

ORIGINALDecision No. 69942

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAUL N. ROSS,

Complainant,

vs.

Case No. 7232

PACIFIC TELEPHONE & TELEGRAPH CO.,
a California corporation,

Defendant.

AMI G. PELLATON, KEN MACKENZIE,
R. P. SURDEZ, ROSCOE D. CARTER,

Complainants,

vs.

Case No. 7424

PACIFIC TELEPHONE & TELEGRAPH CO.,
a California corporation,

Defendants.

In the Matter of the Commission Investigation on its own motion into the practices, rates, charges, contracts, rules and regulations of THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY pertaining to (1) the limitation of liability for telephone directory errors and omissions and (2) measures taken by defendant to mitigate damages to its subscribers resulting therefrom.

Case No. 7796

Melvin E. Cohn, for Saul N. Ross, complainant in Case No. 7232.

Manuel L. Furtado and Newman, Marsh & Furtado by Manuel L. Furtado, for Ami G. Pellaton, Ken MacKenzie, R. P. Surdez and Roscoe D. Carter, complainants in Case No. 7424, amici curiae in Case No. 7232, and interested parties in Case No. 7796.

Pillsbury, Madison & Sutro, Arthur T. George, Maurice D. L. Fuller, Jr., George A. Sears, and John A. Sutro, Jr., for The Pacific Telephone and Telegraph Company, defendant in Cases Nos. 7232 and 7424, and respondent in Case No. 7796.

C. Hayden Ames and Jensen and Underwood, for Dr. R. K. Barnewolt, intervenor in Case No. 7232.

Neal C. Hasbrook and Bacigalupi, Elkins & Salinger by Warren A. Palmer, for California Independent Telephone Association; Harold E. Throp, for California Interstate Telephone Company; Charles B. Snow, and Bert C. Johnson, in propria personae, interested parties in Case No. 7796.

Harold J. McCarthy and Paul Popenoe, Jr., for the Commission staff.

O P I N I O N

On December 3, 1963, the Commission issued Decision No. 66406 in Case No. 7232 concluding that no relief might be granted to complainant Saul N. Ross with respect to errors in directories of The Pacific Telephone and Telegraph Company, hereinafter sometimes called Pacific, which have already occurred, and that further hearing should be held on that part of the complaint in Case No. 7232 which involves a determination whether Pacific's Rule 17(B) is unreasonable for the future. Submission in Case No. 7232 was set aside and said Case No. 7232 was consolidated with Cases Nos. 7424 and 7796. The further proceedings in Case No. 7232 were limited to considering (a) whether or not Pacific's Rule 17(B) is, for the future, reasonable; (b) what limitations, if any, on Pacific's liability for directory errors or omissions are, for the future, reasonable; (c) what measures should reasonably be required of Pacific in the future to mitigate damages to subscribers resulting from directory errors or omissions; (d) whether or not Pacific's Rule 17(B) should, for the future, be continued, modified, or repealed; and (e) whether or not Pacific's Rule 17(B) should, for the future, be replaced by some other rule or rules relating to directory errors and omissions, liability therefor and/or measures to be taken to mitigate damages therefrom.

On August 24, 1962, Ami G. Pellaton, Ken MacKenzie, R. P. Surdez and Roscoe D. Carter filed a complaint against Pacific. Each complainant alleged an omission from the Insurance section of the Yellow Pages of Pacific's 1961 Southern Alameda County Telephone Directory, and each requested the Commission to declare that Regulation No. 17, B-1 (1st revision, sheet 62, schedule 10 PUC 36-T) is and was unreasonable at the time of the publication of the Southern Alameda County Directory in 1961 and that said rule should be annulled and

declared void. Pacific filed its answer on September 18, 1962 and its amended answer on March 18, 1963, requesting that the complaint be dismissed.

On December 3, 1963, the Commission issued its order instituting investigation into the rules, rates, charges, contracts, rules and regulations of Pacific pertaining to (1) the limitation of liability for telephone directory errors and omissions, and (2) measures taken by Pacific to mitigate damages to its subscribers resulting therefrom. This order provided that said investigation is for the purpose of considering certain proposals of the Commission staff and Dr. R. K. Barnewolt, an intervenor in Case No. 7232, and such other proposals as may be brought before the Commission relating to (1) the revision or replacement of Pacific's Rule 17(B) to permit subscribers to subscribe to telephone service under special contracts which (a) will provide that Pacific shall be absolutely liable for a specified amount or schedule of amounts for directory errors and omissions, or (b) will increase Pacific's present limit of liability for damages for such errors or omissions in accordance with a specified schedule; (2) additional measures which should be taken by Pacific to mitigate damages resulting from directory errors and omissions; or (3) any other revision or replacement of Pacific's Rule 17(B) or the cancellation thereof.

On March 10, 1964, the Commission issued its order granting California Independent Telephone Association, hereinafter sometimes called the Association, leave to intervene in Case No. 7796.

Cases Nos. 7232, 7424 and 7796 were consolidated for hearing before Commissioner Grover and Examiner Cline. Public hearings in these matters were held in San Francisco on April 1, 2 and 3 and May 27, 28 and 29, 1964. The matters were taken under submission upon the filing of the closing brief of the Association on September 25, 1964.

The evidence introduced in Case No. 7232 at the hearings before Examiner Cline on September 27 and 28, 1962 was reviewed and the findings and conclusions pertaining thereto were set forth in said Decision No. 66406, issued December 3, 1963 in Case No. 7232. No further evidence was introduced by complainant Saul N. Ross.

The attorney for the complainants in Case No. 7424 stated that in view of Decision No. 66406 in Case No. 7232 his clients felt that they had lost their case and were not interested in appearing personally as witnesses in the consolidated proceedings. They were interested in the staff recommendations, however.

The issue in these consolidated proceedings is whether Pacific's Rule 17(B) is reasonable and should be continued in effect or is unreasonable and should be modified or cancelled.

Position of Pacific and of the Association
in Support of the Reasonableness of the
Existing Limitation Rule.

