

ORIGINALDecision No. 53331

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HENRY L. SOMMER,

Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,

Defendant.

Case No. 5726

H. W. Glensor, for the complainant.Pillsbury, Madison & Sutro, by Dexter C. Tisht
and Richard C. Daugherty, for defendant.O P I N I O N

The complaint, filed on February 9, 1956, alleges, inter alia, that defendant's rate limiting its liability for errors or omissions in advertisements included in its classified telephone directories (Regulation No. 7, 5th revised sheet 6, schedule Cal. P.U.C. No. 39-T, Classified Telephone Directory Advertising - Northern California [Exhibit No. 7 herein]) is unjust and unreasonable. Complainant prays that said rule be declared unjust and unreasonable and expunged from the tariff. ^{1/}

By its answer, filed on March 1, 1956, the defendant denies that said rule or regulation is unjust or unreasonable, and as separate defenses alleges (1) that its rates are published on the basis that the company's expenses arising from liability

^{1/} The complainant also prayed for damages. This portion of the prayer was stricken on motion of the defendant.

for errors or omissions in its classified directory advertising are limited by said rule and regulation, and (2) that in preparing and publishing its telephone directories it must set forth a large number of names, addresses, telephone numbers, and advertisements, 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.

A public hearing on the complaint was held before Examiner Kent C. Rogers in San Francisco on May 15, 1956, and the matter was submitted subject to the filing of concurrent briefs which have been filed and considered. Complainant filed, concurrently with his brief, a "Petition of Complainant for Oral Argument Before Commission En Banc." This petition is hereby denied inasmuch as the order herein will determine this matter.

The complainant presented evidence of the following:

Complainant is a veterinarian. He resides in San Francisco and has no business office. In 1952 he had an advertisement inserted in the defendant's classified San Francisco telephone directory under the general heading "veterinarian", containing his name, address, telephone number, and the statement "practice limited to house calls." In 1952 he joined the "Association of San Francisco Veterinarians" and cancelled his advertisement (Exhibit No. 3). During the years 1953 and 1954 the "Association of San Francisco Veterinarians" ran an advertisement in the classified section of the San Francisco telephone directory under the general heading of "Veterinarians", which advertisement was

headed "Association of S. F. Veterinarians", under which was a statement explaining what the association was and a list of members. This list included the complainant's name, address, telephone number, and the statement "practice limited to house calls." From 1952 on, complainant signed no contract for advertising in the telephone directory. In the latter part of 1954 or the early part of 1955 the complainant notified the "Association of San Francisco Veterinarians" that he did not want his name listed in the association's advertisement and that he refused to pay his share of the advertisement cost. The July 1955 San Francisco classified directory listed complainant under the general heading of "Veterinarians" and gave his address and telephone number. It did not contain the statement "practice limited to house calls." After he cancelled his directory advertising order in 1952, complainant signed no new directory advertising order. Complainant's gross income has decreased since the quoted language was omitted from the advertisement.

The complainant rested his case. The defendant thereupon moved for a dismissal of the complaint on the ground that the complainant had presented no evidence to show that the complained of rule is unreasonable.

In our opinion the motion to dismiss should be granted. We have recently held that the rule here under attack is just and reasonable (Manfred M. Warren et al, v. Pacific Telephone and Telegraph Company, Decision No. 52850 in Case No. 5620). Complainant has presented no argument nor any evidence which would lead us to a contrary decision. The motion to dismiss the complaint will be granted.

O R D E R

Complaint having been made, a public hearing having been held, the defendant having made a motion to dismiss the complaint and the Commission having found that the motion to dismiss the complaint should be granted, and based upon said finding,

IT IS HEREBY ORDERED that the complaint of Henry L. Sommer against The Pacific Telephone and Telegraph Company be, and it hereby is, dismissed.

The effective date of this order shall be twenty days after the date of service of a copy of this decision upon each of the parties hereto.

Dated at San Francisco, California,
this 10th day of July, 1956.

[Signature]
[Signature]
President

Justus S. Casner
Ralph L. Lister

[Signature]
[Signature]
Commissioners