

Decision 99-01-031

January 20, 1999

MAIL DATE

1/21/99

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

C. David Stephan,

Complainant,

vs.

GTE California Incorporated (U1002 C)

Defendant.

(ECP)

Case 96-06-028

(Filed June 14, 1996)

ORDER DENYING REHEARING OF DECISION NO. 98-07-011

I. BACKGROUND

In Case No. 96-06-028, C. David Stephan ("Complainant") sought to have GTE California Incorporated ("GTE") ordered to provide him flat rate foreign exchange service and reparations for measured usage service which he paid. (D.98-07-011, mimeo, p.1.) Complainant testified that due to his move in late 1994 from the Pacific Bell 213 exchange territory into the Mar Vista exchange in GTE territory, and because of his great need to call telephones in the 213 area code exchange, he requested a flat rate foreign exchange service from GTE subject only to a monthly mileage charge. Complainant alleges that GTE advised Complainant that he could have this flat rate foreign exchange service, and due to GTE's representation, Complainant paid several hundred dollars for

connection and wiring charges for a second line. Complainant did receive flat rate foreign exchange service from GTE from November 1994 to November 1995. However, in November 1995, GTE began billing Complainant on a local usage charge basis and Complainant states that he has since paid over a thousand dollars in monthly charges. Complainant requests to return to flat rate foreign exchange service and a refund of the local usage charges already paid.

In D.98-07-011 ("Decision"), Complainant's request for relief was denied. (D.98-07-011, mimeo, p.2.) The Commission found that the failure of GTE to bill Complainant for local usage charges for a full year after foreign exchange service began supports Complainant's assertion that he was told that he would be receiving flat rate service. (D.98-07-011, mimeo, p.2.) The Commission stated that apparently GTE misread its own tariff during 1994 and 1995 when it failed to bill Complainant as well as hundreds of other residential foreign exchange subscribers for local usage charges after foreign exchange service began. (D.98-07-011, mimeo, p.2.) However, the Commission held that, as required by GTE's tariff, it was correct for Complainant to be paying for local usage charges it had been receiving since November 1995 and the Complainant should not continue to benefit from GTE's error by receiving flat rate foreign exchange service. The Commission found that the Complainant is not entitled to reparations for the measured usage service billed and paid nor should complainant receive flat rate foreign exchange service from GTE. The Commission therefore, denied Complainant's request for relief.

In its Application for Rehearing ("Application"), the Complainant argues that the Decision is erroneous because it is "incomplete." The Complainant requests to

be made "whole again" and "action to restore equity is necessary." (Application at 1.) The Complainant contends that the whole purpose for the hearing was to establish that GTE advised Complainant he could have flat rate foreign exchange service between Culver City and Mar Vista. Complainant avers that this allegation appears to be accepted by the ALJ in the Decision. (Application at 1.) Complainant argues that if it were not for GTE's misrepresentation, he would not have paid several hundred dollars for connection and wiring charges for a second line and paid over a thousand dollars in monthly charges since November 1995.

II. DISCUSSION

Complainant does not provide any grounds for legal error. In its Application, Complainant reiterates the contentions made in his original complaint which were found in the Decision to be inadequate to grant the requested relief.

The Commission appears to believe that the failure of GTE to bill Complainant for local usage charges for one year after foreign exchange service began supports Complainant's contention that he was advised that he would be receiving flat rate foreign exchange service. (D.98-07-011, mimeo, p. 2.) The Commission states that GTE may have misread its own tariff. (D.98-07-011, mimeo, p. 2.) However, the fact remains that GTE's tariff requires that Complainant pay for local usage charges and GTE is required by law to enforce its tariff. The Complainant paid for services which were required by law to be charged. The fact that GTE may have erroneously told Complainant that he could have flat rate foreign exchange service does not allow an exemption from GTE's tariff. The Commission correctly concluded that the Complainant

should not be allowed to continue to benefit from GTE's mistake by receiving flat rate foreign exchange service between Culver City and Mar Vista nor should complainant be reimbursed for the measured usage service billed and paid.

No further discussion is required of Complainant's allegations of error.

Accordingly, we conclude that sufficient grounds for rehearing of D.98-07-011 have not been shown.

IT IS THEREFORE ORDERED that:

1. The Application for Rehearing of D.98-07-011 is denied.
2. Case No. 96-06-028 is closed.

This order is effective today.

Dated January 20, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners