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ORIGINAL

Decision No. 79329

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

KENNETH J. MILLER, )  
 )  
Complainant, )  
 )  
 vs. )  
 )  
 GENERAL TELEPHONE COMPANY )  
 OF CALIFORNIA, )  
 )  
Defendant, )  
 )  
 THE CITY OF LOS ANGELES, )  
 a municipal corporation, )  
 )  
Intervenor. )  
 )

Case No. 9152  
(Filed November 20, 1970)

Kenneth J. Miller, for himself, complainant.  
A. M. Hart and Donald J. Duckett, by  
Donald J. Duckett, Attorney at Law, for  
 General Telephone Company of California,  
 defendant.  
Burke, Williams and Sorensen, by Mark C. Allen, Jr.,  
 Attorney at Law, for the City of Downey, and  
Roger Arnebergh, City Attorney, by Thomas C.  
Bonaventura and Richard A. Dawson, Attorneys at  
 Law, for the City of Los Angeles, intervenors.  
G. R. Dougherty, Attorney at Law, for the  
 Commission staff.

O P I N I O N

This is a complaint by Kenneth J. Miller (hereinafter referred to as Miller) against General Telephone Company of

California (hereinafter referred to as General). The Cities of Downey and Los Angeles were permitted to intervene. Miller contests the legality of the Downey Utilities Users Tax and certain practices of General in collecting the tax.

A duly noticed public hearing was held in this matter before Examiner Jarvis in Los Angeles on March 4 and 5, 1971. The matter was submitted on April 5, 1971.

Miller's complaint was filed after the Commission's decision in the Packard case. (Packard v. PT&T and Packard v. PG&E, Decision No. 77800 in Cases Nos. 8998 and 8999.) In Packard we held that the Commission has no jurisdiction to determine whether or not, as a matter of general law, a city is authorized to enact a utility users tax; that if it be assumed the Commission has jurisdiction to determine whether the comprehensive scheme of regulation in the Public Utilities Code precludes the enactment of such a tax, the Commission should decline to act under such jurisdiction in order to leave all matters relating to the legality of such tax to the Superior Court and that the Commission has jurisdiction over the procedures used by utilities in collecting such a tax. The Commission found that utilities should be no more than a billing and remitting conduit in connection with a utility users tax. We also found that certain billing practices of PG&E in connection with the tax were improper and ordered them corrected.

At the hearing, the Presiding Examiner correctly ruled that the issues herein were limited to those which the Commission found it had jurisdiction over in Packard. We also construe the complaint liberally with a view to substantial justice between the parties. (Packard at p. 3.)

Miller's complaint raises the following material issues:

1. Are General's practices in applying the Downey Utilities Users Tax to long distance calls proper?
2. Are General's practices in connection with billing the Downey Utilities Users Tax proper?

The record indicates that on November 15, 1970, an acquaintance of Miller in San Jose placed a collect call to him. The operator<sup>1/</sup> rang Miller's number, and, when he answered, indicated to Miller that a collect call had been placed to him. She asked if he would accept the charges. He replied that he would accept all charges except for the Downey tax. The operator would not complete the call.<sup>2/</sup> The evidence also discloses that if the call had been completed, under General's billing procedures the charge for the telephone service and the taxes thereon would have been billed on separate lines.<sup>3/</sup> Also, the record is clear that the Downey tax does not apply to interstate calls.

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1/ General does not have toll operators in Downey. It appears that the operator involved was a Pacific Telephone operator. This is not significant to the consideration of the point here under consideration. The Commission has jurisdiction over telephone service which involves an interconnection between two California utilities.

2/ Miller also presented evidence about two other telephone calls. It is not necessary to separately consider the other calls because they relate to the same point as the incident herein described.

3/ The toll call would be separately listed. The amount of tax attributable thereto would have been included in the total amount of the Downey tax on all applicable items in the bill.

It is evident from the foregoing that General's billing procedures with respect to applying the Downey tax to intrastate toll calls are consonant with the holdings of this Commission in Packard. What Miller's complaint on this issue boils down to is that the toll operator handling the call was not able to give him this information at the time of the incident heretofore described. The record indicates that toll operators can be furnished information with respect to billing practices and trained to respond to questions in connection therewith. This, however, would mean that additional operating expenses would be incurred by General. These would be passed on to its customers generally. An order which would require General to incur such additional operating expenses would be unwarranted. A toll operator is not the proper representative of General with whom to discuss its procedures in applying a utility users tax. The information is readily available from others in the company. It is not unreasonable to require Miller, and others who may challenge the tax or refuse the payment thereof, to secure the information from persons in General's business office.

The evidence discloses that General separately states on its bills (1) charges for telephone service, (2) federal excise tax and (3) the Downey tax. However, if the Downey tax is not paid it is aggregated in the "total due" figure on the next bill. Thus, when Miller withheld the Downey tax and paid in full the telephone service and federal excise portions of his previous bills his January 7, 1971 bill had the following notice:

"Notice - When this bill was prepared an unpaid balance was due from your last billing. If you have made payment recently, please disregard this notice. If you have not, the total amount of this bill must be paid no later than the final date for payment shown below."

It is clear from the foregoing that General's billing procedure with respect to the unpaid tax is similar to that condemned in Packard:

"The record indicates that PT&T has a separate line on its regular bills entitled, 'Local Tax (If Applicable)'. In Packard's situation, PT&T accumulated the amounts of tax which he refused to pay on that line. The accumulated tax was not included on the line entitled, 'Balance Due From Last Bill'. This procedure is correct and consonant with the views expressed herein. PG&E has a separate line on its Vallejo bills entitled, 'City Tax 5%'. However, the amount of Vallejo utility users tax which Packard refused to pay was accumulated on a line entitled, 'Previous Balance'.<sup>2/</sup> This form of billing is improper. It is confusing. It does not tell Packard, or any other customer who intends to withhold paying the tax, whether the 'previous balance' relates to utility service or the tax. Furthermore, if both types of arrearages are accumulated in this item and PG&E's automatic billing equipment is not programmed to differentiate between them, Packard or someone similarly situated, could be threatened with discontinuance of service because of accumulated tax arrearages. PG&E will be ordered to revise its billing procedure in accordance with the principles set forth herein."

There is no reason why all California utilities should not be required to follow the billing procedures set forth in Packard. General should be ordered to revise its billing procedures to conform thereto.

The record establishes that General has done no more than be a billing and remitting conduit in connection with the Downey tax, and no issue is presented thereon. No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. The City of Downey enacted a utilities users tax which became effective on September 1, 1970. The tax with certain exemptions is applicable to customers of General residing in Downey.

2. Miller resides in Downey.

3. Miller contests the legality of the Downey tax and the legality of General collecting the tax from him as part of his utility bill.

4. Miller contests the manner in which General bills the Downey tax.

5. On November 15, 1970, an acquaintance of Miller in San Jose placed a collect call to him. The operator rang Miller's number, and, when he answered, indicated to Miller that a collect call had been placed to him. The operator asked if he would accept the charges. Miller replied he would accept all charges except for the Downey tax. The operator would not complete the call.

6. The Downey tax does not apply to interstate telephone service.

7. Under General's billing procedures charges for telephone service and taxes are stated on separate lines of a customer's bill, although the amounts of tax are aggregated for all taxable items on the bill.

8. If Miller had accepted the aforesaid collect call the charges for telephone service and the portion of the Downey tax applicable thereto would have appeared on separate lines on his telephone bill.

9. Toll telephone operators are often situated in central offices which have several exchanges. A telephone exchange may be located within two or more cities.

10. It would be an unwarranted expense and detrimental to ratepayers generally to require General and other telephone utilities to train toll operators to provide information about billing practices with respect to a utility users tax at the time they attempt to complete an intrastate toll call.

11. General has personnel readily available at its business office to explain to its customers its billing procedures in connection with the Downey tax.

12. General separately states on its bills (1) charges for telephone service, (2) federal excise tax and (3) the Downey tax. However, if the Downey tax is not paid it is aggregated in the "total due" figure on the customers next bill. This form of billing is improper.

13. Miller deducted the amount of Downey tax from his remittance of General's bill and paid all other charges. As a result the following notice was placed on his bill of January 7, 1971:

"Notice - When this bill was prepared an unpaid balance was due from your last billing. If you have made payment recently, please disregard this notice. If you have not, the total amount of this bill must be paid no later than the final date for payment shown below."

The placing of such notice on the bill, under the facts herein set forth, was improper.

#### Conclusions of Law

1. General is prohibited by law from discontinuing or threatening to discontinue the service of a customer who pays for telephone service but refuses to pay the Downey tax.

2. Miller is entitled to no relief with respect to the procedures used by General in billing intrastate toll calls.

3. General should be ordered to revise its billing practices in connection with the Downey tax so that intentionally withheld tax payments are not included on a billing line which also encompasses charges for utility services, unless the amount of withheld tax is separately stated.

O R D E R

IT IS ORDERED that within thirty days after the effective date of this order, General Telephone Company shall revise its billing practices so that where Miller or any other customer withholds utility user tax payments, the accumulated withheld tax payments are either (1) accumulated on the billing line showing the amount of tax due or (2) separately stated as an accumulated tax due if included on the billing line entitled "total due".

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco California, this 16<sup>th</sup>  
day of NOVEMBER, 1971.

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Chairman  
  
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Commissioners