

Decision No. 18789.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

CALIFORNIA FIREPROOF STORAGE COMPANY,
a corporation,

Complainant,

vs.

SOUTHERN CALIFORNIA TELEPHONE COMPANY,
a corporation,

Defendant.

Case No. 2175.

E. S. Clewett, for Complainant.

Oscar Lawler, for Defendant.

BY THE COMMISSION:

O P I N I O N

The complaint herein involves certain charges attempted to be made by defendant for bold faced listings in its telephone directory and for advertising matter which complainant desired to have included therein. It is alleged that the telephone directory published by defendant is a necessary incident and part of the facilities of communication furnished by defendant to its subscribers, and is required and is an essential and integral part of the telephone business carried on by defendant. It is further alleged that a classified business telephone directory, listing subscribers under classifications showing the particular business or occupation of said subscribers, has been published and is also required in connection with the public service rendered by defendant. For this service, it is alleged, defendant has es-

established and maintained a rate for advertising in said classified business directory of \$50.00 per month per half page, which charge defendant is alleged to have increased to the sum of \$250.00 per month without authority from this Commission. It is alleged that from other firms than complainant the charge of \$50.00 only per half page is still demanded. This action is alleged to constitute an unreasonable difference as to classes of service, in violation of Section 19 of the Public Utilities Act, and also to constitute an unlawful charge and increase in the rate without authority of this Commission.

It is further alleged that defendant has also without authority from this Commission raised the rates and charges for listing the name of complainant as a subscriber of said telephone directory in bold faced, black type from one dollar per month to five dollars per month, which, it is alleged, constitutes a change in the rate in violation of Sections 15 and 63 of the Public Utilities Act. The prayer is that the defendant be ordered and required to accept from complainant, and publish in the classified business directory of said defendant the advertising matter offered by complainant at the rate and charge of \$50.00 per half page per month, and to include in said advertisement the names and addresses of firms and corporations engaged in a like and similar line of business in the locality. It is further prayed that this company be ordered to charge and collect from complainant and its other subscribers the sum of one dollar per month only for printing the name of complainant and said other subscribers in bold faced, black type in said directory in place of five dollars per month. It is also prayed that this Commission require defendant to refund

to complainant all amounts in excess of one dollar per month collected and received by defendant from complainant for said printing of complainant's name in bold faced, black type in said directory.

Believing that it did not possess jurisdiction over the advertising rates mentioned in said complaint, this Commission dismissed the same, but the Supreme Court of this State, upon petition of this complainant, issued its writ of mandate, directing this Commission to take and exercise jurisdiction over the subject matter of said complaint (California Fire-proof Storage Co. v. Brundige, et al., 199 Cal. 185). This Commission, therefore, issued an order setting aside its order of dismissal and a hearing was thereafter had before Commissioner Brundige, at which time testimony was introduced. Subsequently, briefs were filed by both parties to this proceeding.

Subsequent to the issuance of the writ of mandate by the Supreme Court, as above mentioned, this Commission issued its General Order No. 74, directing telephone companies publishing directories within this state to file with this Commission their schedules of rates and charges for classified listings and advertising service in their telephone directory or directories, together with all classifications, rules and regulations appertaining thereto. By subsequent orders (General Orders No. 74-A and 74-B) the time for filing said rates and charges has been extended, but except for said extension of time, said order remains in full force and effect.

The testimony presented in this matter discloses that the allegation, that defendant has charged the rate of \$50.00 per half page per month for advertising in its directory is not strictly true, but that said charges have been changed from

time to time, and have been varied since March, 1920, from \$40.00 per half page per month to \$50.00 per one-third page per month with correspondingly different charges for different sizes and classifications of advertising space. It was also shown that the complainant had not itself ever contracted with the telephone company for one-half page advertising, but that it had at one time contracted for a one-ninth portion of a page at a rate then in force. The testimony also shows that complainant's desire was in fact to have included in a single half-page advertisement the names of five separate and different organizations doing a business similar to that of complainant, with which desire defendant refused to comply. The testimony further shows that this company did attempt to increase its rate for black faced publication to \$5.00 per month, but also that the rate had been changed from one dollar to two dollars as early as 1922. It is contended by defendant that the advertising section of the telephone directory is entirely distinct from its public utility service; that advertising therein is not confined to telephone subscribers; that the contracts for telephone service and for advertising are independent and unrelated, and that unless its operations in this regard should impinge strictly upon the utility service, the Commission would not be justified in interfering with said advertising service.

It is further contended that the Supreme Court, in requiring this Commission to take jurisdiction in this matter, accepted and acted upon as true certain allegations of the complaint which it is alleged are now demonstrated not to be in fact.

Complainant admits that certain of its allegations are not in accord with the facts, but contends that the materi-

al allegations of the complaint have been shown to be substantially correct, to-wit: that there was an attempt by defendant to increase its advertising rates and its rates for bold faced listings in its directories without authority from this Commission in violation of Section 63 of the Public Utilities Act.

Inasmuch as the evidence shows that no contract along the lines specified in the complaint was ever in force between complainant and defendant, we believe that this complaint must be dismissed in so far as it alleges a violation of the statute for the alleged increase of advertising space rates. Our General Order No. 74, above mentioned, is, we believe, in compliance with the material matters contained in the order of the Supreme Court in the mandate proceedings herein.

With reference to the prayer of the complainant for an order of this Commission directing defendant company to list its name in bold face type in the alphabetical section of its directory, and charge a rate of but one dollar per month, reference is made to a recent decision of this Commission in Application No. 13702, (Decision No. 18767). In that decision the Commission authorized defendant company and certain other public utility telephone companies to discontinue the practice of inserting in their telephone directories bold face type listings in the alphabetical sections and of entering into contracts for such service, in order to facilitate and expedite the use of their directories by subscribers and the public generally. In view of the authorization granted to defendant company in said decision, this Commission cannot now grant the prayer of complainant herein for an order along the lines above mentioned, and said prayer will, therefore, be denied. The authorization contained in Decision No. 18767 was granted for good cause

and no reason exists for the modification of said order of authorization.

In view of the peculiar situation involved herein, and of the questions of jurisdiction which were involved, and the testimony adduced herein, we do not believe that reparation should be granted to complainant in connection with the charges for bold faced listings. The testimony herein is of so meager a nature on this point that we do not believe that we would be justified in issuing such an order.

O R D E R

Complaint having been made as above entitled; hearings having been had; briefs having been filed; the matter having been submitted, and the Commission being fully informed in the premises,

IT IS HEREBY ORDERED that this complaint be and the same is hereby dismissed.

Dated at San Francisco, California, this 7th day
of September, 1927.

Frank J. ...

W. J. ...

Thos. J. ...

Commissioners.