Pacific pointed out in its brief that the first limitation provision filed by Pacific, effective July 1, 1923 (Original Sheet C.R.C. 713-T), provided that "The Company shall not be responsible for errors or omissions in its telephone directory." Even though this limitation provision has subsequently been changed, Pacific still carries the following statement in its telephone directories: "The Company assumes no liability for damages arising from errors or omissions in the making up or printing of directories."

In Decision No. 12733, dated October 22, 1923, this Commission ordered Southern California Telephone Company to file revised rules and regulations concerning telephone service. A directory limitation rule proposed by the Commission staff was made effective as of July 1, 1924 for Southern California Telephone Company by Decision No. 13478, dated April 24, 1924 (24 C.R.C. 854).

This rule reads as follows:

"The Company is liable for errors or omissions in the listings of its subscribers in the telephone directory to an amount not in excess of the charge for that exchange service during the effective life of that directory in which the error or omission is made."

The same limitation language was incorporated into Pacific's Rule and Regulation No. 14, Directory Listings, effective July 1, 1924, (Original Sheet C.R.C. 9859-T, No. 713-T). Pacific has made various filings with reference to the directory limitation rule subsequent to this 1924 filing, the presently effective rule being Rule 17(B) in Pacific's Schedule Cal. P.U.C. No. 36-T (1st Revised Sheet 62, canceling Original Sheet 62). This Rule 17(B) 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.
2. Listing furnished at additional charge in the alphabetical telephone directory:
In amount not in excess of the charge for that listing during the effective life of the directory in which the error or omission is made.
3. Listing furnished at additional charge in the classified telephone directory:
In accordance with the provisions of Schedule Cal. P.U.C. No. 39-T, Classified Telephone Directory Advertising - Northern California and Schedule Cal. P.U.C. No. 40-T, Classified Telephone Directory Advertising - Southern California."

* * *

The currently effective Regulation 8 in Pacific's Schedule 39-T (7th Revised Sheet 6, canceling 6th Revised Sheet 6) provides:

- "8. In case of the omission of a part of or other error in an advertisement, the extent of the Company's liability shall be a pro rata abatement of the charge in such a degree as the error or omission shall affect the entire advertisement and in case of the omission of an entire advertisement, the extent of the Company's liability shall be an abatement of the entire charge."

The currently effective Regulation 8 in Pacific's Schedule 40-T (5th Revised Sheet 5, canceling 4th Revised Sheet 5) reads the same as the above quoted Regulation 8 in Schedule 39-T, except that a semicolon precedes the last "and."

The total number of copies of directories printed by Pacific in 1962 was 10,596,994. The 49 separate alphabetical directory arrangements contained 4,330,309 listings, and the 60 separate classified directory arrangements contained 1,533,076 classified listings and advertisements, making a total of 5,863,385 directory listings. There are 22 steps involved in the insertion of each listing in an alphabetical directory, with 26 checks for accuracy. Twenty-five steps and 29 checks for accuracy are involved in connection with each listing and advertisement in the classified directory.

Witnesses for Pacific testified that the rapid growth of population and communication services in California, the resulting connection of many new telephone services daily, and the many disconnects daily increase the need to hold the directory production to the shortest time possible consistent with great accuracy. A delay of 7 days in the production of Pacific's telephone directories would result in the omission or incorrect listing of 14,000 business subscriber listings and 83,300 residence subscriber listings, or a total of 97,300 listings, even though no directory errors were made in the publication of the directories.

Pacific contends that Rule 17(B) has not been used to shield inaccuracy. One of Pacific's witnesses testified that the company is alert to improvements which will enable it to publish more accurate directories. Error reports are made, and the errors are analyzed to help prevent recurrence. New methods and new practices are devised to eliminate errors wherever possible.

In 1962 out of a total of 5,863,385 listings there were 4,667 directory errors of all kinds, involving 3,765 subscribers. This error figure includes many errors noted by the company itself and not reported by subscribers. Many of these errors had no adverse effect on subscribers. Only 843 errors were omissions. In 1962 Pacific had an overall directory reliability of 99.92 percent; the error rate was but .08 percent of the total directory listings.

Pacific witnesses testified that it is difficult to ascertain what damage, if any, a subscriber may have sustained as a result of a directory error. When an error does occur, Pacific takes steps to mitigate the damages through the use of informational listings, intercept service, and referral arrangements. Pacific's present rates reflect in part its experience and expenses over many years of operating under the existing limitation of liability pursuant to Rule 17(B).

Of subscribers with errors in the 1962 directories, 50 percent had annual exchange service billing of \$100 or less and 90 percent had exchange billing of less than \$450 a year. In one case, the adjustment amounted to \$2,400 for a subscriber who had a large quantity of telephone service.

In 1962, with a total potential liability under the present rule of \$417,000, adjustment payments totaled \$21,500. The loss of revenue, plus adjustments actually paid, amounted to an estimated \$133,000.

Pacific contends that the present limitation rule is easily understood by telephone subscribers and provides reasonable adjustments for directory error, since the amount of the billing for exchange telephone service is the best and most available guide to the value of a directory listing to a subscriber.

The intervenor, California Independent Telephone Association, represents 43 independent telephone companies which operate in California. Thirty-three of these companies arrange for issue of their own telephone directories, and the listings of subscribers of the other 10 companies are included in directories issued by Pacific. All of these independent companies have tariff rules (limiting their liability for directory errors and omissions) which are very similar to Pacific's Rule 17.

The witness for the Association testified that the independent telephone companies contract with directory publishing companies to perform the entire directory publication function, including the sale of advertising in the classified section, and that these directory companies follow the same kind of careful procedures as Pacific in publishing telephone directories, with a minimum of errors and omissions. Ten independent telephone companies, providing a representative cross section of those publishing telephone directories in 1962, had an error rate of less than one-tenth of one percent. In 1963 the errors per thousand listings were reduced to .769, considerably less than an error rate of one-tenth of one percent.

The Association urges that reasonable telephone rates are partially dependent on the continuance of the existing limitation of liability rule. The witness for the Association testified that the independent telephone companies take immediate corrective action when errors are discovered in their telephone directories, such as placing

the correct information on the records available to the information operators, providing intercept service, and, where possible, making a direct connection so that when a party dials either the correct or incorrect number he will reach the correct party without interception by an operator.

The witness for the Association further testified that the Association and its member companies strongly recommend that the Commission make no changes in the existing rules limiting liability for directory errors and omissions because:

1. These rules have been in effect for a long period of time and have proved highly workable and acceptable to the majority of telephone subscribers.

2. It is difficult to determine the extent of any damage that might be suffered by a telephone subscriber as the result of an error in, or omission of, his listing in the telephone directory.

3. An increase in the limitation of liability to \$500 or \$2,000 would stimulate the filing of claims and the institution of legal actions whether justified or not, thereby increasing the operating costs of the telephone companies.

4. The payment of \$2,000 in settlement of even one such claim would have a severe impact on the earnings of a small telephone company.

5. Increasing the limit of liability would not improve the accuracy of the directories, but would be in the nature of an arbitrary penalty imposed on the telephone companies.

6. If the limit of liability were raised, it would be necessary for the independent telephone companies to obtain written signed orders for all listings. Such a procedure would inconvenience subscribers and increase telephone company operating costs.

Evidence of Subscriber Witnesses

The evidence submitted by several subscriber witnesses has already been reviewed in Decision No. 66406, issued December 3, 1963, in Case No. 7232, and such evidence will not be restated in this decision.

An attorney with offices in San Bruno testified that he obtained between 50 and 100 clients per year by reason of his listing in the Yellow Pages and that the average fee for each such client would be \$100. He also testified that in referring people to attorneys in other areas he himself obtains the names of the attorneys to whom the referrals are made from the Yellow Pages.

Another witness is an importer of stapling devices and packing supplies. Formerly, he did business as a manufacturers' representative under his own name. At the time he was changing the name of his firm from Sta-tite Staple Company to National Packing Supply, he found that a \$15 advertisement under the name of Alegria, John, which he had ordered, had been omitted from the Staples section of the Yellow Pages of the 1961 Oakland telephone directory. This witness testified that for the three months immediately following this omission he made about \$1,000 per month less than he had previously been making. After this three-month period, he was able to develop other business than staples to offset the loss. He estimated that he makes about \$1,000 per month from telephone directory advertising, for which he pays \$75 per month. A telephone company representative advised this witness that his written contract for the advertisement had been canceled by a telephone call (from someone whom the witness assumed to be a competitor). This latter testimony was disputed by a Pacific witness who testified that the request for the cancellation

of the advertisement had been verified by a Pacific sales representative who had actually called this witness back after the cancellation call was received.

Another witness is a surgeon with offices at 450 Sutter Street, San Francisco. In 1959, this witness had business telephone service on GA 1-1483, located at 450 Sutter Street, San Francisco. He was also listed in the 1959 classified section under the telephone number ORdway 3-3600, which was the number of his answering service. On December 31, 1959, this witness ordered his business telephone service disconnected; his telephone numbers were no longer listed in the classified section of the telephone directory, and his listing was omitted from the Yellow Pages of the 1960 directory even though he had been assured by a Pacific representative that the ORdway 3-3600 number would continue to be listed under his name in the Yellow Pages. It was not until after this witness again became a subscriber to business service on July 19, 1961, on DO 2-4584 at 450 Sutter Street, that his name again appeared in the Yellow Pages of subsequently issued telephone directories.

This witness testified that during the period of the omission of his name from the classified section he knew of two ladies who had had difficulty locating him. There may have been others of whom he had no knowledge who had not been able to reach him. He further testified that most of his business is direct referral by other doctors, and that his net income had increased from year to year. In his overall practice the cases vary from a simple laceration to major abdominal procedures and the fees range from \$10 to \$700.

Another witness is a doctor who is a specialist in obstetrics and gynecology with an office in Sunnyvale. Each one of his new patients fills out a form which shows her name, address, place of business, by whom she was referred, and the last doctor seen. In 1963,

of 255 new patients, 52 stated that they had taken the doctor's name from the telephone book. For the year 1963 alone, these 52 new patients were billed \$4,180.50 or an average of \$80 each. The average billing for old patients is \$60 per year. As each new patient continues to see the doctor 3.75 years on the average, the billing for each new patient during the 3.75 years will be \$245, or a total of \$12,740 for the 52 new patients acquired in 1963. The doctor's total telephone bill averages \$150 per month or \$1,800 per year. This witness estimated that under Pacific's limitation of liability rule he would be entitled to receive \$400 in the event his name was left out of Pacific's directories but that his actual loss would be more like \$5,000 to \$10,000. He further testified that in his own experience approximately one-fifth of his new patients had selected their doctor first from the listings in the classified section of the telephone directory.

Pacific has moved to strike the doctor's testimony relating to "new patients from the telephone book" on the grounds that such testimony was based on hearsay and that Pacific was deprived of its right of cross-examination when the presiding Commissioner sustained an objection to the request that the doctor list the names of new patients included within the 52 who had selected the doctor's name from the telephone book. The motion to strike is again denied on the ground that in an administrative proceeding such as this, which is legislative in nature, testimony based on hearsay is admissible (see also Pub. Util. Code §1701), and on the further ground that the possible inconvenience to the patients of the doctor, most of whom are probably mothers with very young children, justified the presiding Commissioner's ruling which prevented the doctor from disclosing the names of such patients.

An attorney formerly on the Commission staff who is now practicing law in Sacramento testified that his name was omitted from the classified section of the January 1964 Sacramento telephone directory even though it had been included in the classified section of the prior directory. The name of this attorney's associate was also omitted from the classified section of the January 1964 Sacramento directory, but it had not been included in the classified section of the prior Sacramento telephone directory as he had just recently entered private practice. Residence and business listings of both this witness and his associate appeared in the alphabetical section of the January 1964 Sacramento directory. The witness testified that he receives most of his business from referrals but that some of his clients do come to him by reason of his listings in the telephone book. He remembered one client in particular to whom his name, together with the names of two other attorneys, had been referred by the clerk of the Industrial Accident Commission. This client told him that he had selected him because his name had been listed in the telephone directory ahead of the other two attorneys. The gross billing for the services rendered to this client over a two-year period amounted to approximately \$5,000. By reason of the omission, Pacific has made an adjustment of this attorney's exchange service charges of \$26 per month or a total of \$312 for the one-year life of the directory.

