

Mike Knell, dba JTR Publishing,

Complainant,

vs.

Pacific Bell and AT&T,

Defendants.

Case No. 01-07-034

RESPONSE OF PACIFIC BELL TELEPHONE COMPANY (U 1001 C)  
TO COMPLAINANT'S APPLICATION FOR REHEARING

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October 14, 2003

Pursuant to Rule 86.2 of the California Public Utilities Commission's ("Commission's") Rules of Practice and Procedure, Pacific Bell Telephone Company, doing business as SBC California ("SBC California" or "Pacific"), hereby responds to the Application for Rehearing filed by Mike Knell d/b/a JTR Publishing ("Complainant").

## I. INTRODUCTION

Complainant claims that there were several errors in the Decision (D.03-08-025) which support his Application for Rehearing ("App. For Reh'g."). First, he asserts that the Decision "appears to have been based on false and misleading statements made by Pacific."<sup>1</sup> Second, he claims that the Decision "ignored that Rule 11 was imposed upon me because I filed an informal complaint."<sup>2</sup> The third and fourth points, which SBC California does not address, relate to the alleged publication of Complainant's listing information by AT&T.<sup>3</sup>

Applications for Rehearing must specifically set forth the grounds on which a decision is unlawful or erroneous.<sup>4</sup> The Commission itself has stated that its findings "are not open to attack for insufficiency if they are supported by *any reasonable construction of the evidence*."<sup>5</sup> Moreover, a Commission decision that finds in favor of one party does not amount to error merely because another party disagrees with the Commission's interpretation of the evidence.<sup>6</sup>

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<sup>1</sup> App. for Reh'g., p. 1-1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Rule 86 of the California Public Utilities Commission's ("Commission's") Rules of Practice and Procedure.

<sup>5</sup> D.00-11-042, *mimeo*, p. 7.

<sup>6</sup> *Id.*, *mimeo*, at 8.

As set forth below, Complainant's assertions of error are not errors at all; they merely reflect his dissatisfaction with the Decision's conclusions and results. Additionally, Complainant's Application sets forth nearly all the same arguments that he raised in his testimony, pleadings, and his Appeal of the Presiding Officer's Decision -- arguments and conclusions that SBC California's testimony and pleadings refuted and the Commission considered and rejected.

In any event, all of Complainant's grievances as to SBC California that are addressed in Complainant's Application for Rehearing concern incidents that occurred prior to August 1999 (Complainant has not been SBC California's customer since April 1997 for any of the telephone accounts at issue in his Application for Rehearing). As such, those claims are barred by the statute of limitations and his Application for Rehearing must be denied.

## **II. DISCUSSION**

### **A. Complainant's Application for Rehearing Should be Denied because Complainant's Claims as to SBC California are Barred by the Statute of Limitations.**

In his Application for Rehearing, Complainant requests reversal of the Commission's Decision regarding his service quality claims on the basis of his interpretation of the evidence and his disagreement with the Commission's findings. For example, Complainant claims that the Commission erred in failing to address SBC California's alleged "use of defective cable pairs as a negligent cause of the ongoing service problems," the alleged existence of "documents [that] prove that trouble was found on both of [Complainant's] business phone lines on 08/31/01,"

and SBC California's alleged alteration of "repair records back to 1996."<sup>7</sup> Setting aside, for the moment, the lack of evidentiary support for Complainant's allegations, the fact is that Complainant's claims are time-barred and were properly dismissed by the Commission on that basis.

As the Commission itself noted, Section 735 of the California Public Utilities Code limits claims to two years preceding the filing of a complaint.<sup>8</sup> The Complaint in this proceeding was filed July 25, 2001 -- over four years after Complainant discontinued the telephone accounts of concern with SBC California. As a result, the Commission correctly found that Complainant's service quality allegations against SBC California were barred by the statute of limitations.<sup>9</sup>

Complainant argues that the Commission should have found that the statute of limitations was tolled because he was not able to prove that SBC California "was using defective phone lines" until he obtained certain documentation in the 2001 and 2002 timeframes.<sup>10</sup> There are at least two problems with Complainant's argument. First, none of the hundreds of pages of documentation and testimony submitted into evidence by Complainant supports

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<sup>7</sup> App. for Reh'g., pp. 1-6, 1-7.

