

State of Florida



Public Service Commission

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DATE: JANUARY 9, 2003

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICE (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (L.DODSON, B. TAYLOR) *BRT*
~~DIVISION OF CONSUMER AFFAIRS (K.SMITH) *K*~~
 DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (A.MATHIS) *AM*

RE: DOCKET NO. 021178-TL - COMPLAINT OF DELIA SMITH AGAINST
GTC, INC. D/B/A GT COM FOR UNAUTHORIZED CHARGES TO PHONE
BILL.

AGENDA: 01/21/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\021178.RCM

CASE 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 Number 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 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

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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 make. The company responds saying 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 gives rise to her claim that GT Com does not credit her account for the amount she has paid. The credits are, however, appropriately applied on the following month's billing statement.

At the time she filed a 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, staff forwarded a letter to Ms. Smith notifying her of its proposed resolution to her complaint.

On April 25, 2002, Ms. Smith called the Commission to voice the same complaints. Ms. Smith specifically mentioned that she was billed for long distance calls to Canada that she did not make. Commission staff investigated this allegation and found that Ms. Smith was not billed for any calls to Canada. Commission staff believes 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.

Commission staff believes that Ms. Smith incorrectly assumed she was billed for long distance calls because she received this advertising information.

Ms. Smith called the Commission again on May 22, 2002, expressing continued dissatisfaction with her bill. Commission staff recommended that Ms. Smith send the necessary information to request an informal conference. Instead, Ms. Smith sent staff a copy of her telephone bill. During the months that followed, GT Com and Commission 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, Commission staff received a supplemental response from GT Com. The company reported that it was still unable to explain the bills to Ms. Smith's satisfaction. Ms. Smith did not understand that her daughter had agreed to pay the past due amounts for GT Com generated services.

Ms. Smith called Commission staff on August 1, 2002, for information on 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 Commission staff that she had told her daughter not to pay anything to the company. Commission 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 reported to Commission staff that the majority of the disputed extended calling service and long distance calls were made to the customer's relatives. GT Com forwarded to the Commission numerous documents indicating that the calls were made from the customer's originating address to the customer's relatives.

On August 20, 2002, Commission staff received Ms. Smith's request for an informal conference. Ms. Smith then submitted the informal conference request form, which Commission staff 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 for monies she paid but was not credited by GT Com.

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Thereafter, Commission 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 Commission 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 had been due at the time she filed the complaint.

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

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

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission deny Complaint No. 450414T, filed by Ms. Delia Smith against GT Com?

RECOMMENDATION: Yes. The Commission should deny Complaint No. 450414T filed by Ms. Delia Smith. 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. Finally, the total local exchange and long distance charges on her bill at the time she filed the complaint have been removed by the company. (DODSON, TAYLOR, MATHIS, SMITH)

STAFF ANALYSIS: Florida law requires the Florida Public Service Commission 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, the Public Service Commission [PSC] 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 Recommendation is submitted for the Commission's consideration pursuant to Rule 25-22.032(8)(h), Florida Administrative Code.

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

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

3. Not being credited for money that she did pay to GT Com.

After the completion of the Informal Conference two of the issues remain in dispute.²

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, the Commission staff 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 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 the Commission, 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 thinks 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).

² Ms. Smith can no longer allege that GT Com is requesting payment for past due amounts from her. In April 2002, her 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.

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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. For her part, Ms. Smith could not substantiate that GT Com failed to properly credit her account.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. The docket should then be closed upon issuance of a Consummating Order. (DODSON, TAYLOR)

STAFF ANALYSIS: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. The docket should then be closed upon issuance of a Consummating Order.