

Decision 01-02-017 February 8, 2001

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

AT&T Communications of California, Inc.,

Complainant,

vs.

Pacific Bell Telephone Company,

Defendant.

Case 99-12-029  
(Filed December 21, 1999)

Pacific Bell Telephone Company,

Complainant,

vs.

AT&T Communications of California, Inc.,

Defendant.

Case 00-02-027  
(Filed February 6, 2000)

**INTERIM OPINION**

The issue addressed is whether the Commission should deny complainants' requests for dismissal of their complaints. We also resolve the Petition of Greenlining Institute (GI) and Latino Issues Forum (LIF) to intervene.

On August 7, 2000, AT&T Communications of California, Inc. (AT&T) filed a request to dismiss complaint Case (C.) 99-12-029 pursuant to Decision (D.) 91-02-031 and California Code of Civil Procedure (CCP) Section 581. On

August 7, 2000, Pacific Bell (Pacific) filed a similar request to dismiss C.00-02-027. On September 6, 2000, Administrative Law Judge (ALJ) DeUlloa held a prehearing conference (PHC) to provide AT&T and Pacific an opportunity to explain how the requests for dismissal resolved the harm to the public alleged in the complaints. On September 12, 2000, GL/LIF filed a motion to intervene which AT&T and Pacific both opposed. On October 2, 2000, GI/LIF filed a reply to the oppositions.

### **Requests for Dismissal of Complaints**

Resolution of a request for dismissal of a complaint requires a balancing of a litigant's discretion to control interaction with governmental bodies against the Commission's need to advance the public business. (*Application of Southern California Gas Co.*, 43 CPUC2d 639, (D.92-04-027), (1992).) The Commission should deny requests for dismissal when a case involves the orderly development of the law or issues of substantial public interest or importance. (*Id.*)

In this proceeding, the allegations that AT&T and Pacific slammed thousands of California consumers raise issues of substantial public interest and importance. At the September 6 PHC, AT&T argued that the Commission should not pursue the allegations of slamming because its "a terrible problem to try to figure out ...accurate number of people who actually were slammed." (PHC-2/67.) In response to the ALJ's inquiry about alleged harm to the public, AT&T stated:

"what you are really asking for is a detailed investigation of thousands of claimed slams that Pacific listed in its bills. And that, I think is asking for too much. It's not something that the parties in this two-party complaint proceeding were willing to undertake." (PHC-2/67.)

Allegations of wide-scale slamming by and against major utilities such as Pacific and AT&T raise issues of substantial public interest. Contrary to AT&T's position, a thorough investigation of slamming on the scale alleged in these complaints is not "too much to ask."

Complainants' reliance on D.91-02-031 and CCP Section 581 is misplaced. In D.91-02-031, the Commission did not find that the issues raised by the complaint were of substantial public interest. Although, we sometimes look to the CCP for guidance, the CCP does not bind the Commission.

In addition, at the PHC Pacific and AT&T presented two documents entitled:

- "Principles Governing Pacific Bell Marketing of IntraLATA Service and Handling of LPIC Change Requests" and
- "Principles Governing AT&T Marketing of IntraLATA Toll Service"

Although not called a "settlement," these documents have all the attributes of a settlement. The merits of some of these new practices appear contrary to the public interest.

For instance, the "Principles Governing Pacific Bell Marketing ..." emphasize nondisclosure, the first governing principle states that:

"Pacific will review marketing scripts to eliminate any suggestion to the customer that intraLATA toll service was transferred without authorization or that the customer was slammed."

Under existing practice, Pacific apparently informs a consumer that slamming may have occurred when the consumer's carrier of choice has been changed without the consumer's authorization. In an era when the Commission's efforts include the creation of a consumer's telecommunications bill of rights, Pacific's

and AT&T's efforts to limit the dissemination of information concerning slamming appear contrary to the public interest. The benefit to the public gained from Pacific refraining from educating or informing consumers about slamming is elusive. Nonetheless, such a change to a utility's practices may require Commission approval.

Given these considerations, the complaints should not be dismissed. Instead, we shall direct Pacific and AT&T to submit to the Director of Consumer Services Division (CSD) all records pertaining to their respective allegations contained in their complaints. CSD should review the records, conduct a follow-up investigation, and file a report addressing the issues identified in the Scoping Memo and recommend whether the complaints should be dismissed or remain open for adjudication. CSD should file its recommendation within 180 days of receiving records from complainants.

### **Motion to Intervene**

Intervenor participation may advance inquiry and resolution of the allegations contained in the complaints since AT&T and Pacific have both sought to dismiss the complaints. The motion and petition of GI/LIF to intervene should be granted.

### **ALJ Ruling**

At the September 6 PHC conference, the ALJ ruled that AT&T and Pacific retain for three years (from September 6, 2000) all records pertaining to the allegations contained in the complaints. We affirm the ALJ's ruling so that records are preserved.

### **Extension of Time**

Pub. Util. Code § 1701.2(d) provides that adjudicatory cases shall be resolved within 12 months of initiation unless the Commission makes findings

why that deadline cannot be met and issues an order extending that deadline. In this proceeding, the 12-month deadline for resolving the consolidated complaints is March 21, 2001.<sup>1</sup> Given the parties requests for dismissal and the need for investigation by CSD, this matter has been substantially delayed and the Commission will not be able to meet the statutory 12-month deadline.

### **Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments on the draft decision were filed by AT&T, Pacific and GL/LIF. Reply comments were filed by Pacific and AT&T.

The comments of Pacific and AT&T address a complainant's right to dismiss a complaint and also address the allegations made in the complaints.

The reply comments of AT&T assert that the comments of GL/LIF raise issues beyond the scope of a complaint proceeding. Pacific's reply comments assert that GL/LIF has no standing and therefore the Commission should ignore the comments of GL/LIF. Additionally, Pacific asserts that the comments of GL/LIF add confusion to the legal issue before the Commission.

Pacific asserts that the draft decision errs in denying complainants' request to dismiss because under "California Law – including statutes, judicial opinions, and decisions by the Commission- [it] is clear that before a hearing is commenced, a complainant may dismiss a complaint as of right." Pacific's legal argument contains no reference to any statute that explicitly says that a complainant in a Commission proceeding has an absolute right, prior to hearing,

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<sup>1</sup> AT&T and Pacific filed amended complaints in both proceedings on March 22, 2000. Thus, we begin the 12-month clock on March 22, 2000.

to have a complaint case dismissed. Pacific's legal argument contains no reference to any [non-Commission] judicial opinion that holds that a complainant in a Commission proceeding has an absolute right, prior to hearing, to have a complaint case dismissed.

However, Pacific's legal argument does contain a reference to a single Commission decision for the proposition that a complainant has a right to dismiss a complaint case prior to hearing, *Pacific Bell v. A+ Beepers*. We interpret the case narrowly to reflect Pacific's right in that case under the facts and circumstances of that case. Moreover, we rely on subsequent cases that balance the Commission's duty to advance the public interest against a litigant's interests. The public interest is not served by a mechanical reliance on the stage of proceeding to determine whether the Commission should dismiss a complaint. Instead, we look to the interests implicated by the case. In the instant case, we have found that the public interest outweighs the litigants' interests. Unlike a judicial court deciding the interests of two parties, the Commission must always ensure that its decisions advance the public interest.

AT&T makes arguments similar to Pacific except it places greater emphasis on the fact that no evidentiary hearing has occurred in this proceeding. We clarify that we are more concerned about how the public interest is implicated rather than the particular procedural status of a case. Moreover, we emphasize that we expect no major change in the Commission's practice of granting requests for dismissal. Unlike, the myriad of dismissals the Commission has granted in other complaint cases we emphasize that this case is unique in that it involves two of the largest telecommunications providers in California and the complaints contain allegations that thousands of consumers may have been detrimentally affected.

Both AT&T and Pacific assert that the Commission has misunderstood their positions and both offer explanations. In this proceeding, both AT&T and Pacific shall be afforded an opportunity to address the allegations contained in their complaints. However, out of concern for ratepayers we find it necessary to explore allegations contained in the complaints such as “AT&T has used improper marketing and sales practices to mislead and confuse customers into switching their intraLATA toll service from Pacific to AT&T.”<sup>2</sup> “...Pacific has duped and slammed thousands of California customers that had presubscribed AT&T or another carrier as their primary carrier for intraLATA toll service.”<sup>3</sup> AT&T implicates that as many as 80,000 consumers may be affected.<sup>4</sup> We make no judgment on the allegations, but instead find that sufficient cause exists to direct CSD to explore these allegations.

GL/LIF’s comments observe that GL/LIF has no formal standing in this matter until the Commission issues this decision. In light of Pacific’s standing concern, we do not rely upon GL/LIF comments in issuing this decision. GL/LIF may at a later date raise its concerns by way of motion.

### **Findings of Fact**

1. The complaints raise issues of substantial public interest concerning the practices of Pacific and AT&T.
2. The Commission’s need to advance the public interest outweighs Pacific and AT&T’s discretion to control interaction with governmental bodies.

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<sup>2</sup> Pacific’s amended complaint ¶ 9.

<sup>3</sup> AT&T amended complaint ¶ 2.

<sup>4</sup> AT&T amended complaint ¶ 8.

3. The participation of Greenlining Institute and Latino Issues Forum will advance resolution of this matter.

4. Amended complaints were filed on March 22, 2000.

5. Based upon the 12-month statutory deadline, this proceeding must be resolved on or before March 21, 2001, unless this date is extended.

6. The current schedule allows insufficient time to resolve this proceeding before the 12-month statutory deadline runs.

7. Further investigation by CSD of the allegations contained in the complaints is in the public interest.

8. Complainants' requests for dismissal and the need for investigation by CSD have delayed this proceeding.

### **Conclusions of Law**

1. The Complainants' requests for dismissal should be denied.

2. The motion to intervene of Greenlining Institute and Latino Issues Forum should be granted.

3. The Administrative Law Judge's ruling directing AT&T and Pacific to retain for three years (from September 6, 2000) all records pertaining to the allegations contained in the complaints should be affirmed.

4. The 12-month statutory deadline imposed by Pub. Util. Code § 1701.2(d) should be extended, effective immediately, until further order.

**INTERIM ORDER**

**IT IS ORDERED** that:

1. Complainants' requests to dismiss Case (C.) 99-12-029 and C.00-02-027 are denied.
2. Within 30 days of the effective date of this order, AT&T Communications of California, Inc. (AT&T) and Pacific Bell (Pacific) shall submit to the Director of Consumer Services Division (CSD) all records pertaining to the allegations contained in the complaints.
3. Within 180 days of the effective date of this order, CSD shall file a report addressing the issues identified in the Scoping Memo and recommend whether the complaints should be dismissed. Intervenors may conduct discovery and reply to CSD's recommendations within 30 days.
4. The motion of Greenlining Institute and Latino Issues Forum to intervene is granted.
5. AT&T Communications of California, Inc. and Pacific Bell shall retain for three years (from September 6, 2000) all records pertaining to the allegations contained in the complaint.
6. The 12-month statutory deadline in this proceeding, March 21, 2000, is extended until further order.

This order is effective today.

Dated February 8, 2001, at San Francisco, California.

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