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MAIL DATE
10/11/96

Decision 96-10-043

October 9, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ralph J. Reyes,

Complainant,

vs.

GTE California Incorporated,

Defendant.

ORIGINAL

(ECP)

Case 94-11-050

(Filed November 21, 1994)

ORDER DENYING REHEARING OF D.95-07-022

Ralph J. Reyes, complainant has applied for rehearing of D.95-07-022 which denied the relief he requested in the complaint he filed in this matter. Complainant had been making extended use of defendant GTE California Inc. (GTEC) 411 directory assistance service at the rate of between 30 and 100 directory assistance calls a month. In his complaint he states that:

"I have to call 411 for telephone numbers I need to assist my indigents and me. However the operators and supervisors half of the time give me the wrong numbers and places."
(Complaint, p. 2.)

Owing to Reyes claim, GTEC had been giving him a 50 per cent reduction in directory assistance charges for about six months. GTE discontinued the discount when Reyes could not demonstrate that he had in fact been receiving incorrect numbers. Customers of GTE are entitled to five directory assistance calls per month included in the rate for basic telephone service.

In the Application for Rehearing, Reyes requested that the 50 per cent reduction of his directory assistance charges be continued, and that all calls by him to GTEC headquarters at Thousand Oaks to discuss his claim not be charged to him. The Decision stated that the assertion that Reyes received 50 per cent wrong numbers every month was improbable, and that an easier solution would be for complainant to use telephone directories and to request directories for the areas he frequently calls.

Throughout his application for rehearing, Reyes makes general allegations, but does not cite any corresponding support or basis in the record or in law for his charges. He first asserts that he was not given credit for \$140.00 payment paid to GTEC, and that the 50 per cent reduction was to be in effect for two and 1/2 years rather than for a six month period. GTEC replies that the \$140 payment was received October 10, 1994 and applied to an amount then owing of \$172.88, and that no further payments have been received.

GTEC denies that there has been a verbal or written request for a two and 1/2 year credit. In any event Public Utilities Code Section 735 bars such relief for more than two prior years. Furthermore, any continued discount would require approval by the Commission to review whether or not there was discrimination against GTEC's ratepayers who did not enjoy such a discount.

We conclude that this contention lacks merit. Reyes has not proven that 50 per cent of the directory assistance numbers that he has received were incorrect. In the circumstances he cannot be treated differently from GTE's other ratepayers who are entitled by GTEC's tariffs to no more than five calls at no extra charge.

In addition, Reyes has set forth other specific allegations as grounds for rehearing, as follows:

- "1. I asked for and never received an itemized list of all 411 non-service charge calls (wrong numbers) and all correct service calls.

* * * *

3. G.T.E. admitted that they don't have a system to figure out 411 non-service charge legitimate calls. I have the letter from G.T.E. to prove this." (Application for Rehearing, p. 2.)

The GTEC billing system does not provide a printout of the telephone numbers requested by a customer calling directory assistance. The system can provide a report of the number of calls placed to directory assistance by a customer such as Reyes, however, but not the content of the calls. GTE's tariffs do not obligate it to provide that data as a service. Therefore, no violation of law is involved.

Reyes also makes two allegations critical of the administrative law judge:

"2. Any evidence I presented to the court was not recognized by Judge Robert Barnett.

* * * *

4. The court judge was adamant and prejudiced. He spoke to the Defendant prior to the hearing, without my being present." (Application for Rehearing, page 2)

These allegations are not substantiated by Reyes. He does not provide any evidence to support or demonstrate the correctness of these statements. The presiding judge specifically discussed Reyes' testimony in the Decision:

"Complainant's assertion that every month he receives 50 per cent wrong numbers is improbable, especially since there is no evidence regarding the accuracy of the information complainant gave to the directory assistance operators."

Furthermore, on the allegation that the judge spoke to defendant prior to the hearing without Reyes being present, there is not only an absence of proof, but also no hint as to how Reyes

has or would suffer any prejudice from such a contact. These allegations are completely without foundation or merit.

Reyes' next assertion focuses on Commission employees:

"5. I was poorly advised by the Public Advisor and lies made by the Public Utilities Commission Representatives."
(Application for Rehearing page 2)

Reyes presented his own case and was his own witness. No member of the Commission staff made an appearance at the hearing or acted for Reyes in a representative capacity. Reyes criticizes the Public Advisor and alleges that Commission representatives lied to him but he does not tell us how or why. The record is to the contrary. Reyes was able to present his case before an administrative law judge in an adequate manner. The burden is on Reyes to demonstrate that an employee of the Commission has misled or prejudiced Mr. Reyes' ability to present his case.

Reyes also contends:

"6. The Public Utilities Commission didn't make available to me the material that was to be mailed to me after the hearing was over to help me prepare my case."

Mr. Reyes received a copy of Commission D.95-07-022, that was mailed to the parties after the hearing. The record is devoid of any request for documents by Reyes or any indication that Reyes was promised any other document after the hearing. The public file of the record in this case is and was available to Reyes at the Commission offices in Los Angeles or San Francisco during business hours upon request. This contention is without merit.

Reyes further alleges that:

"7. All statements made by the G.T.E. Executive Branch personnel was hearsay and without merit."

GTEC's evidentiary showing in this case was presented as direct testimony by a GTEC witness. Pursuant to Section 1701 of the Public Utilities Code, relating to the conduct of administrative hearings before the Commission, the technical rules of evidence, such as the hearsay rule need not be applied. What is required is credible evidence which in this case was provided by GTEC, but not by complainant.

Another allegation by Reyes is that:

"8. The court failed to recognize my right of cross examination of all witnesses, statements, and depositions made by G.T.E. I never articulated with the G.T.E. personnel whose depositions were taken (hearsay)."

Mr. Reyes raises such an issue for the first time. First, there were no depositions taken in this case. Second, Mr. Reyes was present at the hearing, and was afforded an opportunity to cross examination.

Mr. Reyes last ground for rehearing is that:

"9. I was never given by the court and the Public Utilities Commission complete due process of law."

The record contains a notice of hearing sent to Mr. Reyes. He confirmed this by his presence at the time and place of hearing. He was also accorded an opportunity to be heard.

Due process is provided by adequate notice to the party affected and an opportunity to be heard. People vs. Western Airlines (1954) 42 Cal.2d 621.

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The Commission has reviewed this application for rehearing and each issue presented and finds that good cause for rehearing has not been shown.

Therefore, IT IS ORDERED that Rehearing of D.95-07-022 is denied.

This order is effective today.

Dated October 9, 1996, at San Francisco, California.

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