

ORIGINAL

Decision No. 58130

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THERMAL ENGINEERING & EQUIPMENT
CO., a corporation,

Complainant,

vs.

PACIFIC TELEPHONE & TELEGRAPH CO.,
a corporation,

Defendant.

Case No. 6200

Sam A. Lombardo and Chester C. Smith, for the complainant.

Arthur T. George and Pillsbury, Madison & Sutro,
by Charles B. Renfrew, for the defendant.

O P I N I O N

Thermal Engineering & Equipment Co., a corporation, hereinafter referred to as complainant, by the complaint herein filed on October 31, 1958, alleges that its address is 5469 San Fernando Road West, Los Angeles, 39, California; that defendant is (The) Pacific Telephone and Telegraph Company; that the complainant is a manufacturers' representative in the primary business of selling industrial heating equipment to industrial, commercial and building industries; that complainant represents twelve manufacturers of such equipment listed by name; that said manufacturers do not have personnel in the office of the complainant who use the telephone service; that the employees of the complainant are the sole users of the telephone for the purpose of selling the equipment of the manufacturers represented; that said employees are paid by the complainant and none are in the

pay of complainant's principals; that complainant buys and sells the equipment of the named companies; that orders therefor are taken in the name of the complainant, and after the receipt of said orders the complainant places purchase orders with the respective manufacturers; that defendant has heretofore charged the complainant on the basis of Joint User Service contrary to the contention of the complainant that an additional listing was the proper charge to make; that the Joint User Charge on the CHapman service is \$4.75 per month per joint user, whereas the additional listing charge on the CHapman service is 75 cents per month per listing; that the defendant has created a hardship on the complainant by its interpretation of the tariffs; and that complainant requests an order requiring the defendant to charge complainant on the basis of the additional listing tariffs and the defendant to pay complainant reparations for overpayment.

The defendant filed its answer to the complaint on November 24, 1958. Therein it admitted that its address is as stated in the complaint, and denies the remaining allegations of the complainant with the exception that it alleges that for a period prior to February 4, 1958, complainant subscribed to a number of Joint User Services in connection with Los Angeles Foreign Exchange Service under telephone number CHapman 5-3795 at the rate of \$4.75 per month in accordance with defendant's filed tariff schedules; that defendant offers business additional listings at the rate of 75 cents per month under the conditions applicable to the furnishing of listings contained in its filed tariff schedules; and that it denies that there was a \$4 per month per additional listing overcharge.

As affirmative defenses defendant alleges that its filed tariff schedules provide limitations in the use of subscribers' service by others; that such limitations are shown in paragraph 18 entitled "Subscribers' Private Service Not For Public Use" shown on Original Sheet 64 of Schedule Cal. P.U.C. No. 36-T, which reads in part as follows:

"Telephone service, other than 'Public' and 'Semipublic' service, is furnished for the use of the subscriber, his family and persons residing in his home, or his employees or representatives, except as service may be extended to 'Joint Users'." (Emphasis supplied.);

that joint user service furnished complainant in conjunction with telephone service under CHapman 5-3795 was properly furnished in accordance with the above-quoted tariff provision and with the provisions of defendant's filed tariff Schedule Cal.P.U.C. No. 21-T entitled "Joint User Service -- Southern California", which provides in paragraph 2(c) on First Revised Sheet 9, "Joint User Service is applicable and will be furnished upon application by the subscriber as follows:

" ...

" (c) Application for service to be furnished over the facilities utilized in furnishing service to the subscriber, in the name of another individual, firm, company, corporation, or association represented by the subscriber and the use of the name to be listed is authorized by the owner of the name";

that business additional listings are furnished by defendant at the rate of 75 cents per month each, as set forth in its filed tariff Schedule Cal. P.U.C. No. 17-T under the conditions relating to the furnishing of such listings in said tariff schedule; that business additional listings in the names of the companies which complainant

represents cannot be furnished the complainant under the provisions of defendant's filed tariff Schedule Cal. P.U.C. No. 17-T.

Defendant prays that the complaint be dismissed.

A public hearing on the matter was held in Los Angeles on February 5, 1959, before Examiner Kent C. Rogers and the matter was submitted. It is ready for decision.

At the hearing it was stipulated by the parties that the allegations of the complaint are true, with the exceptions of the allegations contained in paragraphs 7 and 8 thereof, namely, that there is an overpayment existing and that the defendant has created a hardship on the complainant by its interpretation of the tariff.

The complainant's witness testified that prior to February 5, 1958, Joint User Services were furnished the complainant by the defendant in connection with Los Angeles Foreign Exchange Service furnished the complainant under telephone number CHapman 5-3795 at \$4.75 per month for each of the joint users, and commencing on February 5, 1958 Joint User Service was furnished in connection with the Glendale services furnished under CItrus 4-0591 at \$1.50 per month for each of the joint users. The complainant's specific complaint, according to the evidence presented by its witness, is that in its opinion it should be charged only 75 cents per month for each of its additional listings, thereby treating them as business additional listings rather than either the \$4.75 or the \$1.50 for each manufacturer on the theory that it is a joint user.

The defendant's witness, Albert Rawlinson, tariff engineer for the defendant's California operations, testified to its construction of the tariff. He testified generally as follows:

Complainant's business address is 5469 San Fernando Road West, Los Angeles. At that address complainant is being furnished a Glendale exchange Business (Individual) Line Service and two Los Angeles Foreign Exchange Services. In addition, it is being furnished thirteen ^{1/} Joint User Services in connection with the Glendale exchange Business Individual Line Service in the following names:

Madden Corporation, Gabriel Boiler Company, Perfecting Service Co., Orr & Sembower, Inc., Steamaster Co., Inc., Preferred Utilities Steam Generator Co., Rotary Union Co., Powermaster Boiler Co., Dowtherm Heating Equip. Co., E. Keeler Co., Pantex Manufacturing Corp., Speedylectric Division, Speedylectric Boiler Co. and Eclipse Fuel Engineering Co.;

that a monthly rate of \$1.50 for each of said joint users is charged to the complainant in accordance with defendant's Schedule Cal. P.U.C. No. 21-T (Exhibit No. 1); that 8th Revised Sheet No. 4 thereof contains the rate for Joint User Service in Glendale and shows that the correct rate is \$1.50 per month under the heading "individual, party or answering line service"; that prior to February 5, 1958, defendant furnished a number of Joint User Services to the complainant at the rate of \$4.75 per month each; that said Joint User Service was furnished to complainant in connection with Los Angeles Foreign Exchange Service furnished the complainant under the Los Angeles exchange telephone number CHapman 5-3795 in accordance with defendant's filed tariff Schedule Cal. P.U.C. No. 35-T, 5th Revised Sheet 4 and 4th Revised Sheet 5 (Exhibit No. 2); that said 4th Revised Sheet 5, Item 4, shows a \$4.75 monthly

^{1/} Complainant has undertaken to represent one additional manufacturer since the complaint was filed.

rate for each joint user of such Foreign Exchange Individual Line Service; that the applicability of this rate is indicated on 5th Revised Sheet 4, which lists Los Angeles-Glendale under the heading "Territory"; that Rule and Regulation No. 18, entitled "Subscribers' Private Service not for Public Use", shown on Original Sheet 64 of Schedule Cal. P.U.C. No. 36-T (Exhibit No. 3), shows in paragraph 1 thereof that the service extended to the complainant is "Joint User" service; that Joint User Service is defined in Original Sheet 9 of Schedule Cal. P.U.C. No. 36-T (Exhibit No. 4), as follows:

"An individual or concern authorized by the Company and the subscriber to share in the use of a subscriber's business telephone service";

that the joint user does not have to occupy the premises of the subscriber; that the conditions under which Joint User Service may be applied are set forth in First Revised Sheet 9 of Schedule Cal. P.U.C. No. 21-T (Exhibit No. 5); that in condition No. 2 of said First Revised Sheet 9 a condition for Joint User Service is set forth as follows:

"Joint User Service is applicable and will be furnished on application by the subscriber as follows:

"(a)

"(b)

"(c) Application for service to be furnished over the facilities utilized in furnishing service to the subscriber in the name of another individual, firm, company, corporation or association represented by the subscriber and the use of the name to be listed is authorized by the owner of the name";

that said condition is applicable to the service furnished the complainant; that the defendant has received Joint Use Service

applications from the complainant covering the Joint User Service being furnished complainant; that an example of said application is contained in Exhibit No. 7 herein; that the company required written application for all Joint User Services similar to the application exemplified by Exhibit No. 7; that said applications carry the condition that the furnishing of Joint User Service is subject to the company's published rates, rules and regulations; that said rates, rules and regulations are on file with the Commission; that the rate of 75 cents per month is applicable to the defendant's filed tariff schedules for business additional listings; that the furnishing of listings of the firms indicated in the complaint at the business additional listing rate rather than the Joint User rates, under the conditions stated in the complaint, would be contrary to the provisions relating to such listings named on 5th Revised Sheet 7 of Schedule Cal. P.U.C. No. 17-T (Exhibit No. 6); that paragraph 2.b.(1)(a) under the heading "Name", which relates to the names under which business service additional listings may be furnished, reads as follows:

"The name may be that of an individual engaged in a business or profession or an employee or member of a firm or company, an officer of a corporation or association, a department or branch of the same business, or a trade name, providing the subscriber

"actually conducts business under such trade name. These listings shall include a reference to the name shown in the primary or joint user service listing";

that said paragraph 2.b.(1)(a) has no provision for the furnishing of business additional listings in the names of concerns represented by a subscriber; that the tariff schedules provide for directory representation in such manner only in connection with Joint User Service; that for that reason listings of the concerns represented by the complainant could not properly be furnished as business additional listings under filed tariff schedules; that in summary the reasons for concluding that the firms listed in the complaint are joint users of the business service furnished by defendant are that telephone service other than public or semipublic service is only furnished for the use of the subscriber, his family and persons residing in his home, or his employees or representatives, except as service may be extended to joint users; that the definition of a joint user clearly indicates that Joint User Service is applicable in connection with companies represented by the subscriber; that in the complaint of complainant it is alleged that the complainant represents the companies listed; that condition 2(c) of the Joint User Service Schedule is applicable in the case of companies represented by the complainant; that paragraph 4 of the complaint states

that the companies represented do not have personnel in the complainant's office; that paragraph 2(c) of the Joint User Schedule contains no provision requiring that companies represented by the subscriber have personnel on the subscriber's premises; that the complaint states that the complainant sells equipment of the concerns listed in the complaint; that the directory identification is shown in the name of another company, the company selling the product, indicating to the public that they are representing the other concerns, that this condition is clearly covered in condition 2(c) of the Joint User Service Schedule, and that in the witness' opinion the companies named in the complaint were properly classified as Joint User Service under the tariffs of the company.

The complainant herein does not claim that the defendant's tariff is unjust, unreasonable, or preferential. Rather, it contends that the defendant has been and is incorrectly applying its tariff, with the result that complainant has been and is paying excessive telephone bills. At all times complainant had a Los Angeles telephone number, CHapman 5-3795 (and CHapman 5-3796), and one Glendale telephone number, CItrus 4-0591. Prior to February 5, 1958, the twelve (now thirteen) manufacturers complainant represented were listed in the Los Angeles Central Directory under the CHapman number. For these listings complainant paid \$4.75 per month each as joint users. On February 5, 1958, the defendant, at the request

of complainant, listed the manufacturers in the Glendale Directory under the Citrus number in lieu of the Chapman number, and thereafter complainant paid \$1.50 per month each for joint user listings. All of the tariff provisions involved in the determination herein are set out in this opinion. The defendant has correctly charged the complainant on the basis that the manufacturers listed were and are joint users.

The services furnished to complainant come within the definition of Joint User Services in that the thirteen joint users were authorized to share in the use of the complainant's telephone service, the services were furnished over the facilities of the complainant and were listed in the names of each of the thirteen companies the complainant represented, and the services are not within the definition of business service additional listings in that they were not the names of individuals or employees of the complainant, or any other firm, branch or department of the complainant or any other firm or trade name utilized by the complainant.

Upon the facts alleged in the complaint and developed at the hearing, we find that the complaint should be dismissed. It will be so ordered.

O R D E R

A public hearing having been held, evidence having been presented, the Commission having made findings based upon the evidence presented at the hearing, and based upon said findings,

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

The effective date of this order shall be twenty days after the date of service on the complainant.

Dated at San Francisco, California,
this 17th day of March, 1959.

[Signature]
President
[Signature]
[Signature]

Commissioners

Theodore H. Jenner
Commissioner Everett C. McAdams, being
necessarily absent, did not participate
in the disposition of this proceeding.