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Decision \_\_\_\_\_ JUN 15 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Glenn Lichter, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 Pacific Telephone, )  
 )  
 Defendant. )

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Case 11057  
(Filed December 22, 1981)

Glenn Paul Lichter, for himself,  
 complainant.  
Marion J. Stanton, Attorney at Law,  
 for The Pacific Telephone and  
 Telegraph Company, defendant.

O P I N I O N

This complaint, as filed, concerns disputed bills and whether defendant's tariffs permit semipublic, coin telephone service at complainant's premises. However, before hearing was held in this matter the parties resolved all billing questions and agreed that the funds on deposit with the Commission should be released to defendant. The hearing on the remaining issue was held April 5, 1982 before Administrative Law Judge Main in Los Angeles.

Defendant must provide semipublic, coin telephone service in accordance with its filed tariffs:

Schedule Cal. P.U.C. 36-T, 6th Revised Sheet 14, Rule 1, defines "semi-public service" as "a customer telephone service designed for use of a customer and the public in locations somewhat public in character."

Schedule Cal. P.U.C. 4-T, 5th Revised  
Sheet 41, Exchange Telephone Service,  
provides in part:

"Semipublic service will be furnished:

- "a. in semipublic locations, such as stores, shops, restaurants, theaters, etc.,
- "b. in apartment houses and rooming houses, except in connection with customer-provided building entry systems, hotels, motels and trailer courts except that semipublic service without coin box will not be furnished where hotel PBX service is furnished,
- "c. where there is collective use of the service by a number of guests, members, employees or occupants, or a combination of transient and customer use,
- "d. where equipment, facilities and operating conditions permit."

Complainant testified that the coin telephone is located in his house, that he has a business license for Star Enterprises which has done some mail order business and now deals in used books, that he rents out some of the rooms in his house, and that Star Enterprises and his renting out rooms are not related businesses. His testimony also disclosed:

1. The house has four bedrooms, three of which are rentals. At present only one is rented and the other two are listed at Orange Coast College as rooms available for renting. He is unaware that the City of Costa Mesa requires a license or permit to operate a rooming house.

2. The coin telephone is located in one of the rental rooms with a bar separating it from the bedroom itself.
3. His business, Star Enterprises, does not have either employees or set business hours, nor do customers come to his residence.
4. He explained his need for semipublic, coin telephone service as follows:

"Because I have had renters in the house previously who have used existing phones that were there and have run up exorbitant bills that I have had to take care of. And to resolve that problem, by having just a pay phone in the house, if a renter desires to have a phone, fine. They could put their own phone in. If not, there is a phone available to be used for whatever purposes, but it doesn't come out of my pocket except for the expense, just the monthly expense. I don't have to worry about anybody charging a lot of calls to my phone.

"I got the idea from the phone company in the office in Costa Mesa. I told them I was having exorbitant bills, and they said: The only thing that you can do is put in a pay phone.

"And I said: How can I do that? And he said: You would need a business license."

5. He has a business telephone (i.e., Glenn Lichter dba Star Enterprises) and "it is getting the use of one employee, be it me, plus other people in the house."

It is complainant's position that defendant's tariffs permit his service because he operates both a business and rents rooms at his house. He feels his service has been singled out for special scrutiny and an unfavorable tariff interpretation by defendant because of disputed bills. In that regard he testified that in his local area he has observed semipublic telephones at 10 locations that are inaccessible to the public. The specific examples he cited are:

"Right by my house there's a local liquor store that right there behind the counter is a pay phone that says: For employees' use only.

"Right down the street there is a gas station, self-serve gas station. Locked inside the booth is one person operating as a cashier with a pay phone inside there, only for the employees' use.

"There is no way anyone would be allowed in the cashier's cage."

Defendant's division sales manager responsible for the placement of coin telephones in California testified that he visited complainant's premises and found a single-family residence, in an exclusively residential community, with "no indication of any business at all." The telephone was located in a room which "could have been construed as a family room off the kitchen. There was a bed on the floor as you enter and a bar that divides the room, and this is on the other side of it." In his testimony he indicated that of defendant's approximately 65,000 semipublic service subscribers, about 700 are classified as rooming houses which he described in this fashion:

"Most of those we find immediately adjacent to universities, colleges, the usual when one thinks of a rooming house or boarding house, where there are many rooms for rent, each with separate doors, each separately locked. And we only install a telephone in a common area such as the entrance hall or perhaps the eating room if there is one.

