

Decision 06-06-016 June 15, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Gary J. and M. Kay Curto,

Complainants,

vs.

Bell Atlantic Communications, Inc., doing
business as Verizon Long Distance,

Defendant.

(ECP)
Case 06-01-001
(Filed January 4, 2006)

Gary J. Curto, for Complainants.
Karen S. Turner, for Defendant.

DECISION GRANTING JUDGMENT BY DEFAULT

Summary

Complainants allege that defendant charged them \$1,384.79 for long distance calls which should have been local calls. The complaint was filed January 4, 2006, and our Process Office mailed the complaint and Instruction to Answer by certified mail on January 5, 2006. It was served January 11, 2006. The Instruction to Answer required the answer to be filed by January 25, 2006, and noticed the hearing on the complaint for March 3, 2006. For administrative purposes the hearing was continued to March 29, 2006. On March 28, 2006 defendant filed its motion for leave to file its answer. The motion was heard March 29, 2006. The motion is denied.

The crux of the motion is:

“Ms. Turner is the person designated to prepare responses to formal complaints filed against Verizon Long Distance. Verizon Long Distance receives very few formal complaints (less than one per year) and as a result Ms. Turner has had very little experience with the formal complaint process. The failure to file the Answer to the Complaint in this case on time was primarily due to her failure to fully understand the California Rules of Practice and Procedure and simple oversight. This oversight was neither intentional nor designed. Verizon Long Distance was not trying to achieve some procedural or other advantage by filing late. Verizon Long Distance does not expect anyone to be prejudiced by the late filing and to the extent anyone believes they need time to digest Verizon Long Distance’s Answer to the Complaint, Verizon Long Distance has no objection to delaying the hearing date.” (Motion, p. 3.)

A delay of more than two months to file an answer is not inadvertent failure; it is indifference. Defendant was served January 11, 2006. It is well aware of our Rules of Practice and Procedure. Its explanation does not justify delaying resolution of this matter.

Complainant testified he had dial-up services on his computer. He was given a phone number within his area code which he understood was a local call from his telephone. His first bill for calling that number was \$1,384.79. His average phone bill was about \$30 a month. He called Verizon and was told his dial-up phone number was a toll call. He immediately changed his dial-up number to a local number and asked for an adjustment to his phone bill, which was denied. This complaint followed.

The issue of local toll calls being mistaken for local calls is not new. We have recently considered it in *Higginbotham v. PacBell*, D.02-08-069, where we

ruled for the complainant, as we later did in *Byrnes v. PacBell*, D.02-11-060. In *Byrnes*, we said:

“In Decision (D.) 02-08-069 in Case (C.) 01-03-028 et al., we considered these problems in relation to Pacific Bell and found that in regard to obtaining local toll information ‘. . . contacting the ‘O’ operator increases the possibility of error and is less convenient.” (Finding of Fact 10.) And ‘substituting a less accurate and less convenient means of obtaining local toll pricing information is unreasonable.’ (Finding of Fact 11.) (D.02-08-069 at 14.) We concluded that Pacific Bell had failed to provide just and reasonable service in violation of Pub. Util. Code § 451 (D.02-08-069 at 15) and that it should not be permitted to take advantage of its own wrong. (D.02-08-069 at 10, citing Civil Code § 3517.)

In D.02-08-069 we cancelled the local toll charges in dispute. Based on D.02-08-069, we cancel the \$585.38 charge and institute the more reasonable charge of \$56.94.” (D.02-11-060, *mimeo.* p. 6; see, also, *Ferreri v. Verizon* (D.02-08-066).)

Complainants are entitled to a refund of \$1,384.79.

Assignment of Proceeding

Rachelle Chong is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

O R D E R

IT IS ORDERED that:

1. The Motion of defendant Bell Atlantic Communications, Inc., doing business as Verizon Long Distance is denied.
2. Defendant shall refund to complainants \$1,384.79.

3. Case 06-01-001 is closed.

This order is effective today.

Dated June 15, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners