

Decision 89 02 007 FEB 8 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bernell D. McBride,

Complainant,

vs.

General Telephone Company of
California.

Defendant.

Mailed

FEB 8 1989

(ECP)
Case 88-10-035
(Filed October 20, 1988)

Bernell D. McBride, for himself, complainant.
Edward R. Duffy, for GTE California Incorporated,
defendant.

OPINION

Complainant, Bernell D. McBride (complainant) alleges that he was billed for telephone calls from his residence that neither he nor any member of his family made. He seeks refund of \$52.20 previously credited by GTE California Incorporated (GTE-C) (formerly General Telephone Company of California) for calls he denied making but then again debited to his account.

In its Answer, GTE-C denies that it has improperly charged complainant for toll calls which were initiated from his telephone number. GTE-C alleges that on February 13, 1987, complainant contacted GTE-C's billing center and disclaimed knowledge of nine one-minute calls which appeared on the January 1987 statement. GTE-C issued a \$2.51 credit to complainant's account. On March 10, 1987 complainant contacted GTE-C and complained that his statement reflected the wrong long distance carrier. GTE-C issued a \$3.21 credit to compensate for the discount which Allnet, unlike AT&T, ordinarily gives its subscribers for volume calling. On May 15, 1987 complainant

contacted GTE-C and requested listings for ten calls which appeared on his April 1987 statement, which he did not recognize. On May 27, 1987 complainant disputed making calls which appeared on the listing requests supplied by GTE-C and GTE-C issued a credit for \$2.96. On June 30, 1987 complainant contacted GTE-C and questioned the exchange rate charge of \$26.35 stating that he owned his own telephone equipment. GTE-C issued complainant a credit of \$45.86 to reflect the fact that GTE-C stopped renting a decorator phone to complainant on May 27, 1986. The credit adjustment was for the period between May 27, 1986 and July 3, 1987.

On July 7, 1987 complainant contacted GTE-C's customer billing center and disclaimed making ten toll-calls which had appeared on his June, 1987 statement. GTE-C's representative told complainant to deduct the \$19.75 disputed amount temporarily, pending the outcome of further investigation. On July 14, 1987, without conducting further investigation, GTE-C issued complainant a credit adjustment of \$19.75. On September 17, 1987 complainant contacted GTE-C's billing center and disclaimed 31 toll calls which had appeared on his August 1987 statement. Complainant was told to deduct the \$25.06 disputed amount temporarily, pending the outcome of further investigation. On September 28, 1987, without conducting further investigation, GTE-C issued complainant a credit adjustment of \$25.06. On October 1, 1987 complainant contacted GTE-C's customer billing center to dispute 10 calls which appeared on the September, 1987 statement. Complainant stated to GTE-C's representative that he has received credit on every other statement since 1970. He added that his facilities have been checked by GTE-C's repair personnel, and that credit adjustments have been issued accordingly. A review of company records reflects that complainant's service was established in 1979, and that there were no facility inspections at the subject location between December, 1986 and October, 1987.

GTE-C alleges that on October 9, 1987 complainant spoke with a GTE-C customer billing center supervisor and told the supervisor that he has had a billing problem at this subject number for over a year, and that the problem has never been resolved fully. The supervisor then informed complainant that GTE-C would perform a facility inspection. On October 20, 1987 complainant spoke with a GTE-C customer billing center supervisor and asked for the results of the facility inspection. He was told that the results were not yet available but that he should deduct \$14.37 from his outstanding balance. On November 4, 1987 complainant called GTE-C's customer billing center and disputed 18 toll calls and charges for three dial-a-message calls which appeared on the October, 1987 statement. On November 5, 1987 a thorough special inspection of outside facilities was performed and completed and the inspection confirmed that all telephone equipment associated with complainant's telephone service was operating properly. GTE-C also alleges that the results of the November 5, 1987 inspection confirmed that all of the disputed phone calls were dialed directly from the residence. On December 4, 1987 complainant contacted GTE-C's customer billing center and disputed 23 toll calls which had appeared on his November 1987 statement. GTE-C's representative told complainant to deduct \$14.76 from his statement balance temporarily. On December 9, 1987 GTE-C issued complainant a \$6.01 credit for the three dial-a-message calls which appeared on his October, 1987 statement.

GTE-C further alleges that on January 12, 1988, it conducted a toll investigation and found that of the 24 directly dialed toll calls which appeared on the November, 1987 bill, most were made to businesses, one to the Public Utilities Commission, and five calls to other residences. GTE-C contacted two of the five residential numbers and confirmed that the answering parties knew both Mr. and Mrs. McBride on a first-name basis. On January 18, 1988, GTE-C conducted special inspections at the

central office and outside plant responsible for servicing the complainant and found the equipment was operating properly. On January 24, 1988 it placed a dial number recorder on complainant's line to record the telephone numbers of outgoing calls. On February 3, 1988 complainant contacted GTE-C's customer billing center and disputed four toll calls which appeared on the January, 1988 statement. On February 23, 1988 GTE-C removed the dial number recorder from complainant's line. On March 8, 1988, complainant contacted GTE-C's customer billing center and disputed 12 toll calls which appeared on his February, 1988 statement. GTE-C further alleges that after checking the records created by the dial number recorder between the dates of January 24, 1988 and February 23, 1988, each of those 12 disputed calls had in fact been placed from complainant's residence. As a result of its findings, it made a debit adjustment to complainant's account for \$52.20 reflecting the total amount of previous credit issued to complainant in July, September, and November 1987. Defendant GTE-C requests that the Commission dismiss the complaint, deny the relief requested by complainant, and also make a finding that all of the disputed calls were made from complainant's residential phones.

Following notice, a public hearing was held before Administrative Law Judge William A. Turkish on December 15, 1988 and the matter was submitted on that date.

Complainant testified on his own behalf. Defendant GTE-C offered the testimony of one witness. The relevant portions of complainant McBride's testimony were essentially as follows:

He has been billed for telephone calls which neither he nor anyone else in his household has made. Complainant resides with his wife and 17-year old daughter. The telephone in question is a business telephone which is paid for by his employer. Each month he reviews his telephone bills which average approximately \$100 to \$150 per month and if he did not recognize a number on the statement he would call GTE-C and deny making those calls. He

would also ask GTE-C to supply him with the names of the subscribers of the phone numbers which he could not identify. After being furnished with the list of names associated with the telephone numbers he was contesting, he would contact GTE-C and expected that they would give him credit for all the calls which he denied making. Although GTE-C made two physical inspections of his line and found no problems, he still claims that he did not make the telephone calls which appear on his monthly statement. Stating that no machine is infallible, he asks GTE-C to give him credit for all calls which he denies making.

After the special inspections made by GTE-C, he was notified that GTE-C called two numbers which complainant had denied making and was informed by the called parties that they were very familiar with complainant and his spouse. Thereafter, he was told by GTE-C that they would not give him any credit for calls which he denied making. He feels that since credit was issued in the past by GTE-C without "batting an eye," they should continue to grant him credit for calls which he denies making.

On April 1, 1988 he received a letter from General Telephone Company indicating that the previous credit granted to him of \$52.20 for disputed calls on the June, August, and October 1987 statements was being debited back to his account. This \$52.20 includes an adjustment previously issued on July 14, 1987, an adjustment of \$25.06 issued on September 28, 1987 and an adjustment of \$7.39 issued on November 21, 1987.

Mary Moody, a billing superintendent for GTE-C testified essentially as follows:

In each month that complainant called GTE-C to dispute making certain phone calls listed on his statement, GTE-C automatically granted complainant a credit without further investigation. When the calls continued month after month, GTE-C conducted two special investigations which showed no problems with complainant's line or equipment connected with his line. They also

did limited investigations on some of the calls which complainant disclaimed. They also failed to discover any evidence of tampering. According to GTE-C's tariffs, the party of record is considered responsible for making calls from his telephone number. Of the disputed numbers supplied to GTE-C by Mr. McBride some were eventually accepted by complainant after GTE-C supplied complainant with the names of the called numbers. When the names were supplied to the complainant, approximately 50% of the calls were thereafter recognized as having been made by the complainant or his family.

A computer line check was made on his telephone line by placing a monitor on the line itself in the central office. When GTE-C also suggested a monitor be placed on his line at his residence, complainant stated that he did not want his calls monitored. When seven or eight pages of listings were sent to him, complainant returned the listing indicating either that he had identified the caller or that he could not identify the caller. Four or five calls were made to numbers which he denied calling or could not recognize and some of the called parties acknowledged knowing complainant's children and had spoken with his children on the phone. GTE-C feels it has done a very thorough investigation and has concluded that it will no longer adjust calls merely on complainant's statement that he didn't make the calls.

A record of all calls made from complainant's telephone from January 22, through February 24 disclosed numbers were called which complainant had previously informed GTE-C he had not called.

Discussion

Complainant has brought this complaint against GTE-C claiming that the \$52.20 which had previously been credited to him by GTE-C and which GTE-C thereafter debited his account following its investigation should be refunded since they were for calls he alleges were not made by him or any member of his family.

In any complaint action, the burden of proof is upon the party bringing the complaint to prove by a preponderance of the

evidence that his claim is valid. In this instance complainant's proof is merely his statement that because he did not recognize certain telephone numbers appearing on his telephone statement, he did not make the calls and therefore he should not have to pay for the calls. The evidence presented by GTE-C is that no problems were discovered on his line or with the equipment associated with his line on two special inspections and that investigations of disputed calls, in fact, disclosed that the parties of the called numbers did know complainant or his family. Additionally, calls that were monitored by GTE-C disclosed calls made to numbers which complainant had previously denied calling.

It is highly likely that since complainant's telephone bills average approximately \$125 to \$150 per month and the telephone is used by his wife, daughter, and guests, as well as by complainant, some telephone numbers will not be readily identified as having been made. Complainant evidently feels that if he cannot recognize or identify the number called and still cannot recognize the name of the party called when supplied by GTE-C, it is sufficient grounds upon which GTE-C should grant him a credit for the call. Complainant believes that since GTE-C has always in the past given him credit for disputed calls, it should continue to do so merely on his denial of having made such calls. In his testimony complainant stated that notwithstanding the fact that GTE-C had made investigations of his line and equipment associated with his line, no machine was infallible. We accept that premise, but we also have to accept the premise that man's memory likewise is not infallible. With a telephone statement averaging \$125 to \$150 per month and pages and pages of telephone numbers called, it would not be surprising for the subscriber to fail to recognize many numbers which in fact had been called. The evidence shows that after having been supplied with the names of the parties to telephone numbers called from complainant's telephone, he later acknowledged having made at least 50% of those calls which he had

previously denied making. Since he has failed in his burden of proof, we can only conclude that the calls were made from his telephone number and as a subscriber, complainant is responsible for payment of the telephone bills associated with his telephone number. Accordingly, we must conclude that the \$52.20 debited to complainant's telephone statement for calls previously credited on the basis of complainant's denial of having made them, was correct and the claim should be denied.

ORDER

IT IS ORDERED that:

1. The complaint in (ECP) Case 88-10-035 is denied.
2. The amount of \$52.20 on deposit with the Commission shall be disbursed to GTE California Incorporated.

This order becomes effective 30 days from today.

Dated FEB 8 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. CHANLAN
Commissioners

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

[Signature]
Vicki W. Weller, Executive Director