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Decision No. 52830

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MANFRED M. WARREN and C. JAY HOLLANDER, Complainants, vs. PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation, Defendant.	Case No. 5620

C. Jay Hollander, for himself and for Manfred M. Warren, complainants.
Richard B. Daugherty, Arthur T. George and Dexter C. Tight, for Pacific Telephone and Telegraph Company, defendant.
J. B. Balcomb, and Paul Popenoe, Jr., for the Commission staff.

O P I N I O N

This complaint, filed February 14, 1955, contains the allegation that complainants have had to accept defendant's telephone service subject to the Company rule on file with this Commission whereby defendant's liability for errors or omissions in the Classified Telephone Directory is "limited" to a pro rata abatement of the charges paid to the Company as the error or omission may affect the entire advertisement. Request that Manfred M. Warren be listed in said directory under the classification of Patent Attorneys and Agents, was presented December 1, 1953, but the complaint asserts that the directory as published did not contain his name under said classification.

The prayer of the complaint requests that a formal investigation be instituted into defendant's rules, regulations and

practices, that the Commission declare such provision as to limitation of liability to be unlawful, unreasonable, against public policy and therefore null and void, and that general damages in the sum of $10,000 and special damages in the sum of $5,000 be awarded.

The answer filed by the Telephone Company avers that pursuant to the application of C. Jay Hollander business service was established on October 16, 1953, in Room 707 Financial Center Building, Oakland, California under the telephone numbers Templebar 2-0933 and Templebar 2-0934, that this was a joint-user service, Manfred M. Warren being the other user, that the April, 1954, issue of the Oakland, Alameda, Albany, Berkeley, Emeryville, Piedmont, San Leandro and parts of El Cerrito and San Lorenzo Telephone Directory (alphabetical) contained the following listing:

"Hollander, C. Jay, Attorney
Financial Center Building...Templebar 2-0933
"Warren, Manfred M., Attorney
Financial Center Building...Templebar 2-0933"

and under the classified heading "attorneys"

"Hollander, C. Jay, Attorney
Financial Center Building...Templebar 2-0933
"Warren, Manfred M.
Financial Center Building...Templebar 2-0933"

but, that in the classified directory under the classification "Patent Attorneys and Agents" there appeared

"Hollander, C. Jay
Attorney at Law
Financial Center Building...Templebar 2-0933"

instead of

"Warren, Manfred M.
Attorney at Law
Financial Center Building...Templebar 2-0933".

That in the preparation and publication of its telephone directories defendant is required to set forth millions of names, addresses and telephone numbers, that complete freedom from errors

and omissions is a practical impossibility and that the provisions in its published tariffs limiting liability are necessary and reasonable.

The answer also stated that under the Constitution and Laws of the State of California, the Public Utilities Commission has no jurisdiction to determine the existence of or to award damages for any error in or omission of a listing or advertisement in its telephone directories.

Public hearings were held before Examiner John Rowe in San Francisco on June 15 and 16, and September 14, 1955, and on February 24, 1956, and the matter was submitted upon the filing of concurrent briefs which have been received and considered.

The rule providing the extent of defendant's liability is a provision of long standing. The company has had this or a similar rule on file for almost thirty years. Independent telephone companies have similar rules. Such rules are well established and are of general application throughout the telephone industry in the United States.

Complainants have failed to support their assertion that this rule is unreasonable. Mr. Warren testified generally that he had been damaged. However, he did not point to a single item of business that he or his partner had lost as a result of the substitution of Mr. Hollander's name for his under the classification of Patent Attorneys and Agents. The evidence reveals that the telephone service for Mr. Hollander and Mr. Warren under telephone number Templebar 2-0933 included an associated auxiliary line Templebar 2-0934 and a key telephone system arrangement for picking up or holding either of the two lines.

In complainant's brief it is contended that the rule providing for the abatement of the charge is unreasonable because it relieves the telephone company of all liability. Since no benefit

has been conferred upon the subscriber he could demand the return of any charge paid on the theory of failure of consideration. This he could do without benefit of the rule. Consequently it is asserted, the rule amounts to a provision relieving the utility of liability for negligence and cannot be justified as a reasonable limitation of liability.

No evidence of negligence is contained in the present record. In any event, it is not for this Commission to determine legal claims of negligence. Such matters are reserved for the courts.

The primary function of the telephone company is to provide telephones as a means of communication. The furnishing of the alphabetical portions of the directory is an additional incident of this service which is of importance for communication between all but the closest of friends and relatives who can be expected to procure the subscriber's telephone number directly from him. The furnishing of the classified portion of the directory is less vital to the primary purpose of the telephone service.

This less vital part of the service being in the nature of a means by which commercial and professional customers may procure advertising creates for the utility a greater risk in that mistakes in listing customers may result in loss for them. To the extent that these customers bring actions against the telephone company, operating costs will be increased. Damages awarded may be large. Many groundless claims may be asserted. Such groundless claims could be successfully defeated in court but even the lawsuits that are won by the company would impose a heavy burden in lawyer fees and the time of company personnel in court and while they are preparing their testimony. The record in this proceeding does not support a finding by this Commission that it would be in the public interest to permit such added costs which would necessarily be reflected in rates and charges for service.

Complainants have made no contention that the charges for insertions in the classified section are so large that they can be considered as providing funds to pay judgments for damages. In view of the rule involved, neither present rates charged for this service nor for any other service of defendant provide funds for such payments. Moreover, the prescription of a new rule providing for the costs of insurance for damage claims, or for limiting liability, rather than the present rule which entirely excludes any liability other than the return of the charges collected, might well result in higher rates for telephone subscribers and have an impact upon other telephone utilities operating in California. There is no evidence in this record which would support the prescription of a new rule on this matter in the public interest.

The contention that the form of contract used by the telephone company in procuring orders for insertions in the classified section considered with the rule against liability and other provisions results in an agreement which is void and illusory and lends no support to the complainants' case. The form of contract is in consonance with the rule and, therefore, is lawful.

Complainants have failed to show, and the uncontradicted evidence supports a finding which the Commission now makes, that the effects of the rule has not been to increase errors by company employees and the Commission further finds that such errors have been kept to a minimum. There is no showing that a relaxation in this rule would improve service to the public.

Complainants relinquished their prayer that this Commission award them damages in this proceeding. The Superior Court has jurisdiction to give judgment for damages resulting from negligence or breach of contract against a public utility upon a proper showing. However, the law is well settled that such rule as the one here involved prevents the courts from entertaining such actions, unless and until the Commission has determined that the specific rule is unjust and unreasonable.[1/] There is no evidence in the record of this proceeding upon which a determination of unreasonableness could properly be made by the Commission.

The Commission finds that the complainants have failed to support their contention that this rule is unreasonable and further finds the rule attacked by complainants to be just and reasonable.

O R D E R

Complaint having been made and public hearings having been had in the above-entitled and numbered proceeding, evidence having been received and considered, and the matter having been submitted

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1/ Cole v. Pacific Tel. & Tel. Co. (1952) 112 Cal.App.2d 416

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 complainants Manfred M. Warren and C. Jay Hollander, is denied.

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

Dated at San Francisco, California, this 3rd day of April, 1956.

President

Commissioners

Commissioner Rex Hardy, being necessarily absent, did not participate in the disposition of this proceeding.