

ORIGINALDecision No. 69568

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MOREY W. McDANIEL,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH CO.,

Defendant.

Case No. 7894
(Amended)

Morey W. McDaniel, complainant, in propria persona.
Pillsbury, Madison & Sutro and Arthur T. George,
 by Richard W. Odgers, for defendant.
W. H. Gacke, for W. H. Gacke & Associates; Edward
Canapary, for Facts Consolidated; Clifford V.
Levy, for Far West Surveys; Constance V. Gum,
 in propria persona; Robert L. Haslacher, in
 propria persona; Donald C. Burns, for
California Association of Life Underwriters,
 intervenors.
Ermet Macario, for the Commission staff.

O P I N I O N

This is a complaint by Morey W. McDaniel (hereinafter referred to as McDaniel) against The Pacific Telephone and Telegraph Company (hereinafter referred to as PT&T). The complaint, in part, alleges that McDaniel is a PT&T subscriber with individual line service and has a regular listing in the white pages of the Palo Alto Telephone Directory; that since September 1961, when McDaniel's telephone was installed, countless telephone solicitors have called him offering for sale such items as magazines, newspapers, encyclopedias, portraits and air purifiers; that he believes every year telephone solicitors call untold numbers of PT&T's subscribers; that telephone solicitation irritates, annoys and disturbs him, wastes his time and intrudes upon his privacy; that McDaniel believes

telephone solicitation irritates, annoys and disturbs great numbers of PT&T's other subscribers, too; and that PT&T, although in a position to do so, has not adequately protected its subscribers' privacy from unwanted intrusions by telephone solicitors, thus rendering its service to McDaniel and other subscribers inadequate. As part of his requested relief, McDaniel asks for an order that (1) "defendant at the next printing of the Palo Alto Telephone Directory insert immediately before complainant's telephone number a small asterisk:

"McDaniel Morey W 391 Curtnr Av (PA) . . . *321-7728
and insert in the front pages of the directory a statement which explains the asterisk and which should read:

"No uninvited solicitation for a commercial or charitable purpose to any telephone number preceded by an asterisk (*) is permitted."

and an order that (2) "defendant make available to all of its subscribers upon request the above-described service."

PT&T filed an answer and motion to dismiss the complaint. The motion to dismiss alleged that the complaint did not state facts, as required by Section 1702 of the Public Utilities Code which would entitle McDaniel to any relief. PT&T's answer contained various admissions and denials of statements in the complaint. The answer also contained two affirmative defenses: (1) PT&T will, at the option of any subscriber, and at no charge, exclude the subscriber's telephone number from any and all of its directories, that this is the only effective means by which subscribers can be protected from unwanted telephone solicitations, and that McDaniel has never requested that his name be deleted from PT&T's directory; and (2) if the relief sought by McDaniel is authorized, PT&T would incur substantial additional expense in the preparation of its telephone

directories without any benefit to its subscribers, and it would have no practicable means of enforcing observance of the notice purporting to prohibit uninvited solicitation.

A duly noticed public hearing was held in the matter before Examiner Jarvis in San Francisco on August 11 and 12, 1964. The matter was submitted subject to the filing of briefs, which, after an extension of time, were filed by November 13, 1964. At the hearing, the Examiner granted certain petitions for leave to intervene in the proceeding. The intervenors consist of various firms or persons engaged in market research and the California Association of Life Underwriters. All the intervenors oppose the granting of any relief to the complainant.

McDaniel seeks to use this proceeding as a forum to espouse his views on privacy. He has strong views on what he considers constitutes an individual's right to privacy. Consonant with these views, he filed, in the United States District Court for the Northern District of California, an action seeking to enjoin the Post Office Department from delivering third class mail to him. In the case of the telephone, McDaniel believes that "The Bell System has made it possible for anyone to call anyone. And that was a mistake. Few people want calls from just anyone." (Supp. Brief 9.) From this belief, McDaniel argues that all unsolicited phone calls should be prohibited. He has attached to one of his briefs a "Proposed Telephone Privacy Act" which he contends should be enacted. He argues for the installation of automatic tracing equipment so that the originating telephone number of all incoming calls of all subscribers would be recorded. (Supp. Brief 21-22.) He contends that this would assist in enforcing any laws or regulations with respect to unwanted telephone calls.

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It is clear from the foregoing that much of the relief McDaniel seeks deals not with the relationship between PT&T and its customers, but with the use of the telephone and the content of messages between telephone users. Regulation dealing with the content of telephone messages and the use of telephones by members of the general public is ordinarily a matter for the Legislature. (E.g., Penal Code §§ 384, 653j, 653m; 18 U.S.C. §§ 837(d), 1084.) McDaniel, in his briefs and at the hearing, devoted some time to discussing the appropriateness and constitutionality of his proposals. There may be questions as to how far the Legislature can go in controlling the content of telephone calls (see, e.g., Public Utilities Commission v. Pollak, 343 U.S. 451; Beard v. Alexandria, 341 U.S. 622; Martin v. Struthers, 319 U.S. 141; Murdock v. Pennsylvania, 319 U.S. 105), but it is not necessary for the Commission to comment on those questions herein.^{1/}

^{1/} We note, in passing, that certain conduct which McDaniel finds distasteful seems to have the approval of Congress or the Legislature. For example, McDaniel testified that: "I find commercial surveyors far more distasteful than a telephone seller. They ask you many prying questions which I feel are none of their business." (R.T. 197.) Congress, however, has provided for the use of the telephone for conducting the Census. (13 U.S.C. § 24(f).) McDaniel does not like commercial solicitation lists. The Legislature has authorized the Department of Motor Vehicles to sell information which may be used for such lists. (Vehicle Code §§ 1810, 1811.)

In considering the record, we note that McDaniel, at the hearing and in his briefs, referred to books, newspaper or magazine articles and statements of prominent figures. Experience indicates that statements in books (even best sellers), newspapers and magazines and by prominent figures are not always accurate. Where official notice is not involved, an offer of such material, over objection, where the author is not available for examination by the other parties, presents a question within the sound discretion of the hearing officer and, ultimately, of the Commission (Public Utilities Code Section 1701). The Examiner did not receive any of such proffered material in evidence; we find no error or prejudice in his rulings in this respect.

McDaniel contends that this Commission has the jurisdiction to regulate the form and content of PT&T's telephone directories. We agree. (California Fire Proof Storage Co. v. Brundige, 199 Cal. 185.) The question at issue is whether the record indicates the need for exercise of such jurisdiction in connection with any of McDaniel's proposals.

McDaniel requests that the Commission order PT&T to print in its next published directories an asterisk in front of his name and the name of any other subscriber so requesting, and to further order that PT&T should insert in the front of such directories the following:

**"WARNING: SOLICITORS, SALESMEN, CANVASSERS, SURVEYORS
FUND-RAISERS, AND OTHERS**

"No person for the purpose of making a commercial or charitable solicitation shall call any posted number, which is any telephone number printed with an asterisk (*), without the permission of a person who occupies the premises where the telephone with the posted number is located.

"A person makes a commercial solicitation when he:

- offers to sell,
- requests an offer to buy,
- requests an indication of interest in,
- requests information for promotion of, or
- makes a statement designed to arouse interest in

any product, commodity, property, asset, service, item, or benefit, with a view to the eventual sale or distribution thereof.

"A person makes a charitable solicitation when he requests funds or contributions for a charitable purpose.

"A person also makes a solicitation when he requests permission to make a solicitation." 2/

McDaniel offered the testimony of three witnesses in support of the asterisk proposal: himself, his wife and a fellow student. Mrs. McDaniel testified that she receives unwanted telephone solicitations "probably two or three times a week"; that she does not approve of telephone opinion surveys, including political surveys; that she would prohibit all unsolicited calls of a political, commercial or charitable nature; and that she would

2/ At the hearing, McDaniel changed the requested explanatory notice. The complaint, itself, requests the following language:

"No uninvited solicitation for a commercial or charitable purpose to any telephone number preceded by an asterisk (*) is permitted."

regard an unsolicited call from a store with which she had a charge account and transacted business as an unwanted call. Mrs. McDaniel estimated that each unwanted call took about five minutes of her time, and she resents these calls. McDaniel testified in support of the complaint. As indicated, he believes that any uninvited call of a commercial or charitable nature is a violation of his right of privacy. Richard H. Hargrove also testified in behalf of McDaniel. He indicated that he and McDaniel were fellow law students, but that he learned of the complaint from an independent source. Hargrove testified that he had been a law student for three years; that his study was on the second floor of his residence and the telephone on the first floor; that, at times, he "had to come downstairs from studies to answer that phone to find somebody trying to get me to buy something, somebody that I did not ask to call me and somebody that I didn't want to phone." (R.T. 19.) Hargrove testified that he kept track of his calls during a thirteen-day period following July 29, 1964; that during this period he and his wife received four unwanted calls; and that he found "every unsolicited phone call of the charitable and survey and the will-you-buy-nature, selling of products, undesirable." (R.T. 24.) Hargrove indicated that he supports McDaniel's asterisk proposal.

Unless the Legislature designates as a criminal offense the conduct of which McDaniel complains, even if McDaniel's proposal be accepted, a call made to a person with an asterisk before his name in the telephone directory would invoke no sanctions. McDaniel contends that even without criminal sanctions the asterisk would have beneficial effect because (1) a call made in contravention of the asterisk would provide the foundation for a civil damage suit

and (2) there would be voluntary compliance with the no solicitation request symbolized by the asterisk.

On the contention that the asterisk should be established to provide the basis for a civil suit, McDaniel testified:

"On the subject of remedies, I must admit that it's quite unlikely that I would bring any civil suits. If I were repeatedly harassed by the same solicitor, I would probably, but it's not too likely that because of one phone call I would go down to the small claims court and file suit, speaking for myself, although I do believe there may be a small number of people in the State who would do so. And they could ask for actual and punitive damages and it's possible that if the courts awarded a few sizable awards, which included punitive damages, that might serve as a real deterrent.

"I could threaten a solicitor with a suit and if I and others threatened the threats might have a certain deterrent effect.

"I also have available a certain remedy of self-help that I could use.

"Suppose the ... [newspaper], after I put an asterisk by my number, called, in effect ignored my asterisk, I could, I believe, two or three days later take out a subscription to the ... [newspaper] and refuse to pay for it. They, of course, would send the bill and if they wished to take it to small claims court, I, of course, could assert my counterclaim of invasion of privacy.

"The reason that I would not at the time he called say, 'Yes, I will take an order,' and have this in mind is because of some problem of waiver and estoppel, but I think there are, in certain situations, a remedy of self-help which I might have." (R.T. 203, 204.)

* * * *

"I pointed out that bringing civil suits would be difficult, and on my direct here I testified that it would only be necessary for a few people to file suit and recover substantial awards; that that might have a substantial deterrent effect, as well as the possibility of the threat of a civil suit might be a deterrent and also the possibility of the remedy of self-help, which I outlined." (R.T. 226.)

* * * *

"...I don't know that I am competent, but I would volunteer this, but I think, in my opinion, it would be possible to collect actual damages obviously. How much, ten to twenty dollars.

"I envision the possibility, however, of punitive damages when a subscriber -- I mean a solicitor is clearly covered by the prohibition who calls anyway, I would imagine there are in this state a number of judges who have listed phone numbers and who, given an opportunity --

"Q. What is the answer to the question?

"A. \$100 perhaps.

"Q. A hundred dollars.

Under what authority would the punitive damages be awarded?

"A. I have no case authority, but instances of intentional tort violations I think punitive damages are awarded for tort actions.

"Q. Now, assuming that there would be an award of perhaps \$100 for an unwanted telephone call, against whom would you bring the action?

"A. The person who made the call or the organization or any other employees, the organization with whom he worked if they are joint tort-feasors or co-conspirators in a tort.

"Q. Now, how would you ascertain who made the telephone call?

"A. As I suggested, I don't know whether on direct or cross, at least -- it would be difficult, but at least so far as solicitors who are selling something and made themselves known, they sooner or later have to come around and announce --

"Q. Then is it my understanding of your testimony that you couldn't really do anything based on the call; that you would have to engage in a series of conversations to finally entice the other person to physically make himself known to you?

"A. That is right.

"Q. All right.

Might this take a period of time?

"A. Yes, I regret that it would take some time. It might not be so simple.

"Q. All right.

Now, assuming it did take a period of time, might you give us some estimate as to what you think this period of time would be?

"A. Oh, I don't think it would be -- suppose these were the circumstances: A solicitor called and you say, 'Yes, I will buy,' without intending to and I -- even perhaps the day or even the day after somebody will come to the door and identify himself.

This has happened to me.

In about five minutes you would know who he was and with whom he was associated. There the person is before me, physically appears, and I could identify him.

"Q. And then in order to enforce this civil right you would need to commence a legal proceeding, is that not correct?

"A. At this point -- I mean, that would be one way. Again, I wish to point out --

"Q. We are discussing the question of substantial awards now.

"A. Okay. Yes, it would then be necessary to file a suit.

"Q. It would be necessary to either go down to the local municipal court, if the person were filing a small claims action, or engage the services of an attorney, is this correct?

"A. I had envisioned perhaps the small claims court could handle it to keep expenses down.

"Q. Well, your proposal contemplates that the person who is offended by this has the facilities -- human desire of himself to go down and file the complaint in the small claims court?

"A. Yes.

"Q. And if the person were not as sophisticated as you are and did not have any legal training, it might pose a problem to that person to ascertain how to go about filing a small claims action, might it not?

"A. Well, correct me if I am wrong, I think the clerks are rather helpful in helping them file complaints since the assumption is that people aren't lawyers and the small claims court is available for complainants.

"Q. Now, this would take a certain period of time, at least the time to go down and file the complaint, would it not?

"A. Yes.

