Decision 92-10-002   October 6, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Max R. Bauer,   )
)
                 Complainant,   )
)
        vs.   )   Case 91-07-014
)   (Filed July 11, 1991;
GTE California, Incorporated,   )   amended November 12, 1991)
)
                 Defendant.   )
_____)

ORIGINAL

O P I N I O N

        Max R. Bauer (Bauer) complains on his own behalf and on
behalf of all those who are similarly situated that GTE California,
Incorporated (GTEC) unlawfully included a long-distance charge from
Zero Plus Dialing Incorporated (ZPD) in complainant's telephone
bill for his residence in Thousand Oaks. Bauer requests that the
ZPD charge of $4.38 be removed from his bill and that the
Commission award special and general damages of unspecified
millions of dollars.

        Following GTEC's answer to the complaint, a duly noticed
public hearing before Administrative Law Judge Orville I. Wright
was held in Los Angeles on January 29, 1992. The matter was
submitted for decision upon the filing of concurrent briefs on
April 2, 1992.

Facts

        Complainant placed a long-distance telephone call from a
hotel room in Bullhead City, Arizona to Redlands, California. In
placing the call, Bauer requested an American Telephone and
Telegraph (AT&T) operator and charged the call on his AT&T credit
card.

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When Bauer received his monthly residential telephone bill from GTEC, he found that ZPD, rather than AT&T, had carried his long-distance call. Bauer then made an informal complaint to the Commission's Consumer Affairs Branch (Consumer Affairs) depositing the disputed $4.38 with the Commission.

In his informal complaint, as well as in this complaint, Bauer contends that it is unlawful for GTEC to bill him for the long-distance call charge from ZPD when he had specifically requested an AT&T operator when he initiated the call. Bauer admits that he made the call in question and admits that his sole quarrel with the call is that it was carried by ZPD instead of AT&T. Bauer does not dispute the accuracy of the bill.

Consumer Affairs requested GTEC to investigate Bauer's complaint, which included other contentions apart from the long distance call of $4.38. Upon receiving GTEC's report, Consumer Affairs wrote Bauer as follows:

> "We have received a reply from the utility regarding the matter you brought to our attention.

> "GTE informs us that they acknowledged their billing errors to you and subsequently issued the necessary credits to correct the errors. Their contract with ZPD does not allow for the investigation of ZPD charges; therefore, they correctly referred you to ZPD to report your dispute. If you cannot resolve the problem with ZPD then your recourse would be with the Federal Communications Commission as they have jurisdiction over interstate calls; the California Public Utilities Commission has jurisdiction over calls originating and terminating in California.

> "Based on the above results of our investigation, the funds you deposited with the Commission will be distributed as follows: $26.30 will be sent to GTE, and $4.38 will be returned to you for disposition as you choose."

Bauer then filed this informal complaint.

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Discussion

Consumer Affairs' advice to Bauer is in conformity with Commission policy as set forth in the Consumer Affairs memo dated June 1, 1991 on the subject of Impounds on Interstate Complaints.

That memo refers to two decisions wherein the Commission held that it could assume jurisdiction over interstate communications in proper cases (Decision (D.) 85-10-010 and D.87-12-024.) The following procedures were adopted in accepting impounded funds:

"1. Impounded money will be accepted only to prevent disconnection of local telephone service in disputed bill complaints where the dispute involves the use-related charges of a monthly bill.

"2. Any case that money is impounded will cause a complaint to be filed against both the local and long distance carrier. Money will be disbursed based on Consumer Affairs findings as in other money impound complaints.

"3. Where local service is not in jeopardy of being disconnected for non-payment or the complaint is other than the accuracy of the bill, the consumer will be instructed to take the complaint to the Federal Communications Commission (FCC) which has jurisdiction over interstate service. (Emphasis supplied.)

"4. Consumer Affairs procedures concerning the acceptance of customer deposit checks will be in force."

As the record shows that Bauer's local telephone service is not in jeopardy of being disconnected for nonpayment and Bauer's complaint is other than the accuracy of the bill, this complaint should be dismissed. Bauer is free to register his complaint with ZPD and with the FCC.

Findings of Fact

1. Bauer made a telephone call from Arizona to California.

2. In making the call, Bauer requested service from an AT&T operator.

3. Bauer's call was handled by ZPD, an interexchange carrier, and not by AT&T.

4. Bauer's call was billed to him by GTEC, the local exchange carrier providing residential service to Bauer in California.

5. Bauer believes that his interstate call should have been billed by AT&T rather than ZPD.

6. Upon complaint to GTEC and to Consumer Affairs, Bauer was informed that he should report his complaint to ZPD and, if denied by ZPD, he should present his dispute to the Federal Communications Commission.

7. Bauer did not report his complaint to ZPD, but filed a formal complaint with this Commission.

8. Consumer Affairs and GTEC gave Bauer correct instructions as to where he should complain about billing for an interstate telephone call where the accuracy of the bill is not in dispute.

Conclusion of Law

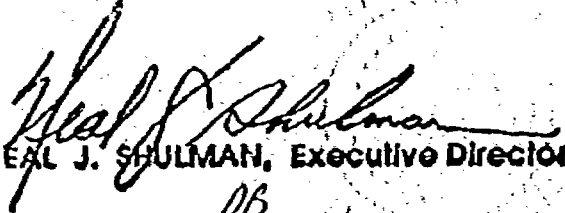The complaint should be dismissed.

O R D E R

IT IS ORDERED that the complaint of Max R. Bauer against GTE California, Incorporated is dismissed and this docket is closed.

This order becomes effective 30 days from today.

Dated October 6, 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