

Decision 03-04-012 April 3, 2003

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

Ellen Shing,

Complainant,

vs.

SBC Pacific Bell,

Defendant.

(ECP)

Case 02-05-015

(Filed May 7, 2002)

**OPINION GRANTING RELIEF**

**1. Summary**

Ellen Shing (Complainant) alleges that SBC Pacific Bell charged her for local toll calls which should have been local calls to access her Internet Service Provider (ISP). SBC Pacific Bell alleges that its charges were correct. In this decision, we grant Complaint's request for relief. Public hearing was held on August 14, 2003.

**2. Positions of the Parties**

Complainant disputes placing calls shown in her November 2001 and December 2001 telephone bills to 415-**233**-4492, a local toll number to access her ISP, Earthlink. She claims that she re-programmed her computer dialer software to dial Earthlink's local number, 415-**240**-4492, on October 12, 2001. She asks SBC

Pacific Bell to credit her account for \$435.42 in billed charges for these disputed calls.

Complainant acknowledges that her dialer software was “by mistake” programmed to dial the toll number and she paid \$171.30 for these calls, as shown in her October 2001 statement. She says that, thereafter, she made sure the toll number was removed from her dialer software. She even called Earthlink’s Technical Department and had them “walk her through” the procedures to ensure that the toll number was “not stuck somewhere in her computer.” She also called SBC Pacific Bell’s telephone operator to ensure that the replacement number 415-~~240~~-4492, was not a toll number. Being an experienced Internet and computer user, and having paid \$171.30 for her mistake, Complainant claims she did everything to ensure that her mistake would not be repeated.

SBC Pacific Bell responds that the toll number, 415-~~233~~- 4492, was directly dialed by Complainant’s computer dialer software during the period in question. According to SBC Pacific Bell, Complainant dialed it either as a primary access number to Earthlink or as an alternate access number to Earthlink if the primary access number failed to connect.

In addition, an expert witness for SBC Pacific Bell testified that the utility did not “re-route” the disputed calls from Earthlink’s local access number to its toll access number. SBC Pacific Bell points out that it has no relationship with Earthlink in this matter and is unaware of alternate numbers to deploy to connect with Earthlink. According to SBC Pacific Bell, the only plausible explanation for this dispute is that Complainant failed to properly program her dialer software to prevent it from dialing the disputed toll number to access her Earthlink. Further, SBC Pacific Bell asserts that the Complainant is the party that selected

the access number for connecting with her ISP. Therefore, SBC Pacific Bell submits that pursuant to its tariffs, Complainant is required to pay SBC Pacific Bell for the services it rendered Complainant.

### **3. Discussion**

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. The user does not realize there is a problem until the monthly statement arrives with a shockingly high telephone bill.

SBC Pacific Bell's argument that Complainant's recourse is with her ISP has no merit. SBC 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 SBC Pacific Bell. We 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 SBC 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. Likewise, based on D.02-08-069, we cancel the \$435.32 charge in dispute here. We note that

in D.02-08-069, we ordered SBC Pacific Bell to restore the local/toll calling information to SBC 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 this complaint.

We are satisfied that the Complainant took all reasonable steps to ensure that her dialer software was not programmed to dial the disputed local toll calls to access her ISP. As Complainant testified, she did everything to ensure that she was not dialing a local toll number to reach her ISP. Moreover, the problem experienced by Complainant is not unique. The Commission has received numerous similar complaints. 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, and only they have the technical expertise to fix the problem. They should not hold customers responsible for this situation. Accordingly, we reject SBC Pacific Bell's argument that Complainant should be required to pay for the toll calls in dispute.

#### **4. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

### **O R D E R**

**IT IS ORDERED** that:

1. The charge of \$435.42 is cancelled.
2. The \$435.42 on deposit with the Commission shall be disbursed to Ellen Shing (Complainant). Complainant deposited checks for \$370.87 and \$64.55, for a total of \$435.42.

3. This case is closed.

This order is effective today.

Dated April 3, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners