

Decision 99-06-077 June 24, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

James D. Korn,

Complainant,

vs.

Pacific Bell,

Defendant.

Case 98-10-025
(Filed October 20, 1998)

James D. Korn, for himself, complainant.

Nicola Erbe, Attorney at Law, and Adrian Tyler,
for Pacific Bell, defendant.

OPINION

James D. Korn, (Complainant) seeks an order requiring the tariffs of Pacific Bell (Defendant or Pacific) to be amended to (1) prevent Defendant from "... acting as a billing and/or collection agent for all non-PacBell companies," and to (2) prohibit Defendant from "... issuing orders or instructions to all non-PacBell companies, except in cases of customer-initiated requests for changes in customer's primary choice of long-distance carrier." Defendant's answer, among other things, asserts the affirmative defense that Complainant fails to state a cause of action because it does not set forth any act or thing done or omitted to be done, which is claimed to be in violation of any provision of law or any order or rule of the Commission.

Administrative Law Judge (ALJ) DeUlloa held a prehearing conference (PHC) in this matter on February 24, 1999. This matter was submitted on February 24, 1999, at the conclusion of the PHC.

The facts as alleged by complainant are:

“ ‘Cramming.’ On my June 5, 1997 statement, PacBell billed me \$5.20 for a collect call to 816-464-9531 in Missouri citing Zero Plus Dialing, Inc. (ZPDI) as the service provider. I contacted PacBell immediately, and it was quickly conceded by myself and PacBell that I had not made the call. ... In the absence of any participation from me, the \$5.20 fictitious charge is an issue between PacBell and ZPDI, no one else. With my September 5, 1997 statement, PacBell finally relented and dropped the spurious \$5.20 ZPDI charge ...

“ ‘Slamming.’ On March 9, 1998, PacBell transmitted a ‘System Generated Account Conversion’ to Sprint, advising that my service at 415-282-**** was disconnected (not true), and instructing Sprint to cancel my Sprint Long Distance Account # ****, which was done. ...PacBell maintains that they sent no instructions of any kind to Sprint on March 9, 1998...Although I maintained an account with Sprint for over nine years, I was never switched or ‘picked’ to Sprint, and I used ‘10333’ to initiate all of my calls with them. As such, there was never any need for PacBell to disconnect me from Sprint ...”

With respect to the “cramming” claim, Complainant argues that Pacific lacks the authority to compel Complainant to interact with a third party, ZPDI. With regards to the “slamming” claim, Complainant argues that no person has the right to interfere in the contractual relations of another by acts that serve no legitimate purpose. Further, Complainant implies that Pacific’s alleged interference with Complainant’s contract with Sprint constitutes a tort of interference with prospective economic advantage.

Complainant titles his causes of action as “cramming” and “slamming.” In support of his cramming allegation, Complainant cites one incident of an

erroneous \$5.20 charge appearing on his phone bill. Moreover, Complainant agrees that Pacific removed the charge from his bill. Thus, there appears to be no factual dispute regarding the cramming claim. The source of Complainant's grievance seems to be that Pacific is making billing and collection services available to other carriers.

Pursuant to Section 272(C)(1) of the Telecommunications Act of 1996 (47 U.S.C. 272), Pacific is required to make billing and collection services available to carriers other than its affiliates. Further, Pacific's tariff 175-T, Section 8 provides that Pacific may offer billing and collection services to other telecommunications providers. Commission approved tariffs have the effect of law. Complainant alleges that Pacific billed Complainant on behalf of a third party. However, Pacific is authorized to bill and collect on behalf of third parties, and thus its activities are consistent with Commission approved tariffs. Therefore, Complainant fails to state facts which constitute a cause of action which the Commission may act upon. In this instance, it also appears that Pacific has taken steps to resolve Complainant's dispute regarding the \$5.20 charge and in fact has removed the charge from Complainant's bill.

Complainant also fails to state facts to support its allegation of slamming. Slamming is the switching of a consumer's presubscribed long distance telephone carrier to another carrier, without the knowing consent of the consumer. (See Pub. Util. Code Section 2889.5.) Prior to and subsequent to the filing this complaint, Complainant's presubscribed long distance provider has been AT&T. However, complainant dials Sprint's access code to use Sprint as a long distance carrier on a per-call basis. Complainant's main grievance is that Sprint switched Complainant's calling plan from a less expensive calling plan to a more expensive calling plan. Complainant alleges that Pacific is responsible for the change in his long distance calling plan with Sprint. Pacific cannot be held

responsible for Sprint's action in changing Mr. Korn's calling plan. Further, changing a customer's calling plan does not constitute "slamming," though it may raise questions pertaining to customer notice. Those issues are not before us here.

At the PHC, Complainant noted that while Pacific's conduct may be in compliance with its tariffs, Pacific's conduct may create an action under tort law. This Commission does not have jurisdiction to hear tort claims. The Complainant should pursue such tort claims, if any, in civil court. Complainant may pursue with Sprint concerns about rates charged, or calling plans offered by Sprint.

This matter was categorized as an adjudicatory proceeding and the instructions to answer indicated that hearings were necessary. At the PHC, the parties agreed that this matter can be resolved without hearings. Therefore, we change the prior determination from hearings are required to no hearings are required.

Comments on Draft Decision

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

Findings of Fact

1. An erroneous charge for \$5.20 on behalf of Zero Plus Dialing, Inc. (ZPDI) appeared on Complainant's June 1997 phone bill statement from Pacific Bell (Pacific).
2. Pacific provides billing services to ZPDI.
3. Pacific removed the ZPDI charge for \$5.20 on Complainant's September 1997 phone bill statement.

4. AT&T has been Complainant's long distance carrier of choice.
5. Pacific has not changed Complainant's presubscribed long distance carrier.
6. Complainant uses the long distance services of Sprint by dialing Sprint's access code.

Conclusions of Law

1. Pursuant to the Telecommunications Act of 1996, and Commission tariffs, Pacific properly provided billing services to ZPDI.
2. The complaint fails to state facts to support a claim of cramming.
3. The complaint fails to state facts to support a claim of slamming.
4. Pacific has not violated any Commission tariff.
5. No hearings are required in this matter.

O R D E R

IT IS ORDERED that the complaint of James D. Korn is denied.

This order is effective today.

Dated June 24, 1999, at San Francisco, California.

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