

**ORIGINAL**Decision No. 68442

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LEE J. KUBBY and  
KEITH F. PRITCHARD

Complainants,

vs.

Case No. 8056

PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, a Corporation,

Defendant.

ORDER OF DISMISSAL

The complaint herein alleges that in November of "1963" complainant Kubby advised defendant of a change of address as of the first of the year and requested an additional directory listing for complainant Pritchard at the new address. The changed listing and the new listing were to appear in the classified section of the "1963" issue of the Sunnyvale, San Jose and Palo Alto directories under the heading Attorneys. In December of 1962 complainants requested, in the same directories, an additional listing of the firm name of Kubby & Pritchard, following each of the same individual's listings. It is alleged that thereafter defendant, without authority, changed its records to reflect a main listing for the classified section of the Sunnyvale directory from Kubby to Kubby & Pritchard, and caused to be published the 1963 Sunnyvale directory, but failed to include a listing for complainant Kubby under the classified section of Attorneys. The complaint alleges that defendant's 1963 San Jose and Palo Alto directories failed to include in the classified sections under Attorneys, listings for Kubby & Pritchard, Attorneys at Law, as had been ordered by complainants.

Complainants allege they "have been damaged in the sum of Thirty Thousand Dollars (\$30,000.00)." They "request an order requiring the defendant to compensate complainants" in that amount.

Responsive to preliminary mailing of the complaint under procedural Rule 12, counsel for defendant suggested absence of jurisdiction and dismissal of the complaint. Counsel urged that the courts, not the Commission, have jurisdiction to determine the existence of negligence and liability therefor, citing Blincoe v. Pacific Telephone, 60 Cal.P.U.C. 432; Warren v. Pacific Telephone, 54 Cal.P.U.C. 704; and Jones v. Pacific Telephone, 61 Cal.P.U.C. 574. Counsel also urged that in the case of alleged directory error defendant's liability in any event is limited by the restrictions set forth in its tariffs, citing Riaboff v. Pacific Telephone, 39 Cal.App.2d Supp. 775, and Cole v. Pacific Telephone, 112 Cal.App.2d 416.

Complainants were advised of the asserted defects, and were requested to advise if they desired to amend the complaint, to request dismissal without prejudice, or to have the question of sufficiency of the pleading submitted to the Commission. Complainants have requested that the question of jurisdiction and sufficiency of the pleading be submitted to the Commission for its determination.

In Warren v. Pacific Telephone, supra, the complainants relinquished their prayer for an award of damages. The decision noted that the "Superior Court has jurisdiction to give judgment for damages resulting from negligence or breach of contract against a public utility upon a proper showing." (54 Cal.P.U.C. at 707.)

The complaint herein is dismissed for failure to state a cause of action within the jurisdiction of the Commission.

Dated at San Francisco, California, this 12<sup>th</sup> day of January, 1965.

Fredrick B. Holoboff  
 President

George E. Brewer

William A. Bennett  
 Commissioners