

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Delia Smith
against GTC, Inc. d/b/a GT Com
for unauthorized charges to
phone bill.

DOCKET NO. 021178-TL
ORDER NO. PSC-03-0601-PAA-TL
ISSUED: May 13, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING COMPLAINT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Background

On April 19, 2002, Ms. Delia Smith (the customer) contacted the Division of Consumer Affairs (CAF) alleging that GTC, Inc. d/b/a GT Com [GT Com] billed her for Extended Calling Service (ECS), directory assistance, and long distance calls that she claims she did not make. The customer also stated that the company inappropriately adds other charges to her bill each month for services she has not used. Her contact was assigned Complaint No. 450414T.

GT Com's response to Ms. Smith's complaint was received by CAF on April 22, 2002. According to its response, GT Com has been in constant contact with Ms. Smith for more than two years in an

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effort to assist Ms. Smith with understanding her billing concerns. GT Com says that Ms. Smith consistently calls the company to complain about numerous ECS calls that are billed at a flat rate of \$.20 per call, as well as directory assistance, and long distance charges that have been added to her bill, all of which the customer asserts she did not place. The company states that Ms. Smith is charged only for the calls that originate in the customer's home.

GT Com further states that Ms. Smith also disputes the "added charges" on her monthly billing statement. Because Ms. Smith often does not pay her telephone bill in a timely manner, the resulting "past due balance" is included in her subsequent monthly billing statement. This "past due balance" amount is the "added charge" that Ms. Smith refers to in her complaint. Additionally, the company noted that even when Ms. Smith makes a payment, it comes in after the next month's bill has gone to the printer. Thus, the printed bill will reflect a past due amount. This, the company states, gives rise to her claim that GT Com does not credit her account for the amount she has paid. The credits are, however, according to GT Com, appropriately applied on the following month's billing statement.

At the time she filed the complaint with CAF, Ms. Smith's account with GT Com had an outstanding balance of \$4,662.24. This represents a combined total of the local exchange company charges and long distance toll charges. However, on April 1, 2002, GT Com removed the local exchange company charges, including the billed ECS and directory assistance calls, or \$2,784.02, from the account. They removed the charges after Ms. Smith's daughter, Pat Smith, signed a promissory note agreeing to pay the \$2,784.02 in monthly installments until the note was paid in full. Her daughter made one payment to GT Com and then ceased sending monthly installments. The cost of the customer's long distance toll calls, or \$1,878.22, remained on the customer's billing account.

On April 24, 2002, our staff forwarded a letter to Ms. Smith notifying her of its proposed resolution to her complaint. On April 25, 2002, Ms. Smith called us again to voice the same complaints. Ms. Smith specifically mentioned that she was billed for long distance calls to Canada that she did not make. Our staff investigated this allegation and found that Ms. Smith was not

billed for any calls to Canada. We believe that Ms. Smith's long distance carrier placed an advertising "bill stuffer" in her monthly bill outlining its calling rates to various parts of the world, including Canada. We believe that Ms. Smith incorrectly assumed she was billed for long distance calls because she received this advertising information.

Ms. Smith called our staff again on May 22, 2002, expressing continued dissatisfaction with her bill. Our staff recommended that Ms. Smith send the necessary information to request an informal conference. Instead, Ms. Smith sent our staff a copy of her telephone bill. During the months that followed, GT Com and our staff talked with Ms. Smith and her designated representatives on numerous occasions in an effort to help Ms. Smith understand her telephone billing.

On July 1, 2002, we received a supplemental response from GT Com. The company reported that it was still unable to explain the bills to Ms. Smith's satisfaction. In addition, Ms. Smith did not understand that her daughter had agreed to pay the past due amounts for GT Com generated services.

Ms. Smith called our staff on August 1, 2002, to obtain information about the informal conference process. She was told that she had not yet complied with the request made on May 22 to send a letter requesting an informal conference. When reminded that her daughter had agreed to pay part of the past due amounts for GT Com services, she told our staff that she had told her daughter not to pay anything to the company. Our staff called GT Com that same day. In response to Ms. Smith's claim that she did not make the calls for which she was billed, GT Com responded that they had checked on the repetitively called numbers and found that the majority of the disputed extended calling service and long distance calls were made to the customer's relatives. GT Com forwarded to us numerous documents indicating that the calls were made from the customer's originating address to the customer's relatives.

On August 20, 2002, we received Ms. Smith's request for an informal conference. Ms. Smith then submitted the informal conference request form, which we received on September 5, 2002. According to Ms. Smith's informal conference request form, the

company owes her "\$20,000, no less than \$15,000." The claimed reimbursement was for two years' of calls she said she did not make, extra charges that were billed to her account, and monies she paid but which were not credited to her account by GT Com.

Thereafter, our staff reviewed numerous documents received from GT Com in preparation for the informal conference. Ms. Smith did not provide any documentation supporting the amount she asserts is owed to her from GT Com.

On September 19, 2002, GT Com reported to our staff in a telephone conversation that GT Com had returned collection responsibilities for the long distance charges on Ms. Smith's account back to the appropriate companies [AT&T and MCI]. The long distance charges returned for collection amounted to \$1,878.22. Following the adjustment, Ms. Smith's account balance with GT Com was zero. However, the informal conference was scheduled because Ms. Smith continued to maintain that GT Com still owed her money and did not properly credit her account.

The informal conference was conducted on November 21, 2002. During the informal conference, the company again explained its billing procedures to the customer. GT Com also explained that "charges" added to her monthly billing were the "past due balance" now added to the current monthly bill.

The company also disputed Ms. Smith's claim that she did not make the calls from her phone. GT Com representatives stated that the company had placed a register on Ms. Smith's phone line to determine the origin of the calls. The register confirmed that the calls originated with Ms. Smith's telephone equipment. Ms. Smith did not support her claim that the company owed her additional money.

At the time of the informal conference, Ms. Smith owed GT Com \$152.25 for the "current" month of November 2002. Thus, while the informal conference did not end with a settlement, the company had already removed all of Ms. Smith's charges that were due at the time that she filed the complaint.

Ms. Smith paid GT Com the November bill by December 15, 2002, as she had promised.

Ms. Smith's complaint was originally scheduled to be heard at the January 21, 2003 Agenda Conference. Prior to the commencement of the Agenda Conference, Ms. Smith contacted us to say that she wanted to appear but that she had no transportation from Chattahoochee to Tallahassee. Upon hearing this, we deferred consideration of her complaint to the February 18, 2003, Agenda Conference.

At the February 18, 2003, Agenda Conference, Ms. Smith appeared before us to present her complaint. She told us that this problem has been occurring for five or six years. As to the calls, she said she has no time to make the number of calls claimed by GT Com, as she is usually gone most of the day, typically fishing. Further, she says she knows of no one in some of the cities the records show she called. Finally, she reiterated that she is not getting credit for the payments she makes.

The GT Com legal representative responded by stating that the company had placed a register on Ms. Smith's telephone to verify the originating and terminating points of each call. The register confirmed that the calls either originated or terminated at Ms. Smith's telephone number. Thus, the company argues that the calls reflected on the bills are accurate.

Upon questioning, our staff reported that they had examined the records supplied by GT Com and could not substantiate any claim by Ms. Smith that the company owed her \$20,000. Our staff could not compare Ms. Smith's receipts to the company's bills because, despite prompting from our staff, Ms. Smith had not provided any documentation that she had paid GT Com.

We again deferred the docket instructing our staff to work with the company and Ms. Smith to verify payments to GT Com. Ms. Smith was instructed to cooperate by providing documents showing she had paid the company. The company and our staff were also directed to investigate alternative calling options that would better suit Ms. Smith's calling usage.

In response to our concerns, GT Com filed with us two documents. The first is a "snapshot" report of Ms. Smith's telephone usage that records all calls made from her number for the randomly selected period of June 23, 2000 to July 5, 2000. The

second document is a print-out of Ms. Smith's billing account for the year 1998 to February 2003. Our staff compared the "snapshot" report period against the same billing period and determined that each call charged to Ms. Smith had in fact originated from her telephone number. Our staff then examined the billing logs and determined that Ms. Smith had not consistently paid her telephone bill before the due date since 1998.

On April 10, 2003, we received limited documentation from Ms. Smith consisting of Money Order payments to GT Com and its predecessor, St. Joseph Telephone Company. The Money Order amounts which cover the time period of this complaint were properly credited to Ms. Smith's account.

In addition, we have obtained information on alternative calling options for Ms. Smith to explore which may alleviate the problem of long distance calls being placed from her phone while she is away from home. Her present provider can place a block on the toll calls for a reasonable monthly charge. Then, if she still wishes to make toll calls, she can purchase a pre-paid calling card. Ms. Smith also has the option of purchasing the same protection from one of the pre-paid ALECs that serve the Chattahoochee region.

This Commission has jurisdiction in this matter pursuant to Section 364.04, Florida Statutes.

II. Decision

Florida law requires us to "assist customers in resolving any billing and service disputes that customers are unable to resolve directly with the company." §364.0252, Fla. Stat. (2002). In accordance with this statute, we adopted Rule 25-22.032, Florida Administrative Code, to set forth the procedures for administering customer complaints.

In this docket, Ms. Delia Smith, having been furnished with telecommunications service by GT Com, is clearly a "customer" of GT

Com within the context of Section 364.0252, Florida Statutes.¹ Since the company and Ms. Smith have been unable to settle their differences after the informal conference, this matter was brought to an agenda conference for our consideration pursuant to Rule 25-22.032(8)(h), Florida Administrative Code.

As noted in the Background, the informal conference was directed at the three issues Ms. Smith raised in her initial complaint and in her informal conference request form:

1. Charges were placed on her bill for telephone calls she did not make or for services she did not use;
2. Disputing the GT Com claim that she owed the company money for services rendered; and
3. Not being credited for money that she did pay to GT Com.

In April 2002, Ms. Smith's daughter executed a promissory note to pay the local exchange company fees and in September 2002, the long distance toll charges were sent back to the long distance carriers for collection. Therefore, Ms. Smith can no longer allege that GT Com is requesting payment for past due amounts from her. Consequently, two of the issues remain in dispute.

After listening to Ms. Smith's presentation and that of the GT Com representatives, and after review of the extensive documentation provided by GT Com, we believe that the company neither charged Ms. Smith's account for calls she did not make, nor failed to credit her account when Ms. Smith made payments to the company.

GT Com takes the position that its filed tariff makes clear that a "subscriber assumes responsibility for all charges for exchange service and toll messages originating at the subscriber's station. GT Com *General Services Tariff*, §2.6.1 (April 15, 1999) [emphasis added]. When Ms. Smith complained that calls did not

¹ Neither Chapter 364, Florida Statutes, nor Rules 25-4 or 25-24, Florida Administrative Code, define the term "customer." The GT Com tariff defines "customer" as any person or firm receiving telecommunication services from GT Com. GT Com *General Services Tariff*, §1 (April 15, 1999).

come from her home, GT Com representatives took the extra steps necessary to trace the origin and destination of the calls. In written documents filed with us, and in statements made at the Informal Conference, the company reported having placed a register on her telephone line. This activity verified that the calls did, in fact, originate from Ms. Smith's phone.

Further, the company also traced the destination of the out-bound calls. By researching the recipient of the repetitive calls reported on Ms. Smith's bill, the company discerned that the called numbers primarily went to her daughter and grandson in Tallahassee. The company surmises that her calls to her grandson were often answered by an answering machine. Since she does not speak to a "person" when the answering machine picks-up, Ms. Smith does not believe that she should have to pay for the call. Since the evidence shows the calls originating from Ms. Smith's telephone, she is responsible for paying for all calls made. GT Com *General Services Tariff*, §2.6.1 (April 15, 1999) & GT Com *Private Line Service Tariff*, §B2.4.1A (September 1, 2001).

Secondly, GT Com challenged the claim that it owes Ms. Smith "somewhere in the neighborhood of \$15,000 to \$20,000" for reimbursement for money not credited to her account. The GT Com representatives not only showed they correctly credited her account, but also showed how Ms. Smith's late payments could cause her to misunderstand her payment history. Therefore, we find that Ms. Smith has failed to show that charges to her GT Com bill were not justified or that GT Com failed to properly credit her accounts for payments made. In addition, we note that the total local exchange and long distance charges on her bill at the time she filed the complaint have been removed by the company.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Complaint No. 450414T, filed by Delia Smith is hereby denied.

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and

ORDER NO. PSC-03-0601-PAA-TL
DOCKET NO. 021178-TL
PAGE 9

Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 13th day of May, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

ORDER NO. PSC-03-0601-PAA-TL

DOCKET NO. 021178-TL

PAGE 10

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 3, 2003.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.