

Decision 02-08-069 August 22, 2002

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

Paul Higginbotham,  vs. Pacific Bell Telephone Company,  Complainant,  Defendant.	Case 01-03-028 (March 7, 2001)
Izu Klepper,  vs. Pacific Bell Telephone Company,  Complainant,  Defendant.	Case 01-05-059 (May 17, 2001)
Asha Goldberg,  vs. Pacific Bell Telephone Company,  Complainant,  Defendant.	Case 01-05-068 (May 28, 2001)
Raymond A. Chamberlin,  vs. Pacific Bell Telephone Company,  Complainant,  Defendant.	Case 01-07-023 (July 16, 2001)
Edward H. Joseph,  vs. Pacific Bell Telephone Company,  Complainant,  Defendant.	Case 01-11-008 (November 5, 2001)

## **DECISION ORDERING PACIFIC BELL TO RESUME PUBLISHING PREFIX INFORMATION**

### **1. Summary**

Until 2000, Pacific Bell Telephone Company (Pacific Bell) published in its local white page directories lists that a customer could use to identify telephone number prefixes that could be called from the customer's telephone number without incurring a toll charge. This decision orders Pacific Bell to resume such publication.

### **2 Background and Procedural History**

The parties do not dispute the basic facts underlying these complaints. Some time prior to 1992, Pacific Bell began publishing lists of local and nearby calling prefixes in white page telephone directories. This information allowed customers to determine whether a call between specific prefixes would incur toll charges. In June 2000, Pacific Bell ceased publishing these lists of prefixes.

These five consolidated complaints, seeking an order that Pacific Bell resume publication, were filed soon afterward,<sup>1</sup> and were consolidated because they involve closely related, material issues of law and fact. On October 19, 2001, a prehearing conference was held. At that time the parties agreed that a workshop led by Telecommunications Division staff might lead to settlement or narrowing of the issues. Such a workshop occurred on November 29, 2001. Subsequently, Pacific Bell responded to data requests from staff.

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<sup>1</sup> Complainant Chamberlin also seeks return of the \$79.55 billed by Pacific Bell for calls to his Internet Service Provider (ISP). Chamberlin alleges that but for the lack of information in the directory he would not have incurred these charges, but would have chosen a local telephone number to access his ISP.

On January 28, 2002, the parties reported that they failed to reach agreement on the issues. Pacific Bell requested evidentiary hearings, and was directed to file declarations supporting that request. Pacific Bell made the required filing, but stated that it had determined that a formal hearing was not required; instead, Pacific Bell attached a declaration by its Technology Development Manager, Linda R. Haynes.

### **3. Pacific Bell's Position**

Per Pacific Bell, the complaints should be dismissed because it had violated no provision of law or rule or order of the Commission. Pacific Bell decided to cease publishing the prefix information<sup>2</sup> because it alleges the information had become unreliable. Pacific Bell stated that the North American Numbering Plan Administrator (NANPA) is responsible for assigning prefix numbers to telephone service providers. Each prefix is in a specified rate center. When an entire 10,000 number prefix is unassigned to end users, a service provider may “rehome” that prefix to a different rate center, which could change what would have been a local call to a toll call.<sup>3</sup> Pacific Bell concluded that it could not maintain accurate and current prefix information on an annual basis for directory publication due to the large number of local carriers now operating in California. Pacific Bell, therefore, ceased publishing the prefix information in the directory

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<sup>2</sup> Pacific Bell had published prefix information for its own prefixes as well as those used by Competitive Local Carriers (CLCs).

<sup>3</sup> The numbers would then be assigned from the “new” rate center. The directories, however, would still show it as being part of the “old” rate center.

and instead included an advisory to customers suggesting that the customer call the “0” operator for specific local and nearby calling information.

In response to data requests from Telecommunications Division staff, Pacific Bell performed prefix list error rate calculations for area codes 510 and 209.<sup>4</sup> Pacific Bell determined that the overall error rate for both area codes was 0.03%, for area code 209 it was 0.16%, and for area code 510 the error rate was 0.0%. Pacific Bell also stated that the error rate for prefixes assigned to Pacific Bell was 0.0%. According to Pacific Bell’s Technology Development Manager, the error rate was less than 1% for the entire state of California. Pacific Bell also emphasized that although the prefix error rate may be small, each prefix error could greatly inconvenience thousands of customers. Pacific Bell concluded that the most effective way to obtain accurate prefix information was to continue the practice of having customers call the “0” operator.

