Decision 11-10-037 October 20, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Wallace B. Roberts, Complainant, vs. Cox California Telecom (U5684C) and Pacific Bell Telephone Company dba AT&T California (U1001C), Defendants.	Case 11-01-006 (Filed January 10, 2011)

DECISION DISMISSING THE COMPLAINT OF WALLACE B. ROBERTS

Summary

This decision grants the unopposed motion of Cox California Telecom and unopposed motion of Pacific Bell Telephone Company d/b/a AT&T California to dismiss the complaint filed against them by Wallace B. Roberts, with the conditions set forth herein.

This proceeding is closed.

Background

Mr. Wallace B. Roberts (Complainant) receives his local telephone service from Pacific Bell Telephone Company d/b/a AT&T California (AT&T) and Cox California Telecom (Cox). When making phone calls Mr. Roberts would use the "per-use" Caller ID block feature on his phone, *67. By dialing *67 before the telephone number being called, the customer intends to block his or her number,

on a per call basis, from appearing on the recipient's caller ID display.[1] Mr. Roberts filed an informal complaint with the California Public Utilities Commission (Commission) in late 2010. In January 2011 he filed a formal complaint. In his complaint(s), Mr. Roberts alleged that when he dialed "*67" followed by the telephone number for Cox's local business office, the Cox automatic answering system read back his telephone number; this indicated that his phone number had not been blocked.

In its response[2] to the complaint, AT&T stated that it had tested Mr. Roberts's telephone and found that its (AT&T's) switch was properly activating the privacy indicator on outgoing calls.[3] This was true when *67 was dialed prior to calling Cox's business office. AT&T concluded that its *67 service was and is functioning properly.[4] Neither Mr. Roberts nor Cox has disputed AT&T's assertions concerning the *67 service. On March 28, 2011 AT&T filed a motion to dismiss the complaint.

In its initial response[5] to the complaint Cox asserted that it had investigated Mr. Roberts' informal complaint following an inquiry by the Commission's Consumer Affairs Branch (CAB). Cox asserted that it had performed an investigation, tested its systems and made an "adjustment" so that Mr. Roberts number would not be displayed when he called into Cox's customer

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[1] Pacific Bell Telephone Company's Motion to Dismiss at 1.

[2] Dated February 18, 2011.

[3] Pacific Bell Telephone Company's Motion to Dismiss at 1.

[4] *Id.* at 2.

[5] Dated February 18, 2011.

care center.[6] Cox asserted that matter was resolved in that the Complainant had contacted CAB, CAB had contacted Cox and Cox responded by remedying the problem identified by the Complainant.[7] However, Cox's initial response did not explain or detail the reason why Mr. Roberts' telephone number had been displayed nor did it explain how the problem had been fixed.

On February 25, 2011 the assigned Administrative Law Judge (ALJ) conducted an informal conference call attended by all of the parties. During the conference call the assigned ALJ requested that Cox provide additional information about the circumstances surrounding the problems and solutions to Mr. Roberts' *67 problems.

In a response filed on March 4, 2011 Cox provided more details concerning the cause of the problem with Mr. Roberts' *67 service (and that problem applied to other Cox customers) and what steps had been taken to resolve the problem and to ensure that it would not re-manifest.[8] On March 25, 2011 Cox filed a motion to dismiss the complaint.

In an email sent to all parties dated March 25, 2011, Mr. Roberts stated that he had no objections to Cox's motion to dismiss the complaint. There were no hearings held in this proceeding.

Discussion

Pursuant to Rule 11.2 of the Commission's Rules of Practice and Procedure, a motion to dismiss a proceeding may be filed no later than five days prior to the first day of hearings. AT&T and Cox have both filed motions to

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[6] Answer of Cox California Telecom at 1.

[7] *Id.* at 2.

dismiss. There have been no hearings held in this proceeding; therefore, the motions were timely filed. A motion to dismiss is analogous in several respects to a motion for summary judgment in a civil proceeding. Under the motion to dismiss procedure the Commission determines before hearing whether there are any triable issues as to any material fact.[9]

AT&T has stated that its equipment was not the cause of the problems with Mr. Roberts' *67 service. Mr. Roberts does not dispute this assertion. Cox has acknowledged and explained the problem with Mr. Roberts' (and other customers') *67 service and provided an explanation of how the problem has been resolved. In order to insure the problem does not re-occur Cox should conduct periodic (at least twice a year) tests on its equipment. Mr. Roberts has not objected to Cox's motion to dismiss. There is no longer any disputed or triable issue of material fact before the Commission. The Complaint should be dismissed.

Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner and W. Anthony Colbert is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Complainant receives his local telephone service from AT&T and Cox.
2. Complainant intended to block his number, on a per call basis, from appearing on the recipient's caller ID display, by using *67 before the telephone number being called.

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[8] Cox Response to ALJ Request for additional information at 1-3.

[9] Westcom Long Distance, Inc. v. Pacific Bell et al., Decision 94-04-082.

3. When Complainant or other customers dialed *67 followed by the telephone number for Cox's local business office the Cox automatic answering system read back their telephone number(s).

4. AT&T's equipment was properly activating the privacy indicator on outgoing *67 calls.

5. Cox's phone system displayed the phone number of the Complainant and other customers after *67 was dialed when calling the local Cox business office.

6. Cox's initial response did not explain or detail the reason why the Complainant's and other customers' telephone number(s) had been displayed nor did it explain how the problem had been fixed.

7. Cox provided additional details and information about the circumstances surrounding the problems and solutions to Complainant's *67 problems.

8. Cox and AT&T have each filed a timely motion to dismiss the complaint.

9. Complainant does not oppose the motions to dismiss filed by Cox and AT&T.

10. No hearings were held in the proceeding.

Conclusions of Law

1. Cox should conduct periodic checks of its equipment settings and procedures to insure that *67 system is functioning properly for all of its customers including Complainant.

2. There are no longer any outstanding issues of material fact in this proceeding.

3. The Complaint against Cox and AT&T should be dismissed.

4. The motions for dismissal in this proceeding are uncontested.

5. The decision should be effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. Cox California Telecom shall conduct periodic checks of its equipment settings and procedures to insure that the *67 system is functioning properly for all of its customers.

2. The Complaint against Cox California Telecom and Pacific Bell Telephone Company d/b/a AT&T California is dismissed.

3. This proceeding is closed.

This order is effective today.

Dated October 20, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners