

ied

Decision No. 68445

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JAMES A. FROST,

Plaintiff,

vs.

PACIFIC TELEPHONE and TELEGRAPH  
COMPANY,

Defendant.

Case No. 7831 :  
(Filed January 31, 1964)

James A. Frost, in propria persona,  
complainant.  
Pillsbury, Madison & Sutro, Arthur T.  
George, George A. Sears, John A. Sutro, Jr.,  
by George A. Sears and John A. Sutro, Jr.,  
for The Pacific Telephone and Telegraph  
Company, defendant.  
Harold J. McCarthy, for the Commission staff.

O P I N I O N

On January 31, 1964, complainant James A. Frost, an attorney, filed a complaint against the defendant The Pacific Telephone and Telegraph Company, hereinafter sometimes called Pacific, alleging that as a result of the omission of his name, address and telephone number from the alphabetical and classified sections of the 1962 edition of Pacific's San Jose-Santa Clara directory and as additional listings from Pacific's 1962 Campbell, Los Altos and Palo Alto directories, he had sustained damages in the amount of \$3,000 and that the service charge for his telephone during the life of the 1962 San Jose-Santa Clara directory was \$49.45 per month or a total of \$593.40 for the twelve-month period. Frost, through his complaint, is seeking judgment against Pacific for: (1) the sum of \$593.40 in accordance with tariff limitations,

(2) an additional sum as damages for Pacific's failure to list complainant's name in the Campbell, Los Altos and Palo Alto directories for 1962, (3) costs of suit, and (4) such other relief as the Commission deems just.

Pacific filed its answer alleging that Frost, during the period of the directory omissions, was a joint user, and as the charge for joint user service during the period in question was \$2.50 per month, that Frost is entitled only to the sum of \$30.00 under defendant's filed tariffs for the twelve-month period.

Public hearing was held before Examiner Cline in San Francisco on April 28, 1964. The matter was taken under submission at the close of the hearing.

The issues to be resolved in this proceeding are:

1. Is Frost entitled to reparation under Pacific's filed tariffs by reason of the omission of his name, address and telephone number from Pacific's telephone directories?

2. If so, is the reparation to which Frost is entitled by reason of such omissions limited (a) to the charges for joint user service or (b) to the total charges to the primary subscriber for exchange service including the joint user service charge but excluding the charges for messages in excess of those included in the minimum monthly rate, during the effective life of the directory in which the omission occurred?

In March of 1961 Frost became associated with Boris A. Stanley in the practice of law in Cupertino. Frost contacted Pacific's office in Sunnyvale in September of 1961, and requested that his name be listed as an attorney in the yellow pages of the San Jose-Santa Clara, Palo Alto, Campbell and Sunnyvale telephone directories. Pacific sent Frost an application for joint user

service which he signed both on behalf of himself as joint user and on behalf of Boris A. Stanley, the primary subscriber, as an associate of Stanley. This executed application for joint user service was returned to Pacific October 13, 1961.

When Frost's name did not appear in the February, 1962 edition of the San Jose-Santa Clara telephone book or in any of the other directories as requested, he made inquiry regarding the omissions at Pacific's Sunnyvale office. The representative to whom Frost spoke advised him that the application had been misfiled and hence had not been sent to San Francisco where the telephone books are printed.

Upon learning of Frost's omission from the directories, Pacific arranged for an additional listing to appear in its information records. A charge of \$0.75 per month for this additional listing was made for the eight months of January to September, 1962.

The witness for Pacific testified that the first information reprint which contained Frost's listing was published February 6, 1962, and that such information reprints are promptly distributed to the information operators. Frost, however, testified that it was not until the latter part of April that his telephone number could be obtained from the information operator.

Under the association arrangement between Frost and Stanley, Frost contributes 50 percent of his attorney's fees to a fund out of which overhead including the telephone bill is paid. During the period in question the telephone bill averaged about \$125.00 per month.

Frost testified that he was unable to determine during 1962 how much income he lost by reason of the omission of his listing as an attorney in the telephone directories because this

was his first year of practice and he had no way to relate back to previous years. In 1963, however, Frost kept a daily log on an hourly basis in which he recorded the names of particular clients who had come to him by virtue of telephone connections. Frost brought the log to the hearing room and testified regarding the fees he had received from clients who had come to him through telephone contacts based on his review of such log. He further testified that as a result of a review of his 1963 logs he determined that the business which he received from references from the phone book in 1963 amounted to \$6,000 and that his net on these fees was 50 percent or \$3,000.

During the period October 1961 to January 1962 the telephone bills were paid by Frost's associate Boris Stanley.

Frost testified that he was unable to identify any individuals who attempted to reach him through the telephone directory and who, being unable to do so by reason of the omission of his listings, had gone to someone else.

The witness for Pacific testified that due to a clerical error Frost's service order establishing the joint user service was not issued and sent to the directory department. This witness further testified that the charges for the basic exchange service during the period in question ranged from \$47.70 to \$49.45 per month. This was because an additional listing charge of \$0.75 per month was made for the informational listing during eight months of the period and the joint user charge of \$2.50 per month was made during four months of the period. This witness further testified that in his opinion the adjustment to be made by reason of the omission of Frost's listing from the telephone directory

is \$16.00 which is the total of the \$6.00 for the eight months informational listing at \$0.75 per month and \$10.00 for the four months joint user service at \$2.50 per month. Frost claims he is also entitled to an additional \$563.40 which is twelve times the \$46.95 charge per month to the subscriber for the other basic exchange service excluding the charge for messages in excess of those included in the minimum monthly rate.

Pacific's Schedule Cal. P.U.C. No. 36-T (Original Sheet 9, and 2nd Revised Sheet 15, canceling 1st Revised Sheet 15) sets forth the following definitions:

"Joint User:

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

\* \* \*

"Subscriber:

"An individual or concern regularly receiving exchange telephone service other than that from public telephone stations."

Pacific's Schedule Cal. P.U.C. No. 20-T (2nd Revised Sheet 9, canceling 1st Revised Sheet 9, and 1st Revised Sheet 10, canceling Original Sheet 10) pertaining to joint user service in Northern California provides:

"CONDITIONS

- "1. Joint user service is an arrangement whereby an individual, other than an employee, member or officer of the concern which is the subscriber, or a firm, corporation or association shares in the use of a subscriber's business telephone service. ..."
- "6. Directory listings will be furnished in connection with joint user service in accordance with the tariff provisions applicable to directory listings."

Pacific's Schedule Cal. P.U.C. No. 17-T (8th Revised Sheet 3, canceling 7th Revised Sheet 3) pertaining to exchange telephone service directory listings provides:

"RATES

"(I) Primary Service Listings:

"(a) Service in Normal Exchange

"Subscribers are entitled without additional charge to primary service listings in the alphabetical section of the directory as follows:

"Each individual line or party line primary station One Listing

\* \* \*

"Each joint user service One Listing

\* \* \*

"A subscriber to business service, at his option and without additional charge, may receive a regular type listing in the Classified Telephone Directory corresponding to each business listing furnished him in the alphabetical telephone directory without additional charge under conditions contained in Classified Telephone Directory Advertising Schedules Cal. P.U.C. Nos. 39-T and 40-T."

Pacific's Schedule Cal. P.U.C. No. 36-T (1st Revised Sheet 62, canceling Original Sheet 62, and 1st Revised Sheet 63, canceling Original Sheet 63) pertaining to telephone directories, listings and numbers provides:

"17. TELEPHONE DIRECTORIES, LISTINGS AND NUMBERS

"(B) Liability for Listings in Directories

"The Company is liable for errors or omissions in listings of its subscribers in the alphabetical and classified telephone directories in accordance with the following:

- "1. Listing furnished without additional charge: In amount not in excess of the charge for the exchange service (excluding the charges for messages in excess of those included in the minimum monthly rate) during the effective life of the directory in which the error or omission is made."

\* \* \*

"(C) Liability for Listings in Information Records

"The Company is liable for errors or omissions in listings of its subscribers in information records in accordance with the following:

- "1. Listing furnished without additional charge: In amount not in excess of the charge for the exchange service (excluding the charges for messages in excess of those included in the minimum monthly rates) for the period during which the error or omission continues.
- "2. Listing furnished at additional charge: In amount not in excess of the charge for that listing for the period during which the error or omission continues."

Upon consideration of the evidence and the foregoing tariff provisions the Commission finds:

1. The joint user subscriber Frost, with the concurrence of the primary subscriber Stanley, who was Frost's associate, applied to Pacific for joint user telephone service on October 13, 1961.
2. Because of Pacific's error, Frost's listings were omitted from Pacific's information records until February 6, 1962, and from

Pacific's telephone directories during the period January, 1962 to the latter part of January, 1963, when the 1963 edition of Pacific's San Jose-Santa Clara directory was published and distributed.

3. The charges for the exchange service on the Stanley-Frost telephone exclusive of charges for messages in excess of those included in the minimum monthly rates were \$46.95 per month for the period from October 13, 1961 to January, 1962.

4. The charges for such exchange service during the period from January to September, 1962 were \$46.95 per month, and in addition thereto an additional listing charge of \$0.75 per month was made for Frost's informational listing during this period of time.

5. The charges for such exchange service during the period from September, 1962 to January, 1963 were \$49.45 per month.

6. By reason of the omission of his name from the informational records and the telephone directories during the period from October 13, 1961 to January, 1963, Frost sustained damages of at least \$715.00 which sum is the tariff limitation of liability.

The Commission concludes:

1. As a joint user subscriber Frost was entitled to a free listing in Pacific's information records from October 13, 1961 to the date of publication and distribution of Pacific's San Jose-Santa Clara directory in January of 1962.

2. As a joint user subscriber Frost was entitled to a free listing in the alphabetical section and in the classified section of Pacific's 1962 San Jose-Santa Clara directory.



3. As to any period preceding the filing of the complaint herein, the Commission should not grant relief for defendant's directory and informational record omissions inconsistent with defendant's then-existing Rules 17(B)1, 17(C)1, and 17(C)2 of Schedule Cal. P.U.C. No.36-T. (Ross v. P.T. & T. Co., 61 Cal. P.U.C. 760.)

4. By reason of the damages which Frost has sustained as a result of the omissions of his listings from the informational records and the 1962 San Jose-Santa Clara directory and because of the limitation of liability provided in Pacific's tariffs on file with this Commission, Frost is entitled to reparation in the amount of \$715.00, which is the sum of the following:

<u>Period</u>	<u>Number of Months</u>	<u>Basic Monthly Exchange Charge</u>	<u>Amount</u>
Oct. 1961 to Jan. 1962	3	\$46.95	\$140.85
Jan. to Sept. 1962	8	46.95	375.60
Sept. 1962 to Jan. 1963	4	49.45	<u>197.80</u>
			\$714.25
		<u>Additional Listing Charge</u>	
Jan. to Feb. 1962	1	.75	<u>.75</u>
		Total	\$715.00

O R D E R

IT IS ORDERED that:

1. The defendant The Pacific Telephone and Telegraph Company forthwith shall pay reparation to the complainant, James A. Frost, in the amount of \$715.00 by reason of the complaint on file herein.

C. 7831 led

2. Within thirty days after the effective date of this order The Pacific Telephone and Telegraph Company shall file a written statement with this Commission advising that Pacific has complied with paragraph 1 of this order and setting forth the accounting entries to record the transactions resulting from such compliance.

The Secretary of the Commission is directed to cause certified copies of this order to be served upon the respective parties, and the effective date of this order, as to any party, shall be twenty days after such service upon such party.

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

Fredrick B. Hallock  
President

John E. Ryland

George A. Grover

William L. Beards  
Commissioners