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MAIL DATE
9/29/97

Decision 97-09-120 September 24, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Daniel T. Carlson, dba
Novato Taxi,

Complainant,

vs.

GTE California Inc., Bay Area Cellular
Telephone dba Cellular One, and GTE
Mobilnet,

Defendants.

ORIGINAL

C.94-08-010
(Filed August 4, 1994)

ORDER DENYING REHEARING

Daniel T. Carlson has applied for rehearing of Decision 96-12-072 which dismissed Carlson's complaint alleging that combined conspiratorial practices by GTE California incorporated (GTEC), Mobilnet, and Cellular One discriminate against customer subscribers such as himself because GTEC hard-wired telephone land line users incur a regional toll charge when they call a local (Novato) cellular phone or receive an incoming call from a cellular phone number resident in Novato, whereas no such charge is incurred on calls from a GTEC hard-wired telephone to another hard-wired telephone in Novato, nor imposed upon Pacific Bell (PacBell) customers residing in Novato when calling or receiving calls from local cellular numbers.

Cellular technology in this case is such that a call from a wired land line in GTEC's service territory in and around Novato to a cellular phone in Novato is routed to a control office which identifies the cellular number and routes the call to the appropriate cellular company's office (MTSO) which switches the call to the cellular number called.

Both Mobilnet's and Cellular One's MTSO are located in San Francisco, about 25 miles to the south of Novato.

GTEC imposes a toll charge for each call using the hard-wired phone phone/cellular combination. PacBell on the other hand avoids the problem in Novato by having entered on agreement known as a reverse bill under the terms of which such tolls and charges are paid by PacBell rather than by the customer.

After the filing of this complaint, GTEC entered into a reverse billing agreement wherein GTEC would pay the regional toll. Carlson is no longer liable for this amount so that the part of this controversy as it relates to the future is now moot.

The remaining issue in this proceeding is whether Carlson is entitled to relief based on the imposition of regional toll charges on the calls to or from his cellular phones prior to the dates of execution of the reverse billing agreements between the cellular carriers and GTEC. Decision 96-12-072 answered that question in the negative.

Carlson admits that the "subject toll charge is an authorized tariff filed with the Commission". (Application for Rehearing, p. 3) He argues, that the tariff was originally approved for calls by landline from Novato to landline in San Francisco, and that the intent of the caller being "to place a tariff call" and in the case where, "access to local cellular phones is the issue, it is not the intent of the landline calls to place a tariffed call to San Francisco" (Application for Rehearing, p. 4)

Carlson misses the point. The schedules, rates, regulations, and limitations of liability filed with or issued by the Public Utilities Commission automatically become a part of the contract between the utility and its patrons, and the patrons are bound thereby notwithstanding absence of actual knowledge. Hischemoeller v. National Ice & Cold Storage (1956) 46 Cal.2d 318.

Carlson also alleges that the Decision contains an erroneous statement in the statement that tolls are applicable to outgoing and incoming calls. He states Exhibit No. 1 shows only outgoing calls. In fact Exhibit No. 3 shows a number of incoming calls.

Therefore **IT IS ORDERED,**

That having reviewed each and every allegation of the application for rehearing we find that legal cause for rehearing has not been shown and that rehearing is hereby denied.

This order is effective today.

Dated September 24, 1997, at San Francisco, California.

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

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