

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

EVALUATION & COMPLIANCE DIVISION
Telecommunications BranchRESOLUTION NO. T-12015
April 22, 1987R E S O L U T I O NPACIFIC BELL. PROTESTS OF OMNIPHONE, INC. AND SABLE COMMUNICATIONS OF CALIFORNIA, INC. TO PACIFIC BELL'S ADVICE LETTER NO. 15224. RESOLUTION NO. T-12015.

On February 13, 1987, Pacific Bell filed Advice Letter No. 15224 in compliance with Decision No. 87-01-042, the Commission's latest interim opinion issued in response to its investigation of 976 Information Access Service (976 IAS). This decision required Pacific Bell and General Telephone to file revised tariffs: a) adopting the Commission's "content neutral" approach to 976 IAS; b) establishing on a permanent basis a residence customer's right to receive a one-time adjustment if (s)he did not know that charges applied to 976 calls or if his or her minor child called 976 programs without parental consent; c) adding a third criterion to the one-time adjustment, namely unauthorized calls made to 976 programs from the residence customer's telephone; and d) authorizing Pacific Bell and General Telephone to charge in full the amount of credit given to residence customers under the one-time adjustment guidelines against the appropriate information provider's account.

Protests to this Advice Letter were filed separately by Omniphone, Inc. (Omniphone) and Sable Communications of California, Inc. (Sable) on March 10, 1987. Sable and Omniphone are both information providers. The Commission received Pacific Bell's response to Omniphone's protest on March 17, 1987, and the utility's response to Sable's protest two days later. On March 28 and April 6, 1987, the Commission received Sable and Omniphone's comments to Pacific Bell's response to their protests. Pacific Bell responded only to Omniphone's April 6 comments on April 10, 1987.

Sable and Omniphone claim that Decision 87-01-042 did not authorize Pacific Bell to charge in full (including the utility's transport and billing charge) the amount of credit given to residence customers under the one-time adjustment guidelines against the appropriate information provider's account. They present basically two reasons to support their claim. First, there is no language in the decision that suggests granting Pacific Bell the authority to recharge the full amount of credit given to a residence customer against the information provider's

account. Second, the protestants argue that the decision could not have intended to adopt the chargeback procedure Pacific Bell proposes in its advice letter, since it would violate Public Utilities Code Sections 454, 728 and 1705.

This resolution finds that language exists in the decision which grants Pacific Bell the authority to implement the chargeback procedure it suggests in its advice letter filing. If the protestants believe this violates Public Utilities Code Sections 454, 728 and 1705, they may challenge the decision through the appropriate procedural channels. It would be inappropriate for the Commission to consider challenges to a decision through the resolution process. Sable and Omniphone's protests are therefore denied.

BACKGROUND

Information Access Service (976 IAS) is a call transport and billing service provided by local exchange carriers (LECs) to private entrepreneurs known as information providers (IPs). IPs develop information programs (passive and interactive prerecorded messages) and, with the help of the LEC, market access to these programs to the LEC's customer base. Because the LEC already has a billing relationship with its local exchange customers, it can offer IPs a billing service, under the 976 IAS tariff, at rates much lower than the cost they would incur if they did their own billing. By utilizing the LEC's facilities and billing base IPs can offer their customers easy access (or "casual access") to their information programs, since presubscription to their recorded programs would not be necessary. It is the LEC's billing capability and existing customer base which makes 976 IAS attractive to the IPs. Under the current 976 IAS tariffs, the LEC bills and collects from callers the per call rate established by the IPs (which may range from \$.20 to \$2.00).[1] The LEC then deducts from this amount its charge for transporting and billing the call.[2] The balance is then remitted by the LEC to the IP.

In its first interim decision (D.85-11-028) in response to Order Instituting Investigation No. 85-04-047 (the investigation of 976 IAS), the Commission adopted an adjustment policy which, under

[1] Callers must still pay any applicable zone or toll charges in addition to the per call charge established by the vendor and billed by the LEC.

[2] The transport and billing rate the LEC charges the IP is as follows:

ESTABLISHED IP CHARGE	TRANSPORT & BILLING RATE PER CALL	
	Initial minute	Each Additional 30 Sec.
\$.20 to \$.55	\$.19	\$.05
.60 to .95	.30	.05
1.00 to 2.00	.50	.05

certain conditions, provided residence telephone subscribers who made calls to 976 IAS programs a one-time adjustment.[3] This "interim relief" was established to provide some remedy for utility residence customers confused about 976 IAS charges that appeared on their telephone bills.

With some modifications, this one-time adjustment policy was made permanent by the Commission in Decision No. 87-01-042, its latest interim order in response to its investigation of 976 IAS.

In response to this decision Pacific Bell filed Advice Letter 15224 to implement the Commission's modified one-time adjustment policy.[4]

PROTESTS

Under the Commission's initial one-time adjustment policy, Decision 85-11-028, IPs are not held responsible for the utility's transport and billing charges. When an adjustment is made by the utility to a telephone subscriber's bill, the amount of the adjustment, less the utility's transport and billing charge, is deducted from the check remitted by the utility to the IP.

Both Omniphone and Sable claim Pacific Bell's Advice Letter filing modifies this chargeback procedure to make IPs responsible for the entire amount adjusted, including the utility's transport and billing charges. Decision No. 87-01-042, they claim, does not give Pacific Bell the authority to amend the chargeback procedure which was established in Decision 85-11-028.[5]

[3] Circumstances that warrant relief include two cases: when the caller did not know 976 billing charges applied and, in the case of calls made by subscribers' minor children, the calls were made without parental consent.

[4] Decision 87-01-042 adds a third circumstance that warrant relief for pending, past and future claims: when the calls made to 976 IAS programs were not authorized by the subscriber.

[5] Transport and Billing charges are the charges the IP must pay Pacific Bell for carrying and billing call to a 976 information program. Referring to the rate structure in footnote 2, let us assume that the IP's 976 program is one minute long and the IP's established rate per call to that program is \$2.00. Pacific bills and collects from the caller this \$2.00 charge. Out of this \$2.00 the utility keeps \$.50 (the transport and billing charge the utility imposes on the IP for carrying and billing the call), and the rest, \$1.50, is remitted to the IP's account. Under the original one-time adjustment policy, Pacific would credit the caller's account \$2.00 and the utility would, in turn, deduct from the IP's future remittance \$1.50; the utility absorbs the \$.50 loss. The protestants argue that Pacific Bell's Advice Letter filing unjustly modifies this recharge arrangement, which, in effect, makes the IP responsible for this \$.50.

In addition, Sable argues Pacific Bell's Advice Letter filing unjustly applies the modified chargeback procedure to a time period earlier than November 1985, when the Commission issued its first interim order on 976 IAS. This, Sable believes, constitutes retroactive ratemaking.

In its response to the protests, Pacific Bell argues that the Commission, in Decision 87-01-042, intended for the IPs to be responsible for the entire 976 adjustment, including the utility's transport and billing charge. In addition, Pacific Bell argues the adjustment period ordered by the Commission dates back to April 17, 1985, the day the Commission issued OII 85-04-047.

DISCUSSION

The issue considered in this resolution is whether Pacific Bell's Advice Letter filing is in compliance with Decision 87-01-042. The Commission believes it is not appropriate in this resolution to consider protests actually directed at the decision itself, and not the utility's compliance filing in response to that decision. Such protests are more appropriately brought forward through an application or petition for rehearing or modification of the decision.

In Ordering Paragraph 1 of Decision 87-01-042 the Commission states the modified one-time adjustment policy "shall apply to all pending, past, and future claims." Pacific Bell's Advice Letter filing applies this one-time adjustment to claims as far back as April 17, 1985, the date the Commission issued Order Instituting Investigation No. 85-04-047. Sable claims Decision 87-01-042 limits the modified one-time adjustment only as far back as November 1985, when the Commission issued its first interim order on 976 IAS (D. 85-11-028).

We find no reference in the decision that verifies Sable's claim. Decision 87-01-042 does not specifically limit how far back the one-time adjustment should apply. We therefore do not find Sable's claim compelling in this regard.

On the other hand, we find Pacific Bell's Advice Letter filing, which limits refunds back to April 17, 1985, not in compliance with Decision 87-01-042. Finding of Fact No. 18 states: "A one-time adjustment per customer account for all calls whether before or subsequent to the opening of this investigation should be made with the amount of credit charged to the 976 IAS account" (emphasis added). Therefore, calls to 976 programs dating as far back as September 9, 1983, when Pacific Bell's 976 IAS tariff became effective, should be included in the one-time adjustments. This brings us to the other issue raised by the protestants with regard to who should absorb the cost of the various portions of these one-time adjustments.

Both Omniphone and Sable claim that Pacific Bell's advice letter filing violates Decision 87-01-042 with respect to the one-time adjustment insofar as it allows the utility to deduct the entire amount of the adjustments, including the utility's transport and billing charges, from the appropriate IP account. First, they believe there is no language in the decision which suggests granting the utility authority to implement the chargeback procedure proposed in its advice letter filing. Second, the utility's transport and billing charge, which they claim is priced far above cost, already includes the cost of "uncollectibles"; they argue these "uncollectibles" include the entire cost of the one-time adjustments. Finally, they believe the decision could not have intended to adopt the chargeback procedure Pacific Bell proposes, since doing so would be in violation of Public Utilities Code Sections 454, 728, and 1705.

In support of their contention that Decision 87-01-042 did not intend for the chargeback procedure to include the utility's transport and billing charge, the protestants cite page 27 of the decision which states: "In line with our policy of collecting the cost of service from the cost-causer, we would require the telephone companies to include a reasonable estimate of uncollected billing and transport charges in the billing and transport rate collected from the 976 vendors." They argue that since uncollected billing and transport charges are built into the utility's rate structure for 976 IAS, IPs have, in essence, already "paid" for the one-time adjustments ordered by the Commission.

In its response, Pacific Bell points out that reflecting the costs associated with one-time adjustments generally as "uncollectibles" effectively requires the non-offending 976 Providers to cover the actions of the offending 976 Providers. In this respect, Pacific Bell believes the language the protestants cite on page 27 of the decision is fully supportive of the tariff provision included in its filing since it is the Commission's policy to assess the total billing and transport charge against the "cost-causer," the offending 976 vendor. Furthermore, the utility argues that while its transport and billing rate is set above cost, the utility incurs additional administrative costs in processing specific requests for one-time adjustments, costs which are in addition to the cost already incurred by the utility for transporting and billing the adjusted call.

Moreover, Pacific Bell cites Finding of Fact 18 of Decision 87-01-042 which states: "A one-time adjustment per customer account for all calls whether before or subsequent to the opening of this investigation should be made with the amount of credit charged to the 976 IAS account" (emphasis added). Pacific argues the Commission defines this credit amount on page 26 of the decision which states: "As used in this order, 'one-time adjustment'

refers to crediting of all the costs of 976 phone charges...." Further, Pacific Bell calls attention to page 26 of the decision where the Commission states:

"Adjusted calls should be debited by the utility to the appropriate provider's account. We believe this policy is equitable from the perspective of all concerned, i.e., the utility, its subscribers, and the providers. In addition, it provides the providers the needed incentive to conduct their business in a responsible manner."

In its response to Pacific Bell's arguments, Sable argues that "Pacific misquotes, misinterprets and inappropriately relies on language in the Interim Decision." Sable believes the utility mistakenly equates an adjustment to a caller's bill with a chargeback to the 976 information provider. Sable argues that the phrase "crediting of all the costs of 976 phone charges" (page 26 of the decision) refers to the crediting of 976 callers' accounts and not to the debiting of 976 information providers' accounts. Moreover, Sable believes the current chargeback procedure (where the utility absorbs the transport and billing cost of each adjustment) is consistent with Finding of Fact 22 which states: "Our policy of assigning cost recovery to the cost-causer requires that the telephone companies include a reasonable estimate of uncollectible billing and transport rate assessed the 976 vendors."

