

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into) DOCKET NO. 920837-TL
proper tariffing of telephone) ORDER NO. PSC-93-1127-FOF-TL
service for elevators and common) ISSUED: August 3, 1993
areas within residential)
facilities.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER REGARDING ELEVATOR TELEPHONES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On February 19, 1992, Clipper Bay Condominium Association, Inc. and several other condominium associations (Clipper Bay) 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 tariff the elevator telephones at issue were appropriately charged business rates. However, we recognized that for electric service, the common areas of condominiums are billed as residential. Thus, an issue regarding the appropriate rates to charge for telephone service in condominium elevators was included in the United Telephone rate case (DN 910980-TL).

On July 20, 1992, OPC filed a protest to our Proposed Agency Action Order issued in the Clipper Bay complaint docket. Since all

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NOT RECORDED/REPORTING

Local Exchange Company (LEC) tariffs contain essentially the same criteria for the application of rates, and any decision made in the United rate case would ultimately affect all LECs, we determined in the rate case that it was most appropriate to address the issue in a generic proceeding. The instant 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 July 7, 1992, Order issued in the Clipper Bay docket, and that docket was closed.

Analysis

As discussed above, all of the Florida LECs use essentially the same criteria to classify telephone service as either business or residential: that is, the character of the subscriber and/or the primary use to be made of the service. While the primary use of a condominium elevator telephone would be to call for help in the event of emergency and the actual user of the service would normally be a resident of the condominium, the subscriber to the telephone service is the condominium association and its use of the service is to provide for the safety and well being of the residents and other users of the elevators. Thus, the character of use under the tariffs is business. However, we note that electric service for elevators in condominiums is classified as residential. The electric industry decisions are found at Order No. 4074, issued September 26, 1966, in Docket No. 7697-EU, as modified by Order 4150, issued March 2, 1967.

In order to achieve parity with the electric industry, residential rates would need to be assessed for telephone service located in elevators as well as all common areas including pool houses, recreation rooms, lobbies, office space housing a condominium association (or similar organization), subject to the criteria defined in the electric industry orders referenced above. The electric orders set forth a convincing case for the classification of common area telephones as residential; however, they fail to adequately address the fact that the subscriber to the service in question is a corporation. Although ownership of the

¹ A tariff change recently approved for Southern Bell modified the primary use criterion. Southern Bell now defines primary business use at residential locations based on whether or not the subscriber requests a business listing in the Southern Bell directory.

corporation is most often held by the people residing in these types of facilities, this does not mitigate the fact that the condominium association itself is a business entity.

Moreover, the adoption of the electric industry's standards for telephone rates would create administrative problems associated with the following four requirements which are analogous to those set forth in the electric industry order:

1. 100% of the telephone service is used exclusively for the co-owner's benefit.
2. No telephone calls are placed in connection with any endeavor which sells or rents a commodity or provides service for a fee.
3. Each demarcation point is separately billed.
4. A responsible legal entity is established as the customer to whom the company can render its bills for telephone service.

Parity between the industries would create a certification process for telephone service and our experience has been that significant problems are created when certification of the use of a telephone line is mandated as in the case of leaky PBX and hybrid key systems. Indeed, it is apparent that the rate status of a given condominium would be subject to constant changes under the terms of the foregoing criteria.

Upon review, we find that the subscribers of the telephone service in question are appropriately classified as businesses. Thus, the Florida LECs shall continue to apply business rates for telephone service located in elevators and common areas of residential facilities as currently approved in each of their respective tariffs. We note that private line circuits and other telephone services, for which no distinction is made between business and residence, are sometimes used in elevators. In those cases the services shall remain as currently billed.

Therefore, it is

ORDERED by the Florida Public Service Commission that local exchange companies appropriately apply business rates for telephone service located in elevators and common areas of condominiums and

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cooperative apartments as provided in each of their respective tariffs. It is further

ORDERED that, absent a timely protest, this docket shall be closed at the end of the PAA protest period which is set forth below.

By ORDER of the Florida Public Service Commission this 3rd day of August, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

CWM

Chairman Deason dissented from this decision.

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose

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substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on August 24, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.