

ORIGINAL

Decision No. 54209

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GREAT LAKES AIRLINES, INC., a corpo-)
 ration,)

Complainant,)

vs.)

Case No. 5855

THE PACIFIC TELEPHONE AND TELEGRAPH)
 COMPANY, a corporation,)

Defendant.)

Keatinge and Older by Edward C. Cazier, Jr.,
 for complainant.
 Arthur T. George and Pillsbury, Madison & Sutro
 by Dexter C. Tight and Charles B. Renfrew,
 for defendant.

OPINION AND ORDER DISMISSING COMPLAINT

By this complaint filed on November 30, 1955, it is alleged that Great Lakes Airlines, Inc., a corporation, is an airline engaged in the common carriage of passengers and freight in interstate commerce; that at all times mentioned in the complaint defendant has offered as a service to its subscribers a classified telephone directory service in which classified directory business firms and individuals may advertise and set forth the nature, extent and price of the services or commodities offered to the public; that for a period of years defendant has, in consideration of certain sums paid by complainant, published in its classified directories display advertisements submitted by complainant to defendant; that complainant has, by means of such display advertisements in said directories, informed the public and telephone service subscribers of the nature, extent and price of air carriage service offered to the public and to telephone service subscribers by complainant; that all prices and

services therein advertised and set forth were and are subject to the rules and regulations of the Civil Aeronautics Board of the United States Government; and that all prices are subject to tariffs duly filed with the Civil Aeronautics Board.

The complaint further alleges that said classified directory display advertisements are a vital, unique and essential means whereby the public and telephone service subscribers may be efficiently and economically informed of the nature, extent and price of services offered by complainant; that there is no other presently available comparable medium for economically and efficiently informing the public and telephone service subscribers of the nature, extent and price of the services offered to the public by complainant; that said display advertisements are a vital and essential part of the airline business conducted by complainant; that prior to the filing of the herein complaint defendant informed complainant that it may advertise through the classified directory service only upon the condition that all reference to price and/or rates for the service offered by complainant to the public be deleted from such advertisements; that complainant has submitted to defendant advertisements containing price and rate information, said prices and rates being identical with those appearing in the tariffs heretofore filed by complainant with the Civil Aeronautics Board; and that the refusal of the defendant to permit complainant to advertise in the classified telephone directories of defendant the nature, extent and price of services rendered to the public by complainant will result in great and irreparable financial loss to complainant and great and needless inconvenience and expense to telephone service subscribers and to the public and the refusal of defendant to carry said advertising of complainant in its classified telephone directories is arbitrary, unreasonable, unjust and discriminatory.

The complainant requests that an order be made by this Commission directing the defendant to accept and publish in its classified telephone directories such otherwise acceptable display advertisements as may be submitted by complainant to defendant, including the publishing of such price and rate information submitted by complainant as shall consist of information respecting prices and rates theretofore filed by complainant with the Civil Aeronautics Board of the United States Government.

On February 5, 1957, the defendant filed a written "Motion to Dismiss" the complaint on the ground that the complainant's contention has been decided adverse to it by this Commission in the case of Frank Serpa, Jr., v. The Pacific Telephone and Telegraph Company, Decision No. 54355, dated January 8, 1957, in Case No. 5787, in which case we held that the company policy of refusing to include prices in any advertisements placed in its Classified Telephone Directory was reasonable and necessary to prevent misleading and unfair advertising.

Oral arguments by both parties on the motion to dismiss were heard by Examiner Kent C. Rogers in Los Angeles on March 12, 1957, and the motion was submitted.

At the outset of the oral argument the attorney for the complainant moved for a dismissal of the hearing on the ground that the rules of the Commission do not provide for a hearing on a motion to dismiss. This motion was denied by the examiner. We affirm this ruling. The Commission may grant or deny a motion to dismiss with or without a hearing (Rules 12 and 13, Rules of Practice and Procedure).

We have read the complaint herein and are of the opinion that the Serpa case, referred to supra, requires the dismissal thereof. In the Serpa case, in which we dismissed a complaint requesting exactly the relief requested by the complaint herein, we

said "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." We went on to state that "In the present case the Commission finds that the company policy is reasonable and nondiscriminatory."

These findings are applicable to the instant action. We see no necessity for another hearing to determine the reasonableness of defendant's policy of refusing advertising copy containing reference to prices and

IT IS ORDERED that the complaint herein be, and the same hereby is, dismissed.

Dated at San Francisco, California, this 9th day of APRIL, 1957.

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