

ALJ/WRI/vdl

Mailed

Decision 92-08-018 August 11, 1992

AUG 11 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Coachella Valley Communications,)
 Complainant,)
 vs.)
 U.S. Sprint,)
 Defendant.)

ORIGINAL

Case 90-08-010
(Filed August 1, 1990)

Gold, Marks, Ring & Pepper, by Joshua L. Rosen,
 Attorney at Law, for Coachella Valley
 Communications, complainant.
Cheryl Houser, Attorney at Law, for US Sprint
 Communications Company Limited Partnership,
 defendant.

O P I N I O N

Coachella Valley Communications (CVC), a provider of interexchange telecommunications services which it purchases from US Sprint (Sprint), complains that Sprint billed it for substantially, more minutes of usage than actually occurred. Failing to resolve this matter informally with the Commission's staff, a formal complaint was filed and the sum of \$155,966.77 deposited with the Commission. Following the filing of Sprint's answer, duly noticed public hearings were held in Palm Springs before Administrative Law Judge (ALJ) Donald B. Jarvis on February 21, 1991 and November 13, 1991, and before ALJ Orville I. Wright on January 14, 1992. Concurrent opening and closing briefs were filed by the parties, and the matter was submitted for decision on April 7, 1992.

Background

CVC is a retailer of interexchange telecommunications services which it purchases at wholesale rates from interexchange

carriers such as Sprint. This case involves Ultra WATS service purchased by CVC from Sprint.

CVC and Sprint each have what is called a "switch" to generate the call detail necessary to conduct business.

Sprint's switch enables the wholesaler to determine the amount of money due from CVC on a monthly basis for the latter's use of Sprint's circuits. Its billing package contains the following:

1. A Statement of Accounts summarizing all amounts due for that particular billing period.
2. A corporate usage summary for the Ultra WATS service, summarizing the number of calls, minutes of usage, total cost, and cost per minute by rate band, by day versus evening versus weekend calls, and by domestic versus international calls for both service locations together, and two Location Detail of Service summaries which show the same information for each service location individually.
3. Call detail records. The call detail lists each call which Sprint's switch has recorded as having been made through CVC's switch. The records contain the date and time at which the call was made, the area code and phone number to which the call was made, the city and state to which the call was made, and the duration of the call in minutes.

CVC's switch enables the retailer to determine the amount of money due from each of its retail customers on a monthly basis for use of CVC's interexchange services. However, CVC's billing periods and corporate usage summaries for the Ultra WATS service supplied by Sprint are not directly comparable to those produced by Sprint's switch, and monthly or longer period totals generated by the switches of wholesaler and retailer vary greatly.

The record is unclear as to whether CVC's switch is programmed to generate data comparable to the call detail produced and supplied to Sprint's customers by Sprint. It is clear, however, that call detail developed by CVC has not been supplied in this case although it has consistently been requested by Sprint.

CVC's Evidence

CVC contends that Sprint overbilled it for Ultra WATS services during the period between/from January 1989 and May 1990 by charging it for calls that were either never made, or were made by a Sprint customer other than CVC.

In support of its contention, CVC presented tables showing minutes of CVC's Ultra WATS usage summarized by month as generated by CVC's switch and by Sprint's switch. The gross numbers show a generally higher usage of Sprint's facilities as billed to CVC by Sprint for the period in question than is supported by CVC's records.

CVC, being unable to quantify the amount of reparations it seeks, suggests that the Commission simply find in its favor by the arbitrarily determined amount of \$155,966.77 it has on deposit.

Complainant candidly admits that it cannot definitively prove that the records generated by its switch are correct and that the records generated by Sprint's switch were not correct. It believes such proof to be a practical impossibility, describing the difficulty in part, as follows:

"Each month CVC receives one or more boxes of paper call detail. These records are between one and one and one-half feet thick. Each page of call detail contains approximately 200 calls. While the number of calls and number of minutes are totalled for each service location at the end of the call detail records, the individual pages contain no totals.

"There is no way for CVC to compare the call detail generated by Sprint's switch with the call detail generated by its switch, other than manually, page by page, call by call. This is obviously an almost impossible task, given the

fact that CVC receives one or two boxes of call detail per month, and in the average month, is billed for over 100,000 calls."

Acknowledging that it has the burden of proof, complainant asserts that the burden has been satisfied, stating that it has shown a reasonable basis for its allegation that the utility's bill is incorrect. The burden should now shift to Sprint, according to CVC, to show that its charges are correct.

Sprint's Evidence

Sprint believes that CVC has not met its burden of proof by a preponderance of the evidence.

Defendant testified that when a reseller customer such as CVC raises a usage dispute claiming a variance in minutes of use, call detail is necessary to compare the minutes captured by Sprint with those captured by the reseller. Call detail is necessary to substantiate the claimed overbilling to make certain the cutoff dates for billing are the same and to account for any delayed usage, according to defendant.

Sprint asserts that from the time complainant first raised the issue of overbilling, Sprint has repeatedly requested that CVC forward call detail documenting specific calls or specific time periods which reflect too many minutes of use. On August 1, 1990, defendant wrote CVC, in part as follows:

"As regards the overall usage dispute, which now totals \$170,058.18, US Sprint has requested more detailed information from Coachella. The information you have provided to date is a summary spreadsheet of calls and minutes for the July 1989 to March 1990 period. You have also mentioned several times (most recently in your PUC complaint of May, 1990) that Coachella would provide detail for the July, August and January 1990 periods at a subsequent date. To date, we have not received this information. The summary information tendered to the PUC differs from previous dispute information you have provided to Sprint in April 1990, specifically usage levels for the September 1989 and March 1990 periods. We are uncertain

as to which type of traffic is included in your figures. Also, US Sprint usage information you provided to the PUC does not agree to Sprint records. You can understand that it is difficult for Sprint to draw any conclusions as to usage variances with the the incomplete information base you have provided."

The requested call detail was not provided although CVC testified that its switch is capable of running call detail, according to defendant.

Succinctly put, Sprint states that the trunk group analysis and other tables presented by CVC contain no information which can be cross-referenced with Sprint's traffic. Call detail generated by complainant's switch is essential to resolve the usage dispute.

Responding to complainant's assertion that it is an almost impossible task for CVC to generate call detail compatible with that of Sprint, defendant states:

"Coachella thinks the only avenue way[sic] it can detect overbilling it is to manually compare Sprint's call detail with Coachella's call detail. Mr. Cranford continually bemoans the difficulty in comparing Sprint's call detail to Coachella's call detail. This is yet another inaccuracy. This type of work need not be done manually. Coachella has a switch with a software program which can be programmed to provide the information recorded by the switch in various data sorts. Thus, calls recorded by the switch can be sorted by day, month, week, intrastate versus interstate. Coachella has never done this.

"In addition, Coachella has always had the option of ordering its billing from Sprint in the form of magnetic discs in addition to the paper call detail it receives. It has never chosen to do so. Magnetic discs can easily be used on a reseller's switch to determine billing discrepancies by simply bouncing the mag tape off the switch and having the software programmed to pick up discrepancies. This is yet another avenue Coachella has never pursued.

"In addition Coachella could have hired another entity to run its tapes to look for billing discrepancies. This too was never done."

Discussion

CVC has contracted with Sprint that the latter will provide usage of its facilities intrastate and interstate at wholesale tariff rates. In turn, CVC will market its interexchange telecommunications service to its customers at retail tariff rates.

Both parties to the contract are well aware of the mechanisms and methodology utilized by the wholesaler to measure the amount and value of the services rendered. The mechanisms and methodology utilized by the wholesaler are equally available to the retailer should the retailer elect to employ them.

Given these circumstances, when a question of overbilling by the wholesaler arises, we believe that specific demonstration of the alleged overbilling is required. It is not enough, in our view, that the retailer merely show indications of overcharge in general terms. Specificity is required if complainant is to carry its burden of proof.

In this case Sprint's billing to CVC shows full details of each and every call for which it requests payment. While CVC contends that it has been overbilled, it does not dispute any individual call on the Sprint bill. Rather, it submits summary figures which are not compatible with those provided by Sprint. These summary figures are not capable of being rated so as to derive the amount of reparations requested.

We conclude that, in not furnishing call detail as requested by defendant, complainant has not carried its burden of proof that overbilling has occurred.

Zeros on Portions of Sprint Bills

At hearing it was revealed that some of Sprint's call detail was incomplete as insufficient data was shown to enable CVC to bill its customers (000-NPA-NXX calls).

There was a delay in Sprint's completing the noticed call detail of some months after it was brought to Sprint's attention. Sprint explains the delay as occurring because of CVC's filing its formal complaint on August 1, 1990. Formal complaint action on the part of CVC resulted in Sprint's referring the entire matter to its legal department.

We do not condone Sprint's dilatory tactic with respect to the calls in question. However, because CVC bills its customers by way of data derived from its own switch and does not depend upon Sprint data, we find no actual diminution of the value of Sprint services because of this delay.

Unlawful Backbilling

While complainant argues in its brief that it was improperly backbilled beyond 90 days for California intrastate calls, there is insufficient evidence on the record to prove that allegation.

Double Billing

The complaint alleges that double billing has occurred and that Sprint has been unwilling to acknowledge or correct these bills.

The record shows that double billing did occur, but that Sprint adjusted for the error upon its receipt of the appropriate call detail from CVC.

No other issues require discussion.

Findings of Fact

1. CVC is a retailer of interexchange telecommunications services which it purchases at wholesale rates from interexchange carriers such as Sprint.
2. CVC complains that Sprint overcharged for its services by overbilling, unlawful backbilling, double billing, and providing incomplete call detail.
3. CVC has deposited \$155,966.77 with the Commission pending resolution of its dispute with Sprint.

4. CVC has not produced sufficient evidence to support its allegations of overcharges.

5. CVC has failed to show that it has suffered damages by reason of Sprint's having provided incomplete call detail.

6. Sprint gave credit to CVC where double billing was shown to have occurred.

7. Having the burden of proof, CVC has failed to show by a preponderance of the evidence that any reparations are due.

Conclusion of Law

The complaint should be dismissed and amounts on deposit with the Commission disbursed to Sprint.

O R D E R

IT IS ORDERED that:

1. The complaint is dismissed.
2. The sum of \$155,966.77 on deposit with the Commission, plus interest earned, shall be disbursed to US Sprint Communications Company Limited Partnership.
3. This proceeding is closed.

This order becomes effective 30 days from today.

Dated August 11, 1992, at San Francisco, California.

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

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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

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NEAL J. SHULMAN, Executive Director