

Decision 03-09-026

September 4, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Robert Rycerski,

Complainant

vs.

SBC Pacific Bell,

Defendant

(ECP)

Case 01-12-044

(Filed December 26, 2001)

ORDER MODIFYING DECISION 03-04-014 AND DENYING REHEARING OF DECISION, AS MODIFIED

I. SUMMARY

Decision (D.)03-04-014, issued on April 3, 2003, ordered SBC Pacific Bell (SBC) to cancel a charge of \$314.87 to Complainant Robert Rycerski (hereafter "Complainant") for local toll charges Complainant incurred when accessing his Internet Service Provider (ISP) during the months of July and August 2001. On May 9, 2003, SBC filed an application for rehearing of D.03-04-014, alleging legal error. We have considered all allegations of error in the application. We agree that D.02-08-069 is not dispositive in this case. Further, we agree that the record in this case does not support the finding that the phone company has the technical expertise to fix the problem experienced by Complainant. However, we do not change the result, which is supported by other grounds in the decision. Specifically, we continue to believe that Complainant was credible in his testimony that he did all he could to avoid dialing a local toll number. Therefore, we affirm the relief granted of canceling the charges for Complainant. In this order, we further explain our rationale for canceling the charges and modify D.03-04-014 in response to SBC's arguments.

II. BACKGROUND

Robert Rycerski (Complainant) disputed placing telephone calls shown in his July 2001 and August 2001 telephone bills to a local toll number to access his ISP. During the informal hearing on February 5, 2002, Complainant testified that he received bills from SBC for July and August 2001 in the amount of \$314.87, which were local toll charges incurred when accessing his ISP. Complainant testified that he was billed for dialing (925) 887-3414, a local toll number, but that his computer modem was not programmed to dial that number. Complainant did not deny that the (925) 887-3414 local toll number is a dial up access number for his ISP, however, he testified that his computer modem was programmed to dial (415) 746-1030, a local toll free number for his ISP. Complainant also testified that he triple checked his computer modem and that it was not set to dial the (925) 887-3414 local toll number. Complainant also alleged that SBC should have alerted him to the sudden increase in the number of local toll calls originating from his telephone, similar to what credit card companies do to protect customers from the fraudulent use of their credit cards. Thus, Complainant filed a complaint with this Commission requesting that SBC credit the disputed amount of \$314.87 to his account.

SBC denied this allegation, and opposed the canceling of these charges on the grounds that whether Complainant programmed the number into his computer or whether it was automatically dialed as a result of software provided by his ISP, it is proper to bill Complainant for a local toll number when his computer modem called that particular phone number. Further, SBC explained that its tariffs already provide for monitoring and notification of unusual activity in an account, and that the activity in Complainant's account was not sufficient to trigger a customer notification. Therefore, SBC submitted that, pursuant to its tariffs, Complainant is required to pay SBC for services rendered.

III. DISCUSSION

On April 3, 2003, we issued D.03-04-014, our original decision in this case, which ordered SBC to cancel the local toll charges incurred by Complainant during the months of July and August 2001. In that decision, we relied on a prior decision, D.02-08-069, which also involved customers who complained of local toll charges when calling their ISPs. D.02-08-069 was a consolidated proceeding of cases filed between March 7, 2001 and November 5, 2001. Each complaint had alleged that SBC had ceased publishing information in its local directory white pages indicating which telephone number prefixes are within a toll-free local calling area. The complaints all sought the same remedy – that SBC resume publishing the information in its directories.

In D.02-08-069, we found that, until 2000, SBC had published prefix information in its local directory white pages that enabled customers to distinguish between a local call and a local toll call. We further found that, in 2000, SBC stopped publishing this information in its directories, and instead included an advisory to customers suggesting that the customer dial “O” to reach an operator for local and local toll calling information. We determined that SBC had made it difficult, inconvenient, and impracticable for customers to get accurate information distinguishing local toll calls from toll-free calls. We concluded that SBC’s decision to cease publication of prefix information was unreasonable. We, therefore, ordered SBC to resume publishing prefix information in its local directory white pages so that customers may distinguish between a local call and a local toll call. In addition, we ordered SBC to publish and regularly update local prefix information at a site on the Internet.

In its application for rehearing, SBC alleges that we erred in relying on D.02-08-069 to cancel the charges in this case. SBC points out that unlike the complainants in D.02-08-069, the Complainant in this case did not allege that he tried to obtain the prefix information from the local directory white pages, nor did he allege that SBC’s removal of the directory information in any way impacted his ability to distinguish between a local call and a local toll call. In fact, Complainant alleges that during the period of time wherein the disputed toll calls were made, his computer modem was

always programmed to dial a toll free number. Complainant never mentions the lack of publication in the local white pages directory.

Based on the record, we agree with SBC that, in this case, the existence or non-existence of toll free dialing information in SBC's local directory white pages was not an issue. Therefore, we will not rely on D.02-08-069 to cancel the \$314.87 charge in dispute. By this order, we will modify D.03-04-014 to delete reference to D.02-08-069. However, the relief ordered in D.03-04-014 is supported by other grounds set forth in that decision.

In D.03-04-014, we also found that the Complainant took all reasonable steps to ensure that his dialer software was not programmed to dial the disputed local toll phone number in order to access his ISP. We found that the problem experienced by Complainant is not unique, and acknowledged that this Commission has received numerous similar complaints. We do not modify these findings. We then stated that the responsibility for remedying the situation lies with the phone companies and the ISPs, who have the technical expertise to fix the problem.

SBC contends that the Commission erred in finding that SBC has the technical expertise to fix the problem. Upon review, we agree that such a finding does not follow from the record evidence in this case. In the ordering paragraphs of this Decision, we will also modify D.03-04-014 to remove the finding that SBC has the technical expertise to fix the problem.

However, we do not agree with SBC that the result in this case is in error. As we initially found in D.03-04-014, the evidence is persuasive that the Complainant took all reasonable steps to ensure that his dialer software was not programmed to dial the disputed local toll calls to access his ISP. (D.03-04-014, mimeo, at 3.) We continue to find the Complainant's testimony that he dialed a local number credible. Therefore, we will not hold him responsible for the local toll charges.

As previously mentioned, the problem experienced by Complainant is not unique and the Commission has received numerous similar complaints. Because both the phone companies and the ISPs are the entities that stand to benefit when a customer is

billed for a local toll call instead of a local call when accessing his or her ISP, the Commission believes the responsibility for remedying the situation lies with the phone companies and the ISPs. They are the beneficiaries of the customers' dollars for dial-up Internet access. Individual customers that the Commission finds to be credible in terms of whether they correctly programmed their computers to dial local numbers should not be held responsible for this situation, which appears to be beyond their ability to control or prevent.

Moreover, a telecommunications carrier, like other public utilities, is obliged to provide reasonable service. As demands on the telecommunications system change over time, the carrier must adapt to meet those demands reasonably. SBC has not shown that it has taken reasonable steps to advise customers, such as the Complainant, of unusual toll usage for Internet access purposes or how to prevent such an occurrence. Accordingly, we reject SBC's argument that Complainant should be required to pay for the local toll calls in dispute, where we have found it credible that Complainant took all reasonable steps to avoid dialing a local toll number.

For all of the foregoing reasons, we will modify D.03-04-014 in this case and deny rehearing, as modified.

THEREFORE, IT IS ORDERED that:

1. On page 2, the first four lines of the fourth paragraph are deleted.
2. On page 3, the first five lines beginning at the top of the page are deleted.
3. On page 3, the first full paragraph is deleted.
4. On page 3, the following phrase in the second full paragraph is deleted:

“, and only they have the technical expertise to fix the problem”

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5. SBC's application for rehearing of D.03-04-014, as modified herein, is denied.

6. This proceeding is closed.

This order is effective today.

Dated September 4, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners