

AUG 05 1997

Decision 97-08-047 August 1, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Tom Schweikert, dba Bay Area Telephone,

Complainant,

vs.

GTE Telephone Operations West Area,

Defendant.

Case 96-03-042
(Filed March 21, 1996)

ORIGINAL

Tom Schweikert, for himself, complainant.
James H. Mc Phail, Attorney at Law, for
GTE California, Incorporated, defendant.

O P I N I O N

Summary of Complaint

Tom Schweikert (complainant) filed a complaint on behalf of himself against GTE Telephone Operations West Area (GTE California, Incorporated or defendant) on March 21, 1996.

Complainant alleges that defendant is attempting to drive him out of the Customer Owned Pay Telephone (COPT) business within defendant's service territory. Specifically, complainant asserts that defendant does not abide by its published COPT business practices; willfully and intentionally sabotaged and vandalized complainant's COPT and related equipment; failed to abide by the "IRD Decision"; retaliated against complainant; required and attempted to collect COPT line deposits as a precondition for accepting complainant's COPT service orders; refused to remit monthly billing credits balances; refused to monitor and maintain defendant's lines in good working condition; and, generated inaccurate billing statements.

Complainant summarizes that defendant has violated Public Utilities (PU) Code § 453 which sets forth basic telephone service rules; its filed tariffs which set forth rules for basic service, annoyance telephone calls, and liability limitations; and, its COPT business practices.

Complainant seeks an order requiring defendant to perform its public utility obligations professionally, accurately, completely, and on time; pay stiff penalties, should it ever attempt to sabotage or vandalize complainant's equipment again; respond to complainant's questions previously reduced to writing in detail; cease its discriminatory practice of refusing to provide basic telephone customer service to complainant; remit all credit balances to complainant as requested and within the very same time frames that complainant is required to remit payments to defendant; trouble shoot and diagnose its own line problems; and, remit all monies due complainant after a complete audit of complainant's telephone bills back to August 1985.

Answer to Complaint

An answer to the complaint was filed by defendant on April 26, 1996. Defendant did not respond to complainant's specific allegations because it believed that the complaint lacked sufficient information to enable it to respond. However, defendant did represent that it acts in accordance with all the terms and conditions contained in its tariffs, which are on file with the Commission and the Federal Communications Commission (FCC).

Defendant moved for a Commission order denying complainant's requested relief because the allegations set forth in the complaint failed to state facts sufficient to state a cause of action under the Commission's PU Code.

Prehearing Conference

A prehearing conference (PHC) was held on May 24, 1996 before Commissioner Duque and Administrative Law Judge (ALJ) Galvin to identify issues, determine whether agreements could be reached

on certain matters, and to establish an evidentiary hearing schedule.

Parties concurred at the PHC that three of complainant's eight issues have either been resolved or would require no further action. These issues deemed moot by the parties were the allegations of willful and intentional sabotage and vandalism of complainant's COPT and related equipment; failure to abide by the IRD Decision; and, requirement and attempts to collect COPT line deposits as a precondition for accepting complainant's COPT service orders.

The parties to this proceeding agreed to a hearing schedule. Complainant's and defendant's direct testimony was to be mailed by June 21, 1996, and July 19, 1996, respectively. An evidentiary hearing was scheduled for August 19, 1996, in San Francisco, California.

Procedural Motions

Complainant made several written procedural requests prior to the August 19, 1996 evidentiary hearing. By a June 10, 1996 letter to the ALJ, complainant stated that he acted prematurely in agreeing that three of his eight issues were no longer at issue. Accordingly, complainant requested that he be allowed to address these issues as a distinctly separate issue or as a component of his outstanding issues at the evidentiary hearing.

Complainant made a second request in his June 15, 1996 letter to defendant stating that, by providing a copy of its letter to the ALJ, he is requesting a two- to three-week extension of time to submit his direct testimony. Complainant alleged that his extension of time was needed to obtain additional information from defendant.

On June 19, 1996, the ALJ issued a ruling to inform complainant that direct and indirect letter notification to modify the hearing procedure established at the PHC were not valid

notifications. On a prospective basis, Complainant was instructed to follow Rule 45 of the Commission's Rules of Practice and Procedure to request specific action related to the complaint proceeding, a copy of which was attached to the ALJ ruling.

In regard to the issues complainant wanted revisited, the ALJ ruled that complainant could substantiate his complaint with any direct testimony he deemed necessary, including a revisit of the issues previously deemed moot, with the understanding that such testimony would not be part of the formal record unless it was received into evidence. A one-week extension of time to prepare and mail direct testimony was granted to both complainant and defendant. Complainant's and defendant's direct testimony were rescheduled to be mailed by June 28, 1996, and July 26, 1996, respectively.

On July 5, 1996, approximately one week after complainant's direct testimony was due, complainant sought an additional time extension, until July 29, 1996, to mail his direct testimony. Complainant cited business obligations as a sole proprietor for his need to have the additional time.

Defendant filed a July 22, 1996 opposition to complainant's latest time extension request. The reasons for denial cited by defendant were complainant's inability to comply with the agreed upon hearing schedule, complainant's inability to comply with prior ALJ rulings, and the impairment of defendant's ability to defend itself. Defendant summarized that complainant, as the moving party, has the burden of proof, and as such, should not benefit from his failures to proceed with the complaint.

Complainant's request to extend his direct testimony mailing date from June 28, 1996 to July 29, 1996, was subsequently granted by an August 8, 1996 ALJ ruling. However, in fairness to defendant and consistent with the PHC agreement that defendant's testimony be available 30 days after receipt of complainant's testimony, defendant was given the option of submitting its

prepared testimony on August 14, 1996, and being prepared to testify at the August, 19, 1996 evidentiary hearing, or to delay mailing of its testimony until August 30, 1996 and be prepared to testify at a date to be set upon conclusion of the August 19, 1996 scheduled hearing. Defendant chose the latter option, to mail its testimony on August 30, 1996, and to testify at a date to be determined at the conclusion of complainant's testimony.

Evidentiary Hearing

An evidentiary hearing was held on August 19, 1996 and August 20, 1996, before Commissioner Duque and the assigned ALJ, at which time complainant provided testimony under examination by defendant and questions by the Commissioner and ALJ. Upon the completion of complainant's testimony on August 20, 1996, six exhibits introduced during his testimony were received into evidence.

The evidentiary hearing was continued to September 16, 1996 for the receipt and examination of defendant's testimony. However, the date set aside for the start of defendant's testimony was subsequently taken off calendar, pursuant to a September 6, 1996 ALJ ruling. This action was taken in response to defendant's written notification that, upon its review of complainant's testimony and defendant's belief that complainant had not met his burden of proof, it would not be providing any testimony. By the same ruling, the ALJ provided all parties time until October 11, 1996 to file concurrent briefs. Defendant was the only party that filed a concurrent brief. The proceeding was submitted on October 11, 1996.

Motion to Reopen Evidentiary Hearing

On October 18, 1996, approximately one week after the proceeding was submitted, complainant moved to reopen this proceeding and to keep it open until defendant provides complainant with a "sufficient" response to his prior data requests and until

seven of defendant's employees and former employees, including defendant's attorney, testify in this proceeding.

Complainant asserts that defendant refused to comply with his prior data requests by mailing reams of totally unorganized and meaningless computer generated papers or copies of letters which defendant knew complainant had either already received or generated. Hence, he seeks a subpoena requiring defendant to sufficiently respond to his prior data requests.

Complainant also represented that he made it clear to the ALJ at the PHC that he intended to call and take testimony from defendant's witnesses, current and former employees. In addition, he was told by the Commission's Public Advisor's Office that he would be able to take testimony from defendant's witnesses scheduled for the September 16, 1996 evidentiary hearing. However, this did not occur because defendant decided not to present any testimony in this proceeding. Complainant believes that these witnesses will corroborate and substantiate his complaint. Hence, he seeks subpoenas to require seven of defendant's employees and former employees to testify.

In this case, complainant had more than a reasonable amount of time to prepare his case, including almost two months extension of time to obtain supplemental information from defendant and to prepare his direct testimony. Complainant already presented his case via the evidentiary hearing process and the evidentiary hearing has been completed. Hence, the issuance of a subpoena requiring defendant to provide additional responses to complainant's prior data request would serve no useful purpose and should not be granted.

As to the need to subpoena witnesses, complainant had approximately six months of time to select his witnesses, more than enough time to substantiate the need to subpoena defendant's employees and former employees he may have wanted to examine. There is no dispute that complainant intended to question

defendant's witnesses. However, once the complainant completed presentation of his case, his option to subpoena witnesses on his behalf no longer existed; and, at the time defendant chose not to offer any witnesses, his option to question defendant's witnesses no longer existed. Defendant's decision to not offer any witnesses precluded complainant from questioning defendant's witnesses.

Complainant has not substantiated the need to obtain additional responses to his prior data requests or to subpoena defendant's employees and prior employees. Further, there is a sufficient amount of testimony in the record to decide this complaint case. Hence, complainant's motion to reopen the evidentiary phase of this complaint case is denied.

Discussion

The issue in this complaint case is whether defendant violated PU Code § 453, its tariffs, and its published COPT business practices. According to complainant, he had spent "many hundreds of hours" to resolve service problems resulting from defendant's failure to abide by these rules. Complainant seeks an unspecified amount of compensation for his time spent to resolve these problems.

Complainant believes that defendant violated the rules when it failed to provide basic service, captured intralATA traffic, required communications in writing only, required security deposits, refused to remit credit balances, refused to maintain COPT lines in working order, and provided inaccurate bills. A discussion of these service problems and rules violations follow.

Failed to Provide Basic Service

Complainant provided several examples to support his assertion that defendant repeatedly and deliberately refused to provide basic COPT services. These examples are classified into three generic categories: COPT service order processing; COPT service connections; and attempt to keep defendant's COPT customers from converting to complainant's COPT service.

COPT Service Orders

Complainant contends that defendant refused to process his COPT service orders. Several examples were presented to demonstrate that defendant would not immediately process COPT applications for those locations having existing payphones owned by defendant.

In one 1996 and two 1994 examples offered by complainant, defendant notified complainant that his requested COPT locations already had COPT contracts with defendant. Hence, defendant's Public Communication's Sales group would need to review the contracts to determine whether contractual issues existed at complainant's requested locations. Subsequently, defendant notified complainant that his applications could not be processed due to existing contracts with defendant.

Consistent with defendant's COPT business practice, complainant sent a letter challenging the Public Communications Group's determination that defendant had existing binding contracts. Upon further review, defendant confirmed that its contracts were no longer valid and that complainant's COPT applications would be processed. COPT service was provided within two weeks after complainant's requested service date.

Complainant contends, and we concur, that defendant should have processed his COPT applications and provided complainant with timely and accurate information. However, in those locations involving existing and prior contracts, it is appropriate for defendant to determine whether contractual issues exist prior to approving such applications.

We do not concur with complainant's observation that defendant deliberately refused to process his COPT applications on baseless grounds. Defendant was lax in reviewing its contracts related to the locations identified in complainant's applications. However, with defendant's challenge process, the locations were released to complainant within a reasonable period of time and

complainant was provided COPT service, as discussed in the following paragraph. There is no evidence to substantiate complainant's assertion that defendant deliberately refused to process complainant's COPT applications or that defendant violated any rules.

COPT Service Connections

Although complainant requested COPT services to be connected on specific dates, defendant did not connect COPT service on complainant's requested dates. In a 1996 example by complainant, defendant did not connect COPT service until approximately two weeks past complainant's requested service date.

There is no guarantee that COPT service will be connected on a specific date requested by a COPT vendor. As confirmed by complainant's Exhibit 2-1, it is defendant's objective to process all COPT requests for service in a uniform and timely manner. The due dates are assigned on a first come basis, considering the available work force and workload. We find defendant's connection process to be fair and reasonable, and find no basis to conclude that defendant intentionally delayed connecting complainant's COPT service or that defendant violated any rules.

Complainant also asserted that defendant intentionally failed to provide complainant with basic scheduling details consisting of a four-hour installation window for the connection of COPT service until he specifically requested the information in writing. Complainant provided at least four examples to demonstrate that he was not informed of the four-hour installation window until after he wrote defendant. All but one of the following examples show that complainant was informed of the four-hour installation window at least two weeks prior to the installation date, a reasonable time period prior to the scheduled installation date for complainant to make any necessary arrangements with his customer.

