

APR 24 1991

Decision 91-04-056 April 24, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

St. Francis Gardens Owners  
 Association, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 General Telephone Company, )  
 )  
 Defendant. )

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**ORIGINAL**

Case 90-12-020  
 (Filed December 10, 1990)

OPINION

Statement of Facts

GTE California Incorporated (GTEC) (U 1002 C), herein captioned as General Telephone Company, provides telephone service for compensation in various areas of California, including the City of Santa Barbara. As a telephone corporation providing such service for the public, it is a public utility (Public Utilities (PU) Code § 216(a)) subject to regulation by this Commission.

St. Francis Gardens Owners Association (St. Francis Gardens) is a residential nine-unit condominium located in Santa Barbara. The condominium is served by an elevator which since November 25, 1985 has been equipped with an emergency service telephone connected solely to an alarm company and the telephone cannot be used for any other purpose. The service furnished by GTEC is Business Flat Rate Service with a Touch Call Line terminating on Customer Provided Equipment. St. Francis Gardens does not subscribe to the Inside Wire Maintenance Contract. The monthly service rate has been \$23.95 plus applicable taxes, surcharges, and an interstate network access charge. The emergency service is held in the name of the St. Francis Gardens Owners Association.

The owners association has complained about the monthly rate being charged, contending that the service should be billed as residence service rather than business service, and that the association accordingly is being "grossly overcharged."<sup>1</sup> An informal complaint filed with the Consumer Affairs Branch resulted in a finding that the utility was billing in compliance with its tariffs on file with the Commission. However, Consumer Affairs also pointed out that Business Local Measured Service would be implemented in the association's area on March 10, 1991 and that the monthly rate would then decrease to \$10.95 plus usage. This information, however, did not satisfy the association which has since filed the present complaint signed by its treasurer.

Discussion

PU Code § 1702 and Rule 9 of this Commission's Rules of Practice and Procedure, as relevant to this complaint, provide that while any person may file a complaint setting forth anything a utility has done or failed to do in violation of any provision of law, or rule or order of this Commission, the Commission is not to entertain, except on its own motion, a complaint as to the reasonableness of any rate or charge unless the complaint is signed by at least 25 actual or prospective telephone service customers.

The present complaint does not state a cause of action under either the PU Code or our Rule in that it states no facts showing that GTEC has acted or failed to act in violation of any law, or of any order or rule of the Commission. A public utility's tariffs filed with the Commission have the force and effect of law (Dollar-A-Day Rent-A-Car Sys. v. Pac. Tel. & Tel. Co. (1972) 26 CA 3d 454). In providing emergency telephone service from the condominium's elevator to the alarm company, GTEC has acted in

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<sup>1</sup> The residence service rate was \$9.75. Under measured service it would be \$5.25.

accordance with all the terms and conditions contained in its tariffs on file with this Commission.

These filed tariffs contain a schedule devoted to definitions, as well as the utility's Rule 22. Included therein are definitions of "Business Service" and "Residence Service."<sup>2</sup> The former relates to the furnishing of telephone service for business purposes, whereas the latter relates to the furnishing of telephone service for domestic, nonbusiness pursuits. The emergency telephone in the condominium elevator cannot be used for domestic pursuits; it can only be used to call the alarm company. Rule 22 A.4 provides that business rates apply in places of dwelling when the principal use of the service is of a business, professional, or occupational nature. Residential Service applies in locations where the actual or obvious use of the service is domestic. Elevator emergency telephone service to an alarm company is a business usage, and scheduled rates must be inflexibly enforced in order to maintain equality between all without preferential privileges of any sort.

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2 GTEC Schedule Cal. P.U.C. No. D&R provides these definitions:

Business Service

Exchange service furnished to individuals engaged in a business, firms, partnerships, corporations, agencies, shops, works, tenants of office buildings, hotels receiving individual or party line service, and individuals conducting any business or practicing a profession having no other office than their residence and where the actual or obvious use of the service is principally or substantially of a business, professional or occupational nature.

Residence Service

Residence service is exchange service furnished customers where the actual or obvious use is for domestic purposes.

Findings of Fact

1. GTEC is a telephone corporation subject to regulation by this Commission.
2. GTEC has acted in accordance with the terms and conditions contained in its tariffs filed with this Commission.
3. The complaint fails to state or allege any violation of law or of any rule or order of this Commission.
4. Elevator emergency telephone service to an alarm company is a business usage.
5. The complaint is signed by the treasurer of the homeowners association.

Conclusions of Law

1. The complaint fails to state a cause of action under PU Code § 1702.
2. The complainant does not have standing to complain of the reasonableness of the rate or charges made by GTEC under Rule 9 of the Commission's Rules of Practice and Procedure.
3. The complaint should be dismissed.

O R D E R

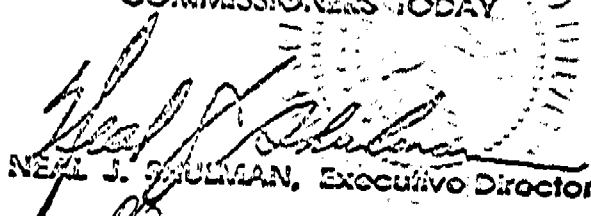
IT IS ORDERED that Case 90-12-020 filed December 10, 1991 is dismissed.

This order becomes effective 30 days from today.

Dated April 24, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
JOHN B. OHANIAN  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

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

  
NEAL J. SHULMAN, Executive Director