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Decision 02-09-022 September 5, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Greenlining Institute, Latino Issues Forum, Complainants, v. Pacific Bell, Pacific Bell Information Services, Defendants.	C.99-01-039 (Filed January 27,1999)

ORDER
DENYING REHEARING OF DECISION NO. 01-04-037
AND MODIFYING THE DECISION

I. SUMMARY

By this decision we deny the application for rehearing of Decision (D.) No. 01-04-037 submitted by The Greenlining Institute and Latino Issues Forum ("Applicants" or "Greenlining"). In the decision, we denied Applicants' complaint and found that the preponderance of the evidence failed to demonstrate that Pacific Bell and Pacific Bell Information Services (Pacific and PBIS, respectively) deceptively marketed and sold voicemail and associated services to business customers. However, we modify the decision to clarify our prospective interpretation of Public Utilities Code Section 2890(d)(2)(A) as applied to the facts of this case.

II. DISCUSSION

At issue in the complaint are charges made by Pacific and PBIS for commercial voice mail service. Applicants allege that Pacific and PBIS failed to advise their business customers who subscribed to Voice Mail service, either in their tariffs or in bills, that every time a call is forwarded to the customer's mailbox as part of the Voice Mail service, the customer is charged for that forwarding service. Unlike residential service, commercial customers pay a measured rate for service. Each call, including those forwarded, carries a charge. (Response of Pacific to Application for Rehearing at page 3.)

The bulk of Applicants' argument is that Pacific's tariff is not just and reasonable because it is ambiguous. We considered and rejected this argument in detail in D.01-04-037 beginning at page 8. Applicants argue that we erred in failing to construe an ambiguous tariff against Pacific, the author of the language. The flaw in this argument is that the Commission did not find the tariff to be ambiguous. Rather, we found it to constitute a "bare minimum of drafting, cumbersome and not user friendly." (D.01-04-037 at 35-36.) Thus, while the Commission identified problems with the tariff, and ordered correction, it did not find the tariff to be ambiguous, which is defined as susceptible to multiple interpretation. The Commission did not abuse its discretion in declining to find the tariff to be ambiguous. None of Applicants' arguments demonstrate legal error in this conclusion. Nor is Applicants' reliance on *Z.I.P. v. Pacific Bell* (1992) 45 Cal.P.U.C.2d 40 (D.92-01-019), and *MCI Telecommunications v. Pacific Bell* (1995) 59 Cal. P.U.C.2d 665, 683 (D.95-05-020), persuasive. As we pointed out in the decision at page 31, unlike the present case, both these prior decisions found the tariffs to be ambiguous. In *Z.I.P*, there was a specific ambiguity which we interpreted against the author of the tariff, and in *MCI* there was a missing term, which was also held against the company. These cases are therefore inapplicable to the present proceeding, and signal no new standard of tariff interpretation as argued by Greenlining.

Applicants also argue that Pacific's bills do not meet the requirements of Public Utilities Code Section 2890(d)(2)(A),[1] which, among other things, requires that a telephone utility "[i]nclude…in the bill the amount being charged for each product or service, including any taxes or surcharges, and a clear and concise description of the service…for which a charge has been imposed." The challenged decision concludes that no violation of Section 2890 occurred. (D.01-04-037 at 25.) The decision finds, however, that Pacific should be required to modify its bills to indicate: 1) that the summary of business local usage charges includes charges associated with voicemail service, namely usage charges for call forwarding and mailbox message retrieval; and 2) that the portion of the bill indicating monthly voicemail charges should also specify whether or not the monthly charge includes call forwarding. (*Id*., at 27.)

The challenged decision states:

> It is undisputed that there is no reference, or cross-reference, to business line usage charges on the portion of the bill which contains PBIS' monthly voicemail charge. Likewise, there is no reference to the inclusion of call forwarding charges or mailbox retrieval charges in Pacific's direct-dialed call summary. (*Id*., at 25.)

Applicants argue that these undisputed facts constitute a violation of Section 2890. They also point to Finding of Fact No. 32, which states:

> Under defendants' current billing format, a customer who is unaware of the business line usage charges associated with voicemail would not be apprised they exist when he or she reviews the bill. (*Id*., at 37.)

We do not find legal error. Although Section 2890 imposes specific and generally clear requirements on carriers with respect to disclosure on telephone bills, its mandate was arguably ambiguous with respect to the specific

[1] Legislation affecting section 2890 that became effective on July 1, 2001, modified portions of the statute so that former section 2890(e)(A)(2) is identical in all relevant respects to current section 2890(d)(2)(A).

issue presented by this case.[2] The decision stated, at page 25, that "both call-forwarding from a business customer's business telephone line to a voice mailbox and message retrieval from the voice mailbox using the business line are treated as local direct-dialed calls. Business customers have measured rate service and Pacific's A.5.2 local exchange tariff provides that local direct-dialed charges . . . are summarized on the bill." The decision further points out that, using present technology, Pacific cannot provide further detail (i.e., separate out the usage charges for each call that has been forwarded or retrieved). (Finding of Fact 33). Under the unique facts presented in this complaint, including the fact that the statute had only recently gone into effect before the complaint was filed, it was not legal error for the decision to conclude that defendants should not be found to have violated Section 2890.

