

Decision \_\_\_\_\_

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

James Byrnes,

Complainant,

vs.

Pacific Bell Telephone Company,

Defendant.

(ECP)

Case 02-04-045

(Filed April 17, 2002)

James Byrnes, for himself, Complainant.

Sherry Winbush, for Defendant.

**OPINION GRANTING RELIEF**

Complainant alleges that defendant charged him for local toll calls which should have been local calls. Defendant alleges its charges were correct.

Public hearing was held September 20, 2002.

Complainant testified that local toll charges on his August 28, 2001 Pacific Bell Telephone Company (Pacific Bell) statement totaled \$585.38. These charges were the result of direct-dialed calls made from complainant's computer-dedicated telephone line to 619-378-4265, which is a dial-up access number for complainant's internet service provider (ISP) America On-Line; that number is one of three numbers he had chosen to automatically dial from his computer to his ISP.

Complainant contends that he was never billed local toll calls accessing the dial-up number prior to the August 28, 2001 bill statement. Complainant testified that in 2000 he purchased a computer for his office and ordered a Pacific Bell local service line to be connected to his computer. The telephone line (619-230-0333) was for the exclusive use of the computer to dial his ISP. When installing the internet service, his ISP provided three local numbers from which to choose. These numbers are dialed in automatic succession if any prior number was busy. His primary number was 619-664-4265; 619-378-4265 was the next in sequence, and the third number was never used. He testified that all three numbers were designated as local numbers; none was designated as a local toll number. Until July 30, 2001, all his ISP connections were with 619-664-4265. Starting July 30 the connection became 619-378-4265, but he did not know this as it happened automatically.

Complainant did not realize that 619-378-4265 was a local toll number until he got his August 2001 bill with a balance of \$585.38. He called Pacific Bell and was told about the local toll charges for 619-378-4265. He immediately deleted 619-378-4265 from his computer and the problem went away. Complainant requests that Pacific Bell bill him \$56.94 for the month of August, 2001, which is the amount he would have been billed had 619-378-4265 been a local number rather than a local toll number.

Defendant's witness testified that under Pacific Bell's tariffs, complainant is responsible for the charges he incurs. The tariffs provide that applicants for service agree to pay all exchange, toll, and other charges made in accordance with the tariffs. Telephone number 619-378-4265 is a local toll number from complainant's exchange and was a local toll number at the time it was programmed into complainant's computer. Complainant's recourse, if any, is

not with Pacific Bell, but with his ISP. The witness said regardless of whether complainant programmed the number 619-378-4265 into his computer or whether it was automatically dialed as a result of software provided by his ISP, Pacific Bell properly billed complainant for direct-dialed toll calls placed by his modem to that number.

We will grant the relief requested. Complainant testified that the access numbers he programmed into his computer were all local numbers. He did not program a local toll number. He should not be billed for a local toll number.

The facts presented here indicate a serious problem in regard to automatic direct-dialed calls from a computer to an ISP. Because the dial-up is automatic, the user is not alerted to the possibility that the dial-up number is a local toll call rather than a local call. As of the time these calls were made, the user could not get the relevant local/toll information from the telephone book and to call the operator is both cumbersome and error-prone. The user does not realize there is a problem until the monthly statement arrives with a shockingly high telephone bill. In these instances a bill of \$585 in place of an expected \$56 is not unusual. (See, Ferreri v Verizon (D.02-08-066) flat rate service v. \$177; Mitchell v. Pacific Bell (D.00-12-010): flat rate service v. \$742; Chamberlin v. Pacific Bell (D.02-08-069): flat rate service v. \$79.)

Pacific Bell's argument that complainant's recourse is with his ISP has no merit. Pacific Bell has made it difficult, inconvenient, and impracticable to get accurate information distinguishing local calls from local toll calls. This information, which at one time was provided in its telephone books, has been deleted from the telephone books with the notation to call the operator. But, as we have found, calling the operator often results in misinformation.

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 cancelled the local toll charges in dispute. Based on D.02-08-069, we cancel the \$585.38 charge and institute the more reasonable charge of \$56.94. We note that in D.02-08-069, we ordered Pacific Bell to restore the local/toll calling information to Pacific Bell’s telephone books but, owing to publication schedules, the restoration will take a long time, and certainly comes too late for the calls involved in the complaint.

Henry Duque 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. The charge of \$585.38 is cancelled.
2. For the August 28, 2001 statement to complainant, the reasonable charge is \$56.94.
3. The \$585.38 on deposit with the Commission shall be disbursed as follows: \$528.44 to complainant; \$56.94 to defendant.

4. This case is closed.

This order is effective today.

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