"Q. How many people do you think, in your opinion, would, if they received an unwanted phone call in spite of the asterisk in the phone book, would encourage the solicitor to physically come so he could be personally identified and thereafter either go to small claims court or hire an attorney to prosecute a civil action which would give them an award, in your testimony, of approximately \$100.

"A. May I explain that? I think the variable circumstances suppose initially that an attorney started one of these suits and recovered \$100. This was widely publicized. If the public was aware that they could collect \$100 -- the possibility of collecting \$100 for an uninvited phone call, this \$100 really would be an incentive to go down and pay \$2.50.

I mean, I suggest that if just a few people who do know try it and the word gets around as to how you do it, the public will become aware of how they can do it.

"Q. Do you think anybody that telephones should collect \$100 if there is an asterisk in the phone book?

"A. If there is an intentional and sort of flagrant violation.

"Q. In order to establish -- in this small claims action you would have to establish the intent?

"A. I think to collect punitive damages you would have to show something like malice.

"Q. Do you think the average telephone subscriber is equipped to present a case to establish malice in the small claims court?

"A. Well, all he would have to show I think is the definition and then explain what this person said on the telephone.

I don't know if he could do that or not. I assume he could.

As layman, of course, any layman in small claims court has some trouble in explaining what his case is, but I imagine the judges who sit in small claims actions are some assistance in aiding and asking appropriate questions." (R.T. 229-233.)

It is clear from McDaniel's own testimony that a civil suit based on a call made in violation of an asterisk listing is not a workable solution to the situation of which McDaniel complains.

Furthermore, as will hereinafter be discussed, many telephone solicitors use lists other than telephone directories, and, since they would be under no obligation to ascertain the existence of an asterisk listing, the problem of the proposed enforcement by civil suit would be compounded.

The question of voluntary compliance is related to certain points raised by PT&T, and they will be considered together. McDaniel testified that he believed solicitors would comply with the asterisk, and, that even if only some did, this would be a benefit. Other witnesses testified that they believed voluntary compliance would not occur, and that, if there were some voluntary compliance at first, it would disappear in a short time; that the lowest denominator would prevail; and that if some solicitors telephoned asterisk numbers, competition would motivate all solicitors to do so. PT&T contends that, regardless of the theory of voluntary compliance, if it were required to put asterisks in its directories the general public would look to PT&T to enforce the meaning of the symbol; that, since PT&T could not enforce the asterisk, ill will would be created between PT&T and its customers; and that costs would be incurred which would have to be passed on to ratepayers generally for an unworkable proposal.

The Commission is of the opinion that if an asterisk proposal were adopted, some members of the general public would look to PT&T or a government agency to enforce it. We need go no further than the testimony of witness Hargrove to substantiate this conclusion. Hargrove, who appeared in behalf of complainant, testified:

"Q. If you had placed an asterisk before your name and received that telephone call, would you have brought suit against ... [name of Charity]?"

"A. If there was a regulation of the type that Mr. McDaniel has asked for in his complaint, I think that I very likely would be inclined to report the incident.

"Q. To whom would you report it?

"A. To whomever the proper authority would be. I have no idea how the regulation is going to be drawn up."
(R.T. 27-28.)

PT&T introduced evidence which indicated that, assuming the arbitrary figure of a 25% request for asterisks, the cost of publishing revised directories with asterisks would amount to approximately \$4,200,000, as its initial cost, with an annual recurring cost of approximately \$227,000. In addition to these directory costs, PT&T would incur additional annual operating costs of approximately \$2,100,000. Pacific indicates that if the asterisk listing were ordered, it would be necessary for its information and intercept operators to convey this fact; that presently its California information operators handle approximately 400 million calls per year, or 1-1/4 million calls per day; that presently its California intercept operators handle approximately 65 million calls per year, or 190,000 per day; that in order to give asterisk information in addition to the other information given, and answer questions about the meaning of the asterisk, additional equipment and operators would be needed; and that this would result in the annual operating costs indicated above.

If an asterisk listing were ordered, even McDaniel concedes that there would be many problems in establishing an acceptable general description of which calls are deemed unacceptable. For example, McDaniel does not object to calls of a political nature but his wife does. One member of a family might object to calls from a store with which they trade while the other

members would not. Some people might not object to public opinion surveys while others would. PT&T contends that if McDaniel is entitled to an asterisk for his particular dislikes, others would be entitled to symbols for theirs, and that the telephone book would have a myriad of stars, circles, ampersands and other symbols which would be confusing and have no practical effect.

PT&T takes the position that two effective ways to discourage unwanted telephone calls are presently available to McDaniel and other subscribers: (1) hang up on the unwanted caller, or (2) procure an unlisted telephone number, which PT&T presently makes available without extra charge.^{3/} PT&T argues that these are the only practical means which are available to cope with the problem, and that McDaniel's proposal is costly and unworkable.

Each of the interested parties gave testimony in opposition to the complaint. Those engaged in market research testified, in general, that they were engaged in an activity useful to society; that market research was used by government, universities, labor unions, etc., as well as for commercial purposes; that their activities were conducted in a polite and proper manner; that if a person did not wish to answer survey questions, the surveyor would immediately terminate the call; that McDaniel's proposal would tend to inhibit their activities; and that McDaniel's proposals are not in the public interest. There was testimony that many elderly and handicapped people earn their living from market research and that

^{3/} There is testimony in the record that, at times, a random digit dialing technique is used by solicitors or people engaged in market research. A computer programs certain number combinations within an exchange without reference to a telephone directory. If this technique is used, an unlisted number may be called. Also, since no directory is used, an asterisk listing would have no effect.

the adoption of McDaniel's proposal would have an adverse economic effect on them. The record also indicates that the California Department of Rehabilitation uses telephone campaigns to sell products manufactured by the blind or handicapped.

A witness who appeared in behalf of the California Association of Life Underwriters testified that the telephone is a valuable business aid to the life underwriters and that "The fact that in the past year Californians purchased more life insurance than the residents of any other state in the United States and now own a total of \$72.5 billion in insurance, life insurance, leads us to a fairly obvious conclusion. It cannot be stated as a generalization that Californians regard a telephone call by a life insurance agent as an unwarranted invasion of privacy. Too many of our citizens are making appointments with agents over the telephone and purchasing insurance to support the complainant's thesis. People do not purchase insurance from those who have grievously invaded their privacy."

(R.T. 111.) He also testified that bills regarding telephone solicitation had been introduced at the 1959 and 1963 sessions of the Legislature, and that neither of the bills had even been voted upon in committee. In one case the author did not call up the bill; in the other instance it was sent to interim committee at the request of the author. He took the position that "There is no valid reason whatsoever to require The Pacific Telephone and Telegraph Company to embark on an expensive and totally unenforceable illusion of solicitation control as advocated by the complainant." (R.T. 112-113.)

We assume that, on occasion, unsolicited telephone calls irk some subscribers. However, even if it be assumed, for discussion only, that unsolicited telephone calls vex a substantial portion of the public, we do not believe that, in the absence of a prohibitory statute, McDaniel's asterisk proposal will ameliorate the situation. It might even create more mischief. In the absence of statutory authority to enforce such a proposal, we believe the most efficacious way for members of the public to discourage unwanted telephone calls is to hang up on the caller.

McDaniel also requests an order which would require PT&T to secure a subscriber's permission before his name could be listed in the Street Address Directory (reverse directory) which is published by PT&T. McDaniel argues that the Street Address Directory is sold by PT&T to persons and firms who use it to make unsolicited calls and that the subscriber's affirmative consent should be obtained before his name is included in it. In support of this position, McDaniel argues that a subscriber has a property right in his name and that PT&T may not use it without his consent. McDaniel cites cases dealing with copyright infringement in support of this point. He points to cases where a telephone company has obtained a judgment for copyright infringement of its directory. He misreads these cases. One who publishes and copyrights a dictionary or a map does not obtain a property right to the words or land depicted therein. A copyright protects the work product of its holder from being copied and reproduced without his consent. It does not give the holder a property right in the subject matter of the material.

PT&T publishes a directory, by street addresses, of all its subscribers who have listed numbers. All subscribers having listed numbers are automatically listed in the Street Address Directory, unless a subscriber specifically requests that his name be deleted from it. The Street Address Directory is published, depending on the area involved, every three or six months. PT&T sells the directory to various users, including solicitors. The record discloses that the Street Address Directory is used by police departments for law enforcement purposes, by fire departments to pinpoint fire locations, by school districts for determining boundaries to see whether students are properly registered, by county planners for determining property locations in connection with rights-of-way, and by assessors, tax collectors and other officials.

The administrative director and controller of the United Bay Area Crusade testified that the United Crusade used the Street Address Directory in various ways: (1) addresses of previous contributors are checked against the directory to determine if they have moved to conserve time of volunteers who personally call upon these people; (2) the directory is used to find names to recruit volunteers in geographic areas where such help is needed; (3) the directory is used to identify contributors where signatures are not legible but the address is legible. He testified that McDaniel's proposal would diminish the effectiveness of the Street Address Directory and, therefore, would be detrimental to the operations of the United Crusade.

The Sheriff of Alameda County testified in opposition to McDaniel's street address directory proposal. He also testified that he was directed by the executive committee of the California

Peace Officers Association "to appear here and oppose any restriction on the street address directory and any limitation that would take additional names out of this directory." (R.T. 320.) The sheriff testified to the following uses of the Street Address Directory:

"Well, the variety of uses that it is put to by law enforcement that are both savings in time and money to law enforcement and to the taxpayers in general.