Another subscriber testified that she and her husband have been engaged in the cement contracting business in Placerville since 1958. Until the September 1962 directory was issued they had a residential listing in the alphabetical section of the telephone directory. This listing was omitted from the September 1962 directory. In 1963 they requested a business service, which was furnished to them. Their listing was therefore included both in the

alphabetical and classified sections of the September 1963 directory. They also have a large picture advertisement in the classified section under "Cement Contractor." The telephone directory in which the omission of their listing occurred was distributed on the 19th of September, 1962, and by the 1st of October the witness noticed that they were not receiving calls for new business. About 40 percent of their business comes from general contractors who have their telephone number, and the other 60 percent comes from private individuals, who would make use of the listing in the telephone directory. The business from the private individuals is their "money-maker." To counteract the effects of the omission of their listing from the 1962 directory, they had a card printed stating that their telephone number had been omitted from the directory due to an error, but that they were still conducting business from "NA 2-3777." Cards were mailed to the 15 general contractors and about 35 other cards were distributed around the community. Also, after the matter of the omission was brought to the attention of the telephone company, they were placed on the information service listing.

Exhibit 38 shows a tabulation of new business of the cement contractor as follows:

<u>Month</u>	<u>September 1961 Directory (With Listing)</u>	<u>September 1962 Directory (Without Listing)</u>	<u>September 1963 Directory (With New Listing)</u>
September	\$ 1,665.50	\$ 251.30	\$1,672.00
October	1,465.60	None	2,711.00
November	1,121.00	None	2,080.00
December	535.00	821.45	<u>2,130.00</u>
January	2,225.00	None	
February	150.00	63.00	
March	564.25	45.00	
April	4,439.00	70.00	
May	2,800.83	1,737.48	
June	1,081.12	660.35	
July	3,694.69	258.00	
August	<u>1,688.00</u>	<u>2,228.55</u>	
Total	\$21,429.99	\$6,135.13	\$8,593.00

The above figures represent gross sales. The profits depend upon the type of job and how good the estimating has been.

In 1961, the cement contractor had a gross income of \$65,794; in 1962, a gross income of \$53,485; and in 1963, a gross income of \$59,875. These figures, of course, include business from both old and new customers.

Another witness is an attorney who was admitted to practice in January, 1962. In April, 1963, when he left the Division of Highways, Department of Public Works, to go into private practice with a firm of attorneys in Vallejo, he called the business office of Pacific in Vallejo to make sure that both his office and residence telephone numbers would be listed in the White Pages and the Yellow Pages. He was properly listed in the White Pages but his listings were omitted from the Yellow Pages of the directory. During the period of the omission of this witness's name from the Yellow Pages, a previous client referred her sister-in-law to him. When the sister-in-law was unable to find the witness's name in the Yellow Pages, she went to another attorney. The witness later learned that the other attorney filed a personal injury complaint on behalf of this potential client in which the prayer was for \$100,000 in damages. This witness testified that he ordinarily takes personal injury cases on a one-third contingency fee basis.

A witness for Pacific testified that this attorney had called the business office in July of 1963 and had requested that the main listing for the firm be changed and that an additional listing be associated with that telephone number for the White Pages for said attorney (whose name was not a part of the firm name). At that time the attorney also arranged for his residence service. Pacific's witness testified that Pacific's records do not show any request by the attorney for a listing in the Yellow Pages.

Another witness is engaged in business in Oakland as a portrait photographer, specializing in wedding pictures under the name of Modern Art Photo Studio. His classified listing and a one-inch advertisement for Modern Art Photo Studio were inadvertently omitted from the classified section entitled "Photographers-Portrait" of the May 1964 Oakland directory. This witness is listed under the names "Lenny Fisher" and "Modern Art Photo Studio" in the White Pages of the directory. In the classified section, he is listed with a one-half inch information listing in his own name, Lenny Fisher, under the heading "Photographers-Portrait," and he is also listed under his own name, Lenny Fisher, under the heading "Artists-Fine Arts." A classified listing for Modern Art Photo Studio appears under the heading "Photographic Color Prints." This witness deals primarily in wedding photography. He usually has a customer only once, and he gets them by recommendation or by advertising in the classified section of the telephone book. Most of those who come to him through a recommendation use the telephone book to obtain his phone number so that they may call him to make arrangements for the photography. The witness keeps cards on which he notes down statements from the customers indicating why they have come to him so that he knows roughly what percentage is from brides' recommendations and what comes to him directly from the Yellow Pages. During the year preceding the omission of his advertisement from the telephone directory, the witness estimated that he received close to \$3,500 in business from the latter type of calls.

Pacific moved to strike the testimony of the foregoing subscriber pertaining to the amount of his business which resulted from calls solely by reason of his listings in the classified section of the

telephone directory, on the grounds that such testimony rests upon hearsay assertions by unidentified persons as to why they went to the subscriber's studio and is incompetent on all the grounds set forth in Pacific's memorandum of May 15, 1964. The rules of evidence in a legislative proceeding such as this will be liberally applied. Pacific made no attempt to ascertain the names and addresses of any of the customers whose records were kept by the subscriber, and hence they are unidentified because of lack of inquiry rather than by reason of the ruling of the presiding Commissioner or Examiner. Hearsay evidence taken from records kept in the usual course of business is admissible.

Proposals of the Commission Staff

Exhibit 29 was prepared by the Commission staff and was received in evidence over the objections of Pacific and the Association. At the conclusion of the hearing Pacific and the Association made motions to strike Exhibit 29 in its entirety on the alleged ground that the staff witness's own testimony revealed that there is no foundation in fact for the conclusionary assertions therein. These motions to strike were taken under submission. Previously, these parties had made motions to strike Paragraphs 26 through 29 and Table 4 of Exhibit 29. Paragraphs 26 through 30 of Exhibit 29 read as follows:

"I - SURVEY OF PROFESSIONAL GROUPS

"26. It is well established that members of certain professions, notably law, medicine, dentistry, and optometry, are generally not permitted to advertise their services. Consequently, the loss of a telephone listing for such a professional member cannot be offset by advertising, distribution of circulars, etc. A recently established professional practice, especially in a new area, would be severely handicapped were such a person's complete listing omitted.

