

Decision No. 62442**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE UTILITY USERS LEAGUE, a non-profit
Citizens Association, and over 25 individual
consumers, by Edward L. Blincoe,
President of said League,

Complainants,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY,
and THE CALIFORNIA WATER AND TELEPHONE COM-
PANY,

Defendants.

Case No. 7076

ORDER OF DISMISSAL

The complaint herein was filed on March 13, 1961. The two defendant telephone utilities on March 22, 1961, submitted statements of asserted defects, under Rule 12 of our procedural rules, taking the position that the complaint fails to state a cause of action, and requesting dismissal. On March 29, 1961, complainant filed a Reply Denying Defects. On June 22, 1961, defendants filed answers generally denying the allegations of the complainant and moving to dismiss the complaint.

Defendants ask that official notice be taken of our decision in Utility User's Assistance League v. Pacific Telephone et al., 58 Cal. P.U.C. 22, being Decision No. 60612 in Case No. 6333, issued August 23, 1960, and dismissing, after five days of public hearing, a complaint similar in nature to the present pleading.^{1/} Complainant takes the position that it "is left completely to the judgment of

^{1/}Case 6333 was dismissed August 23, 1960. Rehearing was denied October 18, 1960, (Decision 60883). On March 31, 1961 complainant petitioned to rescind such dismissal, clarify the complaint, and for Commission investigation. That petition was dismissed April 25, 1961, (Decision 61876). The present complaint in Case 7076 was filed March 13, 1961.

the individual citizens who present the petition, whether they do so only once or constantly and repeatedly," and that the present complaint involves new persons and situations. (Reply Denying Defects, p. 2).

The decision dismissing Case No. 6333 stated in part as follows:

"The Commission has been extremely liberal, not only in entertaining the complaint as filed, but also in the wide latitude of conduct permitted complainant in bringing up any facet of public utility telephone operations wherein there might conceivably be some basis of justifiable customer grievance against defendants. The complaint, as amended, is certainly not without defect and does not fully comply with the requirements of either the Public Utilities Code or the Commission's Rules of Procedure. Nevertheless, the Commission has proceeded on the assumption that Utility User's Assistance League is a bona fide consumers' organization motivated by real dissatisfaction of its membership with certain aspects of telephone service in the Los Angeles extended area. The Commission has been constrained, therefore, from dismissing this complaint by its earnest desire to pinpoint and rectify any possible genuine subscriber grievances with the assistance of the testimony of the telephone users brought forward by the complainant."

It was held that certain contentions and allegations of the complaint in Case No. 6333 would not be considered because of failure to state a cause of action under the Code and the procedural rules. Other contentions and allegations were considered on the merits.

The present complaint contains a broad general allegation of numerous asserted unlawful acts "as hereinafter set forth" in seven numbered paragraphs. The preliminary allegation is as follows:

"DEFENDANTS HAVE COMMITTED UNLAWFUL ACTS, and failed to discharge their statutory obligations to their ratepayers, in violation of and contrary to the Code and Commission rules in that they have established unjust and unreasonable charges, rules and regulations, and received undue benefits from excessive rate of return, tax allowance, operating expenses, expenses, misuse of depreciation reserves, excessive and preferential issues of securities, and discrimination between persons, as to rates, charges service, facilities, and in other respects have allowed preferences and advantages and maintained unreasonable differences between localities and

classes of service, WHICH ACTS subject the rate-payers to improper burdens and deprive them of rightful benefits to which they are lawfully entitled, as hereinafter set forth:"

The essence of the specific allegations and "requests" is substantially as follows:

Paragraph I. Distribution of charges and quality of service, facilities, and stations available in the San Fernando Valley "show wide variation between persons and localities;" Request. An order requiring defendants to provide a uniform zone system in the Valley, regardless of company ownership, "either through a partnership or jointly owned operating company" or as otherwise found proper; to establish a basic "free call" zone including all stations in the Valley plus such adjacent exchanges or district areas outside the zone as will provide station availability comparable to district areas of the Los Angeles Exchange; and to discontinue tolls or surcharges for calls within that area.

This allegation is akin to Paragraph III of the complaint in Case No. 6333, held insufficient to state a cause of action by Decision No. 60612, although here restricted to San Fernando Valley rather than the Los Angeles extended area.

Paragraph II. In many cases "dialing numbers of a prefix" are similar, but one dialing number results in a surcharge and the other does not. It is cumbersome and impractical for the subscriber to know or find out when he is paying a surcharge without intending to do so. Request. That the Commission require that all calls creating surcharges be placed with an operator "or through a digital local dialing system" similar to Digital Distance Dialing.

The order dismissing Case No. 6333 found that "an arbitrary requirement of dialing extra digits to complete toll and mmu calls would be burdensome to the user and unreasonably degrade telephone service." (58 Cal. P.U.C. 22, 26.)

Paragraph III. The present rate of return on plant used in multiple message unit and intrastate toll is exorbitant and not justified on the alleged "uncertain" condition of the business. Request. If this type of business be found to be uncertain, that adjustment be made through accelerated depreciation, and that the Commission "retroactively determine the difference between a fair return and the return which has been allowed and adjust such difference by depreciation of the plant."

Paragraph IV. Present rate of return on investment is excessive and results in ratepayers being required to pay high charges to provide high dividends and evidenced by stocks selling for several times their par value. Request. That the rate of return be reduced to five percent on investment in plant found economically useful.

Whatever may be complainants' theory in Paragraph III of the complaint, it apparently seeks a retroactive finding that rates heretofore found reasonable were not reasonable, and an "adjustment" by "depreciation of the plant." Paragraph IV also alleges present rate of return to be excessive and seeks reduction thereof to five percent.

Paragraph V. Allowance of full federal income taxes paid on all equity capital as an operating expense creates a high cost on the ratepayer and benefits stockholders only. Request. That the Commission establish actuarial tables fixing the amount of federal income tax chargeable to operating expense in a range between one third of capital for new, small companies with marginal markets, to one fifth of capital for large well established companies.

This allegation is somewhat similar to Paragraphs II and IX of the complaint in Case No. 6333, held insufficient to state a cause of action by Decision No. 60612.

Paragraph VI. Utilities facing problems in keeping up with the influx of new business have spent millions of dollars on advertising "to get business." Subscribers pay these costs as advertising expense, but only stockholders benefit. Ratepayers are concerned with service and facilities rather than with more people to compete with available supplies. Advertising tends to minimize news of utility actions detrimental to the public. Request. That "all public advertising" be disallowed as an operating or other expense.

Disallowance of advertising costs was part of the contention in Paragraph II of the complaint in Case No. 6333, held insufficient to state a cause of action by Decision No. 60612.

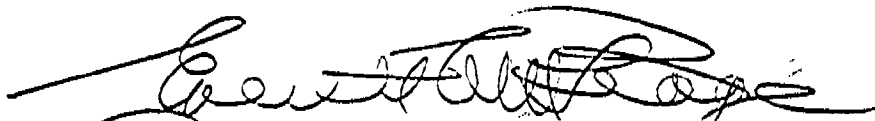
Paragraph VII. In making a complaint ratepayers must spend substantial sums without reimbursement, and also indirectly underwrite utility expenses, thus giving the utility an unfair advantage. Request. That the Commission disallow as operating or other costs all

expenses in connection with complaints and applications or appeals therefrom, and that "justified complaints be reimbursed by the utility."

The subject matter of a number of paragraphs of the complaint was involved in Case No. 6333, and the five days of hearing therein, and ruled on in the order dismissing that complaint. Other paragraphs relate to matters that properly may be the subject of consideration only in the context of rate proceedings of particular utilities; or to matters (assuming jurisdiction) that could not be considered in a proceeding involving but one or two utilities; or to matters beyond the jurisdiction of the Commission; or to matters of legislation rather than regulation; or to matters that clearly could not be violations of law by defendants. Moreover, the pleading is an inseverable admixture of allegation, contention, and argument from which it is not possible to extricate clear and unambiguous cause of action. It is our finding and conclusion that the complaint does not comply with Public Utilities Code Section 1702 nor with the Commission's procedural rules, that the matter should be dismissed and that a public hearing is not necessary; therefore,

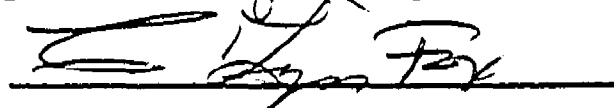
IT IS ORDERED that the motions of the defendants to dismiss the complaint are granted, and the complaint in Case No. 7076 based on the above finding and conclusion is hereby dismissed.

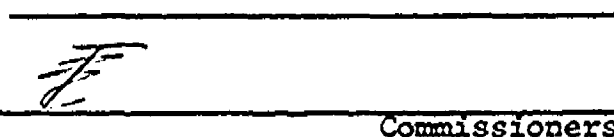
Dated at San Francisco, California, this 22nd day of August, 1961.



President







Commissioners