

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Douglas L. Patton,

Complainant,

vs.

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

Defendant.

(ECP)

Case 06-08-027

(Filed August 28, 2006)

DECISION GRANTING JUDGMENT FOR COMPLAINANT

Summary

Complainant disputes local toll charges for direct dial calls made from complainant's AT&T California telephone number to telephone number 310-510-6065, a local toll call dialup number for AOL, his internet service provider (ISP). Given the local toll number in question (310-510-6065) was directly dialed from the customer's home telephone account, defendant avers it was legally permissible for AT&T California to impose the charges at issue. The amount in dispute is \$353.32 plus taxes, which complainant paid. Both parties say that hearings are not necessary. The pleadings show that a local toll call dialup number was used to access an ISP, which complainant previously had accessed by a local number. Complainant denies having programmed his

computer to use the toll call dial-up number. We grant complainant the relief requested, \$353.32 plus taxes.

This case is the latest in what is now a long line of cases in which an internet dial-up number somehow changes from local to toll, apparently without deliberate act by the customer. We have recognized the unique and difficult situation the customer faces. We have recently considered it in *Higginbotham v. PacBell*, Decision (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 canceled the local toll charges in dispute. Based on D.02-08-069, in D.02-11-060 we canceled the \$585.38 charge. (D.02-11-060, *mimeo.*, p. 6, *see also*, *Ferreri v. Verizon* (D.02-08-066); *Russo v. AT&T California* (D.06-09-033).)

Complainant is entitled to have \$353.32 plus taxes refunded to him.

Assignment of Proceeding

Rachelle B. 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. Defendant shall refund to complainant \$353.32 plus applicable taxes.
2. Case 06-08-027 is closed.

This order is effective today.

Dated _____, at San Francisco, California.