

Decision 90 01 039

JAN 24 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

David A. Van Staveren and
Margaret L. Van Staveren,

Complainants,

vs.

GTE California Incorporated,

Defendant.

(ECP)
Case 89-08-025
(Filed August 16, 1989)

David A. Van Staveren, for himself, complainant.
Edward R. Duffy, for GTE California Incorporated,
defendant.

O P I N I O N

Summary of Complaint

On August 16, 1989, David A. Van Staveren and Margaret L. Van Staveren (complainant) filed a complaint against GTE California Incorporated (GTEC) under the Commission's Expedited Complaint Procedure (ECP). Complainant requests relief for incorrect billing of toll calls made with 976 prefix numbers. Complainant alleges that the calls were not made from his residence phone and requests that defendant remove the disputed amount of \$323.54 from the account.

Complainant tested a 976 call and determined that approximately two and one-half minutes were needed from the time of lifting the receiver to completion of the message. This included the dialing time, the ringing time, the preceding explanatory message time, and the time of the message itself. However, the vast majority of the 976 calls were recorded as one minute in length, which means that these calls served no useful purpose if one wanted to listen to the message.

Complainant states that defendant's billing department informed him that for every "DIAL-A-MSG" toll call there should be a corresponding vendor charge. Complainant's November 16, 1987 telephone bill listed 767 "DIAL-A-MSG" calls and only 8 vendor charges, while the December 16, 1987 bill listed 703 calls and only 10 vendor charges.

Complainant alleges that it would have been senseless for someone in his family to make the calls in the small hours of the night, it would have been evident to family members if someone had made the calls in the evening, and it would have been impossible to make the calls during the day because all family members work and no one was in the house then.

Complainant states that AT&T refunded all of the charges for 900 calls. These 900 calls were placed in essentially the same time period as the disputed 976 calls.

Complainant indicates that the defendant did carry out a line check but did not find anything unusual or amiss. However, the inspection was not made until after the 976 calls had ceased.

Answer to Complaint

Defendant filed its answer to the complaint on September 20, 1989. Defendant indicates that it issued a credit of \$14.02 on April 5, 1988 for 976 calls placed from complainant's line. This billing adjustment apparently covers the period from September 4, 1987, the date of the first 976 call, through October 21, 1987, which is one billing period plus five days from the first bill including 976 calls dated September 16, 1987. Defendant also indicates that special inspections of the outside plant and/or central office facilities of complainant's line were made on six occasions in 1988 and 1989, with no trouble found.

Defendant requests that the Commission dismiss the complaint, deny the relief requested by complainant, and require complainant to pay all amounts charged to account number (415) 892-0675.

Hearing

An evidentiary hearing was held on November 16, 1989 in San Francisco before Administrative Law Judge Toxeira. David Van Staveren and his daughter Jenny Van Staveren testified for complainant, while David Skelton, John Hazard, and Patricia Doyle testified for defendant. Closing statements were made by David Staveren for complainant and Edward Duffy for defendant.

Complainant's Testimony

David Van Staveren testified that:

No one in his family has ever been involved in any criminal activity.

When making a 900/976 call, the time needed to get to the menu point and select a call is one minute and the time needed to receive the entire message is 2-1/2 minutes. No one in his right mind would have made the numerous one minute calls only to get nothing out of them.

Although there are two separate lines to his home, one business and one residential, the 900/976 calls appeared only on his residential phone bill.

Although it is his understanding from talking to defendant that there should be a corresponding vendor charge for each 976 toll charge, there were only 18 vendor charges for more than 1,400 976 charges.

The line check was not made by defendant until after the 900/976 calls had stopped.

The 900/976 calls ceased after blocking took place.

Although everyone in the family worked, there were times when some family member could be in the house during the business day.

No 900/976 calls were made at times when other calls were made from the house.

First stated that he called defendant in early 1988 to disclaim 900/976 calls that appeared on the November 1987 bill, but later agreed that he called defendant on December 15, 1987.

AT&T credited the bills for 900 calls immediately, except for the last bill which was received a little later.

Jenny Van Staveren testified that:

She worked full time during July 1987.

She left home and moved into her own place in September 1988 and immediately had the phone blocked.

She had never made a 900 or 976 call.

Defendant's Testimony

David L. Skelton, Installation and Maintenance Supervisor, testified that:

He conducted both a special and a normal investigation and determined that there were no other drops on complainant's pairs.

The routine check did not indicate that tampering or other unusual activity had taken place. He agreed that the inspection would only prove that no drops were on the pairs at the time of the inspection as no evidence of the drops would remain after their removal.

John Hazard, Switch Services Supervisor for 12 years in Novato, testified that:

The third inspection was made after the disputed calls had ceased.

There was no evidence of unusual activity or tampering at the switch.

Patricia Doyle, Customer Billing Supervisor for approximately 5 years, testified that:

She talked to Mr. Van Staveren for the first time on February 19, 1988 and that he still disputed making the calls.

She discussed the Special Inspection written by Karen Show with complainant and that he was not satisfied by the report.

