

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

Case 92-C-0409 - In the Matter of the Rules and Regulations of the Public Service Commission, Contained in 16NYCRR, in Relation to Complaint Procedures --Appeal by Joel Hurewitz of the Informal Decision Rendered in Favor of New York Telephone Company, filed in C 26358 (273049)

COMMISSION DETERMINATION
(Issued and Effective March 21, 1996)

This is an appeal by Joel Hurewitz, complainant, to the Commission from a decision dated April 9, 1992 (copy attached), about a complaint that the DECCS system at Syracuse University¹ serving rented student housing violated Section 633.2 of NYCRR in several respects and that students are unlawfully required to subscribe to a particular long distance carrier, which concluded that since the dispute concerned a private telephone system and since the customer retained the option of receiving service

¹ DECCS [Digital Educational Centrex Communications] service is provided pursuant to the "Limited Service Offering" section of P.S.C. 911 Section 1, pages 1-7, which sets forth the description, rules, administration, and computation of rates for these specialized services. The individual contract of NYT and Syracuse University (SU) for this service was filed and reviewed by staff for informational purposes but is not made a part of the tariff. It constituted an agreement for the installation and use of an advanced central office-based digital telecommunications switching service that offered a complete selection of sophisticated user and management control capabilities and the conversion of the entire existing SU Centrex service to DECCS. Service was offered in three line classes (Administration, Student, and Local Area Network (LAN) in two types--student and administration) and was available both on and off-campus. Except for the student services (both regular and LAN), DECCS service was offered on a minimum 10-year service basis. The contract set forth the installation cost for the service on a perline basis and also established the monthly rates for each type of line for the 10-year period of the agreement. This system provides a package of specialized calling features including: call waiting, call forwarding, three-way calling, and speed calling. This description largely derives from the contract between NYT and Syracuse University, which has trade secret status, and has been approved by NYT for use in this determination.

directly from New York Telephone (NYT), the dispute does not raise any issues that are subject to the Commission's jurisdiction. The main thrust of the customer's complaint is that the DECCS system at Syracuse University (SU) serving rented student housing violates Section 633.2, and that students are unlawfully required to subscribe to service provided by ACC Long Distance Corporation.² Among the specific rule violations alleged are the following: (1) that students are improperly charged for New York Telephone directory listings; (2) that disconnection of students' service at the end of the year violates Section 631.4; (3) that NYT failed to permit the inspection of contracts, rates, and tariffs applicable to the provision of service to Syracuse University students as required by Section 630.3; and (4) finally, that NYT has violated the requirement of an itemized listing of services as required by Section 633.12. The complainant sought corrections to the provision of telephone service to Syracuse University students to bring it into compliance with the law and sought refunds for himself and all similarly situated students who have been illegally overcharged over the past several years.

The hearing officer noted that Syracuse University's DECCS telecommunications system is privately owned, is not subject to Commission regulation, and that the students who take service from it are taking service from Syracuse University and not from New York Telephone. He also noted that students receive bills from New York Telephone only because NYT provides the billing service, as it is required to do on a non-discriminatory basis. Accordingly, he concluded that the provision of telephone

² Mr. Hurewitz states that in August 1991, he subscribed to AT&T, but he received notification from New York Telephone in September 1991, stating: "This confirms connection to your preferred long distance company...your long distance calls to points outside your regional calling area will be handled by: 'ACC Long Distance Corporation'."

service to student housing is not in violation of any Commission regulations. The hearing officer enclosed with this determination a letter from the Director of Telecommunications Department at Syracuse University dated March 31, 1992 which stated that, in addition to receiving service through the DECCS system, Mr. Hurewitz had the option to receive service directly from NYT, although this would involve significantly higher material and installation costs.

On appeal,³ the complainant argued that the hearing officer erred in finding that Syracuse University is not subject to Commission regulation; that whether or not Syracuse University is subject to Commission regulation, New York Telephone is not exempt from all Commission regulation; that the hearing officer erred in concluding that the DECCS service did not violate the PSL and FCC rules, and Commission rules;⁴ and that the hearing

³ Complainant noted that it is not clear whether a hearing or review was actually completed or whether the informal hearing officer determined that relief could not be provided through the informal hearing or review process. Complainant asserts that if the hearing was completed, the informal hearing officer misinterpreted Commission rules and regulations and failed to consider each of the separate six complaints which were made in the complainant's July 22, 1991 letter, and the appeal is made under Section 12.13(b)(1) or (b)(2) for mistakes in the informal hearing officer's decision. If the hearing officer determined that relief could not be provided through the informal hearing or review process, complainant makes this appeal under Section 12.5(a)(2).

⁴ Specifically, complainant maintains that the DECCS system at Syracuse University violates Section 633.2 and argues that the fact that an individual dormitory resident might receive non-DECCS service at higher rates does not cure this violation. Students, like any other customer of NYT, should be allowed to purchase any home telephone services including Basic Budget, Untimed, Timed, and Flat rate at the same rates as any other resident of Syracuse, New York. Complainant notes that the students at Syracuse University are customers of New York Telephone; that applications for service, monthly payments, and requests for repairs, are made directly to New York Telephone and
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officer erred in failing to consider the specific rule violations raised by complainant. Specifically, the hearing officer failed to address the complaints that: (1) despite Syracuse University's contention that students may subscribe to the long distance company of their choice,⁵ students are required to subscribe to service provided by ACC Long Distance Corporation;⁶ (2) that failing to allow subscription to other long distance carriers providing service to the Syracuse area is contrary to the Federal Communications Commission's Equal Access rules; (3) that NYT improperly charges DECCS student customers for New York Telephone directory listings in violation of the tariff which states that one listing for each individual line is provided without charge; (4) that NYT disconnects DECCS service to student customers at

⁴(...continued)

that nonpayment for service by SU students would be treated in the same manner as nonpayment by any other customers. Copies of letters from New York Telephone, portions of monthly bills, and an application for service were enclosed in support.

⁵ He points to a letter dated July 1990 from Syracuse University's Director of Telecommunications which stated: "If you wish this service you may presubscribe by responding as soon as possible" and argues that by stating that students "may presubscribe" Syracuse seems to be allowing application to other long distance carriers.

⁶ He maintains that, in August 1990, Syracuse University provided all student lines with ACC Long Distance Corporation service and that he has been repeatedly told by New York Telephone that students may not sign-up for other long distance carriers including AT&T, MCI, or USprint. He argues that this means that students are not permitted to subscribe to special calling plans provided by these carriers such as AT&T's Reach Out America or MCI's Friends and Family. This prohibition results in students paying higher telephone rates than they otherwise could.

the end of the term in violation of Section 631.4⁷; (5) that NYT fails to comply with Section 630.3 by failing to make the contracts, rates, and tariffs applicable to the provision of service to Syracuse University students available in the manner required;⁸ and (6) finally, that NYT's bill violates Section 633.12 by failing to provide an itemized listing of services.⁹ On appeal, the complainant also raised a host of arguments that

⁷ He argues that having an automatic disconnection unless the postage paid card (Exhibit 4) is returned does not meet the rule requirement for an on-site inspection. He asserts that New York Telephone unilaterally terminates service on a date provided by university officials and maintains that this illegal procedure does not satisfy the requirement of an on-site inspection. He argues that students who fail to receive the New York Telephone letter, or fail to respond to it, automatically have their service terminated prematurely.

⁸ He maintains that he was denied access to the tariffs applicable to Syracuse University when he requested them at New York Telephone's Syracuse office on May 20, 1991 and was told that he had to make an appointment 24 hours in advance. He also argues that he was wrongly denied access to the contract between Syracuse University and New York Telephone regarding provision of DECCS service on the grounds that it was confidential and maintains that this document is subject to the rule requiring accessibility.

⁹ He maintains that for the two years he subscribed to New York Telephone service at Syracuse University, he have failed to receive any "itemized listing of the services being subscribed to, their monthly rates and an identification of those services which are not necessary for basic service." All that was included under the "Basic Service" part of the bill was a lump sum charge, an FCC line charge, and a total with a statement that "[a] detailed explanation of your Basic service is provided three times a year."

his procedural rights under the complaint procedures¹⁰ were violated¹¹ and made a broad discovery request.¹²

¹⁰ 16 NYCRR Part 12.

¹¹ Specifically, complainant argues that the hearing officer failed to conform to the procedural requirements for either a hearing or a review; that the hearing officer never determined either that a hearing would not be able to provide relief as required by Section 12.5(a)(2); that he was never notified in writing 10 days in advance stating either the date, time or location of an informal hearing or that an informal review would be held as is required by Section 12.5(c); that he has not had the opportunity to examine the documents in the complaint file or to examine the evidence and arguments submitted by the other party as required by Section 12.7; that the hearing officer failed to provide him a copy of a letter from Ms. Elise Angiolillo, Syracuse University Director of Telecommunications; that he did not have an opportunity to submit responses to the evidence and arguments of the other parties as required by Section 12.7(b)(3); that the hearing officer did not provide him with any information regarding the merits of the case exchanged between the hearing officer and the other parties; that he was not given the opportunity to respond to this information as required by Section 12.8; and, finally, that the hearing officer has not complied with the procedural requirements of Section 12.12.

Complainant also maintains that the complaint procedures were violated because the hearing officer failed to give consideration to all the facts and evidence in the case; did not base his decision upon applicable State laws, commission rules, regulations, orders and opinions, and tariffs; failed to summarize the complainant's original positions, arguments, and the facts; gave only poorly supported and extremely vague reasons for his decision; and did not give the customer notice of his right to appeal.

¹² He requested, pursuant to sections 12.7(a)(6) and 12.7(b)(4)a, all relevant information, letters, correspondence, contracts (including the contract between Syracuse University and New York Telephone for DECCS service and all contracts concerning provision of ACC Long Distance Service to Syracuse University), agreements, memoranda and documentation possessed by any other party in this case, including but not limited to, Syracuse University, New York Telephone, and ACC Long Distance Corporation, and all Commission rules, regulations, orders, opinions, and tariffs and court opinions and State laws which
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New York Telephone did not respond to the customer's appeal initially, but did provide additional information¹³ and NYT's position on each of the customer's points on appeal in response to a request from staff. NYT's responses to the customer's appeal were as follows. With respect to the complainant's allegation that the hearing officer failed to follow required procedures set forth in Part 12 of the PSC's rules, NYT stated that it was neither a party nor an active

¹²(...continued)

served as the basis for the informal hearing officer's decision. It should be noted that New York Telephone Company sought trade secret status and protection from public disclosure for its contract with Syracuse University, pursuant to the Freedom of Information Law ("FOIL") and the Commission's Rules promulgated thereunder, on the grounds that these pages contain confidential, commercially sensitive information, the public disclosure of which would place NYT at an unfair competitive disadvantage. N.Y.PUB.OFF.LAW §87(2)(d) (McKinney Supp. 1993). 16 NYCRR § 6-1.3.

¹³ In response to the request for a copy of the contract between New York Telephone and Syracuse University for the DECCS service, NYT submitted under separate letter to Deputy Secretary Barnes of the Public Service Commission a copy of the contract. NYT sought and received confidential trade secret treatment for the DECCS contract.

In response to the request for a copy of any and all rules of the F.C.C. that may have bearing on the NYT service provided to students at Syracuse University through the DECCS service, including the F.C.C. Equal Access Rules, NYT provided certain Parts of the FCC Rules, 47 Code of Federal Regulations, which may have a bearing on these services:

(1) Part 64 - Miscellaneous Rules Relating to Common Carriers. Table of Contents and Sections 64.703 through 64.708.

(2) Part 68 - Connection of Terminal Equipment to the Telephone Network. Section 68.318(d).

(3) The FCC Rules are found in Title 47 of the Code of Federal Regulations, 47 C.F.R. - Telecommunications.

There are no detailed rules relating to Equal Access, except for the few provisions in Part 64 relating to operator service providers and call aggregators, and Section 64.1100, which deals with verification of orders for long distance service generated by telemarketing.

participant in that proceeding, and thus cannot comment on these allegations.¹⁴

With respect to Mr. Hurewitz's allegation that the DECCS system at Syracuse University violates Section 633.2 of the PSC's rules, NYT argues that that section, entitled Applicability of Rules, does not appear to impose any obligations that can be violated by anyone.¹⁵ NYT further notes that with DECCS, it is the college or university which orders the provisioning and general availability of telephone service to its transient college population. Thus, there is a general application for service received from the college or university by its agreement with NYT, and then subsequent and subsidiary specific applications for service by each student. NYT also states that, despite complainant's allegations to the contrary, it is NYT's understanding that students are not required to take the university's DECCS service; that a student can refuse DECCS service, order individual (i.e., non-DECCS) service from NYT (paying all applicable charges for what is ordered), or order no telephone service at all.¹⁶

¹⁴ NYT did, however, note that many of these procedural claims were addressed and rejected in the August 19, 1992 letter to Mr. Hurewitz by Daniel W. Rosenblum, Assistant to the Director, Consumer Services Division.

¹⁵ Part 633.2 defines "Residential service" as including that "service furnished in...college dormitories...for domestic rather than occupational use in residential quarters." "Residential customer" includes "any person who is supplied directly by a telephone corporation with telephone service at a dwelling for his or her residential use pursuant to an application for service made by such a person or a third party on his or her behalf."

¹⁶ NYT cites to a letter from the Director of Syracuse University Telecommunications Department dated March 31, 1992, to the hearing officer. NYT also notes that when Mr. Hurewitz expressed his dissatisfaction with the University's DECCS service, NYT offered to provide him with normal residential service, but that he never placed an order.

In response to the complainant's argument that NYT violated Section 602.3 because it did not make available upon request "the tariffs applicable to Syracuse University" when they were requested by him at NYT's Syracuse office on May 20, 1991, NYT states that due to the passage of time it is unable to comment on whether complainant's rendition of what occurred is factually accurate, but notes that his letter was written eleven months after his reported visit to a Syracuse business office, that a request for "tariffs applicable to Syracuse University" is uncertain in scope (it apparently could require production of all of NYT's state and interstate tariffs), and that under the circumstances an advance appointment was neither unreasonable nor inconsistent with Section 602.3, when reference to multi-volume tariffs would require use of a table in a meeting room.¹⁷ Under the circumstances, NYT believes that NYT did not violate Section 602.3. For these same reasons, NYT argues that the complainant is not entitled to immediate access to tariffs and to any contract between NYT and Syracuse University pursuant to Section 630.3 of the PSC's rules.

With regard to complainant's demand that he be afforded access to the contract between NYT and Syracuse University regarding DECCS service, this claim has already been properly rejected by the Consumer Services Division, trade secret status having been granted.¹⁸

With respect to Mr. Hurewitz's allegation that the procedures under which dormitory Centrex service to students is terminated at the end of the school year violates Section 631.4,

¹⁷ NYT also notes that, on April 30, 1991, a telephone company representative called Mr. Hurewitz, offered to set up an appointment for his inspection of tariffs, but that this offer was declined.

¹⁸ NYT's submission was granted Trade Secret status by Deputy Secretary Barnes on September 3, 1993 under file number 93-15.

NYT notes that complainant apparently would have NYT make an "on-premises inspection" in each and every case before a student's service is terminated, which is preposterous.¹⁹ Dormitory service is cancelled at the end of a school year not because "a subscriber's facilities have been abandoned or are being used by unauthorized persons" (the operative words of Section 631.4), but because the school is closing down for the summer, or the dormitory is being closed, or students are being required to move out of the dormitory.

With respect to complainant's allegation that he was denied the right to presubscribe to the interexchange carrier of his choice because the university provided DECCS service to dormitory occupants which was presubscribed to ACC Long Distance Corp., NYT responds that the DECCS arrangement, where the customer (the university) for Dormitory Centrex service presubscribes to an interexchange carrier, is consistent with the equal access presubscription procedures mandated by the FCC, so long as a student can reach alternative long distance carriers by 10XXX or other access code dialing. Such alternate access code dialing was available to dormitory room students at Syracuse during the period in question. Under the FCC's Rules, as an aggregator Syracuse University has the right to presubscribe to a carrier so long as dormitory occupants could reach other providers of operator services by use of access codes. The DECCS arrangements at Syracuse University appear to fully meet the FCC's requirements for call aggregators.²⁰ Even though college dormitory occupants may generally be longer term occupants than

¹⁹ NYT notes that, taken literally, it would require tens of thousands of "on-premise inspections" at the end of every school year where there is no need for such inspections and where no public policy purpose would be served.

²⁰ See Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Report and Order, 6 FCC Rcd 2744 (1991), recon. denied 7 FCC Rcd 4014 (1992).

hotel patrons, payphone users, or hospital patients, under the FCC's rules implementing the Telephone Operator Consumer Services Improvement Act of 1990,²¹ colleges providing DECCS service to their dormitory students are recognized as aggregators and may lawfully presubscribe dormitory lines to an interexchange carrier so long as the students may access other operator service providers by dialing appropriate access codes. This indeed was the arrangement at Syracuse University during the period in question.

NYT points out that college students residing in dormitories do not have rights comparable to renters of apartments; they are transient occupants for limited time periods. DECCS service is thus particularly useful as it efficiently serves the needs of colleges and universities and the tens of thousands of students who are all arriving and leaving school at the same time, and where dormitories are not open throughout the year. Without it, the prompt and efficient delivery of communications service would be extremely difficult.

We find that the hearing officer erred in stating that the dispute was not one over which we have any jurisdiction. Although it is true that we do not have jurisdiction over SU under PSL 2(17) since it "does not operate the business of affording telephonic communication for profit," we do have jurisdiction over the complaint insofar as it is directed at NYT. The hearing officer correctly concluded, however, that the TEFPA rules do not apply to the residential service supplied to Syracuse University students. The rules contained in Part 633, which govern the rights, duties and obligations of New York Telephone with respect to residential customers and applicants, explicitly apply to residential service to students in college dormitories, but these rules are applicable only where the

²¹ ("TOCSIAII"), Pub. L. No. 101-135, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226).

residential service is supplied "directly." Here the DECCS student service is not supplied directly by NYT. Rather DECCS service is supplied to Syracuse University and is available to SU's students only pursuant to SU's contract with NYT. This is not "direct" service within the meaning of the rule. While the terms and conditions of the telephone service provided to students of Syracuse University differ somewhat from those provided to other residential customers of NYT and do not conform in all respects to the rules set forth in Part 633, this is due to the decisions made by SU regarding how to provide telephone service to its students.

SU has the prerogative, as far as we can see, with respect to persons who reside on its property under terms and conditions established by SU or who are affiliated with the university, to make telephone service available in the manner it deems appropriate. The complainant has not argued otherwise and has provided no support for the proposition that SU actions were improper.

While not essential to our determination, it is worth noting that the student telephone service offered by SU provides a better service at a lower cost for most, if not all, student users. Most notable is the absence of any installation charges, free calling to others within the university system, and generally lower cost local usage. Although students are not free to designate their own long distance carrier, they have the ability to do so on a call-by-call basis, as NYT noted. Under this package, most students will save considerably over what they would pay if they were served directly by NYT.

Since we find that SU students are not covered by the TEFPA protections, we reject the complainant's position that they were improperly charged for New York Telephone directory

listings;²² that NYT improperly failed to permit the inspection of contracts, rates, and tariffs applicable to the provision of service to Syracuse University students; that NYT has violated the requirement of an itemized listing of services; and that disconnection of students' service at the end of the year is improperly handled. We note that, in any event, the termination protections of TEFPA have no place in dormitories where telephone service is supplied by the school via a Centrex system, and that the existing system for terminating service at the end of the school year, unless otherwise notified by the student, is fair and reasonable.²³ We would, however, suggest that NYT consider whether any TEFPA protections are appropriate to student service such as this and should be explicitly incorporated into future DECCS contracts, so as to avoid future complaints of this sort. We also believe that, for the same reason, NYT would be well advised to prepare informational materials for students which explains to them the unique nature of their service, as well as its terms and conditions.²⁴

With respect to that aspect of this complaint which asserts that students are unlawfully required to subscribe to service provided by ACC Long Distance Corporation, we find that complainant has failed to cite any specific authority to support this claim. NYT, on the other hand, asserts that the designation

²² It should be noted that DECCS, like all other Centrex services, includes only a single free directory listing and requires a separate request and payment for all additional listing, in accordance with P.S.C. 900 Section 4, paragraph 1.

²³ It should be noted that we are aware of no other complaints about termination of student dormitory service.

²⁴ We note that this complaint might have been forestalled had Mr. Hurewitz understood that the service is actually provided by SU and that NYT's role is limited. Given that NYT sent the bills, made service calls, pursued collection, and handled terminations, among other things, Mr. Hurewitz's confusion about NYT's role is understandable.

of ACC by Syracuse University is consistent with the equal access presubscription procedures mandated by the FCC, since students can reach alternative long distance carriers by 10XXX or other access code dialing.

Finally, we turn to the complainant's numerous assertions that his due process rights in this complaint were infringed. We find that, while it does appear that the hearing officer failed to follow the rules, particularly in failing to provide the customer with an opportunity for an informal hearing, probably as a result of his mistaking our lack of jurisdiction over SU for a lack of jurisdiction over the dispute itself, we find that there is insufficient evidence in the case file to conclude that complainant's presentation of his position was hampered in any material way or that these deficiencies affected the outcome. There was no dispute about the relevant facts and only questions of law were presented. The complainant's arguments were evaluated and found to lack merit. In these circumstances, there is no need to remand the case back to the informal hearing unit for further proceedings. With respect to complainant's request for further information on appeal, we note that NYT's DECCS contract with SU has been granted trade secret status, that Mr. Hurewitz has not sought access to it, and that the other information requested is a part of the record in this case.

In order to assure that all aspects of this case have been properly addressed, we have thoroughly reviewed the entire complaint file. We conclude that telephone service provided to individuals through a DECCS system is not covered by the TEFPA protections. We also find that there is no evidence here that the FCC's equal access presubscription procedures were violated. Therefore, complainant's appeal is denied and the hearing officer's decision is upheld.