

AUG 7 1991

Decision 91-08-018 August 7, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Daniel Luch,)
Complainant,)
vs.)
GTE California Incorporated,)
Defendant.)

ORIGINAL

(ECP)
Case 91-02-104
(Filed February 21, 1991)

Daniel Luch, for himself, complainant.
Edward R. Duffy, for GTE California Incorporated, defendant.

OPINION

Statement of Facts

GTE California Incorporated (GTEC) with headquarters in Thousand Oaks, California, provides telephone services in various areas of the state, including an area in and around Los Gatos in Santa Clara County.

With regard to customer late payment of telephone bills, GTEC's practice is to consider an account delinquent if payment is not received within 15 days of the date appearing on the face of the bill - this is not the post office cancellation date of the envelope in which the bill is mailed.¹ Each customer is assigned

1 If because of volume, that customer's bill is not mailed on that day, or the billing date assigned occurs on a Saturday, Sunday, or holiday (when GTEC's billing department is closed), the customer's bill, while still bearing the original assigned billing date, will actually be mailed the next work day. Thus it is possible that the actual mailing date may be as much as four days after the date on the bill.

a specific calendar day of the month on which his bill will be computer generated. That day always remains his billing date - the date of presentation. The bill stub to be returned with the customer's payment bears a box enclosure which indicates the date that payment is due (the 15th day after the date of the bill.) If payment is not received by this 15th day, a computer generated notice of payment due is mailed to the customer allowing an additional seven days for payment to be received by the utility. If the past due balance is not received within these seven days, the service is subject to temporary disconnection. This practice is in accord with GTEC's Tariff Schedule D & R, Rule 11, Sheet 34, Paragraph A.1.

Daniel Luch, presently vice-president research and development for Cap Snap Company of San Jose, and former resident of Williamsport, Pennsylvania, relocated to Los Gatos late in 1989. It appears from statements on terminal utility bills from Pennsylvania that Luch's payment history there was excellent. In December of 1989, Luch requested telephone service from GTEC. Luch's assigned billing date was the 4th of each month, so that his payment each month was due at the utility by the 19th of each month.

Payment for Luch's first two bills, dated January 4 and February 4, was not received by the utility until February 22, 1990, and Luch incurred a late charge.² Payment for the March 4 bill was not received until March 29; payment for the April 4 bill was received April 19; payment for the May 4 bill was not received until May 31; payment for the June 4 bill was not received until

² GTEC applies a late payment charge of 1.5 percent on any unpaid balance of \$20 or more if payment has not been received by the late payment date printed on the previous bill. This late payment date is not less than 22 days from the postmark date of the billing envelope.

June 29; and payment for the July 4 bill was not received until July 27. Thus only Luch's April payment was received in timely fashion; six other payments were received late during the first seven months of 1990.

The dispute which precipitated the present complaint originated with the \$65.60 August 4, 1990 billing to Luch. That bill indicated payment was due by August 19. When payment had not been received at GTEC by August 30, service was temporarily disconnected. Company records indicate that on August 31 a call was received by GTEC's Customer Billing Center advising that payment in the amount of \$65.60 had been mailed on August 27.³ Service was immediately reconnected, and a reconnection charge in the amount of \$24.59 (the tariff prescribed amount of \$23 plus tax and surcharge) was debited to the Luch account. After receipt of Luch's check, on September 5 the \$65.60 payment was applied to Luch's account.

Thereafter, beginning with the September 4, 1990 billing, and continuing through and including the April 4, 1991 billing, Luch has paid as follows, but has refused to pay the \$24.59 reconnection charges imposed for the August 1990 disconnection:

<u>Bill Date</u>	<u>Date Payment Rec'd</u>	<u>Bill Date</u>	<u>Date Payment Rec'd</u>
9/4/90	9/24/90	1/4/91	1/18/91
10/4/90	10/24/90	2/4/91	2/13/91
11/4/90	11/26/90	3/4/91	3/20/91
12/4/90	12/27/90	4/4/91	4/19/91

On October 26, 1990, Luch filed an informal complaint with our Consumer Affairs Branch, disputing the propriety of the

³ At the hearing, Luch's son testified he made the call, and that while he may have said the payment had been mailed on August 27, he intended to say August 25. The son also stated he had called, not Customer Billing on August 31, but rather the Repair Answering Center on August 30.

reconnection charges. When the matter was not resolved to his satisfaction, Luch filed the present formal complaint under our Expedited Complaint procedures. Luch contends that GTEC abuses the spirit and letter of its tariff regarding service disconnections, misrepresents billing dates with inaccurate and improper use of postage meters, omits relevant information such as late payment dates and payment due dates from its bills, and does not itemize basic charges. He further charges that GTEC delays crediting payments. He asks for removal of the reconnection charges from his bill and that GTEC change its billing practices.

A duly noticed public hearing was held Monday, May 20, 1991 in San Jose, California, before Administrative Law Judge John A. Weiss. Both Luch and GTEC introduced witnesses and evidence. At conclusion of the hearing the matter was submitted for decision.

Discussion

This dispute centers upon the August 4, 1990 GTEC telephone bill. Luch's assigned billing, or "presentation date," has always been the date the bill was generated, always the 4th of the month. That the actual postmark date, because of intervening weekends and/or holidays, may have been as much as four days later does not serve to change the billing or presentation date appearing on the face of the bill.

Payment of these bills must be received by GTEC within 15 days of the billing or presentation date, by the 19th of each month, or the account would be considered delinquent. This is stated under CURRENT BILL in the General Explanations on the reverse side of each page of the bill. The due date was further clearly stated on the return coupon portion of Luch's August 4, 1990 bill.

When Luch's payment was not received by GTEC by the 19th of August, a computer generated notice was sent, allowing an additional seven days for payment to be received before service was

subject to disconnection. Thus, when Luch's payment had not been received by August 26, 1990, the service became subject to disconnection. This was actually done on August 30, 1990.

Luch argues that he mailed payment at approximately 2:00 p.m., Saturday, August 25, 1990 at the main post office in Los Gatos, and that this mailing, even though it would have at best been received after the August 26, 1990 permissible disconnect date, since it should have been received before the actual disconnect date on August 30, 1990, should have prevented the disconnection on August 30, 1990.

The reverse side of Luch's check shows not when GTEC received the payment, but the date the check was endorsed and credited to Luch's account. The date of endorsement was Wednesday, September 5, 1990. This would be 11 days after Luch states he mailed the payment; nine days after his son told GTEC the payment had been mailed.⁴

While this information and Luch's hypothesis are interesting, they beg the principal issue which, simply put, is: Did Luch's payment arrive at GTEC's Inglewood Payment Processing Center in Southern California by the August 26 deadline provided under GTEC's tariff (August 4 + 15 days = August 19 + 7 days (disconnect notice extension) = August 26), or by August 27, since August 26 was a Sunday with no mail delivery? We conclude it did not. Even the local checks assertedly mailed at the same time to

⁴ Luch introduced a considerable array of material and testimony which he asserts proves that GTE had his payment before it disconnected. Among this evidence and central to his contentions were four cancelled checks drawn on the Commonwealth Bank of Pennsylvania. Respectively numbered in series 1921 to 1923, they were drawn to GTE, South Bay Cablevision, PG&E, and 'WMWA'. All were dated August 24 (the day before they were assertedly mailed). Reverse sides respectively were endorsed September 5, 1990; August 29, 1990; August 28, 1990; and August 30, 1990.

Bay Area Cablevision and PG&E were not endorsed until August 29 and August 28 respectively, thus taking four or three days respectively to get processed. A payment sent to Inglewood in Southern California would require another one to two days for delivery plus processing time, thus placing the delivery date to GTEC certainly beyond August 27, 1990, the tariff deadline permitting disconnection. That it took GTEC until August 30, 1990 before effecting the disconnection does not alter matters. GTEC acted within its tariff provisions and Luch must pay the \$24.59 if he wants continued telephone service.

However, this leads to a subsidiary question: Was GTEC in receipt of the Luch payment, albeit after the August 27, 1990 deadline, but before making the actual disconnection on August 30, 1990? The plaintiff has not persuaded us that GTEC was in receipt of the payment prior to August 30, 1990. The record contains no irrefutable evidence, such as a registered mail receipt, of when Luch's payment was mailed. In the absence of such evidence, we can only conclude that GTEC did not receive payment prior to the August 30 disconnection.

Since we are not persuaded that GTEC did receive Luch's payment prior to August 30, 1990, we need not reach the question of whether GTEC might have shown forbearance before disconnecting Luch's service on August 30. We are persuaded, however, that GTEC followed its tariff. Considering Luch's earlier half-year pattern of late payments, GTEC may reasonably have decided to bring matters to a head by taking action which was authorized under its filed tariff. While it is the utility's duty to provide service, it is the customer's obligation to promptly pay for such service. Utility tariffs contemplate service disconnection for non-payment of bills (Blincoe, et. al v. Pac. Tel. & Tel. Co. (1963) 60 CPUC 434).

Whether the 15-day payment period is too short, even when taken in context of the additional seven-day disconnection.

extension time, is not an issue for a complaint proceeding. The reasonableness of tariff provisions is a matter to be determined in the context of a rate proceeding or an investigation. Investigation 90-02-047 is the present continuing forum wherein all issues reasonably and generically affecting ratepayers are being addressed. As GTEC in its answer to the present complaint points out: a complaint which does not allege a violation by a utility of a provision of law or order of the Commission should be dismissed (Section 1702 of the Public Utilities Code). Here no violation of law or order of the Commission has been set forth, and the utility was acting in conformance with its tariff which has the effect of law.

One last aspect requires comment. Luch's material points up the fact that GTEC delays in depositing payments and crediting customer accounts. As long as this delay does not adversely result in actions impacting the customer's service or bill, it is an internal matter. GTEC's attention is directed to this matter.

ORDER

Therefore, IT IS ORDERED that (ECP) Case 91-02-104 filed February 21, 1991 is dismissed with prejudice, and complainant must pay the \$24.59 reconnection charge.

This order becomes effective 30 days from today.

Dated August 7, 1991, at San Francisco, California.

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

Commissioner Daniel Wm. Fessler,
being necessarily absent, did
not participate.

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

- 7 -

NEAL J. SHULMAN
NEAL J. SHULMAN, Executive Director