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Decision 02-05-051 May 21, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Reginald Thatcher, Complainant, vs. Sprint Communications Company L.P., Defendant.	Case 01-10-033 (Filed October 26, 2001)

Reginald Thatcher, for himself, complainant.
Stephen H. Kukta, Attorney at Law, for Sprint Communications Company L.P., defendant.

O P I N I ON

Summary

Complainant Reginald Thatcher has not shown that Defendant Sprint Communications Company L.P. caused the unauthorized transfer of Thatcher's long distance telephone service. The complaint is dismissed.

Background

Complainant Reginald Thatcher alleges that Sprint Communications Company L.P. had his residential long distance telephone service transferred to

itself without authorization and against his wishes.[1] Sprint acknowledges that it assumed responsibility for providing Thatcher's long distance telephone service, but denies that it initiated the transfer. Thatcher asks the Commission to penalize Sprint for its alleged action.

The assigned Administrative Law Judge held a prehearing conference on February 22, 2002, and one day of evidentiary hearing on March 22, 2002. The proceeding was submitted on closing argument at the conclusion of the evidentiary hearing.

The basic facts underlying the complaint are not in dispute. Prior to November 1999, Thatcher subscribed to both local and long distance service from MCI[2] at his home in Newport Beach. He moved to a new address in the building next door and attempted to have his telephone service transferred effective November 4, 1999 without change of carrier. The switch did not go smoothly and Thatcher had to hire a contractor to do the installation. His MCI local service was eventually activated at the new address on November 16, but he still had no long distance service. Thereafter, with great difficulty Thatcher continued his efforts to get MCI to restore his MCI long distance service, and at some point on or shortly after January 7, 2000, it was finally restored, but with Sprint as the presubscribed interexchange carrier. Thatcher first learned that his service was being provided by Sprint rather than MCI when on or about January 22 he

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[1] The unauthorized change of a telephone customer's preferred carrier is commonly referred to as "slamming."

[2] The parties did not specify the legal names of Thatcher's preferred local and long distance providers, but they were affiliates variously referred to as MCI, MCI Metro, MCI WorldCom and WorldCom. Those are sufficiently definitive for our purposes in this proceeding.

received a letter welcoming him to Sprint. Within the next two days, Thatcher contacted Sprint, Sprint canceled his new account, and MCI initiated a transfer to MCI's long distance service. Thatcher incurred no long distance charges with Sprint during this period, and MCI later gave him a credit for any switching fees he might have paid.

In contrast to the relatively straightforward facts above, there is considerable doubt and contradiction in the evidence tendered to show *who* initiated the assignment of Sprint as the presubscribed long distance carrier, and *why*. Thatcher and Sprint both acknowledge these inconsistencies, both engage in a certain amount of speculation to help interpret the evidence, and neither party maintains that its interpretation is indisputably correct.

Thatcher's Showing

When Thatcher learned that Sprint was his presubscribed carrier, he first called Sprint to complain and was told that Pacific Bell, the ILEC (incumbent local exchange carrier), had signed him up with Sprint; when he contacted Pacific Bell, it told him to contact his local service provider, MCI, which then told him he had been slammed by Sprint. Thatcher thereupon submitted an informal complaint against Sprint to our Consumer Affairs Branch (CAB). Sprint's written response to the informal complaint again stated that Pacific Bell had signed him up. Sprint now acknowledges that was an error, most likely made because it failed to check to find out that Thatcher is part of a very small minority of customers who subscribe to local service from CLCs (competitive local carriers) in Pacific Bell's territory.

In light of the inconsistencies among the carriers' statements to him, Thatcher continued to pursue the informal complaint with CAB as a matter of principle. In August 2000, he received a letter from MCI saying that it had initiated the change to Sprint because Sprint had told MCI it had a letter of

authorization for the switch. Thatcher was never able to obtain a copy of the purported letter of authorization MCI referred to, and CAB closed the informal complaint file in December 2000. Thatcher wrote to CAB again in March 2001, pointing out that the Commission had never investigated the inconsistencies in the carriers' responses, and in October 2001 filed this formal complaint. Thatcher's evidence consisted primarily of his testimony, his notes, and correspondence with CAB, Sprint, and MCI.

Sprint's Showing

Sprint acknowledges it erred in initially attributing the switch request to Pacific Bell as the ILEC, but still maintains that it was initiated by Thatcher's local carrier. The only difference is that today Sprint realizes the local carrier is a CLC, MCI Metro, not Pacific Bell.

MCI Metro and Sprint participate in an intercarrier electronic transactions system used for notifying one another of changes in customers' account status, including PIC (presubscribed interexchange carrier) changes of the type that affected Thatcher's service. On January 7, 2000 MCI Metro sent an electronic Customer Account Record Exchange (CARE) message to Sprint indicating that MCI Metro was assigning or changing[3] Thatcher's PIC to Sprint. According to the numeric codes in the CARE message, that PIC assignment or change was being made by the local carrier at the customer's request. Sprint makes two points here: (1) Only the local carrier can make the physical changes necessary to give effect to a PIC change, so this CARE message was merely notifying Sprint

[3] Although for simplicity we refer to this as a PIC change, the evidence in this instance does not indicate whether it was a change of PIC, or an initial PIC assignment, and neither Thatcher nor Sprint expressed a firm belief one way or the other.

that MCI Metro was in the process of doing so; and (2) Had the long distance provider sent a CARE PIC change request to the local carrier, that would have been evidenced by two CARE messages with other sets of numeric codes, one an outgoing request message and the second a returning confirmation. To support its contention that it had no hand in initiating Thatcher's PIC change, Sprint asked MCI Metro to confirm that there were no other CARE records exchanged between the two carriers relating to Thatcher's telephone number during the period in question, and MCI did so.

Sprint cannot explain why MCI would state in its August 2000 letter to Thatcher that Sprint had claimed to have a letter of authorization for the switch, and neither party introduced further evidence on that point. MCI Metro did not attend or participate in any manner in the proceeding -- its actions were related entirely through testimony and documents provided by Thatcher and Sprint.

Discussion

The Assigned Commissioner's Scoping Ruling defined the issues in this proceeding as:

> 1. Did Sprint violate Public Utilities Code Section 2889.5, or any other provision of the Code, with respect to telephone service provided to Reginald Thatcher?
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> 2. If so, what sanctions, if any, should the Commission impose?

Section[4] 2889.5 provides in pertinent part:

> (a) No telephone corporation… shall make any change or authorize a different telephone corporation to make any change in the provider of any telephone service for which competition

[4] Statutory references are to the Public Utilities Code.

has been authorized of a telephone subscriber until all of the following steps have been completed:

(1) The telephone corporation, its representatives or agents shall thoroughly inform the subscriber of the nature and extent of the service being offered.

(2) The telephone corporation, its representatives or agents shall specifically establish whether the subscriber intends to make any change in his or her telephone service provider, and explain any charges associated with that change.

(3) For sales of residential service, the subscriber's decision to change his or her telephone service provider shall be confirmed by an independent third-party verification company….

* * *

(D) [A] service provider shall not be required to comply with these provisions when the customer directly calls the local service provider to make changes in service providers. […] [A] local exchange service provider shall not be required to perform any verification requirements for any changes solicited by another telephone corporation.

* * *

(b) If a residential or business subscriber that has not signed an authorization notifies the telephone corporation within 90 days that he or she does not wish to change telephone corporations, the subscriber shall be switched back to his or her former telephone corporation at the expense of the telephone corporation that initiated the change.

* * *

(e) Any telephone corporation that violates the verification procedures described in this section shall be liable to the telephone corporation previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation.

> (f) In addition to the liability described in subdivision (e), any telephone corporation that violates the verification procedures described in this section shall credit to a subscriber any charges paid by the subscriber in excess of the amount that the subscriber would have been obligated to pay had the subscriber's telephone service not been changed….

Thatcher's evidence consists almost entirely of MCI's allegations that Sprint slammed him. His testimony at evidentiary hearing that MCI told him he had been slammed by Sprint is hearsay. And, although that testimony was consistent with MCI's August 2000 followup letter, the MCI letter was itself hearsay inasmuch as Thatcher offered it as proof of Sprint's culpability for having falsely claimed to have a letter of authorization. No witness from MCI was ever called to support the allegation.

For its part, Sprint did manage to produce credible evidence supporting its contention that MCI, not Sprint, had initiated the January PIC change: the CARE message; the confirmation document (also hearsay) from MCI that there were no other relevant transactions; and Sprint's expert witness testimony. In his complaint, in his direct testimony, and on cross examination Thatcher stressed what he characterized as his extreme difficulty in communicating with MCI to arrange to have his long distance service restored after November 16, and the strains that developed between him and MCI's customer service representatives and supervisors as some two months went by without that service. Given that climate, it is credible that these miscommunications may have extended to MCI's generating a CARE request initiating Sprint as the long distance carrier.

As the complainant in this proceeding, Thatcher bears the burden of proving through a preponderance of the evidence that Sprint violated Section 2889.5 by making a change, or authorizing MCI to make a change, in the provider of his long distance telephone service. He has not done so.

Thus, it appears that Sprint did not violate Section 2889.5, subsections (a)(1) and (a)(2), and was not required to pursue third-party verification by application of subsection (a)(3)(D). Subsections 2889.5(b), (e), and (f) either did not apply or their purposes were met because: Thatcher was switched promptly to his preferred provider when he complained; there were no long distance charges for services rendered during the period in question; and he was reimbursed for any switching charges he may have incurred.

Findings of Fact

1. After moving in November 2000, Thatcher experienced severe difficulty in dealing with his local carrier to have long distance service reestablished.

2. When Thatcher discovered that he once again had access to long distance service, it had been established with, or changed to, a presubscribed carrier not of his choice.

3. Sprint's erroneous initial explanations to Thatcher and CAB that Pacific Bell had initiated Thatcher's presubscription to Sprint were based on Sprint's failure to ascertain that Thatcher's local exchange service was provided by competitive local carrier MCI Metro rather than the ILEC, Pacific Bell.

4. Sprint has produced credible evidence to show that it was not responsible for initiating whatever service order established it as Thatcher's long distance presubscribed carrier.

5. When Thatcher complained, he was switched to the presubscribed carrier of his choice, and was later reimbursed for any switching charges he may have incurred.

6. Thatcher was not billed for, and did not pay for, any long distance service rendered during the period when Sprint was his presubscribed carrier.

Conclusions of Law

1. Sprint has not been shown to have violated Section 2889.5 or any other provision of the Public Utilities Code, or any Commission rule, order, or tariff with respect to telephone service provided to Thatcher.

2. Thatcher does not seek, nor is he due, reparations for having Sprint as his presubscribed long distance carrier.

3. Thatcher's request that Sprint be penalized should be denied and the complaint dismissed.

4. For administrative efficiency, this order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The complaint in Case 01-10-033 is dismissed.
2. This proceeding is closed.

This order is effective today.

Dated May 21, 2002, at San Francisco, California.