

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into ) DOCKET NO. 920837-TL  
proper tariffing of telephone ) ORDER NO. PSC-94-0598-PHO-TL  
service for elevators and common ) ISSUED: 05/19/94  
areas within residential )  
facilities. )  
\_\_\_\_\_ )

Pursuant to Notice, a Prehearing Conference was held on May 6, 1994, in Tallahassee, Florida, before Commissioner Julia L. Johnson, as Prehearing Officer.

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 and Alan N. Berg, 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. Office Box 110, MC 7, Tampa, Florida 33601.  
On behalf of GTE Florida Incorporated.

Robert G. Beatty and Phil Carver, Esquire, 150 So. Monroe Street, Suite 400, Tallahassee, Florida 32301.  
On behalf of Southern Bell Telephone and Telegraph Company.

Harold McLean, Esquire, and Earl Poucher, The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, Florida 32399-1400.  
On behalf of The Office Of Public Counsel

Michael Billmeier and Charles Murphy, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863.  
On behalf of The Commission Staff.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

**PREHEARING ORDER**

**I. CASE BACKGROUND**

On several occasions, the Commission has been presented with an issue involving the rates charged by local exchange companies (LECs) for service provided to elevators located within condominiums. This Docket was opened to investigate the matter generically. By Proposed Agency Action Order No. PSC-93-1127-FOF-TL, issued in this Docket on August 3, 1993, we determined that LECs appropriately applied business rates to telephones provided to elevators located in condominiums and cooperative apartments. On August 23, 1993, Clipper Bay Condominium Association, Inc., and several other condominium associations, protested the Proposed Agency Action Order, and this matter was scheduled for a hearing.

**II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION**

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of

record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with (1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

#### Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing

order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

### III. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Robert A. Schoen	Staff	1
James H. Thompson	Staff	1, 2, 3
Sharon E. Harrell	Centel/United	1, 2, 3
Beverly Y. Menard	GTEFL	1, 2, 3
Jerry L. Dick	Southern Bell	1, 2, 3
R. Earl Poucher	OPC	3

Rebuttal

Jerry L Dick	Southern Bell	3
Sharon Harrell	United/Centel	3
James H. Thompson	Staff	3

V. BASIC POSITIONS

ATTORNEY GENERAL: A residential rate is appropriate where a local exchange company provides access service directly to a telephone located in a condominium elevator. According to Florida LEC's other than Southern Bell, the primary basis for determining whether subscriber service should be classified as business or residential is the character of the use to be made of the service. Southern Bell also applies a **primary use** criterion based on whether the service is provided at a residential or business location. Service at a residential location is billed at a residential rate unless the subscriber requests a business listing. Under either criterion, the appropriate rate for elevator telephones at condominiums should be residential.

The Commission's previous position, as stated in Order No. PSC-93-1127-FOF-TL, acknowledges that the primary use of telephones in condominium elevators is to call for help in the event of emergency and the primary user is normally a condominium resident. Nevertheless, the Commission found that the subscriber is the condominium association which is a business, and therefore business rates are appropriate. However, the fact that a condominium association is a practical vehicle utilized to pursue the common interests of the condominium residents in the furtherance of residential purposes and objectives does not transform residential use of elevator phones into business use simply because a non-profit corporate entity is the instrumentality of such residential use. Unequivocally, an emergency telephone in an elevator at a single family dwelling would be considered residential. The association of two or more condominium residents to provide emergency telephone service in condominium elevators does not create a business use out of what was residential use for one resident. Simply stated, the identical activity which is residential use for one resident is not a business use for two or more residents who have associated to engage in that same activity. To hold otherwise is to elevate form over substance.

Indeed, electric service for elevators in condominiums is classified as residential. Order No. 4074, issued 9-26-66, in Docket No. 7697-EU, as modified by Order No., 4150, issued 3-2-67. The Commission found, regarding electric service in elevators, that "condominium apartments are, in the legal sense, residential in character," and condominium residents "should have the right to residential rates just as someone living in a single dwelling does. Otherwise they are being discriminated against." The impact of such discrimination is significant, since business rates are generally at least double residential rates.

In conclusion, residential rates are appropriate for telephone service provided condominium elevators.

Centel/United: The proper classification for telephone service in a residential condominium elevator is Business; and the business rate is the appropriate rate to apply.

GTE Florida Incorporated: GTEFL believes that current business rates for telephone service in elevators in condominiums and other such facilities should remain in place. Consistent with Commission precedent and GTEFL's tariffs, the rate for local service is determined by the nature of the customer. Condominium associations are business entities. Therefore, they and other such entities should be charged business rates. Furthermore, applying residential rates in these situations would undermine the

beneficial trend of moving rates toward the costs of providing services.

Southern Bell: The Florida Safety Code for Elevators and Escalators, ASME A17.1-1993 (Safety Code"), requires that each elevator in the State installed after a certain date be equipped with a means of two-way communication to facilitate access to emergency personnel located outside the elevator. Rule 211.1(A)(2). This legal requirement is imposed on the condominium association ("Associations"), not their members. These Associations are business entities which subscribe to elevator telephone service in order to provide for the safety, health, and welfare of their members and to avoid or minimize legal liability. Thus, the service is designed to achieve a business purpose. Accordingly, since the Associations, which are legal business entities, are the subscribers of this service, elevator telephones in condominiums are appropriately classified as business service.

If the Commission converted elevator telephone service from business rates to residential rates, the future revenues of Southern Bell would be affected significantly. This could cause other Florida ratepayers to suffer the unfair burden of having to subsidize condominium associations' elevator telephone service.

OPC: Switched access emergency telephones located in elevators in condominiums should be billed at the residential rate.

Staff: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

## VI. ISSUES AND POSITIONS

ISSUE 1: What does Florida Law require as a communication device in an elevator?

Staff proposes the 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.

**ISSUE 2:** What technical means exist to comply with the legal requirements?

**Attorney General:** No position at this time.

**Centel/United:** Communication services for elevators could be provisioned in several ways. In addition to a business line, a dedicated circuit, an extension off a switchboard or PBX, or an intercom line could all meet the legal requirements.

**GTEFL:** GTEFL is aware of two ways of complying with the legal requirements. The first is a private line circuit between the elevator and the customer's monitoring location. The second is a business individual (B1) line.

**Southern Bell:** There are at least four options available to meet these legal requirements. First, the Association may extend a line from its premise equipment, such as a PBX or key system, to the elevator to establish service.

Second, the Association can establish a "ringdown" circuit between the elevator and one other point on the building's premises.

Third, the Association may establish a dedicated private line between the elevator and an answering point, such as an off premises security station.

Fourth, the Association may order a line directly from the serving local exchange carrier.

**OPC:** No position at this time.

**Staff:** There are three general methods which are used to comply with the legal requirements:

1. An intercom system
2. A LEC provided dedicated line
3. A LEC provided switched access line

The third method includes the use of extension phones which serve multiple elevators from a single line, and line seizure devices which seize an existing line within the building for use in the event of an emergency.



**ISSUE 3:** Where a local exchange company provides local exchange access service directly to a telephone located in a condominium elevator, what rate is appropriate?

**Attorney General:** A residential rate is appropriate for telephone service in condominium elevators.

**Centel/United:** The proper classification for telephone service in a condominium elevator is Business; and the business rate is the appropriate rate to apply. The original subscriber is the condominium developer. The elevator is used in the sale of units, thus a business purpose. At some point the developer transfers control of the common areas to a condominium association, then the subscriber is the respective condominium association, not any of the residents who live in the condominiums. The condominium associations are corporate business entities, not residential subscribers. The corporations order the elevator telephone service to fulfill their legal obligations, not to provide residents with an alternate source of residential telephone service. The function of an elevator telephone is to enhance the safety and security of persons using the elevators, regardless of whether they are residents, guests, trades people, or employees of the association, which is fundamentally a business purpose from the perspective of the condominium association. It is the subscriber of service whose use defines it as business or residence, and not who is permitted to use the service.

**GTEFL:** A business (B1) rate is appropriate for elevator telephone service in condominiums. A condominium is a business association. It should therefore be charged business rates, in accordance with the Company's tariffs and previous Commission rulings. Further, since GTEFL's residential rates are already below cost, it is imprudent to extend them to additional customer groups--especially when those groups are classified as business customers.

**Southern Bell:** The appropriate rate to apply is a business rate. Condominium Associations are Florida corporations which provide a variety of services to their members. The elevator telephone service is supplied to the Association to fulfill its legal, insurance, liability, and safety obligations, not to provide any direct service to residents. In exchange for the services provided by an association, its members pay a maintenance fee to the Association. Clearly, this is a typical transaction between a business and its customers.

In accordance with paragraphs (D), (E), and (F) of Order No. PSC-93-1813-PCO-TL, issued on December 21, 1993, Southern Bell considers Issue 1 to be a question of law, Issue 2 to be a question

of fact, and Issue 3 to be a mixed question of law, fact, and policy.

OPC: When elevator telephones are located in a residential domicile or facility, including condominiums and apartment dwellings, the intended use of the service is residential in nature and is ancillary to the domestic residences contained within the condominium. Residential rates should be applicable for services that are directly associated with the residential purpose of the facility.

Staff: Currently, the subscriber to local exchange access for a telephone located in an elevator in a condominium is typically the condominium association. To the extent that a condominium association is considered to be a business, the norm would be to charge business rates for such elevator telephones. Although there may be legitimate public policy reasons for assessing elevator phones at residential rates, to do so appears to be in conflict with the present way of determining when business rates are applicable and would constitute a specific exception.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Poucher	OPC	REP-1	Southern Bell Tariff
		REP-2	GTE Tariff
		REP-3	United Telephone Tariff
		REP-4	Gulf Telephone Tariff
		REP-5	Indiantown Telephone Tariff
		REP-6	Northeast Telephone Tariff
		REP-7	Florida Power Corp. Tariff
		REP-8	Florida Power & Light Tariff
Thompson	Staff	JHT-1	Resume

The Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

Staff proposes the following stipulation for Issue 1:

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.

IX. PENDING MOTIONS

Attorney General: The Attorney General does not have any pending motions on which it seeks any action.

Central/United: There are no pending motions at this time.

GTEFL: GTEFL has no pending motions or other matters upon which it seeks action.

Southern Bell: Southern Bell has no motions pending.

OPC: There are no pending Motions at this time.

Staff: Staff has no pending motions at this time.

X. Rulings

By Order No. PSC-94-0475-PCO-TL, Southern Bell's Motion for Leave to File Rebuttal Testimony to the Testimony filed by R. Earl Poucher was granted.

It is therefore,

ORDERED by Commissioner Julia L. Johnson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

ORDER NO. PSC-94-0598-PHO-TL  
DOCKET NO. 920837-TL  
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By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 19th day of May, 1994.

  
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JULIA L. JOHNSON, Commissioner and  
Prehearing Officer

( 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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.