ALJ/EJT/bg

Decision 89 11 065 NOV 22 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Lucille D. Rogers, Complainant, vs. General Telephone Company of California, Defendant.	Case 88-07-025 (Filed July 18, 1988)

Lucille D. Rogers, for herself, complainant.
Edward R. Duffy, for GTE California Incorporated, defendant.

OPINION

Summary of Complaint

On July 18, 1988, Lucille D. Rogers (complainant) filed a complaint against General Telephone Company of California, now known as GTE California Incorporated (defendant or GTEC), under the Commission's Expedited Complaint Procedure. The complaint relates to defendant's Frequent Caller Program (FCP), an optional discount program for residential subscribers.

Complainant states that defendant changed the billing period for the FCP from a fixed period each month, the 29th to the 28th, to a variable period of 24 through 36 days, without similarly changing the usage allowance thereby generating additional revenue for the defendant. Complainant requests a refund of $44.87.

Complainant indicates that she filed an informal complaint with the Commission's Consumer Affairs Branch on November 19, 1987. After numerous phone calls, she received a

letter from the Commission dated June 14, 1988, advising her of the informal findings and further to file a formal complaint if she wished to pursue the matter.

Answer to Complaint

Defendant filed its answer to the complaint on August 24, 1988. Defendant alleges that the FCP system was changed for all customers' bills effective June 10, 1987. The fixed dates used to determine the usage allowance were changed to correspond to the previous month's exchange service billing period. For complainant, this meant that the fixed dates for her usage allowance were changed from the 29th to the 28th to the 7th to the 6th. The new fixed period remained in effect only through the August 1987 bills.

Defendant alleges that before September 1987, the FCP allowance was based on fixed billing dates and only calls made during those dates were applied to the allowance. Consequently, FCP calls that were not processed in time could not be billed resulting in estimated revenue losses of $265,000 annually.

Defendant alleges that after September 1, 1987, the FCP fixed billing dates were removed and the prior month's billing period was applied to the allowance, thereby allowing late-billed calls to be added to the allowance.

Defendant also alleges that it will make the following changes: (1) include language in its FCP tariff which would allow late-billed toll to apply to the calling allowance,[1] and (2) notify subscribers that late-billed toll may be applied to their FCP calling allowance, thereby exceeding the usage a subscriber might anticipate being applied to the allowance.

1 Defendant added a special condition to its FCP tariff by Advice No. 5182, filed December 9, 1988, which provided that usage charges could be billed in arrears.

Hearing

On October 17, 1988, the presiding administrative law judge (ALJ) ruled that the Expedited Complaint Procedure be terminated and that the matter be recalendared under the Commission's regular procedure. Evidentiary hearing was held on November 8 and 9, 1988, in Westminster before ALJ Levander.

Complainant's testimony focused on the change from a fixed billing period of 30 days to a variable billing period ranging from 24 to 36 days. Complainant explained that this change caused usage to be billed over a longer and different period than the corresponding allowance and discouraged her use of the FCP due to the difficulty of ascertaining when her telephone toll calls would be billed.

Complainant also alleged that defendant did not provide subscribers with the 90-day notice required by Public Utilities (PU) Code § 730.7. She testified that the subscribers were notified of the change by one little note at the bottom of the bill.

Defendant admitted that it had changed the conditions of FCP service by switching from a fixed billing period to a variable period. Defendant indicated that the switch in billing period was designed to collect lost revenues, which amounted to $265,000 annually. Apparently, this reason was not well publicized even within the company. Defendant's witness Mortensen testified that she told complainant that removal of fixed dates was in response to customers' requests that FCP bills be itemized and that it was not until later that she became aware it was also to recover lost toll revenues. Defendant also stated that its filed tariffs do not discuss fixed billing dates.

Defendant admitted that the only customer notification of the change from fixed billing dates was the notice on the first bill.

Defendant also stated that changing from the manual billing system to the new billing system enabled it to reduce the time between usage and billing to 6 days under the new system, whereas 12 to 15 days were required under the manual system.

Issues

The issues to be determined in this proceeding are:

1. Did defendant violate its tariffs when it switched from a fixed billing period for its FCP to a variable billing period?

2. Did defendant provide its customers with adequate notice when it switched billing periods?

3. Is complainant entitled to relief?

Discussion

Issue 1: Did defendant violate its tariffs when it switched from a fixed billing period for its FCP to a variable billing period?

The FCP, formerly known as Optional Residence Telephone Service, is one of a number of optional arrangements that provide for discounted telephone service for residential subscribers. The FCP provides that for a monthly service charge a subscriber is granted a usage allowance equal to twice that service charge to a specified area. Complainant subscribed to two FCP arrangements. First, she paid a monthly charge of $8.55 and received a monthly allowance of $17.10 applicable to toll calls to Santa Monica. This is the primary area of contention. Second, she paid a monthly charge of $5.50 for a monthly allowance of $11.00 applicable to toll calls to Saddleback. Saddleback is located near El Toro.

Prior to September 1987, service under the FCP was based on a fixed billing period, that is, usage for a monthly period would be compared to the allowance for that same period. If the usage exceeded the allowance, the subscriber would be billed the difference. In this case, the fixed period ranged from the 29th of one month to the following 28th. The parties agree that defendant informed complainant that this was a condition of service when she

obtained service under this schedule. Unfortunately this condition of service was never specified in defendant's tariff schedules.

The problem with the fixed billing period from defendant's point of view is that toll calls made near the end of the billing period, that for whatever reason did not make it into the billing system on time, were "lost" because such calls could not be applied against the allowance for the next billing period. This loss of revenue prompted defendant to change from the fixed billing period to a variable billing period in September 1987.

From complainant's point of view, the change to a variable billing period was not fair because she no longer had knowledge and thereby control of the toll calls that could be applied against a particular allowance, and even worse, she was forced to use restraint on the number of calls that she could make due to the new billing uncertainties. Complainant admits, however, that she had knowledge of the change to a variable billing period at the time the change was instituted.

Defendant did not violate its tariffs when it switched from a fixed billing period for the FCP to a variable billing period, because the fixed billing period was never a stated condition in the tariffs. Defendant added the following special condition to the FCP by Advice No. 5182, filed December 9, 1988:

> "Usage charges are billed in arrears and may not appear on the first bill rendered after the charge has been incurred. In this instance, usage will be attributed to the allowance for the current bill."

Surprisingly, Advice No. 5182 did not identify this added special condition nor present any reasons for the change.

However, defendant did contravene the reason for the program when it became able to mismatch temporarily the usage with the allowance, and subscribers no longer could determine the period over which the allowance was applicable, because defendant can attribute the usage to any past period at its sole discretion.

Clearly, the allowance and the usage applicable to that allowance should be based on the same period of time. The fact that defendant was losing revenues is not sufficient reason for the billing period change when less draconian remedies are available to defendant.

The first and easier remedy would be to use the apparent Pacific Bell[2] approach where the toll charges are billed sufficiently after the usage so that all charges applicable to a particular period can be accumulated and compared to the allowance for that same period of time. Defendant's change to a new billing system would now seem to make this remedy feasible.

A second remedy which can be used by companies with antiquated billing systems would be to vary the allowance[3] to coincide with the period over which the toll usage was accumulated. This remedy, while not nearly as fair as the first remedy because the customer cannot control his usage due to the variability of the billing period, is far superior to the method selected by defendant. Defendant should be required to revise its tariffs to match usage with the allowance for the FCP.

Issue 2: Did defendant provide its customers with adequate notice when it switched billing periods?

The only notice given by defendant when it switched from a fixed billing period to a variable billing period was a small note on the bills of the affected customers. Defendant, in its Answer to Complaint, indicated that it intended to send notices to its customers that use the FCP of the possibility that late-billed toll could be applied to their FCP allowance. Complainant insists that defendant is required to provide 90 days' notice of rate

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2 Defendant's FCP is based on and refers to the cornerstone of Pacific Bell's Schedule A6.3.1.

3 Defendant in fact used this approach to adjust complainant's September 1987 bill.

changes by PU Code § 728.7. Defendant is correct in pointing out that complainant's reliance on § 728.7 is misplaced because that section relates to procedures for rate changes resulting from long-distance rate regulation.

Nevertheless, the purpose for requiring notice in regard to rate changes is to alert customers that their charges for service may be increased. In this case, no rate was being changed, and no tariffed special condition was being changed. The only change was the fixed billing period was being changed to a variable billing period. However, the purpose of the change was to collect revenues that were being lost. This can only be done by increasing the charges to the affected customers. Although notification of such change is not legally required, utility management should have done more than a mere note on the bottom of a bill.

Issue 3: Is complainant entitled to relief?

Complainant originally sought a refund of $44.87. Complainant revised this number to $20 during the hearing, without explaining the reason for and details of the change. Complainant further modified her plea in her Opening Argument to make this a class action suit and now requests that GTE refund to all customers the overcharges on their bills due to 36-day billing with a 30-day usage allowance.

Although complainant alleged that the change in the billing period adversely affected her telephone usage, this change was not reflected in her telephone bills. Charges for usage over the allowance averaged slightly more than $2.00 per month before the change and slightly less that $2.00 per month after the change. It is not apparent that the change in billing periods increased complainant's bills.

We have previously found that applicant did not violate its tariffs when it switched from a fixed billing period to a variable billing period. Therefore, we cannot find any relief appropriate under the circumstances. However, we will order

defendant to revise its FCP schedule to coincide usage with the usage allowance in the future.

Findings of Fact

1. Lucille D. Rogers was a customer of GTEC.

2. Complainant used the FCP, a tariffed offering of defendant.

3. The FCP is an optional discounted residence telephone service whereby a customer receives an allowance for toll charges by paying a monthly service charge.

4. Prior to September 1987, the usage allowance under the FCP was based on a fixed billing period. The fixed billing period was not a special condition of service in defendant's tariffs.

5. In September 1987, defendant changed the fixed billing period to a variable period for the FCP. No change was made in the tariffs because the fixed billing provision had never been included as a special condition in the tariffs.

6. The only notice for this change was a small note on the bottom of the bill of affected customers.

7. The change from a fixed billing period to a variable billing period did not violate defendant's tariffs. However, this change meant that the usage and corresponding allowance would not necessarily be based on the same period.

8. The reason for the billing period change was to permit defendant to collect "lost" toll charges. With the change in billing systems, defendant is now able to bill in arrears and not lose revenues.

9. Defendant is not required by PU Code § 728.7 to provide 90 days' notice of billing period changes. Prudent utility management would have done more to notify subscribers of potential increased charges than a small note on the bottom of a bill.

Conclusions of Law

1. Defendant did not violate its tariffs when it switched billing periods.

2. Complainant's request for relief should be denied.

3. Defendant should be required to revise its FCP tariff schedule to match usage with the corresponding allowance.

ORDER

IT IS ORDERED that:

1. The complaint in Case 88-07-025 is denied.

2. Within 15 days after the effective date of this order, GTE California Incorporated shall revise its Frequent Caller Service Schedule B-4 by deleting Special Condition 6.c. and adding a new special condition that matches the usage period with the corresponding usage allowance.

This order becomes effective 30 days from today.

Dated NOV 22 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director