

COM/GMW/cac

Decision 90 01 051 JAN 24 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORAN W. WARD and NATALIE J. WARD,

Complainants,

v.

GTE CALIFORNIA INCORPORATED,

Defendant.

ORIGINAL

(ECP)

Case 88-11-048)

(Filed November 22, 1988)

Natalie J. Ward, for complainants.
Edward R. Duffy, for defendant.

O P I N I O N

Complainants seek to have some \$300 in telephone call charges deleted from their telephone bill on the ground that the calls were not made from their telephones. Defendant asserts that the calls were made and correctly billed, and that "all such charges which have not yet been paid remain due and owing to GTEC by Ward." Defendant requests that we require complainants to pay all charges for vendor calls. Public hearing was held before Administrative Law Judge Barnett on January 30, 1989.

Mrs. Natalie Ward testified that she and her husband have two telephones at home, (213) 474-2847 and (213) 470-9637: Beginning in April 1987 she noticed that her bills contained charges for calls made to 976 prefixes - so-called vendor calls.

She reported the charges to defendant, who issued credits. However, calls continued to be made, mostly in the late evening and early morning hours. To prevent use of the phone during those hours she unplugged the downstairs phone and took it into her bedroom where the other phone was located. She also acquired a dog. Nevertheless, the calls continued. In 1988,

defendant offered call blocking of 976 numbers, and complainants had their line blocked. This solved the problem until June when the 976 calls started again. Defendant inspected the lines and found that the blocking was not operating properly. Defendant fixed the problem and issued a credit for the 976 charges incurred during this period.

The charges which are the subject of this hearing were incurred after the initial credits were issued in 1987 and prior to the time the blocking was first placed. Defendant has assigned those past-due charges to a collection agency, and complainants have been threatened with a lawsuit.

Mrs. Ward testified that she brought this complaint because she feels that there is something wrong with defendant's telephone system to cause 976 calls to be charged to her phones. Her suspicions were aroused because after the block became ineffective in June the 976 calls were shown as being made between 2 a.m. and 5 a.m. when everyone in the house was asleep.

On cross-examination Mrs. Ward admitted that her adult son lives at home, uses her phone, has friends over, and often calls his girlfriend in the early morning hours. She testified that her son told her that he did not make the 976 calls, except for some sports information calls.

Defendant's witness testified that he did not know the entities which were the recipients of the 976 calls, but the charges are usually either 55¢ or \$2. The 55¢ charges are for information services such as sports information and the \$2 charges are for party-line calls and "pornographic messages." All the calls in question were of the \$2 variety. He placed in evidence an analysis of non-976 calls made from complainants' telephones. That analysis shows that in many instances calls were placed to 976 numbers just before and just after calls to other numbers; some of those instances being at about 3 a.m. He said that a thorough check of complainants' lines was made at the complainants' home and

at the central office. There is no multiple cable to complainants' line, and there is no evidence of a tap into the line. In his opinion there is no technical basis for a 976 call to appear on complainants' bill except for calls made from complainants' line.

The only issue in this case is whether the 976 calls were placed from complainants' phones. Clearly, the preponderance of the evidence proves that they were. A complainant carries the burden of proving that the utility is doing something in violation of law, rule, or Commission order. Complainants in this case have not carried this burden. Defendant GTE is doing nothing more than providing a billing and collection service to information providers who sell information, entertainment, and other services to consumers over the telephone. The telephone charge that the customer sees on the bill is composed of the cost of the telephone call plus the payment to the information provider. That billing and collection service is contained in GTE's tariffs filed with the Commission. Since complainants have failed to demonstrate that GTE was not following its tariffs or that the calls did not come from complainants' phone, we must deny the complaint.

Since this is an Expedited Complaint Proceeding, we need not make findings of fact or conclusions of law.

ORDER

IT IS ORDERED that the complaint of Oran W. Ward and Natalie J. Ward is denied.

This order becomes effective 30 days from 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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