FOUR-HOUR INSTALLATION WINDOW

EXAMPLE	DATE REQUESTED	DATE INFORMED	DATE INSTALLED
1	5/30/96	6/ 3/96	6/18/96
2	5/30/96	6/ 3/96	6/18/96
3	3/23/96	3/28/96	3/29/96
4	11/28/95	12/14/95	1/ 2/96

Is defendant required to provide such information to complainant prior to his request? The only record of a four-hour commitment rule in the record was provided in complainant's Exhibit A-3, an undated excerpt from defendant's newsletter. This excerpt states, in relevant part, that if defendant needs to visit a home or business for installation or repair work, it can schedule a mutually agreed upon four-hour time frame, just ask defendant. The examples provided by complainant substantiate that defendant does follow its four-hour commitment practice, as detailed in its newsletter. Complainant has not substantiated that defendant intentionally failed to inform complainant of the four-hour time frame.

Other examples were provided by complainant to demonstrate that defendant would not properly connect COPT service at the requested locations. One example occurred in 1994 and another in 1996. In both instances, defendant called complainant to tell him that the COPT service had been completed and activated for use. However, in both examples, complainant discovered that the COPT service would not work properly. In the first example, 800 numbers could not be connected and in the second example, a dial tone could not be established. Both problems were resolved within a day after complainant reported the problems to defendant. Again, complainant provided no evidence to demonstrate that defendant intentionally failed to properly connect his COPT service or that defendant violated any rules.

Attempt to Keep COPT Customers

Complainant contends that defendant commonly uses the time period between receiving and processing COPT applications to have its sales staff contact defendant's COPT customers who are planning to change to complainant's service and offer a higher percentage commission to remain defendant's COPT customer. Although complainant offered a hearsay example of this happening, he acknowledged that he had no evidence to substantiate that defendant engaged in business practices to keep customers from converting from defendant's to complainant's COPT service.

Captured IntraLATA Traffic

Complainant receives compensation from a combination of coins used in the COPTs for direct dial calls and from various long distance carriers that may be utilized by customers using the COPTs to carry various categories of long distance calls, such as "O-plus and O-minus" type calls. Since complainant contracted with AT&T for intraLATA toll calls, AT&T would route the COPT calls in exchange for commission payments to complainant.

Irrespective of complainant's commission arrangement with AT&T, complainant asserts that he received no AT&T commission checks for COPT intraLATA toll calls between January and August, 1995. Hence, complainant believes that defendant was illegally capturing intraLATA toll traffic and associated revenues from his COPTs.

Complainant acknowledged that he received commission checks from AT&T's billing company during the January to August, 1995 time period with minimal supplemental information, consisting of only a breakdown of gross revenues and commissions payable by individual COPT numbers. Upon complainant's request, commission checks subsequent to August 1995 included detailed intraLATA, interLATA and interstate call information from his COPTs. This detailed information confirmed that complainant was receiving compensation for intraLATA toll calls.

Although complainant was adamant that defendant collected fees for calls that went out over AT&T facilities, he could not demonstrate that defendant was receiving revenues for such calls. Complainant has not demonstrated that defendant illegally captured complainant's COPT intralATA traffic and revenue intended to be routed through AT&T between January and August, 1995, and has not demonstrated that defendant violated any section of the PU Code or defendant's tariffs.

Communicate Only in Writing

Complainant asserts that defendant denied him basic telephone service by retaliation and intimidation with the imposition of Tariff Rule No. 11 which enables defendant to require complainant to transact all business with defendant in writing. This Tariff Rule authorizes defendant to require customers to transact business with defendant only through written communication if customers uses vile, abusive, or profane language in telephone conversations with defendant.

By its November 11, 1994 letter, defendant notified complainant that he would be required to conduct all future business with defendant in writing, pursuant to defendant's Rule No. 11. The reason given by defendant for implementing the writing only policy was to minimize further misunderstandings and mutual frustrations. A copy of the Rule was attached to the letter.

Complainant acknowledged that he was informed that the writing only policy was implemented because of certain conduct that complainant espoused towards defendant's customer service representatives. However, subsequent to notification of the writing only policy, complainant was able to communicate with defendant both in writing and orally.

Complainant has not demonstrated that defendant has discriminated, retaliated or intimidated complainant with its imposition of Tariff Rule No. 11. However, given that the writing only requirement was implemented several years ago and that

complainant has since been able to communicate with defendant both in writing and orally, the November 11, 1994 written communication only policy activated by defendant on complainant for prior actions should be rescinded.

Required Security Deposit

Complainant asserts that when he first initiated COPT service, defendant required him to pay a security deposit for each new COPT line payable in advance of receipt of any service without informing him that he could be exempted from submitting a security deposit upon approved credit. Complainant objects to being required to teach defendant how to verify the credit worthiness of a new customer. He further contends that defendant withheld the tariff from him and refused to provide service for almost a month despite what the tariff said.

Complainant supported his assertion with testimony stating that defendant never informed him that a new customer who does not meet certain established criteria is subject to a security deposit and that two of defendant's personnel lied to him by saying that defendant's tariffs substantiate that complainant must submit security deposits for COPT service.

However, the exhibits introduced by complainant do not substantiate his security deposit assertion. Complainant received a September 30, 1993 letter from defendant approximately the date that complainant started his business, including copies of defendant's COPT deposit tariff (Tariff Rule No. 5). This was in response to a conversation that took place the prior day. That letter informed complainant that if, after reviewing the deposit tariffs, he had any questions or needed further information he could call defendant at a toll free number. The tariff clearly identified the security deposit exemptions available to complainant.

Complainant also testified that defendant's October 1993 letter summarized defendant's position that it would not provide

complainant service unless he paid a security deposit up front. Again, the exhibit does not substantiate complainant's assertion. The October 1, 1993 letter merely confirms that complainant requested "a copy of the tariff which supports the GTE deposit policy." The letter makes no demand for a security deposit.

Complainant concluded from his reading of defendant's deposit rule that he met three of the bases for a deposit exemption set forth in the Rule, singularly, if not jointly. These exemptions were: an applicant seeking initial service who is the owner of the premises upon which the defendant is requested to furnish service, or is the owner of other local real estate; an applicant who has been a customer of any telephone utility in California for the last two years without having been disconnected for nonpayment of bills; or an applicant who has established credit to the satisfaction of defendant. However, other than informing defendant that he was a Pacific Bell customer, he never substantiated to defendant that he met any of the exemptions.

Subsequently, in response to a defendant-initiated request, Pacific Bell sent a November 4, 1993 letter to defendant confirming that complainant has been a Pacific Bell customer for over six months, and that complainant's account is current. Defendant issued an internal memo the very next day approving the deposit exemption for complainant. Although defendant's internal procedures for exempting defendant from security deposits began on November 5, 1993, complainant acknowledged that the security deposit issue was resolved October 29, 1993, almost a week earlier.

With the security deposit being resolved in 1993 and complainant's inability to demonstrate that defendant acted improperly in this matter, the security deposit issue is moot.

Refusal to Remit Credit Balances

Complainant asserts that defendant has gone out of its way to not provide complainant "the very basic service" by refusing

to remit monthly billing credit balances to complainant even though complainant has made a written request to do so.

The first credit balance instance occurred with two of complainant's November 1994 bills. In both instances, defendant applied the credit balances to complainant's next month billing statement. However, by complainant's January 1, 1995 letter to defendant's customer service manager, he explained that such a practice is not acceptable and that, on a going forward basis, defendant should remit all credit balances due complainant promptly by mailing a check for the amount of any credits to complainant.

Complainant acknowledged that it does not make sense in normal business practices to spend \$30 in accounting or bookkeeping work to issue a check for amounts that may be so small as five cents. However, he believes that all credit balances should be remitted to complainant unless there is a reciprocal arrangement for very small balances.

Defendant explained, by its January 25, 1995 letter to complainant, that it is defendant's policy to carry credit balances on active accounts forward to future bills until the credit is exhausted. This is because its Billing Center does not have the resources to check all of its customers bills for credit balances on a monthly basis. However, refund checks may be issued upon a customer's written request each time a customer wants its credit balance refunded. In the instance of complainant's two credit balances, a check was not issued because the credit balances were already applied to complainant's December bills and because complainant had already paid his December bills, net of the credits.

Complainant's assertion that defendant refuses to remit credit balance became moot when complainant changed from receiving individual COPT bills to receiving a summary billing statement. The summary bill statement batches all of complainant's individual bills into one bill on a monthly basis. Hence, when there is a

credit balance for an individual account, it is automatically offset against other individual bills with a positive balance, resulting in an amount due and payable net of the credit balance.

It is neither practical nor cost effective for defendant's Billing Center to monthly flag every bill that has a credit balance or to remit a check in all instances. Defendant's treatment of complainant's credit balances is reasonable and nondiscriminatory, consistent with defendant's treatment of its other customers' credit balances. Complainant has not demonstrated that defendant violated any section of the PU Code or defendant's tariffs.

Refusal to Maintain COPT Lines

Complainant asserts that defendant requires complainant to provide "free out of house technical service" because defendant will not dispatch a technician to diagnose and repair COPT line problems unless complainant agrees to compensate defendant if the problem is in customer-provided facilities.

Defendant introduced its Tariff Schedule A-9 as Exhibit 6 to substantiate that it has the authority to charge customers for its technicians to visit a customer's premise when a service problem is found to be the result of customer-provided facilities. Although complainant has not been charged for any such service call, complainant does not believe that defendant will truthfully and honestly perform its work.

Consistent with defendant's filed tariffs, defendant has the authority to charge its customers, including complainant, for visits to a customer's premise when a service difficulty is found to be the result of customer-provided facilities. Defendant is properly informing its customers that they will be charged for a premise visit if it is determined that the problem is not with defendant's equipment. Complainant may question whether defendant accurately determines on whose side the problem resides. However,

that is not the issue in this proceeding because complainant has acknowledged that it has not been charged for any such visit.

Complainant has not demonstrated that defendant has allowed its COPT lines to go out of service requiring complainant to provide free out of house technical service. Defendant properly informed complainant that it will not dispatch a technician to diagnose and repair the problem unless complainant agrees to compensate defendant if the problem is in customer-provided facilities. Defendant has not violated any section of the PU Code or its tariffs.

Inaccurate Billing

Complainant asserts that defendant deliberately captured and billed complainant for direct dialed long distance traffic that should have been routed and billed by a different carrier, long distance calls that should have been billed as local calls, false late charges, and inaccurate summary billing statements since June, 1995. Because of these problems resulting in disputed charges, complainant began depositing monies with the Commission.

Complainant summarized that defendant deliberately refused to provide him with basic telephone service by refusing to correct billing discrepancies and refusing to initiate pro-active measures to ensure safeguards are implemented to provide complainant with accurate billing statements.

Complainant introduced several of his telephone bills into evidence to support his contention that defendant deliberately captured traffic and revenue through inaccurate telephone bills. Two of these bills showed that defendant billed complainant in January, 1996 for routing two long distance zone traffic calls at \$0.14 each and a direct dialed long distance call at \$1.05. These calls should have been routed and billed by an alternative carrier because complainant's COPTs are programed for an alternative carrier to route these long distance calls.

Complainant's alternative carrier's bill for the same billing time period shows that a number of similar calls were properly routed to his alternative carrier through-out the billing cycle in question. Since the majority of calls were properly routed through his alternative carrier, complainant concluded that defendant deliberately and intentionally captured the three calls through its switches or network and billed complainant for the routing such traffic. However, complainant has no documentation or evidence to substantiate this claim.

Three other bills from the January through June, 1996 billing period were introduced by complainant to show that defendant billed complainant for calls routed through AT&T instead of through complainant's alternative carrier. However, in these instances, defendant was acting as AT&T's billing agent.

Even though AT&T reversed all charges totaling \$.95, complainant asserted that defendant is liable because defendant refuses to address these types of matters, whether its defendant's own intraLATA calling issue, AT&T's, or some other long-distance company's. Complainant had no documentation to substantiate that defendant captured and routed the calls to AT&T.

The local calls billed by defendant consisted of a \$.04 and \$0.10 long distance charge in the January, 1996 billing cycle. Upon being notified of this billing error defendant reversed the charges and credited complainant's account. Complainant acknowledged that defendant explained to him that a software program error caused the inaccurate billing which was corrected to prevent future occurrences. No other bills were provided by complainant to demonstrate that this problem persists.

In addition to defendant's alleged capturing and routing of calls intended for complainant's alternative carrier, complainant asserted that defendant consistently fails and refuses to provide accurate summary billing statements. Complainant has participated in defendant's summary billing statement program since

at least August, 1995. Through this program, complainant receives a monthly summary bill with total amount due supported by individual bills for each of complainant's individual COPTs.

Complainant represented that he made \$238 in overpayments as of September 20, 1995, of which \$38 represented overpayments to defendant and \$200 represented deposits to the Commission for disputed charges. However, an ALJ inquiry into the Commission's Fiscal Office disclosed that only \$150.93 of complainant's \$200 deposit is held in trust.

Complainant has consistently added up the individual bills attached to the monthly summary bills since August 1995 and has paid that amount to defendant. However, the amount that complainant added up and paid never equaled the amount due on the summary bill. For example, complainant received a \$621.68 November 1995 summary bill from defendant but paid only \$589.03, based on his tabulation of the individual bills attached to the summary bill.

The ALJ had both complainant and defendant add up the individual bills to determine whether the total of the individual bills equaled the amount due on the summary bill. Upon complainant and defendant adding up current charges of each individual bill, plus current late payment charges and applicable taxes, it was substantiated that the individual bills do equal the total amount due on the summary bill. Hence, defendant's summary bill is accurate and complainant should have been remitting the total amount requested on the monthly summary bills.

Since complainant continued to pay defendant only the total amount of individual bills excluding late payment charges and applicable taxes past the September 20, 1995 billing period, the cumulative amount of complainant's unpaid charges increase each monthly. Hence, there is no record of the current balance complainant owes defendant.

Conclusion

The burden of proof in a complaint case is with the complainant. Although, each individual issue identified by complainant was not specifically identified and discussed in this order, the outcome of such issue is consistent with the outcome of the major issues discussed in this order. Complainant presented no evidence to show that defendant violated any provision of law or an order or rule of the Commission. This complaint proceeding should be dismissed with prejudice. The Commission's Fiscal Office should forward complainant's \$150.93 deposit held in trust to defendant for credit to complainant's account. Complainant should pay defendant the remaining balance due on his account within 30 days after the effective date of this order.

Findings of Fact

1. The issue in this complaint case is whether defendant violated PU Code § 453, its tariffs, and its published COPT business practice.
2. This proceeding was submitted on October 11, 1996.
3. Complainant seeks to reopen this proceeding to obtain additional information from defendant and to subpoena witnesses.
4. Complainant had more than a reasonable amount of time to prepare his case, including almost two months extension of time to obtain supplemental information from defendant and to prepare his direct testimony.
5. Complainant had approximately six months of time to select his witnesses and to subpoena defendant's employees and former employees he may have wanted to examine.
6. Complainant has not substantiated the need to obtain additional responses to his prior data requests or to subpoena defendant's employees and prior employees to testify.
7. Defendant would not process COPT applications for those locations having existing COPTs owned by defendant until its Public

Communications Sales group determined whether contractual issues existed at those locations.

8. Defendant notified complainant that his applications at certain locations could not be processed due to existing contracts with defendant at the locations.

9. Consistent with defendant's COPT business practice, complainant challenged the Public Communications group determination that defendant had existing binding contracts at certain locations.

10. Defendant confirmed that its contracts at certain locations were no longer valid and that Complainant's COPT applications would be processed. COPT service was provided within two weeks after complainant's requested service date.

11. It is defendant's objective to process all COPT requests for service in a uniform and timely manner. The due dates are assigned on a first come basis, considering the available work force and workload.

12. Defendant has a policy to schedule a mutually agreed upon four-hour time frame to visit a home or business for installation or repair work.

13. Although defendant did not completely connect COPT service at all requested locations, it resolved connection problems within one day after complainant reported connection problems to defendant.

14. Complainant had no evidence to substantiate that defendant engaged in business practices to keep customers from converting from defendant's to complainant's COPT service.

15. Complainant receives compensation from a combination of coins in the COPTs for direct dial calls and from various long distance carriers.

16. Complainant asserts that he received no AT&T commission checks for COPT long distance intraLATA calls between January and August, 1995.

17. Complainant received commission checks from AT&T's billing company during the January to August, 1995 time period with minimal supplemental information.

18. Commission checks subsequent to August, 1995 included detailed intraLATA, interLATA, and interstate call information from complainant's COPTs.

19. Complainant was receiving compensation for long distance intraLATA calls.

19. Tariff Rule No. 11 enables defendant to require complainant to transact all business with defendant in writing if complainant uses vile, abusive, or profane language in telephone conversations with defendant.

20. Complainant acknowledged that he was informed that the written only policy was implemented because of certain conduct that complainant espoused toward defendant's customer service representatives.

21. Subsequent to notification of the written only policy, complainant was able to communicate with defendant both in writing and orally.

22. Defendant provided complainant with a copy of defendant's COPT deposit tariff, Tariff Rule No. 5.

23. The COPT deposit tariff identified security deposit exemptions available to complainant.

24. Defendant made no demand for a security deposit.

25. Complainant did not demonstrate to defendant that he qualified for an exemption to the security deposit rule.

26. Defendant initiated a request to Pacific Bell to confirm that complainant satisfies one of defendant's security deposit exemptions.

27. The security deposit issue was resolved in 1993.

28. Complainant asserts that defendant has refused to remit monthly billing credit balances to complainant even though complainant has made a written request to do so.

29. Defendant applied the credit balances to complainant's next monthly billing statement.

30. It is defendant's policy to carry credit balances on active accounts forward to future bills until the credit is exhausted. However, refund checks may be issued upon a customer's written request each time a customer wants its credit balance refunded.

31. Defendant did not issue a refund check to defendant for credit balances because the credit balances were already applied to complainant's bills and because complainant already paid the subsequent bills, net of credits.

32. Credit balance issues became moot when complainant changed from receiving individual COPT bills to receiving a summary billing statement.

33. Tariff Schedule A-9 provides defendant with the authority to charge customers for its technicians to visit a customer's premise when a service problem is found to be the result of customer-provided facilities.

34. Complainant has no evidence to substantiate that defendant deliberately and intentionally captured calls through its switches or network and billed complainant for the routing of such traffic.

35. AT&T reversed the charges for calls routed through AT&T that should have been carried by complainant's alternative carrier.

36. Defendant reversed the local call charges billed by defendant as long distance calls.

37. A software program error caused the inaccurate billing of local calls being billed as long distance charges.

38. Complainant has participated in defendant's summary billing statement program since at least August, 1995.

39. Complainant represented that he paid over \$238 in over-payments as of defendant's September 20, 1995 billing statement, of

which \$38 represented overpayments to defendant and \$200 represented deposits to the Commission for disputed charges.

40. The Fiscal Office has \$150.93 of complainant's alleged \$200 deposit in trust, pending the results of this complaint.

41. Complainant has consistently paid the total of his individual bills attached to the monthly summary bills since August 1995.

42. The total amount that complainant added up from its detailed bills and paid never equalled the total amount due on the summary bill.

43. Complainant and defendant confirmed that complainant's November, 1995 individual bills plus current late payment charges and applicable taxes equaled the total amount due on the November, 1995 summary bill.

44. There is no record of the current balance complainant owes defendant.

Conclusions of Law

1. Complainant's motion to reopen this proceeding should be denied.

2. The burden of proof in a complaint case is with the complainant.

3. The complaint in this case should be denied with prejudice.

O R D E R

IT IS ORDERED that:

1. The complaint in Case 96-03-042 is denied with prejudice.

2. The Commission's Fiscal Office shall disperse all monies deposited by Tom Schweikert (complainant) and held in trust to GTE California, Incorporated (defendant) for credit to complainant's account.

3. Complainant shall pay defendant the balance due on his account after being credited for the monies deposited with the Commission within 30 days after the effective date of this order.

4. Case 96-03-042 is closed.

This order is effective today.

Dated August 1, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners