

Decision 99-02-088 February 18, 1999

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.

Case 96-11-029
(Filed November 20, 1996)**ORDER DENYING REHEARING OF DECISION 98-07-089****I. BACKGROUND**

In Case No. 96-11-029, Nancy M. Horner and Vertec International, Inc. ("Complainants") alleged 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 requested that the Commission direct 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 requested relief from all charges for future phone use until GTE upgrades its system to acceptable reliable service.

On September 5, 1997, the ALJ issued a ruling holding, among other things, that GTE could not be responsible for charges which would be in the nature of damages.

(D.98-07-089, mimeo, p. 2.) Therefore, the only issues which the Commission considered in this proceeding were refunds of installation charges and line charges paid to GTE and relief from future charges. (D.98-07-089, mimeo, p. 2.)

In D.98-07-089 (the "Decision") the Commission denied the complaint with prejudice. The Commission found that there was insufficient evidence to support a finding that GTE's system is the cause of Complainants' service deficiencies and found that Complainants had failed to meet their burden of proof. (D.98-07-089, mimeo, FOF 1, COL 2.) The Commission found that GTE (1) has taken all reasonable steps to remedy Complainants' situation; (2) presented evidence, which Complainants have not disputed, that Complainants' own equipment has not been tested; (3) while testing GTE equipment, identified problems with Complainants' equipment, which could be due to the age of Complainants' phone system. (D.98-07-089, mimeo, p. 4.)

In addition, the Commission stated that GTE had granted Complainants \$1353.83 in credits for time out of service and service performance guarantees amounting to 45% of Commission jurisdictional payment for a two-year period. The Commission held that there is no need for further credits due to the Complainants' failure to demonstrate that GTE did not make repairs or to show that their own equipment was not at fault. (D.98-07-089, mimeo, p. 5.) The Commission found that GTE's credits to Complainants constitute an equitable resolution of this matter. (D.98-07-089, mimeo, p. 5.)

II. DISCUSSION

In their Application, Complainants argue that Finding of Fact No. 1, which provides that "[t]here is insufficient evidence to support a finding that GTE's system is the cause of Complainants' service deficiencies,"¹ is erroneous. The Complainants also disagree with the discussion in the text which provides:

¹ D.98-07-89, mimeo, p. 5, FOF 1.

“GTE has, however, presented evidence, which Complainants have not disputed, that Complainants’ own equipment has not been tested. This lack of testing, coupled with 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.” (D.98-07-89, mimeo, p. 4.)

In addition, the Complainants argue that the Commission’s order that monies impounded with the PUC be remitted to GTE is erroneous and denying the complaint with prejudice is erroneous.

Complainants assert that from 1994 to August 1998, Certified Phone Solutions, an outside vendor and an Authorized Sales Representative of GTE and Pacific Bell, has repeatedly tested Complainants’ equipment. (Application at 1-2.) Complainants’ attach a Notarized Letter from Certified Phone Solutions to the Application to demonstrate that a qualified outside vendor has tested Complainants’ equipment. (Application at 3-4.) Complainants allege that Certified Phone Solutions diagnosed the problems with the Complainants over the phone concluding that the problems could not be caused by Complainants’ equipment. In addition, Complainants contend that Certified Phone Solutions advised Complainants that Certified Phone Solutions should not test Complainants’ equipment because it would cost \$ 670 and the problems have been experienced by Complainants’ neighbor and others who do not use Complainants’ equipment. (Application at 1-2, citing to Exh. 2, Exh. 12 and Attached Notarized Letter, Exh. II.)

Moreover, Complainants allege that the record demonstrates that GTE’s equipment is the cause of Complainants’ service deficiencies. (Application at 3-4.) Complainants argue that their comments to the ALJ’s Proposed Decision describe the written and verbal testimony to this proceeding which (a) list the numerous times Ms.

Horner herself tested her own equipment and found it to be working; (b) demonstrate that GTE experienced the alleged problem during its testing; and (c) demonstrate that GTE testified falsely regarding the number of tests it performed and the results of those tests and GTE had incomplete records of its tests and test results. (Application at 2.)

Complainants have failed to demonstrate any legal error in the Decision. The burden of proof is on the Complainant to prove that the utility has violated any order or rule of the Commission. (PU Code section 1702.) The Complainants did not meet their burden.

There is evidence in the record to support conclusions in Finding of Fact No. 1 and the discussion in the text. Ms. Horner's testing of her own equipment consists of a visual inspection of her facilities and equipment. (TR. Complainant/Horner 99:5-100:15, 102:25-103:14.) Ms. Horner's visual testing of her own equipment as well as her telephone diagnoses with Certified Phone Solutions was determined by the Commission to be insufficient to demonstrate that her own equipment was not causing the alleged problems. Complainants took no action to have their equipment checked by an experienced technician competent to work on the system. Moreover, the record revealed that GTE took reasonable steps to remedy the situation insofar as GTE's system is concerned, including testing, repairing and retesting its facilities. (D.98-07-089, mimeo, p. 4.) As trier of fact weighing the credibility of evidence, it is reasonable for the Commission to conclude that the evidence provided by the Complainants' is inadequate to prove that GTE's system was the cause of Complainants' alleged problems.

We also note that Exhibit II of the Application, the notarized letter by Certified Phone Solutions, is new information which was not provided in the underlying proceeding. To the extent Complainants seek to introduce new evidence this new evidence should be disregarded. The Application for Rehearing is not the proper forum to introduce additional evidence.

In the Application, Complainants reiterate arguments made in the original complaint which were found by the Commission to be insufficient to demonstrate that GTE's system was the cause of Complainants' service deficiencies. In the Application, the Complainants ask the Commission to reweigh the evidence. The fact that the Commission was not persuaded by this evidence is not proof that it did not consider the evidence. The California Supreme Court has stated that a decision contains sufficient level of detail regarding the evidence if findings of fact and conclusions of law are sufficient to enable the court to determine that the court properly exercised its authority and did not act arbitrarily. (Toward Utility Rate Normalization v. Pub. Util. Com. (1978) 22 Cal.3d 529, 538.)

Complainants also argue that because the Commission denied the complaint with prejudice for the period of January 1994 to April 1996, the Complainants will be prevented from filing another action for "as many periods of time as it takes to have GTE upgrade its equipment/lines/service." (Application at 3.) Complainants also note that the California Public Utilities Commission is in the process of conducting a service quality investigation on all local exchange carriers in California to address ongoing problems such as those alleged by Complainants. (Application at 3.)

Contrary to Complainants' belief, denying the Complaint with prejudice does not preclude Complainants from filing another action for the period of time until "GTE upgrades its equipment/lines/service." We note, however, that Complainants would still be required to meet its burden of proving that GTE's system is the cause of Complainants' service deficiencies. As stated above, the Complainants did not meet their burden in this proceeding. We also note that the service quality investigation which the Complainants mention is pending.

For the above reasons, the allegations in Complainants' application for rehearing are without merit. Accordingly, we deny rehearing.

IT IS ORDERED that:

1. The Application for Rehearing of D.98-07-089 is denied.
2. Case No. 96-11-029 is closed.

This order is effective today.

Dated February 18, 1999, at San Francisco, California.

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