

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Michael J. Paoletti,

Complainant,

vs.

Pacific Bell Telephone Company d/b/a AT&T  
California,

Defendant.

(ECP)  
Case 06-02-027  
(Filed February 15, 2006)

Michael J. Paoletti, complainant, in pro per.

Sherry Winbush, Case Manager, for Pacific Bell  
Telephone Company d/b/a AT&T California,  
defendant.

**ORDER DISMISSING COMPLAINT**

This matter was heard by Administrative Law Judge (ALJ) Victor D. Ryerson in the Commission’s Courtroom in San Francisco on March 29, 2006. Following the hearing the ALJ granted defendant leave to submit an additional exhibit, and granted complainant leave to submit a responsive exhibit 10 days thereafter. Defendant submitted the additional exhibit as of April 17, and it has been received for the record as Exhibit 2. Complainant submitted a response, which was received for the record as Exhibit 3, and the matter was submitted on April 28, 2006.

Complainant lives in San Leandro and has two telephone lines, one of which is exclusively dedicated to his computer for dial-up internet service. Until

early 2005 his computer modem was programmed with a local number to call Earthlink, his internet service provider (ISP).

Sometime during the spring of 2005, complainant upgraded his dial-up modem and had to change dial-up numbers. The upgrade was done for him by a third party. Either complainant or the third party selected (510) 248-4492, a Fremont number that, unbeknownst to complainant at the time, was a local toll call.

Toll charges began to accrue, and complainant first became aware of dramatically increasing charges when the defendant sent him a Special Advance Toll Bill (which did not require payment at the time) for the period from May 20 through 26, 2005. Charges on his bill to that date were \$561.45. A second Special Advance Toll Bill covering the period from May 20 through June 5, 2005, showed charges of \$1,512.50.

Complainant received his regular phone bill on June 20, 2005, for the amount of \$1,560.06. Under the terms of the bill, full payment was due by July 20, 2005. Complainant contacted the defendant to challenge the amount of the charges and defendant, as a courtesy, offered to reduce his bill by \$481.50. On August 5, 2005, complainant paid defendant \$1,137.90 under protest, and it is this sum that he seeks to recover in this proceeding.

Defendant denies that it has billed complainant incorrectly. There is no dispute that a call from complainant's dedicated computer line to the Earthlink number is a local toll call. However, complainant disputes that he made calls of the length and frequency reflected in his bills, and also questions the methodology used to compute the length of his calls which, for at least five days, resulted in bills for calling time in excess of 1440 minutes (the number of minutes in a day).

There are several reasons for the peculiarities in complainant's telephone bills. First, if an Earthlink customer with dial-up service remains online for a period of 12 hours (720 minutes), Earthlink's program will automatically hang

up the call, and a charge for 720 + 1, or 721 minutes, will be posted to the bill. Second, all calls are billed on the day on which they were initiated, regardless of duration. Therefore, if a call is made during the second half of the day and extends past midnight, the entire call will be billed to the first day in addition to all other calls made on that day. This can result in cumulative billings in excess of 1440 minutes on that day. The charges that appeared on complainant's bills are consistent with this explanation.

Complainant testified that he was living alone at the time the bills were generated, that nobody else had access to his computer, and that he was traveling out of town at times when his telephone bills reflect that he was logged on to the Internet. He denies logging on as frequently as his bills indicate, or for the periods shown for the calls. However, in the absence of any evidence that defendant's equipment malfunctioned, we must presume that call measurements were accurate, and that rating of calls was correct. Some other explanation must account for the calling record reflecting the number and duration of calls that produced complainant's high bills, and we cannot speculate as to what the explanation may be.

We cannot order defendant to make the requested refund, but we perceive defendant's \$481.50 courtesy adjustment as a fair compromise. We also encourage complainant to take the matter up with Earthlink, which might be able to provide further explanation for the fact that complainant's internet connections were continuous even though he intended to hang them up. The fact that a third party selected his new number and reprogrammed his modem when he upgraded his service may also account for the reason why his calls were logged as continuous, when they should not have been.

Given these circumstances, the complaint should be dismissed.

### **Assignment of Proceeding**

Rachelle B. Chong is the Assigned Commissioner and Victor D. Ryerson is the assigned ALJ in this proceeding.

Therefore, **IT IS ORDERED** that:

1. This complaint is dismissed.
2. Case 06-02-027 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.