

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Rajesh B. Shah	:	
-vs-	:	
Illinois Bell Telephone Company	:	03-0494
	:	
Complaint as to classification of residential	:	
into business line by utility company in	:	
Chicago, Illinois.	:	

ADMINISTRATIVE LAW JUDGES' PROPOSED ORDER

By the Commission:

Before the Illinois Commerce Commission (“Commission”) is a formal complaint filed by Rajesh B. Shah (the “Complainant”) on August 18, 2003, alleging that, since August, 2000, Illinois Bell Telephone Company d/b/a SBC Ameritech (now “SBC Illinois” or “SBCI”) has improperly classified his residential telephone service as a business service and billed accordingly. For his relief, Mr. Shah requests that the balance due on his account be reduced to zero. He further seeks to have the service on his two telephone lines (and directory listings) be re-classified from business to residential. The complaint also asks that SBCI change Mr. Shah’s listing address to a post office box; and that the Commission adopt new rules that are more responsive to consumers.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission this matter came on for status hearings before an Administrative Law Judge (“ALJ”) in the Chicago offices beginning on September 4, 2003. Rajesh B. Shah appeared pro se and SBCI appeared by counsel. The evidentiary hearings took place on February 6, 2004. Mr. Shah testified in support of his complaint. SBCI presented the testimony of Nancy Doyle, an associate director in the Company’s sales operations group, and Katharine Conrow, Regulatory Affairs Director of Consumer and Business Retail Services. At the close of the proceeding on February 6, 2004, the record was marked “Heard and Taken.”

The original briefing schedule was extended upon the Complainant’s request. At the Complainant’s request too, the record was re-opened so as to allow Mr. Shah to submit additional evidence. On May 24, 2004, the record was again marked “Heard and Taken.”

Mr. Shah and SBCI filed their respective initial briefs on June 7, 2004. Both parties filed reply briefs on June 18, 2004. The ALJs issued a Proposed Order on September 24, 2004.

I. THE COMPLAINT

The instant verified complaint alleges that in July, 2000, Mr. Shah requested installation of a telephone line at 107 W. Van Buren, Rm. 215, Chicago, Illinois 60605. According to Mr. Shah, the marketing person he spoke with at SBCI suggested a special promotional offering of a second line with free installation. Mr. Shah alleges that he decided to use the second line as a fax and selected the telephone numbers 312-798-9500 and 312-789-9600.

On receiving his first bill, Mr. Shah observed that his listing indicated a business line instead of a personal (residential) line. Mr. Shah was surprised too, he claims, by a charge of \$221.00 instead of the free installation he had reason to expect.

According to the complaint, Mr. Shah called SBCI to address these concerns. The charges were adjusted and Mr. Shah was promised that he would not be billed at business rates. On the next bill, however, Mr. Shah again noticed that his expectations were not met. He further complains of a listing of his lines in the Yellow Pages directory.

The complaint alleges that Mr. Shah attempted to switch service on his lines to MCI. He only wanted to switch over one line, however, so as not to lose the DSL service that was carried on the other line.

Mr. Shah claims that he attempted to resolve the business listing issue with the company several times. In these discussions, Mr. Shah alleges that SBCI spent significant time in documenting and arguing why his phone lines are considered to be business lines and not residential service.

The complaint asks the Commission to provide Mr. Shah with several types of relief:

- 1 to have the service for his two telephone lines be changed from business to residential, with the removal of any Yellow Pages and white pages business listing for the lines and the addition of a white pages residential listing. Complaint at 8.
- 2 to have the balance owed on his account be reduced to zero "to avoid time and money required for adjustment and accounting." Id.
- 3 for SBCI to include a post office box, rather than a street address, in his directory listing. Id.
- 4 to have the Commission amend its guidelines and adopt new rules to be more responsive to customers' needs. Id.

II. THE FACTS OF RECORD.

The Service Location

The record shows that Rajesh B. Shah moved into the premises at 107 West Van Buren Street, No. 215, in Chicago, on August 1, 2000. Tr. 90. The space he rents consists of one room measuring approximately 150 square feet. Tr. 92. The room does not contain a built-in kitchen or a bathroom, and Mr. Shah sleeps on the floor because the room is too small for a bed. Tr. 92-93. According to Mr. Shah, he has a refrigerator and microwave in his room and shares a bathroom in common with other tenants on the floor. Tr. 92 -93.

The other tenants in Mr. Shah's building are commercial. There are two bar/restaurants at the street level. Tr. 53; SBCI Cross Ex. 2. The second floor, where Mr. Shah's room is located, contains a mix of office tenants, including two lawyers, a delivery company, and a stamp company. Tr. 54-56. According to Mr. Shah, none of the other tenants reside in their rented spaces. Tr. 56.

Establishment of Service

On July 28, 2000, Mr. Shah established service with SBC Illinois at the 107 West Van Buren address. SBC Ill. Ex. 1.0 (Conrow) at 3; SBC Cross Ex. 3 (Aug. 28, 2000 bill, p.1). An SBCI technician installed two business lines at the premises and put in four two-line jacks. Tr. 101, 191.

Mr. Shah testified that when he contacted SBCI, he wanted to establish residential service, and was "offered one additional line . . . with installation free." Tr. 40; Complaint ¶ 1. The testimony of SBCI witness Conrow indicates that the Company did offer a marketing promotion in July 2000 that involved a waiver of non-recurring charges for installation of an additional line. But, her tariff review showed that promotion was available only to business customers. Tr. 192-93; SBCI Ex. 1.0 (Conrow), Schedule 1. This promotion expired July 31, 2000, and there was no similar offering available to residential customers.

Mr. Shah's two lines were assigned the numbers 312-789-9500 and 312-789-9600. According to Mr. Shah, he spent a lot of time selecting telephone numbers for the two lines because he wanted numbers that would be easy to remember. Tr. 94; Complaint ¶ 1. According to SBCI witness Doyle, the company attempts to reserve "hundred numbers," such as Mr. Shah received, for business customers. Tr. 106-07.

Since Mr. Shah's order involved business lines, he was entitled to a free Yellow Pages listing. Tr. 106. The order establishing his service shows that Mr. Shah's account was to be listed in the Yellow Pages under the heading "Employment Contractors – Temporary Help." SBCI. Direct Ex. 1, p. 1; see also Tr. 45, 105-06; Shah Ex. 1 on Reopening. The Chicago white pages directory lists the Complainant's number and address under "Rajeesh B. Shah." Tr. 49, 51; SBCI Cross Ex. 1.

Shah-USA

Mr. Shah is the owner of a business known as Shah-USA, which offers business services and product distribution and supply services to customers. Tr. 74-75. The web-site for Shah-USA (found at www.shah-usa.com) describes the business as “a diversified firm based in Chicago.” SBC Ill. Cross Ex. 4. This site identifies Shah-USA’s office address as 107 W. Van Buren, No. 215, in Chicago; its telephone number as 312-789-9500; and its fax number as 312-789-9600. Id.

The same office address and telephone numbers for Shah-USA also can be found on other web-sites listing notaries public, tax accountants, or businesses that market services to the Indian community. See SBC Ill. Cross. Ex. 5-8. The advertisement for Shah-USA on the IndiaBook.com site is dated August 26, 2001. SBC Ill. Cross Ex. 8.

The Service Classification.

On receiving his first bill from SBCI, in August 2000, Mr. Shah noticed that he was being charged for business lines. Tr. 40-41. On September 7, 2000, he contacted SBC Illinois to question the classification of his service. SBC Ill. Direct Ex. 4; Tr. 178.

The company records for Mr. Shah’s account indicate that, on September 11, 2003, the Company concluded Mr. Shah was in a commercial location and should have business service. SBC Ill. Direct Ex. 4; Tr. 179-80. Ms. Doyle could not tell from the account records just exactly what the company did to investigate the classification of Mr. Shah’s service. Tr. 179. As a general matter, she testified that SBC Illinois might investigate a claim of service misclassification by sending a technician to the premises to determine whether the service was located in a residential or commercial building. Tr. 176.

Ms. Doyle described other procedures that SBCI follows when establishing a customer’s service. At the outset, when a customer calls for service, the SBCI representative asks whether the customer wants business or residential service. Tr. 108. Ms. Doyle explains that SBCI service representatives who take business orders could not take residential orders (and vice-versa), so that a customer who reached the wrong type of service representative would be transferred to the correct type of representative to establish service. Tr. 109-10. Where a business order is involved, the representative will ask the customer how the business should be listed in the Yellow Pages and fills out that portion of the service order accordingly. Tr. 106.

SBCI could take other steps if it is uncertain as to how a customer should be classified. The representative could ask the customer whether the line will be located in a home or a business, and whether the number will be used in advertising or on business cards. Tr. 108-09. The Company could send out a technician to look at the space and determine whether it is a business or a residence (id. at 111). Or, it might consult its records to see whether other customers in the building were business or

residential. Id. at 113. The representative also could ask a customer who wants residential service whether the space where service is to be installed has a personal bathroom or a kitchen. Id. at 110-11.

Even after an installation order has been placed, SBCI may determine that the service is wrongly classified. The SBCI technician making the installation knows from the order whether residential or business service has been requested. Tr. 172-73. If the technician notices an incompatibility between the service ordered and the nature of the premises, that information would be reported to the SBC Illinois business service center so that a representative could contact the customer for clarification. Tr. 173-74.

The SBCI Tariff

The SBCI has a tariff that sets out regulations by which to distinguish business from residential service. The tariff provides, among other things, that service should be classified as business if it is "situated in a commercial, professional or institutional location." SBC Ill. Direct Ex. 2 (Tariff No. 20, Pt. 4, § 2, ¶ 1.3(A)(2)). In addition, where a combined business and residence premises is at issue, the Company will consider the service as residential only if the service is "located in bona fide residential quarters of such premises." Id. (¶ 1.3(B)(2)). Ms. Doyle explained that "bona fide residential quarters" would have to have a personal bathroom and a kitchen facility. Tr. 116-17. Mr. Shah's room does not have these facilities.

Account Charges, Payments and Credits

The August 2000 bill for Mr. Shah's account included a total of \$290.85 in charges (before taxes) relating to the installation of service, including approximately \$200 in installation service call and labor charges. Tr. 123-24; SBCI Cross Ex. 3 (August 28, 2000 bill, p. 1). After Mr. Shah complained that these charges were inconsistent with the offer under which he established service, SBC Illinois credited the account a total of \$210.62 (including taxes) on his September 2000 bill. Tr. 41, 126-27; SBCI Cross Ex. 3 (Sept. 28, 2000 bill, p. 1). The account records indicate that this credit was provided because of a promotion or previous agreement with the customer. SBC Ill. Direct Ex. 4; Tr. 129-30.

On September 19, 2000, SBCI issued an adjustment of \$210.62 to correct charges per the sale agreement. Tr. 130. Another credit was entered on October 13, 2000 for \$88.21 for reason that SBCI misses the scheduled installation date. Tr. 131. A "goodwill" adjustment of \$ 94.08 also was given that same date because Mr. Shah complained of voicemail services and a late payment charge. Tr. 132. Still another "goodwill" adjustment was made on Mr. Shah's July 2001 bill for installation charges and long distance charges. Tr. 138. SBCI ultimately provided Mr. Shah with credits multiple times for the August 2000 installation charges. Tr. 172.

Mr. Shah made only occasional payments on his account from the time he established service. See SBCI Cross Ex. 3; SBCI Direct Ex. 3. He last made a

payment in February 2002. SBCI Direct Ex. 3. According to Mr. Shah, he has not received any bills or invoices from SBCI since February 2003. As of the September 2003 bill, his account balance was \$2608.30. SBC Ill. Cross Ex. 3 (Sept. 28, 2003 bill, p. 1).

In addition to local service charges from SBCI, Mr. Shah's telephone bills over the last several years included charges for other services, including charges from long-distance carriers such as Sprint and HBS. See, e.g., SBCI Cross Ex. 3 (Sept. 28, 2000 bill, p. 3, and Aug. 28, 2001, p. 3).

