

Decision 99-10-051 October 21, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Marcella Beagle,

Complainant,

vs.

Pacific Bell,

Defendant.

Case 99-03-016
(Filed March 8, 1999)

OPINION DISMISSING COMPLAINT

Summary

We grant the motion of Pacific Bell and dismiss two of the three charges alleged by complainant. On the service interruption charge, we direct Pacific Bell to adjust complainant's account, in accordance with its tariff, for the one full day she was without telephone service in March 1999. This decision is a complete adjudication of this case, which we close accordingly.

Procedural Background

Marcella Beagle (Ms. Beagle or complainant) filed this complaint concerning various billings disputes and other matters against Pacific Bell on March 8, 1999. In the complaint, Ms. Beagle states expressly that she does not want this matter to be assigned to our expedited complaint procedure (ECP)

and that she is authorizing Richard Beagle¹ (Mr. Beagle or complainant's representative) to appear on her behalf in this proceeding. The March 15 instructions to answer categorized the complaint as an adjudicatory proceeding and indicated a hearing might be set; the categorization has not been appealed. Pacific Bell filed an answer on April 14. The assigned administrative law judge (ALJ) set a prehearing conference (PHC) for June 3.

Shortly before the PHC, on May 26, Pacific Bell filed a motion to dismiss and for summary judgment. Several days later but before the PHC, complainant mailed a response to the ALJ (and served Pacific Bell) but did not tender the document for filing.

At the request of complainant's representative, the ALJ conducted the PHC by telephone conference call. After taking appearances, the ALJ asked the parties to summarize the positions alleged in their initial pleadings. She then offered to entertain oral argument on Pacific Bell's motion to dismiss and for summary judgment if Mr. Beagle was prepared to respond orally and elected to do so, and if Pacific Bell did not object. With the agreement of both parties, oral argument proceeded with the following presentations: Pacific Bell's opening; Mr. Beagle's response; Pacific Bell's reply; Mr. Beagle's final rebuttal. The ALJ advised Mr. Beagle that time remained for him, as complainant's representative, to file a written response to the motion and that he might do so, if he chose. The ALJ advised him, however, that he should contact the Docket Office first, since the document he had served on complainant's behalf (but had not filed), failed to

¹ Richard Beagle has filed a number of informal and formal complaints with the Commission over the last several years. However, these complaints did not concern the account at issue here.

comply with Commission rules governing format, content and filing of formal documents. Mr. Beagle stated that the oral argument would suffice and complainant would not file a written response to Pacific Bell's motion. Subsequently however, by ruling dated August 4, the ALJ directed complainant to supplement the record of the oral argument by providing, by August 13, copies of supporting documentation (i.e., a cancelled check) which Mr. Beagle had referred to in his oral opposition to the motion. Mr. Beagle filed a response to the ruling on August 16.

The Dispute

The complaint contains numerous broad assertions of fraud and harassment by Pacific Bell. Generally, it is the Commission's practice to liberally construe compliance with its Rules of Practice and Procedure when a complaint is filed by a customer who is not represented by legal counsel.² Neither the Commission nor any party can waive subject matter jurisdiction, and therefore the ALJ scheduled a PHC to clarify, as Pub. Util. Code § 1702 requires, exactly how the utility was alleged to have violated the law and whether we should set an evidentiary hearing.

As articulated by Mr. Beagle at the PHC, complainant's grievances appear to center on three allegations: (1) that Pacific Bell has failed to reverse an

² However, the Commission's patience has limits. From time to time we have declared certain individuals "vexatious litigants" and required them to post security for reasonable expenses the utility might incur in defending against a complaint. (See *Victor v. Southern California Gas Company* (1988) D.88-03-080, 1988 Cal. PUC LEXIS 198, citing California's vexatious litigant statutes, Code. Civ. Proc. § 391 et seq.). We also advise both Ms. Beagle and her representative, Mr. Beagle, that complainants cannot expect to participate in formal adjudications with the same level of informality available when a case is conducted under our ECP rules.

improper late payment charge; (2) that Pacific Bell has failed to provide her with financial compensation for two service interruptions; and (3) that Pacific Bell has discriminated against her and harassed her, primarily by placing her on a 15-day payment schedule when she first established service. We review these issues in greater detail below.

