

Decision 99-09-052 September 16, 1999

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Paul Betouliere,

Complainant,

vs.

GTE California Incorporated,

Defendant.

Case 99-03-069  
(Filed March 29, 1999)

**OPINION**

**1. Summary**

Pursuant to Pub. Util. Code § 1702, this complaint is dismissed for failure to state a cause of action for which relief can be granted.

**2. Nature of Complaint**

This complaint by Paul Betouliere was filed on March 29, 1999. The complaint alleges that GTE California Incorporated (GTEC) is obligated to create a new rate center more central to the community of Topanga in the Santa Monica Mountains. Complainant asserts that the rate center now serving Topanga unfairly restricts the area within which toll-free calls can be made. Complainant disputes a GTEC billing of \$1,260.37 for local toll calls made by his son in the mistaken belief that an Internet access number would be toll free. Complainant has deposited the disputed amount in the Commission's escrow account pending resolution of this complaint.

Complainant asks the Commission to require GTEC to relocate the rate center serving Topanga and to return the escrow amount to complainant.

### **3. GTEC's Motion to Dismiss**

GTEC timely answered the complaint, denying all allegations of wrongdoing and asserting, by way of affirmative defenses, that its establishment of the rate center serving Topanga was made in accordance with the tariffs of GTEC and Pacific Bell.

With its answer, GTEC filed a motion to dismiss the complaint. GTEC alleges that complainant's son was incorrectly informed by his Internet access provider that calls from a 310/455 prefix to an 818/772 prefix would be local calls. GTEC states that 310/455 is in the Santa Monica exchange, Santa Monica District Area, while 818/772 is in the Northridge exchange, which has its own rate center. In its motion, GTEC attached the tariff sheets describing the measurement requirements for calls served by the rate center for 310/455 and the rate center serving the 818/772 prefix. Also attached, as Exhibit K, is the calculation showing 15 air miles between the rate centers of the two exchanges. Generally, calls between 12 and 16 miles from rate center to rate center are designated Zone 3 calls and are subject to toll charges.

Having alleged that its toll rate for calls between the Santa Monica exchange and the Northridge exchange was correctly calculated pursuant to tariff, GTEC moves for dismissal of the complaint on grounds that it fails to allege a violation of any provision of law or any order or rule of the Commission, as required by Pub. Util. Code § 1702 and Rule 9 of the Rules of Practice and Procedure.

GTEC also moves to dismiss on grounds that complainant is not a customer of GTEC and therefore lacks standing, and that the complaint is

brought individually and not by the 25 or more customers required by Section 1702 (where a complaint challenges the reasonableness of a utility's tariffed rates).

#### **4. Direction to Complainant**

By Administrative Law Judge (ALJ) Ruling dated May 21, 1999, complainant was directed to file a response to defendant's motion to dismiss within 30 days. By letter dated June 16, 1999, complainant notified the ALJ that he intended his complaint to be handled under the expedited complaint procedure described in Rule 13.2 of the Rules of Practice and Procedure. Since attorneys are not permitted to represent another party under the expedited complaint procedure, and since no pleadings other than a complaint and answer are contemplated under this procedure, complainant declined to respond to the motion to dismiss.

By ALJ Ruling dated June 23, 1999, complainant was advised that, contrary to his view, the complaint had been processed as a formal complaint, rather than as one subject to the expedited complaint procedure. Under Rule 13.2(g), the Commission or its presiding officer may at any time designate that a complaint will be heard under the regular procedure. The ALJ Ruling stated that, because the relief requested here had the potential of requiring relocation of telephone rate centers throughout the state (with resulting widespread adjustments in rates), the informal hearing contemplated by the expedited complaint procedure was not appropriate.

The ALJ Ruling again directed complainant to respond to GTEC's motion to dismiss, extending the time for response by another 30 days. Complainant was directed to state the law, rule or order that GTEC is alleged to have violated. Additionally, complainant was asked to state any material issue of fact in dispute

between the parties and that would require a formal hearing. Finally, complainant was asked to state why, in his judgment, the complaint should not be dismissed as a matter of law based on the arguments and tariff exhibits filed by GTEC.

By letter dated July 19, 1999, complainant alleged no law, rule or order that had been violated, but he argued that GTEC violated the "spirit" of its Tariff Rule 16 (basis of mileage charges) by not establishing overlapping rate centers that would more precisely measure a toll-free calling area of 12 miles from a subscriber's phone. Complainant acknowledged that GTEC had correctly measured the distance between existing rate centers serving Topanga and Northridge exchanges, but he argued that creation of additional rate centers closer to Topanga would have permitted the calls in question to be toll free.

## **5. Discussion**

Complainant does not dispute that the calls at issue in this case were placed to a different exchange with a different rate center, nor does he claim that the calculation of the air miles used to determine the amount of zone usage measurement charges was inaccurate. What complainant essentially asks the Commission to do is to adjust the existing rate center for the Santa Monica District Area closer to Topanga (and in turn closer to the Northridge exchange rate center) to reduce the distance between these rate centers.

To accommodate complainant would result in greater local toll charges for others within the Santa Monica District Area. Moving that rate center closer to Northridge necessarily would cause the Santa Monica District Area rate center to be moved farther from rate centers in other exchanges, thereby increasing charges for calls made by customers to those other exchanges.

We have considered proposals of this kind in the past, and we have concluded that once a rate center is determined for the purpose of setting rates in a telephone exchange, the rate center does not change. (See API Alarm Systems v. General Telephone (1990) 36 CPUC2d 369; Rueff v. GTE California, Inc., et al. (1994) 53 CPUC2d 9 (abstract), Decision (D.) 94-01-015.)

In Rueff, the Commission acknowledged the propriety of the historical establishment of rate centers, noting that most rate centers were established earlier in this century, usually at a post office or other federal building. The complainant in Rueff sought to adjust rate centers to coincide with geographic centers in fully developed exchanges. The Commission rejected complainant's claim, finding that "[i]n California once a rate center is determined for the purpose of setting rates in a telephone exchange the rate center does not change." (D.94-01-015, at 7.) The Commission stated that complainant's proposal to adjust rate centers was "an exercise in demographics with no regard for the mechanics of telephony" (D.94-01-015, at 5), and that such a change would cause every rate in the State of California to become uncertain.

The location of the rate centers in the Santa Monica District Area and Northridge exchanges is determined by tariffs on file with the Commission. The formula to be used to calculate air miles between rate centers, which in turn determines the amount of local toll charges, also is determined by tariffs on file with the Commission. Those tariffs control this dispute. (Colich & Sons v. Pacific Bell (1988) 198 Cal.App.3d 1225, 1232.) Complainant acknowledges that GTEC has complied with those tariffs, and complainant has not alleged a

violation of any law or of any rule or order of the Commission. Accordingly, the motion to dismiss pursuant to Pub. Util. Code § 1702 is granted.<sup>1</sup>

## **6. Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. Complainant in his comments states that his questions about the location of rate centers have not been fully answered, and he asks that consideration of defendant's motion to dismiss be postponed. The record shows that complainant has been furnished with copies of all relevant tariffs describing the locations of rate centers, the method of measuring distances between rate centers, and the formulas for calculating charges for calls between rate centers. Complainant provides no justification for considering further discovery, nor for postponing a decision on defendant's motion to dismiss.

## **Findings of Fact**

1. Complainant alleges that GTEC is required to create a new rate center more central to the community of Topanga in the Santa Monica Mountains.
2. Complainant disputes a GTEC billing of \$1,260.37 for local toll calls made by his son in the mistaken belief that an Internet access number would be toll free.
3. Complainant has deposited the disputed amount in the Commission's escrow account pending resolution of this complaint.

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<sup>1</sup> Because we dismiss for failure to allege a violation of law, rule or order, we need not reach GTEC's other grounds for dismissal, i.e., lack of standing and failure to comply with the 25-customer rule of Pub. Util. Code § 1702.

4. GTEC denies the allegations and moves to dismiss on grounds that complainant has not alleged a violation of any provision of law or any order or rule of the Commission, as required by Pub. Util. Code § 1702.

5. By letter responding to the motion to dismiss, complainant acknowledged that the toll charges had been correctly calculated, but he argued that, in fairness, the rate center for Topanga should be relocated.

### **Conclusions of Law**

1. The location of rate centers involved in this complaint is determined by tariffs on file with the Commission.

2. In California, once a rate center is determined for the purpose of setting rates in a telephone exchange, the rate center does not change.

3. Complainant has not alleged a violation of any law or of any rule or order of the Commission.

4. The ALJ's ruling under Rule 13.2(g) that this matter should be treated as a formal complaint was proper in light of the nature of the relief requested.

5. Defendant's motion to dismiss should be granted, and the proceeding should be closed, effective immediately.

## **O R D E R**

**IT IS ORDERED** that:

1. The Administrative Law Judge's ruling treating this matter as a formal complaint is affirmed. The complaint is dismissed.

2. All moneys deposited with the Commission in connection with this complaint shall be released to GTE California Incorporated.

3. This proceeding is closed.

This order is effective today.

Dated September 16, 1999, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

JOEL Z. HYATT

CARL W. WOOD

Commissioners