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Decision 92-11-044 November 23, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

STUART H. JONES,

Complainant,

vs.

GTE CALIFORNIA, INC.,

Defendant.

Case 92-03-059
(Filed March 30, 1992)

O P I N I O N

By complaint filed March 30, 1992, Stuart H. Jones (Jones or complainant) seeks an order of this Commission directing GTE California Incorporated (GTEC) to refund or credit his account with all late charges imposed against it between February 1984 and the present, alleging that a 1984 accounting error by GTEC was the basis of GTEC's imposition of such charges, and that GTEC's failure to correct the error in subsequent years has perpetuated the problem to this day.

By Answer filed May 8, 1992, GTEC admits that its imposition of late charges commencing February 1984 was in error, but claims that it corrected that error by crediting complainant's August 1989 service bill with all then-accrued charges, and that the charges now in question represent late payment charges incurred subsequent to August 1989, which were properly assessed against complainant for late bill payment in accordance with GTEC's filed tariffs.

Pursuant to notice, an evidentiary hearing was held in San Francisco on June 30, 1992, at which hearing each party was given the opportunity to examine and cross-examine witnesses, produce exhibits, and make both an opening statement and a closing argument. Post-hearing briefs were neither requested nor offered,

and the matter was submitted on August 10, 1992, the date the hearing transcript was filed of record.

Discussion

Since approximately 1953, complainant has subscribed to the same GTEC system telephone number, and claims that during that period he paid his service bill on approximately the first of each month following the month in which service was rendered. In late January or early February 1984, complainant received his service bill for the month of January 1984, and shortly thereafter, paid the same in full. For some inexplicable reason, GTEC thereafter debited complainant's account \$8.79 and added a charge entitled "payment adjustment" in that amount to complainant's February 1984, service bill. According to complainant's testimony (tr. p. 17), he immediately contacted GTEC and contested the imposition of the "payment adjustment," but despite complainant's claim that the imposition of that "adjustment" was in error, and even though GTEC was unable to justify or even articulate any basis for the "payment adjustment," GTEC failed or refused to remove the charge from complainant's account and/or bills.

Complainant claims to have thereafter paid each month's bill shortly after submission, but refused to pay the original \$8.79 "adjustment" or additional late payment charges which GTEC applied, allegedly pursuant to its tariff, to the \$8.79. Thus, the combined "adjustment" and associated late payment charges continued to increase each month not unlike a loan subject to compound interest. In spite of repeated discussions between the parties, efforts to straighten out this account were unsuccessful for an extended period of time. According to GTEC's hearing witness (tr. p. 30), GTEC's records indicate that complainant did not dispute the "payment adjustment" until March 17, 1986, not in February 1984 as complainant testified. This discrepancy is of no real significance in this proceeding as GTEC's witness indicated, as noted below, that (whatever the date of notice) the \$21.86 credit

was not posted to complainant's account until July 11, 1989. Thus, it took more than five years for GTEC to correct its original error.

On July 11, 1989, some five years after the dispute began, GTEC, apparently acknowledging an error in imposing the "payment adjustment" and thereafter charging interest thereon, credited complainant's account \$21.86, which was applied to complainant's August 1989 bill. That figure was intended to represent the original \$8.79 "payment adjustment" plus compounded late charges imposed on that base amount to July 11, 1989. In this regard, at the hearing on the complaint herein, GTEC's witness stated (tr. p. 34) that in 1992 she discovered that the 1989 calculation of the refund was in error, and that the correct credit should have been \$23.50 rather than \$21.86, thus, an additional credit of \$1.64 should have been given. The witness testified (tr. p. 35) that on May 8, 1992, GTEC gave an additional credit of \$2.51 to complainant to cover the \$1.64 undercredit plus accrued late charges on that amount through May 8, 1992, the date the credit was applied to the account. The witness also testified (tr. p. 35) that in addition to the \$2.51 credit, complainant was credited another \$0.83 for an April 1992 late payment charge imposed on a \$45.90 service bill dated October 13, 1991, that complainant paid to the Commission to be held in escrow until his differences with GTEC were resolved. Thus, it appears that the credit given in May 1992 amounted to \$3.34. This confusion is illustrative of the problems encountered in attempting to resolve the conflict between the parties.

In its defense, GTEC alleges that virtually all of the charges against complainant's account which are involved in this dispute are late payment fees properly imposed pursuant to GTEC's tariffs (Exh. 5). In support of this position, GTEC introduced Exhibit 4 which purports to show complainant's account history for the period February 13, 1984 through June 13, 1992, including all

late payment charges calculated during that period. An examination of this document indicates that for virtually every month, the "Payment Date" (date of posting payment) followed the "Due Date of LPC" (late payment charge) by one to nine days, indicating that the payment was late, thus justifying the imposition of the late charge.

Complainant testified (tr. p. 19) that he paid his service bill each month before the late payment date. His own records (Exhibit 1), those of GTEC (Exhibit 4), and the testimony of GTEC's witness, Elizabeth Lewis (tr. p. 37), show this is not true. Each month's payment was received by GTEC anywhere from 23 to 32 days after the date of the bill. According to GTEC's applicable tariff (Exhibit 5), a late charge of 1.5% may be imposed on that portion of any bill remaining unpaid 22 days after the postmark of said bill. In the absence of evidence to the contrary, we assume the date of the bill and the postmark date were the same. Nothing in the record supports any inference that GTEC did not promptly post the payments (credit the account) as soon as received by GTEC.

Complainant admitted that he was aware that GTEC considered payment to be made as of the date of receipt, not date of complainant's check(s) or date of mailing. In fact, the witness agreed (tr. p. 22) that GTEC offered to change complainant's billing cycle as an accommodation.

Conclusion

While we agree that GTEC erred in imposing the \$8.79 "payment adjustment" charge on complainant's service account in 1984, and aggravated that error by charging and compounding late charges against that amount between 1984 and 1989, and was negligent in not correcting the error until 1989, and further, that such inept handling of complainant's account caused complainant anguish and frustration, we must acknowledge that GTEC did what it could to correct the situation once it acknowledged its error. It

credited complainant's account with all erroneously imposed charges and offered to change the complainant's billing cycle to accommodate complainant's payment pattern.

All charges subsequent to the May 8, 1989 credit and account reconciliation appear to be based on an almost perpetual unpaid account balance which varied in amount from month-to-month. The charges imposed on those unpaid balances were authorized by GTEC's filed tariffs, and nothing in the record indicates that they were not properly imposed.

Findings of Fact

1. In late January or early February 1984, GTEC erroneously charged complainant with a "payment adjustment" in the amount of \$8.79, which complainant refused to pay.

2. Efforts to resolve the dispute between complainant and GTEC between 1984 and July 11, 1989 were unsuccessful.

3. On July 11, 1989, GTEC gave complainant credit for \$21.86, representing the 1984 \$8.79 "payment adjustment" and late charges imposed thereon to July 11, 1989.

4. The correct credit which should have been given complainant on July 11, 1989 was \$23.50 rather than \$21.86. This error was corrected in May 1992, with the giving of an appropriate credit.

5. Late charges have been imposed each month on all outstanding balances since the time the July 1989 credit was given.

6. GTEC's filed tariffs permit a late charge of 1.5% to be imposed on that portion of any bill not paid within 22 days after the postmark date of said bill.

7. For the entire January 1984 through July 1992 period, virtually every monthly payment on complainant's account has been received one to nine days after the late payment date.

8. Nothing in the record supports any inference that GTEC did not promptly post complainant's payments as soon as received by GTEC.

9. Complainant is aware that GTEC considered payment to be made as of the date of receipt, not date of complainant's check(s) or date of mailing.

10. GTEC offered to change complainant's billing cycle as an accommodation to the complainant.

Conclusions of Law

1. GTEC has corrected any errors arising out of the imposition of the \$8.79 "payment adjustment," by giving credits for the \$8.79 and all accumulated late charges thereon.

2. All late payment charges imposed on complainant's account, with the exception of those associated with the \$8.79 "payment adjustment" referred to in paragraph "1" of these Conclusions of Law, were properly assessed in accordance with GTEC's tariffs on file with this Commission.

3. Complainant has failed to prove the allegations of his complaint, and the same should be dismissed with prejudice.

4. The \$45.90 on deposit with the Commission is to be paid to GTEC as it has already credited this payment to complainant's account.

ORDER

IT IS ORDERED that:

1. The \$45.90 payment on deposit with the Commission be paid to GTE California Incorporated.

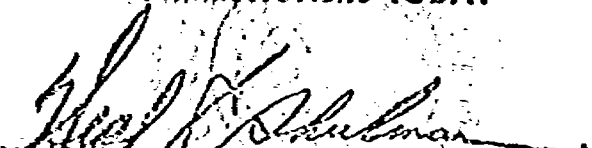
2. The complaint is dismissed with prejudice.

This order is effective today.

Dated November 23, 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. SAULMAN, Executive Director