

Decision 98-07-099 July 23, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices and conduct of Sonic Communications dba SCI Communications (U-5336-C), to determine whether it has complied with laws, rules, regulations and its' tariff rules governing the manner in which California consumers are changed from one long-distance carrier to another. All local exchange carriers in California are also named as respondents for the limited purpose of having them hold, until further order, funds in their possession from billing customers for Sonic (or which would be paid to Sonic in advance of billing) under agreements or contracts with Sonic.

Investigation 95-02-004
(Filed February 8, 1995)

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Pacific Bell, respondents.
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Communications, interested parties.
Laura Tudisco, Attorney at Law, for the Safety
and Enforcement Division.

FINAL OPINION

Summary

This decision revokes the operating authority of Sonic Communications, Inc., dba SCI Communications (Sonic), currently a defunct entity, for unlawfully switching the presubscribed long distance service of California residential customers of other carriers to Sonic in violation of Public Utilities (PU) Code §2889.5. Hereafter, any applications for operating authority submitted by a firm which includes among its principals, officers or employees, former Sonic officers, shareholders or employees shall clearly state such involvement.

Background

On February 8, 1995, the California Public Utilities Commission (Commission) instituted this investigation¹ into the operations, practices and conduct of Sonic after receiving hundreds of complaints that Sonic was engaged in "slamming," the unauthorized switching of customers' long distance carriers. In the order, we also directed all local exchange carriers (LECs) billing and collecting for Sonic to hold all funds from February 8, 1995 until they received further notice from the Commission.

We placed the hold on the company's billings out of concern that Sonic, a Georgia corporation, might not be creditworthy. In order to give Sonic an opportunity to promptly respond to this concern, the Commission set a hearing for a week later to receive evidence regarding Sonic's operations and its financial viability.

¹ Order Instituting Investigation (I.) 95-02-004.

At the February 16, 1995 hearing, the Commission's Safety and Enforcement Division², the Office of the Attorney General of the State of California (the AG's Office), Pacific Bell (Pacific) and AT&T Communications (AT&T-C) collectively presented eight witnesses and entered 29 exhibits into evidence. Sonic appeared but neither responded to nor challenged the evidence presented indicating that it had slammed customers. Sonic focussed its participation on arguing for the release of the funds being held.

On March 16, 1995, we issued Decision (D.) 95-03-016 which continued the order for LECs to hold Sonic's funds. Moreover, we ordered each respondent California LEC that billed for the company to notify Sonic's customers that this proceeding or other actions might lead to the eventual revocation or termination of Sonic's authorization to provide long distance services in the state. 59 CPUC2d 30, 35 (1995).

In early March 1995, the Safety and Enforcement Division and the AG's Office jointly filed a "Motion for the Issuance of an Order to Show Cause Why the Commission Should Not Find That All of Sonic's California Customer's Were Unlawfully Switched." In a late-filed response, Sonic denied that it had operated unlawfully and continued to argue federal preemption³ of the issue. On April 5, 1995, we issued D.95-04-029⁴ which determined, based on the existing evidentiary

² By Executive Director order dated September 10, 1996, the functions relative to this proceeding previously performed by the Safety and Enforcement Division were transferred to the Commission's Consumer Services Division.

³ On March 8, 1995, Sonic filed a request for a temporary restraining order in United States District Court for the Northern District of California (District Court). The request was to prevent the Commission from enforcing the February 8, 1995 "hold" order. On March 9, 1995, the District Court denied Sonic's request.

⁴ Order To Show Cause Why the Commission Should Not Find That All Of Sonic's California Customer's Were Unlawfully Switched And For Hearings To Consider Redress For Consumers

record, that Sonic's methods of obtaining customers appeared to be in violation of PU Code § 2889.5. The Commission further found Sonic's federal preemption argument to be without merit. Accordingly, the Commission established a rebuttable presumption that all of Sonic's customers were unlawfully switched. We directed that further hearings be promptly set. Among the additional issues to be determined were restitution and how Sonic's customers were to be protected from service interruptions.

The Los Angeles Superior Court issued a preliminary injunction against Sonic at the request of the California Attorney General on March 8, 1995. The court's action strictly constrained Sonic's business operations as well as the direct or indirect billing for its long distance service for the period covered between March 1, 1994 and March 8, 1995.

On April 7, 1995, Sonic filed a petition for relief⁵ under Chapter 11, Title 11, United States Code. The bankruptcy court appointed a Chapter 11 Trustee for Sonic (Trustee) on May 23, 1995. Eight days later, in light of its petition, Sonic requested a continuance of the formal workshop and evidentiary hearing scheduled at the Commission in an April 11, 1995 prehearing conference. After the workshop and hearing dates were reset, the Trustee requested and received a 60 day postponement.

Pursuant to an Administrative Law Judge's Ruling after the prehearing conference, the Safety and Enforcement Division and the AG's Office timely filed concurrent opening briefs on May 8, 1995 on the issue of whether or not all of Sonic's intrastate long distance customers were switched to it from other long distance carriers without those customers being given the notice required by PU

⁵ In re Sonic Communications, Inc., Case No. 95-64899, United States Bankruptcy Court, Northern District of Georgia, Atlanta Division.

Code § 2889.5. Sonic late-filed its opening brief on May 16. Without leave, Sonic submitted a reply brief on the same date.

On September 13, 1995, certain parties⁶ in the bankruptcy matter proposed a settlement of the proceeding. The bankruptcy court approved a complex final settlement agreement on November 20, 1995. Under the terms of the agreement, certain funds billed to ratepayers on behalf of Sonic and held by LECs in California, Illinois, New York and Texas were paid to the Trustee and were distributed to affected consumers in the states according to a formula devised. Accordingly, the settlement precludes this Commission from issuing any order which deals with monetary issues such as damages, restitution, or fines. However, we are not prohibited from making an ultimate determination in this investigation as to whether Sonic slammed customers in California and the extent of its authority to operate in the state.⁷

This is an enforcement proceeding brought by the Commission against Sonic, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1

Were All of Sonic's Intrastate Long Distance Customers Switched To Sonic From Other Long Distance Carriers Without Those Customers Being Given The Notice Required By PU Code § 2889.5?

During the February 16, 1995 hearing, the testimony and documents admitted into evidence revealed that between July 1994 and January 1995, Sonic ordered 96,694 primary interexchange carrier (PIC) changes in the long distance

⁶ The AG's Office and the Commission represented the interests of the people of California in the bankruptcy proceeding.

⁷ Significantly, under the settlement agreement, the Trustee surrendered Sonic's certificate of public convenience and necessity (CPCN) in California. In Re: Sonic Communications, Inc. Case No. 95-64899 (Paragraph 12(v.) at 9)(November 29, 1995).

service of Californians from AT&T-C, Sprint, MCI or some other long distance carrier to Sonic.⁸ From July 1994 through January 1995, approximately 7461 customers had complained to Pacific, the LEC, that their long distance service had been switched to Sonic without their authorization.⁹ In 6631 of those instances, Sonic had not provided within 45 days any verification that the consumer had requested the change.¹⁰ The 45 days is the time set by the LEC to produce such authorization to avoid a presumption the customer was switched without authorization.

In only 830 of those PIC change disputes did Sonic respond by providing a purported letter of authorization showing a consumer's signature.¹¹ In the instances in which Sonic submitted a purported letter of authorization, it submitted a copy of the front and back of a \$10.00 check in which there was a line below the endorsement line that ostensibly contained the letter of authorization.¹² The record indicates that the line constituting the letter of authorization was in tiny (approximately 4.6 point typeface), light gray print that one witness testified he was only able to read with the aid of a magnifying glass.¹³ In some instances, the \$10.00 checks were accompanied by a slip of paper entitled "Sci" in one corner and the name and address of Sonic in the opposite corner bearing the message:

⁸ Transcript (Tr.) at 82 and Exhibit (Ex.) 19 at 4-5 with page 1 of attachment.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Tr. At 67, 75 and Ex. 15 at 33-34.

Footnote continued on next page

"We're so sure you'll be satisfied with the savings, we're putting up \$10.00 to prove it!

The \$10.00 voucher included is made out to you! Consider it an instant way to reduce your long distance costs. It could mean one month's free service and it's just a taste of the significant savings you will enjoy each and every month."¹⁴

Sonic presented no evidence to support its assertion that it had revised its checks to contain boldface, easily read type. It did not state when such revisions had been made, or if any of the revised checks had ever been used to solicit Californians or customers anywhere.¹⁵ Sonic continued to insist that it had complied with all federal regulations regarding switching long distance carriers, and that federal law preempted state law concerning what actions constitute permitted practices in changing long distance carriers. Sonic Opening Brief at 7. Moreover, Sonic maintained that it had complied with California law. *Id.* at 4.

The Safety and Enforcement Division and the AG's Office argue that the uncontroverted record in this proceeding establishes that Sonic used only three methods of switching consumers to Sonic: First, the company switched consumers' long distance service if they endorsed \$10.00 checks that Sonic sent. These checks contained, under the endorsement space, nearly illegible phrases that purportedly authorized the switch. Second, Sonic switched consumers' long distance service whose billing number Sonic mistakenly associated with one of the \$10.00 checks, even if the person endorsing the check had no connection with the billing number. Finally, Sonic switched the long distance service of consumers without anyone having endorsed one of the \$10.00 checks.

¹³ Tr. at 16-19, 22-23, 33, 64, 67 and 75; Exs. 1, 3 at 23-25, 6 at 127-130, 15 at 7 (para. 16) and 61A.

¹⁴ Tr. at 16-18, 22-23, and 64; Exs. 2, 3 at 23-25.

¹⁵ Opposition to Order Filed by Public Utilities Commission February 8, 1995, or in the Alternative, A Motion for Continuance at 5, Ex. A.

Memorandum of Interested Party, the People of the State of California Requesting Commission to Find That All of Sonic's California Customers Were Unlawfully Switched ; and Request for Official Notice (Memorandum) at 5 and Concurrent Opening Brief of the Safety and Enforcement Division Regarding Notice Provided By SCI Communications to California Consumers at 4.

The Safety and Enforcement Division and the AG's Office pointed out that PU Code § 2889.5(a)¹⁶ sets standards for entities making changes in subscribers' telephone service, if made other than in person. The entity soliciting a change must: "thoroughly inform the subscriber of the nature and extent of the service being offered" and "[s]pecifically establish whether the subscriber intends to make any change in his or her telephone corporation and explain any charges associated with that change." PU Code § 2889.5(a). The entity must also mail an information package seeking confirmation of the change and make some "reasonable" attempt to "obtain written authorization of the subscriber's intent to change telephone corporations." *Id.* The Safety and Enforcement Division and the AG's Office declared that Sonic did not come close to meeting these requirements. *The Safety and Enforcement Division Concurrent Opening Brief at 4-5 and Memorandum at 6.*

Discussion

PU Code § 2889.5 sets forth specific requirements that must be met before a residential telephone customer's long distance carrier may be switched. Any telephone corporation that obtains residential customers in violation of PU Code § 2889.5 has switched them unlawfully. By means of nearly illegible, vague writing on the backs of \$10.00 checks and ambiguous statements on occasionally

¹⁶ All references to the requirements of PU Code § 2889.5 are to its provisions as they existed relative to the time at which these claimed violations occurred.

enclosed inserts with the checks, Sonic did not "thoroughly inform the subscriber of the nature and extent of the service being offered." Using these methods, Sonic also did not "[s]pecifically establish whether the subscriber intends to make any change in his or her telephone corporation and explain any charges associated with that change." In addition, the check and the enclosed slip of paper did not meet the requirement to mail an information package seeking confirmation of the change and to make some "reasonable" attempt to "obtain written authorization of the subscriber's intent to change telephone corporations." *Id.*

Without question, Sonic did not comply with § 2889.5 in the instances in which it switched Californians telephone service without their knowledge, and without their having endorsed one of the Sonic checks. Accordingly, we find that all of Sonic's California customers were unlawfully switched from other long distance companies to Sonic.

The bankruptcy settlement has determined the monetary damages caused by these actions. Still, Sonic's damage to the public trust in California has not been directly censured until now. To this end, we find it appropriate to revoke Sonic's CPCN, issued by this Commission in October 1993¹⁷. In revoking the CPCN, we formally discharge the operating authority that the Trustee "surrendered" in the bankruptcy settlement. In addition, any applications for operating authority for a firm which includes any former officers, shareholders or employees of Sonic shall reveal such involvement and the Commission will carefully scrutinize the applications.

¹⁷ D.93-10-060.

Findings of Fact

1. Testimony and documents admitted into evidence at the February 16, 1995 hearing revealed that between July 1994 and January 1995, Sonic ordered 96,694 PIC changes in the long distance service of Californians from AT&T-C, Sprint, MCI or some other long distance carrier to Sonic.

2. From July 1994 through January 1995, approximately 7461 customers had complained to Pacific that their long distance service had been switched to Sonic without their authorization.

3. In 6631 of those instances, Sonic had not provided within forty-five days any verification that the consumer had requested the change.

4. In only 830 of those PIC change disputes did Sonic respond by providing a purported letter of authorization in the form of an endorsement on a \$10.00 check showing a consumer's signature.

5. Sonic used only three methods of switching consumers to itself:

a. Sonic switched consumers' long distance service if they endorsed \$10.00 checks with nearly illegible language that Sonic sent.

b. Sonic switched consumers' long distance service whose billing number Sonic mistakenly associated with one of the \$10.00 checks, even if the person endorsing the check had no connection with the billing number.

c. Sonic switched the long distance service of consumers without anyone having endorsed one of the \$10.00 checks.

9. On April 7, 1995, Sonic filed a petition for relief under Chapter 11, Title 11, United States Code.

10. The bankruptcy court approved a complex final settlement agreement on November 20, 1995 resolving all monetary damages in this matter.

11. The Trustee surrendered Sonic's CPCN in the bankruptcy settlement.

12. Sonic's damage to the public trust in California has not been directly censured until now.

Conclusions of Law

1. This is an enforcement proceeding, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.
2. Sonic's methods of causing residential customers' prescribed long distance service to be switched to Sonic did not comply with PU Code § 2889.5(a).
3. All of the customers whose prescribed long distance service Sonic caused to have switched to Sonic, were switched unlawfully, in violation of PU Code § 2889.5(a).
4. It is appropriate to revoke Sonic's CPCN and formally discharge the operating authority surrendered by the Trustee in the bankruptcy settlement.
5. This proceeding should be closed.
6. Administrative efficiency necessitates that this order should be effective on the date signed.

FINAL ORDER

IT IS ORDERED that:

1. The certificate of public convenience and necessity issued to Sonic Communications Inc., dba SCI Communications (Sonic) in October 1993 in Decision 93-10-060 is hereby revoked and its identification number U-5336-C is cancelled.
2. Any applications for operating authority submitted by a firm which includes among its principals, officers or employees, any former Sonic officers, shareholders or employees shall clearly identify the position they held within Sonic as well as their duties and responsibilities during their tenure at Sonic. Commission staff are directed to carefully scrutinize any such applications.

I.95-02-004 ALJ/JAR/jva

3. Investigation 95-02-004 is closed.

This order is effective today.

Dated July 23, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners