

Decision 98-07-089 July 23, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Nancy M. Horner and Vertec International, Inc.,
dba Vitosha, Ltd.,

Complainants,

vs.

GTE of California, Incorporated,

Defendant.

ORIGINAL

Case 96-11-029
(Filed November 20, 1996)

Nancy Horner, for herself and as President of Verdec International, Inc., dba Vitosha, Ltd., complainants.
James H. McPhail, Attorney at Law, and Sandra Newmark, for GTE California Incorporated, defendant.

O P I N I O N

Background

On November 20, 1996, Nancy M. Horner and Vertec International, Inc., (Complainants) filed a complaint alleging that GTE California Incorporated (GTE) was providing inadequate service in that callers frequently experienced "ring - no answers" despite Complainants being present to answer any calls, "busy signals" although Complainants have four business lines that were never simultaneously in use, and "crackling and hissing" and mid conversation disconnections. Complainants compared the GTE service to that provided in a "post-Communist third world country."

Complainants sought an order of the Commission directing GTE to issue Complainants a \$5,000 cash payment for refunds of installation charges, all line charges, all local toll call charges, one-half of all charges paid to long distance companies, all late payment charges, and taxes and stop payment check fees. Complainants also sought to be relieved from all charges for future phone use until such time as GTE upgrades its system to acceptable reliable service.

On January 7, 1997, GTE filed its answer denying that it was providing inadequate service and requesting that all damage components of the relief requested be dismissed.

On March 7, 1997, the Assigned Administrative Law Judge (ALJ) held a prehearing conference at which the parties unsuccessfully attempted to reach a mutually agreeable resolution of this proceeding. The ALJ adopted a procedural schedule but encouraged the parties to continue their settlement efforts.

On September 5, 1997, the ALJ issued a ruling holding that GTE could only be responsible for refunds of payments it received, and not other charges which would be in the nature of damages. Because the Commission lacks jurisdiction to award damages, GTE could not be ordered to refund payments to other entities, such as taxes or check stop payment charges, long distance charges, or toll charges for calls that were completed. Therefore, the remaining issues were refunds of installation fees and line charges paid to GTE and relief from future charges.

On October 2, 1997, the ALJ held evidentiary hearings at which Complainants presented one witness and 15 exhibits. GTE presented three witnesses and three exhibits.

The parties submitted initial briefs on February 2, 1998, and reply briefs on February 27, 1998. In its initial brief, GTE stated that it has issued credits to

Complainants for the late payment charges it has been assessing pending the outcome of this complaint.

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 (PU) Code § 1757.1.

Summary of Each Party's Case

A. *Horner/Vertec*

Complainant Horner testified that she owns an international trade and finance consulting business and that she relies on her telephone service to communicate with her clients all over the world. She stated that she has made repeated complaints to GTE regarding her clients receiving "ring - no answer" when she has been present and the phone did not ring. She further stated that GTE has been extremely difficult to work with to arrange for repairs and that even when undertaken, such repair efforts have been unsuccessful. She also stated that, at GTE's request, she has recorded dates and times of service failures and that GTE has not used this information in any way. Ms. Horner presented written documents from ten people substantiating telephone service failures. She also offered as an exhibit, an article from Fortune magazine which showed an interview with GTE's chairman discussing GTE's large investments in data telecommunications system, to the detriment of its local systems, according to Ms. Horner.

B. *GTE*

GTE's witnesses stated that they have repeatedly tested all equipment which serves Complainants and have repaired all defects. GTE also stated that it went beyond repairing defects to also replacing equipment that was not clearly defective "for the good of service" in the hope of improving service to Complainants.

GTE stated that its testing efforts found that Complainants' telephone equipment was the most likely cause of the on-going service problems. GTE pointed out that Complainant's phone system is approximately 10 to 12 years old, having been previously leased to another user. GTE's repair technician testified that when he made detailed tests of the phone service to Complainants, he found portions of the Complainants' equipment to be inoperable in such a way as to result in a "ring - no answer." GTE's witnesses concluded that GTE had done all that it could in terms of testing and replacing GTE's equipment all of which appeared to be in good working condition.

Discussion

The record in this case reveals a highly dissatisfied customer who has presented credible and well-supported testimony that she is receiving inadequate and unreliable telephone service. The record also reveals that GTE has taken all reasonable steps to remedy this situation insofar as GTE's system is concerned. Nevertheless, according to Complainants, the problems persist.

GTE emphatically states that it has tested, repaired, and retested all its facilities that provide service to the Complainants and that it cannot identify any possible explanation for these service failures on GTE's system. Complainants have not offered any evidence, other than allegations of general incompetence, that GTE has refused to test or repair any of its equipment or facilities.

GTE has, however, presented evidence, which Complainants have not disputed, that Complainants' own equipment has not been tested. This lack of testing, coupled with the problems identified by the GTE technician while testing GTE equipment and the age of the Complainants' equipment, is sufficient evidence to undermine any claim that the service deficiency could only be caused by GTE's system.

From January 1994 to April 1996, GTE states that Complainants incurred \$2,995.37 in monthly service charges. During this same time period, GTE granted Complainants \$1,353.83 in credits for time out of service and service performance guarantees. Thus, for this time period, GTE has refunded 45% of the monthly charges to Complainants. This is nearly half of the total amount the Commission has jurisdiction to order refunded for that time period. Although the complaint covers the time period from January 1994 through November 1996, complainants' failure to show that GTE did not make repairs or test thoroughly obviates the need for further credits.

In sum, complainants have received a refund of 45% of Commission jurisdictional payments for a two-year period. In light of their failure to prove that their own equipment is not at fault, this appears to be an equitable resolution of this matter.

In its opening brief, GTE stated that it had issued or will issue further credits for late payment charges incurred due to amounts on deposit with the Commission. If not yet complete, GTE is directed to issue credits for all late charges imposed for amounts which were on deposit with the Commission.

Findings of Fact

1. There is insufficient evidence to support a finding that GTE's system is the cause of Complainants' service deficiencies.
2. GTE has credited Complainants \$1,353.83.
3. The amount on deposit with the Commission, \$1,314.00, should be disbursed to GTE.

Conclusions of Law

1. 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 PU Code § 1757.1.

2. Complainants have failed to meet their burden of proof.
3. This complaint should be dismissed.

O R D E R

Therefore, **IT IS ORDERED** that:

1. The amount on deposit with the Commission, \$1,314.00, should be disbursed to GTB California Incorporated.
2. GTB shall issue credits for all late charges incurred due to amounts on deposit with the Commission.
3. This complaint is denied with prejudice.
4. This proceeding is closed.

This order is effective today.

Dated July 23, 1998, at San Francisco, California.

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