

ORIGINAL

Decision No. 82248

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LINDSAY-LESHER DISTRIBUTING CO.,
a California Corporation, (doing
business as IDENTIFONE); JERRY
GOLDSTEIN; and ROBERT MARGOLIS,
Complainants,

-vs-

PACIFIC TELEPHONE & TELEGRAPH
COMPANY,
Defendant.

Case No. 9464
(Filed October 31, 1972)

Arthur Livingston, Attorney at Law, for
complainants.
Katherine V. Tooks, Attorney at Law, for
defendant.
David G. Brown, for The Polynesian Owners
Association, interested party.
Tibor Toczauer, for the Commission staff.

O P I N I O N

Lindsay-Lesher Distributing Company, dba Identifone (Identifone) is the distributor of a tenant control security entry system used by and for tenants in apartment houses or multiple occupancies. The Identifone system in an apartment house served by defendant, The Pacific Telephone and Telegraph Company (Pacific), requires Pacific to furnish a telephone line and a coupler^{1/} into which the Identifone system is plugged. The apartment house owner pays the rate. The system does not require a telephone instrument; however, some of the Identifone installations have telephone instruments.^{2/}

^{1/} Per Pacific's instructions.

^{2/} Exhibit 5 shows that the telephone instrument can be utilized to obtain an outside number.

The complaint involves the rate applicable for the telephone line furnished by Pacific for use with the Identifone system in apartment houses in which complainants Goldstein and Margolis have an economic interest. Complainants contend that the applicable rate for the service is the residential rate set forth in the Schedule CAL P.U.C. No. 36-T, Sheets 70 and 71, for the reasons that the service is on residential apartment houses and no business listings are provided, and that the only station, if any, is in a location which is a part of a domestic or residential establishment.

Complainants contend that Pacific's use of a business rate for the use of the telephone line in connection with the Identifone system is illegal, excessive, unjust, discriminatory, and contrary to the applicable tariff; and that a continuance of the business rate will seriously damage Identifone business and will give Pacific an unfair, unreasonable, and discriminatory advantage as a competitor to Identifone in the security entry business.

The relief sought is to restrain Pacific from charging business rates for complainants or for any other person seeking the installation of an Identifone system; that Pacific be ordered to refund all excessive amounts charged for the use of the telephone lines referred to in the complaint; and that Pacific be required to apply residential rates for the telephone line supplied for the use of the Identifone system in apartment buildings, or, in the alternative, that there be ordered an adjustment or separate tariff for the use of the telephone line for the Identifone system at a rate which is not excessive, unjust, and discriminatory.

Pacific contends that it is charging the proper rates, based upon its interpretation of service definitions contained in its tariff sheets; that the complaint is legally insufficient

under Section 1702 of the Public Utilities Code because there is no violation of its tariffs, of any rate, or of any order of the Commission; that since the application of a business rate is appropriate the complaint is a challenge to the reasonableness of its rate or charges which was not signed by not less than 25 actual or prospective customers; that application of a residential rate would violate its tariffs; and that therefore the complaint be dismissed.

Hearings were heard before Examiner Levander on March 9, April 30, and May 1, 1973, and submitted on the later date.

The Identifone system contains a directory in which each tenant is assigned a code number and a telephone receiver both located at the entrance to a building. A person wishing entry would follow the printed instructions on the directory and dial a tenant's code number which triggers the dialing of the telephone number through a control unit which utilizes Pacific's distribution and switching system to ring the tenant's telephone if it is not in use. If the line is busy the person seeking entry is instructed to hang up and wait 30 seconds before redialing. The tenant uses his telephone to talk to the party seeking entrance and he may permit entry by pushing a button on a hand held sound impulse door opener which transmits a special sound impulse through the telephone to unlock the door.

Several Identifone installations have been installed on both Pacific and General Telephone Company of California's (General) systems, by Identifone and by independent installers utilizing Identifone equipment. Pacific and General had been billing for Identifone lines at residential rates until installations were made in the Dunkirk exchange affecting the Goldstein and Margolis installations. Pacific charged business message unit rates in the Dunkirk exchange.

Pacific's witness contends that it erred in charging business message rates for complainant's Identifone lines and that the appropriate rate to be charged would be for semipublic telephone service, a more costly service than business message service. Pacific contends that the owner of a building with an Identifone system should pay the monthly business message rate plus the monthly coupler rate (now \$3) plus the semipublic rate per call (now 10¢). Pacific originally billed Goldstein and Margolis the business message rate plus the monthly coupler rate plus the message unit rate (4.5¢ per message for each message over the 80 message unit allowance).

Complainants presented evidence showing that Pacific's facilities, the coupler and telephone line, are located in locked cabinets, in closets of a manager's apartment, or other locations inaccessible to the public which are part of a domestic rather than a business establishment; that the usage is limited to obtaining a protected entry to a residential apartment; that the nature of the usage is such as to tie up Pacific's equipment for a limited time as compared to a normal telephone conversation; and that therefore it is a residential usage and the residential flat rate should be applied for the Identifone line.

The Polynesian Owners Association (Polynesian) is a group owning its own residential building which was giving consideration to purchasing an entry control system. Polynesian contends that its members do not conduct a business; that Pacific's proposed semipublic rates for Identifone, or its competitors, or Pacific's entry control system would be prohibitive in cost; that the semipublic rate ordinarily applies to providing a telephone for a customer at a business establishment for making telephone calls to other numbers and for receiving return calls; that Identifone and similar systems are one-way propositions where a call can be originated only at the entrance of a building to communicate with occupants in the building; that these calls are of a short duration compared to calls of unlimited duration permissible on residential flat rate service; and that Pacific is restricting its market competition.

Pacific presented evidence showing that the business rate applied to all service outside of an individual home or apartment; that an Identifone was located in an entryway to a building which

is a common area for all tenants and for the general public which includes businessmen; that the Identifone installation was not part of an individual apartment or residence; that because of public accessibility the semi-public rate would apply for Identifone installations, including an installation on a single-family residence.

Pacific's witness agreed that calls made on the Identifone would generally be of short duration as compared to normal calls.

Pacific contends that Identifone costs were part of the business of running an apartment house or similar facility and that the Identifone system is a selling point enhancing an apartment house operation. (There is no direct cost to the tenant; rent does not fluctuate with use of the Identifone.)

The pertinent portions of Rule 22 in Pacific's tariffs regarding the applicability of business and residence service classes are:

Business and Residence Service

"(A) Business rates apply at the following locations:"

* * *

- " 2. In boarding houses and rooming houses with more than five rooms available for rent (except as noted under 'B' below), colleges, clubs, lodges, schools, libraries, churches, lobbies and halls of hotels, apartment buildings, hospitals, and private and public institutions."

* * *

"(B) Residence rates apply at the following locations:

1. In private residences or residential apartments of hotels and apartment houses when business listings are not provided and when all stations are in locations which are a part of a domestic establishment, except that when residence extension service is provided at locations not a part of a domestic establishment under the provisions of Rules 2.(D), residence rates will apply.

* * *"

A Pacific entry control installation is a private line service operating outside of the normal switching message network equipment. A person seeking entry can contact the occupant of an apartment while the occupant's telephone is busy, and may use an instrument at up to four entrances to a building. Pacific's rates for the service include installation charges and monthly charges for the equipment to cover all costs of service including return on investment. There are flat rate monthly charges for a control line to each apartment and to each door control.

Identifone uses Pacific's normal switching network and therefore a caller can't get through when the occupant's telephone is busy. Pacific installs, operates, and maintains all of the entry control equipment except for the electrical door latch equipment and power supply. The customer updates the entrance directory (ies). Identifone performs similar functions on its equipment.

The Goldstein and Margolis apartment buildings cater to working couples. The number of entry calls per apartment in an apartment building using Identifone renting to families with children would reasonably be expected to be higher than in the Goldstein and Margolis buildings.

If the telephone bills for the Identifone lines in complainants' buildings were recalculated using semi-public service rates, the bills would approximately double, and in some cases the bill for an apartment building would be higher than the monthly charge would be for an entry phone and line rentals of a Pacific entry system installed on the same building.

Complainants stated that they did not see the need for a coupler in connection with an Identifone installation but they presented no evidence on this point. The Commission has recently issued an investigation on its own motion into the promulgation of a General Order providing for the procedures and standards to be followed

for the interconnection of customer - provided communications terminal equipment to the telecommunication facilities of intra-state telephone utilities, Case No. 9625. This might be the proper forum for complainants to resolve the issue of the need for a coupler on their equipment.

The Commission staff position is as follows:

- (a) A strict interpretation of the tariffs now on the books indicates that semi-public service is the lawful service to be offered.
- (b) Tariffs are intended to be logical, reasonable guidelines.
- (c) If there is cause to dispute the reasonableness of the tariffs they should be reviewed.
- (d) Generally the tariffs have been well designed and would indicate the service desirable under specific conditions.
- (e) A lower rate structure, the business message service rate, is appropriate for entrance systems where the use of the line is limited in scope and calls are of short duration.
- (f) Such a provision offered for these classes of users would create no discrimination but would assess the burden in proportion to the usage imposed on the network.

The staff further recommended that those parties using Identifone who were identified on this record, but who were not parties to the proceeding, should be granted a one-year stay from any increase over their present billing rates.

We concur with the staff's rationale for requiring a utility to file a tariff for entrance systems at business message service rates. We will not adopt the staff proposal for deferring

the application of these rates for certain Identifone customers because such an application would be discriminatory.

Identifone's rate and revenue relationships at business message service rates on Pacific's exchange equipment are reasonable when compared to those for Pacific's entry control system.

Findings

1. Business rates should be charged for serving Identifone installations. Pacific's tariffs (Rule No. 22, Sections (A)2. and (B)1.) prohibit residential flat rates for this service.

2. Pacific's proposal to charge semi-public rates for the Identifone lines does not adequately consider the limited scope or the limited usage of its equipment associated with the short duration of Identifone calls.

3. The business message service rate is reasonable for the Identifone system or for similar entrance systems.

4. Identifone's rate and revenue relationships at business message service rates on Pacific's exchange network are reasonable when compared to those for Pacific's entry control system.

5. Entrance systems should not be utilized for reaching outside numbers.

6. The complaint seeks the proper interpretation of Pacific's tariffs. Complainant suggests relief in the form of a separate rate which is not excessive, unjust, and discriminatory. The record supports the need for a separate schedule and in that context it is not necessary that 25 present or prospective Identifone customers sign the complaint.

Conclusions

1. Pacific should change its tariffs to provide for entrance systems at business message service rates. These rates are reasonable for this type of service.

2. Service provided under these tariffs should not be utilized for reaching outside numbers.

O R D E R

IT IS ORDERED that The Pacific Telephone and Telegraph Company shall file with this Commission revised tariff schedules providing for the application of its business message service rates for telephone lines serving building entry systems which have the limited capability of being used only for one way dialing to stations served through the entry system. Such filing shall comply with General Order No. 96-A. The effective date of the revised schedules shall be one day after the date of filing.

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

Dated at San Francisco, California, this 18th day of DECEMBER, 1973.

William J. Gussow President
[Signature]
[Signature] Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.