"27. A survey was conducted to ascertain what an average member of each of certain selected professions could expect to receive should his listing be omitted and the maximum compensation be provided under present tariff rules. The area selected was Sunnyvale, California. Sunnyvale has a population of 72,400, with 42,204 telephone company stations, and a significant number of members in each selected professional category.

"28. The results of this survey are tabulated in Table 4. It should be noted that for an individual practice there is only one professional user and that is the subscriber for telephone service. In the case of a group practice or partnership there may be other professional users who could be listed in the directory as either joint users or as additional listings. Generally, an additional listing is used when the professional is an employee of the subscriber.

"29. Table 4 indicates that under the present Rule 17(B) 47 professionals could expect a maximum basic compensation in the order of \$6 to \$30. In relation to the professional damages that typically occur, such compensation is negligible. During the survey the vast majority of those interviewed considered compensation in the order of \$200 to \$500 inadequate and expressed the opinions that amounts from \$2,000 to \$5,000 would more nearly represent the actual damages.

"J - CONCLUSIONS AND RECOMMENDATIONS

"30. In the staff's view the issues and considerations support an amendment or revision of the present Rule 17(B). Numerous types of amendments are possible; two trial revisions, identified as Plans A and B have been explored."

The technique employed in making the survey referred to in Exhibit 29 was described by the staff witness as follows:

"Now, the actual technique adopted in the survey was to call by telephone as many of the professional people noted in Table 4 as were listed in the Sunnyvale telephone book. Most of the time I talked with the doctor or lawyer or dentist's secretary and asked her if she wouldn't mind finding a telephone bill of recent date, and from that telephone bill tell me what the monthly service charge was.

"On certain occasions I would also talk to the doctor or lawyer because the secretary in talking to him found out that he was interested in this matter and wished to talk to me. On those times we discussed the matter of what the doctor or attorney considered would be a suitable amount of compensation for errors or omissions in telephone books, in particular relating to their particular profession."

Table 4 in Exhibit 29 is a tabulation of the average maximum liability of Pacific under its present tariff rules for directory errors and omissions to selected professional personnel in Sunnyvale who were included in the Commission staff survey. A total of approximately 138 professionals are listed in the February 1963 Sunnyvale telephone directory. The following tabulation is prepared from Table 4:

<u>Professional Group</u>	<u>Number in Practice</u>	<u>Individual Practice</u>		<u>Group Practice or Partnership</u>	
		<u>Av. Max. Liability Per User</u>	<u>No. of Users</u>	<u>Av. Max. Liability Per User</u>	<u>No. of Users</u>
Optometrists Subscribers	5	\$228	4		
Attorneys Subscribers	22	540	2	\$936	5
Additional Charge Listings				6	11
Dentists Subscribers	35	220	15	558	6
Joint Users				30	9
Physicians and Surgeons Subscribers	59	444	22	779	9
Additional Charge Listings				6	10
Sunnyvale Medical Clinic Subscribers	17			12,000	1
Additional Charge Listings				6	17

The motions to strike Exhibit 29 are denied. The grounds on which the motions to strike are based will be considered with respect to the weight to be given the evidence in question. The stricter procedure which would govern in determining the amount of damages to which a subscriber would be entitled from Pacific in a damage action involving a directory error or omission does not control the present rule-making proceeding.

The two plans submitted by the Commission staff for consideration are set forth in Exhibit 29.

Plan A is as follows:

"PLAN A

"Rule 17(B) - Liability for Listings in Directories

"The company is liable for errors or omissions in listings, lines of information, headings, caption texts and display advertising, furnished with or without additional charge in the alphabetical and classified telephone directories, in accordance with the following:

1. Primary service listings:

In amount not in excess of the charge for exchange service (excluding the charges for messages in excess of those included in the monthly rate) during the effective life of the directory in which the error or omission is made.

2. Additional listings, lines of information, headings, caption texts and display advertising:

In amount not in excess of the charge for that listing, line of information, heading, caption text, or display advertising, during the effective life of the directory in which the error or omission is made.

3. Business service, including joint user subscribers, may elect to pay a premium per unit of insurance, for each primary or additional listing, line of information, heading, caption text, or display advertising, in which case the company is absolutely liable, in addition to the amount cited in 1 and 2 above, according to the following schedule:

Each unit of insurance:

Complete omission	\$1,000
Name not recognizable	1,000
Wrong classification	1,000
Not authorized or not cancelled	None
Other errors or omissions	100

Premium per unit of insurance:

Alphabetical section	\$0.05 per month
Classified section	0.10 per month

A maximum of five units of insurance may be purchased for each item covered."

Plan A retains the same limitation of liability for directory errors and omissions as is presently provided, but it also provides that business subscribers may purchase insurance up to a maximum limit for each listing. Provision of insurance for residence subscribers was not considered warranted. The staff recommended that contracts for the insertion of listings in directories contain a clear, bold notice advising the subscriber of the availability of insurance to protect against loss or damage arising from directory errors or omissions.

In Exhibit 29 the staff submitted the following tabulation to show the relationship between errors and the premium rates suggested for Plan A:

Revenue Required to Provide Absolute Liability Coverage

<u>Types of Errors- Classified Section</u>	<u>Total Errors</u>	<u>Assumed Liability Per Error</u>	<u>Amount Paid</u>
Omissions	392	\$1,000	\$392,000
Wrong Name	215	1,000	215,000
Wrong Classification	86	1,000	86,000
Not Authorized and Not Cancelled	559	None	
Other Errors and Omissions	<u>536</u>	<u>100</u>	<u>53,600</u>
Total Errors and Omissions (Northern California)	1,788	---	\$746,600
Total Listings (Items) - Less Not Authorized and Not Cancelled (Northern California)			698,066
Basic Revenue Required Per Item - (Northern California)			<u>Per Month</u> \$ 0.09
Basic Revenue Required Per Item - Adjusted Total State			\$ 0.07

The 10 cents per month premium suggested by the staff for classified items will provide approximately 40 percent for overhead and associated expenses that Pacific would incur.

