Decision _____

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

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| Frances Ann Myers,<br><br>Complainant,<br><br>vs.<br><br>Pacific Bell Telephone Company, dba SBC California,<br><br>Defendant. | (ECP)<br>Case 04-10-016<br>(Petition for Modification<br>Filed May 17, 2005) |

## OPINION DENYING THE PETITION FOR MODIFICATION OF DECISION 05-01-045 BY FRANCES ANN MYERS

In her original complaint, complainant alleged various problems with her voice mail. Those problems ranged from receiving incomplete messages, receiving messages that were hang-ups, delays in receiving messages, and unauthorized access to complainant's voice mail. Complainant sought improvement in her phone service. Public hearing was held on December 3, 2004.

On January 27, 2005, we issued Decision 05-01-045 that denied the relief requested by complainant. The decision determined that "defendant has not caused complainant's problems with her telephone service." Time for filing an application for rehearing expired on February 28, 2005.

Rule 47 of the Commission's Rules of Practice and Procedure (Rules) states in pertinent part:

(a) A petition for modification asks the Commission to make changes to the text of an issued decision. Filing a petition for modification does not stay the effectiveness of the decision or preserve the party's appellate rights; an application of rehearing (see Article 21) is the vehicle to request rehearing and preserve a party's appellate rights.

(b) A petition for modification must concisely state the justification for the requested relief and must propose specific working to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed (Rule 73). Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

The petition, filed on May 17, 2005, does not seek to make changes to the text of the decision, nor does the petition concisely state any justification for the requested relief in this proceeding, which includes, among other things, "recompense for damages." Aside from the fact that the Commission is without authority to award monetary damages,[1] this petition is nothing more than a thinly disguised application for rehearing that consists of allegations of negligence by SBC California. A petition for modification that is no more than an untimely application for rehearing will be dismissed. (Northern California Association v. CPUC (1964) 61 Cal 2d 126.) Complainant has failed to satisfy the basic requirements of Rule 47(a) and Rule 47(b). Where complainant has failed to set forth the specific changes in the decision and has failed to state concisely the justification for the requested relief or modification, the Commission should dismiss the petition with prejudice.

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[1] See e.g., *Joseph Canter* v. *Southern California Edison Company*, 73 CPUC 2d 410, 413 (1997); *Center* v. *Digital Cellular, Inc.*, 69 CPUC 2d 649, 652 (1996); *Yeung* v. *Pacific*, 67 CPUC 2d 634, 639-640 (1996); *Mak* v. *Pacific Tel. & Tel., Co.*, 72 CPUC 735, 738 (1971).

Michael R. Peevey is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

## O R D E R

**IT IS ORDERED** that:

1. The petition for modification is dismissed.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.