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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation to the operations and practices of Future Telephone Communications (U-5524-C), and its president Manuel G. Zepeda, Jr., and vice-president, Carlos G. Zepeda, Respondent.	FILED PUBLIC UTILITIES COMMISSION APRIL 23, 1997 SAN FRANCISCO OFFICE I.97-04-046 ORIGINAL

ORDER INSTITUTING INVESTIGATION

The California Public Utilities Commission (Commission) is the agency responsible for the regulation of telephone corporations providing long distance telephone services within the state of California, pursuant to the California Constitution, Article XII, and by Public Utilities Code section 1001, et. seq. Future Telephone Communications (FTC) is a telephone corporation that provides resold intra Local Access Transport Area and inter LATA inter exchange service in California, under a Certificate of Public Convenience and Necessity (CPCN) issued by the Commission (see D.95-10-008). The Consumer Services Division (CSD or staff) advises us that it has completed the first stage of an investigation into FTC's practices and prepared a report, which shall be served on respondents and shall be available as a public record in this docket.

The CSD alleges that FTC has violated several provisions of the Public Utilities Code by causing thousands of California consumers to be billed for

a monthly service fee even though they were not FTC's customers and FTC provided no service. The allegations, described more fully in this order, are serious, and if FTC does not successfully refute them, its CPCN can be revoked or suspended and fines imposed. Our goal is to expeditiously hear the evidence, impose whatever sanctions may be warranted, and to take all measures to ensure that any customers who paid wrongfully imposed charges are reimbursed. This order also directs FTC to cease and desist from billing non-customers for service not provided to them.

CSD staff has demonstrated ample cause to initiate this investigatory proceeding, and FTC should understand the seriousness of the allegations and the potential consequences it faces.

Background

FTC was incorporated on April 1, 1993. FTC is an interexchange carrier (IEC). Its corporate headquarters is located in Dallas, Texas. FTC currently purchases telecommunications services from Wiltel Corporation.[1] The president of FTC is Manuel G. Zepeda; his brother, Carlos G. Zepeda , is the vice-president of the company. In 1996, estimated revenue for FTC was $5 million.

1. Billing Information.

Staff has conducted an initial investigation of FTC. Based on information provided to CSD and this Commission, it has found: FTC charges subscribers for its services and bills them indirectly through local exchange carriers (LEC). However, because FTC is a small IEC, it uses a "billing aggregator" to forward its service charges to a "billing agent," i.e., a LEC, such as GTE of California. From July through September 1996, FTC used the National

[1] Wiltel Corporation is an IEC authorized by this Commission to provide interLATA and intraLATA telecommunications services. Wiltel sells telecommunications services to, among others, telecommunications corporations who in turn resell telecommunications service to telephone subscribers.

Business Exchange, Inc. (NBE), as its billing aggregator.[2] NBE, in turn, authorized OAN Services, Inc. (OAN), to act as FTC's billing agent. As the designated billing agent for FTC, OAN processed FTC's telephone billing records during that period and forwarded those records to LECs for inclusion in the billing statements sent to customers. During that same period of time, all of FTC's accounts receivable were purchased by the Receivable Funding Corporation (RFC).[3]

Upon receiving payment from customers in California, GTE, the affected LEC, in turn, remitted FTC's accounts to FTC's billing agent. The billing agent then remits those funds to NBE, who forwards the funds to RFC. (See Exhibit III to the Report of Mark Clairmont, showing a diagram prepared by staff illustrating the FTC billing arrangement during July through September 1996.)

2. <u>Activity At Issue</u>.

FTC charges a "service charge" totaling $8.99 per month, per telephone line, for long distance service. FTC claims that the service charge entitles a customer to a discounted calling plan of 30 free minutes per month in addition to daytime rates of 10 cents per minute and evening rates of 20 cents per minute for additional long distance calls. (As discussed below, this claim differs from FTC's tariff on file at the Commission.) For three months of 1996 (August through October), over 30,000 telephone customers in California received monthly billing statements from GTE, reflecting a service charge of $8.99 per month for long distance service from FTC. Staff interviewed 55 such customers. Those 55

[2] Since October 1996, FTC's billing agent has been U.S. Billing, Inc. (USBI).

[3] CSD alleges that FTC's president attempted to conceal from staff, FTC's relationship with RFC, and informed staff, in the presence of counsel, that FTC physically received its billed revenue, when it had actually previously sold those accounts receivable to RFC. Mr. Zepeda admitted to the relationship between FTC and RFC only after staff advised him that they knew of the on-going agreement between the two companies for the sale of FTC's accounts receivable to RFC.

customers contend that FTC was not their long distance service provider and that they did not receive long distance (or other) services from FTC. Additionally, those 55 California consumers contend that they had not had any previous contact with FTC, nor had they chosen FTC as a provider of their long distance telephone service.

It is alleged that from August through October 1996, more than 30,000 GTE customers were billed for FTC service charges. It is alleged that OAN stopped doing business with FTC due to the receipt of thousands of consumer complaints regarding FTC's monthly service charge. Allegedly during the period of August through October 1996, OAN issued approximately 19,547 credit adjustments to customers who complained about FTC's service charge.[4] USBI attempted to collect FTC service charges from approximately 4,859 consumers for the month of October 1996; however, USBI also apparently prevented more than 20,000 GTE customers from being billed for FTC charges in October. (It is alleged by FTC's president, that OAN is currently retaining $250,000 in FTC's billed revenues because of the credit adjustment charges it has issued to consumers in the San Fernando Valley area of Los Angeles who had complained to it about the FTC monthly service charges, as discussed *infra*.)[5]

In August 1996 OAN billed 33,000 telephone lines FTC customers through GTE for the $8.99 service charge, yet only 20 total long distance telephone calls were billed by GTE for FTC. It is also alleged that while FTC was

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[4] After September 1996, FTC stopped billing through NBE and resumed a previous relationship with USBI. (According to staff, FTC's president alleges that NBE is currently holding $600,000 in FTC revenues, and has done so since advising FTC in October 1996 that it was aware of press reports on the FTC (818 area code) billing situation.) USBI, however, never forwarded FTC's October service charges to FTC.

[5] Consequently, OAN's total credit adjustment in response to the complaints concerning FTC's service charge for the period of September 5, 1996 through October 31, 1996, approximated $150,994.17.

charging consumers a monthly service charge for long distance telephone service, it was providing virtually no long distance service to the customer. According to FTC's president, since July 1996, the company has used employee telemarketers to sell its discount calling plan to consumers in the (818) area code of California; and in July 1996 employed 15 telemarketers. Those telemarketers were allegedly paid an hourly wage of $6.00 in addition to a commission of $3.00 per "sale," and all 15 telemarketers were high school students, hired by FTC through their school.

Staff says that FTC's president informed them that during the month of July 1996, 11,400 new customers in the (818) area code region asked FTC employees to switch their long distance service provider to FTC. (It is alleged by staff that this would have required each of the 15 telemarketers, working full time, to complete, on average, 182.75 sales per week during July 1996; it is also alleged that Zepeda informed staff that generally, approximately half of the telemarketers made 50 sales per week, and roughly 10% made about 80 sales per week.)

However, staff says that Zepeda contended that during this period the telemarketers failed to verify those 11,400 requests and nevertheless submitted the names to FTC's billing department, with instructions to bill the 11,400 consumers with the monthly service charge. It is also alleged that none of the 11,400 customers were actually switched to FTC because the telemarketers by-passed FTC's verification department's procedures, thereby apparently causing those customers not to become FTC customers, yet received FTC service charges, essentially for service they did not receive. Thus, while those 11,400 customers were each charged a monthly fee (of $8.99) which should have entitled them, under the alleged plan, to 30 minutes of long distance service, in addition to rates of 10 cents per minute during the day and 20 cents per minute during the evening after the first 30 minutes of service; instead, they did not receive any long distance telephone service from FTC (and presumably received their long distance service

via another provider, at the other provider(s)' rates). Allegedly, Zepeda informed our staff that before the end of August 1996, FTC was aware of consumer complaints it had received from consumers who had been charged FTC's monthly service charge and contested the FTC charges, claiming they had not chosen FTC as a service provider. Allegedly, FTC advised those consumers that they would receive a credit for the erroneous service charge. FTC's president allegedly informed staff that sometime in late September or October 1996, he and the vice president addressed the (818) area code marketing situation with FTC's telemarketing employees, encountered some difficulty with marketing the staff, and ultimately fired all of the telemarketers allegedly responsible for the billing irregularities.

However, staff's investigation contains information from the affected telemarketers and a former supervisor disputing Zepeda's rendition to staff. The information obtained from the student telemarketers and a former supervisor, sets forth quite a different story, not only with respect to the telemarketers engaged by FTC during this period and the reasons for their termination, but concerning the procedures employed by FTC in selling its service and obtaining new customers. For example, the telemarketers interviewed by staff, claim they did not engage in any solicitation in the (818) area code or anywhere else in California. FTC's former supervisor, Bill Johnson, told staff that he actually supervised a different shift from the one Zepeda attributed to him, and was not aware of any consumer complaints concerning FTC monthly service charges in the Los Angeles area. Additionally, the former telemarketers and supervisor allegedly dispute, among other things, any contact between the telemarketing department and the billing department during their employment.

Staff's investigation found that in August 1996, for example, FTC charged its monthly service charge not just to 11,400 consumers as Zepeda

contends, but to over 30,000 GTE customers in California, resulting in alleged charges of over $500,000 for services never ordered, nor received.

Allegedly, according to Zepeda, on October 1, 1996, FTC again forwarded service charges for many thousands of telephone consumers in the (818) area code to GTE for inclusion in the October billing cycle due to Zepeda's failure to inform FTC's billing manager not to bill those disputed customers. (However, as previously noted, USBI apparently did not fully forward that billing information to GTE for the October billing cycle.) In early October 1996, FTC's president allegedly was informed by RFC (the company that had purchased FTC's accounts receivable) of press reports concerning consumer complaints about the FTC monthly service charges in the (818) area code.