"I have listed a few of the uses that law enforcement put it to.

"One is an area search, say, for instance, where there is a missing child in a residential area. Our clerical staff with the use of this directory can man phones and notify a number of blocks that the child is missing. That would require up to an hour or two or three hours for individual officers or groups of officers to perform the same function. This becomes vitally essential in a rural area where there are, say, a large number of swimming pools that each individual be asked to check their own premise for a missing child.

"Another function is checking out sketchy information that may include phonetic names and possibly the name of the street only. This is particularly true in the checking out of human failure of transposing addresses and may have an address that has been checked out, but the only -- the easiest way to do then is to look in the -- run down the whole street for the name or a similar name to identify the individual you are checking out.

"And delivering messages from other areas to members of family concerning death or injury, this enables us even if there is not a phone at the immediate address to contact a neighbor who can cooperate in delivering the message. And this function here in California where we have had a large influx of population, this type of request from other jurisdictions in other states has put an additional burden on law enforcement and in, say, 95 per cent of the cases by use of the street address directory these matters can be handled and expedited to the satisfaction of everyone.

"And checking the apartment address where there are a large number of apartments, soliciting the cooperation of the manager in delivering messages or ascertaining if the man -- where the individual may be contacted, his employment, to deliver a message.

"Another one that is widely used by all law enforcement is minor traffic warrants. Frequently an individual

may have a parking ticket that he overlooks and in the event a warrant is issued it becomes law enforcement's problem to serve that and experience has shown that if the man is listed in the reversible directory that probably he will respond to a phone call for posting the bail and take care of the matter instead of having someone ring his doorbell and, if necessary, take him into custody.

"When former addresses of subjects are known, leads may develop with phone contact with former neighbors. Now, we all know that frequently information can be secured from behind locked doors from persons who may be very upset, particularly elderly persons, by the presence of a man in uniform making a request for information.

"Where a witness, say, is unable to recall the name of the individual or may just recall the street or neighborhood, we frequently use the street address directory to refresh their memory, go over the street, the names on the street and use it for that purpose in ascertaining who they are actually talking about.

"Where we have a report of suspicious circumstances the directory may be used to identify all persons living in the neighborhood and develop information as to what is actually going on in the neighborhood or at a given address where subject may be living with friends and the address is only furnished. We use the reverse directory for that purpose.

"And another vital function in patrol work, say, a car responds to a call at a given address or for any address, goes off the air to make contact at the given address, the reversible is used to contact him that he is needed for additional emergency work or anything in connection with that case. You can readily understand that he may go off the air without any idea who lives in the house and whose name it is in and the reversible directory is used so that the manned communication center can reach out and contact him where otherwise he would be out of touch.

"The cross-street reference in this directory, every cross street is listed in addition to the numerical sequence. This enables you to check an intersection, say, in connection with an accident or an incident that occurred at the intersection to check the whole area without having to ring somebody's doorbell and do it in that fashion. It just expedites so many functions of law enforcement and this is why I feel that it is one of the best tools that we have and I also feel that any restriction or any removal of names from it would be a disservice to law enforcement, particularly in this day and age when we are having our problems." (R.T. 320-324.)

The record discloses that, in addition to PT&T's street address directories, there are over 100 directories in California from which people obtain names or lists for solicitation. The Department of Motor Vehicles sells similar information. (Vehicle Code §§ 1810, 1811). PT&T will, upon request, delete the name of a subscriber from its Street Address Directory. At the hearing it appeared that McDaniel requested deletion of his name from the Street Address Directory and PT&T agreed to do so in the next publication and succeeding ones. McDaniel's personal complaint has been satisfied on this count. As to the public generally, in view of the existence of many similar sources of information and the beneficial uses of the Street Address Directory, we do not find PT&T's practices in the publishing of the Street Address Directory to be unreasonable. Anyone who shares McDaniel's view on this subject may easily have his name deleted by making appropriate arrangements with PT&T.

At the hearing, McDaniel requested an order directing PT&T to accept for publication in its directories lines of information indicating that the subscriber did not wish to receive unsolicited telephone calls. PT&T's tariff presently provides for the sale to subscribers of a line of printing, up to 32 characters, in the white pages of a directory at a charge of 35 cents per month or \$4.20 per year. PT&T has refused to accept lines of information such as proposed by McDaniel and opposes his request. PT&T contends that it only accepts lines of information which aid in the proper routing and completing of telephone calls; that the proposed line of information is not in this category; that if McDaniel were permitted to have his requested line of information, others

would be entitled to whatever language they preferred; and that such listings could add unnecessary bulk to directories requiring publication of additional directories, which would be an inconvenience to directory users.

After McDaniel made his request dealing with lines of information, he testified that:

"Frankly I don't wish to do it, and the reason I don't wish to do it is that I think such lines are churlish and antisocial and frankly I wouldn't buy one.

"I would much prefer to have an asterisk or some other symbol which I think would be much more polite and accomplish the same purpose.

"Another thing is that people interested in buying a line of information, it would cost \$4.20 for each line and for a short single line of information like 'No telephone soliciting' that would be \$4.20 a year and, of course, over a period of years that would become quite a sizable figure.

"If I wanted a more detailed-specified line of information carved out like 'No telephone soliciting for commercial or charitable purposes', I might have two or three, four lines of information at \$4.20 each. Very rapidly you could be paying three times that or \$12.60 a month -- I mean a year.

"This is to me, anyway, a prohibitive cost to accomplish the objective." (R.T. 189, 190.)

However, after the hearing, McDaniel in a letter supplement to his briefs asks for a ruling on his request.

Schedule Cal. P.U.C. No. 17 T, 9th Revised Sheet 5, of PT&T's tariff, in part provides:

"Listings in the alphabetical (white) section of the directory are intended solely for the purpose of identifying subscribers' telephone numbers as an aid to the use of telephone service."

McDaniel's own testimony indicates some of the reasons the proposal is not practical. Furthermore, for the reasons discussed fully in connection with McDaniel's asterisk proposal, the Commission is

of the opinion that publication of the requested lines of information would not ameliorate the alleged problem for which they were designed. In the circumstances, we do not find PT&T's refusal to accept such lines of information, in the light of its tariff, to be unreasonable.

McDaniel, in his complaint, asks this Commission to order PT&T to pay him "reasonable compensation for his time and expenses in presenting this claim for relief." Even if McDaniel were entitled to any relief in this proceeding, this Commission has no jurisdiction to make such an order (Public Utilities Code §2106).

PT&T, in a footnote in its brief, implies that the proceeding should be dismissed as moot. The footnote alleges that McDaniel's telephone service was disconnected at his request in August of 1964 and that the forwarding address McDaniel gave to PT&T is outside of California. We do not think the question of mootness should be raised in this manner, without affording McDaniel notice and an opportunity to respond. We refrain from passing on this question.

PT&T's motion to dismiss the complaint will be denied. McDaniel's motion for the Commission to institute its own investigation will also be denied, at this time, but the Commission will continue its informal study of the problems involved. It is claimed that equipment exists which makes

recorded solicitation calls automatically, which will call back if the telephone is busy or the number called does not answer, and which can even be programmed to call back if the person called hangs up before the message is completed. Although the record does not suggest that PT&T offers such equipment, it is reported to be available elsewhere. The Commission is concerned that, through such devices, there may occur such an intensification of telephone solicitation practices that corrective action by the Commission or the Legislature would be warranted. In that event, a formal investigation might be instituted.

No other points require discussion. The Commission makes the following findings and conclusions, in addition to those already made herein.

Findings of Fact

1. McDaniel desires not to receive any unsolicited telephone calls of a commercial or charitable nature.
2. McDaniel requests that this Commission order PT&T to place in PT&T's telephone directory, before his number, and before the numbers of all other telephone subscribers who so request, an asterisk; and that PT&T place in the front of each telephone directory a detailed explanation indicating that the asterisk means that unsolicited commercial or charitable calls to the person before whose number the asterisk appears are prohibited.

3. PT&T refuses to adopt McDaniel's asterisk proposal.
4. If McDaniel's asterisk proposal were adopted, PT&T would incur substantial initial and continuing annual operating costs to put it into use.
5. In the absence of supporting prohibitory legislation, there would be no reasonable, workable way to enforce the asterisk proposal.
6. If PT&T were ordered to put the asterisk proposal into use, many subscribers would expect PT&T to enforce the terms of the proposal, and PT&T would have no authority to do this.
7. If PT&T were ordered to put the asterisk proposal into use, a substantial amount of ill will would be generated between PT&T and its subscribers, and PT&T would incur substantial initial and continuing operating costs which would be passed on to all telephone subscribers.
8. PT&T publishes street address directories. It includes in said directories the names, addresses and telephone numbers of all subscribers who have listed telephone numbers. PT&T will delete the name of a subscriber from the Street Address Directory upon the request of the subscriber.
9. Subsequent to the filing of the complaint, McDaniel requested that his name be deleted from the applicable PT&T Street Address Directory and PT&T has indicated that the requested deletion will be made.

10. PT&T's procedure in listing and deleting names in and from its street address directories is not unreasonable.

11. Schedule Cal. P.U.C. No. 17 T, 9th Revised Sheet 5 of PT&T's tariff provides in part that:

"Listings in the alphabetical (white) section of the directory are intended solely for the purpose of identifying subscribers' telephone numbers as an aid to the use of telephone service."

In accordance with said tariff provision, PT&T has indicated that it will refuse to accept from any subscriber, including McDaniel, lines of information which seek to prohibit certain types of telephone calls.

12. PT&T's practice in refusing to accept said lines of information is not unreasonable.

Conclusions of Law

1. The public interest does not require the adoption of McDaniel's asterisk proposal.

2. PT&T's procedure in listing and deleting names in and from its street address directories is not unreasonable and the public interest does not require an order directing PT&T to change its procedure.

3. PT&T's practice of refusing to accept, for the white pages of its regular telephone directories, lines of information which would seek to prohibit certain types of telephone calls is not unreasonable, and the public interest does not require an order directing PT&T to change its practice.

4. McDaniel is entitled to no relief in this proceeding.

O R D E R

IT IS ORDERED that complainant, Morey W. McDaniel, is entitled to no relief in this proceeding and the complaint is denied. The Pacific Telephone and Telegraph Company's motion to dismiss is denied. Complainant's motion that the Commission institute its own investigation of this problem is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 17th day of August, 1965.

Frederick B. Holohoff
President

George L. Grover

Augustin

William L. Bennett
Commissioners

COMMISSIONER PETER E. MITCHELL - CONCURRING OPINION:

I concur in the findings and order.

Telephone communications in California today are furnished swiftly and efficiently by 43 utilities serving over 10,000,000 stations. Facilities have been expanded and improved constantly even though the growth in telephones annually has exceeded the increase in State population. Specialized communications equipment has been and is being developed by the telephone industry to meet the needs of its subscribers. Mindful of such advances in technology, inspection of the record in this proceeding recommends to me emphasis on a problem of personal relationship between telephone users.

Case No. 7894 contains an issue not treated by the majority opinion but certainly of noteworthy import. The complainant, Morey W. McDaniel, has incidentally brought to our attention the insufficiency of automatic equipment which will determine the calling telephone numbers of unsolicited calls. The purport, however, is of wider scope and greater application than McDaniel's limitation to unsolicited calls. It extends to all calls which are unwelcome to the recipient.

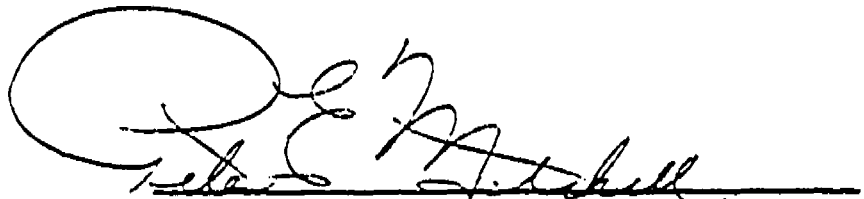
Law-enforcement agencies and telephone companies receive complaints daily from subscribers who have been harassed, frightened, intimidated, and otherwise insulted by telephone calls. Within the past few weeks, nation-wide publicity has been given a war widow in the Middle West and a prominent entertainer in the Bay Area, both of whom were besieged by unseemly telephone messages. There is no present ability to trace immediately these disturbing calls to the originating number. This is my concern!

The California Legislature declared in 1963 by statute (Section 65m, Subsections a and b, added STATS 1963, C801 p 1832#1) declared that every person who uses threatening or obscene language over the telephone, or who annoys another person on the telephone, without disclosing his identity, is guilty of a misdemeanor. We are cognizant that such calls do occur; we now have laws to punish the offenders; what we need are the means to seek out these transgressors.

No one experienced in the field of communications will discount the technical obstacles that must be overcome in locating and identifying the author of an indecorous telephone call. The isolation of a calling exchange is itself complex without the supplementary burden of designating a specific number within the exchange. Nonetheless, it is not an impossible task. There are procedures currently utilized which, given sufficient time for employment, will determine the calling number on step-by-step equipment. It is my understanding that this process is not adaptable on the cross-bar equipment which Pacific primarily operates. True, when Pacific converts completely to electronic switching equipment in the year 2000, it may be possible then to automatically establish the calling telephone number. However, a few of us may not be on hand for the occasion.

Therefore, I request The Pacific Telephone and Telegraph Company, not later than thirty days after the effective date of this order, to supply the following information to the Secretary of the Commission:

1. Present ability of Pacific and the Bell system to identify calling telephone numbers;
2. Status of plans of Pacific and the Bell system for the introduction of automatic equipment which will record the location of originating telephone calls;
3. Financial or technical aspects bearing on the attainment of such a project;
4. Feasibility of a program to automatically select the originating telephone numbers of threatening or disturbing calls to a telephone subscriber.



Peter E. Mitchell, Commissioner