"That's an example of what we consider to be a rooming house."

The testimony of defendant's witness also disclosed:

1. Defendant has had problems gaining access to complainant's premises to make the collection from the coin telephone. An arrangement was made, but not consummated, for complainant to provide defendant with a key to his house.
2. Defendant has keys to the premises for approximately 2,500 public and semipublic telephones in order to make collections. Defendant's witness maintains that this is an unsound practice that will have to be phased out: "The idea of sending someone to a personal residence or a residence, be it male or female, to enter during the day or the security in a business is such that it's a very poor policy, and we have tried not to expand it, and we'll get out of that business."
3. The City of Costa Mesa has not issued a rooming house license to complainant.

It is defendant's position that whether complainant's business as Star Enterprises and the rooms he rents out in his home meet the tariff requirements for semipublic, coin telephone service is a judgment call, and it is the judgment of defendant's witness that the requirements are not met.

Discussion

From the evidence it is clear that complainant wants semipublic, coin telephone service because he rents out rooms in his house.

Defendant's tariffs permit applications of semipublic service less public in character than contemplated in the tariff definition of that service: For example, "where there is collective use...by...employees or occupants, ..." falls considerably short of "for use of a customer and the public in locations somewhat public in character." It is up to defendant to propose more restrictive tariffs if in its judgment they are needed.

Complainant rents out rooms and also has a business. He should continue to be furnished semipublic telephone service, subject to either his providing defendant a key to his house or making someone available at his house during normal business hours.

Findings of Fact

1. Complainant and defendant have agreed the \$60.44 on deposit with the Commission should be released to defendant.

2. Semipublic telephone service differs from public telephone service in that the former is a customer-subscribed service.

3. Complainant subscribes to semipublic, coin telephone service as Glenn Lichter dba Star Enterprises. The coin telephone is in his four-bedroom house, which is in a residential area of the City of Costa Mesa. Three of the four bedrooms in his house are available as rentals. ✓

4. Complainant has a business license for Star Enterprises. Through Star Enterprises he deals in used books and has engaged in a mail order business. Complainant does not have employees or set business hours, nor do customers come to his residence. Complainant's renting out of rooms is not a business that he engages in through Star Enterprises.

5. The City of Costa Mesa requires a license to operate a rooming house; complainant was unaware of this requirement.

6. Defendant's tariffs include rooming houses in the list of examples of where semipublic telephone service is expressly furnished but neither define the term nor describe or otherwise place limitations on the kind or extent of room rentals necessary to constitute a rooming house.

7. Defendant's tariffs permit semipublic service "where there is collective use of the service by...employees or occupants, ..." This tariff provision implies a narrower application of semipublic service than conveyed in its tariff definition "[a] customer telephone service designed for use of a customer and the public in locations somewhat public in character."

8. Discontinuing complainant's semipublic, coin telephone service would not be compatible with Findings 6 and 7.

9. Defendant has had difficulty gaining access to complainant's premises to make the collection from the coin telephone.

10. Defendant has keys to the premises for approximately 2,500 public and semipublic telephones which represent about 1 1/2% of the total number of those telephones. Defendant asserts that security considerations make this practice unsound and that it will have to be phased out. Complainant should not be singled out in a prospective phase-out of that practice.

11. An arrangement was made, but not consummated, for complainant to provide defendant with a key to his house.

Conclusions of Law

1. The \$60.44 deposit made by complainant should be released to defendant.
2. Complainant's semipublic, coin telephone service should not be discontinued by defendant, provided that the condition imposed by the following order is fulfilled.

O R D E R

IT IS ORDERED that:

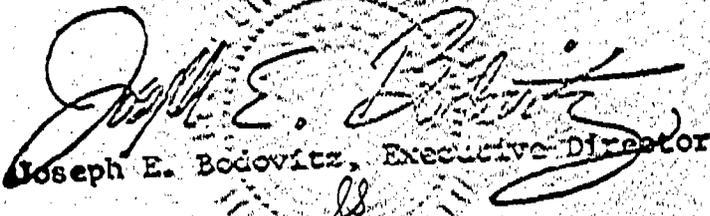
1. Complainant Glenn Lichter's deposit of \$60.44, and any other deposit made by complainant in connection with this complaint, shall be disbursed to defendant Pacific Telephone.
2. Complainant shall continue to qualify for semipublic, coin telephone service provided that defendant can gain access to his house during normal business hours.

This order becomes effective 30 days from today.

Dated JUN 15 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director

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