The witness for the staff testified that the alphabetical rate of 5 cents per month per item provides for 4.4 cents per month basic revenue requirement and 0.4 cents for overhead and associated expenses which Pacific would incur.

Plan B proposed by the Commission staff is set forth in Exhibit 29 as follows:

"PLAN B

"Rule 17(B) - Liability for Listings in Directories.

"The company is liable for errors or omissions in listings, lines of information, headings, caption texts, and display advertising, furnished with or without additional charge in the alphabetical and classified telephone directories, in accordance with the following:

1. Primary service and additional listings, lines of information, headings and caption texts, not including display advertising, according to the following:

- a. Business Service

- (1) In amount not in excess of the charge for 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, or \$_____, whichever is greater, according to the schedule below:

- (a) Primary Service Listings, additional listings and headings:

Complete omission: not to exceed 100% of the maximum in a.(1) above.

Name not recognizable: not to exceed 100% of the maximum in a.(1) above.

Wrong classification: not to exceed 100% of the maximum in a.(1) above.

Other errors or omissions (except listings, lines of information, headings, and caption texts, not cancelled or not authorized): not to exceed 10% of the maximum in a.(1) above.

- (b) Lines of information and caption texts: not to exceed 20% of a.(1)(a) above.

- (2) Listings, lines of information, headings, and caption texts, not authorized or not cancelled: A refund of all charges for that listing, line of information, heading or caption text during the effective life of the directory in which the error or omission is made.
- b. Residence Service Including Service For Guest of Hotel
 - (1) Primary Listing: In amount not in excess of the charge for exchange service (excluding the charges for messages in excess of those included in minimum monthly rate) during the effective life of the directory in which the error or omission is made.
 - (2) Additional listings and lines of information: In amount not in excess of the charge for that listing or line of information during the effective life of the directory in which the error or omission is made.
 - (3) Listings and lines of information, not authorized or not cancelled: A refund of all charges for that listing or line of information during the effective life of the directory in which the error or omission is made.
 - c. Should the company elect to issue a correction sheet, as prescribed herein, and such correction sheet contains the correct listing, line of information, heading, or caption text which was incorrect or omitted from the original directory, the liability shall be 20% of the liability cited in a.(1) and b.(1) and (2) above.
 - d. Notification of errors or omissions, pursuant to the filing of claims under a.(1) and b.(1) and (2) above must be made to the company in writing within 30 days of the effective date of the telephone directory in which the error or omission is made.
 - e. All correction sheets for a directory shall be published and distributed to subscribers who originally received a copy of the telephone directory in question within 45 days from the effective date of the directory. In addition each additional directory furnished to subscribers after the issue date of the errata sheet shall have such a correction sheet included therein.
2. Display advertising furnished at additional charge: In amount not in excess of the charge for that display advertisement during the effective life of the directory in which the error or omission is made."

The Commission staff witness recommended that the blank in Paragraph 1.a.(1) of Plan B above be filled in with an amount somewhere between \$2,000 and \$5,000.

Exhibit 29 points out that correction sheets for telephone directories have on occasion been adopted as an interim solution to the problem of an unusual number of directory errors and omissions. Under Plan B the issuance of the correction sheet would be at the option of Pacific.

The Commission staff's Exhibit 31 sets forth the limitation of liability rules of Western Union Telegraph Co. Introductory Paragraph 2 and Paragraphs 2(a) and 2(b) read as follows:

"2. To guard against mistakes or delays, the sender of a message should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated message rate is charged in addition. Unless otherwise indicated on its face, each message is presumed to be an unrepeated message and paid for as such, in consideration whereof it is agreed between the sender of the message and the Telegraph Company as follows:

(a) The Telegraph Company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the unrepeated-message rate beyond the sum of five hundred dollars; nor for mistakes or delays in the transmission or delivery, or for non-delivery, of any message received for transmission at the repeated-message rate beyond the sum of five thousand dollars, unless specifically valued; nor in any case for delays arising from unavoidable interruption in the working of its lines.

(b) In any event the Telegraph Company shall not be liable for damages for mistakes or delays in the transmission or delivery, or for the non-delivery, of any message, whether caused by the negligence of its servants or otherwise, beyond the actual loss, not exceeding in any event the sum of five thousand dollars, at which amount the sender of each message represents that the message is valued, unless a greater value is stated in writing by the sender thereof at the time the message is tendered for transmission, and unless the repeated-message rate is paid or agreed to be paid and an additional charge equal to one-tenth of one per cent of the amount by which such valuation shall exceed five thousand dollars."

The rules limiting the liability of Western Union Telegraph Co. for Telex Service are set forth in Pacific's Exhibit 41 as follows:

"(19) Liability of Telegraph Company:

In view of the fact that the subscriber controls his communication over the facilities furnished him by the Telegraph Company, and because errors and interruptions incident to the service and to the use of such facilities of the Telegraph Company are unavoidable, Telex Service furnished by the Telegraph Company is subject to the terms, conditions and limitations herein stated:

- (a) The liability of the Telegraph Company for damages arising out of mistakes, omissions, interruptions, delays or errors or defects in transmission occurring in the course of furnishing service or facilities under this tariff and not caused by the negligence of the subscriber, or of the Telegraph Company in failing to maintain proper standards of maintenance and operation and to exercise reasonable supervision, shall in no event exceed an amount equivalent to the proportionate charge to the subscriber for the period of service during which such mistake, omission, interruption, delay or error or defect in transmission occurs.

- (b) The Telegraph Company's liability arising from errors in or omissions of directory listings of Telex Service users shall be limited to and satisfied by a refund or credit not exceeding the amount of the charges if any, made for such listings during the period covered by the directory in which the error or omission occurs. Any such directories or lists of Telex Service users furnished by the Telegraph Company (as well as Telex Service station numbers assigned by the Telegraph Company) are the property of the Telegraph Company and are lent to persons receiving them only as a ready reference in making Telex Service Calls."

Pacific contended that under Plan A of the Commission staff there is no reasonable relationship between the amount of insurance payable and the damage, if any, sustained by a subscriber, and that unless there is some reasonable relationship between the amount of the loss and the amount of the insurance, the contract of insurance may amount to a gambling or wagering transaction.

The staff proposal assumes that subscribers at random would purchase the insurance and that the directory errors would occur at random. Over 96 percent of all directory errors occur in new or changed listings, not in listings which continue unchanged from directory to directory, and only approximately 35 percent of all directory listings are new or changed listings.

The insurance expert for Pacific testified that in any insurance scheme there has to be a sufficiently large number of exposure units to permit the law of large numbers to work and the exposure units should have an equal probability of loss; that the time and the severity of the loss should be out of the control of the insured; that the loss must be definite in time and place and there must be some mechanism by which the insurer can identify the loss as to its time and its amount; and that the insured must also have an insurable interest in the subject matter of the insurance--when a

person gambles, he either loses or wins, whereas when he insures, the insurance payments offset a loss and his asset position remains substantially the same.

This witness pointed out that there would be very little incentive for an individual to purchase insurance under Plan A unless he were at the same time making a change or a new listing, that the claims of the insured group would therefore be far higher than those of the non-insured group, and that the insurance itself may trigger a higher level of losses than would ordinarily emanate from a non-insured group. This witness concluded that the directory error circumstances revealed in this proceeding do not provide a basis for a practical insurance arrangement.

Pacific contends that Plan B is arbitrary, complicated and unnecessary. Its contention that the basis of the opinion of the staff witness (that is, the opinion that the limitation of liability for errors of omission, unrecognizable name and wrong classification should be raised to an amount of \$2,000 to \$5,000) is without evidentiary value has been considered in connection with the denial of the motion to strike Exhibit 29.

Pacific points out that in the event Plan A or Plan B is adopted, further protective measures, such as requiring written authority for changes in listings instead of accepting telephone authorization as is done at the present time, would be placed into operation. Such protective measures, according to Pacific's witness, would be necessary not to reduce the number of directory errors and omissions but to protect Pacific from subscribers' inducing an increase in such errors and omissions and to protect Pacific from spurious claims. These measures would require additional directory production time of 7 to 10 days; a delay of 7 days would mean 14,000 business

listing changes or new connect listings and 83,300 changes or new connect listings for residence subscribers would not be included in the directories. Thus the 7-day delay would result in 97,300 subscribers' not having listings in the directories as they wished. Exhibit 46 also indicates that additional business office expenses of \$101,000 and additional directory expenses of \$878,100, or a total of \$979,100, would be imposed on Pacific as a result of these protective measures.

Pacific vigorously opposes the proposal that correction sheets be issued to mitigate damages resulting from directory errors and omissions. The Commission staff proposes a 30-day period in which the errors to be included in the correction sheets would have to be reported to Pacific. Pacific's Exhibit 27 shows that of the directory errors occurring in Pacific's 1962 directories, only 73 percent of the alphabetical errors and 46 percent of the classified errors, or a total of 56 percent of all errors, were reported within the first 30 days. Hence, it is urged, 44 percent of the errors would not be included in the correction sheets. Pacific's witness testified that in an area such as Los Angeles, to prepare and distribute the correction sheets would require one and one-half to two months following the 30-day period.

About 22 million copies of correction sheets would be required annually. Pacific's witness testified that it would be impractical to mail the correction sheets as bill inserts because they could not be handled by the automatic envelope stuffing machinery of Pacific and because billing addresses often differ from those to which the directories are delivered. Subscribers having directories at many different locations would have to make their own distribution of correction sheets. A separate visit would have to be made to each of the 62,000 pay stations where Pacific has about 108,000 directories.

The staff witness estimated that the preparation and printing costs of the correction sheets would be about \$197,000. Pacific's witness estimated that such costs would amount to \$208,000, mailing costs \$557,000, delivery list preparation \$47,000, and public telephone station distribution costs \$42,000, or total costs of \$854,000, without allowance for clerical and supervision expense. Pacific's witness further testified that few subscribers would take the time to put the correction sheets in the front of their directories and that even subscribers who had the correction sheets available for use would turn to information service immediately for any listing they did not find in the alphabetical or classified directory rather than use the correction sheets.

Findings and Conclusions

Upon a consideration of the record in these proceedings, the Commission finds as follows:

1. By Decision issued April 3, 1956, this Commission found that Pacific's Rule 17(B) is reasonable. (See Warren v. Pacific Tel. & Tel. Co., 54 Cal.P.U.C. 704, 708.)
2. The alleged directory errors which form the basis of the complaint in Case No. 7424 were alleged to have occurred in 1961.
3. Pacific uses great care in the preparation of its directories. Twenty-two steps are involved in the insertion of each listing in an alphabetical directory, with twenty-six checks for accuracy. Twenty-five steps and twenty-nine checks for accuracy are involved in connection with each listing and advertisement in the classified directory. Expenditure of more time and more money in striving for complete elimination of directory errors would not only extend presently required publication deadlines, but it would create an unwarranted burden on the users. As a practical matter, the goal of perfection may not be obtainable in any event.
4. Directory production time should be held to the shortest time practicable consistent with accuracy.

5. This record establishes that the present methods of Pacific in settling claims for damages resulting from directory errors and omissions essentially constitute credit allowance procedures.

6. Credit allowance procedures are presently applicable when telephone, gas, electricity and water services are interrupted for significant periods of time.

7. Pacific's Rules 17(B) and 17(C), Regulation 8 of Cal. P.U.C. No. 39-T, and Regulation 8 of NO. 40-T should be modified to reflect the actual practice of Pacific in settling claims for directory errors and omissions.

8. This record fails to establish that there should be a change in Rules 17(B) and 17(C), Regulation 8 of Cal. P.U.C. No. 39-T, and Regulation 8 of No. 40-T except as provided herein.

9. The statement in Pacific's directories that "The Company assumes no liability for damages arising from errors or omissions in the making up or printing of directories" is misleading and tends to discourage the filing of just claims for reparation arising from directory and information record errors or omissions.

10. The probable extent of usage of correction sheets by subscribers does not justify the additional expenditures which would be required to issue and distribute such correction sheets.

11. The proposals of the Commission staff, prepared in conformance with the scope of the Commission's Order of Investigation, have been helpful to the Commission in considering these matters.

Based upon a consideration of the record in these proceedings and the foregoing findings, the Commission concludes as follows:

1. With respect to Pacific's directory errors or omissions which have heretofore occurred and which occurred after April 3, 1956, this Commission may not grant relief inconsistent with Pacific's existing Rule 17(B).

2. No relief inconsistent with Pacific's existing Rule 17(B) may be granted to the complainants herein with respect to directory errors or omissions that have already occurred.

3. Pacific's existing Rule 17(B) and 17(C) of Schedule 36-T, Regulation 8 of Schedule 39-T, and Regulation 8 of Schedule 40-T should be revised as provided in paragraph 1 of the following order.

4. Pacific's contracts and tariffs providing for the insertion of primary listings, additional listings, lines of information, headings, caption texts, and/or display advertising of business service subscribers, including joint user business service subscribers, in Pacific's directories should be revised to substitute the term "credit allowance" for "liability".

5. The statement "The Company assumes no liability for damages arising from errors or omissions in the making up or printing of directories" should no longer be included in Pacific's directories.

6. All directories should in the future contain a summary, as set out herein, of Pacific's Rules 17(B) and 17(C).

7. Pacific should not be required to issue correction sheets for directory errors and omissions.

O R D E R

IT IS ORDERED that:

1. Within twenty days after the effective date of this order The Pacific Telephone and Telegraph Company shall revise its tariff schedules by means of an Advice Letter filed in accordance with procedures set forth in General Order No. 96-A to substitute for Rules 17(B) and 17(C), of Schedule Cal. P.U.C. No. 36-T, Regulation 8 of Schedule Cal. P.U.C. No. 39-T, and Regulation 8 of Schedule Cal. P.U.C. No. 40-T, the revised wording set forth in Appendix A attached hereto.

2. The Pacific Telephone and Telegraph Company's contracts and tariffs providing for the insertion of primary listings, additional listings, lines of information, headings, caption texts, and/or display advertising of business service subscribers, in its directories shall be revised to substitute the term "credit allowance" for "liability".

3. The Pacific Telephone and Telegraph Company shall omit the following statement from its directories which are printed subsequently to the effective date of this order:

"The Company assumes no liability for damages arising from errors or omissions in the making up or printing of directories"

and shall insert in front of the alphabetical section and in front of the classified section, in all directories printed after the effective date of this order, the following statement:

NOTICE TO SUBSCRIBERS

If an error or omission has been made by The Pacific Telephone and Telegraph Company in connection with your listing in this Directory (whether or not you have paid an additional charge for such listing) you may be eligible to receive a credit allowance per the following rules and regulation. If you have any questions please contact the nearest "Pacific Telephone" business office. If you thereafter believe you need further information contact the California Public Utilities Commission in San Francisco or Los Angeles.

(Quote Rules 17(B) and 17(C) in front of alphabetical section).

(Quote Rule 17(B) in front of classified section).

4. Except for the relief granted and action taken herein, Cases Nos. 7232 and 7424 are dismissed and Case No. 7796 is discontinued.

A copy of this order shall be served upon all appearances herein.

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

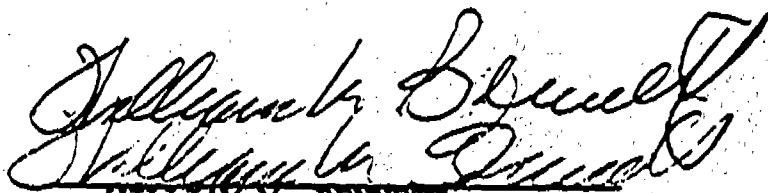
Dated at San Francisco, California, this 9th day of November, 1965.

Fredrick B. Holcomb
President
Paul E. ...
George E. ...
...
Commissioners

BENNETT, William M., Concurring Opinion:

I concur in the order herein but wish to point out that any negligence in the preparation of the advertising directories of the Pacific Telephone and Telegraph Company and damages claimed thereby are properly matters to be adjudicated before a court of competent jurisdiction. I do not construe the instant order as substituting for such proper relief any rebate upon the billing for directory advertising.

The question of damages is best determined by the courts and it is not only usual but indeed it is highly proper that in the event of an error in the directory listing from which damages can be demonstrated that the court should provide relief. Accordingly with this explanation I concur in the instant order.


WILLIAM M. BENNETT
Commissioner

San Francisco, California

November 9, 1965

APPENDIX A

SCHEDULE CAL. P.U.C. NO. 36-T.- RULES AND REGULATIONS

RULE 17(B) Credit allowance for errors or omissions in directories.

The Company shall allow credit 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.
2. Listing furnished at additional charge in the alphabetical telephone directory: In amount not in excess of the charge for that listing during the effective life of the directory in which the error or omission is made.
3. Listing furnished at additional charge in the classified telephone directory: In accordance with the provisions of Schedule Cal. P.U.C. No. 39-T, Classified Telephone Directory Advertising - Northern California, and Schedule Cal. P.U.C. No. 40-T, Classified Telephone Directory Advertising - Southern California, as follows: "In case of the omission of a part of or other error in an advertisement,

the extent of the Company's credit allowance shall be a pro rata abatement of the charge in such a degree as the error or omission shall affect the entire advertisement which may amount to abatement of the entire charge and in case of the omission of an entire advertisement, the extent of the Company's credit allowance shall be an abatement of the entire charge".

The subscriber assumes full responsibility concerning the right to use any name as a directory listing and agrees to hold the Company free and harmless of and from any claims, loss, damage, or liability which may result from the use of such listing. The Company does not undertake to determine the legal, contractual, or other right to the use of a name to be listed in a telephone directory of the Company.

RULE 17(C) Credit allowance for errors or omissions in information records.

The Company shall allow credit 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.

SCHEDULES CAL. P.U.C. NOS. 39-T and 40-T

REGULATION 8

In case of the omission of a part of or other error in an advertisement, the extent of the Company's credit allowance shall be a pro rata abatement of the charge in such a degree as the error or omission shall affect the entire advertisement which may amount to abatement of the entire charge and in case of the omission of an entire advertisement, the extent of the Company's credit allowance shall be an abatement of the entire charge.

(End of Appendix A)