 30 days from the effective date of this order, AT&T Communications of California, Inc. ("AT&T") shall remit to Pacific Bell and Pacific Bell Public Communications (referred to collectively as "Pacific") the Pay Station Service Charge ("PSSC") in the amount of \$1,268,600 for non-coin intraLATA calls made from Pacific's payphones during the period of April 1, 1997, through October 6, 1997.
2. AT&T shall pay interest to Pacific on the amount of money set forth in Ordering Paragraph (OP) 1. The interest shall be based on the 3-month commercial paper rate published in Federal Reserve Board Statistical Release G.13. The interest shall accrue from April 1, 1997, until AT&T pays Pacific the amount of money set forth in OP 1.
3. The PSSC that AT&T is ordered to remit to Pacific in OP 1 includes \$1,224,700 for non-coin intraLATA calls made during the period of April 15, 1997, through October 6, 1997. AT&T may use the amount of PSSC that it remits to Pacific for this period to offset the compensation that AT&T must pay to Pacific pursuant to the regulations of the Federal Communications Commission ("FCC") for non-coin intraLATA calls during the period of April 15, 1997, through October 6, 1997. If the FCC precludes this offset, then Pacific shall refund to AT&T the amount of PSSC that AT&T remits to Pacific for the period of April 15, 1997, through October 6, 1997.
4. If AT&T compensates Pacific for non-coin calls during the period of April 15, 1997, through October 6, 1997, pursuant to FCC regulations prior to remitting to Pacific the PSSC required by OP 1, then AT&T shall not remit to Pacific the PSSC for the period of April 15, 1997, through October 6, 1997.

5. Pacific's complaint against AT&T is granted to the extent set forth in OPs 1 through 4. In all other respects, Pacific's complaint is denied.

6. This proceeding is closed.

This order is effective today.

Dated June 3, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

LORETTA M. LYNCH

TAL C. FINNEY

Commissioners