

DEC 19 1990

Decision 90-12-064 . December 19, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

P. Bogart,

Complainant,

v.

Pacific Bell, (U 1001C),

Defendant.

ORIGINAL

(ECP)

Case 90-09-022

(Filed September 10, 1990)

P. Bogart, for himself, complainant
Phyllis J. Conran, for Pacific Bell, defendant.

O P I N I O N

Public hearing in this matter was held before Administrative Law Judge Barnett on November 9, 1990.

Complainant testified that he is retired and rents a room at 6253 Hollywood Boulevard, Los Angeles, California, No. 614A. In that room he has a bed and his personal belongings, such as clothes, books, and a hot plate. He said that other people also live at 6253 Hollywood Boulevard. His residence is in Oregon and he uses the Hollywood Boulevard address when he visits Los Angeles. In early 1990 he ordered a residential telephone at that address for his personal, nonbusiness, use. After taking the order the telephone company refused to install a residential phone but only agreed to install a telephone at the business rate. He said that under protest he paid the installation charges and phone charges for a business telephone. From that time to the present he has been paying the business rate charges. He requests a refund of all charges levied for installation at the business rate and for the difference between the business phone and the residential phone

rate, as well as a \$500 penalty for loss of time, effort, and emotional distress.

Defendant's witness testified that complainant requested a residential service at 6253 Hollywood Boulevard, which is an office building. The witness testified that complainant has been billed at the business service rate since installation on January 20, 1990. He testified that Pacific Bell's (PacBell) Schedule Cal PUC No. 2.1.22 states, "Business rates apply at the following locations: (1) in offices, stores, factories and all other premises of a business nature and at any other premises where the substantial and predominate use of the service is professional, occupational or administrative in nature, rather than social or domestic." PacBell Schedule Cal PUC No. A2.1.1, Rule No. 1, defines residence service as "exchange telephone service furnished a customer at a residence or place of dwelling where the actual or obvious use is for domestic purposes."

He testified that 6253 Hollywood Boulevard, Los Angeles, is an office building managed by B. G. & R. Enterprises and is not a domestic household and, therefore, business rates apply. He went to the building and observed that there is a suite numbered 614 and that 614A is one of the rooms in the suite. He said that the suite is occupied by a real estate firm. He tried to call complainant to be admitted to complainant's room but complainant never returned the call. He presented Exhibit 1, an affidavit from the leasing agent of the building, which states that the building is to be occupied for commercial use only, and has no facilities for residential living. The witness offered in evidence complainant's telephone bills for September and October 1990 which show that the only calls made from that telephone were all made to one number in Santa Monica, which is the telephone number of a real estate firm. Of over 80 calls made in the two-month period every single one was to the Santa Monica number and all were made during normal business hours. He concluded by saying that when you call complainant's

telephone you get a ring which indicates that the telephone is either in a computer mode or a fax mode.

Findings of Fact

1. The address, 6253 Hollywood Boulevard, Los Angeles, California, is the address of a commercial building. Suite 614 is the office of a commercial real estate firm.

2. Complainant has a bed and personal belongings in Suite 614A.

3. Complainant's telephone at the location of 6253 Hollywood Boulevard, No. (213) 467-5824, has been used exclusively to place numbers to a phone in Santa Monica which is listed to a company called Data Quick Corporation, which is a real estate firm. All calls were made during regular business hours. No calls were made to a nonbusiness phone.

4. The telephone (213) 467-5824 is a telephone on business premises used for business purposes and should be billed at the business rate.

Conclusion of Law

The Commission concludes that defendant has billed complainant under the proper tariff and at the proper rate and the complaint should be denied.

ORDER

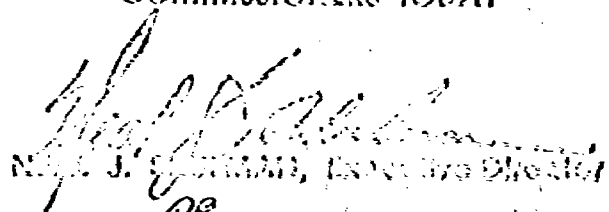
IT IS ORDERED that the complaint in C.90-09-022 is denied.

This order is effective today.

Dated December 19, 1990, at San Francisco, California.

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

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


NEIL J. SULLIVAN, Executive Director