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Decision 92-05-044 May 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

C. W. Clark Plumbing Co., Inc.,)
Complainant,)
vs.)
General Telephone Company of)
California,)
Defendant.)

ORIGINAL
(ECP)
Case 92-01-024
(Filed January 9, 1992)

O P I N I O N

Background

C.W. Clark Plumbing Co., Inc. (complainant) filed a complaint against General Telephone Company of California (General Telephone) on January 9, 1992. The complaint alleges as follows:

"GTE quoted fees and charges for moving each and every line in our phone system. When the bills came for the move many were different from the quotes. I ask that the utility stand by their original bid and adjust our bills accordingly."

GTE California Incorporated (GTEC), the successor to General Telephone, filed its verified answer on February 24, 1992. A hearing was held on March 19, 1992 under the expedited complaint procedure provided for in Rule 13.2 of the Commission's Rules of Practice and Procedure.

By way of background, the complainant decided to physically relocate its offices from one part of Los Angeles to another. The complainant has several telephone service accounts in the names of different entities. Four of those accounts are the subject of this dispute. Richard Pack, the President of C.W. Clark Plumbing Co., Inc., called GTEC to request the change in telephone

service to the new location. The service request of the complainant is viewed as a "move from and to" request by GTEC.

Gwedolyn Doucet, a GTEC employee and who was the acting business account representative supervisor when Mr. Pack called to place his service order, handled his initial and subsequent calls. Mr. Pack contends that Ms. Doucet quoted him a price of \$110 for the first line and \$52.50 for each additional line for moving all of the lines. GTEC denies having orally quoted the complainant any prices. Instead, GTEC contends that the complainant was provided with written quotes for the move and change order. Ms. Doucet and Edward Duffy testified at the hearing on GTEC's behalf.

Telephone service at the new location for all four accounts became operative on June 1, 1991.

Issue Presented

The issue in this case is whether the tariff charges or an oral price quote apply in a situation where telephone numbers are moved from one location to another. To resolve this issue, we must also examine the meaning of what a "customer" is, and the tariff charges that apply in situations where there are more than one customer and one account.

The broader issue raised by the complainant is whether the utility has a duty to inform the customer of the charges associated with a service request.

Position of the Complainant

The complainant, through its witness Richard Pack, contends that when he called GTEC on April 24, 1991, Ms. Doucet quoted him a price of \$110 for moving the initial telephone line, and that each line thereafter would cost \$52.50 to move. Mr. Pack testified that he was not informed that he would be charged a separate primary line charge for each account. Nor was he informed that the two foreign exchange lines would incur a move from and to charge of \$200 for each foreign exchange account. Had he known about the \$200 charge, he contends that his company would have

saved money by having those two accounts call forwarded instead. Furthermore, Mr. Pack contends that only one premise visit charge should be billed because all of the phone numbers belong to the complainant and involve the same address.

Mr. Pack believes that his company, for all four accounts, should have been charged as follows:

<u>Quantity</u>	<u>Description</u>	<u>Unit Rate</u>	<u>Total Rate</u>
1	Primary Line Charge	\$ 34.50	\$ 34.50
1	Premise Visit Charge	40.25	40.25
13	Additional Line Charge	17.25	224.25
14	Central Office Connection	35.25	493.50
Total Installation Charges			\$ 792.50

At the hearing, the complainant agreed that the total installation charge for account (213) 477-1211 was appropriate. Of the \$635 that is due under this account, the complainant has paid directly to GTEC the sum of \$155.25. On the same account, the complainant has deposited the sum of \$466.50 with the Commission. Although the amount for this account is not in dispute, it forms the basis of the complainant's argument that he was overcharged on the other three accounts.

With respect to the three remaining accounts, the complainant contends that his company should have been charged only the sum of \$52.50 for each account, as detailed in the above itemization. The \$52.50 represents a central office connection fee of \$35.25 and an additional line charge of \$17.25. The complainant has deposited with the Commission \$176.00, \$269.75, and \$386.15 for the (213) 479-2539, (213) 879-9388, and (213) 272-1541 accounts, respectively.

During the hearing, the complainant raised the issue that GTEC should have an obligation to inform customers of extraordinary charges, and that it should also be obligated to inform customers of how to reduce telephone costs. Mr. Pack also took issue with

certain allegations contained in GTEC's verified answer, which he alleges are untrue and misleading.

Position of GTEC

GTEC denies having orally quoted any prices to the complainant. GTEC contends that all of the charges that the complainant has been billed for are proper, and are authorized by Commission-approved tariffs. Those charges were itemized by GTEC in Exhibit 1.

Exhibit 1 is a three-page document dated August 5, 1991, consisting of a cover letter from GTEC to Mr. Pack and two pages of itemized service order activity showing four separate telephone service accounts.¹ Under the name of Bruin Plumbing & Heating, two separate accounts are itemized. The first account is for (213) 477-1211. There are a total of 11 local exchange lines associated with this account. The second account is for (213) 479-2539, which consists of a single local exchange line. Another account, (213) 272-1541, is listed in Exhibit 1 under the name of Bruin Plumbing.² This is a single line, foreign exchange number. The fourth account is in the name of Clark Plumbing, with the number of (213) 879-9388. This is also a single line, foreign exchange number.

For account (213) 477-1211, GTEC's itemization of charges is as follows:³

1 Although the term "account" is not defined in GTEC's schedule of definitions and rules, the term "telephone service" is defined as "A service including both exchange and toll service."

2 GTEC's answer at page 3 states that the (213) 272-1541 account is in the name of Bruin Plumbing and Heating.

3 Exhibit 1 contained an adding error of fifty cents for this account.

<u>Quantity</u>	<u>Description</u>	<u>Unit Rate</u>	<u>Total Rate</u>
1	Primary Line Charge	\$ 34.50	\$ 34.50
10	Additional Line Charges	17.25	172.50
11	Central Office Connection	35.25	387.75
1	Premise Visit Charge	40.25	<u>40.25</u>
Total Installation Charges			\$635.00

For account (213) 479-2539, the itemization of charges is as follows:

<u>Quantity</u>	<u>Description</u>	<u>Unit Rate</u>	<u>Total Rate</u>
1	Primary Line Charge	\$ 34.50	\$ 34.50
1	Central Office Connection	35.25	35.25
1	Time Sensitive Charge-Minimum One Hour (For Wiring of Jack)	85.00	85.00
1	Time Sensitive Charge-Each Additional 15 Minutes	21.25	<u>21.25</u>
Total Installation Charges			\$176.00

For account (213) 879-9388, the itemization of charges is as follows:⁴

<u>Quantity</u>	<u>Description</u>	<u>Unit Rate</u>	<u>Total Rate</u>
1	Primary Line Charge	\$ 34.50	\$ 34.50
1	Central Office Connection	35.25	35.25
1	Measured Business Line- Foreign Exchange	200.00	<u>\$200.00</u>
Total Installation Charges			\$269.75

⁴ GTEC's representative, Edward Duffy, stated at the hearing that an additional charge of \$40.25 for a premise visit charge should have been added to the bill because this account is under a different customer name. This would have increased the total installation charge to \$310.00. However, Mr. Duffy stated during the hearing that GTEC is not seeking to recover the premise visit charge on this account.

For account (213) 272-1541, the itemization of charges is as follows:⁵

<u>Quantity</u>	<u>Description</u>	<u>Unit Rate</u>	<u>Total Rate</u>
1	Primary Line Charge	\$ 34.50	\$ 34.50
1	Central Office Connection	35.25	35.25
1	Premise Visit Charge ⁶	40.25	40.25
1	Measured Business Line- Foreign Exchange	200.00	<u>200.00</u>
	Total Installation Charges		\$310.00

Discussion

a. GTEC's Verified Answer

During the hearing, Mr. Pack pointed out several instances where GTEC had included false and misleading allegations in its verified answer.

Rule 13.1 of the Commission's Rules of Practice and Procedure states that an answer to a complaint must comply with Rules 2 through 8. Rule 5 provides that answers to a complaint must be verified. The requirement of a verified answer in civil court cases can also be found in Section 446 of the Code of Civil Procedure. The purpose of a verified answer is to assure good faith in the averments or statements of a party to the litigation. (Star Motor Imports, Inc. v. Superior Court (1979) 88 Cal.App.3d 201, 204.) In addition to a verified answer, Rule 1 states in part

5 A \$6.00 charge appeared in Exhibit 1 as part of the itemized billing for this account. Exhibit 1 also stated that this charge was in error and would be credited on the complainant's September 1991 bill. At the hearing, Mr. Duffy stated that GTEC has now determined that the \$6.00 charge was an appropriate charge, but that GTEC is not seeking to recover that amount.

6 Although the premise visit charge was not itemized in Exhibit 1, Mr. Duffy and Ms. Doucet stated that it was included as part of the total installation charge of \$316.00.

that "Any person who signs a pleading or brief, ...or transacts business with the Commission...agrees...never to mislead the Commission or its staff by an artifice or false statement of fact or law." GTEC's answer was signed by one of its in-house attorneys and also signed and verified by GTEC's Regional Director of Regulatory and Industry Affairs.

One example cited by Mr. Pack is that there are three instances where GTEC's answer states in essence that no charges were quoted over the phone to Mr. Pack because he would not stay on the line long enough to obtain the quote. (See GTEC's Answer, pp. 2-3.) However, Ms. Doucet testified that all the calls that she had with Mr. Pack were terminated mutually by both parties in a friendly manner. There was never a time when Mr. Pack unilaterally hung up on Ms. Doucet. According to Ms. Doucet, she did not quote any prices to Mr. Pack for the "move from and to" services that he requested, although that is GTEC's normal practice.⁷ No reason was offered at the hearing as to why GTEC did not quote a price to Mr. Pack over the phone.

Mr. Pack testified that he never hung up on Ms. Doucet before he was quoted a price. Instead, Mr. Pack testified that his conversations with Ms. Doucet were cordial, and that Ms. Doucet quoted him a price of \$110 for the first line, and that each

7 This practice is substantiated by the second sentence in paragraph 2 of the first page of Exhibit 1. That sentence states that "Our business account representatives will quote installation and service charges when an order is placed." Ms. Doucet also testified that the customer service representatives use what they refer to as a "cheat sheet" to quote prices to customers over the phone. The cheat sheet is a summary of GTEC's tariff prices for various services. In addition, Rule 3 of GTEC's tariffs provides that at the time a move or change is applied for, a full itemization of recurring rates and nonrecurring charges applicable to the services provided for shall be provided. (Schedule Cal. P.U.C. No. D&R, Original Sheet 23.1.)

additional line would cost \$52.50 each. Mr. Pack's handwritten notes, which were prepared at or near the time of his telephone conversation with Ms. Doucet, had both of those amounts written down. Mr. Pack's notes were admitted into evidence as Exhibit 2.

Mr. Pack also points out that GTEC's answer alleges that Mr. Pack did not call GTEC until May 16, 1991 to place his service request. (See GTEC's Answer, pp. 2-3.) However, Mr. Pack testified that he first called GTEC on April 24, 1991. Although Ms. Doucet could not recall the exact date when she first spoke to Mr. Pack, the first phone call that she had with him regarding his service order occurred before May 16, 1991. Ms. Doucet and Mr. Pack also had several subsequent phone calls to confirm various scheduling items.

Another example of GTEC's erroneous allegations are the three statements made in the answer that GTEC sent three customer notification letters to the complainant on May 18, 1991, regarding three different accounts, with a price quote for the requested services. (See GTEC's Answer, pp. 2-3.) GTEC did not produce any May 18, 1991 letters during the hearing.⁸ The only letters presented at the hearing that come close to being a customer notification letter are two letters from GTEC to Bruin Plumbing & Heating. Those two letters, which Mr. Pack furnished, only pertained to account (213) 477-1211. Those letters were dated May 28, 1991, and June 3, 1991, and were received into evidence as Exhibits 4 and 5.

