

Decision 90 05 024 MAY 04 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

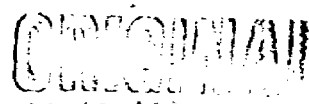
Dan Fendel,

Complainant,

vs.

General Telephone Company of
California,

Defendant.


Case 89-08-019
(Filed August 14, 1989)

Dan Fendel, for himself, complainant.
Janet S. Wong, for GTE California Incorporated,
defendant.

O P I N I O N

Summary of Complaint

On August 14, 1989, Dan Fendel (complainant) filed a complaint against General Telephone Company of California, now known as GTE California Incorporated (defendant), relating to charges for numerous 976-IAS phone calls which complainant alleges that he did not make.

Complainant requests:

1. That defendant refund to complainant all charges for 976-IAS phone calls on any phone that complainant has ever had with defendant, an amount estimated at \$2,700.
2. That the Commission advise complainant of proper damages and punitive compensation that should be paid to ensure not only that complainant's exertions to resolve this case are compensated, but also to make it clear to defendant that such abuses will not go unpunished.

3. That defendant shall reimburse complainant for all of his expenses in cooperating with defendant during the long history of this case.
4. That the Commission shall order defendant to cease and desist all collection activities, harassments, or other interferences in complainant's life and good name, and shall cause to be corrected any erroneous credit reports, accounts, dossiers, or other information given to other agencies or within its own records to fairly reflect the just resolution of this case.
5. That defendant's chairman shall write and sign a letter of apology to complainant for the abuses his company has caused complainant to suffer.

Answer to Complaint

Defendant filed its answer to the complaint on September 15, 1989. Defendant agrees that it provides complainant with residential telephone service through two telephone lines at the present time and had provided service through a business line in the past. Defendant claims that it issued in error credits for 976 calls of \$478.56 on complainant's first residence line on December 30, 1985 and \$1,284.17 on complainant's business line on March 24 and April 21, 1986. Defendant also indicates that special inspections of the outside plant and/or central office facilities of complainant's lines were made during 1986 and 1987. Defendant advised complainant of the dates of the inspections and the resulting reports of no trouble found.

Defendant requests that the Commission dismiss the complaint, deny the relief requested by complainant, and require complainant to pay all charges billed to account numbers (213) 474-3230, (213) 470-3683, (213) 470-3340, and (213) 475-4257.

Hearing

Evidentiary hearings were held on October 18, and November 14, 1989, in Los Angeles before Administrative Law Judge Texeira. The matter was submitted on February 13, 1990.

Complainant's Testimony

Complainant, Dan L. Fendel, testified that:

Complainant resides in an 8-unit apartment house. Complainant has lived there for 12 years. The other residents are mostly UCLA students and relatively transient.

The phone inlets for the eight apartments are located in a panel next to each other.

Complainant's phone went dead on one occasion in 1982-83. After calling defendant, complainant was able to fix the problem by reconnecting a loose wire at the panel.

Complainant was called out of the country during the summer of 1985 and had a friend, Bonnie, and her son housesit and pay his bills.

Upon complainant's return home 2 or 3 months later, September or October 1985, he discovered that defendant's bills which had averaged \$75 to \$100 per month suddenly increased to an average of \$500 to \$800 per month for the three months that he was away. The prime cause of this increase was an enormous number of 976 vendor calls.

Complainant blamed Bonnie's son for making the calls, but the boy steadfastly maintained his innocence and never admitted making any calls.

Complainant called defendant to explain the situation and expected the unusual charges to be refunded. Defendant told complainant that under Public Utilities Commission's (PUC) policy, it could only cancel one month's charges on a one-time only basis. Defendant consequently issued a credit of \$478.56 on December 30, 1985.

However, the 976 calls continued so in early February 1986 complainant requested defendant

to investigate why calls that were not made appeared on his bill. Complainant was told by defendant that the PUC would not permit refunds. However, complainant was informed by Kyle Devine of the PUC that the PUC does not tell a utility not to make refunds when the utility has made a mistake.

After discussions with defendant, complainant did not pay for 976 charges for the next several months, but paid the other charges. It was complainant's understanding that his situation was in limbo until the PUC ruled on the 976 OII. The cutoff notices continued.

Defendant's documents indicate that they made an inspection in February 1986 and found no problems.

Complainant does not contend that someone has been tapping his line, but rather that defendant's billing computer system goofed.

Defendant's Mr. Hand and two others inspected complainant's lines again on April 23, 1986 and apparently did something as the 976 calls stopped on his residence line.

The 976 calls then appeared on his business phone bill, so complainant called defendant to check on this problem. Defendant issued the usual one-month credit for \$1,284.17. Complainant then followed the prior procedure of having defendant indicate the 976 amount to be deducted and paying the balance of his business bill, with the same cutoff notices.

