

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CAMILLE ENGLISH)	
)	
COMPLAINANT)	
)	
VS.)	CASE NO. 90-355
)	
GTE SOUTH INCORPORATED)	
)	
DEFENDANT)	

O R D E R

On November 12, 1990, Camille English filed a complaint against GTE South Incorporated ("GTE") charging that GTE was threatening to disconnect her telephone service. Prior to filing its answer, GTE discontinued service to Camille English and on December 3, 1990, Camille English moved the Commission to compel GTE to restore service. On December 10, 1990, GTE filed its answer in which it admitted discontinuing service to Camille English, but stated affirmatively that such action was taken because Camille English owed telephone charges for long-distance service which were past due and delinquent. Camille English denies owing all but a small portion of the charges claimed due by GTE.

On January 4, 1991, the Commission found that issues of law and fact between the parties were in dispute and a formal hearing was scheduled. On January 7, 1991, Camille English's motion to restore service was denied pending a hearing to resolve her

complaint. The formal hearing was held on February 14, 1991. All parties appeared and were represented by counsel, including AmeriCall Systems of Louisville ("AmeriCall"), who was permitted to intervene with full rights of a party by Order entered March 8, 1991.

FINDINGS OF FACT

Camille English resides in Lebanon at the home of her mother, Ann English. Also residing in the home are Camille English's 16-year old brother and Camille English's infant daughter. The family moved to Lebanon from Indiana and lived in at least one other home before moving to their present address. Camille English, who was 18 when the hearing was held and who is now 19, is employed at McDonald's restaurant in Lebanon and her mother is employed at a manufacturing plant in Campbellsville, approximately 30 miles away.

The refusal by GTE to furnish or restore telephone service to Camille English is based on two outstanding telephone bills that were charged to two separate telephones. The first telephone was installed at another address in Lebanon where the family lived earlier. That telephone was listed to Ann English but was installed for the benefit and use of all members of the household. While that telephone was in operation, Camille English charged approximately \$200 in long-distance calls to the number. When Ann English was unable or unwilling to pay the bill, GTE discontinued service. The amount presently owed on that account is \$122.16. The telephone was disconnected in 1987 when Camille English was 15 years of age.

After the family moved to their present address, Camille English asked her mother to reapply for telephone service. Ann English refused because she was afraid Camille English might run up another large bill for which Ann English would be responsible. Instead, Ann English told Camille English that if she wanted a telephone, she would have to apply for one herself and she would be the person responsible for all of the telephone bills. Consequently, in 1990, when Camille English was 18 years of age and gainfully employed, she applied for and received telephone service from GTE at the family's current address.

Recognizing her propensity to make numerous long-distance calls and to protect herself from running up a large long-distance telephone bill, when she applied for service, Camille English requested an option package from GTE that included a blocking feature. This feature prevents anyone from either making long-distance calls from the telephone, or collect calls to the telephone, unless the calls are charged to a credit calling card issued by GTE to the subscriber of the service. The telephone was installed with this service and GTE issued a credit calling card to Camille English. Camille English gave the card to her mother, Ann English, for her mother's sole use and control. Ann English was the only person authorized to use the calling card and it only was used when Ann English called her home from work to check on the family or when members of the household called relatives in Indiana.

After the telephone was installed, Camille English paid all of the telephone bills until she received the bills for August and

September 1990. Those were the first bills she received that contained the disputed charges. Camille English maintains that almost all of the long-distance charges on those bills, which total \$1,630.16 plus late fees, were made by third parties without her knowledge or authorization and she denies responsibility for their payment.

All of the calls for which Camille English denies responsibility were made by a visitor to her household, Nicoel English, or by persons to whom Nicoel English gave Camille English's calling card account number. This is confirmed by GTE's own investigation. GTE maintains, however, that Camille English either authorized Nicoel English to use the number or, alternatively, did not take reasonable precautions to protect the number and the charges were incurred as a result of Camille English's negligence.

Nicoel English, who resides in Indiana, claims to be a daughter of Camille English's father and thus Camille English's half sister. There is approximately one or two months difference in their ages. This claim is vehemently denied by Camille English. Nevertheless, it would appear that Camille English's paternal grandmother also regards Nicoel English as her granddaughter and, during a visit by Camille English to Indiana, she was persuaded by her grandmother to take Nicoel English home with her when she returned to Lebanon. The visit to Lebanon lasted approximately three to four weeks and ended shortly before July 4, 1990 when Camille English and her mother, Ann English, noticed that some of their money was missing and they suspected

Nicoel English was stealing from them. Ann English drove Nicoel English to Louisville, where Nicoel English caught a bus to Indiana. During her visit, however, Nicoel English had apparently gone through Ann English's purse, where the credit calling card was kept, and had obtained the calling card number. Although Nicoel English charged some long-distance calls to the calling card number before the visit ended, neither Camille English nor Ann English were aware that Nicoel English had the number until August 6, 1990, when Camille English received the first of the two disputed telephone bills. That bill included long-distance charges of \$203.39, most of which were made by Nicoel English.

Upon receiving the August 6, 1990 bill, Camille English notified GTE that it contained charges for calls that she had neither made nor authorized, and that someone was apparently using her credit calling card. Although Camille English suspected that Nicoel English was the person making the calls, she was not asked by GTE if she knew who was using her credit card and she did not volunteer the information. Camille English was advised by GTE that the telephone calls would be removed from her bill, that the calling card number would be cancelled, and that a new calling card would be issued to her.

Approximately one month later, in September, Camille English received the second disputed bill. This bill covered the period of July 20, 1990 to August 7, 1990, one day after Camille English had notified GTE of the unauthorized calls. The total amount of long distance calls charged on that bill was \$1,697.91. Camille English again called GTE to advise GTE that most of the calls were

not made or authorized by her. This time, however, she was informed that an investigation by GTE had found that the calls were made by Nicoel English, who GTE had identified as her sister, and because she and Nicoel English were related, it was against company policy to remove the calls from her bill. Camille English was also informed that because she and her mother, Ann English, resided in the same home, the outstanding charges on the first telephone listed to Ann English at their earlier address in Lebanon would also have to be paid, otherwise service would be terminated. Camille English then filed this complaint to require that service be maintained. However, while the complaint was pending, when Camille English continued to deny liability for either bill, service was terminated.

CONCLUSIONS OF LAW

The Prior Telephone Service

GTE refuses to reinstate service to Camille English until the outstanding telephone bill owed by Ann English, her mother, is paid. As the basis for its position, GTE relies upon its published tariff which provides in part:

The company reserves the right to refuse service to any applicant who is found to be indebted to the company for service previously furnished until satisfactory arrangements have been made for the payment of all such indebtedness. The company may also refuse to furnish service to any applicant desiring to establish service for former customers of the company who are indebted for previous service, regardless of the listing requested for such service, until satisfactory arrangements have been made for the payment of such indebtedness. (PSC Kentucky Tariff No. 1S2.3.3.B) (emphasis added)

In response, Camille English maintains that she has requested service for herself and not for her mother and, therefore, GTE's denial of service is improper.

The tariff provisions are consistent with the general rule that a utility serving the public may adopt reasonable regulations for conducting its affairs, including a regulation that service to customers who default in payment may be discontinued. The rationale for the rule is that it provides a more efficient and effective method of collection than the alternative of filing lawsuits to collect the many unpaid small bills that may be scattered among its customers.

Although only Camille English applied for the most recent service, GTE furnished the service for the use and benefit of all members of the household. That includes Ann English. Therefore, restoring service to Camille English without requiring payment of the earlier telephone bill would effectively allow Ann English to circumvent the tariff and deny GTE an effective method of recovering delinquent telephone bills. Furthermore, in applying for service for her household, Camille English reaffirmed the former obligation. Therefore, consistent with GTE's tariff provisions, service should not be restored to Camille English until the outstanding charges billed to the telephone furnished to Ann English are paid.

The Calling Card Charges

The major issue presented by the complaint in terms of the monetary amount involved is whether Camille English is liable to GTE for the long-distance telephone calls charged to her calling

card account by Nicoel English and those persons to whom Nicoel English furnished the calling card number. If Camille English is liable for those charges, then GTE may, in accordance with its tariff, refuse to provide service until the charges are paid.

The calling card issued to Camille English specifically states on its reverse side that:

In the event of unauthorized use, the customer's maximum liability is \$50.

This provision is consistent with the provisions of 15 USC §1643 of the federal Truth In Lending Act ("Act") and Regulation 12 CFR §226.12 promulgated under the authority of the Act. This statute and its regulation limit the liability of a holder of a credit card for its unauthorized use to \$50.

GTE contends, however, that notwithstanding the provisions of the Act, Camille English remains responsible for the entire amount charged because she was negligent in not protecting the card from Nicoel English after she began to suspect that Nicoel English was stealing from the family. The position is based on the premise that when "unauthorized purchases on a credit card are the result of negligence. . . on the part of the holder of the card, whether the duty of care is brought out by contract or is merely implied, the holder of the card may be held liable for the purchases." 15 ALR 3d 1091 §5. The evidence, however, does not support the position taken by GTE.

Negligence is generally defined as the absence of ordinary care. Donigan v. Beech Bend Raceway Park, 895 F2d 205, 207 CA6 (1990). Here, there is no evidence that Camille English did not

exercise ordinary care to protect the card. Upon receiving the card, she entrusted it to her mother who controlled its use. The card was kept in her mother's handbag and, so far as Camille English and her mother knew, was never taken from the handbag by Nicoel English. When, during Nicoel English's visit to their home, Camille English and her mother began to notice that money and other items were missing, they ended the visit and sent Nicoel English home to Indiana. Given all the circumstances, Camille English did exercise ordinary care to protect the card from unauthorized users. Therefore, the maximum amount for which Camille English can be held responsible for the unauthorized use of the card is \$50. GTE may, however, refuse to provide telephone service to Camille English until Camille English has paid \$50 of the disputed long-distance telephone charges as well as all undisputed charges listed on the August and September 1990 telephone bills. In addition, by limiting the liability of the cardholder for unauthorized use of the credit card number to \$50 and in including utility charges within its credit card provisions, the Act imposes the entire liability above \$50 for unauthorized calls upon the utility. Therefore, GTE may not include that liability as an operating expense recoverable through its rates, but instead, the company must absorb that expense.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. GTE shall issue to Camille English a revised telephone bill containing the outstanding charges to the telephone issued to Ann English, the outstanding local service charges and authorized

long-distance charges to the telephone issued to Camille English, and \$50 of the unauthorized and disputed long-distance charges to Camille English's telephone.

2. GTE shall restore telephone service to Camille English upon payment of the revised telephone bill or upon Camille English making arrangements satisfactory to GTE for the payment of the bill.

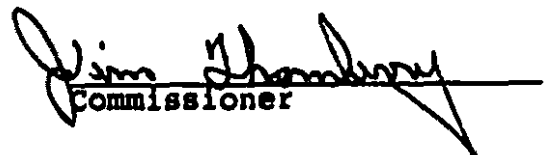
3. The liability in excess of \$50 for the unauthorized use of Camille English's credit calling card shall be absorbed by GTE and shall not be included as an operating expense recoverable through its service rates.

Done at Frankfort, Kentucky, this 19th day of June, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director