

Decision 90 03 013 MAR 14 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Robert David Heller,)
 Complainant,)
 vs.)
 Pacific Bell (U-1001-C),)
 Defendant.)

ORIGINAL

Case 89-10-043
(Filed October 26, 1989)

Robert D. Heller, for himself, complainant.
Kristin A. Ohlson, for Pacific Bell, defendant.

O P I N I O N

Summary of Complaint

On October 26, 1989, Robert David Heller (complainant) filed a complaint against Pacific Bell (defendant) requesting that the billing basis for three telephones in the community apartment building at 1960 Vallejo Street, San Francisco, be changed from business service to residential service.

Complainant states that one of the telephones is located at the front entrance of the building and is used as the doorbell system. It can only ring the ten apartments in the building.

Complainant further states that the other telephones, located inside the passenger and service elevators, are answered exclusively by an answering service and are solely for emergencies in the elevators.

Complainant avers that defendant's tariff schedule Cal. P.U.C. A2.1.22 Rule 22 is applicable to the matter at issue and argues that it should be interpreted to mean that the service being provided is residential in nature and not a business service.

Complainant requests that the billing basis for the three telephones be changed to residential service, that no charge be made for Zone 1 calls from these three telephones, and that defendant refund the amount due for overcharges for treating the telephones as a business service and for Zone 1 calls from these telephones.

Summary of Answer

Defendant agrees that the tariff schedule cited above is applicable to the matter at issue. Defendant then refers to different sections of the tariff schedule which defendant interprets to provide that the service should be considered a business service rather than a residential service.

Defendant further alleges that it is required by its tariff schedule Cal. P.U.C. A10.3.4A, second revised sheet 28, to charge a business line rate for the telephone located at the entrance of the building since it is used as an entry control service.

Defendant alleges that the other two telephones at issue are billed to "1960 Vallejo Inc.," a corporation, and "Hanford-Fruend & Co.," a real estate management company, respectively. Defendant states that these are business entities and argues that a business rate should therefore be charged for each of these phones.

Defendant finally argues that charging residential rates for these telephones violates § 453 of the Public Utilities Code.

Defendant denies that complainant is entitled to any relief and requests that the complaint be dismissed.

Hearing

An evidentiary hearing was held on January 11, 1990 in San Francisco before Administrative Law Judge Texeira. Robert D. Heller testified for complainant and Carolyn S. Bur testified for defendant.

Complainant testified that the bills for the telephone used as the entry control system were \$165.66 for the first ten

Discussion

Complainant has conceded that the telephone used as an entry control system is a business service, so that the only issue to be decided in this proceeding is to determine if the telephones in the elevators should be billed as a business or residential service.

In a complaint proceeding such as this, the complainant bears the burden of proof. In this case, the parties agree that the service at issue is governed by defendant's Tariff Schedule A.2.1.22 Rule No. 22, Business and Residence Service, which provides in pertinent part as follows:

"A.1.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 in b. following), colleges, clubs, lodges, schools, libraries, churches, lobbies and halls of hotels, apartment buildings, hospitals and private and public institutions, and where the service is not subject to semi-public or public use."

* * *

"(5) At a residence location regardless of the form of listing furnished, where service is provided at a location which is not part of a domestic household."

* * *

"b. Residence rates apply at the following locations:

"In private residences or residential apartments of hotels and apartment houses, in the residential premises of boarding and rooming houses, the homes

CORRECTION

THIS DOCUMENT HAS
BEEN REPHOTOGRAPHED
TO ASSURE
LEGIBILITY

months of 1989. If the telephone had been billed as a residential telephone, the bills would have been \$83.50 for the same period. This was based on a residential base rate of \$8.35 per month.

Complainant further testified that the bills for the elevator phones totalled \$144.44 for the first nine months of 1989 and would have been \$75.14 for the same period if the service was treated as a residential service rather than a business service.

Complainant conceded in his closing argument that defendant's tariffs did provide that the telephone used as the entry control system should be considered a business phone. However, complainant did not agree that the telephones in the elevators should be considered a business service and repeated his petition that these telephones be considered a residential service.

Defendant's witness Carolyn Bur, a business office manager for four years, testified that defendant's tariffs clearly provide that an entry control service is a business service.

The witness further testified that complainant had incorrectly calculated the bill assuming the service was residential rather than business and that the proper rate differential for the entry control telephone would be about 50¢ per month, excluding local call charges.

Defendant's witness also testified that the tariffs provide that business rates apply to apartment buildings where service is provided at a location which is not part of the domestic household and that residential rates apply to apartment houses where the predominant use of the service is social and domestic in nature rather than professional, occupational, and administrative. The witness stated that the elevator phones would be considered as serving an administrative function for people in the building. The witness finally testified that this issue has been dealt with informally by the Commission, and the Commission has always upheld defendant's interpretation.

Discussion

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In a complaint proceeding such as this, the complainant bears the burden of proof. In this case, the parties agree that the service at issue is governed by defendant's Tariff Schedule A.2.1.22 Rule No. 22, Business and Residence Service, which provides in pertinent part as follows:

"A.1.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 in b. following), colleges, clubs, lodges, schools, libraries, churches, lobbies and halls of hotels, apartment buildings, hospitals and private and public institutions, and where the service is not subject to semi-public or public use."

* * *

"(5) At a residence location regardless of the form of listing furnished, where service is provided at a location which is not part of a domestic household."

* * *

"b. Residence rates apply at the following locations:

"In private residences or residential apartments of hotels and apartment houses, in the residential premises of boarding and rooming houses, the homes

of nurses, and all other premises of strictly a residential nature as long as business listings are not provided and where the predominant use of the service is social and domestic in nature rather than professional, occupational and administrative."

The fact that the service is billed to a corporation which would at least imply that the service is a business service is not compelling in this instance. Therefore, the case turns on whether the predominant use of the service is business or residential in nature.

Is a telephone in an elevator located in a residential building providing a business service or a residential service? If the elevator was located in a private residence, the telephone in that elevator would be providing a residential service, even if connected to an answering service and only used for emergencies in the elevator. However, if the telephone was located in the elevator of an apartment building where the tenants rented rather than owned stock in a corporation, there is no question that the service would be considered a business service.

The situation at issue is somewhat between the two situations described above, but somewhat closer to the rental apartment building than the private residence. The telephone is not predominantly used for social or domestic purposes in either case. However, the use of the telephone in the apartment building is primarily an administrative function, and therefore must be considered a business use according to the tariffs.

Findings of Fact

1. Three telephones in the community apartment building at 1960 Vallejo Street, San Francisco, are being billed for business service by defendant.

2. Complainant requests that service to these three telephones be changed to residential service.

3. One of the telephones is located at the front entrance of the building and is used as an entry control system.

4. Defendant's tariffs specifically provide that telephones used as entry control systems are to be billed at a business line rate.

5. The other two telephones at issue are located in elevators in the apartment building and are used solely to report emergencies in the elevators to an answering service.

6. Such service can not be considered residential service because it is not predominantly social and domestic in nature.

7. The service must be considered as a business service because it serves a predominantly administrative function, even though it is located in an apartment building that is completely residential.

Conclusions of Law

1. Defendant's tariffs provide that the telephone used as an entry control system is a business service.

2. Telephones in elevators in residential buildings should be considered a business service because the service is predominantly administrative in nature.

3. Complainant's request for relief should be denied.

ORDER

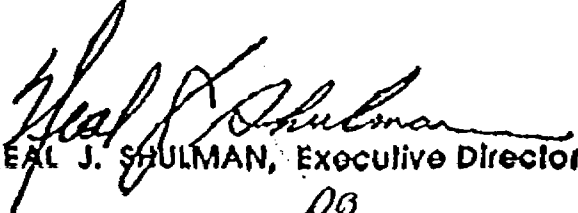
IT IS ORDERED that the complaint of Robert David Heller against Pacific Bell is denied.

This order becomes effective 30 days from today.

Dated MAR 14 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. CHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SHULMAN, Executive Director
PS