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Decision 92-07-044 July 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Kenneth Bates, Jr.,
Complainant,

vs.

GTE California Incorporated,
Defendant.

And Related Matters.

ORIGINAL

Case 91-02-084
(Filed February 15, 1991)

Case 91-04-033

I.90-02-047

Kenneth Bates, Jr., for himself, complainant.
Michael Allan, Attorney at Law, for GTE
California, Incorporated, defendant.
Mary Adu and Lionel B. Wilson, Attorneys at
Law, for Division of Ratepayer Advocates.

O P I N I O N

This decision resolves the complaints of Kenneth Bates (Bates) against GTE California Incorporated (GTEC). We adopt certain changes to GTEC's billing and collection practices, among them a requirement that GTEC suspend disconnection and disconnection notices in cases where it is investigating an uncredited account when the customer has provided proof of payment for the amount in question.

I. Background

Bates filed two complaints against GTEC. The first, filed on February 15, 1991, alleges that GTEC improperly threatened to disconnect Bates' telephone service after he had paid his bill

on time and provided proof of payment to GTEC. The complaint alleges that GTEC's quality of service has deteriorated in that GTEC has closed walk-in customer service facilities and failed to maintain adequate billing operations.

The second complaint, filed April 26, 1991, alleges that GTEC improperly encoded Bates' payment check, withdrawing \$106.58 more from Bates' bank account than Bates owed to GTEC.

These two complaints were consolidated with Investigation (I.) 90-02-047, which we opened for the purpose of entertaining complaints about utility operations and services. Complaints on these subjects were once the subject of general rate cases, proceedings which have been superseded by a new regulatory program for GTEC. Three days of hearings were held on these matters. The Division of Ratepayer Advocates (DRA) participated in the complaints.

II. The Misapplied Payment (Case (C.) 91-02-084)

A. Statement of Facts

On August 3, 1990, Bates contacted a GTEC customer representative to inform the company that he had not received his July bill. Immediately thereafter, Bates sent a check to GTEC for the amount of his July bill. GTEC deposited the check on August 14. On August 20, Bates contacted a GTEC customer representative again because his August bill did not show a credit for the July payment. The representative informed Bates that the company had no record of his July payment. Bates subsequently presented to GTEC a copy of his canceled check at which time GTEC informed Bates that he should deduct the paid amount from his future bill and that the company would undertake an investigation. In the meantime, the company would not credit his account.

On September 4, 1990, GTEC mailed Bates a disconnection notice, advising Bates that his service would be cut off in seven

days if his outstanding balance (in the amount of the July and August bills) was not paid. Shortly thereafter, GTEC determined that it had inadvertently credited Bates' July payment to the wrong account. GTEC credited Bates' account on the September bill.

B. Bates' Position

Bates believes GTEC's actions disadvantaged him in violation of Public Utilities Code Section 453(a) and caused him considerable cost and inconvenience. Bates recommends that the Commission:

Order telephone utilities to credit a customer's account immediately where the customer proves that his or her bill has been paid, and to suspend service disconnect notices and fines in such cases;

Order telephone utilities to maintain walk-in facilities for resolving billing disputes and to increase oversight of billing operations; and

Create an independent agency to monitor service quality more closely by surveying customers and reviewing informal complaints.

Bates also seeks interim relief seeking an order directing GTEC to open a public office at its headquarters in Thousand Oaks where customers can meet in person with company representatives to resolve problems.

C. GTEC's Position

GTEC states that while Bates may have been inconvenienced because customer service centers were not available to him, he was not "disadvantaged" under Section 453(a).

GTEC proposes modifications to Rule 10 of its tariffs which it believes will address many of Bates' concerns. The modifications would require GTEC, after receiving proof of payment, to either suppress the temporary disconnection notice or preclude the account from temporary disconnection. It would pay expenses incurred by the customer in the course of resolving a billing or

collection error caused by the utility. GTEC proposes that it should be allowed 30 days from receiving proof of payment to investigate the matter before crediting the customer's account.

GTEC states that Bates has not shown that customer service centers are needed. GTEC states it instituted the current telephonic customer service system in order to serve ratepayers more effectively and more economically.

D. DRA's Position

DRA acknowledges that the events leading up to Bates' complaint were likely to have caused him considerable inconvenience. DRA does not agree, however, that GTEC violated Section 453(a). DRA does not believe the record in this proceeding supports Bates' proposal for customer service centers. DRA recommends that the utility suspend penalties (including disconnection) and disconnection notices in cases where a customer provides proof of payment and pay customer expenses, as GTEC proposes.

E. Discussion

Bates claims that when customers cannot meet in person with a service representative they are "disadvantaged" pursuant to Section 453(a). Section 453(a) states:

No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.

It is well-established that for any prejudice or disadvantage to be unlawful it must be "unjust or undue." (California Portland Cement Co. v. Union Pacific Railroad Co. (1955) 54 CPUC 539.) Rates for different customer classes, for example, differ and may therefore be considered to disadvantage some customers relative to others. Such discrimination between

customer classes, however, is lawful if it is justified on the basis that it serves the public interest.

Similarly, a "disadvantage" which is unlawful under Section 453(a) can only be established when a comparison is made between situations which are comparable. (Navarro Lumber Co. v. S.P. Co. (1918) 15 C.R.C. 317.) In this case, Bates would need to demonstrate that similarly situated customers were treated differently in similar circumstances. For example, it would be unlawful for GTEC to provide walk-in customer facilities to Bates but to refuse the same service to a similarly situated customer.

The record in this proceeding does not demonstrate that GTEC discriminates between customers in similar circumstances or has "disadvantaged" Bates as that term is used in Section 453(a). It appears that GTEC responded to Bates' inquiries in a manner that was reasonable and consistent with its tariffs. GTEC therefore did not violate Section 453(a) by failing to provide customer service centers.

On the other hand, Bates' complaint has identified billing and collection practices which may cause unnecessary inconvenience and anxiety for GTEC's customers. GTEC proposes tariff language to accommodate complainant's concerns by providing that GTEC will either suppress a temporary disconnection notice or preclude the account from being temporarily disconnected. Bates opposes this proposed language because it would permit GTEC to mail a disconnection notice even after a customer has provided proof of payment. We agree with the complainant that a customer in good standing should not be subjected to the potential inconvenience and anxiety which might accompany receipt of a disconnection notice during the period when the company is investigating what may be its own error. We will direct GTEC to submit the proposed tariff language changes, modified to provide that when proof of payment is received regarding an uncredited payment, GTEC shall suppress the

temporary disconnection notice immediately. These tariff changes are included in Appendix A.

The subject of customer service centers is more difficult. Traditionally, GTEC provided customer service centers throughout its territory. These offices permitted customers to pay bills and resolve billing disputes in person. Over the past several years, it has closed down these centers.¹ Bates provided anecdotal evidence, in the form of informal complaints made to the Commission, that some customers have been inconvenienced because GTEC no longer maintains customer service centers. DRA provided evidence to show that GTEC customers have a lower opinion of GTEC's service than Pacific Bell's (Pacific) customers have of Pacific's service. The record in this proceeding, however, does not demonstrate that customer service centers are required in order for GTEC to provide adequate service. This is not to say that customer service centers are unnecessary. We cannot in this proceeding, however, justify the potentially large investment which may be required in order to reinstate that level of service. We may revisit this issue at a later date. DRA states it is undertaking a customer survey of GTEC's service quality which may provide evidence regarding the need for customer service centers. We also intend to undertake a review of the regulatory framework adopted in Decision (D.) 89-10-031. At that time we intend to consider utility service quality generally and may consider customer service centers specifically.

Finally, we respond to Bates' recommendation that we create an independent agency to monitor service quality. We have no authority to create a new agency. The Commission is in fact the

¹ GTEC has closed customer service centers where customers were able to transact, in person, any type of business concerning utility service. It does, however, provide in-person bill payment service using contracted vendors.

agency which is obligated by statute to oversee utility services. In fulfilling that responsibility, we have designated DRA as the portion of the staff which undertakes independent analysis on behalf of ratepayers and the Commission Advisory and Compliance Division as the portion of the staff which serves in a broader advisory role. Both of these staff divisions monitor utility services.

III. The Misencoded Check (C.91-04-033)

A. Statement of Facts

On October 16, 1990, GTEC billed Bates \$105.64. GTEC did not receive payment for that bill in time to credit Bates' account before issuing the November bill. The November bill sought payment for \$299.77, an amount which included the October charges. On November 28, GTEC received payment for the November bill in the amount of \$193.19 but misencoded the amount of the check, debiting Bates' bank account for \$299.77. Bates discovered the error in late December and contacted his bank, directing it to credit his account by \$106.58 (the difference between the two-month bill and the actual outstanding charges). After the Federal Reserve Bank contacted GTEC about the error, GTEC adjusted Bates' utility account.

B. Bates' Position

Bates believes GTEC placed him in financial jeopardy and disadvantaged him in violation of Code Section 453(a) because his bank account held less funds than he had reason to believe.

Bates asks the Commission to:

Order telephone utilities to voluntarily refund to customers, without delay, any money collected above the amounts of customers' checks;

Order telephone utilities to pay interest on money collected in excess of customers' checks if the money is held more than three days;

Order telephone utilities to pay interest and expenses when a customer incurs expenses in order to recover money lost as a result of a check encoding error; and

Monitor the billing and collection policies and practices of telephone utilities to determine if new regulations are needed.

C. GTEC's Position

GTEC proposes to change its tariffs to provide that it will pay a 1.5% interest penalty on customer money which is overcollected because of a check misencoding error, and to reimburse the customer for reasonable expenses incurred by the customer in correcting a utility error. Such expenses would include financial institution fees, and mailing and photocopying costs.

D. DRA's Position

Like GTEC, DRA proposes that the Commission order GTEC to pay customers 1.5% of the amount overcollected through check encoding errors, consistent with the penalty GTEC pays customers who are overcharged, as set forth in D.85-12-017. DRA also proposes that GTEC's tariffs offer customers reimbursement for reasonable expenses incurred when attempting to correct a utility's mistake.

E. Discussion

GTEC's misencoding of Bates' check does not constitute a violation of Section 453(a), which we discussed above. GTEC's error may have "disadvantaged" Bates by causing him inconvenience; however, this inconvenience arose from an administrative error which does not appear to be prevalent and which does not constitute a "prejudice or disadvantage" under Section 453(a).

Notwithstanding this, Bates' complaint identifies certain shortcomings in existing tariffs. Both GTEC and DRA propose tariff language which would cure the problems Bates identifies. We will adopt the tariff language proposed by GTEC under which it would pay

customers 1.5% on amounts which are overcollected due to check encoding errors and reimburse customers for reasonable expenses incurred in attempting to correct utility billing and collection errors. We will, however, remove language proposed by GTEC which conditions the payment of the penalty on "negative impacts" to a customer's bank account. This modification will avoid disputes between GTEC and its customers over whether customer bank accounts are affected. These tariff changes are included in Appendix A.

Bates also proposes that the Commission staff monitor billing and collection practices to determine if new regulations are required. As stated previously, DRA is undertaking a customer survey regarding billing and collection matters, and we intend to review GTEC's services more generally in our review of the regulatory program adopted in D.89-10-031.

IV. Conclusion

In summary, we commend Bates for bringing these matters to our attention. Although we do not adopt all of Bates' recommendations, we do adopt modifications to GTEC's tariffs which should mitigate customer confusion and anxiety in cases where GTEC makes an error in billing or collection. We also commend DRA and GTEC for working with Bates in attempting to resolve the issues raised in these complaints.

Findings of Fact

1. Bates did not receive a copy of his July 1990 bill and mailed payment for the bill after contacting GTEC.
2. GTEC informed Bates that his account would not be disconnected during the course of an investigation of his payment, but subsequently mailed a disconnection notice to Bates.
3. The record in this proceeding does not provide justification for ordering GTEC to open customer service centers.
4. GTEC misencoded Bates' November 1990 payment, and thereby overcollected funds from Bates' bank account.
5. Bates contacted his bank to request a credit to his bank account for the amount overcollected by GTEC in November 1990.
6. GTEC credited Bates' utility account after receiving notice from the Federal Reserve Bank that GTEC had overcollected funds from Bates' bank account.

Conclusions of Law

1. GTEC has not violated Section 453(a) by failing to provide customer service centers to Bates or other customers.
2. GTEC did not violate Section 453(a) when it misencoded Bates' October 1990 payment.
3. The Commission should order GTEC to suspend disconnection and disconnection notices in cases where a customer's account has not been credited and the customer has provided proof of payment.
4. The Commission should order GTEC to pay customer expenses listed in Appendix A which are incurred by customers in the course of resolving billing and collection problems.
5. GTEC should be ordered to pay a monthly 1.5% late payment penalty to customers whose accounts are overcollected due to a check encoding error.
6. GTEC should be ordered to modify Rule 10 of its tariffs to incorporate the provisions of Appendix A to this decision.

O R D E R

IT IS ORDERED that:

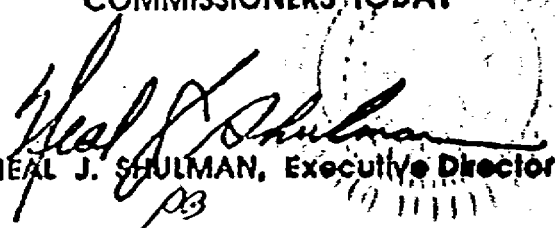
1. The complaint of Kenneth Bates, Jr. in Case 91-02-084 is granted to the extent set forth herein.
2. The complaint of Kenneth Bates, Jr. in Case 91-04-033 is granted to the extent set forth herein.
3. GTE California Incorporated shall, within 15 days of the effective date of this order, file changes to Rule 10 of its tariffs which incorporate the provisions of Appendix A of this decision.

This order is effective today.

Dated July 22, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director

APPENDIX A

Modifications to Rule 10

E. Late Payment Charge

Customers who pay a bill subject to a late payment charge which is in error shall receive a comparable monthly 1.5 percent penalty on the amount in error from the Utility. This penalty shall apply to any amount overcollected through a check encoding error. The penalty shall be applied as a credit to the customer's account, unless the customer requests that it be refunded by check. The customer shall be informed of the latter option promptly upon recognition of the error.

L. Proof of Payment

1. Proof of payment constitutes a copy of a paid canceled check, canceled money order, authorized payment agent receipt, or GTEC receipt.
2. When proof of payment is received regarding an uncredited payment, GTEC shall, for the next billing round, suppress the temporary disconnection notice and preclude the account from being temporarily disconnected for the uncredited amount. Disputes that remain unresolved beyond 30 calendar days from receipt of proof of payment shall be reconciled in the customer's favor. Any late payment charges assessed due to an uncredited payment shall, after receipt of proof of payment, be credited to the account.

M. Reimbursement of Reasonable Expenses Due to Utility Error

Upon request, GTEC shall reimburse a customer for financial institution fees related to research and document production, photocopy and mailing costs incurred during the resolution of utility-caused billing and collection errors.

(END OF APPENDIX A)