Although GTEC's verified answer is based on information and belief, it would not have taken much time for GTEC's attorneys or regulatory personnel to obtain the underlying facts from Ms. Doucet, and include those facts in its answer. If the

⁸ GTEC representative Duffy stated that GTEC does not retain any copies of its customer notification letters.

allegations are based on information and belief, the information should rest upon information supplied by others. (See 40 CRC 555, 563.) Instead, GTEC chose to frame its answer in a manner which would cause anyone reading the complaint and the answer to doubt the complainant's version of the events even before the hearing. In addition, additional preparation and hearing time were required to sift through the erroneous allegations made by GTEC and to uncover the undisputed facts.

We find that GTEC's behavior in filing its answer in this case misled the Commission. GTEC is put on notice that if similar misleading allegations occur in future complaint cases or applications, the Commission will not hesitate to exercise its contempt power under Public Utilities (PU) Code § 2113⁹.

b. Applicable Law

Official notice is taken of GTEC's tariffs and schedules.

The definition of a "customer" is the key to deciding whether the charges billed to the complainant are proper.

A customer is defined in GTEC's Schedule Cal. P.U.C. D&R as:

"The person in whose name the service is furnished as evidenced by the signature on the application or contract for that service, or in the absence of a filed instrument, by the receipt and payment of bills regularly issued in his name regardless of the identity of the actual user of the service."

⁹ Section 2113 states in pertinent part: "Every public utility ...or person which fails to comply with any part of any...rule... or requirement of the commission...is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record...."

According to Exhibit 1, two of the accounts are in the name of Bruin Plumbing & Heating, one account is in the name of Bruin Plumbing, and one account is in the name of Clark Plumbing and Heating. A customer is defined as "The person in whose name the service is furnished...." We consider each of the four accounts to be separate customer accounts because there are four separate telephone services being furnished under four different account numbers. Thus, even though the complainant is the actual user of all four accounts, and notwithstanding the fact that Mr. Pack made one call to place his service order for all four accounts, the complainant's contention that he should be charged for moving his four accounts at the rate of \$110 for the first line, and \$52.50 for each line thereafter is contrary to what GTEC's filed tariffs provide. Having concluded that, we will examine the individual charges for the three customer accounts that remain in dispute.

c. Account (213) 479-2539

GTEC's Schedule A-41 covers service connection, and move and change charges. The "APPLICABILITY" paragraph in that schedule states that the schedule is "Applicable to charges for processing and completion of customer or applicant requests for all exchange services." As discussed in the preceding section, there are four separate customer accounts which the complainant requested be moved to a new location. As provided for in GTEC's tariff, the appropriate charge for the first line of each service that is requested to be moved is \$34.50. (Schedule Cal. P.U.C. Par. A.1.a.(1)(b).) The central office connection charge of \$35.25 is also appropriate, as conceded by the complainant. The central office connection charge is found in Paragraph 2.b of the same schedule.

With respect to the time sensitive charges of \$85 and \$21.25, the uncontradicted evidence presented by the complainant leads us to conclude that these charges are not supported by the

evidence. The evidence presented by the complainant established that Mr. Pack had retained Comtone to prewire the premises for the telephone number associated with this account. The 479-2539 number is the facsimile number for the complainant. Exhibit 3, the contract between the complainant and Comtone, lists the prewiring of a "fax" line as part of the contract description. The location of the facsimile line also appears in Exhibit 10, a diagram of the physical locations of the telephone jacks. Mr. Pack also testified that all of the wiring that he had contracted with Comtone for was performed during the week of May 27, 1991. Mr. Pack was also present when the GTEC installer was on the premises, but did not request or see the GTEC installer wire any jack. GTEC did not present the GTEC installer or present any evidence to contradict Mr. Pack's testimony regarding the wiring of the facsimile line. For that reason, we conclude that the time sensitive charges totaling \$106.25 are not warranted.

Accordingly, we conclude that the proper charge for account (213) 479-2539 is the amount of \$69.75.

d. Account (213) 879-9388

The primary line charge of \$34.50 and the central office connection charge of \$35.25 are appropriate for the same reasons discussed in the account above.

To determine whether the \$200 charge for moving a foreign exchange line is proper, we must examine GTEC's Schedule A-19. That schedule covers foreign exchange service. The term "foreign exchange service" is defined in GTEC's schedule of definitions and rules as: "Exchange service furnished by means of a circuit connecting a customer's premises with a central office in an exchange area other than that in which the premises is located." Paragraph A.2.a. of the Rates section in Schedule A-19 provides that each trunk or individual line for a business will be charged a nonrecurring charge of \$200 for network access, plus the applicable charges in Schedule A-41.

Mr. Pack contends that it would have been cheaper to have the 879-9388 number call forwarded instead of incurring the move and change charge. Had he been informed of the \$200 charge by GTEC, he would have availed himself of the call forwarding option. However, Mr. Pack asserts that he was never informed of the \$200 charge, and contends that he should have been informed of such a charge so that he could act to minimize his costs.

Ms. Doucet testified that she did not quote any prices to Mr. Pack. She also testified that any moves and charges associated with a foreign exchange number are handled by another GTEC office.

GTEC's Rule 3 provides that at the time a move or change is requested by a customer, GTEC shall provide a full itemization of recurring rates and nonrecurring charges applicable to the services applied for unless such itemization is waived by the customer in writing. After the taking of a complete order for the move or change, GTEC is supposed to mail a confirmation letter within two days to the customer with a brief description of the services ordered and the recurring and nonrecurring charges.

The testimony of Mr. Pack is that he called GTEC on April 24, 1991 to place his move and change orders for all four accounts. GTEC's own witness, Ms. Doucet, testified that the service order was placed before May 16, 1991.

GTEC did not present any evidence to support its allegations in its answer that the service order was first made on May 16, 1991. Furthermore, GTEC did not present any evidence that confirmation letters for the (213) 477-1211, 272-1541, and 272-1541 accounts were sent to the complainant on May 18, 1991 as alleged in its answer. Indeed, the only letters presented at the hearing that appear to be confirmation letters are Exhibits 4 and 5, which were supplied by the complainant. However, those two letters are dated May 28, 1991 and June 3, 1991, well after Mr. Pack's initial service order. In addition, both of those letters only pertain to the 477-1211 account, and quote total service connection charges.

They do not itemize the nonrecurring service connection charges as required by GTEC's Rule 3.

We are aware that filed tariffs have the force and effect of law. (Dollar-A-Day Rent-A-Car Systems, Inc. v. Pacific Telephone Telegraph Co. (1972) 26 Cal.App.3d 454, 457.) We are also cognizant of the fact that the Commission and the courts of this state have held that a public utility "cannot by contract, conduct, estoppel, waiver, directly or indirectly increase or decrease the rate as published in the tariff of the carrier until the published tariff itself is changed." (Transmix Corp. v. Southern Pacific Co. (1960) 187 Cal.App.2d 257, 264; Commercial National Bank v. Pacific Telephone & Telegraph Co. (1972) D.81351 [75 CPUC 199].)

Those cases have not been reconciled with another line of cases which hold that utilities must inform inquiring customers about charges or available service options.¹⁰ The Commission has required utilities to inform customers of least-cost service alternatives in the past. In D.90997 [2 CPUC2d 533, 546] the Commission stated that:

"[U]nder Section 451...a telephone utility does, in our opinion, have a duty to provide a prompt response to a specific customer request for information readily available to the utility which may assist the customer in determining whether its line and equipment configurations are reasonably economical, so long as such request is reasonable in scope."

10 In addition, PU Code § 489(b) provides in pertinent part that "The commission shall, by rule or order, require every telephone corporation operating within a service area, on first contact by a prospective subscriber and in subsequent contacts by the subscriber for the purpose of changing service, to fully inform the subscriber of the basic services available to the class of subscribers to which the subscriber belongs." We refrain from addressing whether foreign exchange service is a "basic service" that a customer must be informed of when a customer calls to change service.

Indeed, a refund of a foreign exchange connection charge may be appropriate where the customer loses money as a result of the utility's misrepresentation. (See D.89-01-041, p. 7.)

In this case, we believe that the \$200 connection charge should be refunded. The evidence is clear that the initial service order took place sometime in April or early May of 1991. According to GTEC, no oral itemization was provided. In addition, there is no evidence that any written itemization was provided to the complainant within two days of the placing of the order as required by GTEC's Rule 3. Had the complainant been made aware of the \$200 charge, Mr. Pack could have considered a lower cost alternative such as call forwarding.¹¹

Under the circumstances, we find that GTEC did not provide a timely itemization to the complainant as required by GTEC's Rule 3, and that the complainant should be refunded the foreign exchange connection charge of \$200. Consequently, we conclude that the proper charge for account (213) 879-9388 is the amount of \$69.75.

e. Account (213) 272-1541

For the same reasons stated in our discussion of account (213) 479-2539, we find that the primary line charge of \$34.50 and the central office connection charge of \$35.25 are appropriate. For the reasons stated in the discussion of account (213) 879-9388, we find that the foreign exchange connection charge of \$200 should be refunded because GTEC failed to comply with Rule 3 of its tariffs.

¹¹ Mr. Pack testified that his company uses call forwarding for three other numbers that his company has. According to Pacific Bell's Schedule A5, the remote call forwarding service costs \$18 per month.

The premise visit charge is described in paragraph 5 of the Special Conditions section of GTEC's Schedule A-41. Two pertinent provisions of that paragraph are quoted here:

- "a. The Premises Visit Charge applies to a visit by Utility personnel to a customer's or applicant's premises for the purpose of performing work activities other than for repair and/or maintenance or for a total disconnect of service. The type of work for which the visit is made includes but is not limited to provision of new service and/or equipment (other than maintenance replacement),

* * *

- "c. When a customer or applicant initiated request requires a visit to more than one customer's or applicant's premises, multiple Premises Visit Charges will be applicable."

GTEC's rationale for charging the premise visit charge on this account appears to be that the account is in the name of Bruin Plumbing, as opposed to the name of Bruin Plumbing and Heating. Ms. Doucet testified that if two accounts are under the same name, there is only one premise charge. If there are two accounts under two different names, then two premise charges apply. We agree that Ms. Doucet's understanding of this charge is consistent with paragraph 5 of the Special Conditions and the definition of a customer.

GTEC's answer at page 3 states that the name on the 272-1541 account is Bruin Plumbing and Heating. This conflicts with GTEC's Exhibit 1. This discrepancy was not noticed or addressed by the parties during the hearing. Due to this inconsistency in the name of the account, we find that the premise visit charge for this account violates GTEC's Schedule A-41. The charge violates the schedule because a premise visit charge has already been billed on the (213) 477-1211 account, an account in

the name of Bruin Plumbing and Heating. If we allowed the charge for the 272-1541 account, this would result in a double charge.

We therefore conclude that the appropriate charge for account (213) 272-1541 is \$69.75.

Conclusion

In accordance with Rule 13.2 of the Commission's Rules, separately stated findings of fact and conclusions of law are not required.

For account (213) 477-1211, the complainant agrees that the \$635 charge is justified. The complainant has paid GTEC \$155.25 toward this charge. The complainant has on deposit with the Commission the amount of \$466.50. That leaves a balance of \$13.25 which the complainant has not deposited with the Commission. With respect to the three remaining accounts, for the reasons discussed above, we find that the proper charge for each account should have been \$69.75. In the order below, we will direct the Executive Director to distribute the monies on deposit in accordance with our decision.

O R D E R

IT IS ORDERED that:

1. From the \$1,298.40 which the complainant has on deposit with the Commission, the Executive Director will cause \$689 to be released to GTEC as payment in full for the following accounts which are the subject of this proceeding: (213) 477-1211; (213) 479-2539; (213) 879-9388, and (213) 272-1541.

2. The remaining amount of \$609.40 shall be refunded to the complainant.

This order becomes effective 30 days from today.

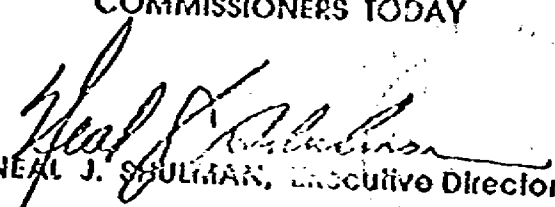
Dated May 20, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director

pb