

COM/GMW/cac

Decision 90 01 040 JAN 24 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Marilyn Klein,
 Complainant,
 v.
 GTE California Incorporated,
 Defendant.

ORIGINAL
 (ECP)
 Case 89-03-019
 (Filed March 7, 1989)

Marilyn Klein, for herself, complainant.
Edward R. Duffy, for GTE California
 Incorporated, defendant.

OPINION

Complainant seeks to have vendor charges of \$352.67 canceled because the telephone calls were not placed from her telephone. Vendor charges are charges made for calls to 976-prefix telephones, the recipients of which provide various messages over the telephone to the caller. The charge per call in this case was \$2. The telephone numbers called were to vendors who are known to provide sexually-explicit material on the phone. Defendant asserts that all the disputed vendor calls were made from complainant's telephone and that complainant is liable. Public hearing was held before Administrative Law Judge Barnett on June 2, 1989.

Complainant testified that she moved to her present address on Spry Street, Norwalk in October 1986. It is a three-bedroom single family house in which she resided with her two sons, now ages 26 and 29. There are four telephones in the house. She first noticed the vendor charges on her February 1987 telephone bill. She immediately complained to defendant, who conducted an investigation of complainant's telephones, outside wiring, and central office equipment and who made adjustments to complainant's

bill in accordance with Commission policy. The vendor charges continued to appear until April 1988 when defendant placed a 976-block on her line. She testified that she had discussed the vendor calls with her sons, who denied making the calls. They both lived at the home during the entire period. She said that the prior owner of her home was a telephone company employee who had at least two telephone lines into the home and had much interior telephone wiring. She suspects that an attachment may have been placed on the outside wiring of her telephone line which would permit a stranger to make calls over her line without anyone knowing the source. She said she received obscene mail addressed to the prior owner of the house.

A representative of defendant testified that as far as he could tell all the disputed calls were made to vendors of sexually-explicit material. He said that defendant conducted four different inspections of complainant's home, inspected the outside wiring, and inspected the central office equipment that serviced complainant's telephones and all was found to be in order. No evidence of irregularity could be found. He presented bills from complainant's first day in her home from October 1986 and highlighted all of the calls made to vendors. Calls were made locally as well as interstate.

He then presented telephone bills from complainant's Muroc Street, Norwalk home prior to her move in 1986. He highlighted the telephone numbers on those bills for the period April 1985 through October 1986 which represented calls to vendors of sexually-explicit material. Many of those numbers were the same as those on the bills in dispute.

Complainant admitted that her two sons had also resided with her at her previous address. Defendant showed that at the previous address complainant had asked for and received credit for vendor calls which had been billed and which she denied had been made from her telephone. Defendant's witness testified that he

could only show that the disputed calls were made. He had no knowledge of any conversation that took place or whether any service was rendered.

Discussion

The evidence is clear that the vendor calls were made from complainant's telephone. The same numbers were called from the Spry Street residence as were called from the Muroc Street residence. Her two adult sons resided with her at both residences during all the time the vendor calls were made. Defendant's tariff provides that on behalf of the 976 vendor it will bill the vendor's customer (the caller). (Schedule CPUC No. A-14, 8th Rev. Sheet 5, 1.(a).) Complainant has the burden of proving that GTE is violating the law, a rule, or an order of the Commission or that it is failing to do something required by law, rule, or Commission order. Complainant has not carried this burden. Instead, it is clear from the evidence that the calls were made from complainant's telephones and that there was no irregularity in complainant's lines or equipment. GTE is authorized under its tariffs on file with the Commission to render billing and collection service to information providers who sell information, entertainment, and other services to consumers over the telephone. Since complainant has failed to show that GTE is not following its tariffs or that the calls were not made from her telephone, we must deny the complaint.

Since this matter was filed and heard under the Expedited Complaint Procedure, no findings of fact nor conclusions of law need be made.

O R D E R

IT IS ORDERED that the complaint of Marilyn Klein against GTE California Incorporated is denied.

This order becomes effective 30 days from today.

Dated JAN 24 1990, at San Francisco, California.

G. MITCHELL WLK
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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