In November 2000, Mr. Shah subscribed to DSL service from Ameritech Internet Services (SBCI Cross Ex. 3 (Nov. 28, 2000 bill, p.2; Tr. 57),¹ and he continued to be billed for DSL internet service – on one or both of his lines – through at least September 2003. See SBC Ill. Cross Ex. 3; Tr. 57-58.² In addition, between January 2002 and September 2003, companies such as Integretel, Inc., and Enhanced Services Billing, Inc. ("ESBI") billed the account for what appear to be internet related charges. See SBC Ill. Cross Ex. 3.³

Business vs. Residential Service Cost

SBC Illinois charges different rates to business and residential customers for local service. In particular, the line rate and usage rates are generally higher for business customers. Tr. 145-46. As a business customer, Mr. Shah was billed a monthly line charge of between \$5.03 and \$5.10 per access line between August 2000 and September 2003. See SBCI Cross Ex. 3; Tr. 150 (line charge was \$5.10 in August 2000). In comparison, the monthly line charge for a residential access line during this period was \$2.55 per line. SBCI Direct Ex. 7; Tr. 147-48.⁴ At the hearing, Mr. Shah agreed that he would have been obligated to pay SBC Illinois' rates for residential local service had his account been classified as a residential account. Tr. 56-57.

III. COMMISSION ANALYSIS AND CONCLUSION

The Commission is well aware that the Complainant appears pro se in this case and is not an attorney. This requires that we give Mr. Shah some leeway and not force strict compliance with our rules of practice. At the same time, however, we remain mindful that there is a Respondent who is entitled to certain rights, most notably, fair notice and opportunity to mount a defense. This means that, even where set out by a pro se litigant, arguments, positions, and relief requests on brief, must meet with the allegations of the complaint and be based on the record evidence.

¹ Ameritech Internet Services is now known as SBC Yahoo! Internet Services.

² Mr. Shah apparently added DSL internet service to the second line in July 2003. See SBC Ill. Cross Ex. 3 (July 28, 2003 bill, p. 2).

³ For example, in March 2002, Integretel billed a total of \$33.10 for something described as "Websource Internet." SBC Ill. Cross Ex. 3 (Mar. 28, 2002 bill, p. 3). The September 2003 bill includes \$33.10 in charges from ESBI for something described as "Webxites Silver Monthly Fee." Id. (Sept. 28, 2003 bill, p. 3).

⁴ The line rate does not include any taxes or government-related fees, such as the federal access charge. Tr. 148.

With these concerns at hand, and at the very start, we find it necessary to disregard any new causes of action or damage requests beyond what Mr. Shah sought in the Complaint, or pursued at hearing. It is fundamental that an administrative agency must base its decision solely on the facts and testimony that are found in the record. This Commission cannot, and will not, compromise the integrity of its decision-making

That said, the instant complaint sets out four different requests for relief. At the hearing, however, Mr. Shah presented no evidence on two of the four requests set out in the complaint: a request that SBCI include a post office box, instead of a street address, for his directory listing, and a request that the Commission amend its guidelines and adopt new rules that are more responsive to customer needs. Hence, we find these two requests to be abandoned.

With careful and studied review of the evidentiary record before us, and the arguments thereon, the Commission now considers the two remaining counts and relief requests in Mr. Shah's complaint. These are:

1. Whether the balance owed on Mr. Shah's service account should be reduced to zero based on the claim of improper classification and associated billing; and,
2. Whether the service for Mr. Shah's two telephone lines should be changed from business to residential, with the removal of any Yellow Pages and white pages business listing for the lines and the addition of a white pages residential listing.

For reasons that will soon become apparent, we treat each of these claims and relief requests as wholly separate and distinct matters.

A. The Action for Overcharges Relief Under Section 252.1 of the Act.

In his complaint, Mr. Shah alleges incorrect billing and overcharges based on improper classification of service, i.e., business instead of residential. The record shows that business rates are higher than residential rates. As such, Mr. Shah states a claim generally cognizable under Sections 9-252.1 of the Illinois Public Utilities Act. 220 ILCS 5/9-252.1.

To be sure, Mr. Shah seeks not a refund for overcharges as might be expected in this situation. Instead, he wants his account balance reduced to zero. Per the date of the evidentiary hearing, that unpaid amount as current to his September 2003 bill, was \$ 2,608.30.

SBCI maintains that the Commission can order a credit only for the amount of overcharge due to misclassification and not for the entirety of the unpaid balance on Mr. Shah's account. So too, SBCI points out, most of the unpaid charges are for services provided by carriers not subject to our jurisdiction or made respondents to the case.

More significantly, SBCI asserts that there is a statute of limitations problem in this case.

It is the latter of SBCI's allegations that draws our attention at this juncture. At the very outset, the Commission needs to examine the record and the governing law to see if it has the authority to proceed in these premises.

Section 9-252.1 of the Act provides, in relevant part, that:

Any complaint relating to an incorrect billing must be filed with the Commission no more than 2 years after the date the customer first has knowledge of the incorrect billing. 220 ILCS 5/9-252.1. (emphasis added).

The allegations of the instant complaint demonstrate that Mr. Shah had knowledge of the allegedly incorrect billing, based on improper classification of service, in August, 2000 when he received his first bill. The record shows that Mr. Shah was aware that he was being billed as a business customer sometime prior to September 7, 2000, as that was the date on which he contacted SBCI to question the classification of his service. SBC Ill. Direct Ex. 4; Tr. 178. The complained-of billing was reviewed and confirmed by SBCI only days later on September 11, 2000. Tr. 179. The record shows that Mr. Shah filed the instant complaint on August 18, 2003, on a cause of action challenging the classification/overcharges of business service that accrued on, at the latest, September 2000.

Pursuant to Section 9-252.1, however, (and giving Mr. Shah the benefit of the September 2000 date), the complaint in these premises was to have been filed by and no later than September of 2002. Since the complaint here was not filed until August 18 2003, it is time barred under the statute.

This Commission derives its power solely from the Public Utilities Act. 220 ILCS 1-1 et. seq. Because the Commission is a purely statutory creation and possesses no inherent or common law powers, it can only assume jurisdiction in the manner prescribed by the Act. It is "subject matter jurisdiction" which concerns us here and this includes both the power to hear and determine a particular class of cases and the authority to grant a party the relief requested.

By its enactment of this Section 9-252.1, the General Assembly both conferred jurisdiction on the Commission to hear complaints of this type and fixed the time within which such jurisdiction could be exercised, i.e., "no more than 2 years after the date the customer first has knowledge of the incorrect billing." Id Under the express and unambiguous language of this provision, Mr. Shah's compliance with the two-year time limit contained in Sections 9-252.1 was a jurisdictional prerequisite to the Complainant's right to bring his action before the Commission. Cinch Manufacturing Company v. Edward J. Rosewell, 659 N.E.2d 65 (1st Dist. 1995) (when a right of recovery is purely statutory in origin, and the act that creates the right also sets the limitations period,

compliance with the limitation is a condition precedent to the plaintiff's right to seek a remedy under the act).

On the basis of the record facts, Mr. Shah's filing was untimely, beyond the two-year statutory limit, and thus, we are without jurisdiction to hear the complaint. In order that the Commission be vested with the authority to hear and determine his cause the complaint was required to have been filed, if at all, by September, 2002. Because he failed to do so, we are left powerless to grant the Complainant relief under Section 9-252.1. The Act does not confer power on this Commission to consider complaints filed outside the statutory period. (Notably, the outcome is the same even if we could consider as controlling the date of March 24, 2003, whereupon Mr. Shah made an informal complaint against SBCI with the Commission's Consumer Services Division. That action was already seven months past the statutory limit).

Illinois case law has established that the time limitations for bringing actions before administrative agencies are matters of jurisdiction. Charleston Community Unit School Dist. 1 v. Illinois Educational Labor Relations Board, 203 Ill. App.3d 619, 561 N.E.2d 331 (4th Dist. 1990); Fredman Brothers Furniture Co. v. Dept. of Revenue, 486 N.E. 2d 893 (1985). So too, the Commission has recognized and followed this standard in its Order for Docket 98-0208 (November 17, 1999).

