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Decision 90 01 014 JAN 9 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ralph Holliday and
 Barbara Holliday,
 Complainants,
 vs.
 GTE California Incorporated,
 Defendant.

ORIGINAL

Case 89-04-013
(Filed April 7, 1989)

Barbara Banks-Holliday, for herself, complainant.
Edward R. Duffy, for GTE California Incorporated,
 defendant.
Janice Grau, Attorney at Law, and Jack Leutza,
 for the Division of Ratepayer Advocates.

O P I N I O N

This complaint was filed by Ralph and Barbara Holliday (complainants) against GTE California Incorporated (GTEC) seeking relief from certain charges for 976 Information Access Service (976) and other calls. The complaint was filed on April 7, 1989 following an informal review of the complaint by Consumer Affairs Branch. The matter went to hearing on July 21, 1989, and was submitted August 22, 1989.

This decision grants complainants' request for relief from 976 billings. It denies their request for relief from billings for other services.

I. Chronology of Events

The parties do not dispute the following chronology of events:

August 25, 1987 - Barbara Holliday (Holliday) contacted GTEC's customer billing center to dispute 976 vendor charges which appeared on Holliday's August 19, 1987 statement. GTEC's billing representative informed Holliday that she should pay the undisputed charges and the disputed charges would be referred to GTEC's Investigation Unit.

October 13, 1987 - GTEC credited Holliday's account \$932.68 for 976 charges appearing on August and September 1987 bills (one month plus five days of billings).

October 28, 1987 - GTEC sent a notice to Holliday informing her of the adjustment and notifying her that she was responsible for \$122.00 in 976 charges on her October bill.

November 4, 1987 - GTEC inspected its central office facilities and outside facilities to determine whether any irregularities existed on Holliday's equipment. GTEC found no unauthorized connections.

December 15, 1987 - By way of letter, GTEC informed Holliday of the results of the inspection.

January 1988 - GTEC mailed all of its residential customers, including Holliday, a notice that 976 blocking was available, a feature that was to become effective March 1, 1988.

March 1, 1988 - 976 blocking became available to all GTEC customers.

May 7, 1988 - GTEC mailed a final notice of unpaid 976 charges in the amount of \$3,869. The notice stated that the account would be assigned to a collection agency if not paid within 15 days, and that mandatory blocking would be instituted on May 25, 1988.

May 25, 1988 - GTEC instituted 976 blocking on the Holliday line.

August 30, 1988 - GTEC temporarily disconnected Holliday's service for nonpayment of disputed charges (which were not for 976 services). On the same day, complainant phoned GTEC's billing center and disputed GTEC's decision to disconnect her service.

August 31, 1988 - Holliday filed an informal complaint with the Commission.

September 6, 1988 - GTEC connected a new service, with a new line, at the Holliday residence in the name of Ann Kimble, complainants' daughter.

September 13, 1988 - GTEC undertook another inspection of Holliday's line, and found no trouble on the line.

II. Holliday's Testimony

Holliday, whose husband, Ralph Holliday, is the customer of record, testified that:

The only 976 calls made by a member of her household were those to lottery numbers and were made by her husband.

GTEC billings show 976 and other disputed calls made during days and at hours when no member of her household was at home. She has five sons who do not reside in her home, and a daughter who lived in the house during periods of 1988.

She requested that GTEC disconnect her phone line in August 1987, and that the GTEC representative told her that disconnection would not solve her problem and would not permit GTEC to investigate the source of the problem.

In October 1987 she requested blocking, but GTEC stated it did not have the equipment to block 976 calls prior to 1988.

She had had problems with her phone line whereby callers would sometimes receive wrong numbers. At other times she could hear other people talking on the line. She asked GTEC to check the line, and GTEC stated nothing was wrong with it.

She called GTEC every time she received a bill which included disputed 976 and other calls since the August 1987 bill until May 1988 when she began calling the Consumer Affairs Branch of the Commission.

GTEC sent her a form in January 1988 regarding whether she would like to have 976 calls blocked. She requested blocking by mailing the card to GTEC in January 1988.

Although the 976 blocking eventually resolved the problem of billings for 976 calls, Holliday continued to be billed for other unauthorized calls. She kept a log of all toll calls made by members of her household, and informed GTEC of those which she did not make.

III. GTEC's Testimony

GTEC's main witness, Ed Duffy, works in the Regulatory Affairs Department of GTEC. Duffy testified that:

During the inspections of Holliday's outside facilities on November 4, 1987 and September 14, 1988, GTEC's inspector could find no evidence of an unauthorized attachment on Holliday's line.

A GTEC employee could have made the calls from the GTEC central office, but GTEC's investigation found no evidence of that occurring.

Some of the disputed (non-976) calls on Holliday's billings are also calls listed on her daughter's billings.

He believes Holliday never requested a line disconnection, but rather a change in telephone number.

Holliday's billings show that undisputed calls were made shortly before calls which are disputed.

GTEC had the technical capability to block Holliday's 976 calls before March 1988 but no Commission authority to block before that time. GTEC has no record that Holliday ever requested blocking.

The majority of the disputed 976 billings were to "chat line" services.

The trouble on Holliday's line (e.g., calls in routing to another number) to which she referred could have occurred if a line was crossed with another line; however, GTEC had no reports from Holliday regarding this type of problem.

GTEC does not have a record of any communications from Holliday between November 1987 and August 1988.

Holliday's son was home in October 1987 contrary to Holliday's statement that her son was only home during the holiday season. Her son identified himself in a phone call with a GTEC representative.

The customer of record is responsible for calls placed on his or her equipment, whether or not the customer is aware that the calls are being made.

GTEC's witness Frank Morales, a telephone installer, testified that:

In September, 1988, he installed a second line at the complainants' residence. A young man and a young woman were on the premises. He could not use the existing line because it had been completely disabled.

A "hot drop" is a terminal connection whereby more than one household can use the same line. He did not check for a "hot drop" on complainants' line but believes the other inspectors did.

GTEC argues on brief that Holliday has the burden to show exactly which calls were not placed from her household and why the contested calls could not have been placed from her household. GTEC states Holliday has failed to satisfy her burden of proof.

GTEC states that members of Holliday's family, including five sons, a daughter and her husband, were at home at various times during the period in question. GTEC believes that Holliday disclaims the 976 calls because "she assumed most or all of the 976 calls were to adult, and possibly pornographic, services and she was offended by the notion that calls to such services were being made by a member of her household."

GTEC does not have a record of Holliday's request for disconnection. GTEC argues that even if Holliday had requested disconnection and subsequent reconnection of her line, GTEC could not reasonably have been expected to reconnect her line to different facilities given that it could uncover no service problems.

IV. Division of Ratepayer Advocates' Position

Division of Ratepayer Advocates (DRA) sponsored a witness and filed a brief in this proceeding. DRA participated in the proceeding to address the application by GTEC of the Commission's adjustment policy prior to the availability of blocking in early 1988. DRA did not comment on the appropriate treatment of disputed calls which were not to 976 numbers.

DRA believes GTEC's interpretation of the Commission's adjustment policy during the period in question was too narrow. GTEC's position on adjustment during that period is that it owed the customer one billing cycle plus five days' worth of adjustments. This interpretation, according to DRA, is incorrect. The Commission considered limiting adjustments to one billing cycle plus 60 days in Decision (D.) 87-08-064. DRA argues, however, that

this decision never went into effect because proper notice was not given to customers. Therefore, the earlier, more liberal policy should have been applied and complainants should have been credited for all 976 calls prior to the availability of blocking.

Even if the 60-day limitation had become effective and proper notice had been give to GTEC's customers, GTEC still would have owed the complainants an adjustment for August, September, and October 1987.

DRA also believes GTEC should not have denied a customer an adjustment for a continuing problem before GTEC had even made a determination that the problem was the customer's.

Finally, DRA notes that this case is substantially similar to many others filed against GTEC. DRA recommends the Commission consolidate these complaints and initiate an investigation into GTEC's handling of 976 adjustments.

V. GTEC's Response to DRA's Position

GTEC objects to DRA's recommendation to relieve Holliday of 976 charges. GTEC believes the Commission never intended for the one-time adjustment policy to be applied as DRA suggests. Although the Commission required a one-time adjustment for 976 charges "arising out of a single cause, episode, or chain of events," it did not intend that the utilities must apply that policy to approximately 11 months of "unauthorized" calls.

GTEC cites language in Commission decisions to point out that the Commission intended that customers take responsibility for 976 calls made after the one-time adjustment was applied and that an overly liberal adjustment policy may lead to abuse.

VI. Discussion

We address several issues in this decision:

- o Did GTEC properly handle Holliday's complaint?
- o Did GTEC properly apply the 976 adjustment policy?
- o Should Holliday be relieved of billings for disputed calls which were not to 976 services?
- o Should the Commission initiate an investigation of GTEC's application of the 976 adjustment policy?

A. Did GTEC properly handle Holliday's complaint?

Holliday disputes \$3,869.90 of 976 calls. She also disputes non-976 calls, amounts for which are not stated in her complaint. The disputed 976 charges are included on Holliday's October 1987 through June 1988 billings. The other charges appear to be for August 1987 through September 1988 billings.

It is impossible to determine from the record the source of the disputed calls. GTEC believes that a member of the Holliday household made the calls without authorization although it appears to argue that the customer is responsible for any calls made on the customer's premises. Holliday states that no member of her household made the calls, asserting that many of the calls were made when her family was not at home or when she is certain the telephone was not being used. Whether or not the calls were made from Holliday's telephone equipment, it is uncontroverted that the disputed calls were unauthorized by complainants.

Holliday called the company when she first discovered calls she believed were unauthorized and continued to call GTEC when she disputed subsequent billings. After discovering the problem in late 1987, she kept a log of calls made by members of

her household in order to determine whether her billings were correct.

Holliday states she requested blocking, disconnection, and a new telephone number from GTEC. When Holliday found the matter could not be resolved with GTEC, she began working with the Commission's Consumer Affairs Branch, writing numerous letters to the Commission explaining her problem and seeking advice.

The record does not support GTEC's claim that it did everything possible to resolve this complaint. In fact, the evidence before us indicates that GTEC handled this complaint very poorly. When Holliday first called to dispute the calls, she asked that her line be inspected and that the line be disconnected. GTEC advised her not to disconnect because an inspection could not be performed on a nonworking line. GTEC's advice to the customer that the line should not be disconnected until the inspection was made was reasonable only if GTEC conducted its investigation promptly. GTEC's inspection was not prompt. Although Holliday requested an inspection in August, GTEC did not make the inspection until November. Moreover, GTEC did not notify Holliday of the results of the inspection until December, almost six weeks after the inspection was made, and four months after Holliday's initial complaint.

The Hollidays continued service on that line at GTEC's request, awaiting GTEC's dilatory inspection. Despite this, GTEC sent a letter to Hollidays in October, notifying the complainants that they would be liable for all 976 calls beginning with those made in September. The letter also advised complainants that GTEC would consider the matter resolved if Hollidays did not contact GTEC within two weeks, by November 11, 1987. This letter to the Hollidays was improper. The complainants' liability depended, at least in part, on the inspection of the line which GTEC had promised to undertake. Yet GTEC did not make the inspection until November 4 and did not notify the Hollidays of the results of the

inspection until December. It was improper for GTEC to attempt to consider the dispute "resolved" even before the inspection was made.

Because GTEC advised Holliday not to disconnect her phone line and to await an inspection, complainant could reasonably have assumed that she would not be liable for calls she believed she did not make, at least until GTEC advised her whether the inspection found problems with the line. Because the complainant wanted to disconnect the line in August and did not do so at GTEC's request, we find that GTEC should be responsible for all disputed calls through December. If GTEC had made the inspection in a timely manner and notified complainant within the normal adjustment period, no extension in the adjustment period would be necessary. But where, as here, GTEC unreasonably delays in making the inspection until after expiration of the adjustment period, GTEC should be responsible for the consequences of the delay.

Not only did GTEC fail to inspect the line in a timely manner, once it made the inspection and finally notified complainant of the results, it failed to do all it could to help complainant with her mounting bills.

Holliday states that she requested blocking on several occasions. Despite the request, GTEC did not provide blocking when it was first technically feasible to do so. GTEC's witness testified that GTEC had the technical capacity to block 976 calls in early January 1988. Its tariffs permitted (but did not require) the utility to block such calls. Since GTEC's approved tariffs permitted it to block 976 calls, GTEC did not need additional Commission authority to block as GTEC states.

GTEC also failed to institute 976 blocking on Holliday's line in March 1988 on the grounds that it had not received notification from Holliday pursuant to the form GTEC mailed to all of its customers in January 1988. Holliday requested blocking five months prior to March 1988. Her problems with 976 calls were

ongoing during that five months. GTEC should have contacted Holliday and instituted 976 blocking of Holliday's line with or without receipt of the signature card.

GTEC's failure to provide blocking to a customer who had clearly requested it and who was in obvious distress is reason enough to require GTEC to be held responsible for all 976 calls between January 1988 and May 1988.

GTEC might have also attempted to resolve Holliday's problem by using a different line to serve Holliday. This capability was available, as evidenced by GTEC's use of a second line to serve Holliday's residence in 1988. A line change may have resolved Holliday's problem if it resulted from a "hot drop" or employee tampering. GTEC's witness testified that, although its inspections could not uncover any problems, Holliday's line could have been subject to either form of undetected tampering.

In view of the large number of disputed calls, the high level of outstanding charges, and the controversial nature of 976 calling during the period in question, GTEC failed to take adequate steps to address Holliday's complaint.

B. Did GTEC properly apply the 976 adjustment policy?

Another issue in this proceeding is whether GTEC appropriately applied the adjustment policy. DRA argues that GTEC did not. Based on its interpretation of past Commission decisions, DRA believes Holliday should be relieved of all 976 charges.

The first 976 adjustment policy was established in D.87-01-042, prior to Holliday's first 976 inquiry to GTEC:

The one-time adjustment per residence customer shall apply to all pending, past, and future claims when it is established that the (1) customer did not know that 976 billing charges were applied, (2) for calls by a minor child, the call was made by the minor child without parental consent, or (3) the calls were not authorized by the subscriber.

The Commission defined "one time" as referring to "calls made before the customer first discovers his liability for 976 charges, or calls arising out of a single cause, episode, or chain of events." This adjustment policy did not specify a time limit and was to remain in effect until blocking was available.

Subsequently, we responded to a petition for modification by issuing D.87-08-064. That decision narrowed the adjustment policy to discourage abuse of the policy. We found that customers should be allowed credits for 60 days, plus one billing cycle. This period would permit the customer an opportunity to determine the source of the calls and to correct the problem.

D.87-08-064 also stated that since this change in policy had not been reviewed by the parties we would order them to propose an appropriate form of customer notice to the Commission. We ordered the utilities to submit those notices after which we would require GTEC and Pacific Bell (Pacific) to incorporate the 60-day adjustment limitation in their tariffs.

D.88-05-073, issued in response to petitions for modification, commented that the parties had not by that time met to develop notices or tariff terms on the 60-day adjustment policy.

Later, we considered the adjustment policies for Pacific's 976 and 900 services. In D.89-03-061, we conditionally adopted a settlement for the implementation of 900 services. In that decision, we stated that Pacific should apply the 60-day policy (set forth in D.87-08-064) to 900 services. Subsequently, Pacific modified its 976 tariffs to apply the same policy to 976 services.

The 60-day adjustment policy set forth in D.87-08-064 never became effective for GTEC, however, because GTEC did not present customer notices or change its tariffs to reflect the rule change. Accordingly, the 976 adjustment policy in effect during the period of complainants' disputed billings was that policy

adopted in D.87-01-042 and which is described above. That policy continues to be in effect for GTEC.

With this in mind, we consider how the original adjustment policy should have been applied in this case. GTEC believes its application of the adjustment policy was proper in light of the Commission's recognition of the abuse of the policy and because our early adjustment policy was open to interpretation. GTEC adjusted Holliday's bill one billing cycle plus five days, consistent with its current adjustment policy.

Although the adjustment policy set forth in D.87-01-042 may require some interpretation, GTEC's interpretation is too narrow. The 60-day adjustment policy was established in D.87-08-064 to limit the earlier policy, not expand it. Therefore, the most restrictive adjustment policy we have considered is the 60-day adjustment policy. GTEC should have more liberally interpreted the adjustment policy.

GTEC states it applied a restrictive policy in this case on the grounds that it sought to limit abuse of the adjustment policy. Holliday's actions demonstrate that she did not seek to abuse the policy. To the contrary, she acted to limit abusive use of her telephone equipment by requesting technical changes to her line.

The adjustment policy set forth in D.87-01-042 establishes certain criteria for making adjustments to 976 bills. The customer must be unaware of the charges or the calls must have been unauthorized by the subscriber. Adjustments were applicable to calls made before a customer discovers liability for 976 calling or those "arising out of a single cause, episode, or chain of events."

GTEC has argued that complainants must show the calls were not made from their household in order to qualify for the relief sought. We disagree. We established the adjustment policy, in part, to provide customers one-time relief from any unauthorized

calls. In this case it is undisputed that the calls were unauthorized. Further, although the source of the calls was never determined, they appear to have been made by the same party or parties, to similar types of 976 programs, and over a continuing period. This circumstance, combined with GTEC's failure to take prompt and reasonable action to mitigate complainants' problem, leads us to conclude that the disputed calls arose from "a single series of events."

Because we find that complainants' disputed 976 calls were unauthorized and arose out of a single chain of events, complainants' are entitled to an adjustment. We will grant Holliday's request for relief for charges from disputed 976 calls. We also find that GTEC misinterpreted our 976 adjustment policy by limiting adjustments to one billing cycle plus five days.

C. Should complainants be relieved of billings for disputed calls which were not to 976 services?

A remaining issue is whether Holliday should be credited for amounts billed for disputed calls not made to 976 numbers. In past decisions, we have distinguished 976 calls from other calls. 976 is an enhanced service with which customers have had little or no experience until recently. Customers may not have been aware that unauthorized use of those services could occur and impose significant costs. In recent years, we have established various policies seeking to address these circumstances.

Calls associated with traditional telephone services, however, subject customers to a higher level of responsibility. D.87-01-042, issued in our ongoing 976 service investigation, stated "Protection of the revenue requirement associated with this vital (utility) service is the goal of holding subscribers strictly liable for charges" associated with traditional services. In the case of those billing problems, therefore, Holliday's burden of proof is greater. Holliday has not demonstrated that she should be relieved from billings associated with traditional phone services.

Although we deny Holliday's request for relief from charges for certain disputed calls, we expect GTEC to take all reasonable measures to resolve customer complaints regarding unauthorized calls, whether or not those calls are to 976 services. As discussed above, we are not convinced that GTEC did so in this case.

D. Should the Commission initiate an investigation of GTEC's application of the 976 adjustment policy?

Finally, we address DRA's request to open an investigation into GTEC's 976 billing and adjustment practices. We will not undertake such an investigation at this time. This decision should provide adequate guidance to GTEC regarding the proper application of the 976 adjustment policy in pending and future complaints, both formal and informal. We will take further action if we become aware that GTEC is not following the guidelines set forth in this order. We will also direct our Consumer Affairs Branch to use these guidelines in advising customers regarding 976 adjustments.

Findings of Fact

1. Complainants filed this complaint seeking relief from \$3,869.90 worth of 976 calls and an unspecified amount for other calls.
2. It is uncontroverted that complainants' disputed calls were unauthorized.
3. Holliday acted responsibly in contacting GTEC regarding disputed calls, seeking a technical solution to her problem, and keeping a log of calls made by members of her household.
4. Complainants' problem might have been mitigated if GTEC had blocked 976 calls, or used a different line to serve complainants.
5. GTEC waited over two months to inspect complainants' facilities and issued a 976 call adjustment prior to making that inspection. GTEC billed complainants for calls made between the

time of the complaint and the date it issued the adjustment notice, and prior to notifying complainants that it could not determine a problem on their line.

6. Complainants might have reasonably expected that their problem could have been resolved by GTEC following its inspection of the line. They therefore did not have a reasonable opportunity to mitigate the damage caused by calls made prior to the adjustment notice.

7. GTEC did not take adequate steps to address Holliday's complaint.

8. D.87-01-042, as modified by D.87-08-064 and D.88-05-073, set forth a policy for 976 call adjustments.

9. The 60-day adjustment policy set forth in D.87-08-064 was more restrictive than the policy adopted in D.87-01-042, and the most restrictive policy established by the Commission.

10. GTEC never notified its customers of the 60-day adjustment policy set forth in D.87-08-064 or included that adjustment policy in its tariffs.

11. The disputed 976 calls appear to have been made by the same party or parties, were to similar types of 976 programs, and occurred over a continuing period. These circumstances, in combination with GTEC's failure to take prompt and reasonable action to address complainants' problem, establish that the disputed 976 calls arose out of a single chain of events.

12. The Commission, in D.87-01-042, distinguished 976 calling from traditional telephone services and found that customers are subject to a higher level of responsibility for traditional telephone services.

13. Complainants did not demonstrate that they should be relieved from billings associated with traditional telephone services.

Conclusions of Law

1. The 60-day adjustment policy set forth in D.87-08-064 never became effective for GTEC.
2. The 976 adjustment policy in effect during the course of complainants' disputed billings was that policy adopted in D.87-01-042.
3. Complainants should be granted relief from charges for disputed 976 calls.
4. Complainants should not be granted relief from charges for calls that are not to 976 programs.
5. GTEC should apply the 976 adjustment policy guidelines set forth in this decision in applicable pending and future 976 complaint cases.

O R D E R

IT IS ORDERED that:

1. GTE California Incorporated (GTEC) shall relieve Ralph and Barbara Holliday from all charges associated with disputed 976 services. If GTEC has referred Holliday's 976 billings to a collection agency, it shall, within 15 days of the effective date of this order, direct the collection agency to discontinue its collection activities with respect to Holliday.
2. GTEC shall apply the 976 adjustment policy guidelines set forth in this decision to all applicable pending and future 976 complaint cases, whether formal or informal.

3. In all other respects, this complaint is denied.
4. The Executive Director shall direct the Consumer Affairs Branch to use the 976 adjustment policy guidelines set forth in this decision when responding to applicable customer inquiries.

This order is effective today.

Dated JAN 9 1990, at San Francisco, California.

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

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

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

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