Decision **DRAFT DECISION OF ALJ WALKER** **(Mailed 6/17/2002)**

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

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| Gerald W. Utterback,<br><br>Complainant,<br><br>vs.<br><br>Pacific Bell Telephone Company.<br><br>Defendant. | Case 02-01-039<br>(Filed January 15, 2002) |

# OPINION DISMISSING COMPLAINT

## 1. Summary

Complainant objects to a change in his telephone number from the Vacaville Exchange to the Dixon Exchange and asks that the Commission consider moving the Local Access and Transport Area (LATA) boundary between the two exchanges. Pacific Bell Telephone Company (Pacific) moves to dismiss on grounds that the Commission has decided the same issues in a case brought by two of complainant's neighbors. (Decision (D.) 01-12-031.) Complainant has declined an invitation to respond to the motion to dismiss. This decision finds that the Commission has no choice but to dismiss. The complaint is barred by Pub. Util. Code § 1709 (collateral actions or proceedings) and it fails to state a cause of action against Pacific.

## 2. Motion to Dismiss

Pacific filed its motion to dismiss on March 8, 2002, on grounds that the complaint is a collateral proceeding barred by an earlier decision of the Commission, and on grounds that the complaint fails to allege any act or thing done or omitted to be done in violation of any provision of law or any order or rule of the Commission. Under Rule 45 of the Rules of Practice and Procedure, complainant had 15 days to respond to the motion. When no response was received, the administrative law judge (ALJ) issued a ruling waiving the 15-day rule and inviting the complainant to file a response to the motion to dismiss on or before April 15, 2002. Complainant has not filed a response to the motion to dismiss.

## 3. Discussion

The earlier decision dealing with the same issues is D.01-12-031. That case considered the complaint of Skip and Gail Thomson, who reside in Pacific's Dixon Exchange, which is in the Sacramento LATA. Pacific had incorrectly assigned the Thomsons telephone numbers from Pacific's Vacaville Exchange, which is part of the San Francisco LATA. The Thomsons objected to Pacific's intention to correct the error by changing the Thomsons' Vacaville Exchange telephone numbers to Dixon Exchange telephone numbers. The Thomsons asked that the LATA boundaries be redrawn so that they could retain their Vacaville Exchange telephone numbers.

The Commission dismissed the Thomsons' complaint, finding that they had failed to show a violation of law or order or rule of the Commission. The Commission noted that Pacific is only permitted to provide telephone service within a LATA (intraLATA service), and is not permitted to carry traffic across LATA boundaries (interLATA service). InterLATA traffic may be carried only

by interexchange carriers. Moreover, the Commission noted that in accordance with D.98-06-075, the Commission in 1998 ceased accepting Extended Area Service (EAS) complaints that formed the basis for any request by Pacific to the Federal Communications Commission to change a LATA boundary.

D.01-12-031 noted that 18 customers in the Dixon Exchange other than the Thomsons had incorrectly been given Vacaville Exchange telephone numbers. Complainant Gerald W. Utterback is one of those customers, and he participated in a status conference that led to D.01-12-031. Like the Thomsons, complainant objects to the change in his telephone number and asks the Commission to consider moving the LATA boundary.

In D.01-12-031, the Commission found that there were no disputed issues of fact, and it determined the case as a matter of law. Thus, the decision is dispositive of the issues in the instant complaint, and complainant's attempt to now relitigate those issues is barred by Pub. Util. Code § 1709. Section 1709 states:

> In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.

D.01-12-031 became a final decision of the Commission on December 19, 2001. The Thomsons' petition to modify the decision was denied in D.02-05-002, dated May 2, 2002. Under the principles of collateral estoppel, complainant my not relitigate in this proceeding the same issues that were litigated and determined in the prior Thomson proceeding. (Clark v. Lesher (1956) 46 Cal.2d 874, 880.)

Finally, the complaint does not set forth any act or thing done or omitted to be done claimed to be in violation of any provision of law or any order or rule of the Commission, as required by Pub. Util. Code § 1702. A complaint will be

dismissed if it does not allege that the utility violated a provision of law or order of the Commission. (L.J.T. Industries, Inc. and R. H. Mitman v. Pacific Telephone Company (1976) 80 CPUC 836.

It is unfortunate that Pacific made the mistake of assigning a Vacaville Exchange number to complainant and others when they reside in the Dixon Exchange. Once the mistake became known, however, Pacific was required to correct the error if it was to comply with the prohibition on providing interLATA service. Pacific states that it is making the changes in telephone numbers without charge and is providing number referrals for six months at no cost to the subscribers. Our order today confirms that the change in telephone service will be made without cost to complainant.

The scope of this proceeding is set forth in the complaint and answer. We confirm ALJ Walker as the presiding officer. The presiding officer's decision has been filed with the Commission and is being served on all parties pursuant to Pub. Util. Code § 1701.2.

## 4. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were received on _____.

## Findings of Fact

1. Complainant is located in the Dixon LATA Exchange.

2. By error, Pacific assigned complainant a Vacaville Exchange telephone number.

3. Complainant is one of 19 customers in the Dixon Exchange who had incorrectly been given Vacaville Exchange telephone numbers.

4. Two of complainant's neighbors filed a complaint against Pacific seeking to have the LATA boundaries moved so that they could retain their Vacaville Exchange telephone number.

5. The Commission in D.01-12-031 dismissed the complaint filed by complainant's neighbors on grounds that it failed to state a cause of action as required by Pub. Util. Code § 1702.

6. The complaint in this proceeding raises the same objection and seeks the same relief as did the complaint in D.01-12-031.

## Conclusions of Law

1. The complaint in this proceeding is barred by Pub. Util. Code § 1709.

2. Complainant has not alleged that Pacific's actions violate the law or any rule or order of this Commission, as required by Pub. Util. Code § 1702.

3. The complaint should be dismissed.

## O R D E R

**IT IS ORDERED** that:

1. The complaint of Gerald W. Utterback against Pacific Bell Telephone Company (Pacific) is dismissed.

2. Pacific will make its change to complainant's telephone service and will provide number referral for six months at no cost to complainant.

3. Case 02-01-039 is closed.

This order is effective today.

Dated _____, at San Francisco, California.