

APR 23 1998

Decision 98-04-045 April 23, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Fred McElhaney,

Complainant,

vs.

GTE California, Incorporated,

Defendant.

ORIGINAL

Case 97-06-004
(Filed June 2, 1997)

Frederick Barry McElhaney, for himself, complainant.
Ondrea Dae Hidley, Attorney at Law, for GTE California,
Incorporated, for defendant.

FINAL OPINION

Background

Complainant owns a cabin in the San Gabriel mountains near Los Angeles. Neither complainant nor his neighbors have telephone service. GTE - California (GTEC) is the local exchange company designated to provide service in this area. Due to the mountainous terrain and lack of nearby facilities, special line extensions are needed to provide service in the area. Thus, special line extension charges would apply. Specifically, after an allowance of 300 feet, the customer is responsible for the actual costs of any additional extension.

Complainant sought service from GTEC. The nearest existing service facilities are at least a mile from complainant's cabin.

Over a period of months, complainant met with GTEC representatives to determine the cost of extending service to the cabin. These meetings culminated in a June 1996 letter from GTEC which estimated that the cost would be in "the low six figures," presumably meaning more than \$100,000. This estimate was preliminary and

an exact engineering estimate would require an engineering study, which would be prepared at the expense of those to whom service would be extended. GTEC indicated that a deposit would be required to begin the engineering study to calculate an exact estimate.

Complainant did not forward such a deposit but instead called GTEC's general customer service telephone number and attempted to order service for his cabin. Although complainant gave the address of the cabin and stated that it did not have existing service, complainant withheld the fact that he had been specifically informed by GTEC engineers that the special line extension rules applied with the resulting additional costs. GTEC customer service department sent a letter confirming the order and the standard charge of \$88.10. Prior to the date service was to commence, GTEC notified complainant that the confirmation letter was mistakenly issued and that it would not extend service for the price stated in the confirmation letter.

Complainant filed a formal complaint with the Commission seeking a Commission order to force GTEC to extend service to his cabin for \$88.10. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in Section 1757.1.

On October 3, 1997, the assigned Administrative Law Judge (ALJ) held a hearing at which both complainant and GTEC presented witnesses. Both parties filed post-hearing briefs.

On March 24, 1998, the assigned ALJ issued the Proposed Decision. No party filed substantive comments.

Positions of the Parties

A. Complainant

Complainant believes that the confirmation letter is a binding contract that the Commission should enforce.

B. GTEC

GTEC states that its tariffs require it to charge the complainant the actual costs of a line extension which exceeds the allotted distance. To do otherwise, GTEC contends, would result in improper discrimination in favor of complainant.

Discussion

A. Compliance with Tariffs

Complainant has not alleged nor presented any evidence that GTEC's process for determining the line extension cost and assessing it to the customers to be served by the line extension is in any way at odds with GTEC's tariffs or other Commission decisions or state law. Thus, we conclude that GTEC is acting in compliance with its tariffs.

B. The Confirmation Letter as a Binding Contract

Complainant's sole argument is that the confirmation letter he received is binding contract; a contract he wants enforced. As a matter of law, complainant is incorrect.

A party to an otherwise binding contract may rescind the contract when the contract is based on a unilateral mistake that was known to the other party. Bunnett v. Regents of Univ. Of Cal., 35 Cal App 4th 843, 855, 41 Cal Rptr 2d (1995). Here, complainant knew that extending service to his cabin was not covered by GTEC's general service tariffs but he did not disclose this information to the customer service representative who caused a service confirmation letter to be prepared. Upon discovery of its mistake, GTEC had the legal right to rescind any obligations the confirmation letter created. GTEC did so when it notified complainant that it would not extend service for \$88.10.

Findings of Fact

1. Complainant's cabin is located in the San Gabriel Exchange of GTEC's service territory.

2. Complainant requested telephone service from GTEC to his cabin, and received a preliminary estimate of more than \$100,000 for connection because of the distance to GTEC's facilities, and the terrain.

3. Upon subsequent request to GTEC's customer service department by complainant, GTEC mistakenly sent a service order confirmation letter to complainant.

4. GTEC rescinded its mistaken service order confirmation letter.

Conclusions of Law

1. Special line extension rules apply for service extensions in the San Gabriel Exchange portion of GTEC's service territory.

2. Complainant did not allege nor prove that GTEC was violating its tariffs or other laws.

3. In light of its timely rescission of its service order confirmation letter, GTEC was not required by its tariffs to provide service in accord with the rescinded confirmation letter.

4. This complaint should be dismissed with prejudice.

5. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in Public Utilities Code § 1757.1.

FINAL ORDER

IT IS ORDERED that:

1. This complaint is dismissed with prejudice against the complainant bringing the same cause of action in the future.

2. This proceeding is closed.

This order is effective today.

Dated April 23, 1998, at Sacramento, California.

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