

ORIGINAL

Decision No. 48668

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GLADYS A. O'DONNELL,)	
)	
Complainant,)	
)	
vs.)	Case No. 5447
)	
THE PACIFIC TELEPHONE AND TELEGRAPH)	
COMPANY, a corporation,)	
)	
Defendant.)	

Sidney Rudy, by Allen M. Singer, for complainant.
Arthur T. George and Pillsbury, Madison & Sutro,
 by Noel Dyer, for defendant The Pacific
 Telephone and Telegraph Company.

O P I N I O N

The complaint filed February 16, 1953 alleges that the defendant's rules and regulations affecting and pertaining to its service, particularly those limiting liability for errors or omissions in the listing of subscribers, are, and each of them is, not just and not reasonable. Complainant therefore requests an order that said rules and regulations are not just and not reasonable and are therefore void and of no effect. By answer defendant denies that said rules and regulations are unjust or unreasonable and as separate defenses alleges: (1) that its rates are published on the basis and assumption that the company's expenses arising from liability for errors or omissions in directory and information listings are limited by said rules and regulations, (2) in preparing and publishing its telephone directories it must set forth a large number of names, addresses and telephone numbers and that consequently it is extremely difficult to avoid some omissions and errors in listings and that such limitation of liability is reasonable and

necessary for the proper conduct of a public telephone system, and (3) that such limitations of liability are tariff provisions for liquidated damages and constitute contracts with its subscribers and are reasonable, lawful and binding on complainant and defendant.

Public hearing was held before Commissioner Potter and Examiner Rowe in San Francisco on May 4, 1953 and upon the receipt of evidence offered by defendant and argument of both counsel the matter was duly submitted and is now ready for decision.

The complaint contained no specific allegations of damage to the complainant and she introduced no evidence at the hearing. Counsel for complainant made his opening statement saying that the effect of the limitation of liability rules on any particular person is not important. He said that it applied only where there was a legal liability on the part of defendant to respond in damages for its error or omission and that the rule to be just must be just to all. He insisted that any limitation of liability less than the actual damage suffered by a subscriber as a result of the company's error or omission could not be just. He conceded that this limitation of liability was a part of the rate but that, being unjust, such rule could not be legal and binding.

According to the evidence submitted by defendant the rule is necessary in the conduct of a telephone business under the rates which it has published. Omissions and errors in listings were said to be rare in view of the large number of listings. Defendant asserted that in printing the company directories, printer's proof of the listings is invariably sent to new subscribers prior to publication so that, by carefully reading such proofs and calling errors or omissions to the defendant's attention, subscribers are enabled to eliminate errors and omissions to a large extent. Also, the company was said to have taken reasonable measures to minimize

C-5447 SL *

damage and inconvenience to subscribers resulting from any omission or error, by the use of intercept and reference services.

The printing and distribution of telephone directories are incidental means of improving and facilitating the defendant's primary function of furnishing a telephone service. Contrary to the assertion of complainant the Commission may not take judicial notice of the asserted fact that great damage to subscribers necessarily results from errors or omissions in telephone directory listings. Complainant has not shown to what extent, if any, she has in any respect suffered as a result of the rule. The construction of the term "just and reasonable" contended for by complainant is strained and unnecessarily narrow. Her construction of the term "just" is applied to the effect or result of the rule rather than to its nature, as intended by the legislature as used in the Public Utilities Code. ✓

The Commission finds the rules attacked by complainant to be just and reasonable. ✓

O R D E R

Complaint having been made and public hearing having been had in the above-entitled and numbered proceeding, evidence having been received and considered, and the matter having been submitted for decision, the Commission now being fully advised and basing its decision upon the findings and conclusions in the foregoing opinion,

IT IS HEREBY ORDERED that the relief sought by said complainant be, and it is, denied.

The Secretary is directed to cause copies of this order to be served by registered mail upon the parties to this proceeding.

This order shall be effective twenty days after the date hereof.

Dated at San Francisco, California, this 1st day of June, 1953.

A. J. [Signature]
President

James F. Crocker

Harold Hulse

Kenneth [Signature]

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.