While we do not find legal error, we will modify D.01-04-037 to clarify that, going forward, we interpret Section 2890(d)(2)(A) to require defendants to disclose on their business customers' telephone bills that charges for voicemail services also include local usage charges for call retrieval and (if applicable) call forwarding. This is implicit in the decision's requirement that defendants change their bill disclosure practices to provide this information. We will modify the decision to make explicit that, prospectively, we view this disclosure to be required by the statute, in particular the statutory directives to include on the bill "the amount being charged for each product or service" and "a clear and concise description of the service . . . for which a charge has been imposed." Absent the required information, business customers would not be informed of the full amount they must pay to use voice mail services, nor would they be provided a clear and concise description of voice mail service, which includes call forwarding and call retrieval and the associated local usage charges.

[2] It is noteworthy that the language in question was added to the Public Utilities Code by Senate Bill (SB) 378, which became effective on January 1, 1999, just 27 days before this complaint was filed.

However, as in the challenged decision, in light of the current technological infeasibility of itemizing all voicemail-related local usage charges, we do not find that Section 2890 requires a call-by-call itemization of voicemail-related local usage charges. The requirements of Section 2890 are satisfied by disclosures on the bill that the amount that is being charged for voicemail services may include usage charges for voicemail-related call forwarding and message retrieval.

III. MODIFICATIONS

D.01-04-037 should be modified as follows:

At the end of the paragraph that begins on the bottom of page 25 and continues to the top of page 26 that begins with the words, "In fact", add the following sentences, including the accompanying footnote: "In addition, as we note below, the evidence shows that defendants' current technology does not permit an itemization of each individual call usage charge that is associated with the use of voicemail. Under these circumstances and the fact that the pertinent provisions of the statute had only just become effective less than a month before the complaint was filed, [footnote: The language in question was added to the Public Utilities Code by Senate Bill (SB) 378, which became effective on January 1, 1999, just 27 days before this complaint was filed.] we do not find that defendants violated Section 2890."

Add the following paragraph before the first full paragraph on page 26 (which begins with the word "Therefore"): "While we do not find that defendants violated Section 2890 under the unique facts presented in this complaint, we conclude that, prospectively, Section 2890 should be interpreted to require defendants to disclose on their business customers' telephone bills that charges for voicemail services also include local usage charges for call retrieval and (if applicable) call forwarding. We base this conclusion on the statutory directives to include on the bill 'the amount being charged for each product or

service' and 'a clear and concise description of the service . . . for which a charge has been imposed.' Absent the required information, business customers would not be informed of the full amount they must pay to use voice mail services, nor would they be provided a clear and concise description of voice mail service, which includes call forwarding and call retrieval and the associated local usage charges.

Delete the first sentence of the first full paragraph on page 26 (which begins with the word "Therefore") and replace it with the following sentence: "Our conclusion that, prospectively, defendants must disclose on business customer bills the existence of additional usage charges associated with voicemail is also supported by the factual record in this case."

On page 33, before the first full paragraph at the top of the page the following paragraph should be inserted:

> "However, as explained above, we conclude that, prospectively, Section 2890 should be interpreted to require defendants to disclose on business customer bills the existence of additional usage charges associated with voicemail."

On page 38, add a new Finding of Fact 34: "The provisions of Section 2890 that are at issue in this case had been in effect only 27 days when this complaint was filed."

On page 39, Conclusion of Law No. 11 should be replaced with the following: "In light of the unique facts of this case, we do not find that defendants violated Section 2890."

On page 39, add a new Conclusion of Law No. 11a: "Prospectively, we interpret Section 2890(d)(2)(A) to require defendants to disclose on their business customers' telephone bills that charges for voicemail services also include local usage charges for call retrieval and (if applicable) call forwarding."

IV. CONCLUSION

Applicants have demonstrated no legal or factual error in the decision, which is supported by substantial evidence, and rehearing should be denied. By this order, we modify D.01-04-037 to clarify that, prospectively, the additional disclosure on telephone bills ordered by the decision is required by Section 2890(d)(2)(A).

Therefore **IT IS ORDERED** that:

1. Rehearing of Decision 01-04-037 is denied.
2. Decision 01-04-037 is modified as set forth above.
3. This proceeding is closed.

This order is effective today.

Dated September 5, 2002 at San Francisco, California.

LORETTA M. LYNCH
President
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.