Decision 99-06-001 June 3, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the operations and practices of Future Telephone Communications (U 5524 C) and its president Manuel G. Zepeda, Jr., and vice president Carlos G. Zepeda, Respondents.	Investigation 97-04-046 (Filed April 23, 1997)

Maria V. Oropeza, Attorney at Law, for the Consumer Services Division.

OPINION

Summary

The certificate of Future Telephone Communications (FTC) is revoked for charging consumers for long distance service without their agreement, charging rates not stated in its tariff, and violating Commission orders.

Discussion

FTC is a telephone corporation licensed to provide resold intraLATA and interLATA interexchange service in California pursuant to a certificate of public convenience and necessity issued in Decision (D.) 95-10-008. Its president is Manuel G. Zepeda and its vice-president is Carlos G. Zepeda.

On April 23, 1997 the Commission issued the order of investigation herein to determine whether FTC and its officers (collectively referred to as FTC) had violated Pub. Util. Code §§ 451, 489, 532, and 702 by charging monthly rates for consumers who had not requested service, by charging rates not expressed in its filed tariff, and by not obeying Commission orders, rules, and regulations. The

Commission proceeding was delayed because of an assertion by FTC that the Commission proceeding could not take place while a contemporaneous criminal proceeding against the same respondents was in progress in Los Angeles. By letter dated September 23, 1998 the Administrative Law Judge (ALJ) granted the Commission's Consumer Services Division's (CSD) motion to set a hearing date and requested counsel for CSD to contact counsel for FTC to agree on a date for a prehearing conference. Counsel agreed on October 15, 1998. By letter dated October 2, 1998 FTC's counsel notified the ALJ that she had been discharged by FTC. No substitution of counsel was made.

There was no legal representation or personal appearance by FTC at the prehearing conference. By a Ruling of November 4, 1998 the ALJ set an evidentiary hearing for December 2, 1998.

The evidentiary hearing convened on December 2, 1998. FTC was not represented, either personally or by counsel. CSD witness Clairmont sponsored Exhibit 3. This is a transcribed telephone message to Mr. Clairmont from Manuel G. Zepeda, president of FTC and a respondent herein. The message, in its entirety, is as follows:

> "Mr. Zepeda: Good afternoon, Mr. Clairmont. My name is Manuel Zepeda, FTC, Future Telephone Communications, Investigation 97-04-046.
>
> "I just received an Administrative Law Judge ruling concerning hearing December 2nd and 3rd, 1998 of this year at 10:00 a.m. by Sheldon Rosenthal.
>
> "Future Telephone Communications will not be appearing at this hearing since it has closed – it has closed as of September 30th of 1998 and is no longer doing business.
>
> Thank you very much."

This message was on the voicemail of Mr. Clairmont. Mr. Clairmont testified that he was familiar with the voice of Mr. Manuel Zepeda from numerous previous personal and telephonic contacts and that the voice on the voicemail was that of Mr. Zepeda. (Tr. 23.) A certificate by a Certified Shorthand Reporter states that this is the full message left on the voicemail.

CSD witness Cooper testified that she interviewed 45 consumers in California who had complained about charges on their phone bills for service allegedly rendered by FTC. None of them had been contacted by FTC, had requested service from FTC, or had confirmed service from FTC. Copies of her interviews and of the consumers' bills showing charges payable to FTC are included in Exhibit 1, Part 2. Additional interviews and bills with another 10 customers contacted by witness Clairmont are also in Exhibit 1, Part 2. All of these consumers were charged $7.95 per month for a service which they claim not to have ordered, plus taxes and fees, which brought the total charge to $8.99 per month. Witness Clairmont testified that there were a total of 30,664 consumers who were billed for one or more months by FTC at this monthly charge. (Exhibit 1, Part 1.) Witness Clairmont testified that the total charges improperly billed by FTC were $522,728.40. (Exhibit 1, Part 1, p. 4.)

Exhibit 2, Part 2, II, contains the tariff of FTC on file with the Commission at the time of the charges in question. Witness Clairmont reviewed this tariff and testified that there is no mention in the tariff of a monthly charge of $7.95, plus taxes, or of any other monthly charge. (Tr. 30.) Yet, this is the charge shown on the bills of the consumers whose records are in Exhibit 1. Utilities are required to keep schedules of their rates and charges (Pub. Util. Code § 489) and charge rates in conformance with these published schedules. (Pub. Util. Code § 532.)

Exhibit 2, sponsored by witness Clairmont, pertains to the criminal action brought in Los Angeles County against FTC. Exhibit 2, B, contains a sentencing order of the Municipal Court indicating that FTC has pled guilty or nolo contendere to 24 counts of the criminal complaint. These counts all alleged a violation of Pub. Util. Code § 451. Among the provisions of its sentencing order the Court required FTC to make restitution to all California consumers who where overcharged or wrongly charged. Exhibit 2, L, is a statement in the Court's docket as follows:

> "DEFENSE ADVISED THE COURT THAT FULL RESTITUTION HAS BEEN MADE."

Witness Clairmont telephoned the prosecuting attorney and verified that restitution had been made.

In the Commission order instituting this investigation the Commission demanded that FTC provide CSD with:

> "A report submitted under penalty of perjury identifying by name, address and telephone number all 30,664 GTE customers it billed a monthly service charge during the months of August through October 1996. FTC shall in the report also make a full accounting, by month, of the amount it billed each GTE customer and the credits or refunds it issued each customer." (P. 10, Ordering Paragraph 9.)

This report was due within thirty days of service of the order in Investigation 97-04-046, dated April 23, 1997. CSD states that the report has never been received. (Tr. 9.)

In her closing statement counsel for CSD pointed to the extent of the violations and made the following recommendations:

1. FTC's certificate be revoked for cause.

2. FTC, Manuel Zepeda, and Carlos G. Zepeda be jointly and severally fined in the amount of $500,000, $100,000 of which shall be immediately due and payable and $400,000 to become due and payable if any of the Respondents attempt to obtain a certificate of public convenience and necessity from this Commission within the next 10 years.

3. FTC, Manuel G. Zepeda and Carlos G. Zepeda shall individually and collectively be barred from seeking a certificate to conduct telecommunications services in California for the next 10 years.

4. That neither Carlos G. Zepeda nor Manuel G. Zepeda be permitted to own more than 10% of a company holding a certificate offering telecommunications services within California for the next 10 years.

This proposed decision was mailed to the parties on April 27, 1999, pursuant to Pub. Util. Code § 311(d). No comments have been received.

Findings of Fact

1. FTC is a telephone corporation licensed by this commission to provide interLATA interexchange service in California.

2. FTC's president is Manuel G. Zepeda and its vice-president is Carlos G. Zepeda.

3. FTC billed 30,664 consumers in California for monthly long distance service.

4. None of these consumers had been contacted by FTC before inserting a billing charge, had requested service from FTC, or had confirmed to FTC that their long-distance service should be switched to FTC.

5. FTC's filed tariff with this Commission does not provide for a monthly charge of $7.95, or of any other monthly charge.

6. FTC improperly billed and collected $522,728.40 from California consumers.

7. FTC has not filed the report demanded by Ordering Paragraph 9 of the Order Instituting Investigation in this proceeding.

8. FTC has pled guilty or nolo contendere to 24 criminal counts of violation of Pub. Util. Code § 451.

9. Records of the Criminal Court indicate that FTC has made restitution to the consumers in California who were improperly switched to FTC's service and billed monthly charges.

10. FTC is no longer doing business.

Conclusions of Law

1. FTC has admitted violating Pub. Util. Code § 451 by a plea of guilty or nolo contendere in Municipal Court in California.

2. FTC has violated Pub. Util. Code § 489 by failing to have a tariff on file containing the charges it made to California consumers.

3. FTC has violated Pub. Util. Code § 532 billing and collecting other than its filed rates and charges.

4. FTC has violated Pub. Util. Code § 702 by failing to provide the report ordered in Paragraph 9 of the Order Instituting Investigation in this proceeding.

5. FTC has abandoned service in California without notification or seeking permission of the Commission.

6. The actions of FTC, Manuel G. Zepeda and Carlos G. Zepeda were reprehensible, callous and intentional attempts to unlawfully obtain funds from California ratepayers.

7. FTC, Manuel G. Zepeda, and Carlos G. Zepeda should be fined $500,000, $100,000 of which shall be due within 30 days of receipt of this order. The remaining $400,000 should be payable if, within the next ten years, any of the respondents seek authority to operate an enterprise subject to the regulation of this Commission.

8. Manuel G. Zepeda and Carlos G. Zepeda should be barred from owning more than 10% of any company holding a certificate of public convenience and necessity from this Commission during the next ten years.

8. Manuel G. Zepeda and Carlos G. Zepeda should be barred from owning more than 10% of any company holding a certificate of public convenience and necessity from this Commission during the next ten years.

ORDER

IT IS ORDERED that:

1. The certificate of public convenience and necessity issued to Future Telephone Communications (FTC) is revoked.
2. FTC, Manuel G. Zepeda, and Carlos G. Zepeda are fined $500,000, $100,000 of which is due and payable 30 days after service of this order. The remainder shall accompany any application for a certificate of public convenience and necessity filed by any of the above within the next 10 years.
3. Manuel G. Zepeda and Carlos G. Zepeda are barred from holding more than 10% of any entity regulated by this Commission for the next ten years.
4. This matter is closed.

This order is effective today.

Dated June 3, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
LORETTA M. LYNCH
TAL C. FINNEY
Commissioners