

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into) DOCKET NO. 920837-TL
proper tariffing of telephone) ORDER NO. PSC-94-1180-FOF-TL
service for elevators and common) ISSUED: September 27, 1994
areas within residential)
facilities.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING

APPEARANCES:

MICHAEL A. GROSS, Esquire, PL-01, The Capitol, Tallahassee, Florida 32399-1050, on behalf of Robert A. Butterworth, Attorney General of the State of Florida.

JEFF WAHLEN, Esquire, Post Office Box 165000, Altamonte Springs, Florida 32716-5000, on behalf of Central Telephone Company of Florida and United Telephone Company of Florida.

KIMBERLY CASWELL, Esquire, P. O. Box 110, MC 7, Tampa, Florida 33601, on behalf of GTE Florida Incorporated.

ROBERT G. BEATTY, Esquire, and PHILLIP CARVER, Esquire, 150 South Monroe Street, Suite 400, Tallahassee, Florida 32301, on behalf of Southern Bell Telephone and Telegraph Company.

HAROLD McLEAN, Esquire, Office of Public Counsel, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400, on behalf of the Citizens of the State of Florida.

MICHAEL BILLMEIER, Esquire, and TRACY HATCH, Esquire, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32399-0863, on behalf of the Commission Staff.

PRENTICE P. PRUITT, Esquire, 101 East Gaines Street, Tallahassee, Florida 32399-0863, on behalf of the Commissioners.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

FINAL ORDER

BY THE COMMISSION:

I. Background

On February 19, 1992, Clipper Bay Condominium Association, Inc. (Clipper Bay) and several other condominium associations filed a complaint against United Telephone Company of Florida (United) regarding the rates charged for elevator telephones. On March 16, 1992, United filed its answer to Clipper Bay's Complaint and a Motion to Dismiss. On March 24, 1992, the Office of Public Counsel (OPC) filed a response to United's Motion to Dismiss.

By Order No. PSC-92-0625-FOF-TL, issued on July 7, 1992, we found that, under United's current tariff, the elevator telephones at issue were appropriately charged business rates. However, we acknowledged that for electric service, the common areas of condominiums are billed as residential. Thus an issue concerning the appropriate rates to charge for telephone service in condominium elevators was included in the United Telephone rate case (Docket No. 910980-TL).

On July 20, 1992, OPC filed a protest to our July 7, 1992 Order issued in the Clipper Bay complaint docket. Since all local exchange company (LEC) tariffs at that time contained essentially the same criteria for the application of rates, and any decision made in the United rate case would affect all LECs, we determined that it was most appropriate to address the issue in a generic proceeding. This docket was opened to investigate the proper tariffing of telephone service for elevators and common areas within residential facilities. Consequently, OPC withdrew its protest to the Order issued in the Clipper Bay Docket and that docket was closed.

By Order No. PSC-93-1127-FOF-TL, we proposed that business rates were appropriate for telephone service located in elevators and common areas of condominiums and cooperative apartments as provided in each of their respective tariffs. On August 19, 1993, Clipper Bay filed a protest to that Order and requested a formal hearing under Section 120.57, Florida Statutes.

Parties intervening in this docket included Clipper Bay Condominium Association (Clipper Bay), Cinnamon Cove Terrace Condominium I Association (Cinnamon Cove), Estero Sands Condominium Association (Estero), the Office of Public Counsel (OPC), the Office of the Attorney General (Attorney General), Central Telephone Company of Florida (Centel), United Telephone Company of

Florida (United), GTE Florida Incorporated (GTEFL), and Southern Bell Telephone and Telegraph Company (Southern Bell). Clipper Bay, Cinnamon Cove, and Estero did not file pre-hearing statements, participate in the hearing, nor file post-hearing statements. Pursuant to Section 25-22.056(3)(a),(b), Florida Administrative Code, Clipper Bay, Cinnamon Cove, and Estero have waived their positions and were dismissed from this proceeding.

Order No. PSC-94-1080-PHO-TL set forth the issues to be addressed during this proceeding. The hearing on these issues was held May 25, 1994. Among the issues addressed were the requirements of Florida Law regarding devices for communication in a condominium elevator, the available technology, and this appropriate rates for interconnection with the local exchange companies. Our decisions regarding these issues are set forth below.

II. Legal Requirements

The parties did not contest the applicable legal requirements. The parties proposed following stipulation:

Generally, elevators installed in Florida since 1978 are required to have a "means of two-way conversation between the car and a readily accessible point outside the hoistway which is available to emergency personnel (telephone, intercom, etc.). The means to activate the two-way conversation system does not have to be provided in the car." Rule 211.1(a)(2), ASME, A17.1 (National Standard Safety Code for Elevators and Escalators) adopted in Florida by Rule 61C-5.001, Florida Administrative Code.

We approved the stipulation at the beginning of the hearing.

III. Available Technology

The evidence presented at the hearing showed five general methods which can be used to comply with the legal requirements. These methods are:

1. A LEC provided switched access line
2. An extension off of a PBX or switchboard
3. An intercom system
4. A dedicated (private) line or "ring-down" system
5. A line seizure device

Witness Thompson provided descriptions of various methods of providing two-way communication in an elevator. The most common method is via the installation of a telephone instrument in the elevator cab that is connected to a single line business rate (B1), LEC furnished dial line. Currently, the LECs charge this line a single line business rate. To reduce monthly costs, the elevator line can be installed as an extension from an existing telephone line in the facility, or from the facility's PBX or switchboard.

Several witnesses described an intercom system as another method to provide communications to and from an elevator. Under this scenario, lines from the elevator car are connected to a manual monitoring post in the building. Pushing a button on the elevator intercom panel alerts the monitoring post, which can then engage in a voice conversation with the elevator. Because of the high initial installation costs, as well as the continuing monitoring expense, the intercom system has been used only by a small percentage of customers, specifically by those facilities with personnel on the premises on a twenty-four-hour basis.

Another method for providing two-way communications in an elevator is a dedicated private line. GTEFL's witness Menard testified that a private line can be installed from an elevator to a customer's monitoring location and that private line service can be ordered from GTEFL. Southern Bell's witness Dick also testified that a condominium association could establish a dedicated private line between the elevator and an answering point such as an off-premises security station. Witness Thompson describes this method as a "ring-down" method, where no dialing is required because an off-hook condition at either end automatically rings the other instrument and allows two-way calling.

Witness Thompson testified that the intercom and ring-down systems are more expensive than the LEC provided switched access line method and that a high percentage of customers for elevator phone service used an extension from a switched line to provide two-way communication. Witness Thompson also indicated that the "ring-down" system was the most costly system since it required the use of point to point telephone lines, special exchange circuits, and telephone instruments that are provided by the LEC on a monthly basis. There are also additional charges for monitoring or answering services.

Witness Thompson further testified that a line-seizure device can be used to provide two-way communications in an elevator. A line-seizure device uses an existing telephone line that serves the premises, such as the office phone. The device seizes control of

the line when a call is placed from the elevator and dials the monitoring office. We note that the line-seizure device and monitoring service are supplied by witness Thompson's company.

Based on the evidence presented at the hearing, we find that condominium associations are not limited to switched access line service for the provision of two-way communications in an elevator. A condominium association can choose a LEC provided switched access line, an intercom system, a dedicated line, an extension from another phone or switchboard, or a line seizure device to fulfil its obligation to provide communications to elevators.

IV. Appropriate Rates For LEC Provided Lines

Currently, the LECs apply B1 rates to telephones in elevators. In their respective tariffs, GTEFL, United, and Centel determine the appropriate rate based on the character of use of the service. Business rates apply whenever the use of the service is primarily of a business, professional, institutional, or occupational nature. Business rates apply for establishments such as offices, stores, factories, mines, and other business establishments. Residential rates apply when the service's use is of a domestic nature. Residential rates apply to private residences not employing business listings, private apartments, private stables, and fraternity house rooms.

OPC witness Poucher argued that character of use meant the use by telephone user, the condominium residents, and not the subscriber to the service. An elevator phone is intended for the use of condominium residents and their guests. Since elevator telephones are used by condominium residents, witness Poucher argues that they should be assessed a residential rate.

Southern Bell's tariff differs from the other LECs but it also charges a business rate to phones in condominium elevators. Southern Bell witness Dick testified that the rate Southern Bell charges for phone service is based on the location of the phone. Phones at business locations are charged a business rate and phones at residential locations are charged a residential rate. Witness Dick also testified that the character of the subscriber is used to determine appropriate rates and since the subscriber to the service, the condominium association, is a business entity, the elevator phone service that condominium associations subscribe to should be assessed a business rate.

Witness Poucher also took issue with Southern Bell's interpretation of its tariff. Notwithstanding Southern Bell's argument that a condominium elevator is on a business location, witness Poucher contends that an elevator telephone is located in a residential facility and should be charged a residential rate.

Only witness Dick estimated the revenue loss if we were to change the rates from business to residential and he conceded that figure was just a guess. Witness Dick testified further that Florida ratepayers could suffer the burden of subsidizing condominium associations via increased rates to other ratepayers.

We find that LECs should be allowed to continue applying business rates to telephones located in condominium elevators. While we believe that calls made with these telephones will be made primarily by condominium residents, condominium associations use elevator phone service to fulfill legal obligations and enhance the safety of condominium residents. This includes meeting the requirement of installing a communications device in an elevator. This is a business activity and business rates should apply to a switched telephone line. The condominium residents can receive residential rates in their units but an elevator is not a residential facility. We agree that an elevator is not in itself a business location. However, the one strong indication as to whether the location of service is business or residential is the type of customer making the request. Since the condominium association is a business entity making the request for phone service, a business rate is appropriate.

We note that two LECs, Southern Bell and GTEFL, offer a business message rate option. This option offers business customers a less expensive option for local exchange service. Condominium associations located in areas where the service is available may wish to investigate this option.

Based on the foregoing, it is

ORDERED BY the Florida Public Service Commission that Florida law requires a means of two-way communication in an elevator between the elevator and the outside, as described in the body of this Order. It is further

ORDERED that there are various ways of fulfilling this obligation and each entity should investigate the options and determine which best suits its needs. It is further

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ORDERED that the Florida local exchange companies may continue to charge business rates for switched access lines to condominium elevators. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 27th day of September, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

LMB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.