

Decision 93784 DEC 1 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Saul Rouda and Charlotte von Segesser, )  
 )  
 Complainants, )  
 )  
 vs )  
 )  
 Pacific Telephone and Telegraph Company, )  
 )  
 Defendant. )

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Case 10966  
(Filed March 17, 1981)

Saul Rouda, for Charlotte von Segesser and himself, complainants.  
Marion J. Stanton, Attorney at Law, for defendant.

O P I N I O N

Complainants live on a houseboat moored about 100 feet from shore, at Gate 5, Waldo Point Harbor, just north of Sausalito, in Marin County.

The complaint alleges that telephone service was lost when complainants moved to a new location in Waldo Point Harbor. It is alleged that defendant's representative promised service on several occasions when contacted by telephone, but no telephone was ever installed. Defendant's representative finally came out and advised that Waldo Point Harbor has denied defendant's employees access to install complainants' telephone service. The complaint further alleges that a business telephone was installed where von Segesser is employed, but defendant has refused to classify this service as

residential, at a lower charge than business service. The complaint prays that defendant be required to install a residential telephone on complainants' houseboat and that defendant be required to refund the difference between business and residential telephone service. Complainants also request reimbursement for the installation of a conduit which they allege was extended after one of defendant's employees advised a conduit would be required to enclose the wire which was to be extended to their premises. The complaint also requests that service be extended to all other members of the houseboat community who request it.

The answer was filed on May 22, 1981. It was admitted that von Segesser had telephone service prior to complainants' moving to their new location at Gate 5, Waldo Point Harbor. It is alleged that complainants were warned that Waldo Point Harbor would not allow telephone installers or other employees to enter its property to install complainants' telephone. It is alleged that Rouda was advised that his grievance was with Waldo Point Harbor and the telephone company was not directly involved. It is further alleged that an employee visited complainants' houseboat in May 1980 and refused to enter because of unsafe conditions, defined as a shaky gangplank which was supported by rotting and deteriorated piling a few inches above the water level offshore.

A hearing was held on August 7, 1981 in San Francisco, before Administrative Law Judge Edward G. Fraser. The matter was submitted after final argument on the date of hearing.

Complainants' Testimony

Rouda testified for the complainants. He stated that complainants moved to their present location in April or May 1979.

Wes Olson, a representative of defendant, advised that complainants' grievance was with their landlord and that a complaint should be filed. Complainants filed a complaint which was rejected by the Commission since they had listed Waldo Point Harbor as the defendant. They were advised that only public utilities could be named as defendants. In early July 1979 Olson advised that conduits were needed to support the telephone wire. Rouda installed a conduit and paid for it. He was again refused service a week later. A business telephone was installed on July 1, 1980 at the clothing store where von Segesser works. A secretarial line was extended to a telephone answering service on July 7, 1980. This action was at complainants' request since they could not obtain a residential telephone. The store is 300 yards from complainants' residence and is out of reach when they are at home. The answering service is employed so there is someone to answer the telephone in the evenings when calls come in from family or friends. Rouda requested that he be charged a residential rate for the telephone in the store, but was denied this privilege. He was advised that defendant is required to classify it as a business service and to charge him the higher business rate. He admitted that a coin telephone is located on the Waldo dock, but this does not substitute for a residential telephone.

Rouda testified that a landlord should not be allowed to interfere with a tenant's rights to telephone service as long as the latter pays for it. He does not consider the entrance to his home dangerous, since more than 20 adults and children use it daily at all times of the day and night. No injuries have occurred and there have been no complaints. Rouda further established on cross-examination that service to complainants' boat alternatively could be provided

from the new "D" dock which meets building code provisions. "D" dock is located approximately 40 to 50 feet from complainants' boat. Rouda also suggested that service could be provided to a neighbor's boat located only two feet from the "D" dock which complainants would then share with the neighbor. The neighbor, Norman Carlin, is apparently in agreement.

A friend also testified for complainants. He is a caretaker on a boat owned by another, which has telephone service in the owner's name. He has repeatedly requested a telephone in his own name and has been refused. He was advised that he already has a telephone and has no need for another instrument. He admitted that he can use the telephone in the boat for incoming or outgoing calls, but would like to have his own telephone so he can take it with him if the owner returns and he has to leave his caretaker job.

Defendant's Evidence

Defendant provided testimony from three witnesses and various documentary evidence.

Waldo Point Harbormaster testified that the entire Gate 5 area is being converted into a dock with 265 separate moorings. Telephone and utility service is provided for all paying tenants. Rouda and others pay no rent and also do not pay for utility service, nor for garbage collection. He placed Exhibits 4, 5, 6, and 7 in evidence, which are photographs of the gangplank from shore to Rouda's boat. He testified that the gangplanks are not safe. They have been constructed with whatever the tenants had available. None of the work was done by Waldo Point Harbor. He did testify, however, that the nearby "D" dock, which could serve complainants, met applicable building code standards, but that he would not permit such service to unpaying and/or temporary tenants adjacent to that dock.

A civil engineer testified that he inspected the walkway that provides access to complainants' houseboat and found it to be unsafe and a public nuisance. He checked the condition at low tide. He found several support poles with the upper portion separate from the lower. Other poles were rotted through or full of worm holes.

All were unsafe and deteriorating. The gangway is too far gone to be repaired. It will be necessary to provide a new dock to ensure a safe means of access.

Defendant's final witness was Wes Olson, the supervisor for southern Marin County. When he received complainants' request for service he called Waldo Point Harbor for authority to cross its property and right of entry was denied. Complainants were so advised. Members of the Communication Workers of America (CWA) have been told by their union officers not to enter Gate 5 of the Waldo Point Harbor area due to the unsafe condition of the area. He stated that the access walks are over the bay and are mostly in a deteriorating state; the telephone poles are dangerous and draped in unauthorized wiring installed by unknown individuals. One test registered 220 volts on a telephone line which was being used by someone to supply current.

This testimony was supplemented by a letter dated June 1, 1981 from the chief electrical engineer of the Commission to Pacific Gas and Electric Company which verifies that an inspection by Commission engineers on May 8, 1981 confirmed that the area is unsafe (Exhibit 15). A second letter from a Commission engineer dated August 3, 1981 identifies the specific safety violations (Exhibit 16). There is also an August 3, 1981 letter from the Ygnacio office of the CWA which states that members of the union have been told not to accept employment on the Waldo Point Piers due to the hazards prevalent in the area (Exhibit 14).

#### Discussion

The instant proceeding is but one chapter in an ongoing legal battle between residents of Waldo Point Harbor and their landlord. Our role in this proceeding, however, is not to take sides with respect to these landlord-tenant problems. Rather, our obligation is to ensure that customers of the defendant utility are furnished adequate and reliable service on a nondiscriminatory basis.

The evidence in this proceeding focused on both the landlord-tenant issues and on the safety of the premises at the

complainants' location at Waldo Point Harbor. Our concern is with the latter.<sup>1</sup> Much testimony was presented with respect to the dock, known as Golden Dragon Pier, which provides access to complainants' houseboat. The evidence is conflicting. Defendant's engineer testified that the dock is unsafe, although he acknowledged that he had not made a detailed study of the dock's structure, and was not aware of added supports which had been constructed. Rouda, on the other hand, testified that the dock to his residence is sufficiently secured to allow persons to safely cross it, noting the daily crossings by 20 adults and children who have experienced no difficulty and have voiced no complaint.

We do not believe that the record in this case is clear enough to permit us to conclude that the dock to complainants' residence is so unsafe as to prohibit reasonably safe access. We are concerned, however, that complainants be given telephone service. The record is clear that service to the complainants' residence can reasonably be provided from the "D" dock which all parties agree meets applicable safety standards. Complainants are even willing to receive service at their neighbor's houseboat along "D" dock. Their neighbor has apparently agreed to this. We will therefore order defendant to provide service to the complainants from the "D" dock, either to the neighbor's boat located two feet from the dock or to complainants' boat, located approximately 40 to 50 feet from the dock.

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<sup>1</sup> The record indicates that another resident of this houseboat community is presently served by defendant and has been served for several years. The fact that the landlord has allowed such service implies that an easement was given to permit access to the defendant to render such service. The harbormaster is concerned, however, that access be given only to paying residents.

The facts of this case are not materially different from those in Lyons v Pacific Telephone (1979) D.90257 in C.10735. In that case similar allegations of unsafe conditions and denial of access to complainants' residence were made by defendant. Defendant, however, did comply with our order to provide telephone service. We think there is reasonably safe access to install telephone service on behalf of the complainants in this case as well.

By this decision we reaffirm our concern that customers be provided utility service without discrimination. We recognize the universal necessity of having telephone service in health and welfare emergencies, in applying for a job, and in contacting family and friends.

As a separate issue, complainants have requested that they be reimbursed for the difference between business and residential rates during the entire period they were charged for a business telephone. There is insufficient evidence to support this request. Defendant's tariff requires that the higher business rate be charged whenever a telephone is installed in a place where business is conducted. Complainants requested that service be provided in the clothing store and defendant complied. Defendant should not be required to pay for the conduit. The evidence is conflicting but defendant's seems the most persuasive. Complainants were aware of the adamant position of their landlord and of defendant's view on the unsafe condition of the premises. It is also obvious that many residents were stringing wires and extending facilities to make their own connections to whatever was available. Thus to require defendant to pay for a facility that it neither authorized nor installed may encourage others to seek reimbursement of unauthorized installations of equipment.

Findings of Fact

1. Complainants have been refused telephone service on their houseboat because right of access to install the telephone has been denied by the lessor and the premises have been classified as structurally unsafe by defendant and by CWA which represents defendant's nonmanagement employees.

2. Complainants have a business telephone in a clothing store located about 300 yards from their houseboat, which is inadequate for residential purposes.

3. Dock "D" at Waldo Point Harbor is a reasonably safe alternative source of access to complainants' houseboat which meets applicable safety standards.

4. Complainants are willing to share telephone service at a neighbor's boat located approximately two feet from Dock "D" with the neighbor's consent.

5. Telephone service is essential for communication and as a means of obtaining help in medical or other emergencies.

Conclusions of Law

1. Complainants have no right to reimbursement for the difference between the business and the residential telephone rate during the period they had a business telephone, nor are they entitled to reimbursement from defendant for the expense of extending a conduit to carry electric wires.

2. The request for residential telephone service to complainants should be granted.

3. The other relief requested should be denied.



4. Complainants' lack of nearby telephone service requires that relief be provided without delay. This decision will therefore be effective today.

**O R D E R**

IT IS ORDERED that:

1. The Pacific Telephone and Telegraph Company shall provide telephone service to Saul Rouda and Charlotte von Segesser either at their houseboat or at their neighbor's houseboat within 7 days of the date of this order.

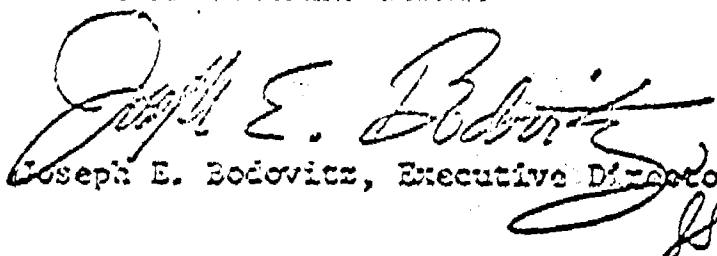
2. All other requested relief is denied.

This order is effective today.

Dated December 1, 1981, 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