

Decision No. 54355

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FRANK SERPA, JR.,

Complainant,

vs,

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,

Defendant.

Case No. 5787

Waldo Postel for Complainant.
Arthur T. George, Richard P. Dougherty and Dexter C. Tight
for Defendant.
Ermet J. Macario for the
Commission Staff.

O P I N I O N

By this complaint filed June 22, 1956, it is alleged that Frank Serpa, Jr. for some years has been conducting business under four different names at 2931, 2933, 2935 and 2937 Geary Boulevard in San Francisco; that heretofore complainant has had said names listed and in advertisements in the Classified Directory of defendant has included statements of prices to be charged in his rug cleaning business; that defendant threatens arbitrarily to eliminate all prices or percentages from any and all advertisements of complainant under the different names under which he carries on his carpet cleaning business, and has notified complainant that in its September, 1956 issue of the San Francisco Telephone Directory it will eliminate all prices, discounts or percentages from his listing and those of certain other subscribers.

The prayer of the complaint requests an order directing defendant in its next and following directories to include prices, percentages and discounts when and as requested and for other just

and proper relief. In its answer defendant alleges that it advised complainant on May 1, 1956 that any advertising copy showing specific prices or discounts would be unacceptable for any advertising.

As an affirmative defense defendant alleges that its tariff schedules contain regulations under which it has established practices governing the acceptability of advertising copy which regulations are uniformly applied; and that after a careful review of the results of publishing prices of services and commodities in its telephone directories it concluded that such prices should be excluded from all classified advertising, that defendant has been and is proceeding to apply this policy on a uniform, nondiscriminatory basis and that this policy is reasonable and just and in the public interest.

Public hearing was held in San Francisco on November 21 and 23, 1956 before Examiner John Rowe at which time evidence both oral and documentary was adduced and after oral argument the matter was submitted for decision.

According to the testimony of complainant he has stated prices in his advertisements in defendant's classified directory until the September 1956 issue, when they were removed by defendant. Also complainant has pointed to one instance where one of his competitor's has been permitted to include prices in its advertisement in this directory. He further testified that since the new directory was issued he received fewer requests for service than in the same period in prior years. This evidence was received over defendant's objection, as having some evidentiary value in showing a possible loss of business. However, in view of the fact that there are so many unknown factors bearing on the question of loss of business the Commission is unable to make a finding that the removal of prices from complainant's advertisements has resulted in a material loss of business.

From the evidence submitted by defendant the Commission finds as a fact that the inclusion of prices in the advertisement of one of complainant's competitors was the result of a mistake or error on the part of an employee of defendant and such fact does not render defendant's exclusion of prices from the advertisements of complainant an arbitrary or discriminatory act.

The policy of defendant in refusing to include prices in any advertisements placed in its Classified Telephone Directory is found to be reasonable and necessary to prevent misleading and unfair advertising. The prices included in advertisements in a telephone directory which is published only once a year will very probably become unrealistic in view of changes in costs of labor and materials. Also, it permits "bait" advertising, which is found to be undesirable.

The publication of a Classified Telephone Directory, while it is a venture not essential to the performance of telephone service, is so materially required in connection with such service as to become colored with the same considerations of regulation. No one except the telephone company can adequately carry on the venture.

Since the publication of advertisements and the listing of businesses in a directory is vital to the proper rendition of telephone service it is a matter within the regulatory jurisdiction of the Commission. However, because the telephone company in publishing the directory is itself a party to any representations therein and to any practices carried on by advertisers therein, it has the duty as well as the right to see that the public is treated fairly and honestly. It must, therefore, be permitted a reasonable amount of supervision and the determination of proper policies as to the content of advertisements published. These policies must be non-discriminatory and fair.

Some of the company policies are of such vital importance to subscribers that it would appear desirable that they be incorporated in rules and regulations filed with the Commission. If so filed, the Commission will be in a better position to aid the telephone company in the development of such policies. Also, their filing would blunt the effect of charges such as were made at the hearing that the telephone company is acting like a legislature and is acting arbitrarily. Without such prior filing the company is taking upon itself more of a risk in that the Commission without such a filing cannot in any sense be considered as having previously considered and passed upon such a rule or policy determination. In the present case the Commission finds that the company policy is reasonable and nondiscriminatory. The complaint will, therefore, be ordered dismissed.

O R D E R

Complaint and answer having been filed, public hearing having been held, and basing its determination upon the evidence of record and the findings in the above opinion,

IT IS ORDERED that the complaint in Case No. 5787 is dismissed.

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

Dated at San Francisco, California, this 8th day of JANUARY, 1957.

[Signature] President
[Signature]
[Signature]
[Signature]
[Signature] Commissioners