We find the protestants' arguments specious and agree with Pacific Bell that the Commission, in Decision 87-01-042, adopted a new chargeback policy which requires the responsible information providers to absorb the full cost of the adjustments made to callers' accounts. The protestants place out of context the Commission's statements on its policy of assigning cost recovery to the cost-causer which requires Pacific Bell to include a reasonable estimate of uncollectibles in its transport and billing rate charged to the information providers. These statements on page 27 and Finding of Fact 22 directly relate to the discussion over whether local exchange carriers should be allowed to disconnect a caller's telephone service for non-payment of a 976 charge. The Commission argues that "976 information access service is not such a vital service that its purveyors are entitled to the protections that a monopoly enjoys[and that]...it would be improper for the customer's phone service to be disconnected for failure to pay 976 charges, so long as the utility's revenue requirement is protected" (see page 27).

Before Pacific Bell was authorized to offer 976 Information Access Service in September 1983, the Commission's E & C Staff analyzed the associated costs to ensure the transport and billing rate charged by Pacific Bell not only will recover these costs but will collect some surplus revenue to help pay for the cost of providing basic telephone service. Pacific Bell was required to

include "uncollectibles" as part of its cost estimates for this product. Thus, estimates for "uncollectibles" are built into the rates charged for transport and billing. Since a one-time adjustment policy was not contemplated at that time, it was not included in the estimates for the cost of "uncollectibles". We therefore find fallacious the argument that the one-time adjustments (first adopted in November 1985) are a part of the estimates for "uncollectibles" built into the rate (which remains unchanged since the service began in September 1983) charged by the utility for transporting and billing a 976 call.

The protestants make reference to the fact that the surplus revenue collected by Pacific Bell through its transport and billing rate is "pure gravy". The Commission does not deny this and emphasizes that this "pure gravy" is revenue contribution used to help pay for the cost of basic telephone service. If the current chargeback arrangement is retained, which the providers believe it should be, 976 IAS would generate less revenue contribution than it otherwise would to help pay for basic telephone service. Further, contrary to Sable's argument, we believe Finding of Fact 18 intends to require the utility, in circumstances that warrant a one-time adjustment, to credit a caller's bill and charge back the "amount of credit to the [appropriate] 976 IAS [provider's] account."

If the protestants believe the chargeback arrangement adopted in Decision 87-01-042 constitutes a violation of Public Utilities Code Sections 728 (retroactive ratemaking), 454 (failure to provide proper showing justifying a rate increase) and 1705 (failure to provide findings of fact and conclusions of law to permit a rate increase or a modification of a decision), they may pursue the appropriate procedural channels to challenge this decision. We must emphasize that it is inappropriate for this Commission to consider challenges to a decision through the resolution process.

The Commission finds that the rates, charges and conditions authorized in this Resolution are just and reasonable and present rates, charges and conditions, as they differ from the rates, charges and conditions authorized in this Resolution are for the future unjust and unreasonable; and good cause appearing,

IT IS ORDERED that:

- (1) The protest of Omniphone is denied.
- (2) The protest of Sable is denied.
- (3) Pacific Bell shall amend Advice Letter 15224 with another supplement to be filed no later than 10 days after the effective date of this resolution, and to become effective 5 days after filing, revising the associated tariff sheets to state

that: (a) one-time adjustments given to residence exchange customers may include 976 charges incurred on or after September 9, 1983, and, b) all one-time adjustments shall be recharged in full, including the utility's billing and transport charges, to the appropriate 976 IAS provider's account.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on April 22, 1987. The following Commissioners approved it:



Executive Director

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. CHANIAN
Commissioners