#### **4. Complainants’ Position**

Complainants contend that Pacific Bell has violated Public Utilities Code<sup>5</sup> § 451 by failing to provide reasonable service, §§ 728, 729, and 761 by failing to use reasonable practices with regard to rates charged, and § 786 by failing to annually issue to each residential customer a listing of services and charges. Complainants also cite § 766.5 as requiring the Commission to investigate the billing practices of telephone companies.

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<sup>4</sup> The error rate was calculated by comparing the last published directory information with similar information from one year earlier.

<sup>5</sup> All citations are to the Public Utilities Code unless otherwise indicated.

Complainants vigorously dispute Pacific Bell's assertion that calling the "0" operator is a viable alternative to directory publication of the prefix information. Complainants note that each call to the operator is limited to information about three prefixes. Complainants also assert that the error rate from calls to "0" operators may be far greater than the less than 1% rate from consulting directories, and that there is no means to document information obtained from the operator should there later be a dispute.

Complainants request that the Commission order Pacific Bell to resume publishing the prefix information in the directories. Complainants also seek a Commission order directing Pacific Bell to establish an internet web page with updated prefix information, and Complainant Chamberlin seeks a refund of charges he incurred due to Pacific Bell's deletion of the toll-free local calling information.

#### **5. Informal Complaints Received by the Commission**

Staff of the Commission's Consumer Affairs Branch has received three informal complaints alleging that Pacific Bell "0" operators gave misinformation regarding the toll status of a particular prefix. In one case, to confirm the allegation, the staff person, with a Pacific Bell executive on the line, placed a call to the "0" operator, and received incorrect information. The other two informal complaints similarly alleged that after being unable to find the toll-free prefix information in the directory, the customer contacted the "0" operator but received incorrect information.

In response to these informal complaints, Pacific Bell filed a declaration from its Associate Director – Formal Complaints. The declaration stated that Pacific Bell investigated each of these complaints. In the case of Customer #1, the

customer received a full refund because a Pacific Bell executive participated in a call where erroneous information was provided by the “0” operator.

Customers #2 and #3, however, did not receive a refund because they “could have chosen access numbers . . . [that] would have avoided toll charges.” Pacific Bell did not explain how the fact that a toll-free option was available but not selected by the customer tended to support Pacific Bell’s conclusion that the charges should be “sustained.”<sup>3</sup>

## **6. Discussion**

The Public Utilities Code and Commission precedent require Pacific Bell to make accurate pricing information conveniently available to its customers. Pacific Bell’s decision to substitute a less accurate and less convenient means of obtaining local toll pricing information is unreasonable and violates these requirements. We, therefore, require Pacific Bell to resume publication.

Section 489 requires Pacific Bell to publish all of its tariffs and the rules that affect the tariffs:

The Commission shall, by rule or order, require every public utility other than a common carrier to file with the commission within the time and in the form as the commission designates, and to print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected or enforced, together with all rules, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service.

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<sup>3</sup> On July 16, 2002, complainant Chamberlin filed a motion for acceptance of late-filed comments. The request is granted. In his comments, Chamberlin pointed out that customers may choose a number that is not the closest one to connect to an internet service provider if the closest number is often busy.

Section 451 requires that Pacific Bell provide just and reasonable service to the public:

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

The Commission has previously determined that “Pacific owes its customers a responsibility to provide all available and accurate information as those customers may require to make an intelligent choice between similar services where such a choice exists.” National Communications Center Corp. v. PT&T Co., 3 CPUC2d 672 (1980)(D.91784).

These authorities require that a public utility, such as Pacific Bell, publish in tariffs accurate information regarding the price for all its services, including local toll. However, the prefixes are not in the tariffs and for many years, Pacific Bell provided local and nearby calling information in the customer information section of its white pages directory. Since only rate centers are identified in tariffs but not prefixes, it is appropriate that prefixes be published in white pages directories. In 2000, Pacific Bell ceased this publication due to changes in prefixes used by other local carriers. As a substitute for publication, Pacific Bell required customers to call the “0” operator. As discussed below, we find that Pacific Bell’s decision to cease this publication, and to substitute calls to the operator, was unreasonable.

**Pacific Bell's Prefixes**

Pacific Bell has explained that it does not “rehome” its prefixes. Consequently, absent unprecedented actions by Pacific Bell, the directories will never be wrong with regard to these prefixes. Pacific Bell notes that it does add new prefixes; these prefixes would not be reflected in any previously published directory. Thus, the Pacific Bell prefix list may be incomplete, but has never been wrong as to the listed prefixes.

In contrast, the operator system adds the potential for human error and diminishes convenience. For Pacific Bell prefixes, replacing the published list with the “0” operator approach injects a potential for error into what was an error-free publication. This means of obtaining local calling information is also less convenient because it takes more time. Customers can only get information on three prefixes per call, so finding a toll-free number from a list presented (for example) by one’s internet service provider could take several calls to the operator.

As quoted above, § 489 requires that Pacific Bell make pricing information available to its customers. Historically, one of the means Pacific Bell has used to meet this requirement was via publication in its directories. Pacific Bell has, however, substituted a less accurate and less convenient means of obtaining this pricing information for its own prefixes with no compelling reason.<sup>6</sup> Such a substitution is unreasonable and, accordingly, violates § 451.

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<sup>6</sup> Competitor issues are discussed below.

### **Other Service Provider Prefixes**

Pacific Bell's rationale for omitting all prefix information was that it could not rely on prefix information from other local carriers. As the error rate data show, however, only a miniscule fraction of prefixes are moved so as to render a directory publication erroneous. Thus, over 99% of the prefixes belonging to all local service providers remain unchanged. As noted above, Pacific Bell's substitute method, calls to the "0" operator, has a potential for error and inconvenience that the directory method did not. Addressing the less than 1% of prefixes that do change by imposing unwarranted inaccuracy and inconvenience on customers by omitting all prefixes from the directory is excessive. A better solution would be narrowly focused on the unreliable prefixes.

A solution would be to differentiate the prefixes of other service providers from Pacific Bell's. The prefix list would have the accompanying notation that the list is current as of a specified date but that the information should be confirmed with the "0" operator. This solution is more accurate and convenient than Pacific Bell's "publish nothing" approach.

This solution, and undoubtedly others, could address the problem of prefix rate center changes without imposing unnecessary inaccuracy and inconvenience on Pacific Bell customers. The path chosen by Pacific Bell – refusing to publish all service providers' prefixes, when less than 1% cause the problem – increases customers' exposure to inaccuracy and imposes unnecessary inconvenience. Therefore, we conclude that Pacific Bell acted unreasonably in violation of § 451.

### **Pacific Bell Evaluation of Complaints**

As discussed above, the Commission has received three informal complaints alleging that inaccurate information was obtained from a "0" operator. In the one case where a Pacific Bell executive participated in the call, a

full refund was given. In the other two cases, Pacific Bell “sustained” the charges because toll-free access numbers were available.

In evaluating these customers’ complaints, Pacific Bell draws the inexplicable inference that a fully and accurately informed customer would knowingly choose to pay toll charges when a toll-free option was available. A far more reasonable explanation is that the customer was somehow misinformed as to which access numbers were toll-free.

We find Pacific Bell’s evaluation of these complaints to be unreasonable and in violation of § 451. These customers alleged that they received erroneous information from Pacific Bell. The customers, however, could not document the error due to Pacific Bell’s decision to cease publishing the information. Pacific Bell appears to require that one of its own executives witness the error or the billings will be “sustained.” Having refused to provide customers any documentation of local toll prefixes, Pacific Bell cannot now rely on this lack of documentation to “sustain” its billings. Such an outcome is at odds with the jurisprudential maxim of “no one can take advantage of his or her own wrong,” codified in the Civil Code at § 3517.

### **Competitor Issues**

Pacific Bell stated that it feared that other service providers would object to any prefix publication plan that treated their prefixes differently from Pacific Bell’s. We are unpersuaded that Pacific Bell’s fears necessitate the decision to cease all prefix publication.

To the extent the service providers’ prefix information is as reliable as Pacific Bell’s, *i.e.* the prefix will not be “rehomed” during the effective time of the directory, the information should be published just as Pacific Bell’s information is published. If other service providers’ prefix information is not as reliable as

Pacific Bell's, then sound customer service principles may support publishing the other service providers' information differently. We recognize that there are many possible means to reflect the different levels of reliability of this information; however, getting the maximum accurate information to the customers conveniently is our goal. In consultation with our Telecommunications Division, Pacific Bell is directed to devise a publication plan that achieves our goal.

