

Opinion No. 80-06

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OPINION OF: Jeff Bingaman, Attorney General

BY: Jeffrey L. Fornaciari, Assistant Attorney General

TO: Dick Mutz, Director of Administrative Services, Natural Resources Department, Villagra Building, Santa Fe, New Mexico 87503

PUBLIC UTILITIES

A State agency or department is liable for long distance telephone charges which result from unauthorized long distance telephone calls made from its telephones by former and present employees.

QUESTIONS

Is the State Parks and Recreation Division of the Natural Resources Department liable to various telephone companies for long distance telephone charges which result from unauthorized long distance telephone calls made from its telephones by former and present Division employees?

CONCLUSIONS

Yes.

ANALYSIS

Under Article 11, Section 7 of the New Mexico Constitution, the New Mexico State Corporation Commission is delegated full power and authority over the services, rates and charges of telephone companies operating in New Mexico. **Mountain States Tel. & Tel. Co. v. New Mexico State Corp. Comm.**, 90 N.M. 325, 563 P.2d 588 (1977). In the exercise of its constitutional power and authority, the State Corporation Commission has approved and adopted numerous tariff schedules, which were filed by various telephone companies operating in New Mexico. These tariff schedules define, govern and control the respective rights and obligations of the telephone companies with their subscribers. The significance of the tariff schedules filed with the State Corporation Commission is that they are not only binding upon telephone companies and their subscribers as a contractual obligation, but they also have the force and effect of law. This position finds support in the holdings of several jurisdictions which conclude:

". . . a tariff required by law is not a mere contract. It is the law."

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Carter v. American Tel. & Tel. Co., 365 F.2d 486 (5th Cir. 1966), **cert. denied**, 385 U.S. 1008 (1967); See also **Shehi v. Southwestern Bell Tel. Co.**, 382 F.2d 627 (10th Cir. 1967); **Teleco, Inc. v. Southwestern Bell Tel. Co.**, 391 F. Supp. 692 (W.D. Okla. 1974).

More than sixteen telephone companies have tariff schedules on file at the State Corporation Commission. Without knowing which specific telephone companies are involved in your question, we cannot state categorically that the following provisions are included in the tariffs of each of the telephone companies at issue. However, the Mountain States Tel. & Tel. Co. -- New Mexico Long Distance Message Communication Service Tariff, which has been approved by the State Corporation Commission, appears to be {*115} typical of the several tariffs examined in analyzing your question. This tariff provides that each telephone subscriber is liable for charges for the long distance telephone calls originating from the subscriber's telephone, whether or not the subscriber authorized or approved the telephone calls:

"4. Payment Arrangements

a. Payment for Services

The customer is responsible for payment of all charges for services furnished the customer, including charges for services originated or charges accepted at the customer's station.

b. Termination of Service for Cause

"Upon nonpayment of any sum due the Telephone Company, or upon a violation of any of the conditions governing the furnishing of service, the Telephone Company may by notice in writing to the customer, without incurring any liability, forthwith discontinue the furnishing of said services." (Original Sheet 5, Issued: 12/5/68; Effective 1/6/69).

Thus, under these tariffs each New Mexico telephone subscriber, including the State and its agencies and departments, is liable for payment of long distance charges for telephone calls that originate from the subscriber's telephone, irrespective of whether the call was authorized by the subscriber.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General