The Late Payment Charge

Though the complaint alleges that Pacific Bell has improperly sent disconnection notices to complainant and assessed two late charges against her account, at the PHC Mr. Beagle conceded that only one late charge is in dispute. The disputed charge is \$3.17 assessed for late payment of Ms. Beagle's September 1998 telephone bill (i.e., the bill bearing the statement date "September 17, 1998"). In a declaration in support of its motion, Pacific Bell states its records show the bill was paid on October 22, one day after the late payment charge date. (See Declaration of Gabriel J. Reyes, Pacific Bell Customer Relations Team Specialist for Credit and Collections.)

At the PHC, Mr. Beagle argued that Pacific Bell should reverse the charge, asserting the statements in the declaration are fraudulent since complainant's September bill was paid by a check cancelled one day before the late payment charge date. In response to the ALJ's August 4 ruling, however, Mr. Beagle admits his prior representation was inaccurate and apologizes for the error. Mr. Beagle produces photocopies of the front and the back of the cancelled check which show the check was dated October 20, 1998, deposited on October 22, 1998, and cancelled on October 23, 1998. Thus, as Mr. Beagle now admits, the check was received and deposited by Pacific Bell two days after it was sent and one day after the late charge applied.

Mr. Beagle also argued at the PHC that Pacific Bell backdates its bills, thereby improperly reducing the actual time afforded for bill payment. The proof, according to Mr. Beagle's PHC argument, is that a statement with a bill date of the 17th in a given month may show payments received as late as the 20th, several days after the purported mailing.

With respect to these contentions, Pacific Bell explains that complainant has misunderstood its billing process. According to the Reyes declaration, the bill date which appears on a customer's statement indicates the end of the billing cycle, not the mailing date. The bill date for Ms. Beagle's account is the 17th of each month. Bill processing after the end of the billing cycle takes seven to ten days, so routinely the bill is mailed seven to 10 days after the bill date. Ms. Beagle's September telephone bill was mailed on September 27, 10 days after the September 17 bill date. Because Ms. Beagle was on a 15-day payment schedule from March of 1998 (when she established service) until March of 1999, her September bill was due 15 days after it was mailed to her.³ However, consistent with its tariff Rule No. 9, which provides that a late payment date cannot be less than 22 days from the date the bill is postmarked, Pacific Bell did not assess a late charge until October 21, more than 22 days from September 27. (See Schedule CAL. P.U.C. No. A2.1.9.)

³ The parties' pleadings reveal that Ms. Beagle frequently has not paid her bill until after the 15-day period, triggering a number of Pacific Bell disconnect notices during 1998. However, because each bill was paid prior to the disconnect date, Ms. Beagle's service was never disconnected. Pacific Bell admits it erroneously sent one disconnect notice to Ms. Beagle, and other customers on the same billing cycle, when it converted to a new bill print system. Pacific Bell discovered the error and did not disconnect any customer's service.

At the PHC, Pacific Bell explained further the "Payment Receipt Integrity Process" it follows when processing customer checks. Pacific Bell notes the date the check is received and applies the check against the customer's account as of that date. Where, for example, the account number is not written on the check or some part of the check is illegible, Pacific Bell must conduct some research before applying the payment. In such cases it is possible that a late charge may be assessed against an account. However, as long as the check was received prior to the late payment charge date, any late charges assessed for these reasons will be reversed. Consistent with this procedure, Pacific Bell reversed a late payment charge assessed against Ms. Beagle's December 1998 bill. (Ms. Beagle paid the bill on January 20, 1999, one day before the late payment charge date.)

We find for Pacific Bell regarding this aspect of the complaint. Complainant's own evidence is that her check was sent the day before the late charge applied. Moreover, Pacific Bell's explanation of the bill payment system and verification that it followed its practices with respect to Ms. Beagle's account are credible. We conclude that Pacific Bell's refusal to refund the \$3.17 is not a violation of its tariffs.

The Service Interruptions

The complaint charges Pacific Bell with several improper service disconnections and seeks financial compensation. During the course of the PHC, it became apparent that Ms. Beagle's grievance concerns one period of alleged service interruption from December 4-6, 1998 and a delay in the transfer of service, within the same exchange, from one residence to another between March 22-24, 1999. Pacific Bell does not consider such matters to be "disconnections."

Pacific Bell's records indicate that Ms. Beagle reported phone trouble on November 26 but later that same day cancelled the repair appointment, stating the telephone was working again. There are no records of service problems in December, according to Pacific Bell. In March 1999, Pacific Bell's records indicate Ms. Beagle transferred her telephone service when she changed her residence but confusion about her new address resulted in a delay in the transfer. Mr. Beagle stated that complainant informed Pacific Bell she would be moving to one address, the arrangement fell through, and about a month later she moved to a different address. At the PHC, Pacific Bell stated it ascribes no blame to the error.

With respect to the alleged December interruption, we conclude complainant has not established a cause of action. With respect to the delayed service transfer in March, now that the semantic misunderstanding has been corrected it appears the parties do not dispute the material facts. While some interruption is unavoidable when service associated with a single number is transferred within the same exchange, here the transfer did not occur as smoothly or as quickly as it might. Pacific Bell's tariff Rule No. 14 provides for a pro rata adjustment of the monthly fixed charge for service interruptions when the customer is not at fault. (See Schedule CAL P.U.C. A2.1.14.) We will direct Pacific Bell to adjust Ms. Beagle's account to reflect the one full day (March 23) she was without service, calculated in accordance with the tariff.

Discrimination

The complaint asserts Pacific Bell discriminated and harassed complainant when she first established service in 1998 by placing her on a 15-day payment schedule after reviewing credit reports without her consent. It also charges that Pacific Bell service representatives mistakenly have referred to

Mr. Beagle as complainant's spouse on several occasions when he has been in contact with the utility on her behalf. In addition, the complaint asserts Pacific Bell has harassed Ms. Beagle by attempting to contact her several times by telephone or by express letter about various matters including potential service disconnections, after being advised that she only wanted to be contacted by ordinary mail.

The Reyes declaration in support of Pacific Bell's motion states that because of the lack of a verifiable credit history and Ms. Beagle's failure to respond to Pacific Bell's request for positive identification, Ms. Beagle was considered a high risk customer when she established service in March 1998. Therefore, Ms. Beagle's account was assigned a 15-day payment schedule, which Pacific Bell's tariff Rule No. 6 permits. (See Pacific Bell Schedule CAL P.U.C. No. A2.1.6.) In March 1999, one year after she established service, Ms Beagle's account was reassigned to the usual 30-day payment schedule.

At the PHC, Mr. Beagle responded to the motion by stating that he and Ms. Beagle have not been married since 1992 and that they do not live at the same address. He also reiterated the other claims of harassment and discrimination. Pacific Bell replied that any offence was inadvertent and that its service representatives apologized for the telephone contacts.

We grant Pacific Bell's motion and dismiss this portion of the complaint. We conclude that Pacific Bell did not act arbitrarily when it placed Ms. Beagle on a 15-day payment schedule. Moreover, acknowledging her generally timely payment history over the ensuing year, Pacific Bell subsequently transferred her to a 30-day payment schedule. With respect to the other allegations of discrimination and harassment, we conclude these are not actionable. Furthermore, with respect to future contact with Ms. Beagle, Pacific Bell has acknowledged Ms. Beagle's request to be contacted only by ordinary

mail regarding all matters, including any that may concern late payment and potential disconnection. There is no need for us to intervene.

Other Matters

Mr. Beagle's response to the ALJ's August 4 ruling does more than provide the documentation she specifically requested. Among other things, Mr. Beagle reiterates his arguments that Pacific Bell backdates its bills and seeks to add one or more causes of action alleging that Pacific Bell has double-charged complainant by requesting payment in consecutive months for the same bill total. He also states that he wishes to quash Pacific Bell's motion to dismiss and asks the Commission to take punitive action against the utility for intentional deceit.

We strike these portions of the response. To the extent Mr. Beagle is seeking to amend the complaint, not only is his method procedurally irregular but his allegations are either repetitive of prior allegations or are refuted by the exhibits he attaches in support. The purported effort to "quash" the motion to dismiss is plainly misplaced. Moreover, Mr. Beagle has already responded to the motion to dismiss.

Conclusion

After careful review and consideration of the record in this proceeding, we grant Pacific Bell's motion to the extent discussed above and dismiss the complaint in part. We find for complainant with respect to a portion of the March service interruption, only, and direct Pacific Bell to make the appropriate account adjustment.

In its answer, Pacific Bell characterizes the complaint as "frivolous." We will not go so far, but we question the expenditure of private and public resources this complaint has required. According to both parties, the matters

underlying this complaint have given rise to a volume of correspondence from Ms. Beagle and/or Mr. Beagle to Pacific Bell. We urge Pacific Bell as well as complainant and her representative to repair their strained business relationship.

No Hearing is Necessary

In resolving this matter on the pleadings filed to date and the parties' oral argument at the PHC, we change the determination, in the instructions to answer, that this proceeding required a hearing and make a final determination that no hearing is necessary, in accordance with Rule 6.6 of the Rules of Practice and Procedure. We deem this proceeding to stand submitted as of September 21, 1999, the date the draft decision was mailed.

Comments on Draft Decision

The draft decision of ALJ Jean Vieth in this matter was mailed to the parties in accordance with § 311(g) and Rule 77.1 of the Rules of Practice and Procedure.

Neither party filed comments, per se, but Mr. Beagle filed a document entitled "Motion to Set Aside CPUC Opinion Dismissing Complaint." Mr. Beagle argues that complainant's due process rights have been violated because the ALJ did not hold an evidentiary hearing. Mr. Beagle also argues that the ALJ suppressed evidence because she did not set an evidentiary hearing to explore further complainant's arguments that Pacific Bell improperly placed her on a 15-day payment schedule after reviewing credit reports without her consent and that Pacific Bell backdates its bills. There is no need – and in fact it would be poor use of the Commission's limited resources -- to set a matter for hearing when there are no triable issues as to any material fact. As we have explained previously, like a motion for summary judgment in the civil courts, the purpose of a motion to dismiss under our rules is to permit determination "before hearing

whether there are any triable issues as to many material fact." (*Westcom Long Distance, Inc. v. Pacific Bell et al.*, D94-04-082, (1994) 54 CPUC2d 244, 249.)

Here the ALJ set a PHC to permit the parties to clarify the nature of the dispute. She then held oral argument, at Mr. Beagle's election, on Pacific Bell's motion to dismiss and for summary judgment and also offered him an opportunity to file a written response (which he declined). After review of all the pleadings, the parties arguments, and the evidentiary support on the summary judgment motion, the ALJ concluded the harassment claim should be dismissed and that no material dispute existed regarding the alleged service interruptions – in fact on that claim, she found for complainant, in part. With respect to the late payment charge, she required Mr. Beagle to provide supplemental support for his oral argument claim that Pacific Bell imposed a late charge after complainant paid her bill – the canceled check Mr. Beagle submitted does not support the claim, as he himself has recognized.

After review of the record and Mr. Beagle's most recent pleading, we conclude there has been no violation of due process. We have made certain minor revisions to the ALJ's draft, however.

Findings of Fact

1. Complainant, Marcella Beagle, authorized Richard Beagle to represent her in this proceeding.
2. Prior informal and formal complaints filed at the Commission by Mr. Beagle do not concern the account at issue here.
3. At the PHC, Mr. Beagle stated he was prepared to participate in oral argument on Pacific Bell's motion to dismiss and for summary judgment and that in light of the opportunity for oral argument, he would not file a written response to the motion.

4. Prior to the PHC, Mr. Beagle served a document purporting to be responsive to Pacific Bell's motion but did not file it with the Commission's Docket Office.

5. As articulated by Mr. Beagle at the PHC, complainant's grievances appear to center on three allegations: (a) that Pacific Bell has failed to reverse an improper \$3.17 late payment charge for late payment of Ms Beagle's September telephone bill; (b) that Pacific Bell has failed to provide Ms. Beagle with financial compensation for service interruptions in December 1998 and March 1999; and (c) that Pacific Bell has discriminated against Ms. Beagle and harassed her, primarily by placing her on a 15-day payment schedule when she first established service.

6. The Reyes declaration in support of Pacific Bell's motion explains the utility's bill payment process and states Ms. Beagle paid her September bill one day late.

7. Complainant paid her September bill with a check sent to Pacific Bell the day before the late charge applied.

8. Pacific Bell's records do not show a service interruption in December 1998.

9. Pacific Bell's records show a service interruption between March 22 and 24, 1999, when Ms. Beagle transferred her telephone service within the same exchange in connection with a change in her residence. There was confusion about her new address but Pacific Bell stated it does not ascribe blame to Ms. Beagle.

10. While some interruption is unavoidable when telephone service associated with a single number is transferred within the same exchange, here the transfer did not occur as smoothly or quickly as it might.

11. The Reyes declaration states that because of the lack of verifiable credit history, Ms. Beagle was considered a high risk customer when she established service in March 1998 and she was placed on a 15-day payment schedule.

Conclusions of Law

1. Mr. Beagle has waived his right to file a written response to Pacific Bell's motion.

2. The Reyes declaration is credible.

3. Complainant's own evidence is that her September bill was paid by a check sent to Pacific Bell the day before the late charge applied.

4. We should grant Pacific Bell's motion with respect to the late payment charge.

5. Pacific Bell's tariff Rule No. 14 provides for a pro rata adjustment of the monthly fixed charge for service interruptions when the customer is not at fault.

6. We should direct Pacific Bell to adjust Ms. Beagle's bill for the one full day she was without service (March 23), calculated in accordance with the tariff.

7. Ms. Beagle has not established a cause of action with respect to the alleged discrimination and harassment.

8. We should grant Pacific Bell's motion with respect to the alleged discrimination and harassment.

9. We should strike those portions of complainant's response to the ALJ's August 4, 1999 ruling which seek to amend the complaint.

10. We should strike those portions of complainant's response to the ALJ's August 4, 1999 ruling which Mr. Beagle describes as a motion to quash.

11. In resolving this matter on the pleadings filed to date and the parties' oral argument at the PHC, we make a final determination that no hearing is necessary in accordance with Rule 6.6 of the Rules of Practice and Procedure.

12. In order to resolve this dispute expeditiously, this decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Complainant's August 16, 1999 response to the Administrative Law Judge's ruling is stricken in part.
2. Pacific Bell's motion is granted and the complaint is dismissed with respect to the late payment charge and the discrimination charge.
3. Pacific Bell shall adjust Marcella Beagle's bill for the one full day she was without service in March 1999; the adjustment shall be calculated in accordance with Pacific Bell's tariff Rule No. 14.
4. This proceeding is closed.

This order is effective today.

Dated October 21, 1999, at San Francisco, California.

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