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MAIL DATE
9/6/96

Decision 96-09-047

September 4, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ali Malik

Complainant,

vs.

GTE California Incorporated,

Defendant.

ORIGINAL

Case 94-07-004

ORDER DENYING REHEARING

Ali Malik, complainant, has filed an application for rehearing of D.95-04-025, which after public hearing, ordered that Malik is liable to GTE California Incorporated in the amount of \$7,993 for telephone service. Malik had filed a complaint asserting that he never requested telephone service and is not responsible for the bill.

In D.95-04-025, the Commission reasoned that in determining the disagreeable obligation of apportioning a loss caused by a third party, Malik's roommates, our law seeks to determine if one of "two moral innocents" was "at fault" in the sense of negligence. (D.95-04-025, slip opinion, p. 5) The Commission adopted as facts that both the Complainant and Defendant were innocent parties that had suffered from the fraud of a third party.

A third party to this Complaint had changed the listing of a telephone service to Malik's name, providing identification in the form of Malik's social security number and driver's license and sufficient information to withstand a credit check by Defendant.

Malik did not have knowledge of the changeover, and once he learned of it acted consistently by having service cancelled and following up by reporting it to appropriate law enforcement authority to determine whether criminal charges ought to be filed.

The Defendant was deceived into placing telephone service in Complainant's name. At all times Defendant and its employees acted in accordance with Defendant's tariffs and internal procedures.

Examining the facts to determine whether there was a causal link between any negligent act or omission of any party and the fraud, we found that Malik agreed to share an apartment with strangers. He agreed to common use of a telephone over which a heavy volume of long distance calls were placed. We concluded that these acts enabled the fraudulent party to terminate a prior roommate's responsibility for the telephone account and transfer it to Malik. The evidence is that long distance calling patterns increased, incredibly so, resulting in a dramatic escalation of the telephone bill.

In his application for rehearing, Malik contends that if the Commission desires to determine a causal link of negligence to establish which party must bear the loss, then the Defendant is negligent to the degree that it extended an approximate \$8000 line of credit to unverified caller without secondary verification.

Malik argues that even if GTE may not be responsible for the acts of a third party, it is still responsible to take reasonable steps in identifying the caller or callers. Therefore, the party extending the credit, must bear the loss.

Here, the Defendant acted according to its tariffs. Its tariff Rule No. 8 sets forth procedures that allow for a change of account and supersedure of responsibility for telephone service from one party to another, which were followed in this case. (Transcript, page 40-41).

The Defendant also performed a verification and follow-up procedure as to identification, including social security and driver's license numbers. (Reporter's transcript, p. 9, 30-38). Defendant conducted a separate investigation of Malik's employment. (Tr. pg. 42-51).

The Defendant followed its tariffs and procedures and was prudent in verifying facts submitted to it in the request for supersedure of service.

Finally, in fixing responsibility, we must bear in mind that GTE, other ratepayers are exposed to the risk of insuring this bill. Where a utility has acted prudently pursuant to its tariffs and has provided a service, as it has done here, a rate or charge that becomes uncollectable, maybe claimed as an allowance for the revenue shortfall so caused. In that case other ratepayers, rather than GTE, would subsidize Malik for the loss occasioned by his act of entering in an agreement for sharing of a telephone bill with roommates.

Therefore, IT IS ORDERED that:

1. Rehearing of D.95-04-025 is denied.

This order is effective today.

Dated September 4, 1996, at San Francisco, California.

DANIEL WM. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

President P. Gregory Conlon,
being necessarily absent, did
not participate.