

Decision 02-10-006 October 3, 2002

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)

OPINION ON SLAMMING COMPLAINTS

I. Summary

Pacific Bell (Pacific) shall retain the services of an independent auditor to conduct an “operational audit”¹ and validation² of its current process for tracking and billing Local Primary Interexchange Carrier (LPIC) disputes.

II. Background

AT&T Communications of California, Inc. (AT&T) has alleged that Pacific slammed³ thousands of California customers who had presubscribed AT&T or another carrier as their LPIC for intraLATA⁴ toll service, and that Pacific engaged in unfair business and billing practices to winback customers who had switched their LPIC from Pacific to AT&T.

Pacific, in turn, alleged that AT&T engaged in slamming activities. Pacific based its complaint on numerous verbal and written communications from customers advising Pacific that their intraLATA toll service had been switched to AT&T without the customers’ knowledge or informed consent.

These slamming allegations arose out of billing disputes. Neither of the complainants alleged that any customer ever paid a higher rate than the customer otherwise would have paid as a result of an alleged slam.

¹ As used here, “operational audit” is an evaluation of the effectiveness and efficiency of an entity’s compliance with regulatory policies, plans, procedures, laws, and regulations.

² Validation encompasses a statistical sampling of direct confirmation with LPIC customers.

³ Slamming is a practice in which a consumer’s local, local toll or long-distance service provider is switched without the consumer’s authorization.

⁴ IntraLATA is telecommunications services that originate and end in the same Local Access and Transport Area.

On April 13, 2000, the original assigned Administrative Law Judge (ALJ) consolidated these complaints. Subsequently, on August 7, 2000, AT&T and Pacific filed requests to dismiss, without prejudice, their respective complaints. Those requests resulted from negotiations and discovery showing that some of their allegations were unwarranted and that other problems could be resolved or avoided by prospectively changing their marketing efforts to reduce customer confusion over LPIC switching. These changes are embodied in a set of “Statement of intraLATA Toll Marketing Principles” negotiated by AT&T and Pacific, and in tariff language clarifications.

By Decision (D.) 01-02-017, dated February 8, 2001, we declined to dismiss the complaints. We found the public interest may be better served by resolving the serious slamming allegations in these complaints. We instead required AT&T and Pacific to retain for three years (from September 6, 2000) all records pertaining to the allegations contained in their complaints, and to provide those records to the Director of Consumer Protection and Safety Division (CPSD).⁵

We further directed CPSD to review those records, conduct a follow-up investigation, and file a report on its results within 180 days of receiving the records. That report was to address the issues identified in the Assigned Commissioner’s Scoping Memo and to recommend whether the complaints should be dismissed. The issues included whether either AT&T or Pacific has slammed California consumers, and whether Pacific’s LPIC billing system improperly billed AT&T for unauthorized changes in service provided under

⁵ At the time D.01-02-017 was issued, CPSD was known as the Consumer Services Division.

Pacific's winback program, when in fact the consumer authorized the change. CPSD filed its report on August 7, 2001.⁶

III. Discussion

Although AT&T and Pacific resolved all issues between themselves, we look to the CPSD report to determine what impact, if any, the practices alleged in the complaints had or may have on California consumers.

CPSD randomly selected 128 California consumers to be interviewed from a list of customers whom Pacific identified as having been switched to AT&T without their authorization in 1999.⁷ Of those 128 consumers, CPSD completed 75 interviews. From those completed interviews, CPSD found discrepancies in Pacific's reporting of alleged slamming complaints. Because of those discrepancies, CPSD recommends that this proceeding remain open and that an outside (independent) auditor conduct a detailed study of the accuracy of Pacific's process for tracking and billing LPIC disputes, currently and for 1999-2000. CPSD also found discrepancies in Pacific and AT&T's compliance with the independent third-party verification (TPV) requirement of Pub. Util. Code § 2889.5.

A. Alleged Slamming

Of the 75 random interviews, CPSD found that 25 customers had been switched to AT&T without their authorization, 11 had authorized the switch of

⁶ Parts of that report containing confidential information provided by AT&T and Pacific were submitted under seal. Such information is available upon the execution of a non-disclosure agreement.

⁷ The total number of customers on that list was not indicated.

their local toll service to AT&T, and 39 either couldn't recall switching their service provider or said that no switch had occurred. Those results led CPSD to conclude that AT&T had slammed some customers, Pacific had improperly billed AT&T for customers that switched to AT&T and then returned to Pacific under Pacific's winback program, and that Pacific's coding of complaints in its billing system may be inaccurate.