Having reviewed the governing statute, case law, and consistent with its prior orders, the Commission finds that it has no authority to hear the instant complaint on the action that arises under and is governed by Sec.252.1 of the Act. As such, the only action we can take in these premises is to dismiss, with prejudice this count of the complaint.

B. The Action for Prospective Classification Relief.

There is another relief request in the Complaint, wherein Mr. Shah asks to have the service for his two telephone lines re-classified from business to residential. This request largely involves a Commission-approved tariff (ILL. C.C. No. 20) and SBCI's construction thereof. We view this part of the relief request liberally and as prospective in nature. The record here amassed will serve in resolving this classification dispute for forward-looking purposes.

The only issue at this juncture is whether Mr. Shah should be classified as a business or residential customer.

1. The Business Classification

The classification of a customer's service as business or residence is determined by regulations in SBCI's tariff that define the "character of use" for rate purposes. Pursuant thereto, a service will be classified as business if:

- 1 The service is used primarily or substantially for a paid commercial, professional or institutional activity; or
- 2 The service is situated in a commercial, professional or institutional location, or other location serving primarily or substantially as a site of an activity for pay; or
- 3 The service number is listed as the principal or only number for a business in any Ameritech Pages Plus directory; or
- 4 The service is used to conduct promotions, solicitations, or market research for which compensation or reimbursement is paid or provided. However, such use of service, without compensation or reimbursement, for a charitable or civic purpose shall not constitute business use of a service. Tariff No. 20, Pt. 4, § 2, ¶ 1.3(A)(1) – (A)(4).

Under the tariff language, the presence of even one of these factors is determinative of a business classification. We note that two of the four regulations that establish business service are at issue in this case.

a. Business Activity Per (A)(1))

The SBCI tariff sets out that a service will be classified as business if it is “**used primarily or substantially for a paid commercial, professional or institutional activity.**” SBC Ill. Direct Ex. 2 (Tariff No. 20, Pt. 4, § 2, ¶ 1.3(A)(1)).

The record indicates that Mr. Shah is using the service, at least in part, for business purposes. He owns a business, Shah-USA, which offers business services and product distribution and supply services to customers. Tr. 74-75. The Shah-USA website provides a physical address for the business of 107 W. Van Buren, No. 215, Chicago; and lists the two telephone numbers, i.e., 312-789-9500 and 312-789-9600 for Mr. Shah’s SBC Illinois account. SBCI. Cross Ex. 4.

SBCI points out too, that the physical address and telephone numbers for Shah-USA can be found on a number of other websites listing notaries public, tax accountants, or businesses marketing services to the Indian community. SBCI. Cross Ex. 5-8. In SBCI’s view, Mr. Shah’s use of the two telephone numbers to market the services of Shah-USA on the internet means that he is using his service “substantially for a paid commercial . . . activity.” Id. We agree and are persuaded to this end by other circumstances of record

In his 10’ by 15’ foot room, Mr. Shah had four two-line telephone jacks installed. This suggests something far more than just residential character. He also purposely sought to obtain two, easy-to-remember “hundred numbers” for the lines, i.e., 789-9500 and 789-9600. SBCI’s assertion that the Company attempts to reserve such numbers

for business customers is reasonable in our view and telling of Mr. Shah's service activities.

We see that Mr. Shah has been using or at least holding out his telephone service in conjunction with his business, i.e., Shah-USA. To be sure, he claims that the Notary Public offering indicated on the Shah-USA website is provided as a social service and for free. (Shah Br.at 5). His tax-preparation, book keeping and accounting services, Mr. Shah argues, are mostly performed at the client's location. According to Mr. Shah, 99% of the Shah-USA's business associates have toll free numbers such that use of the services provided by the Respondent is minimal to none. Most of the business dealing, he claims, is done through email on the internet or via correspondence using a P.O. Box. These attempts to explain away his business activities are not persuasive in our view. Indeed, the Complainant's assertion that all calls on his service are incoming with no outgoing calls, simply does not square with business experience.

Notably, in addressing the print-out of the Shah-USA website that lists his street address and telephone numbers, the Complainant states that, for "credibility purpose a physical address is needed to every business" (Shah Br. at 4). As such, we see the Complainant to well acknowledge that the subject premises is a vital part of his business operation. Indeed, he has shown no other source of livelihood.

b. The Service Location Factor Per (A)(2).

The SBCI tariff also provides for a business classification where the service is "**situated in a commercial, professional or institutional location.**" SBC III. Direct Ex. 2 (Tariff No. 20, Pt. 4, § 2, ¶ 1.3(A)(2)).

The building that houses Mr. Shah's room and the subject service premises is located at 107 West Van Buren Street in downtown Chicago. It is a commercial location. Indeed, it is undisputed that all of the other tenants in the building are businesses. The record shows that these tenants include bars and restaurants, two lawyers, and a delivery company.

We see Mr. Shah to assert that the city of Chicago is undergoing change such that residential units are coming into the neighborhood. As a general proposition, we find Mr. Shah to be correct. The Commission readily acknowledges that there are several rental apartments, single room weekly hotels, and condominiums in and around the downtown area. Mr. Shah, however, has not shown that the particular building, where he maintains service, has been converted from a business purpose to a residential use. In other words, and on the record showings, it remains a location of commercial activity and under the terms of the tariff would require business service. Indeed, Mr. Shah testified that none of the other tenants in his building reside on premises.

2. The Residential Classification

The tariff further specifies that a “residential classification” is available only if none of the four business-determining regulations apply, and where:

1. The use of the service is primarily and substantially of a social or domestic nature, and
2. Service is located in a residence or, in the case of a combined business and residence premises, the service is located in bona fide residential quarters of such premises and business service is located in the business quarters of the same premises. Residence service may be extended into a business location, in the case of the combined business and residence premises, on an incoming-only basis.

Mr. Shah claims that he is entitled to a residential line classification because he lives at the subject premises located at 107 West Van Buren Street in Chicago. So too, Mr. Shah argues, the telephone lines at issue are his primary and only telephone lines meaning that he does not have any other telephone service either in the form of a landline or wireless line. Further, he claims that these telephones lines are for Rajesh B. Shah and not for Shah-USA. The majority of his telephone service, Mr. Shah asserts, is being used for domestic purposes and not for business purposes.

For its part, SBCI does not dispute that Mr. Shah lives at the service premises. Nevertheless, the Company maintains that Mr. Shah’s living there is not dispositive of the classification question. SBCI points out that the 150 square foot room that Mr. Shah claims to occupy as a residence (and from which he also operates Shah-USA), has neither a bathroom, nor a built-in kitchen facility.

We note that the SBCI tariff explicitly addresses the situation where, as here, a customer has service in a combined business and residence premises. In such a mixed-use setting, a customer can have residential service only in the “**bona fide residential quarters**” of the premises. SBCI Direct Ex. 2 (Tariff No. 20, Pt. 4, § 2, ¶ 1.3(B)(2)). SBCI witness Nancy Doyle explained that the “bona fide residential quarters” in such an arrangement would have to contain a personal bathroom and a kitchen facility. Under our reading of the tariff too, business service would be required in the business quarters of the residence.

Mr. Shah notes the reference to “bona fide residential quarters” in the tariff. He, however, disputes the way in which SBCI witness Doyle’s gives definition to that term, i.e., by specifying a bathroom or built in kitchen requirement. Not having these facilities, Mr. Shah argues, does not suffice to constitute the premises a business location. He asks that the Commission not accept the definition offered by SBCI in this instance. According to Mr. Shah, the SBCI tariff does not state that if a location cannot be classified as residence, it must be considered business.

We agree with SBCI that Mr. Shah has not established a bona fide residence as would support anything other than a business classification (for at least on one of his lines). Mr. Shah himself tells us that he sleeps on the floor and has no bed in the room. He claims to have a refrigerator and microwave, and to use the common bathroom facilities that are shared with other tenants in the building. SBCI points out that the premises lack both kitchen and bathroom facilities and, on this basis, do not qualify as a bona fide residence under the tariff. While Mr. Shah disagrees, he suggests no other criteria and we can think of no other as might be reasonably used to establish a residential character of use. To be sure, even as some flexibility is always desirable, there must be some uniformity or standard in regulations. In other words, we cannot read the tariff wholly out of existence, as Mr. Shah would have us do.

3. The Final Assessment.

The record showings, taken as a whole, indicate that a business classification is proper for Mr. Shah's service. He has a business and publishes to the world his service location and the phone numbers associated therewith. Mr. Shah explains that a physical address is needed for every business. (Initial Br. at 4) We believe it reasonable that telephone service is also required.

Mr. Shah's service premises are situated in a commercial building in a downtown location. The building has not been converted to a residential use. In the small room where Mr. Shah identifies a business and also resides, there are four phone jacks and two separate lines. The Complainant has kept two lines at the location for over three years. Each of the two lines, at Mr. Shah's initiative was awarded an easy-to-remember "hundred numbers" that the Company generally reserves for its business customers.

The Complainant has shown noting as would segregate and distinguish the residential portion of his room from the business quarters. SBCI's requirement of a personal bathroom and a kitchen appears wholly reasonable in establishing a bona fide residence.

Just as telling is the SBCI order record that contains information about how to list Mr. Shah in the Yellow Pages directory. Without doubt, this is information that he would have had to supply. To be sure, Mr. Shah takes issue with the listing here. We do not believe, however, that a SBCI representative would have fashioned a listing for Mr. Shah out of whole cloth and without his input or direction. Or that he would have maintained it for so long without experiencing some benefit.

To the extent that Mr. Shaw remains an SBCI customer and can satisfactorily establish a distinction between his unique lifestyle arrangement and business activities, he might be able to have one of his lines on residential service and the other line on business service. But, we will not further speculate as to this end.

On the facts of record, and the reasonable inferences to be drawn therefrom, we find no error in service classification for Rajesh B. Shah. Thus, the Complainant's request for reclassification, from business to residential, is hereby denied.

IV. FINDINGS AND ORDERINGS PARAGRAPHS

The Commission, having considered the entire record, and being fully advised in the premises, is of the opinion and finds that:

- (1) A formal verified complaint was filed by Rajesh B. Shah ("Complainant") on August 18, 2003 against the Respondent Illinois Bell Telephone Company;
- (2) Illinois Bell Telephone Company d/b/a SBC Ameritech, and now SBC Illinois ("SBCI"), an Illinois corporation, provides local telecommunications service in the State of Illinois, and is a public utility within the meaning of Section 3-105 of the Illinois Public Utilities Act ("Act");
- (3) the Commission has jurisdiction over the parties herein;
- (4) the recital of facts and law and the conclusions stated in the prefatory portions of this Order are supported by the evidence of record and are hereby adopted as findings of fact and conclusions of law;
- (5) the complaint brought by Rajesh B. Shah states a claim actionable under Section 9-252.1 of the Public Utilities Act;
- (6) the Complainant, however, failed to bring his complaint within the time period prescribed in Section 9-252.1 of the Act. (220 ILCS 5/9-252; 5/9-252.1);
- (7) because the filing of the complaint in this cause was beyond the statutory time period for the bringing of such an action, the Commission lacks subject matter jurisdiction to hear the complaint;
- (8) On action of this Commission, this count of the complaint arising under Section 9-252.1 of the Act, should be dismissed with prejudice;
- (9) the forward-looking service reclassification relief further requested by the Complaint, is hereby denied.

IT IS THEREFORE ORDERED that the complaint filed by Rajesh B. Shah against SBC Illinois on August 18, 2003, and governed by Section 9-252.1 of the Act, be, and the same is hereby, dismissed with prejudice.

IT IS FURTHER ORDERED that the forward-looking service reclassification relief requested by the Complainant is denied.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code, this Order is final, it is not subject to the Administrative Review Law.

DATED:	September 24, 2004
BRIEFS ON EXCEPTIONS DUE:	October 8, 2004
REPLY BRIEFS ON EXCEPTIONS DUE:	October 15, 2004

Eve Moran,
Bernadette Cole,
Administrative Law Judges