Closing Statements

David Van Staveren for complainant argued:

The presumption that the 900/976 calls billed to his phone were made from his home is a gross insult to his family.

It is not logical for anyone to make these calls, especially the prevalent one-minute calls, because no benefit would be received.

Members of his family would have a difficult time functioning at work the next day if they had stayed up most of the night making these calls.

No 900/976 calls were made at the time other calls were made.

Family members may have been at home during the business day but never made these calls.

He is appalled at the hostile and insulting manner of the GTEC personnel in California when he discussed this problem with them.

Edward Duffy for defendant argued:

He has no opinion on who placed the calls.

The calls were placed at different times, sometimes during the business day.

There was no indication of any trouble or tampering with the hardware or software serving complainant.

The reason for the disparity between vendor charges and GTEC toll charges is that GTEC did not have contracts with most 976 vendors for calls from the Novato area.

By tariff, the customer is responsible for all calls made from his phone.

Discussion

Under GTEC's tariffs, a customer is normally responsible for all calls made from his phone. Therefore, complainant has the burden of proving that the calls were not made from his phone. In this decision, we do not address the issue of who actually made the calls in this instance, since even if plaintiff had made the calls, the issue of a billing adjustment needs resolution prior to any determination of plaintiff's ultimate responsibility for payment.

Therefore, the only issue that we will address in this decision is the appropriate adjustment to be made for disputed 976 calls based on the 976 adjustment policy.

The 976 adjustment policy was revised in Decision (D.) 87-01-042, issued on January 14, 1987, in Case 85-04-021, to provide:

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 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 explained that it was "forced to depart from its usual principle of holding telephone subscribers strictly liable for charges incurred for calls made on their phones...because of the very nature of 976 programs." The Commission defined "one-time adjustment" as referring to "crediting of all the costs of 976 phone charges (a) incurred before the customer first discovers his liability for 976 charges, or (b) arising out of a single cause, episode, or chain of events." This adjustment policy was to remain in effect until blocking was available.

In response to a petition for modification, we issued D.87-08-064 which narrowed the adjustment policy to discourage abuse of the adjustment. We found that customers should be allowed

credits for 60 days, plus one billing cycle, in order to give customers the 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 to the proceeding, we would order them to propose an appropriate form of customer notice to the Commission. We ordered the utilities to submit these notices after which we would require GTEC and Pacific Bell to incorporate the 60-day adjustment limitation in their tariffs.

D.88-05-073, also issued after petitions for modification, noticed that the parties had not met to develop notices or tariff terms on the 60-day adjustment policy.

The adjustment policy prescribed in D.87-08-064 never became effective because the utilities did not present customer notices or change their tariffs to reflect the rule change. Accordingly, the 976 adjustment policy in effect during the billing period under dispute is the revised policy prescribed in D.87-01-042.

With this in mind, we consider now the adjustment policy that should be applied in this case. Clearly, the 60-day adjustment period established in D.87-01-042 was designed to limit the earlier adjustment period, not to expand it. This adjustment policy was intended to provide customers with sufficient time to discuss the problem with the serving utility, then find the source of the problem and take appropriate corrective action. Certainly, a period of 60 days from the time a customer brings the matter to the attention of the serving utility is not unreasonable and must be considered the minimum amount of time needed for the customer to stop the unauthorized use of his phone.

The following tabulation summarizes complainant's disputed bills showing the number of 976 calls and the total GTEC charges for such calls. Additive amounts such as applicable taxes are not included in the charges.

<u>Date of Bill</u>	<u>976 Calls</u>	<u>Total Charges</u>
9/16/87	4	\$ 0.61
10/16/87	22	4.12
11/16/87	768	115.29
12/16/87	686	112.38
1/16/88	118	18.95
2/16/88	117	23.50
3/16/88	16	3.13

Complainant claims that he was unaware that he was being billed for 976 charges until he received the 11/16/87 bill which arrived in an unusual and much larger envelope than the normal billing envelope. The record does not indicate the date that complainant received or understood the import of this bill. However, it is agreed by the parties that complainant contacted defendant on December 15, 1987 to disavow making any 976 calls and sought correction of this problem and an appropriate billing adjustment. Proper application of the 976 adjustment policy requires adjustment of all bills for 976 usage for a minimum of 60 days from December 15, 1987 or through February 15, 1988. This would leave only the charge of \$3.13 on the 3/16/88 bill which is de minimus and would not extend the adjustment period significantly and consequently should be adjusted as well.

There is little question that complainant did not authorize any of these calls and took the appropriate action to solve the problem once he was aware that he had a problem.

For the reasons discussed above, complainant's residential telephone bill should be adjusted by eliminating all charges for 976 calls set forth on bills to complainant from September 16, 1987 through March 16, 1988. Since this matter was filed as an ECP no separately stated findings of fact or conclusions of law will be made.

O R D E R

IT IS ORDERED that GTE California Incorporated shall adjust complainant's telephone bill by deleting all charges for 976 calls set forth on bills to complainant from September 16, 1987 through March 16, 1988.

This order is effective today.

Dated JAN 24 1990, 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

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