AT&T and Pacific welcome further investigation into slamming and marketing practices within California. However, neither believes that such an investigation should be included in this complaint proceeding. AT&T recommends that we instead open an investigation into Pacific's process for tracking and billing LPIC disputes. AT&T also suggests we consider whether Pacific should be managing this process at all. Pacific does not believe that an audit would yield useful or reliable information because Pacific has changed and is in the process of further changing its procedures for tracking and billing LPIC disputes. If any such investigation is instituted, Pacific recommends that the practices of all market participants be included in the investigation.

We find from CPSD's report that Pacific's process of tracking and billing 1999 LPIC disputes, at a minimum, contributed to customer confusion. We further find that the public interest requires an independent audit and validation of Pacific's current process. Public interest, in this instance, is confirmation that (1) the switching of customers' LPIC service is done "only" upon specific request of customers, and (2) the confidential LPIC dispute reports being provided by Pacific to CPSD provide accurate information.

We find no benefit in keeping this proceeding open pending the results of an independent audit and verification of the 1999 process, as requested by CPSD. That process, which has already been scrutinized by CPSD, has and is currently

undergoing further changes. Rather, an audit should be conducted on the process currently being used by Pacific and relied on by CPSD. We also decline, for now, to open an investigation into Pacific's process; we may reconsider, however, if the audit results identify issues needing to be addressed in an investigation.

Pacific should retain the services of an independent auditor to audit its current process for tracking and billing LPIC disputes. That auditor should prepare and submit to CPSD a report on the scope and results of the audit. Pacific should make the auditor and all of the auditor's work papers available to CPSD upon request. Pacific should correct any deficiencies discovered by the independent auditor and report any corrective action taken to CPSD.

To the extent that CPSD is not satisfied with the audit results or corrective action taken by Pacific, CPSD should prepare an investigation into the tracking and billing of Pacific's LPIC disputes for our consideration.

In sum, as the complainants have resolved their differences, and as CPSD has not found that AT&T or Pacific intentionally slammed any customer, this proceeding should be closed. However, CPSD did find that Pacific's process in 1999 for tracking and billing LPIC disputes was flawed, so the closing of this proceeding should be conditioned upon an independent audit of Pacific's current process to determine whether Pacific has corrected those flaws.

B. Third-Party Verification

CPSD found that AT&T and Pacific did not "at all times" comply with the independent TPV requirements set forth in Pub. Util. Code § 2889.5(a)(3). That section requires, among other matters, an independent TPV company to confirm a customer's decision to change his or her telephone service provider. Although CPSD did not address the extent or frequency of AT&T and Pacific's

noncompliance with TPV requirements in the public version of its report, more detailed information was included in its sealed version. To the extent that such information is germane to the issues in this order and, if revealed, would not place the utilities at a competitive disadvantage, disclose disaggregated customer information, or disclose specific customer information, such information should be discussed in this order.

The sealed version of CPSD's report disclosed that Pacific used signed letters of authorization in lieu of TPVs for the period May 1999 through October 1999, approximately 180 days, for confirming residential subscribers' decisions to change their local toll telephone service to Pacific. The sealed version also disclosed that Pacific did not always use TPVs when returning residential customers back to Pacific's service as part of its winback program.

Pacific filed an August 28, 2001 response to the report and an October 25, 2001 reply to AT&T's response, but Pacific limited its comments to the proposed audit of its LPIC billing and tracking system. Thus, Pacific did not deny report's finding of noncompliance with the statutory TPV requirements. Pacific's September 6, 2000 statement at the second prehearing conference on this matter clearly concedes such noncompliance. At that time, its attorney stated that "very soon we'll implement a third party verification of slamming allegations so that whatever those numbers are, there is not going to be a dispute" because they will have been verified.⁸

As to AT&T, CPSD did not indicate the extent of noncompliance. Unlike Pacific, AT&T addressed this finding in its response to the CPSD report. AT&T

⁸ RT 49, line 5 to 11.

said that it did provide CPSD with the TPV confirmation date, name of person who performed the confirmation, the service confirmed, and the unique identifier provided by the customer (often a birth date) “for all but a very few of the residential accounts.”⁹ This comports with CPSD’s finding that AT&T did not “at all times” comply with the TPV requirement of Pub. Util. Code § 2889.5.

Although it is reasonable to expect minor noncompliance with TPV, full compliance in 1999 could have properly corrected and conceivably avoided customer confusion and the slamming of the 25 customers CPSD determined were slammed. This lack of compliance with TPV further justifies the need for an audit of Pacific’s process.

IV. Comments on Draft Decision

The draft decision of ALJ Galvin in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure.

AT&T and WorldCom, Inc. filed comments and Greenlining Institute submitted a letter on the ALJ’s draft decision. Pacific Bell filed comments and reply comments. AT&T, Pacific Bell, and Greenlining Institute are parties to the proceeding, as such their comments were carefully considered. Because WorldCom, Inc. is not a party to this proceeding, its comments were not considered. Only minor changes were made to the draft decision. Those changes were made to Finding of Fact Numbers 7 and 8 and are incorporated into this order.

⁹ AT&T’s response, page 10, footnote 4.

IV. Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Michael Galvin is the assigned ALJ in this proceeding.

Findings of Fact

1. The complaints of AT&T and Pacific were consolidated on April 13, 2000.
2. AT&T and Pacific resolved differences between themselves and requested their complaints be dismissed without prejudice. However, we declined to do so based on our concern that the public interest may be implicated by those complaints.
3. CPSD recommends that Pacific retain an outside auditor to provide a detailed report on the accuracy of Pacific's process for tracking and billing LPIC disputes, currently and for 1999-2000.
4. CPSD confirmed from a random sample of LPIC dispute customers identified by Pacific that some of the customers had been slammed in 1999.
5. CPSD found Pacific's process of tracking and billing LPIC disputes flawed.
6. The slamming allegations in this proceeding arose out of billing disputes. Neither of the complainants alleged that any customer ever paid a higher rate than the customer otherwise would have paid as a result of an alleged slam.
7. AT&T and Pacific did not at all times comply with the independent TPV requirements in 1999.
8. From May 1999 through October 1999, Pacific did not use TPV to confirm a residential subscriber's decision to change his or her local toll service when Pacific had a signed letter of authorization from that residential subscriber authorizing such change.
9. AT&T provided TPV on all but a very few of its residential accounts.

Conclusions of Law

1. The CPSD report should remain under seal to the extent that such information, if released, would place the utilities at a competitive disadvantage, disclose disaggregated information, or disclose specific customer information.
2. Pacific's process of tracking and billing 1999 LPIC disputes was flawed and contributed to customer confusion.
3. Public interest requires confirmation that the switching of customers' LPIC service is done only upon specific request of customers and confirmation that confidential LPIC dispute reports being provided by Pacific to CPSD provide accurate information.
4. Public interest requires an independent audit and verification of Pacific's current process of tracking and billing LPIC disputes.
5. To the extent that information placed under seal is germane to the issues before us and, if revealed, would not place the utilities at a competitive disadvantage, disclose disaggregated customer information or disclose specific customer information, such information should be discussed in this order.
6. It is premature to issue an investigation into Pacific's LPIC process.
7. This proceeding should be closed conditioned upon an independent audit of Pacific's current process for tracking and billing LPIC disputes.

O R D E R

IT IS ORDERED that:

1. Pacific Bell (Pacific) shall retain an independent auditor to conduct an operational audit and validation of Pacific's current process for tracking and billing Local Primary Interexchange Carrier (LPIC) disputes. That independent auditor shall, without Pacific oversight, prepare and submit a report on the scope and results

of the audit to the Commission's Consumer Protection and Safety Division (CPSD) within 120 days after the effective date of this order. The independent auditor and all of the auditor's work papers shall be available to CPSD. Pacific shall correct any deficiencies discovered by the independent auditor within 30 days after completion of the audit report, and shall report any corrective action taken to CPSD within 15 days after correction.

2. To the extent that CPSD is not satisfied with the audit results or corrective action required by Ordering Paragraph 1, CPSD will prepare an order instituting investigation into the tracking and billing of Pacific's LPIC disputes for our consideration.

3. All data placed under seal in this proceeding shall remain sealed. The sealed data shall not be made accessible or disclosed to anyone other than Commission staff. However, the sealed data may be disclosed upon the execution of a mutually acceptable nondisclosure agreement or on further order or ruling of the Commission or the Administrative Law Judge then designated as the Law and Motion Judge.

4. Cases 99-12-029 and 00-02-027 are closed. Any failure of Pacific in complying with Ordering Paragraph 1 shall result in the reopening of this proceeding and setting of hearings upon the filing of a petition by CPSD.

This order is effective today.

Dated October 3, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners