

Decision No. 55344

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

<p>HUDSON FUHRER,</p> <p style="text-align: center;">Complainant,</p> <p style="text-align: center;">vs.</p> <p>THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,</p> <p style="text-align: center;">Defendant.</p>

Case No. 5949

ORDER OF DISMISSAL

The above complaint alleges that defendant places enclosures in envelopes containing monthly bills, imposing the necessity of viewing and removing such enclosures, and that complainant being mentally ill, such annoyances of enclosures tends to aggravate complainant's condition. The complaint requests that defendant be ordered to cease and desist from placing any enclosures in envelopes containing each monthly bill to complainant.

Pursuant to procedural Rule 12, counsel for defendant submitted a statement of asserted defects, taking the position that the complaint failed to state a cause of action. Formal service was withheld. Complainant was advised of the asserted defects, and was requested to advise whether he desired to file an amended complaint, dismiss the complaint, or rely upon the present pleading. Complainant was further advised that should he desire to rely upon the present complaint, the matter would be submitted to the Commission with a staff recommendation that the complaint be dismissed for

failure to state a cause of action. By letter of July 22, 1957 complainant stated that he relied upon the present pleading.

Public Utilities Code section 1702 provides in part that complaint may be filed

"setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission."

The complaint does not allege any breach of legal duty, nor does it point to any provision of law, tariff provision, or Commission order or rule which defendant has violated by enclosure of the circulars in question with its monthly bills for telephone service.

Good cause appearing, IT IS ORDERED that the complaint in Case No. 5949 is hereby dismissed for failure to state a cause of action.

Dated at San Francisco, California, this 5th day of August, 1957.

[Signature]
President
[Signature]
[Signature]
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Commissioners