<sup>8</sup> D.03-08-025, mimeo, p. 10. See also Cal. Pub. Util. Code §735.

<sup>9</sup> As to the one business account that was installed in May of 2000 for which SBC California currently is Complainant's local service provider (925-455-4975), the only cause of action asserted in the Complaint as to that account was a claim for over-billing. The amount in question involved \$6.00, was resolved in D.03-08-025 by directing SBC California to issue a refund to Complainant in the amount of \$6.00, and is not the subject of Complainant's Application for Rehearing.

<sup>10</sup> App. for Reh'g., p. 1-11.

Complainant's theory that SBC California was using "defective" telephone lines.<sup>11</sup>

Indeed, the Commission explicitly found:

Complainant has theories about the cause(s) of service quality problems on his lines, including defective pairs and non-paired wires that receive other signals. Complainant and Pacific disagree on the meaning of notations in Pacific's documentation that Complainant alleges proves these theories...[W]e need not determine the precise cause of Complainant's service quality problems, because Defendants addressed them by making appropriate repairs and issuing credits.<sup>12</sup>

Complainant's disagreement with the Commission's conclusions in this regard do not establish error. The California Supreme Court has stated that "[w]hen conflicting evidence is presented from which conflicting inferences can be drawn, the commission's findings are final."<sup>13</sup>

Second, as the Commission properly noted,

Service quality issues are obvious, and Complainant reported problems with his service to Defendants. Increased knowledge of why service quality problems existed, in and of itself, is insufficient to toll the statute of limitations...Nothing in the record indicates Defendants concealed any information concerning service quality problems experienced by Complainant...<sup>14</sup>

The fact that Complainant began alleging service quality problems to SBC California beginning in 1996 is, in and of itself, dispositive of the fact that Complainant knew about his service quality problems early on.<sup>15</sup> As the Commission appropriately

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<sup>11</sup> Complainant's theory that SBC California was using defective cable pairs is based on Attachments 25, 26 and 27 to his opening testimony. As discussed below, nothing in those Attachments or anywhere else in the record supports Complainant's theory.

<sup>12</sup> D.03-08-025, mimeo, p. 9.

<sup>13</sup> City of Los Angeles v. PUC (1972) 7 Cal.3d 331, 351.

<sup>14</sup> D.03-08-025, mimeo, p. 10.

<sup>15</sup> For example, as the Commission notes, "Complainant also states that he reported a service outage to a Pacific supervisor on October 29, 1996...Complainant states Pacific made repairs on November 6, 1996." (Id. at 8.)

acknowledges, the reason *why* those problems were occurring is irrelevant for statute of limitation purposes.<sup>16</sup> As such, the Commission did not err in dismissing Complainant's service quality claims against SBC California because all of those claims occurred prior to July 25, 1999 and, therefore, were barred by the statute of limitations. Complainant had no actionable service quality claims against SBC California and, therefore, there was no legal error with the Commission so finding.

**B. Complainant's Claims Are Moot.**

In its Decision, the Commission found that "Pacific's records indicate AT&T has not forwarded Pacific any trouble reports (a work item generated by Pacific's customer service when a customer has a service problem) concerning Complainant since January 2001" and that "Complainant currently has no service quality problems and has not reported trouble on his lines since before he filed this complaint."<sup>17</sup> Significantly, Complainant does not dispute either of these findings. If Complainant has not had any service quality problems since at least January 2001, then the Decision correctly found there is nothing further for the Commission to adjudicate and there was no reversible error, as Complainant claims.

**C. The Commission Properly Determined that SBC California Did Not Violate Any Rules or Regulations in Handling Complainant's Service Quality Problems.**

In evaluating Complainant's service quality allegations, the Commission acknowledged the ongoing efforts made by SBC California to address Complainant's service quality problems. It noted that, among other things:

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<sup>16</sup> *Id.* at 10 ("Increased knowledge of why service quality problems existed, in and of itself, is insufficient to toll the statute of limitations").

<sup>17</sup> D.03-08-025, mimeo, pp. 4, 11.

SBC California changed the cable pairs which serve Complainant two times, first in 1996 and again in 2001. Pacific has responded to each request from AT&T to test Complainant's lines when Complainant experienced service quality problems. In September 2001, Pacific, on its own initiative, rebuilt the serving terminals to Complainant's neighborhood as a preventative measure. Pacific's records indicate AT&T has not forwarded Pacific any trouble reports (a work item generated by Pacific's customer service when a customer has a service problem) concerning Complainant since January 2001.<sup>18</sup>

The Commission further observed that "Complainant currently has no service quality problems and has not reported trouble on his lines since before he filed this complaint."<sup>19</sup> Complainant did not dispute any of these facts. As such, the Commission found that it "need not determine the precise cause of Complainant's service quality problems, because Defendants addressed them by making appropriate repairs and issuing credits."<sup>20</sup> There simply is no further relief the Commission can grant Complainant.

Nevertheless, Complainant seeks rehearing on the ground that the Commission's findings "appear to have been based on false and misleading statements made by Pacific."<sup>21</sup> Not only is there no support for this assertion but, moreover, none of the alleged "false and misleading statements" upon which Complainant relies calls into question the Decision's determination that SBC California properly addressed Complainant's service quality problems, that SBC California made appropriate repairs and credits, and that Complainant has not had

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<sup>18</sup> *Id.* at 4.

<sup>19</sup> *Id.* at 11.

<sup>20</sup> *Id.* at 9.

<sup>21</sup> App. for Reh'g., p. 1-1.

any service quality problems since at least January 2001. Again, if Complainant has not had any service quality problems since at least January 2001, then there was nothing for the Commission to adjudicate.

**D. The Allegations in Complainant's Application for Rehearing Do Not Support a Finding of Reversible Error.**

1. Complainant's Contrary Interpretation of the Evidence Concerning Cable Pair 1118 Does Not Establish Reversible Error.

In its Response to Complainant's Appeal of the Presiding Officer's Decision, SBC California pointed to Complainant's discussion of cable pair 1118 to demonstrate the unreliability of Complainant's "factual" assertions and the lack of merit to his Appeal. SBC California stated:

Complainant points to the portion of Attachment 27 to his testimony...containing the numbers "85093" and from this infers that the information on this line in Attachment 27 (1) pertains to his telephone account, 462-5093, and (2) relates to cable pair 1118. Complainant's conclusions are unreasonable -- they amount to nothing more than unsubstantiated inference on top of additional unsubstantiated inference. Nothing in Attachment 27 supports either of these inferences -- this document does not even mention cable pair "1118." The fact is that cable pair 1118 (and 1132, as well) was never used to provide Complainant's service.<sup>22</sup>

In his Application for Rehearing, Complainant claims that SBC California perjured itself in asserting the foregoing.<sup>23</sup> He also claims that the Decision should be reversed because it "did not address the fact...that Pacific was providing service through two defective cable pairs (1118 and 1132)."<sup>24</sup>

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<sup>22</sup> SBC California's Response to Complainant's Appeal of the Presiding Officer's Decision, p. 7.

<sup>23</sup> App. for Reh'g, p. 1-2.

<sup>24</sup> App. for Reh'g, p. 1-6 (emphasis in original).

Complainant is wrong. Complainant's insistence that SBC California "was providing service through two defective cable pairs" is not fact by any means; rather, it is Complainant's conjecture.

Complainant and SBC California each addressed the evidence and presented their arguments on this issue. As SBC California addressed in its Response to Complainant's Appeal of the Presiding Officer's Decision, nothing in the record establishes that SBC California ever provided service to Complainant's TN 925-263-5093 via cable pairs 1118 or 1132.<sup>25</sup> Complainant obviously disagrees. Complainant's disagreement, however, does not mean that the Commission erred in rejecting Complainant's interpretation.<sup>26</sup> Moreover, the issue is moot because Complainant has no current service problems.

2. Complainant's Contrary Interpretation of the Evidence Concerning Cable Pairs 1118 and 1132 does not Establish Reversible Error.

Complainant also claims that the Decision should be reversed because it "did not address the fact...that Pacific was providing service through two defective cable pairs (1118 and 1132)."<sup>27</sup> Complainant misstates the record. Complainant's insistence that SBC California "was providing service through two defective cable pairs" is not fact by any means; rather, it is Complainant's unsupported conjecture. As SBC California addressed in its Response to Complainant's Appeal of the Presiding Officer's Decision, nothing in the record establishes that SBC California ever provided service to Complainant via cable pairs

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<sup>25</sup> SBC California's Response to Complainant's Appeal of the Presiding Officer's Decision, p. 7.

<sup>26</sup> D.00-11-042, mimeo, p. 8, citing City of Los Angeles v. PUC (1972) Cal.3d 331, 351.

<sup>27</sup> App. for Reh'g, p. 1-6 (emphasis in original).

1118 and 1132.<sup>28</sup> While SBC California's and Complainant's interpretation of the evidence may differ, it does not mean that the Commission erred in rejecting Complainant's interpretation.<sup>29</sup>

3. Complainant's Contrary Interpretation of the Evidence Concerning Code "98" Does Not Establish Reversible Error.

Complainant also claims that the Decision should be reversed because Attachments 1 and 5 to his Application for Rehearing allegedly show that his business phone lines "had trouble codes of '98' On August 31, 2001." As an initial matter, Complainant is not permitted to rely on extra-record evidence. As such, the attachments to his Application for Rehearing must be ignored. Second, as SBC California previously has explained, there is nothing in the record establishing that "98" is a trouble code; Complainant's insistence on this point is nothing more than unsupported speculation.<sup>30</sup> Third, Complainant previously raised -- and the Commission rejected -- this very same argument. Specifically, in his opening brief, Complainant stated:

Attachment #29 in my testimony shows that code '98' is not a default code, and that there were problems on my business phone line on 08/31/01....<sup>31</sup>

In fact, nothing in Attachment 29 or anywhere else in the record establishes that "98" is a trouble code (which it is not); the number "98" does not even appear

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<sup>28</sup> SBC California's Response to Complainant's Appeal of the Presiding Officer's Decision, p. 7.

<sup>29</sup> D.00-11-042, mimeo, p. 8, citing City of Los Angeles v. PUC (1972) Cal.3d 331, 351.

<sup>30</sup> See, e.g., SBC California's Response to Complainant's Appeal of the Presiding Officer's Decision, p. 4.

<sup>31</sup> Complainant's Opening Brief, p. 1-21.

anywhere in Attachment 29. As such, the Decision properly discarded

Complainant's claim in this regard.

4. Complainant's Contrary Interpretation of the Evidence Concerning SBC California's Lack of Comprehensive Data from 1996 Does Not Establish Reversible Error.

Complainant next claims that the Decision should be reversed because it failed to find that SBC California altered repair records going back to 1996.<sup>32</sup> According to Complainant, because SBC California was able to produce some records in this proceeding dating back to 1996, SBC California must have lied when it stated that it did not have any record of Complainant having reported a service outage on October 29, 1996.<sup>33</sup>

Complainant's inference is unsupported. Data pertaining to 1996 are seven years old and would have been at least five years old by the time Complainant filed his complaint in 2001. SBC California does not retain comprehensive maintenance records that far back in time, nor is it required to do so. Moreover, as SBC California has explained in its filings in this proceeding,<sup>34</sup> and as the Commission agreed,<sup>35</sup> that period is far beyond the applicable statute of limitations. The information that SBC California was able to produce for the year 1996 constitutes what it was able to piece together for that period. The fact that SBC California does not retain comprehensive data dating back five-plus years does not provide any reason to question the accuracy of its testimony. It does,

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<sup>32</sup> App. for Reh'g., p. 1-7.

<sup>33</sup> Id.

<sup>34</sup> See, e.g., SBC California's Opening Brief, Reply Brief, and Reply to Complainant's Appeal of the Presiding Officer's Decision.

<sup>35</sup> D.03-08-025, mimeo, p. 10.

however, illustrate why statutes of limitation are enacted -- to prevent a party from taking advantage of the passage of time and the inevitable loss of evidence that occurs with that passage.

After considering the evidence presented by the parties, the Commission concluded:

Complainant's allegations that Pacific altered, destroyed, or concealed repair records and concealed service quality issues is not established in this proceeding. The POD noted that there were discrepancies between Complainant's and Pacific's records but did not find those discrepancies resulted from improper conduct by Pacific. Complainant's service quality problems arose seven years ago, and there is no requirement that utilities retain records that long.

The Commission's findings were supported by substantial evidence. Again, Complainant's disagreement with the Commission's interpretation of the evidence does not establish error.

5. Complainant's Contrary Interpretation of the Evidence Concerning Repair Records Pertaining to January 30, 2001 Does Not Establish Reversible Error.

Complainant also insists that SBC California "altered repair records for trouble found in January 30, 2001."<sup>36</sup> Complainant bases this allegation on the fact that SBC California "admitted it found trouble on Jan 30 2001" in its Answer to the Complaint but later stated in testimony that "although [the] technician did not find any trouble, in an abundance of caution, he/she cut Mr. Knell to a different cable pair."<sup>37</sup> According to Complainant, the inconsistency between the two constitutes "proof" that SBC California altered these records.<sup>38</sup> Not only is

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<sup>36</sup> App. for Reh'g., p. 1-8.

<sup>37</sup> *Id.* Appeal of Presiding Officer's Decision, p. 1-4.

<sup>38</sup> Appeal of Presiding Officer's Decision, p. 1-4.

Complainant's claim unfounded, but also it is the same baseless contention raised in his Appeal of the Presiding Officer's Decision, which the Commission rightfully rejected. As SBC California explained in its response to Complainant's Appeal of the Presiding Officer's Decision:

SBC California's Answer and Mr. Alex's testimony both report that on January 30, 2001, SBC California cut Mr. Knell's service to a new cable pair. The minor difference between the two documents only concerned the reason why the new cable pair was cut (the Answer averred that trouble had been found on the line, while Mr. Alex's testimony stated that no trouble was found and the cable pair was cut merely to satisfy Complainant). This difference appears to have been the result of SBC California having had more time to thoroughly investigate this trouble ticket in the 10 months between the filing of SBC California's Answer and Mr. Alex's testimony. Regardless, it is a distinction without a difference; the POD correctly notes that the disagreement about whether there was a defective cable on January 30, 2001 is irrelevant because SBC California repaired the line and Complainant has had no further problems with it.<sup>39</sup>

The Commission agreed that it was a distinction without a difference, and Complainant's disagreement with the Commission's interpretation of the evidence does not establish error.

6. Complainant's Contrary Interpretation of the Evidence Concerning the Imposition of Rule 11 Restrictions Does Not Establish Reversible Error.

Finally, Complainant claims that the Decision committed error in failing to find that SBC California wrongly imposed Rule 11 restrictions on Complainant's communications with SBC California personnel. Complainant suggests that SBC

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<sup>39</sup> SBC California's Response to Complainant's Appeal of the Presiding Officer's Decision, pp. 5-6.

California imposed Rule 11 restrictions as a result of his filing an informal Complaint. Complainant provides no actual evidence, however, to support this unfounded assertion. The Commission found that "the testimony generally supports Defendants having grounds to impose the [Rule 11] restriction."<sup>40</sup>

SBC California affirmatively established that it complied with its tariff in imposing Rule 11 restrictions. SBC California's tariff, Schedule Cal.P.U.C. No. A2.1.11(A)(10)(c) ("Rule 11") provides that if a customer places telephone calls to SBC California with "intent to annoy," SBC California may refuse to transact business with that customer except by written communication. Pursuant to that tariff section, SBC California placed Complainant on Rule 11 restrictions on April 3, 1997 after receiving harassing telephone calls from him in or about March 1997.

In a letter written by a SBC California manager who had been in contact with Complainant by telephone over a period of five to six months, the author specifically makes reference to having received "verbal threats" from Mr. Knell, and confirms that Mr. Knell also threatened other "upper management" personnel at SBC California.<sup>41</sup> Moreover, in an independent investigation conducted by Linda Woods, a manager in the Commission's Consumer Affairs Branch, Ms. Woods corroborated these facts. Specifically, she stated in a letter to Mr. Knell dated October 28, 1999 that Rule 11 restrictions were imposed following

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<sup>40</sup> D.03-08-025, mimeo, p. 18.

<sup>41</sup> SBC California produced this letter to Complainant in discovery. It is set forth in the record as Attachment 7 to Complainant's testimony.

"unwanted and harassing telephone calls to [SBC California employee] Linda Standen" in March 1997.<sup>42</sup>

Complainant has no evidence to contradict these events. Just the opposite, Complainant confirmed in his June 5, 2002 testimony that he called Ms. Standen on at least two occasions prior to the imposition of Rule 11 restrictions on his communications -- "in late February 1997" and "on 3/11/97."<sup>43</sup> Additionally, SBC California submitted documentation that Complainant threatened two other SBC California employees during an on-site service visit.<sup>44</sup> Complainant's threatening behavior towards these on-site employees, as described in the documentation set forth in Attachment 7 to Complainant's testimony, lends further credence to the fact that Complainant's telephone calls to Ms. Standen in early 1997 were of a harassing nature and warranted the imposition of Rule 11 limitations on Complainant's future communications. On the basis of this evidence, the Commission properly found that Defendants had grounds to impose the Rule 11 restriction.<sup>45</sup>

Because substantial evidence supports the conclusion that Rule 11 was properly enforced, no error was made.

### III. CONCLUSION

Complainant has not pointed to any factual, legal or technical error supporting his Application for Rehearing or warranting the reversal of the

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<sup>42</sup> A copy of Ms. Woods' letter to Complainant is set forth as Exhibit 3 to Mr. Alex's Testimony (Mr. Alex's testimony was submitted into the record as Hearing Exhibit 2).

<sup>43</sup> Knell Testimony, pp. 1-24, 1-25.

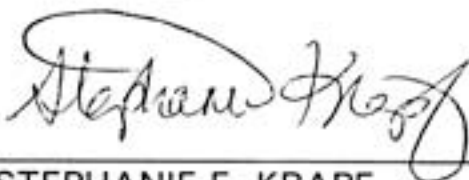
<sup>44</sup> See Attachment 7 to Mr. Knell's Testimony.

<sup>45</sup> D.03-08-025, mimeo, pp. 18-19.

Commission's Decision. The Commission properly based its findings, conclusions, and determinations on the record at hand rather than on Complainant's unsupported inferences and speculation. Because the Commission's factual determinations are supported by substantial evidence, it is not erroneous or unlawful, and Complainant's Application for Rehearing should be denied.

Dated at San Francisco, California, this 14<sup>th</sup> day of October 2003.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Stephanie Krapf", written over a horizontal line.

STEPHANIE E. KRAPF

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Attorney for SBC California

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **RESPONSE OF PACIFIC BELL TELEPHONE COMPANY (U 1001 C) TO COMPLAINANT'S APPLICATION FOR REHEARING**, on all known parties to **C.01-07-034**, by e-mail and hand-delivery or by mailing a properly addressed copy by first-class mail with postage prepaid and via email to each party named in the official service list.

Executed this 14<sup>th</sup> day of October 2003, at San Francisco, California.

SBC CALIFORNIA  
140 New Montgomery Street  
San Francisco, CA 94105

By:

  
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Claudia Barros