On March 1, 1987, complainant sent a letter to defendant requesting that the 976 charges be removed and the bill cleaned up. Defendant did not respond to this letter.

In mid-1987, defendant informed complainant by phone that a locked box had been placed on his phone connection so that no one else could tap into his line. However, the 976 calls continued, sometimes on one line, sometimes on the other line, and even sometimes on his calling card.

Later in 1987, defendant's Mrs. Riggs called complainant and said that defendant completely inspected everything and decided that complainant is making the calls and owed defendant \$16,000.

Defendant later said that there was another procedure to follow called a "trap" to register numbers being dialed from a phone. The "trap" did not work. Complainant examined his phone connection and discovered two boxes where there had been one before, but found no evidence of tampering.

Defendant sent a service man a week later and he said that there were two locked boxes and only one was needed so he removed one of the locked boxes and the 976 calls stopped.

Complainant now expected to get his money refunded. Instead, sometime before August 24, 1988 complainant received three final bills for \$7,013.15, \$13,052.00 and \$751.91 with collection agency notices. Complainant requested that collection activities be stopped because PUC was involved. Collection activities stopped three months later.

There were some 976 calls with AT&T during this period, but only for small amounts.

After the PUC decision on 976 was issued, complainant received a number of huge billing envelopes from defendant full of small bill credits.

In June 1988, complainant gave up his job as Dramatists Guild representative, but had another telephone line put in to replace the Guild business line, also blocked from 976 calls.

Then sometime in May or June of 1989, complainant received a call from defendant's Security Division advising of excessive use of his calling card for 976 calls. Complainant disavowed the calls and agreed that defendant should immediately cancel the calling card and issue a new one. Complainant was told not to

pay these charges and that defendant would investigate.

Complainant's next bill included calling card charges for a card that he never received. Complainant discussed matter with defendant's Inspector Maubee and once again cancelled the unreceived card and requested a new one.

Complainant received a letter from the PUC on July 27, 1989 indicating that the PUC had investigated the informal complaint and found for defendant, that defendant could proceed with the collection of the disputed bills, but defendant could not turn off his phone. Duane Filer of the PUC also explained the procedure to file a formal complaint.

On July 28, 1989, defendant shut off complainant's phone. Complainant convinced a service repair supervisor to put the phone back into service at midnight for the weekend even though the account was flagged "under no circumstances return this line to service."

Complainant called the PUC at 8:30 a.m. on Monday July 31, 1989 but was unable to talk to Duane Filer. The phone was dead when complainant tried to call the PUC again at 9:30 a.m.

Complainant went to his parents' house and spent the rest of the day trying to get his phone reconnected. He was finally informed by defendant that the cutoff was due to nonpayment of long distance charges for 976 calls, a total of \$590.49. To get reconnected, complainant was required to pay this amount plus a \$40 reconnection fee. These disputed charges could be included in the formal complaint to be filed with the PUC.

In order to get his service reconnected, complainant agreed to pay \$590.49, plus the \$40 reconnection fee, plus other disputed credit card long distance charges on the August bill, a total of \$1,011.64. Complainant agreed to pay this amount off at a rate of \$100 per month over the normal bill.

On October 15, 1989, complainant was informed by a friend that defendant had called to ask questions about complainant. Complainant indicated that he considers this an unwarranted defamation of character and should be stopped.

Complainant testified under cross-examination:

He first left for Europe around April 1, 1985.

Complainant's March 1, 1985 bill of \$344 included \$200 of 976 charges and his April 1, 1985 bill included \$230 of 976 charges. Both bills were paid in full and the 976 charges were not disclaimed. The May 1, 1985 bill similarly included approximately \$301 in 976 charges.

Complainant's business associates referred to in the December 1985 letter are complainant's parents.

Complainant's August 1, 1985 bill included calling card 976 calls. Complainant stated that he was in Europe at the time and does not know who made the calls.

In June 1985, 20 calls to 976 numbers were placed from complainant's parents' house using complainant's calling card number.

In 1988 calling card calls to 976 numbers were placed from complainant's phone as well as from his parents' phone.

Complainant disclaimed every 976 call since he returned from Europe.

Defendant's Testimony

Victor M. Carroll testified that:

As Administrator of Billing Tests, it is his responsibility to verify that bills are representative of a customer's activities.

The witness described the different entities within the billing system and provided a detailed explanation of how the billing system functions.

Errors in the billing system would affect a number of customers and not just one customer.

The way the billing system works, calls that last from 1 second to 60 seconds are considered one-minute calls. Therefore, several one-minute calls can be made during the same minute.

His department checks on approximately 500 errors per year.

Bill McClendon testified that:

He is an Installation and Maintenance Supervisor with 13 years of experience.

