

Mailed

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Decision 90-10-058 October 24, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mackensen Corporation,)
)
 Complainant,)
)
 vs.)
)
 GTE California Incorporated,)
)
 Defendant.)

Case 90-04-059
(Filed April 30, 1990)

Warren Mackensen, for Mackensen Corporation, complainant.
Kenneth K. Okel and Michael L. Allan, Attorneys at Law, for GTE California Incorporated, defendant.

O P I N I O N

On April 30, 1990, Mackensen Corporation (Mackensen, complainant) filed this complaint against GTE California, Inc. (GTEC, defendant) alleging that GTEC discontinued its call forwarding service without notice in mid-1989. Mackensen requests that its call forwarding service be restored at GTEC's expense to operate as it did before this date. Prior to mid-1989, all calls forwarded by Mackensen reached the rotary¹ of the forwarding number, an answering service. After this date, the second call was not forwarded to the answering service while the first call was in progress. The second caller received a busy signal.

1 Mackensen's answering service employs a system called a "rotary" which can receive up to eight incoming calls simultaneously. The ninth caller receives a busy signal.

On June 5, 1990, GTEC filed an answer to the complaint. GTEC admits that in the summer of 1989 it upgraded its 1EAX analog switch, which provides call forwarding service, to the DMS-100 digital switch. GTEC alleges that the new switch is incapable of providing the same service as the old one. GTEC alleges the prior service was untariffed and it has no obligation to continue to offer such a service. GTEC requests that the complaint be denied.

The Complaint

In the spring of 1984 Mackensen subscribed to GTEC's call forwarding service for its sole business number. Mackensen asked its GTEC customer service representative if call forwarding would allow multiple incoming calls concurrently. Mackensen was assured that it would. After the service was installed, complainant tested and confirmed that it operated as represented. For five years Mackensen forwarded virtually all incoming calls to an answering service. An incoming call forwarded to the answering service would be transferred randomly by a rotary to one of several other telephone numbers. Thus, the answering service could handle multiple incoming calls concurrently. After obtaining the identity of the caller, the answering service would call Mackensen on one of its unpublished numbers, announcing the caller and inquiring whether the call would be taken by Mackensen or whether a message should be taken by the service.

In the summer of 1989, Mackensen's call forwarding service changed. Mackensen received repeated customer complaints that callers frequently received a busy signal for long periods of time when attempting to reach Mackensen. One of Mackensen's customers, the president of a major software company, asked why Mackensen could not afford more than one incoming telephone line to handle calls. At that time, Mackensen had 12 incoming telephone lines.

Mackensen presented the problem to GTEC. GTEC concluded that Mackensen's answering service did not have adequate incoming

telephone lines to handle the calls. GTEC advised Mackensen to request that the answering service order more incoming lines.

In order to obtain more trunk capacity, Mackensen changed its answering service. However, the problem persisted. As a temporary remedy, Mackensen finally gave certain customers its unpublished telephone number which negated the responsibility of the answering service to screen calls. Mackensen does not know how many callers were discouraged because of the consistent busy signals.

Mackensen agrees that multiple-call forwarding is not in defendant's tariff; however, it contends that GTEC is not providing the service described in its tariff, that is, a service which forwards all incoming calls.

Mackensen requests that its call forwarding service be restored at GTEC's expense to operate as it did prior to 1989.

GTEC's Answer to the Complaint

GTEC admits that it provides call forwarding service under its tariff, Schedule A-40, on one of six business lines subscribed by Mackensen. GTEC admits that on June 16, 1989 it replaced its 1EAX analog switch in Mackensen's serving central office with a DMS-100 digital switch. GTEC admits that this change caused a change in Mackensen's call forwarding service. However, defendant contends it is not obligated to restore the previously inefficient and free service.

The 1EAX switch provided call forwarding for the lines in Mackensen's rotary group, even though such service, multiple-line call forwarding, is not in GTEC's tariff. Mackensen was charged for single-line call forwarding service on one business line. Therefore, in GTEC's opinion, from 1984 to 1989 Mackensen received free call forwarding service for five business lines.

GTEC admits that the DMS 100 switch does not have the same capability. Under the new switch operations, multiple-call forwarding can be provided only when a customer orders additional

trunks to provide call forwarding to multiple lines in a rotary group. This tariffed service, called "remote call forwarding," was offered to Mackensen as a substitute for the prior switch's custom calling operations. Mackensen declined this offer because remote call forwarding cannot be programmed by the customer and any requested programming modifications by the company take time.

Prior to changing the switch, GTEC notified Mackensen and all similarly affected customers of the planned switch replacement. GTEC's written notice indicates it may be necessary for a customer to reprogram stored telephone numbers and, in rare circumstances, customer equipment may require minor modifications to make it compatible with the new switch.

GTEC relies on its tariff provision limiting the provision of custom calling service to the capability of its equipment. GTEC contends that the DMS100 switch does have limits. It does not forward calls simultaneously on one line. The first call is forwarded and the second call generates a busy signal.

GTEC contends that Mackensen's remedy is limited under its tariff to a credit for service problems experienced by Mackensen, if any.

Discussion

Complainant requests that an untariffed service provided for five years without charge be restored. We do not find such a request reasonable and according to GTE witness testimony, it is not possible. The service requested by Mackensen is not one offered by GTEC, therefore, GTEC has no obligation to provide it. The service requested is service incidental to tariffed service. According, the complaint is denied.

Findings of Fact

1. Mackensen received multiple-call forwarding service from 1984 to mid-1989, a service which was incidental to tariffed call forwarding service.

2. Defendant replaced the 1EAX analog switch in complainant's central office with a DMS-100 digital switch in June 1989. As a result of this equipment change, multiple-call forwarding can be provided only when a customer orders additional trunks to provide cell forwarding to multiple lines in a rotary group.

3. Defendant has no duty to reinstate untariffed, incidental services.

4. Defendant's conduct does not violate its tariff obligation to forward all calls of a subscriber to its call forwarding service. Defendant is limited to providing a service within its equipment capability.

5. Defendant has no duty to provide a service that is beyond the capacity of its equipment.

Conclusion of Law

The complaint should be denied.

O R D E R

IT IS ORDERED that the complaint is denied.
This order becomes effective 30 days from today.
Dated October 24, 1990, at San Francisco, California.

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

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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