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Decision 96-09-060, September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Level One Communications, Inc.

Complainant,

ORIGINAL

vs

Case 95-12-079

(Filed December 28, 1995)

AT&T Communications of California, Inc.,

Defendant.

OPINION

Summary

The assigned administrative law judge (ALJ) ruled that Level One Communications, Inc. (complainant) is a former long-distance customer of AT&T Communications of California, Inc. (defendant). Complainant alleges that defendant has improperly calculated the intrastate fees, taxes, and surcharges on its bills because it applied the applicable percentages to the undiscounted amount of the bill, rather than to the billed amount reflecting discounts to which complainant was entitled, thus resulting in an overcollection. Defendant admits that it discounted its bills to complainant, but maintains that it correctly calculated the amount of the intrastate fees, taxes, and surcharges because under terms of the applicable tariffs, discounts applied only to the interstate portion of those bills. We will deny the complaint.

Procedural Background

Defendant filed a complaint with the Commission on August 1994 (the period in question) together with copies of the December 28, 1995, against "AT&T." The complaint alleges errors

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in the calculation of intrastate fees, taxes, and surcharges on defendant's bills from October 1993 through August 1994 and asks for an order requiring a refund of approximately \$1,600.

The complaint was served on defendant, which timely filed its answer on February 20, 1996. Defendant admitted in its answer that it was the proper defendant in this action.

Defendant admitted some of the allegations in the complaint, denied others, and declined to admit or deny others. Defendant moved to dismiss the complaint without a hearing on the grounds that complainant failed to state a cause of action on which relief could be granted.

The assigned administrative law judge (ALJ) ruled that the complaint should proceed to the merits, without prejudice to defendant's right to argue its affirmative defense of failure to state a claim at the time this matter was ordered submitted, and directed defendant to file as an exhibit the invoices and tariffs for the relevant period. Defendant filed an exhibit, and at the request of complainant, proceedings were suspended to provide a time to explore settlement opportunities. When no settlement appeared, complainant was ordered to serve its direct testimony, if any, by an ALJ ruling dated May 16, 1996. Complainant did not offer any evidence, and the ALJ ordered the matter submitted on the written briefs due August 9, 1996.

Discussion

Defendant submitted an exhibit that provides copies of its invoices to complainant for the period October 1993 through August 1994 (the period in question), together with copies of the

applicable intrastate and interstate tariffs that were in effect from time to time during that period. Defendant designates the specific customer, network service that it provided to complainant as AT&T CustomNet® and states that it provides discounts based on the customer's volume of monthly usage.

Complainant does not dispute the authenticity of the copies of invoices or the tariffs that applied during the months it took service. There are no factual disputes. Rather, complainant believes that method by which the Universal Lifeline, Deaf Trust, and Commission fees are calculated is incorrect. Specifically, complainant believes that the fees should be

calculated based on the billed amount after application of all discounts, as shown in the following table of hypothetical data:

Intrastate usage	\$5,000	
Interstate usage	0	
Total	\$5,000	
Discount ¹ (30%)	<u>1,500</u>	Key difference between parties
Net usage	<u>\$3,500</u>	
Fee ² (6%)	\$ 300	Applied to total intrastate usage
Fee (6%)	<u>210</u>	Applied to net usage
Difference	<u>90</u>	

It is undisputed that during the relevant time the intrastate

¹ The amount of the discount is for illustration only. The tariff did not contain a discount.

² This is the fee for the Universal Lifeline service at the time, and is representative of the other fees with respect to the amount to which the fee should be applied.

As defendant points out, however, two tariffs apply to complainant's service: an intrastate tariff filed with this Commission, and an interstate tariff filed with the Federal Communications Commission (FCC). The intrastate tariff does not include a discount schedule. The interstate tariff does include a discount schedule. *If there are nonidentical discounts effective in [defendant's] intrastate tariff, the interstate discount will be applied to the [complainant's] total intrastate, interstate and international usage. When identical discounts are effective in an intrastate tariff (of defendant), the discount based on total usage will be applied separately to intrastate and interstate (including international) usage charges. There are no intrastate tariffs (of defendant) containing identical discounts at this time." (Defendant's Tariff F.C.C. No. 1 12th Revised Page 178.64 eff. Oct. 27, 1993.)

Thus, even when complainant's usage is entirely intrastate, the discount is not deemed to apply to the intrastate portion of the bill, but only to the total. Otherwise, if complainant's position were correct, defendant would not be required to discount the bill at all in the absence of interstate charges. The quoted tariff is clear on the point: The only circumstance under which the intrastate portion of the bill is discounted separately from the interstate and international portion is if the intrastate tariff contains identical discounts. It is undisputed that during the relevant time the intrastate tariff did not contain an identical discount.

This is the fee for the Universal Lifeline service at the time, and is representative of the other fees with respect to the amount to which the fee should be applied.

Accordingly, in the table above, the \$1,500 discount is applied in reduction of the total bill of complainant, but does not affect the intrastate charges upon which fees, taxes, and surcharges are calculated. Therefore, aside from some immaterial errors in calculation disclosed by defendant (amounting to less than \$2,00), defendant has correctly calculated the bills of complainant.

Findings of Fact

1. Complainant was a long-distance customer of defendant from October 1993 through August 1994.

2. There are no disputed issues of material fact concerning the intrastate and interstate usage by complainant of defendant's services and the intrastate and interstate tariffs governing such usage at the relevant times.

3. The tariff governing discounts of complainant's bills by defendant provides that if there are nonidentical discounts effective in defendant's intrastate tariff, the interstate discount will be applied to the complainant's total intrastate, interstate and international usage. When identical discounts are effective in an intrastate tariff of defendant, the discount based on total usage will be applied separately to intrastate and interstate (including international) usage charges and that there are no intrastate tariffs of defendant containing identical discounts.

JESSIE L. KNIGHT
HENRY M. DUQUE
JOSHUA L. NEPPER
Commissioners

Conclusions of Law

1. Even when complainant's usage is entirely intrastate, the discount is not deemed to apply to the intrastate portion of the bill, but only to the total bill.

2. Defendant's method of calculating the amount to which intrastate fees, taxes, and surcharges applied was not in error.

3. The complaint should be denied.

Complainant was a long-distance customer of defendant

O. R. D. E. R. from October 1993 through August 1996

IT IS ORDERED that there are no disputed issues.

1. The complaint of Level One Communications, Inc. against AT&T Communications of California, Inc. for improperly calculating the intrastate fees, taxes, and surcharges on invoices rendered to complainant is denied.

2. This proceeding is closed.

This order is effective today.

Dated September 20, 1996 at San Francisco, California

based on total usage will be applied separately to intrastate and interstate (national) usage charges and that there

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners