

ORIGINAL

Decision No. 80369

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Homer A. Butts, )  
Complainant,  
vs. )  
Roseville Telephone Company, )  
Defendant. )

Case No. 9306  
(Filed December 20, 1971)

Homer A. Butts, for himself, complainant.  
George K. Minasian, for Roseville Telephone Company,  
defendant.

O P I N I O N

Hearing on this complaint was held after due notice before Examiner Coffey in Roseville, California, on June 8, 1972. The matter was submitted on June 23, 1972, upon receipt of the reporter's transcript.

Complainant, the owner of Ol' Hom's Pizza Parlor in Roseville, requests an order directing the Roseville Telephone Company to furnish a public telephone at his pizza parlor and removing the phrase "at the discretion of the telephone company" from the tariff.

In May, 1971, complainant, upon request that a public telephone be installed in his place of business, was informed by defendant that he would have to subscribe to coin semi-public telephone service at rates and conditions applicable under Schedule No. A-2. Coin Semi-Public Telephone Service.

Complainant argues:

"The only way to distinguish between a public and semi-public telephone was by the decision of the telephone company."

"I feel that my restaurant is just as public as other restaurants being provided public telephone service, and I feel that I should not be discriminated against by a representative of the telephone company based on an arbitrary decision by him. I am willing to make a reasonable guarantee to the telephone company for a public telephone.

"There are restaurants and taverns in Roseville that have coin telephones with extensions available to the management, and I feel that this is what should be considered a semi-public telephone.

"I feel that because a public utility is normally a type of monopoly regulated by a utilities commission, the utility should not have the phrase 'at the discretion of the telephone company' in its tariffs. This leads to discrimination and is unfair to the public."

The Roseville Telephone Company states its case in the following manner:

"Mr. Butts applied for service with our company in May, 1971. We informed him at that time of our company policies concerning public and semi-public coin telephone service. This was prompted by the fact that the previous customer at that location had subscribed to coin semi-public telephone service and the coin telephone still remained on the premises. Mr. Butts decided to establish flat rate business service and requested that the coin telephone be changed to public telephone service.

"We explained to Mr. Butts that we felt this particular location did not produce a sufficient amount of customer and general transient usage to warrant establishment as a public telephone. We based this decision on collections made from this telephone over the past several years. Coin telephone service at this location has, in all previous cases, been subscribed for at coin semi-public telephone rates. In addition to this, we pointed out that there are four public telephone locations and seven semi-public telephone services within a two block perimeter of Mr. Butts' restaurant.

"In November of 1971, Mr. Butts came into our office and again requested that a public telephone be installed in his place of business. We again attempted to explain our decision to Mr. Butts and indicated that a coin telephone at that location would have to be subscribed for at coin semi-public telephone rates.

"During this conversation, Mr. Butts mentioned another restaurant in Roseville which had public telephone service. It was explained to Mr. Butts that the restaurant mentioned by him has had a coin telephone on the premises in excess of ten years and has had a history of usage sufficient to be maintained as a public telephone. We also explained to Mr. Butts that this restaurant was a combination dinner house-cocktail lounge. All restaurants which have public telephone service are either open to the public 24 hours daily and cater to general transient usage or are combination dinner house-cocktail lounge establishments.

"Our proposal to Mr. Butts was to ask that he subscribe to coin semi-public telephone service and if sufficient revenue were derived from this coin telephone over a six month period of time, we would then change to public telephone service. We feel that a minimum monthly average of \$25.00 must be maintained in order to give consideration to public telephone service.

"We do not feel that our public telephone service practices are discriminatory. We feel that removal of Special Condition No. 1 under Schedule No. A-3 Public Telephone Service, would result in haphazard and random installations of coin telephones which would not produce sufficient revenue to offset installation and operating costs of providing public telephone service. These costs would then be necessarily passed on to other customers."

#### Findings and Conclusions

We find that:

1. From October, 1967, until May, 1971, semi-public telephone service was furnished at 119 Church Street, Roseville.
2. When complainant began business at 119 Church Street, Roseville in May, 1971, he applied for flat rate business service and requested that the coin telephone be changed to public service.

3. The charges for semi-public telephone service are \$15.00 for installation, \$2.00 per month service charge and a guarantee of 25 cents a day, or about \$7.50 a month.

4. There is no customer charge for a public telephone.

5. Revenue from a public telephone is shared with the "customer" controlling the location of said telephone by paying a 10% commission on local service and a 6% commission on long-distance service.

6. Defendant's tariffs do not set forth said revenue sharing.

7. Special Condition No. 1 of defendant's Schedule No. A-3, Public Telephone Service, states:

"Public telephones will be installed by the utility at its discretion in public locations to meet general and transient requirements."

8. Schedule No. A-3 for Public Telephone Service does not specify the conditions under which defendant will install a public telephone.

9. Defendant as a condition of installation requires assurance that an average of \$25 per month of exchange and toll revenue will be collected from a proposed public telephone.

10. This record does not demonstrate the reasonableness of defendant's requirement that an average of \$25 per month of exchange and toll revenue be generated by a public telephone.

11. Defendant's Schedule No. A-3, Public Telephone Service, is arbitrary and potentially discriminatory in that it does not state specific conditions under which public telephone service will be furnished at requested locations, and in that it does not impose any limit on defendant's discretion.

12. Exhibit No. 1 indicates that for the 45 months from October, 1967, to May, 1971, the monthly collection for the semi-public telephone at 119 Church Street, Roseville, averaged \$11.77, ranging from a minimum of "no collection" to a maximum of \$34.75.

13. Since the monthly collection from the semi-public telephone at 119 Church Street, Roseville, from October, 1967, to May, 1971, averaged less than \$25, defendant has refused to install a public telephone at said location.

14. Three different owners operated the business at 119 Church Street, Roseville, from October, 1967, to May, 1971, under difficult conditions.

15. It is arbitrary and unreasonable to assume that the level of semi-public telephone collections at 119 Church Street, Roseville, will be the same in the future as it was from October, 1967, to May, 1971.

16. The costs of installing semi-public telephone service and public telephone service are substantially identical.

17. Defendant proposes that if complainant subscribes to coin semi-public telephone service and if an average of \$25 over a six-month period is derived from said service, defendant would convert the semi-public telephone service to public telephone service and would refund installation charges.

We conclude that defendant should be required to revise its tariffs to include the conditions under which it will supply public telephone service, and that complainant's request for public telephone service should be granted under the conditions hereinafter ordered.

O R D E R

IT IS ORDERED that:

1. On or before January 1, 1973, Roseville Telephone Company shall revise its Schedule No. A-3, Public Telephone Service, by removing the phrase "at its discretion" from Special Condition No. 1 and substituting therefor the specific conditions under which it will install public telephones in public locations. A factual showing establishing the reasonableness of any revenue or other requirement shall be made with the filing of the ordered revisions.

2. Within thirty days after the effective date hereof, Roseville Telephone Company shall establish public telephone service at

119 Church Street, Roseville, California. Six months after the filing of the tariff revisions herein ordered, said service will be discontinued if it has not met the conditions of the tariff revised as herein ordered.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15<sup>th</sup>  
day of AUGUST, 1972.

William J. Stinson  
President  
William J. Stinson Jr.  
John W. Holmes

Commissioners

D. W. Holmes  
J. R. Wilson Jr., Commissioner

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.