

FEB 22 1991

Decision 91-02-043 February 21, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FRANCES M. WORK, Complainant,

vs.

GENERAL TELEPHONE COMPANY OF CALIFORNIA, Defendant.

ORIGINAL

Case 89-06-055 (Filed June 27, 1989)

Frances Work, for herself, complainant
 Robert N. Herrera and Kenneth K. Okel, for
 GTE California, Inc., defendant.

OPINION

Summary

The complainant, Frances M. Work (Mrs. Work), is married to Earl Work, a residential customer of the defendant, General Telephone Company of California, Inc. Since the time the complaint was filed, the defendant has changed its name to GTE California, Incorporated (GTEC). For the sake of consistency, defendant will be referred to by its present name.

Complaint was filed on July 26, 1989. Mrs. Work asserts that she was wrongfully billed for 1,880 calls to "976 numbers" that no one at her residence had made. Mrs. Work states that she did not authorize the 976 charges appearing on her bills from January through September 1986. The complainant requests that GTEC's January 1988 billing in the amount of \$5,108.75 be disallowed and that "full unrestricted telephone service be restored with a change in the cable color code." A copy of the GTEC invoice dated January 16, 1988 was attached to the complaint. It is entitled, "Final Statement - Vendor Charges" and shows unpaid vendor charges appearing on February 1986 through September 1986

statements from (213) 921-0455 of \$3,506.55. Also shown are \$959.24 of late payment charges associated with unpaid vendor charges, \$501.89 of "associated billing surcharge", and \$141.07 in taxes and California Public Utilities Commission (CPUC) fees. These sums total \$5,108.75.

GTEC answers that it has provided complainant with residential phone service at (213) 921-0455 since August 5, 1986. Service had been provided at (213) 921-6885 from December 30, 1976 until August 4, 1986. GTEC states that it correctly billed Mrs. Work for 976 calls.

GTEC requests that the Commission deny the complaint and find that all the disputed 976 vendor calls were made from Mrs. Work's residential telephone with her consent.

We grant complainant the relief sought because the defendant did not apply the Commission's 976 adjustment policy properly and did not handle her complaint to phone company representatives properly. We also find that Mrs. Work did not authorize the 976 charges and that the charges arose out of a related chain of events. The complainant's account should be adjusted by \$5,108.75 and her credit history should be restored.

Facts

GTEC provided the following chronology of events in its answer to the complaint:

The following 976 calls were listed on the complainant's telephone statements:

January 16, 1986	13 calls
February 16, 1986	5 calls
March 16, 1986	306 calls
April 16, 1986	103 calls
May 16, 1986	56 calls

May 16, 1986 Mrs. Work contacted GTEC's customer billing center to dispute 976 and other toll calls which had appeared in her statements for the past several months. Mrs. Work stated that she believed her son was placing those

disputed calls, although he denied making the calls when she confronted him. Mrs. Work also told GTEC that she had placed a lock on the phone.

Subsequently, the complainant's bills reflected these additional 976 calls:

June 16, 1986	462 calls
July 16, 1986	219 calls
August 16, 1986	532 calls

June 25, 1986 GTEC notified complainant that the company would conduct a line check. GTEC's representative also informed Mrs. Work that she could deduct the \$2,011.56 in 976 vendor charges from her statement pending the outcome of the investigation.

July 16, 1986 Mrs. Work discussed the 976 vendor charges contained on the July 16, 1986 statement with a company representative. As a result of this conversation, the GTEC representative issued a credit of \$21.70 for late payment charges on the July statement.

July 25, 1986 GTEC thoroughly inspected the central office and outside equipment which provided complainant's residential telephone service. GTEC's technicians found no trouble with any of its equipment which serves the complainant's home.

August 1, 1986 GTEC informed Mrs. Work of the results of the July 25 inspections. Mrs. Work stated that she was certain that the 976 calls were not placed from her line; she requested a number change at no charge.

August 5, 1986 GTEC changed Mrs. Work's number at no charge.

August 28, 1986 GTEC credited Mrs. Work's account with \$31.31 for the late payment charge which had appeared on the August 16, 1986 statement.

September 3, 1986 GTEC informed Mrs. Work that her service would not be disconnected for failure to pay the vendor charges. Mrs. Work agreed to toll restrictions¹ on the line. Toll restriction was established on September 5, 1986.

September 10, 1986 Mrs. Work spoke with a GTEC customer representative and suggested that her neighbor's cordless phone was the cause of the vendor charges appearing on her bill. GTEC explained that was not possible unless the complainant had a cordless phone having the same frequency as her neighbor's. Mrs. Work then requested listings for a total of 28 calls.

September 12, 1986 GTEC mailed to complainant the listings she had requested on September 10, 1986.

September 22, 1986 Mrs. Work contacted a GTEC customer representative and stated that someone had told her that changing the cable pair would stop the 976 calls. The GTEC customer representative advised the complainant that no trouble had been found during the inspection on July 25, 1986, and that changing the cable pair would not resolve the problem.

January 1, 1987 Mrs. Work requested the extra drop wire connected to her neighbor's home be removed.

January 30, 1987 GTEC performed another special inspection in its central office and outside plant and found no trouble. On this date, GTEC removed an inactive drop wire from Mrs. Work's neighbor's home.

June 17, 1987 GTEC advised Mrs. Work that credit would be issued for the "first month's disclaim" of 976 calls, plus five days past the next month's bill.

¹ "Toll restriction" on an access line prevents the completion of nonlocal calls.

October 28, 1987 Mrs. Work contacted a GTEC customer representative and questioned the time of day on some calls on the June 1986 bill. The GTEC customer representative explained to her that they were operator-handled calls.

November 12, 1987 Mrs. Work filed an informal complaint with the Commission on November 12, 1987.

December 11, 1987 GTEC issued Mrs. Work a one-time 976 adjustment of \$35.35.

December 17, 1987 GTEC transferred Mrs. Work's outstanding 976 charges to a vendor's final account, consisting of \$4,060.10 of vendor charges and \$1,048.65 for late payment charges associated with 976 calls.

December 17, 1987 GTEC completed a special inspection of outside plant equipment associated with Mrs. Work's telephone service and found no trouble. GTEC also advised Mrs. Work that "a credit of \$5,018.75 was issued and the amount was transferred to "final status". The GTEC representative further advised Mrs. Work that 976 blocking would become available in March 1988. Mrs. Work asked to remove call restriction and establish 976 blocking at that time.

March 1, 1988 GTEC removed toll restriction and established 976 blocking.

March 17, 1988 GTEC received a call from complainant, where she disputed 2 ZUM calls and 40 toll calls. GTEC issued a credit of \$10.47, per company policy, as "the first disclaim of Toll". Mrs. Work requested that 976 blocking be removed and that toll restriction be reestablished.

March 30, 1988 GTEC again completed a special inspection of outside facilities which included multiple terminals associated with Mrs. Work's telephone service and found no trouble. The GTEC billing center also reviewed all accounts on the 14000 block of E. Lynmark where the Work residence is located for possible 976 call disputes and found no problems.

Evidentiary hearing was held in Los Angeles on December 4, 1989. Concurrent briefs were filed on January 22, 1990.

The Complainant's Testimony

Mrs. Work represented herself and testified on her own behalf. Her photographs of the home and compilations of the bills for the period in question were accepted in evidence. Mrs. Work did not disagree with the above chronology except for one fact. She states that she first complained about the 976 charges in March of 1986, not May of 1986 as claimed by GTEC. At the hearing, Mrs. Work stated that each time she spoke to a GTEC representative she requested the name and address of 976 vendors but was told that GTEC would not give out that information.

Mrs. Work stated that when she called GTEC in March of 1986, the utility representative stated that her service would be disconnected if she did not pay the bill of \$546.74, that the CPUC was investigating 976 calls, and that GTEC would call her when they learned of the CPUC's decision. Mrs. Work alleges that the representative stated that she would be reimbursed for those charges after the CPUC's investigation. Mrs. Work paid the March and April charges, which totaled \$883.80, on May 9, 1986.

When advised by GTEC's representatives that the company was going to perform a line check on her service, Mrs. Work said she assumed that GTEC was going to place a tap on the line to ascertain who was placing the calls and where they were coming from. She stated that she would not allow her family members to use the phone to make local calls because she believed the phone company was conducting such an investigation.

Mrs. Work questioned the accuracy of the 976 billings attributed to her phone service because the GTEC bill does not list the 976 calls in the chronological order in which they were supposedly made. Also, at certain times, more than one 976 call

was made during the same minute, sometimes to the same number; at other times to different numbers.

Mrs. Work claimed that the 976 calls were not made from her house or outside of it with her knowledge and consent. She stated that only her husband, herself, and her son had access to the phone. Her son is 27 years old. In response to suggestions by GTEC's representatives that her son was doing the calling, she denied that he could have made the calls because she put a lock on the phone and kept the phone next to her bed at night and constantly with her during the day.

Mrs. Work claims that she attempted to stop the unknown calls by changing the phone number in August 1986 and by constantly watching the phone. She claims that she is not at fault for the calls because she did everything possible to control access to her telephone. She argues that while GTEC did advise her in September 1986 that the phone line could be restricted to halt further unauthorized use, it should have notified her of this option sooner in order to stop this problem while GTEC investigated the calls.

The Defendant's Testimony

GTEC presented the testimony of six GTEC employees. Scott England, a senior administrator in the network operations technical support staff group, described how a call is connected. According to Mr. England, the electronic switch to which the Work's circuit is connected would have detected any cross-connects during the course of its ongoing maintenance. He concluded that Mrs. Work's line was not registering calls from another number.

Jim DeBoer, an installer-maintainer for outside plant, testified about his July 1986 special inspection on the outside facilities which lead up to Mrs. Work's residence. He looked to see if any wires had been spliced into the Work's cable pairs. He found no tampering with Mrs. Work's wires during his inspection.

Bob Birchem, an installation and maintenance supervisor for GTEC, then testified. In September of 1989 he inspected the

service drops to residences located behind Mrs. Work's house to see if any of those had been connected to complainant's house. He found no such connections, nor did he find any evidence of tampering with the terminals or of tampering.

Jean Jeu-Devine testified for GTEC that, as a billing representative, she had responsibility for Mrs. Work's account from July 1986 to November 1987. She works exclusively on 976 vendor disputes. GTEC attempted to show the history of Mrs. Work's contact with GTEC through Ms. Jeu-Devine's interpretation of a sheaf of memos allegedly prepared by GTEC representatives to memorialize the substance of each customer contact. This testimony was intended to refute Mrs. Work's statement that she contacted GTEC to question the 976 charges as early as March of 1986. Although Ms. Jeu-Devine testified that company policy required customer representatives to document each customer contact, testimony showed that company policy was not observed on at least two occasions.

Ms. Jeu-Devine also stated that Mrs. Work never requested a customer name and address (CNA) of the 976 calls appearing on her bills during the approximately 16 months she handled Mrs. Work's account. Mrs. Work disputed this statement. Mrs. Work also asked why the 976 charges on her bills were grouped by date, but not in order by time of call. Ms. Jeu-Devine replied that those calls were "hand-posted".

GTEC's next witness was Laurie Walker, a customer billing representative in the customer relations department for billing, who handles CPUC's informal complaints and any "executive contacts". She testified that she called Mrs. Work in December of 1987 concerning her informal complaint and advised her that blocking would be available during the first quarter of 1988. She said that blocking was installed effective March 1, 1988.

Ms. Walker confirmed that there was no documentation of a request for listing information on 976 calls. She stated that the information is always given to customers who request it.

Mrs. Work was clearly astonished by Ms. Walker's testimony. She emphatically stated that the billing representative with whom she had spoken said that the 976 vendor name and address could not be given out. Mrs. Work asked Ms. Walker to explain why the 976 calls appearing on her bill were not listed in chronological order but were "hand-posted". Ms. Walker stated that a call is hand-posted when "for some reason or other they are not able to bill it through the normal equipment like they do. It could have fallen out of the billing system. Sometimes it happens when a telephone number change is involved. I'm not familiar with all the different reasons, but I do know that they do occasionally manually bill calls where they have a problem. Maybe the billing tape ran out. I don't know." She further testified that GTEC would have been able to provide an explanation for the jumbled sequence if GTEC had been contacted within a six-month period, but that the request for explanation was too late.

Ms. Walker explained that Mrs. Work was given an adjustment for 976 charges in December 1987 when Ms. Walker discussed the informal complaint with Mrs. Work. Ms. Walker testified, "When she called in May it was vague as to ... which was the first disputed statement. When the informal complaint came through, it clearly identified it as January. So she was issued a credit for the January 16, 1986 statement plus calls appearing on the February statement billed through January first."

GTEC also presented Edward Duffy, state staff administrator for regulatory affairs, as a witness. He testified that the multiple calls during a single minute could occur if the dialer placed the call, hung up, and placed another call or several other calls again during one minute because one minute is the shortest time GTEC can bill for.

Discussion

The availability of 976 calling service has caused unprecedented difficulties for many telephone customers such as the complainant. GTEC was well aware of the enormous billings that a customer might incur for 976 charges. GTEC was an active participant in the Commission's investigation into 976 services which was held from 1984 through 1988.

In November of 1985, the Commission adopted an interim adjustment policy for 976 charges whereby the customer would be relieved of 976 vendor charges (i.e., the money due to 976 operators, but not the toll charges associated with the calls made) on any bill rendered after the effective date of the decision when it was established that the customer did not know that 976 calling charges applied (Decision (D.) 85-11-028).

The adjustment policy was made permanent and was expanded by D.87-01-042, which states:

"The one-time adjustment per residence customer shall apply to all pending, past, and future claims when it is established that the (1) customer did not know that 976 billing charges were applied, (2) for calls by a minor child, the call was made by the minor child without parental consent, or (3) the calls were not authorized by the subscriber." (23 CPUC 2d 443, 462.)

This adjustment policy was reviewed and applied to GTEC in a recent decision, D.90-01-014 (Case 89-04-013, Holliday v. GTEC California, Inc.). There, we reviewed whether GTEC properly handled the customer's complaint and whether GTEC properly applied the 976 adjustment policy.

Did GTEC Properly Apply the Commission's Adjustment Policy?

In January of 1987, the Commission expanded the one-time billing adjustment policy to provide adjustments for any unauthorized calls, whether made by a minor child or not. The

adjustment policy did not specify a time limit and was to remain in effect until blocking was available.

A subsequent Commission decision, issued in August of 1987, limited the adjustment period to 60 days, plus one billing cycle (D.87-08-064). More than nine months later, we observed that the utilities had not proposed the required customer notice and tariff modifications to implement the shortened adjustment period (D.88-05-073). We found in Holliday v. GTEC (D.90-01-014) that the limitation of the adjustment period to 60 days never became effective for GTEC. Thus, the 976 adjustment policy in effect during the period of complainant's disputed billings was the policy adopted in D.87-01-042, which states:

"As used in this order, 'one time adjustment' refers to the crediting of all the costs of 976 phone charges (a) incurred before the customer first discovers his liability for 976 charges, or (b) arising out of a single cause, episode, or chain of events. The adjustment is to be applied one time only to provide the incentive for the customer to rectify the situation giving rise to the unauthorized calls. The phone companies must exercise their discretion fairly to interpret this rule, bearing in mind that the adjustments ordered in this decision may relate to calls made when 976 service was first tarified."

In the course of the ongoing discussions between Mrs. Work and GTEC from early 1986 through October 1987, GTEC's billing representatives never credited Mrs. Work with a 976 billing adjustment. The adjustment was made only after Mrs. Work had filed an informal complaint with the CPUC for relief from the 976 charges. GTEC's witness Walker stated that it was unclear which month's 976 billings were disputed. However, GTEC never asked Mrs. Work to clarify which bills she disputed during the numerous contacts documented by GTEC's representatives.

Based on the informal complaint, the company determined that the first disputed statement was that of January 16, 1986.

That statement would have reflected calls made during the month of December. On that basis, GTEC issued Mrs. Work a credit for that statement plus calls on the February 1986 statement for calls billed through January 1, 1986.

GTEC's acts are inconsistent with the testimony of its own witnesses. Its service representatives claimed that Mrs. Work did not contact GTEC to complain about 976 charges until May of 1986. In that case, Mrs. Work would have been contesting her 976 charges appearing on her January, February, March, April, and May bills. Those are the charges which GTEC should have adjusted pursuant to the Commission's policy.

The Commission has never stated that a 976 adjustment should be limited to the first month that 976 charges appear on the customer's bill. GTEC's refusal to adjust Mrs. Work's account for anything more than the January 1986 bill is unsupportable under the facts shown.

It is clear that GTEC reasonably investigated Mrs. Work's telephone service to determine whether it was in proper working order. We believe that the majority if not all of the disputed calls were made by someone in her household, despite her testimony to the contrary. The enormous volume of calls makes it highly unlikely that she was unaware that her telephone was being put to this use.

However, we also believe that Mrs. Work did not place the calls herself and in all likelihood was unable to control the other person or persons in her household who were doing so. Her efforts to obtain adjustments and to have access to 976 restricted or blocked speak to her intent to have the calls stopped. Given that GTEC's one-time adjustment policy never became effective during this period, these facts are sufficient to establish unauthorized use and to order the removal from Mrs. Work's bill of the disputed 976 charges.

We note that Mrs. Work apparently requested the removal of 976 blocking on March 17, 1988. We would advise the complainant that she will bear a heavy burden in seeking the extraordinary removal of any future charges for 976 or 900 services from her bill, given that free blocking is available and that she is indisputably informed about it and the nature of these services.

Conclusion

We find that the 976 charges appearing on Mrs. Work's bills were unauthorized and arose out of a single chain of events. Therefore, complainant is entitled to an adjustment of her account deleting all 976 charges.

Findings of Fact

1. The defendant, GTEC, has provided the complainant with one-party residential telephone service at (213) 921-0455 since August 5, 1986.
2. The complainant, Mrs. Work, was billed for calls to 976 numbers during 1986. The complainant disclaimed those calls, stating that nobody at her residence made the calls. Complainant did not authorize the 976 charges which appeared on her bill.
3. Complainant contacted defendant on May 21, 1986 to complain of 976 calls appearing on her bill. At that time, she had been billed approximately \$966 for 483 "976" calls.
4. On June 25, 1986, defendant advised complainant that it would undertake a line check of her telephone facilities.
5. On August 1, 1986, defendant advised complainant that the line check had not uncovered any irregularities in her phone service.
6. Complainant was billed for 219 "976" calls on July 16, 1986; 532 "976" calls on August 16, 1986; and 164 "976" calls on September 16, 1986.
7. On September 3, 1986, defendant offered and complainant accepted toll restriction on her service.

8. No toll 976 charges appeared on complainant's bills from September 1986 to March 1988.

9. Defendant billed complainant \$5,108.75 in January of 1988 for unpaid 976 vendor charges and related charges.

10. On November 12, 1987, complainant filed an informal complaint with the CPUC alleging that she should not be liable for the unpaid 976 vendor charges.

11. On December 11, 1987, GTEC issued Mrs. Work a one-time 976 adjustment of \$35.35 for charges appearing on her January 1986 bill.

12. The 976 calls complained of are unauthorized because complainant did not place the 976 calls herself, was in all likelihood unable to control the other person or persons in her household who were doing so; she attempted to restrict or block access to 976 calling; and she sought adjustments to eliminate 976 charges from her bills.

13. The 976 charges appearing on the bills in question arise from a single cause because they were made repeatedly to certain 976 numbers, many only lasted one minute, they were logged during the early hours of the morning, and they were hand-posted out of chronological order on complainant's bill.

Conclusions of Law

1. GTEC failed to properly apply the Commission's one-time adjustment policy ordered in D.85-11-028.

2. GTEC should have applied the Commission's one-time adjustment policy ordered in D.87-01-042 because the 976 calls were unauthorized.

3. GTEC should make a one-time adjustment to the complainant's account to delete all 976 charges billed during 1986.

ORDER

IT IS ORDERED that:

1. Relief is granted to Frances M. Work (complainant) in the amount of \$5,108.75.

2. GTE California, Inc. (GTEC) shall restore complainant's account and credit standing to reflect this order. Complainant shall not be liable for late payment of 976 vendor charges appearing on February 1986 through September 1986 statements.

This order is effective today.

Dated February 21, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I abstain.

DANIEL WM. FESSLER
Commissioner

I abstain.

NORMAN D. SHUMWAY
Commissioner

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


NEAL J. SCHULMAN, Executive Director