

ORIGINALDecision No. 72766

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GUS FARBER,

Complainant,

-vs-

PACIFIC TELEPHONE
& TELEGRAPH COMPANY,
a corporation,

Defendant.

Case No. 8639

ORDER OF DISMISSAL

In substance complainant alleges that he is an appraiser, that he purchased a column of advertising material to be placed in the "yellow pages" of defendant's telephone directory for the City and County of San Francisco in September, 1966; that he has agreed to and paid the sum of \$108.00 per month for such advertisement; that "Appraisers" are listed in said "yellow pages" of the directory commencing at page 40 in the fifth column; that complainant's name as an appraiser appears in the first column of page 41 of the directory; that complainant's full column of advertisement is inserted on page 40 of the directory in the third column between the headings "Apartments - (Cont'd)" and "Appliances Household - Refinishing." Complainant alleges that the insertion of his column of advertising material between the headings above described makes the advertisement valueless for the reason that no one looking for an appraiser in the "yellow pages" will look for the name of an appraiser in advertisements appearing between the described

headings. The prayer of the complaint is for an order directing defendant to return all sums of money paid by complainant for the placing of such advertisement.

Pursuant to procedural Rule 12 a copy of the complaint was mailed to defendant by way of information, and defendant's counsel submitted a statement of asserted defects. Counsel urged dismissal in that the complaint failed to allege violation of law, filed tariffs, or of any rule or order of the Commission and that the advertisement was placed in accordance with the established tariff.

A copy of the statement was sent to the attorneys for the complainant, who were asked to advise whether they would request dismissal without prejudice, file an amended complaint or rely on the present pleading. Complainant relies upon the present pleading.

Under Section 1702 of the Public Utilities Code a complaint must set forth "... any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission"

Defendant's Schedule Cal.P.U.C. No. 39-T, 6th Revised Sheet 5, Classified Telephone Directory Advertising - Northern California Special Conditions, provides in Regulations 8 and 9:

- "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.
- "9. 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."

It appears that page 40 of the directory is opposite to page 41.

The complaint does not allege any violation of filed tariff provisions, any provision of law or any order or rule of the Commission.

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

Dated at San Francisco, California, this 18th day of JULY, 1967.

D. E. Mitchell
President
William A. Bennett
Attorney
William J. Quinn
Paul P. Nicholas
Commissioners