3. Tariffs

FTC's tariff on file with this Commission advises the public of a discounted rate available to subscribers who make over $10.00 of long distance calls per month. There is no information in the tariff concerning a discounted calling plan available for a monthly surcharge of $7.95, plus tax (amounting to a total of $8.99). However, it is alleged that FTC's president has advised staff, during his interview, that the tariff contains a typographical error and should reflect $7.95, rather than the $10.00 amount. The tariff referencing a discounted plan has been on file with the Commission since October 16, 1995. Staff notes that FTC's tariff can only apply to its customers, and allegedly thousands of non-FTC customers were charged $8.99.

Discussion

There is information in the staff's report that support allegations that FTC and its president and vice-president attempted to defraud California telephone consumers in the (818) area code by charging them for a service they neither subscribed to nor received. Moreover, there are allegations in the report that FTC

and its president attempted to deceive and mislead staff in its investigation of this matter, and that FTC and its president were not forthcoming in its business dealings with this Commission. This investigatory docket will afford the respondents an opportunity to refute staff's evidence and conclusions.

After the issuance of a CPCN, this Commission exercises continuing oversight of a utility's fitness to provide service in California. By section 489, public utilities subject to this Commission's jurisdiction must keep accurate tariffs on file with the Commission. Failure to do so may subject a public utility to penalties. (*Id.*, see also, §§ 491, 495.) Public utilities are required to charge tariffed rates for the services provided to the public, and may not charge different rates. (§ 532. Pursuant to section 702, "[e]very public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission ...."

Pursuant to section 2889.5, a telephone corporation cannot switch a subscriber to another telephone corporation without notifying that subscriber and obtaining his/her/its verified consent to the change. It appears that while FTC may not have actually physically transferred the affected subscribers from their long distance service provider, it allegedly charged them for service, as if they had been successfully and correctly transferred. Thus, at a minimum it could be alleged that FTC attempted to violate section 2889.5.

Should we find the allegations of unethical, fraudulent, misleading and otherwise unlawful conduct contained in staff's report to be true, we believe that this telephone corporation's pattern of conduct would show a fundamental lack of respect and ethical behavior due the public and this Commission from a utility, and which the law and this Commission's rules require from a certificate holder.

IT IS ORDERED that:

1. An investigation on the Commission's own motion is hereby instituted into the operations and practices of respondents Future Telephone Communications, a corporation, and its president Manuel G. Zepeda, Jr., and vice-president, Carlos G. Zepeda, as individuals.

2. It appears that respondents may have:

   a.) violated Public Utilities Code section 451 in that tariff rates were assessed on non-customers and to non-existent services.

   b.) violated P.U. Code sections 532 and 702 in that it did not follow commission orders requiring that it charge customers tariffed rates, and instead assessed charges in its tariff, applicable to its customers, to non customers or residential and/or business subscribers not switched to FTC under provisions of section 2889.5; and

   c.) violated Public Utilities Code section 489, by maintaining an inaccurate tariff, or misapplying a tariff on consumers not their customers;

3. The respondents are placed on notice that they are charged with violating P.U Code provisions which evoke application of P.U. Code section 734 which empowers the commission to order reparations.

4. The respondents are placed on notice that their operating authority may be suspended or revoked if the alleged violations are sustained, regardless of the intent alleged by the respondents. This is because of the apparent extent of gross operational negligence and dereliction of the fundamental obligation to only charge customers for services provided. In addition, fines may be imposed for

violating applicable rules and sections of the PU Code under sections 2107 and 2108.

5. The respondents shall immediately, upon personal service of this order upon them, cease and desist from causing non-customers to be billed for services not received or provided by the respondents.

6. The respondents are put on notice that the Commission shall schedule a formal evidentiary hearing, on an expedited basis, to address issues raised by this investigation.

7. The staff may, if it elects to do so, present additional evidence beyond that described above, either by testimony or through documentation.

8. A prehearing conference shall be held in the Commission's headquarters in San Francisco, California, before an Administrative Law Judge at a time to be announced.

9. Within thirty days after service of this order on at least one of the respondents, the respondents shall provide the Consumer Services Division staff with the following information (which is essential for quantifying the degree to which California consumers were impacted by the alleged conduct and verify the degree to which restitution may be required):

> 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.

10. The Executive Director shall cause a copy of this order, including staff's report, to be served by certified mail on the individual and corporate entity

respondents as follows: Manuel G. Zepeda, Jr., and Carlos G. Zepeda, doing business as Future Telephone Communications, 8150 Brook River Drive, Suite 5-300-138, Dallas Texas 75247.

This order is effective today.

Dated April 23, 1997, at San Francisco, California.

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

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STATE OF CALIFORNIA