

ORIGINAL

Decision No. 50056

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARTIN GENDEL,

Complainant,

- vs -

Case No. 5499

GENERAL TELEPHONE COMPANY OF CALIFORNIA, a corporation, and THE PACIFIC TELEPHONE & TELEGRAPH CO., a corporation,

Defendants.

Martin Gendel, complainant.
Marshall K. Taylor and Albert M. Hart,
for General Telephone Company;
Arthur T. George, Alexander R. Imlay
and Dexter C. Tight, for The Pacific
Telephone and Telegraph Company;
respondents.
M. E. Mezek, Senior Utilities Engineer,
Public Utilities Commission, for the
Commission staff.

O P I N I O N

The amended complaint, filed with this Commission by Martin Gendel on December 15, 1953, joins the General Telephone Company of California, hereinafter referred to as General, and The Pacific Telephone and Telegraph Company, hereinafter referred to as Pacific, as defendants and alleges that on or about February 15, 1952, complainant filed with General his application for Bradshaw, preferably, or Brighton telephone service in his residence at 519 S. Beverly Glen Boulevard, West Los Angeles;^{1/} that said application included a request for a preferential category classification based upon the following statement of fact, which

^{1/} Bradshaw service refers to Los Angeles foreign exchange service in West Los Angeles while Brighton service refers to Beverly Hills foreign exchange service in West Los Angeles.

statement had theretofore been submitted to General; "the complainant is the senior partner in the law firm of Gendel & Raskoff, located at 6435 Wilshire Boulevard, Los Angeles, and has been practicing law in Los Angeles for over 20 years; we have been fortunate in accumulating a rather sizable clientele consisting mainly of individuals or entities engaged in various phases of manufacturing or business. As a result of this specialization in business law, I am compelled to be available by telephone at all hours. To complicate my personal difficulties, approximately five years ago I was directed by the Sansum Clinic of Santa Barbara to cut down on office activities and to attempt to carry on part of my law practice from my home. As a matter of fact, current medication prescribed by the Clinic resulted in moving of our offices last November closer to my home in order to cut down on traffic traveling"; that subsequent to February 15, 1952, and prior to the date of filing of this complaint, General has made newly available both Bradshaw and Brighton telephone services to applicants for such telephone service who are not entitled to preferential treatment, or who are not entitled to any greater preferential treatment than complainant is entitled to; that by making available Bradshaw telephone service to said individuals whose applications were filed after the application of complainant, General has not afforded complainant fair or equal service and has discriminated against complainant without cause; that at all times complainant has offered to continue receiving Arizona service, now being furnished by General, as well as paying for the additionally requested Bradshaw service; that complainant is entitled to preferential treatment in connection with his application for

Bradshaw or Brighton telephone service in his residence; that since the date of complainant's application, to wit, on or about February 15, 1952, General has made available Bradshaw or Brighton telephone service upon applications filed after the application of complainant and which said applications were not entitled to the initial category preferential classification or preferential treatment as compared to complainant. Complainant asks that this Commission make an order directing General to install Bradshaw service, preferably, or Brighton service in his home. Pacific is joined for the reason that Bradshaw and Brighton services are provided as a joint undertaking by Pacific and General.

Pacific and General denied the material allegations of the complaint. As an affirmative defense, General alleged that complainant's first request that he be accorded preferential treatment was contained in a letter dated May 5, 1953 (Exhibit 1); that pursuant to General's Rule and Regulation No. 8, consideration was given to the reasons offered in support of complainant's request; that it was determined that the complainant, on the facts, was not entitled to preferential treatment on the grounds that said reasons did not indicate greater essentiality or a more unreasonable hardship than other applications for such service being held by this answering defendant; that said determination was communicated to the complainant by defendant's letter dated May 20, 1953 (Exhibit No. 1); that there have been only three foreign exchange installations made on the basis of preferential treatment to any applicant in the complainant's category since May 5, 1953, or since February 15, 1952, the date of his original application;

that two such installations were supplied to medical doctors whose applications were approved based on public health and safety; that the third such installation was furnished for a temporary period from March 19, 1953 until May 26, 1953 to the campaign headquarters of a candidate for municipal office.

Public hearings were held in Los Angeles on March 15 and March 30, 1954, before Examiner Rogers. At the conclusion of the latter hearing the matter was submitted. It is ready for decision.

Reference is made to the following tariff provisions of General and the definition of residence main service as agreed to by the parties:

Definition of Business Service taken from Definitions on Tariff Sheet Cal. P.U.C. Sheet No. 278-T.

"10, Business Service.

Business service is exchange service furnished individuals engaged in a business, firms, partnerships, corporations, agencies, shops, works, tenants of office buildings, hotels receiving individual or party line service, and individuals conducting any business or practicing a profession having no other office than their residence, when the actual or obvious use is for business purposes."

The parties stipulated that "residence main service" means primary residence service and could be service on a one party line or a multiple party line.

Rule and Regulation No. 8 refers to the priority of establishment and supersedure of service. The pertinent provisions are as follows in quotation marks:

"A. PRIORITY OF SERVICE APPLICATION

Whenever facilities are not immediately available to furnish service to all applicants, the order of precedence, by categories will continue to be the same as that established by the Civilian Production Administration in Utilities Order U-2, as amended August 7, 1946, as shown below:"

"Category I

Business service and residence main service to the extent required for the proper discharge of duties essential to the activities of:

Official Army, Navy, Marine Corps and Coast Guard Units and the Veterans' Administration."

Category II

Changed business address in same exchange.

Category III

Veterans' business.

"Category IV

Business service other than that included in the above categories."

"Category V

Residence main service where:

The attending physician or surgeon certifies in writing that there exists a condition of serious illness or pregnancy involving serious complications, that he must be called repeatedly at unpredictable intervals for emergency treatment and that in view of all the circumstances telephone service is essential. Such service shall be terminated within 30 days of the termination of the conditions specified above."

Category VI

Change of residence address in same exchange.

"Category VII

New residence main service to the extent required for the proper discharge of duties essential to the following activities:

.....
The furnishing of material, equipment or facilities under prime or subcontracts to the armed forces of the United States and by suppliers to such prime or

subcontractors; the converting of war plants to peacetime operations; and the reestablishing under the same ownership of businesses which were obliged to close during the war because of lack of materials or manpower or because of wartime regulations; persons (such as engineers, architects, contractors, chemists, lawyers and accountants) who perform special services for these activities or for public works projects."

Category VIII

Wives of members of armed forces, veterans, etc.

"Category IX

New residence main service other than that included in the above categories."

Category X

Residence extension telephones.

"The Company will accord preferential treatment, when warranted by the facts and circumstances as determined by the Company, to applications which are not specifically mentioned above involving service requirements of greater essentiality or more unreasonable hardship than other applications which are being held by the Company."

Brighton and Bradshaw services allow the subscriber to dial numbers located in various exchanges other than the exchange where the telephone is located. Bradshaw coverage is greater than Brighton.

Complainant testified as follows:

He is a lawyer with his office since 1951 at 6435 Wilshire Boulevard in Los Angeles. In the latter part of December, 1951, he purchased a home at 519 South Beverly Glen in Los Angeles. The sellers of the house had Brighton service at the time complainant purchased it. This service continued for a time after complainant moved into the house.

On or about December 19, 1951, complainant called Ralph Collins at General. Collins referred complainant to a

Mr. Grout. On January 10th, 1952, complainant talked to Grout who complainant thinks was the manager of General's Westwood office. He told Grout that one of the reasons he had moved his office to Wilshire Boulevard was that he had bought a home nearby; that he had what Sansum Clinic described as office hypertension; that the clinic recommended that he move out of town, go farther west, and conduct as much of his business as possible from his home; that he would like to be assured he would receive at least a Brighton number; and he asked about obtaining a Bradshaw number. Grout recommended that complainant talk to a Miss Libert, his secretary. On or about February 7, 1952, complainant received a form directed to the former owner of his home stating that the Brighton service would be discontinued as the former or original subscriber was no longer the user. On February 7, 1952, complainant talked to Miss Libert, told her he had talked to Mr. Grout, and asked her what he had to do to keep the Brighton service, and again attempted to secure Bradshaw service. He told Miss Libert about the hypertension and his need to work from the house and asked her how he would go about it if it were necessary to present the facts to the company. Miss Libert said she would mail application forms. The next day, complainant received an application form for Brighton service and an application form for Arizona service, but none for Bradshaw service. On that day complainant called Miss Libert and asked about a Bradshaw application. She said none was necessary as she was noting it down. He asked her if she wanted an affidavit from the Sansum Clinic as to his medical history. Complainant also asked if it would be of any assistance to obtain affidavits from clients in

preferred industries (complainant represents firms in the aircraft industry). Miss Libert said it would not be necessary as she was noting it down. Complainant asked Miss Libert when he could expect some results. She was a little vague, said he would receive Arizona service, and that the Brighton or Bradshaw service would take a little time.

The then existing Brighton number was discontinued about February 9 or 10, 1952, and the Arizona service was installed.

About the middle of April, 1952, complainant called General relative to the extended service and was told to be patient, that phones were tight. Thereafter complainant talked to Miss Libert or others at General on several occasions, and called Pacific's Los Angeles attorneys. He was led to believe that if General would request the installation of a Bradshaw number, Pacific was in a position to make the installation. Complainant again talked to General and was told that it was necessary that a Bradshaw number be available before he could be given it and that it was difficult to acquire that kind of service.

One or two days prior to May 5, 1953, complainant went to General's Westwood office and talked to Mr. Lind. Mr. Lind suggested complainant write setting forth his reasons for requiring the extended service, that Bradshaw service would best suit complainant's needs and suggested that complainant cease attempting to gain a Brighton number. On May 5, 1953, complainant wrote a letter setting forth his reasons for the extended service (Exhibit 1, letter May 5, 1953), and requested that he be given a Bradshaw number in addition to his Arizona number. On May 8, 1953, complainant received an acknowledgment of his letter of

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May 5, 1953 (Exhibit 1, Letter May 8, 1953), requesting preferential treatment. On May 20, 1953, complainant received a letter advising him that General could not install a Bradshaw number as the information furnished did not indicate greater essentiality or more unreasonable hardship than other applications being held (Exhibit 1, letter May 20, 1953). On May 22, 1953, complainant informed General that he wanted information concerning Bradshaw and Brighton services installed on applications filed after his and advised that he intended to take the matter up with the Public Utilities Commission. (Exhibit 1, letter of May 22, 1953). On June 3, 1953, General advised complainant that it could not give a definite date when he would expect installation and advised that the Brighton application had been canceled (Exhibit 1, letter June 3, 1953). Thereafter complainant filed the complaint herein.

Complainant comes to his office between 7:30 and 8 a.m. and goes home at 6:30 to 8:30 p.m. during the week; no time is spent at home on business matters. If the Bradshaw service were installed complainant alleges he could eliminate some early morning and late evening office hours by reason of being able to carry on his business from his home. Complainant avers he would spend 50% of his working time at home if he had the extended service. Complainant stated that if an integral part of the definition of a business service (see above) is that he have no other office he would not qualify because his practice is such that he could not operate it entirely from his home. Complainant stated that he might qualify under Category VII of Rule and Regulation No. 8 (see above) as he personally owns an interest in

the Aircraft Division of Calneva which does aircraft precision work for the Douglas El Segundo plant.

Ninety per cent of complainant's clients could be reached with the Bradshaw service by dialing but only 10 per cent can be reached by dialing with the Arizona service. Complainant would prefer Bradshaw service to Brighton service. He doubts that he can qualify under Category V, Rule and Regulation No. 8 (see above) as when his situation (heart condition) develops he has to lie down, that is all. He asserts that he has been ordered to stay home and do work from there and that his doctor would certify that the telephone service for such use is essential to his treatment.

At the conclusion of complainant's presentation, General and Pacific moved for a dismissal on the ground that the pleadings present one fundamental issue - has there been illegal discrimination by the defendants insofar as the rendering or failure to render foreign exchange service to the complainant is concerned. Subsidiary, they said, is the issue whether Pacific has facilities available which upon demand of General could be used to render service to the complainant. There is, the respondents stated, not one iota of evidence indicating discrimination nor any evidence that any facilities are available for rendering to him the service which he is asking for.

Respondents' motions are denied. This Commission has the authority, on its own motion, to investigate and correct discriminatory practices by utilities. The record herein, including the evidence presented by the respondents, shows that the complainant is entitled to the relief he seeks although the

evidence he presented would not, by itself, support the granting of said relief. It should be borne in mind that at no time prior to the filing of the complaint herein, according to the evidence, was applicant given or shown a copy of General's Rule and Regulation No. 8. In addition, as appears from the evidence, General, in some instances at least, disregarded Rule and Regulation No. 8 in determining priority of applications.

The evidence shows that Brighton as well as Bradshaw services are furnished through the joint facilities of General and Pacific. There are, it appears from the evidence, inadequate facilities to supply service to all potential subscribers for Brighton or Bradshaw service, but all prospective subscribers for either service will be able to secure the service desired early in 1955. While Pacific at present has insufficient equipment to provide lines for all Bradshaw categories (Rule and Regulation No. 8) in General's service area, including complainant's home address, it has sufficient equipment to service all categories higher than Category IX. Pacific never inquires of General, when Pacific receives an application for service from General, the category of the proposed customer under Rule and Regulation No. 8. In the past all General's requests for Bradshaw services have been satisfied by Pacific within not to exceed 6 months, and the record shows connections which were made within two or three weeks.

General furnishes both Brighton and Bradshaw services pursuant, it is claimed, to Rule and Regulation No. 8 for the reason that it does not have sufficient equipment to serve all

parties who desire such service. Rule and Regulation No. 8 provides 10 categories of preference plus the paragraph following Category X which permits General to accord preferential treatment when warranted by the facts and circumstances as determined by the company to applications which are not specifically mentioned in the 10 specific categories and involving service requirements of greater essentiality or more unreasonable hardship than other applications being held by the company. The record shows that starting with January 8, 1952, General commenced disregarding the specific provisions of Rule and Regulation No. 8 and thereafter placed all applications in either Category I, Category IV or Category IX, or the greater essentiality paragraph referred to above. Since complainant filed his applications for Brighton and Bradshaw service, two Brighton services and three Bradshaw services have been installed pursuant to this latter provision. The two Brighton services were for doctors, and the three Bradshaw services were for political candidates. Category I applications are lumped together with Category VII applications (both have to do with contractors furnishing supplies to the armed forces). General's witness stated that with suitable certification from some authorized member of the armed forces complainant would be entitled to Category I treatment, but complainant did not furnish the required certification. All Brighton and Bradshaw connections made since complainant requested service (February 14, 1952,) are shown on Exhibits 4 and 5. Categories I, IV and IX only are shown, with the exceptions of the five preferred treatment subscribers referred to above.

Reference to two subscribers was made by complainant in an attempt to show that the rules have been disregarded in

granting service.

First, on Exhibit No. 5, Page 6, reference is made to Samuel Banovitz given a Category IV rating. His application was filed on October 16, 1953, and he received a Bradshaw number on February 11, 1954. General's witness stated that the reason was: "Based upon Mr. Banovitz statement that he is establishing for himself interests in the west pertaining to real estate investments and reorganizations, that when in Los Angeles he conducts the major portion (underlining added) of his business from his home using telephones exclusively for long distance calls to various parts of the community, that his home has a separate room and equipment for office purposes and his stenographer is employed on a part time basis. He states that he believes it possible to conduct his business from his home on a temporary basis rather than to seek temporary office space in the general vicinity." (Note that the definition of "business service" states that such service can be given to individuals having no other office than their residence.) The witness stated that there were from ten to fifteen subscribers in the exhibit in the same category as Banovitz.

Second, on Exhibit No. 4, Page 3, reference is made to Dean Martin. He applied for Brighton service on July 16, 1953, subsequent to complainant's application, and received service on July 29, 1953. His application was placed in Category IV without investigation, the principal factor being that he had previously subscribed to Arizona service. (This does not appear to be a basis of supersedure specified in Rule and Regulation No. 8.)

It appears from the record that respondent General has not consistently and uniformly applied the provisions of Rule and Regulation No. 8. This has resulted in a situation where the complainant herein has been denied service while subsequent applicants, in a lower Rule and Regulation No. 8 classification, have received service. In addition to the foregoing, respondent General does not provide subscribers with copies of Rule and Regulation No. 8, nor does General offer to make them available for inspection; hence subscribers are not informed of the various categories, rules and requirements respecting service installations.

From the evidence we are of the opinion complainant could and would have, early in 1952, qualified as an applicant under Category VII combined with Category I had he been advised of the company's requirements. Such qualification would have placed him at least ahead of the Category IV applications.

Upon the record herein we are of the opinion and find that complainant has suffered unreasonable discrimination in the furnishing to him of telephone service by General Telephone Company of California and is entitled to the immediate installation of a Bradshaw or Brighton service. It will be so ordered.

O R D E R

Complaint having been filed, public hearing having been held thereon, the matter having been argued and submitted;

IT IS ORDERED that General Telephone Company of California and The Pacific Telephone and Telegraph Company forthwith install a Bradshaw or Brighton telephone service for complainant Martin Gendel in the premises owned by said Martin Gendel and located at 519 South Beverly Glen Boulevard, West Los Angeles, California.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 18th day of May, 1954.

John E. Mitchell
President
Justice J. Adams
Samuel Potter
Gene Higgins

Commissioners