### **Internet-Based Solutions**

As the complainants have suggested, a means for customers to access Pacific Bell's local pricing information via the internet would be most desirable as the results would be up-to-date and convenient. Pacific Bell stated that it "is reviewing the possibility of providing local calling area prefix information via the internet" but that "significant time and effort will be required" and that the entire project could take "four to six months to complete."

Pacific Bell is subject to an extant obligation to make its tariffs available at a site on the Internet. As of January 1, 2002, Pacific Bell is required to publish all its tariffs at a site on the Internet. We adopted this requirement in D.01-07-026 because we found that meaningful public access to filed tariffs is essential to fulfill our consumer protection duties. We also required that all tariffs "fully and readily disclose information a customer would need in deciding between service options." D.01-07-026, mimeo at p. 5. While that decision does not specifically address the local calling prefixes at issue in this proceeding, the decision does reflect our strong policy favoring publication of tariff and pricing information at a site on the Internet to enable fully informed customer choice. Accordingly, we will require that Pacific Bell implement a plan to publish and regularly update local and nearby prefixes on its website, within 12 months of the effective date of

this order. To keep us informed of progress, Pacific Bell shall file and serve a compliance report on all parties to this proceeding, and the Director of the Telecommunications Division, 90 days after the effective date of this order and every 90 days after the first filing until the site is available.

## **7. Remedies**

Pacific Bell shall resume publication of local and nearby calling prefix information, including prefixes that may be called without incurring toll charges. Pacific Bell shall have 120 days to begin including such local and nearby calling prefix information in its directories scheduled to be published in the established schedule. No later than 18 months after the effective date of this order, Pacific Bell shall complete publication in the white pages of all its directories local and nearby calling prefix information including prefixes that may be called without incurring toll charges, and shall thereafter continue publishing this information until ordered by the Commission to do otherwise. Pacific Bell shall also refund to Complainant Chamberlin \$79.55.

### **Need for Evidentiary Hearings**

Pursuant to Rule 6.6 of the Commission's Rules of Practice and Procedure (Rules), a hearing is not necessary to resolve the issues in this proceeding and, accordingly, Article 2.5 of the Rules ceases to apply, with the exception of the ex parte rules contained therein.

### **Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Pacific Bell filed comments on August 12, 2002, and stated that it should not be subject to a prefix publication requirement in this decision because the Commission was considering a similar but possibly

different rule in R.00-02-004. We have no desire to impose inconsistent rules on Pacific Bell. Here, we seek only to restore the status quo ante; that is, return to the state before Pacific Bell's unreasonable decision to cease publication. We believe that substantive compliance with Ordering Paragraph 1 is fully consistent with the directives contemplated in R.00-02-004.

Pacific Bell also takes issue with the requirement to publish its prefix information on its website. Pacific Bell contends it should not be singled out for this requirement and that, if required to place the information on its website, it should be allowed to recover the costs of implementation and maintenance from its ratepayers. As noted in this decision, all local exchange carriers must publish tariffs on internet site. Given Pacific Bell's policies and practices as discussed throughout this decision, Pacific Bell should also provide customers with accurate and timely prefix information on the internet site.

In its comments Pacific Bell also requested clarification of Finding of Fact 7 and associated text, which has been done. Finally, Pacific Bell sought an explicit statement that its directories need only publish prefix dialing information for its customers. Pacific Bell's directories need only show free prefix information for calls placed from a Pacific Bell prefix. This may, however, include calls to a non-Pacific Bell prefix.

### **Findings of Fact**

1. This is a consolidated proceeding with cases filed between March 7, 2001 and November 5, 2001.
2. A hearing is not necessary to resolve the issues in this proceeding.
3. Sometime prior to 1992 Pacific Bell began publishing local and nearby calling prefixes in telephone directories.

4. In June 2000, Pacific Bell ceased publishing these lists of prefixes and instead included an advisory to customers suggesting that the customer call the “0” operator for specific local and nearby calling information.

5. When a service provider moves a prefix to a different rate center (“rehomes” the prefix), a call to that prefix may change from a local call to a toll call.

6. Pacific Bell determined that the overall prefix list error rate for area code 510 and 209 was 0.03%, for area code 209 it was 0.16%, and for area code 510 the error rate was 0.0%, and confirmed that the overall error rate for the state was less than 1% .

7. Pacific Bell stated that the error rate for prefixes assigned to Pacific Bell in area codes 510 and 209 was 0.0%.

8. Staff of the Commission’s Consumer Affairs Branch have received three informal complaints alleging that Pacific Bell “0” operators gave the customer erroneous information regarding the toll status of a particular prefix.

9. Pacific Bell’s prefix error rate explanation of why it ceased publishing its local and nearby calling information does not apply to its own prefix information nor is it compelling when considering that more than 99% of all service providers’ prefixes are not changed.

10. For Pacific Bell’s prefixes and more than 99% of all service providers’ prefixes that have not been changed, contacting the “0” operator increases the possibility of error and is less convenient.

11. Substituting a less accurate and less convenient means of obtaining local toll pricing information is unreasonable.

12. Refusing to publish all service providers’ prefixes, when less than 1% of the prefixes cause the problem, increases customers’ exposure to inaccuracy and

imposes unnecessary inconvenience, and is, therefore, unreasonable.

13. Publishing local and nearby calling information in the directory is the best currently available means to provide this information to all customers.

14. Publication of local and nearby calling information on a site on the internet is a convenient means to make accurate information available to the public.

15. Pacific Bell should publish other service providers' prefix information in its directory. Information that is subject to change should be published in the means most convenient for customers.

16. But for Pacific Bell's decision to cease publishing the toll free prefix information, Chamberlin would not have incurred \$79.55 in charges.

### **Conclusions of Law**

1. Section 489 requires Pacific Bell to publish all of its tariffs and the rules that affect the tariffs.

2. Section 451 requires that Pacific Bell provide just and reasonable service to the public.

3. Pacific Bell must provide all available and accurate pricing information to its customers.

4. Substituting a less accurate and less convenient means of obtaining local toll pricing information without a compelling reason is unreasonable and violates § 451.

5. Refusing to publish all service providers' prefixes, when less than 1% of the prefixes cause the problem, increases customers' exposure to inaccuracy, imposes unnecessary inconvenience, is unreasonable, and violates § 451.

6. Pacific Bell should credit \$79.55 to Complainant Chamberlin.

7. The public interest and §§ 451 and 489 require that Pacific Bell make accurate local call pricing information conveniently available to customers.

8. The public interest and §§ 451 and 489 require that Pacific Bell resume publication of local and nearby call pricing information in its directories and begin publication on a site on the internet.

9. Because a hearing is not necessary to resolve the issues in this proceeding, Article 2.5 of the Commission's Rules of Practice and Procedure ceases to apply to this proceeding.

10. Because of the public interest in the relief awarded, today's decision should be made effective immediately.

## O R D E R

Therefore, **IT IS ORDERED** that:

1. Pacific Bell Telephone Company (Pacific Bell) shall resume publication in the white pages of its telephone directories of local and nearby calling information, including prefixes that may be called without incurring toll charges. Pacific Bell shall consult with the Commission's Telecommunications Division to devise a plan to accurately and conveniently publish prefixes belonging to other service providers that may be called without charge. No later than 120 days after the effective date of this order, Pacific Bell shall begin including in its newly published directories all such local and nearby calling prefix information. No later than 18 months after the effective date of this order, Pacific Bell shall complete publication in the white pages of all its directories local and nearby calling prefix information including prefixes that may be called without incurring toll charges, and shall thereafter continue publishing this information until ordered by the commission to do otherwise. Pacific Bell shall confer and consult with the Commission's Telecommunications Division throughout the process of resuming publication of this information.

2. Pacific Bell shall implement publication and regular update of local and nearby calling prefix information at a site on the Internet within 12 months of the effective date of this order. Pacific Bell shall file and serve on all parties to this proceeding, and the Director of the Telecommunications Division, compliance reports on its efforts to achieve this goal. Such reports shall be due no later than 90 days after the effective date of this order and every 90 days thereafter until the site is available.

3. Pacific Bell shall credit Raymond A. Chamberlin's account for \$79.55.

4. This proceeding is closed.

This order is effective today.

Dated August 22, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners