

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Telephone Company (U 1001 C), Pacific Bell Internet Services, and SBC Advanced Solutions, Inc. (U 6346 C) to determine whether they have violated the laws, rules and regulations governing the inclusion of charges for products or services on telephone bills.

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PUBLIC UTILITIES COMMISSION
JANUARY 23, 2002
SAN FRANCISCO OFFICE
I.02-01-024

ORDER INSTITUTING INVESTIGATION

I. SUMMARY

We issue this Order Instituting Investigation (OII) to determine whether Pacific Bell Telephone Company (Pacific Bell), SBC Advanced Solutions, Inc. (SBC-ASI), and Pacific Bell Internet Services (Respondents) have complied with Public Utilities Code section 2890¹ which governs the manner in which California consumers are billed for products or services on their telephone bills. CSD staff's investigative report and the accompanying victims' declarations demonstrate that Respondents' practices include the following: (1) billing consumers for DSL and/or Internet services that were neither ordered nor received; (2) billing consumers for DSL and/or Internet services that were ordered but not received; (3) billing consumers for DSL and/or Internet services after the consumer requested termination of the service(s); (4) billing by two Respondents for the same DSL and/or Internet service; and (5) billing consumers for services or products that Respondents promoted as free or as less expensive than the charges placed on the consumers' telephone bills.

¹ All further statutory references are to the California Public Utilities Code unless otherwise noted.

We will also consider whether Pacific Bell has reported consumer cramming² complaints against its affiliates to the Commission's Consumer Services Division (CSD) as required by Commission Decisions (D.) 00-03-020³. Ordering Paragraph 2 of D.00-03-020 as modified by D.00-11-015 adopts rules requiring billing telephone companies to maintain accurate and up-to-date records of all customer complaints made to or received by them for charges for products or services provided by a third party, including corporate affiliates. Ordering Paragraph 2 also requires all billing telephone companies to create summary reports of consumer complaints received each month for each service provider and billing agent and provide the report quarterly to CSD.

II. RESPONDENTS

Pacific Bell Telephone Company: Pacific Bell is a corporation organized and existing under the laws of the state of California. Pacific Bell has authority to operate as a Local Exchange Carrier (LEC), providing local exchange telephone services to California consumers within Pacific Bell's local service area. The assigned utility number for Pacific Bell Telephone Company is U-1001-C.⁴ Pacific Bell is a subsidiary of SBC Communications, Inc. On September 17, 1998, Pacific Bell received approval from the Commission in Resolution T-16191 to provide Asymmetric Digital Subscriber Line (ADSL) services to California consumers.⁵

Pacific Bell Internet Services: Pacific Bell Internet Services is a corporation organized and existing under the laws of the state of California. Pacific Bell Internet Services is a subsidiary of Pacific Bell. Consumers who ordered Pacific Bell's ADSL and chose Pacific Bell Internet Services as their Internet Service Provider (ISP)

² The inclusion of unauthorized charges on a consumer's telephone bill is commonly referred to as "cramming."

³ The Subscriber Complaint Reporting Rules adopted in D.00-03-020 were modified in D.00-11-015.

⁴ Pacific Bell Telephone also has authority from this Commission to operate as a Competitive Local Exchange Carrier in the serving territories of Verizon, California Inc., Citizens Telephone Company and Roseville Telephone Company. (See D.97-09-115 and D.98-01-024.)

⁵ Apparently, Pacific Bell provides only ADSL service but it is sometimes referred to as "DSL" service.

were billed the associated fee for Internet access on their regular monthly Pacific Bell telephone billing statement under the heading “Pacific Bell Internet Services.”

SBC Advanced Solutions, Inc.: SBC-ASI is a Delaware corporation; its business offices are in Houston, Texas. The assigned utility number for SBC-ASI is U-6346-C. SBC-ASI was registered with the California Secretary of State in August 1999. SBC-ASI is a subsidiary of SBC Communications, Inc., and an affiliate of Pacific Bell. On October 15, 1999, SBC-ASI filed A.99-10-009 seeking authority to operate in California as a Non-Dominant Inter Exchange Carrier, and to provide ADSL, DSL, and other advanced services to California customers. A.99-10-009 was later amended to include a request for authority to operate as a Competitive Local Carrier. On May 4, 2000, the Commission approved SBC-ASI’s application in D.00-05-021. In June 2000, provision and billing of DSL was transitioned from Pacific Bell to SBC-ASI. In D.00-05-021, the Commission granted SBC-ASI a certificate of public convenience and necessity (CPCN) to operate as a facilities-based provider of competitive local exchange and intraLATA interexchange services.

III. FACTUAL ALLEGATIONS

A. Cramming Complaints

In March 2001, CSD staff began an investigation of billing complaints from consumers against Pacific Bell, Pacific Bell Internet Services, and SBC-ASI relating to DSL and Internet services. CSD staff has obtained consumer declarations documenting the consumers’ experiences, and copies of these declarations are made public along with this OII, with telephone numbers and account numbers redacted, and will be placed in the Commission’s public formal file for this proceeding⁶

⁶ These include the Investigative Report of Patricia Esule, and Declarations of John Barnes, Robert Blaschka, Stephanie Boyce, Alan Bridgewater, Andrew Bustamonte, Sergio Calderon, Richard Caras, Ronny Y. Chiu, Joyce Christenson, Neal Daneman, Yvonne Davis, Karen Faithorn, Fredric Frye, Leslie Gache, Adele Gardner, Charles Hile, Leslie Kinanahan, Norman Kincl, James Kittock, Leslie Koelsch, Linda Lancaster, Grant J. MacFarlane, Cindy O’Hare, Amy Phillips, Claudia Sperry, Michelle Saputo, Phil Schroeder, Philip Scordelis, Julian Sutherland, Andreas Termin, Michael Voorhees, Kelly J. Wagner, Denise Ward, Josh Wertheimer, Mary R. Zorovic.

Staff's investigative report states that Pacific Bell began providing DSL service to consumers in late 1998⁷. On October 15, 1999, SBC-ASI filed A.99-10-009 seeking authority to operate in California as a Non-Dominant Inter Exchange Carrier, and to provide ADSL, DSL, and other advanced services to California customers. A.99-10-009 was later amended to include a request for authority to operate as a Competitive Local Carrier. According to A.99-10-009, the Federal Communications Commission (FCC) in Decision FCC-99-272 required, as a condition of approving the merger of Ameritech and SBC Communications, that Ameritech and SBC Communications create one or more separate affiliates to provide all advanced services for the combined company. On May 4, 2000, the Commission approved SBC-ASI's application in D.00-05-021. In June 2000, provision and billing of DSL apparently transitioned from Pacific Bell to SBC-ASI.

According to CSD staff, Pacific Bell continues to market DSL as a Pacific Bell product. Print advertisements and Pacific Bell's web site show the service as a Pacific Bell service; consumers may place their order for DSL via Pacific Bell's web site or by calling Pacific Bell. CSD staff state that Pacific Bell print advertisements mailed to consumers do not refer to SBC-ASI as the provider of the service; typically, SBC-ASI is only identified in the fine print.

Staff investigated consumer complaints for 1999, 2000 and 2001. From 1999 to the present, the Commission's Consumer Affairs Branch (CAB) received 753 consumer complaints attributable to Pacific Bell, Pacific Bell Internet Services, and SBC-ASI relating to the inclusion of unauthorized DSL and/or Internet charges on a telephone subscriber's bill. CSD staff has reviewed these 753 consumer complaints, consumer letters and accompanying documents, and consumer declarations, and found the following: 298 of these complaints allege that Respondents billed consumers for DSL

⁷ CSD staff reviewed complaints received by CAB from consumers about unauthorized billings by Pacific Bell and Pacific Bell Internet. It appears that in late 1999 Pacific Bell may have provided DSL service to consumers under the name Pacific Bell Internet. Most consumers did not, or could not, differentiate between the two companies. Therefore, CSD staff considered those billing complaints together.

and/or Internet services that were neither ordered nor received; 174 of these complaints allege that Respondents billed consumers for DSL and/or Internet services that were ordered but not received; 148 of these complaints allege that Respondents billed consumers for DSL and/or Internet services after the consumer requested termination of the service(s); 59 of these complaints allege that Respondents, under different names, billed consumers twice for the same DSL and/or Internet service; and 74 of these complaints allege that Respondents billed consumers for services or products that Respondents promoted as free or as less expensive than the charges placed on the consumers' telephone bills.

The consumer declarations and letters obtained by staff document the consumers' frustration over calling Pacific Bell and inquiring about DSL service, being told it was unavailable in their area, and subsequently receiving a bill for DSL service although they had never ordered it. Consumers also expressed frustration over Respondents' DSL service because after installation it often did not work properly or at all, and thus many consumers cancelled their DSL service, only to be repeatedly billed by Respondents. Consumers also allege being transferred back and forth between Respondents' customer service representatives when inquiring about how to remove the charges from their bill, suffering through long hold times, and being disconnected before reaching a customer service representative.

Some consumers who complained to CAB also submitted written complaint letters to CAB documenting their experiences. CSD staff reviewed 203 written complaints documenting the consumers' experiences relating to cramming attributable to Respondents. These consumer complaint letters are included in an attachment to staff's investigative report. In addition, CSD staff conducted interviews and obtained written declarations from 35 consumers describing their cramming complaints against Respondents.

B. Failure to Report Customer Complaints Against Its Affiliates

Pacific Bell provides billing services for service providers, including its affiliates. D.00-03-020 as modified by D.00-11-015 requires Pacific Bell to submit quarterly reports to CSD indicating the number of cramming complaints it received each month for each service provider and billing agent for that quarter. D.00-03-020 requires that Pacific Bell include its corporate affiliates in its reports. The first quarterly report, for January, February, and March of 2001, was due April 30th, 2001. Staff has received and reviewed the quarterly reports for the first three quarters of 2001, and they are attached to staff's report. The quarterly report for the fourth quarter of 2001 is due January 31st, 2002.

The quarterly reports indicate that for each month of 2001, Pacific Bell reported no complaints against its affiliate SBC-ASI. The quarterly reports submitted by Pacific Bell also show that Pacific Bell adjusted approximately \$24 million to SBC-ASI customers' bills in the year 2001.

CAB staff tracks consumer contacts in its Oracle database, known as the Consumer Complaint Tracking System. According to CSD staff, review of CAB's database shows 283 consumer complaints against SBC-ASI for unauthorized billing for the year 2001 (through August 15, 2001).

Staff alleges that until mid-2000, when SBC-ASI took over provision of DSL services, CAB staff forwarded complaints regarding Pacific Bell's DSL service to Pacific Bell's executive office. CSD staff quote a Pacific Bell web page as follows: "Subject to regulatory approval, Pacific Bell DSL Service is provided by SBC Advanced Solutions, Inc. (SBC-ASI), an affiliate of Pacific Bell Telephone Company. Prior to such approval, Pacific Bell Telephone Company continues to provide such service." SBC-ASI's application was approved in D.00-05-021, and it appears that provision of DSL service was transitioned shortly thereafter. After mid-2000, many SBC-ASI DSL consumer complaints continued to be forwarded to Pacific Bell, and if a consumer had multiple

complaints regarding both Pacific Bell and SBC-ASI, CAB would forward a copy of the complaint to each company.

IV. DISCUSSION

CSD staff's investigative report alleges that Respondents have engaged in the illegal practice of cramming in violation of section 2890 and have failed to report consumer complaints of cramming against Pacific Bell's affiliates, as required by D.00-03-020 and D.00-11-015.

Section 2890 provides that a telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized. (Section 2890(a).⁸) The practice of cramming has become a serious and widespread problem in California, draining time and money from California consumers and businesses. To address the problem, the Legislature enacted Public Utilities Code sections 2889.9 and 2890. Section 2889.9 provides the Commission with jurisdiction over public utilities and non-public utilities that place unauthorized charges on a subscriber's telephone bill. We have exercised that jurisdiction in the past to protect consumers from cramming, and will continue to do so. (*See, e.g., Investigation of USP&C* (April 19, 2001) D.01-04-036.)

According to the allegations, Pacific Bell, Pacific Bell Internet Services, and/or SBC-ASI have billed consumers for DSL and/or Internet services that were never ordered or received, or that were ordered but not received, or continued to bill consumers for DSL and/or Internet services after the consumer canceled the service. CSD staff's allegations also state that two or more Respondents have billed consumers for the same DSL and/or Internet services, and have billed consumers for services or products that were promoted as free or as less expensive than the charges placed on the consumers'

⁸ Until January 2001, Public Utilities Code section 2890(a) permitted only "communications-related" goods and services to be charged on a telephone bill, although it allowed the Commission to permit Billing Telephone Companies to include charges for Commission-specified non-communications-related goods and services on a separate bill within the telephone bill envelope. Effective July 1, 2001, the prohibition in section 2890 on the inclusion of non-communication-related charges on telephone bills expired. In D.01-07-030, we adopted Interim Rules Governing The Inclusion of Non-Communications Related Charges on Telephone Bills.

telephone bills. If true, these allegations demonstrate that Respondents have violated section 2890.

Staff's report also alleges that Pacific Bell has not complied with our complaint reporting rules established pursuant to section 2889.9. (Rules Designed to Deter Slamming, Cramming and Sliding (March 2000) D.00-03-020, as modified by D.00-11-015.) These rules state "Every billing telephone company shall maintain accurate and up-to-date records of all customer complaints made to or received by it for charges for products or services provided by a third party, including corporate affiliates." (D.00-11-015, Attachment A.) The rules define "customer complaints" as "any written or oral communication to a Billing Telephone Company from a person or entity which has been billed for a charge which the person or entity alleges was unauthorized or resulted from false, deceptive, or misleading representations and which was billed, either directly or indirectly, through a billing telephone company." (Ibid.) Ordering Paragraph 2 of D.00-03-020 as modified by D.00-11-015 requires all billing telephone companies and billing agents to create summary reports of consumer complaints received each month for each service provider and billing agent and provide the report quarterly to CSD.

Pacific Bell's quarterly reports for the year 2001 report no complaints against SBC-ASI in any month. Considering the number of unauthorized billing complaints received by CAB against SBC-ASI in 2001, the amount of dollars Pacific Bell adjusted to SBC-ASI customers' bills during that period, and staff's allegation that written cramming complaints against SBC-ASI were forwarded by CAB to Pacific Bell, we find it appropriate to consider whether Pacific Bell failed to maintain accurate and up-to-date records of consumer complaints and failed to report these complaints against its affiliates in its quarterly reports submitted to CSD.

To achieve the goal of deterring cramming, the various participants in the billing chain must be held accountable for their part in the billing process. (See Interim Opinion Adopting Interim Rules Governing the Inclusion of Non-Communications-

Related Charges in Telephone Bills (July 12, 2001) D.01-07-030, mimeo, p. 11.) CSD staff's investigation raises questions about the role Pacific Bell and its affiliates have played in the chain of unauthorized billing of California consumers for DSL and/or Internet services.

If Pacific Bell did not comply with Ordering Paragraph 2 of D.00-03-020 as modified by D.00-11-015, we will consider whether Pacific Bell should be found in violation of section 702. Should we find violations of sections 702 or 2890, or any violations of statutes or Commission orders, decisions, rules or requirements, we will consider whether Respondents should be fined pursuant to sections 2107 and 2108, whether Pacific Bell and/or SBC-ASI should be ordered to pay reparations pursuant to section 734, and whether Pacific Bell and/or SBC-ASI should be ordered to cease and desist from any unlawful operations and practices, or have special conditions and restrictions imposed on them.

Good cause appearing, therefore,

IT IS ORDERED that:

1. An investigation on the Commission's own motion is instituted into the operations, practices and conduct of Pacific Bell Telephone Company (Pacific Bell), Pacific Bell Internet Services (Pacific Bell Internet), and SBC Advanced Solutions, Inc. (SBC-ASI) (Respondents) to determine whether:
 - a) Any or all of the Respondents violated Public Utilities Code section 2890 by placing charges on a subscriber's telephone bill for products or services the purchase of which the subscriber did not authorize;
 - b) Pacific Bell violated Ordering Paragraph 2 of Decision 00-03-020 as modified by D.00-11-015 which requires billing telephone companies to maintain accurate and up-to-date records of all customer complaints made to or received by them for charges for products or services provided by a third party, including corporate affiliates;
 - c) Pacific Bell violated Ordering Paragraph 2 of Decision 00-03-020 as modified by D.00-11-015 which requires billing telephone companies to

create a calendar month summary report of all customer complaints received each month for each service provider and billing agent for charges by a third party, including corporate affiliates, and provide it to the Director of CSD quarterly;

- d) Pacific Bell violated Public Utilities Code section 702 by violating Ordering Paragraph 2 of Decision 00-03-020 as modified by D.00-11-015. Section 702 requires every public utility to obey and comply with every order, decision, direction or rule of the Commission and to do everything necessary or proper to secure the compliance by its agents;
- e) Pacific Bell and/or SBC-ASI should be ordered to pay reparations pursuant to Public Utilities Code section 734;
- f) Any or all of the Respondents should be fined pursuant to Public Utilities Code sections 2107 and 2108 for violations of the Public Utilities Code or other order, decision, rule, direction, demand or requirement of the Commission.

2. To facilitate the completion of this investigation, and consistent with the provisions of Public Utilities Code section 314, Respondents are ordered to preserve until further order of the Commission all California consumer complaints, as defined in Attachment A, Subscriber Complaint Reporting Rules of D.00-11-015.

3. CSD staff's investigative report includes cramming complaint information for Respondents that Pacific Bell has identified as proprietary pursuant to P.U. Code section 583. This information is relevant to the airing of the issues in a full, open regulatory proceeding and is hereby made public.

4. Within 30 days of the date this order is mailed, Respondents shall provide CSD staff with the following information or, if the information is not available, provide CSD staff with an explanation of why it is not available:

a) Any and all records of California “customer complaints” (as defined in D.00-11-015, Attachment A) against Pacific Bell, Pacific Bell Internet, and SBC-ASI, from 1999 to the present. Specifically, any and all records of such “customer complaints” that relate to Pacific Bell, Pacific Bell Internet, and SBC-ASI billing consumers for DSL and/or Internet services that were neither ordered nor received; billing consumers for DSL and/or Internet services that were ordered but not received; billing consumers for DSL and/or Internet services after the consumer requested termination of the service(s); billing consumers twice (under two different names) for the same DSL and/or Internet service; and billing consumers for services or products that Respondents promoted as free or as less expensive than the charges placed on the consumers’ telephone bills.

5. A full hearing on the allegations set forth in this OII and any additional information which staff wishes to advance that is germane to the issues in the proceeding, shall be held on a date to be set at the Commission’s hearing room, 505 Van Ness Avenue, San Francisco.

6. CSD staff shall continue discovery and continue to investigate the operations of Respondents. Any additional information that CSD staff wishes to advance, as part of its direct showing in this proceeding, shall be provided to the Respondents in advance of any hearings in accordance with the schedule directed by the assigned Administrative Law Judge. CSD staff will be subject only to discovery relating to the specific violations alleged in this order.

7. We expect CSD staff to bring additional evidence of any alleged harmful business practices by Respondents to our attention (e.g., new types of violations). CSD staff may propose to amend the OII to add additional respondents or to raise additional issues. Any such proposal should be presented to the Commission in the form of a

motion to amend the OII and should be supported by a CSD staff declaration supporting the additional named respondents and/or proposed amendments.

8. This ordering paragraph suffices for the “preliminary scoping memo” required by Rule 6 (c) of the Commission’s Rules of Practice and Procedure. This proceeding is categorized as an adjudicatory proceeding and will be set for evidentiary hearing. The issues of this proceeding are framed in the above order. A prehearing conference shall be scheduled for the purpose of setting a schedule for this proceeding including dates for the exchange of additional written testimony, determining which of the CSD staff’s witnesses will need to testify, and addressing discovery issues. This order, as to categorization of this proceeding, can be appealed under the procedures in Rule 6.4. Any person filing a response to this order instituting investigation shall state in the response any objections to the order regarding the need for hearings, or issues to be considered. However, objections regarding issues to be considered must be confined to jurisdictional issues that could nullify any eventual Commission decision on the merits of the alleged violations, and not on factual assertions that are the subject of evidentiary hearings.

Service of this order on Respondents will be effectuated by personally serving a copy of the order and CSD staff’s investigative report on the Respondents’ designated agent for service in California:

The Registered Agent for Service of Process in California for Pacific Bell Telephone Company is:

Mary Mello
485 S. Monroe Street
San Jose, CA 95128

The Registered Agent for Service of Process in California for Pacific Bell Internet Service is:

Marilyn Salmon
485 S. Monroe Street
San Jose, CA 95128

The Registered Agent for Service of Process in California for SBC
Advanced Solutions, Inc. is:

CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

A copy of the order and CSD staff's investigative report will be sent by
certified mail directly to:

Pacific Bell
140 New Montgomery Street, Room 1805
San Francisco, CA 94105
Attention: James B. Young

This order is effective today.

Dated January 23, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners