

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 9, 2003

TO: PARTIES OF RECORD IN CASE 02-12-010

This proceeding was filed on December 10, 2002, and is assigned to Commissioner Geoffrey Brown and Administrative Law Judge (ALJ) Bertram Patrick. This is the decision of the Presiding Officer, ALJ Patrick.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 8.2 of the Commission's Rules of Practice and Procedure.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hkr

Attachment

PRESIDING OFFICER'S DECISION (Mailed 9/9/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Skip and Gail Thomson,

Complainants,

vs.

SBC Pacific Bell,

Defendant.

Case 02-12-010
(Filed December 10, 2002)

Skip and Gail Thomson, for themselves,
complainants.

Michael D. Sasser, Attorney at Law, for SBC
California, defendant.

OPINION DENYING REQUESTED RELIEF

I. Summary

Skip and Gail Thomson (Complainants) seek an order from the Commission requiring SBC California¹ to relocate its local loop demarcation point² on their property so that they may change their Dixon exchange service

¹ SBC California was previously SBC Pacific Bell.

² The local loop demarcation point is the point that separates the responsibility for installation and repair of telecommunications facilities between the utility and the customer.

area telephone numbers to Vacaville exchange numbers. The evidence shows that the local loop demarcation point conforms with SBC California's tariffs and construction standards for such installations. The complaint is denied and this proceeding is closed.

II. Procedural Summary

On February 14, 2003, SBC California filed a motion to dismiss the complaint pursuant to Pub. Util. Code § 1709 alleging that Complainants seek to relitigate a claim that was decided by the Commission in Decision (D.) 01-12-031. We do not reach the motion to dismiss since we will address the present complaint on the merits.

An evidentiary hearing on the complaint was held on June 4, 2003, in Vacaville. As agreed by the parties, an opening brief was filed by SBC California on June 25, 2003. Complainants replied on July 21, 2003, and this matter was submitted for decision.

III. The Relevant Facts

A Local Access and Transport Area (LATA) bisects Complainants' property. Half the property is in the Dixon exchange service area and the other half is in the Vacaville exchange service area. The local loop demarcation point is mounted on a redwood post located about 10 feet from the primary residence. The post and primary residence are in the Dixon exchange service area, and Complainants have Dixon exchange telephone numbers. Complainants have a newly constructed detached garage in the Vacaville exchange part of their property. The garage was not an issue in the complaint resolved in D.01-12-031.

IV. Positions of the Parties

Complainants contend that SBC California's local loop demarcation point is a "temporary" installation, and that it should be permanently attached to their

newly constructed detached garage so that they may have Vacaville exchange telephone numbers. Complainants argue that if SBC California had correctly located its LATA (see D.01-12-031), they would have built their house on the Vacaville exchange side of their property so that they would have had Vacaville exchange telephone numbers, and (since most of their calls are to Vacaville numbers) they would have had lower telephone bills.

SBC California responds that the redwood post on which its local loop demarcation point is mounted is not temporary and that the post conforms to standard construction standards for such rural installations. SBC California says that a mistake was made in locating the LATA; however, it does not advise customers on whether they would be better off constructing their residences in one exchange/LATA versus another. SBC California submits that granting Complainants' request would create the prospect that other customers will similarly demand that SBC California move its demarcation point away from their primary residences, causing lack of uniformity, inefficiencies, and additional burdens on the process of installing and maintaining telephone service.

V. Discussion

We deny Complainants' request that SBC California be ordered to relocate its local loop demarcation point to the newly constructed detached garage. We find the current demarcation point is proper. Melissa Stanton, an SBC California engineer with responsibility for demarcation methods, testified that there is no reason to view the installation on Complainants' property as only temporary. According to her, the installation conforms to SBC California's tariff requirements and construction standards for installations in rural areas.

Further, in D.92-01-023, the Commission adopted a Settlement Agreement “for the Unbundling of Intrabuilding Network Cable and Network Terminating Wire, and setting a Statewide Policy for the Location of Demarcation Points.” As witness Stanton noted, diagrams included as part of the Settlement Agreement show the location of the demarcation point in various scenarios. In particular, the diagram for Residence and Business Simple Services shows that the demarcation point for a residence is on or in close proximity to the residence. This diagram is consistent with SBC California’s tariff definition for the local loop demarcation point, which specifies that: “The local loop demarcation point is generally located at the first point of entry to a single or multi-story building and includes the main entrance facility.” Complainants’ detached garage does not meet this requirement.

The Settlement Agreement adopted by the Commission in D.92-01-023 also makes clear that the utility has ultimate authority to decide the location of its demarcation point. The Settlement Agreement specifies, for example:

- “1. For new continuous property, regardless of type of use, the location of the Local Loop Demarcation Point will be at the appropriate main distribution terminal as determined by negotiations between the utility and the property owner. Where no agreement can be reached, the utility will designate the location of the Local Loop Demarcation Point. . . .”
(Attachment A, p. 3, emphasis added.)

Accordingly, the complaint should be denied.

VI. The Presiding Officer’s Decision

The scope of this proceeding is set forth in the complaint and answer. We confirm Administrative Law Judge Bertram D. Patrick as the presiding officer. The presiding officer’s decision has been filed with the Commission and is being

served on all parties pursuant to Pub. Util. Code § 1701.2. Geoffrey F. Brown is the Assigned Commissioner.

Findings of Fact

1. The redwood post on which the local loop demarcation point is mounted is not temporary.
2. The location of the local loop demarcation point is determined by the location of the primary residence.
3. The local loop demarcation point at Complainants' property is correctly located adjacent to the main entrance to Complainants' primary residence.
4. The newly constructed detached garage is not the primary residence on the property.

Conclusion of Law

Complainants' request that SBC California be ordered to relocate its local loop demarcation point on their property should be denied, effective immediately, for the reason that the present installation conforms to SBC California's filed tariffs and standard construction procedures for such installations, and the newly constructed detached garage is not Complainants' primary residence.

O R D E R

IT IS ORDERED that:

1. The complaint of Skip and Gail Thomson against SBC California is denied.
2. Case 02-12-010 is closed.

This order is effective today.

Dated _____, at San Francisco, California.