

ALJ/MJG/jt

Decision 88 01 013 JAN 13 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pedro M. Roque,)
 Complainant,)
 vs.)
 General Telephone Company)
 of California,)
 Defendant.)

(ECP)
 Case 87-06-033
 (Filed June 22, 1987)

Pedro M. Roque, for himself, complainant.
Edward R. Duffy, for General Telephone Company
 of California, defendant.

OPINION

Summary of Complaint

On June 22, 1987 Pedro M. Roque (complainant) filed this expedited complaint (ECP) against General Telephone Company of California (defendant). Complainant represents that defendant billed complainant \$107.53 for 22 toll calls purportedly placed from complainant's residence in Redlands to Zamora in Watsonville during August 1986.

According to complainant, the calls were not placed from his telephone because no one from his family placed the calls and the calls, added on his bill by defendant at a later date, were not identified on his August bill.

Further, complainant represents that until complainant began investigating these calls, no member of his household knew Zamora. By copy of a notarized letter attached to the complaint, Zamora represents that neither he nor his family received any of the August 1986 calls and that no family member knew complainant prior to this dispute.

The complaint also indicates that a small claims action against defendant has been initiated.

Summary of Answer to Complaint

Defendant filed its answer to the complaint on August 24, 1987. Defendant's answer confirms that complainant was billed \$107.53 for 22 toll calls. However, defendant represents that these calls were placed from June 6 through June 25, 1986, not during the month of August 1986 as the complaint alleges.

Defendant also clarified that the calls did not appear on complainant's original bill because, although they were placed from complainant's residence, the calls were billed to a third number at the calling party's request. However, when the calls appeared on the incorrect customer's bill the calls were credited to that customer and billed to complainant, the originating telephone number, in accordance with Tariff Rule No. 10.

Defendant acknowledges that complainant filed a small claims action. However, it represents that the court entered judgment in favor of defendant on February 25, 1987 and again on June 18, 1987, a copy of which is attached to defendant's answer.

Hearing

After notice, a hearing was held in Los Angeles before Administrative Law Judge Galvin on September 22, 1987. The matter was submitted on the same day. Complainant testified for himself, and Edward R. Duffy testified for defendant.

Complainant acknowledges that his complaint addresses calls placed in August while defendant's answer addresses calls placed in June. Since complainant did not have a copy of his October bill, which shows the billing of the disputed calls, complainant was unable to verify the precise month.

Nevertheless, complainant represents that, because defendant did not provide the original computer print-out sheet showing that the calls were placed from his telephone and charged

to a third-party number, defendant is unable to substantiate that the calls were actually placed from his telephone.

Although complainant calls relatives and friends in Watsonville, complainant represents that neither he nor his family placed the calls to Zamora, and that Zamora, by the previously mentioned statement, confirmed that neither complainant nor complaint's family called him.

In regards to the statement, complainant testified that someone other than Zamora prepared the statement for Zamora's signature because Zamora does not speak English.

Defendant's witness, Duffy, introduced copies of complainant's 1986 and 1985 telephone bills as Item 1 and 2, respectively. The October 1986 bill shows 22 toll calls to 4 different numbers, only one of which is Zamora's telephone number, charged to defendant for the period from June 6 through June 25.

Also, defendant clarified that complainant was not provided a computer print-out showing that the calls were placed from complainant's telephone because the original toll tapes, retained for 30 to 45 days, are no longer available. Secondary billing data was used to bill complainant for the disputed bills.

By examination, complainant and defendant acknowledged that complainant made a \$35 payment toward the disputed \$107.53, and that the unpaid balance is now \$72.53.

Discussion

Although the small claims court action was addressed by complainant and defendant at the hearing, the results of that action are not considered in this opinion because matters addressed and concluded in that action are not necessarily identical to the matters addressed in this proceeding.

The burden of proof in a complaint proceeding rests with the complainant. Therefore, complainant's allegation that defendant is unable to substantiate that the calls were placed from complainant's telephone is without merit.

Complainant's dispute is whether 22 calls placed to Zamora during the month of August 1986 were placed from complainant's telephone by complainant or his family. However, defendant maintains that the disputed calls, not necessarily placed by complainant or complainant's family, were placed from complainant's telephone; and, therefore, in accordance with tariff provisions, complainant is accountable for calls placed from his telephone.

Although the complaint alleges that the dispute pertains to calls placed to one phone number in August 1986, a copy of complainant's October 1986 bill shows that the calls were placed from complainant's telephone to four different telephone numbers in June 1986. Complainant's telephone bills also substantiates that two of the telephone numbers, representing \$104.69 of the \$107.53 disputed amount, were dialed directly from complainant's telephone the year before, in June 1985.

Complainant did not establish that defendant's billing procedures are faulty or that defendant violated any tariff or Commission rule or procedure by billing complainant for the calls.

Not even Zamora's statement can be used to substantiate complainant's claim. First, it acknowledges that Zamora did not receive any calls from complainant or complainant's family in August 1986, two months after the disputed calls. Second, Zamora does not indicate that calls received on Zamora's telephone in June 1986 were not placed from complainant's telephone. Third, it does not show that the statement is a true and correct translation from Zamora's native language to English. The notarized statement only acknowledges that Zamora signed the statement.

No evidence was presented to show that the calls were not placed from complainant's telephone. In billing complainant for calls placed from complainant's telephone defendant correctly applied its Tariff Rule No. 10 which states that:

"The customer is responsible for payment of all exchange, message unit, toll, and other charges

for service furnished and/or billable in accordance with the provisions of the filed tariffs, including charges applicable for service originated or charges accepted at the customer's telephone(s)."

For the reasons discussed above complainant's allegation is without merit and should be dismissed. Since this matter was filed as an ECP no separate stated findings of fact or conclusions of law will be made.

ORDER

IT IS ORDERED that:

1. Case 87-06-033 is denied.
2. General Telephone Company of California and Pedro M. Roque shall negotiate a payment arrangement for the collection and payment, respectively, of the \$72.53 balance due on the disputed toll calls within 30 days from the effective date of this order. If a payment arrangement is not entered into, then the entire \$72.53 shall be due and payable 30 days from the date of this order.

This order is effective today.

Dated JAN 19 1988, at San Francisco, California.

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

Commissioner Stanley W. Hulett
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.



Victor Weissert, Executive Director

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