

ORIGINAL

Decision No. 72620

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Floyd W. Walworth Jr. dba
Walworth Security Service, Ltd.,
Complainant,

vs.

Pacific Telephone and Telegraph Company,
a corporation,
Defendant.

Case No. 8532
(Filed September 21, 1966)

Floyd W. Walworth, Jr., in propria
persona.
Del Fuller, Jr., Dennis Bromley, and
Arthur T. George, by Del Fuller, Jr.,
for defendant.

O P I N I O N

Complainant requests an order (1) requiring defendant to cease and desist from certain discriminatory practices in connection with the placing of display advertising in defendant's classified telephone directory, (2) requiring defendant to institute a lottery "whereby in public view advertisers may observe the complete impartiality of location selection and ad placement," and (3) that \$420 due defendant from complainant for directory advertising "be declared not owing to defendant." Defendant denied the material allegations of the complaint.

The matter was heard and submitted before Examiner Robert Barnett on February 8, 1967, at Los Angeles.

Defendant places display advertising in its classified directories on the basis of size and seniority. Within a given classified directory heading larger and more expensive advertisements are assigned positions closer to the beginning of their classified headings than are smaller and less expensive advertisements. Within each group of similarly sized advertisements those which have been placed for the longest continuous time are displayed closer to the beginning.^{1/} It is generally conceded that the closer the advertising is to the beginning of the classified heading the more desirable is the position.

Complainant, an advertiser in defendant's classified directory, asserts that defendant's practice discriminates against the small advertiser. He feels that potential customers who seek services through the use of the classified directory when turning to a particular heading would see only the larger ads; not all customers would turn the pages to look at the smaller ads. Complainant would like the chance to be listed near the front of a classified heading without having to purchase a large ad. In his opinion many small businesses cannot afford large ads and they are the ones who most need the benefits of advertising.^{2/} Complainant

^{1/} Defendant's tariff concerning display advertising states, "No specific position for display advertising is guaranteed in any issue, and the Company reserves the right to place such advertising in any position either on any page on which appears the heading with which such advertising is to be associated or on any page opposite any such page." Defendant does not exercise the discretion afforded by its tariff but, rather, follows the criteria of size and seniority.

^{2/} Defendant's Los Angeles classified directory display advertising charges are: double one-half column, \$140 per month; one-half column, \$70 per month; and quarter-column, \$35 per month.

suggests that "a lottery method (be) devised whereby there would be equal opportunity for every person placing an ad in the Yellow Pages to have a fair chance --- to perhaps end up being the first listing or to be in the first page of the listings." Complainant presented no evidence on his \$420 claim.

Defendant presented one witness, its sales supervisor in charge of classified advertising. He testified to numerous reasons why defendant's present practice is reasonable: (1) the customer is willing to pay more for a large ad that gives him a favorable position; (2) the rule is well defined, easily understood, and easy to explain. Customers can make an intelligent choice when buying advertising; (3) well-defined rules eliminate disputes that can arise concerning preferential treatment; (4) simple placement rules speed up the production of the classified directory. Clerks can handle the ads expeditiously. Each day's delay in the production of the Los Angeles classified directory means that over 400 listings would be omitted; and (5) defendant's practices are consistent with general advertising practices in other media where the best positions command the highest prices, e.g., prime time on television, the center and cover pages of a magazine.

In the witness's opinion a lottery would cause a loss of revenue to defendant because advertisers would not pay premium prices for ads if they could not be certain of the position of their ad; the word "lottery" has a connotation of graft and payoff; there would be more complaints about the fairness of the lottery than there are about defendant's present practice; there would be delays in the production time of the directory; and it would be

very expensive to conduct a lottery. Every classified directory in the United States positions its ads by size. Within each size category half the directories position ads by seniority and half by alphabet; none uses a lottery or similar method to position advertising.

Allegations such as complainant makes are not new, and have been the subject of a searching study by the District of Columbia Public Service Commission where a system of ad placement identical with that of defendant was held to be fair and reasonable. (Classified Dir. Sub. Asso. v. Chesapeake & P. Tel. Co. (D.C.P.S.C. 1966) 62 PUR 3d 475, 480 (reconsideration denied 64 PUR 3d 120).)

Findings of Fact

The Commission finds that:

1. Defendant places display advertising in its classified directories on the basis of size and seniority. Within a given classified directory heading larger and more expensive advertisements are assigned positions closer to the beginning of their classified headings than are smaller and less expensive advertisements. Within each group of similarly sized advertisements those which have been placed for the longest continuous time are displayed closer to the beginning.

2. Defendant's present practice is reasonable because the customer is willing to pay more for a large ad that gives him a favorable position; the rule is well defined, easily understood, and easy to explain; customers can make an intelligent choice

when buying advertising; well-defined rules eliminate disputes that can arise concerning preferential treatment; simple placement rules speed up the production of the classified directory; clerks can handle the ads expeditiously; and defendant's practices are consistent with general advertising practices in other media where the best positions command the highest prices, e.g., prime time on television, the center and cover pages of a magazine.

3. A lottery would cause a loss of revenue to defendant because advertisers would not pay premium prices for ads if they could not be certain of the position of their ad; there would be more complaints about the fairness of the lottery than there are about defendant's present practice; there would be delays in the production time of the directory; each day's delay in the production of the Los Angeles classified directory means that over 400 listings would be omitted; and it would be very expensive to conduct a lottery.

4. Every classified directory in the United States positions its ads by size. Within each size category half the directories position ads by seniority and half by alphabet; none use a lottery or similar method to position advertising.

5. Defendant's present policies of advertising placement in its classified directory are fair and reasonable.

The Commission concludes that the complaint should be dismissed.

ORDER

IT IS ORDERED that the complaint is dismissed.

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

Dated at San Francisco, California, this 20th day of JUNE, 1967.

[Signature]
President
[Signature]
Augusta
[Signature]
William [Signature]
[Signature]
Commissioners