After a customer disputes calls on the bills, the Customer Billing Center requests his group to perform a facilities inspection. The inspector accesses the telephone cable at several points to ascertain if there are any unauthorized connections to the customer's line.

If the customer continues to dispute calls, a special inspection of the outside facilities is initiated using a more senior inspector. The inspector checks the cross-connection box and the apartment building terminal for unauthorized connections.

On July 2, 1987, an inspector met with complainant to conduct a special inspection. Complainant's terminal was connected differently than the other seven units in the building, but there was nothing wrong with the arrangement.

He met with complainant on September 17, 1987 and complainant seemed satisfied with the explanation, but not with the nature of the problem.

There was no evidence of any tampering with complainant's line. However, there were many locations where tampering could have taken place.

Bob Souza testified that:

He is a plant installer and maintainer with the responsibility to maintain outside plant facilities once dial tone has left the central office. He has been with defendant for 15 years and has been doing special inspections for 2 years.

He performed the special inspection at complainant's apartment. He replaced all the interior wires to eliminate any taps, breaks, or splices in the line and to streamline the connection. He found no problems or tampering of any kind.

Judy Perez testified that:

She is a Customer Billing Representative responsible for handling billing disputes on an executive level, such as complaints to the PUC.

She talked to complainant on January 25, 1989 and reviewed his complaint to the PUC. She informed complainant that she had investigated his disputed calling card 976 calls and concluded that he or someone that had access to his calling card had made the calls and defendant would not be issuing credit.

The investigation of the originating numbers showed that the numbers belonged to William Fendel, complainant's father. Complainant said that this was a software problem and he was not responsible for the calling card 976 calls even though he knew of no one who would have access to his calling card and to two of his father's residences.

Complainant was offered a restricted calling card by the customer billing center manager on July 31, 1989. A restricted calling card allows the calling card owner to call only his billed number.

The investigation conducted with regard to the claimed-not-to-be-received calling card revealed that two individuals who had been called using the calling card identified themselves as friends of complainant and did receive calls from him.

Patricia L. Laubacher testified that:

She is a customer accounting supervisor. She prepared Exhibit 11 from the accounts receivable ledger, which contains the same information shown on a customer's bill. The information includes the customer's total amount due each month, the amount of vendor charges for the month, the total amount of toll charges for the month, and amount and date of payments.

Edward Duffy testified that:

He is State Staff Administrator, Regulatory Affairs. He reviewed complainant's billing history and prepared Exhibits 12 and 13.

Complainant has made calling card calls from his parents' home in Encinatas in 1985 and from his parents' home in Beverly Hills in 1988 and 1989. Calls were placed from his parents' home in Encinatas also in 1989.

Although much has been made of the concept of overlapping calls, not much in the way of actual overlapping calls appears on the bill.

There were calling card calls placed during July of 1985 as well as September of 1985 when complainant claimed to be out of the country.

There are several kinds of 976 calls, some of which last for only one minute.

Positions of the Parties

Complainant takes the position that only defendant had the means, opportunity, and motive to do something in this proceeding. Although complainant had access to his parents' home, so did defendant's technicians, but only the technicians would be able to dial the numbers fast enough or had access to his calling card.

Complainant further argues that this is not a neat and tidy case. Rather, it is irrational, confused, and without a clear

pattern of evidence other than the behavior and potential motivation of the parties.

Complainant states that the reason people make phone calls is to talk or listen to the contents of those calls. This was impossible in this case because the calls were so short. Complainant states that people subscribe to phone service to use it with as much convenience and as little hassle as possible. They do not pursue actions over a period of years that are absolutely certain to cause inconvenience, hassles, and even interruption or withdrawal of telephone service. Complainant indicates the reason people cooperate with businesses whose service they use is to resolve problems, not complicate or exacerbate them. In this case, complainant cooperated with everything that defendant suggested in order to solve the problem. Finally, the reason that people do anything is to gain something from it. In this case, complainant is only seeking the return of his own money. Therefore, complainant argues that there is no motive for him to have functioned in the manner suggested by defendant. Defendant's case does not exist. Complainant characterizes it as a tissue of innuendo, technical doublespeak, personal animosity, sincere but incompetent effort, delays, lies, fumbblings, and coverups, all designed to make you put aside your common sense, put aside reason, put aside justice, and believe in raw data rather than human experience.

Defendant takes the position that all the disputed calls were placed by complainant, that complainant has offered insufficient evidence to satisfy his burden of proof, and complainant should receive no further credits or refunds.

Defendant states that 976 charges appeared on complainant's residence and business accounts starting in February 1984. Complainant paid these bills without dispute. Although complainant testified that his bills averaged \$100 or less per month before the spring or summer of 1985, the 976 charges on these

bills averaged in excess of \$100 per month from May 1984 to May 1985.

Defendant states that complainant claimed to be out of the country at the time and consequently could not explain calling card calls to his residence number and other numbers during that period.

Defendant states that an examination of complainant's bills revealed that 976 charges appeared on either his residence or business line for 62 of the 69 months in the time under consideration, February 1985 to October 1989. 976 calls appeared on both complainant's residence and business bills during the same month for ten of the months between March 1986 and May 1988. 976 calls also were made with complainant's calling card from his parents' two homes. Defendant submitted that complainant made the disputed 976 calling card calls from his home and his parents' homes perhaps with the intention of disclaiming those calls, since he did not know that defendant's copies of his bills show originating numbers.

In regard to the question of why so many 976 calls, defendant states that one explanation for the magnitude and frequency of calls is that the caller never intended to pay for them. As far as the bills reflecting a number of calls within a short period of time, defendant suggests that the caller may have been message shopping or trying to locate a particular person on a chat line or dating service line.

Defendant further suggests that perhaps it was complainant's parents who placed the calls, because they did have the keys to his apartment, his mailbox, and to their two homes.

Finally, defendant claims that it made a thorough investigation of complainant's allegations. To eliminate the potential for error, defendant conducted several investigations, all with no trouble found. As an added precaution, all of complainant's inside wiring was changed as a preventive security

measure despite no evidence of tampering during one of the special investigations.

Discussion

In complaint proceedings such as the case at hand, complainant has the burden of proof. There is only one issue in this proceeding that needs to be decided. That issue is "Is complainant directly or indirectly responsible for the myriad 976 calls that emanated from his residence line, business line or calling card from 1984 through 1989?"

Complainant bases his case on the premise that the behavior attributed to him by defendant is irrational and nonsensical. Complainant insists that from the moment that he discovered that 976 calls had been billed to his account, he has been working with defendant to find the cause of this problem and to eliminate the problem. He steadfastly insists that the only 976 calls that he made were to ascertain the nature of the calls that he was supposedly dialing. He has cooperated with defendant in every way, except for paying for the disputed charges. He had defendant block his lines from 976 calls as soon as defendant was able to provide blocking.

Complainant argues that only defendant has the ability to correct the problem because the facilities that they added or removed from time to time had profound effects on his service and the disputed calls. Complainant then argues that only defendant stands to gain anything out of this case and that is the money that it allegedly has paid the 976 vendors as well as a preservation of its invincibility and the false justification of its flawed people and procedures.

Defendant's considerably less flamboyant case is premised on the proposition that only complainant or a member of his family had the opportunity to make these calls from the locations or originating numbers of these calls.

At first blush, complainant's case is appealing. However, a careful review of Exhibit 4, complainant's bills, reveals the following: From November 8 through November 11, 1986, complainant's residence bill included a number of calling card calls originating primarily in Texas and Florida to (among others) complainant's residence phone and certain 976 numbers. During this period no calls originated from either complainant's residence line or business line in Los Angeles. Even more striking was the fact that there were no 976 calls originating from these lines on those days, but numerous 976 calls before and after that period. This pattern of no calls originating from complainant's residence and business lines when his calling card was used elsewhere was consistently repeated. It is clear that complainant must have used his calling card at those times and that complainant made 976 calls on those occasions.

Given this pattern of behavior, the facts do not support complainant's representations. Complainant has the burden of proving that he or someone he authorized did not make these calls. Complainant has not met this burden.

Findings of Fact

1. Complainant was billed for a large number of 976 calls by defendant from 1984 to 1989.
2. Complainant disputed all 976 charges billed to his accounts.
3. Complainant cooperated with defendant in seeking to find the source of the problem.
4. Defendant's inspections revealed no tampering or problems with complainant's lines.
5. A review of complainant's bills reveals that no calls originated from his residence and business lines at times that calling card calls originated from other areas.
6. It is reasonable to assume that complainant made the calling card calls at these times.

7. These calling card calls at these times include calls to 976 numbers. It is likewise reasonable to assume that complainant made these calls as well.

8. Complainant has not met his burden of proving that he did not make the 976 calls under dispute.

Conclusion of Law

Complainant's request for relief should be denied.

O R D E R

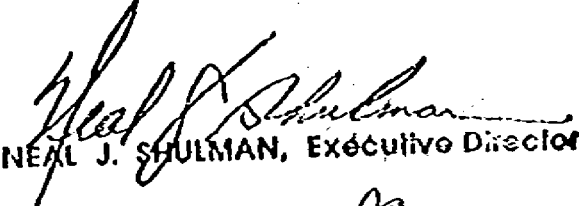
IT IS ORDERED that the complaint of Dan Fendel against GTE California Incorporated is denied.

This order becomes effective 30 days from today.

Dated MAY 04 1990, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director