

DEC 19 1990

Decision 90-12-051 December 19, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Elizabeth Seisay,  
Complainant,

vs.

General Telephone and AT&T,  
Defendants.

ORIGINAL

Case 89-07-054  
(Filed July 31, 1989)

Elizabeth Seisay, for herself, complainant.  
Kenneth K. Okel and Janet S. Wong, Attorneys  
at Law, for GTE California Incorporated;  
and Jonathan H. Krotinger and Walter Mosley,  
Attorneys at Law, for AT&T, defendants.

O P I N I O N

Summary of Complaint

Elizabeth Seisay (complainant or Seisay) filed this complaint against GTE California Incorporated (GTEC) and AT&T Communications of California, Inc. (AT&T) on July 31, 1989. Complainant seeks a \$4,353.44 credit to her account for GTEC overcharges. According to complainant, GTEC overcharged her \$2,584.03 for long distance and frequent caller program charges, and \$1,769.41 for AT&T international collect calls billed by GTEC. Although an overcharge is asserted in the complaint no details about the overcharge is provided. Complainant also requests that GTEC be required to reconnect her telephone.

Answer to Complaint

GTEC and AT&T answered the complaint on September 1, 1989 and September 5, 1989, respectively. GTEC acknowledges that it provided telephone service to complainant but denies that it overcharged Seisay. Rather, GTEC asserts that Seisay owes GTEC

\$1,526.96<sup>1</sup> for the final closing of service at two separate telephone numbers. GTEC summarizes the events which led up to the alleged balance due from Seisay as follows:

- a. Service was provided to complainant at a Moreno Valley location.
- b. An additional service was provided to complainant at a Long Beach location on February 26, 1988.
- c. The Long Beach telephone number was changed on June 16, 1988, at complainant's request.
- d. "Circle Calling"<sup>2</sup> service was provided on February 26, 1988, at complainant's request.
- e. "Community Calling"<sup>3</sup> service for Downey was provided on June 16, 1988 at complainant's request.
- f. Circle Calling and Community Calling services were cancelled on April 26, 1989, at complainant's request.
- g. Complainant informed GTEC on May 1, 1989 that she never ordered Circle Calling or Community Calling.
- h. Complainant was told that if the calls under the two disputed programs were rerated that complainant would owe an additional \$300.

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1 This amount was subsequently increased \$344.82 to \$1,871.78 to reflect complainant's check returned from the bank for insufficient funds.

2 Circle Calling is a service which allows a subscriber to call within a 40-mile radius of the subscriber's home at a 30% discount rate.

3 Community Calling is a service which allows a subscriber to select up to four communities as a local calling area and entitles the subscriber to receive a 30% discount on all toll calls placed to those communities as well as a monthly calling allowance for each selected community.

- i. Complainant chose to only accept the rerating of Community Calling services on May 1, 1989 and a \$79.39 credit less \$31.43 for rerated calls was issued to complainant.
- j. Complainant called GTEC on May 22, 1989 to question the Community Calling credit and asserted that she never disputed the Circle Calling or Community Calling services.
- k. Complainant still owes GTEC \$1,526.96, or \$936.01 and \$590.95 for her Long Beach and Moreno Valley services, respectively.

AT&T avers that Seisay's complaint pertaining to \$1,769.41 of international collect calls should be dismissed with prejudice because the alleged international calls are not subject to this Commission jurisdiction.

#### Hearing

An evidentiary hearing was held in Riverside before Administrative Law Judge (ALJ) Galvin on December 6, 1989. Complainant, informed of her right to be represented by an attorney, chose to represent herself in this complaint case. GTEC and AT&T were represented by attorneys.

Seisay testified for herself. GTEC's customer representative Brian Schreiber and customer billing supervisor Laura Walker testified for defendants.

#### Discussion

Complainant testified that her complaint against AT&T concerns international collect telephone calls alleged to have been received at her home. Seisay clarified that her complaint against GTEC pertained to Circle Calling and Community Calling services and credit for her payment of bills.

#### International Calls

AT&T moved that AT&T be dismissed from the complaint because the Commission lacks jurisdiction on international calls.

Complainant acknowledged that her complaint against AT&T pertained to international calls and apparently was aware that the

Federal Communications Commission (FCC) is the proper agency to complain about international calls. This is substantiated by complainant's testimony. Seisay testified that she "went all the way to Washington, D.C., you know, Public Utilities for AT&T to file a complaint..." However, on examination by the ALJ, complainant clarified that she made an attempt to file such a complaint against AT&T but didn't because she was located in California.

Irrespective, complainant offered no evidence to substantiate that we have jurisdiction over international calls. On the contrary, we have held in prior decisions<sup>4</sup> that we have jurisdiction only over intrastate operations consisting of exchange and intrastate toll business. Absent jurisdiction over international calls, the complaint against AT&T and international calls should be dismissed.

Consistent with the dismissal of the complaint against international calls, GTEC should be precluded from holding complainant's intrastate telephone service hostage by requiring Seisay to pay for AT&T international calls before restoring her service.

#### Circle Calling and Community Calling

Although complainant testified that she never ordered Circle Calling or Community Calling service, Schreiber testified that GTEC records show that Circle Calling was established on February 26, 1988 and Community Calling on June 16, 1988 at complainant's request. GTEC's records also showed that the disputed services were discontinued April 26, 1989 at 9:50 a.m., at Seisay's request.

Schreiber explained that subscribers establish Circle Calling and Community Calling by calling the service center. At

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<sup>4</sup> California Interstate Tel. Co., 59 CAL P.U.C. 761 (1962).

the time an order is received the service center confirms the order by comparing caller identification, such as the caller's social security number or driver's license number, with similar identification provided to GTEC at the time telephone service was established.

Schreiber, referring to his notes, testified that he called complainant at her home on May 22, 1989 to discuss the disputed services. Seisay first told Schreiber that she never called to remove the services and later on in the same conversation told him that she never ordered the disputed services. Schreiber explained to Seisay that GTEC's billing office already rerated her calls during the time period that Community Calling service was in effect and issued her a \$79.43 credit less \$31.43 for rerated calls.

Although complainant requested Schreiber to issue her a credit for Circle Calling service Schreiber advised her against it because the rerating would result in complainant owing GTEC an additional \$322.88, as shown in Exhibit 3.

Regardless of whether complainant ordered Circle Calling or Community Calling services, GTEC acted in complainant's best interest. Not only did GTEC credit complainant's account for the difference between what her bill would have been with Community Calling and without it, GTEC did not charge complainant the additional \$322.88 that she would have been billed without the Circle Calling service.

Since complainant received the benefit of doubt in both disputed services, her complaint pertaining to Community Calling and Circle Calling is moot and should be denied.

Credit For Bill Payments

Seisay also alleges that the balance on her telephone bill continued to increase without any credit for payments that she made or credits for international collect calls, Circle Calling, and Community Calling service charges. The international collect

calls, Circle Calling, and Community Calling disputes have been addressed and will not be addressed further.

Seisay selected her July, August, and September 1988 telephone bills to substantiate her claim that her telephone bill continued to increase without credit for payments that she made. These bills are summarized as follows:

<u>Date of Bill</u>	<u>Beginning Balance</u>	<u>New Charges</u>	<u>Surcharge Adjustment</u>	<u>Current Payments</u>	<u>Ending Balance</u>
7/16/88	\$ 153.60	\$ 594.03	\$ 0	\$ 140.00	\$ 607.63
8/16/88	607.63	413.84	0	0	1,021.47
9/16/88	1,021.47	511.71	3.06	607.00	923.12

Seisay explained that although she sent two checks to GTEC totaling \$607.00, one for \$257.00 and the other for \$350.00, it took two months for the checks to appear on her bill. Although the payments did finally appear on her September bill, she asserts that GTEC did not deduct the payments from her balance due. Further, complainant represented that GTEC changed the dates on her check. She neither identified the dates that originally appeared on the checks or the dates that they were altered to.

As shown in the above tabulation, complainant's \$607.00 payment was credited to her bill. This is verified by adding the \$511.71 new charges to complainant's \$1,021.47 beginning of period balance, subtracting the \$3.06 surcharge adjustment, and subtracting the \$607.00 in payments to arrive at the \$923.12 end of period balance.

Irrespective of when the checks were prepared, mailed, and received, complainant did receive full credit. Disputes about other payments to GTEC were alleged; however, none were substantiated by complainant. Complainant's assertion that her bill was not credited for payments that she made is without merit and should be denied.

Complainant also testified that she had a list of disputed calls. Because the list was not available at the hearing

GTEC asked Seisay to review her September 1988 telephone bill, consisting of nine pages, to identify the disputed telephone calls listed on her September bill. Seisay used a check mark to identify calls placed by complainant or her daughter and a "X" to identify calls not placed by complainant or her daughter. The September 1988 bill with the marks made by Seisay was introduced as Exhibit 1.

Seisay identified at least two-thirds of the approximate 280 calls listed on her September bill as being valid calls. The remaining one-third, totaling less than \$25 of the \$511.71 current charges, were identified as calls not made by complainant or her daughter.

Complainant explained that she is certain that no one in her household used the telephone to make the disputed calls because only complainant's husband and daughter reside with her at the house. Her husband does not use the telephone and her daughter needs complainant's permission to make calls.

However, in response to questions from GTEC, complainant acknowledged that her husband does make calls. She clarified that he only places calls to his work location, his cousin's house, or to complainant's cousin's house.

A comparison of the calls identified by complainant as valid calls with calls identified as not being valid disclosed that at least three telephone numbers that appear on complainant's valid list also appear on her nonvalid list. Complainant provided no explanation for these discrepancies. As to the remaining disputed calls, complainant provided no substantive testimony to collaborate that the disputed calls were not placed from her telephone. Seisay's assertion that GTEC billed her for calls not placed from Seisay's telephone is without merit and should be denied.

Walker testified that complainant still owes GTEC \$1,871.78 of which \$936.01 pertains to complainant's Long Beach service and \$935.77 to complainant's Moreno Valley service. Walker

explained that the amount due to GTEC is \$344.82 higher than the amount asserted in GTEC's answer to the complaint due to a \$334.77 check returned by the bank for insufficient funds and a \$10.05 return check charge. Complainant concurred that the \$334.77 check was returned by the bank because of insufficient funds.

Reconnection of Telephone Service

Although complainant requests that her telephone service be reconnected, she still owes GTEC \$1,871.78, of which \$72.72 pertains to international collect calls. The amount of international collect call charges due to AT&T is not identified in the record; it is identified in a AT&T December 14, 1989 letter addressed to complainant, a copy of which was provided to the assigned ALJ and GTEC. We take official notice of AT&T's December 14, 1989 letter addressed to complainant for this complaint.

Intrastate telephone service should not be restored without complainant paying the \$1,799.06 (\$1,871.78 less \$72.72 AT&T international collect call charges) to GTEC. However, complainant should be given a reasonable period of time to pay GTEC or to negotiate a payment arrangement with GTEC.

Findings of Fact

1. Complainant asserts that GTEC and AT&T overcharged her for long distance calls, frequent caller program charges, and international collect calls.
2. AT&T moved that AT&T should be dismissed from the complaint because the Commission lacks jurisdiction over international calls.
3. The complaint against AT&T pertains to only international calls.
4. The FCC has jurisdiction over international calls.
5. GTEC issued complainant a credit for Community Calling service charges.
6. Complainant did not issue complainant a credit for Circle Calling service.



7. Credit for Circle Calling charges would result in complainant owing GTEC an additional \$322.88.

8. GTEC credited complainant's account for payments that it received from complainant.

9. Complainant did not provide a list of disputed calls.

10. Complainant identified two-thirds of the approximate 280 calls listed on her September 1988 bill as being valid calls.

11. Disputed calls identified on complainant's September 1988 bill totaled less than \$25 of the \$511.71 charges incurred during the September bill cycle.

12. Complainant provided contradictory testimony on whether her husband uses the telephone.

13. Complainant did not explain why at least three of the numbers she identified on her September 1988 bill appeared on both the valid phone call list and nonvalid call list.

14. Complainant's \$344.82 check was returned to GTEC by the bank because of insufficient funds.

15. Complainant owes GTEC \$1,871.78 for her Long Beach and Moreno Valley telephone service.

16. Official notice is taken of AT&T's December 14, 1989 letter which identifies \$72.72 as the balance due from complainant for international collect calls.

#### Conclusions of Law

1. AT&T should be dismissed from this complaint.

2. GTEC should not require complainant to pay disputed international collect calls as a condition of restoring intrastate telephone service.

3. Complainant's request for a \$4,353.44 credit to her account should be denied.

4. Complainant's intrastate telephone service should not be restored until complainant pays GTEC the balance due or enters into a payment arrangement with GTEC.

O R D E R

IT IS ORDERED that:

1. AT&T Communications of California, Inc. is dismissed from this complaint.

2. The complaint in Case 89-07-054 is denied.

3. Elizabeth Seisay (complainant) and GTE California Incorporated (GTEC) shall negotiate a payment arrangement for the payment and collection, respectively, of the \$1,799.06 due to GTEC within 30 days from the effective date of this order. Absent the establishment of a payment arrangement during this time period the entire \$1,799.06 shall be due and payable to GTEC.

4. Complainant's intrastate telephone service shall be restored upon complainant paying GTEC the \$1,799.06 she owes GTEC or upon entering into a monthly payment plan with GTEC.

This order becomes effective 30 days from today.

Dated December 19, 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.

*[Handwritten Signature]*  
REGG. J. GOLMAN, Executive Director