

hjh

Decision No. 73977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JACK D. CONLEE,

Complainant,

vs.

The Pacific Telephone and
Telegraph Company Directory,
a corporation,

Defendant.

Case No. 8723
(Filed November 7, 1967)

Jack D. Conlee, in propria persona,
complainant.
Robert E. Michalski for The Pacific
Telephone and Telegraph Company,
defendant.

O P I N I O N

On November 7, 1967 Jack D. Conlee, complainant, doing business as Conlee Glass Company, filed his complaint against The Pacific Telephone and Telegraph Company, defendant. The answer to the complaint was filed by defendant on December 1, 1967. Public hearing was held before Examiner Cline in Sacramento on February 2, 1968. The matter was taken under submission on the filing of late filed Exhibit No. 5 on February 7, 1968.

The issues raised by the parties are as follows:

1. Does the show-through of the advertisement on the reverse side of the yellow sheet on which the Conlee Glass Co. advertisement was printed in the classified section of the 1967 Sacramento telephone directory published by defendant entitle the complainant to a full or partial credit allowance toward the \$48 per month charge by defendant for the Conlee Glass Co. advertisement?

C. 8723 hjh

2. Is the complainant entitled to a credit allowance of 3/30ths of the \$8.80 monthly charge for exchange service by reason of the temporary discontinuance of his telephone service from October 17 to October 19, 1967?

3. Is the complainant entitled to any credit allowance for the erroneous listing:

"If no answer call ...455-8383"

which appeared following the alphabetical listing of Conlee Glass Co. in the white pages of the 1966 and 1967 Sacramento telephone directories and which erroneous listing should have been deleted from said directories?

Findings

Upon a consideration of the record in this proceeding the Commission finds as follows:

1. None of the ink used for the advertisement on the reverse side of the yellow sheet on which the Conlee advertisement was printed in the 1967 Sacramento Telephone Directory came through the paper onto the Conlee advertisement.

2. Some of the wording of the advertisement on the reverse side of the yellow sheet on which said Conlee advertisement was printed can be seen through the Conlee advertisement. This is called show-through or strike-through and it is common in the printing industry.

3. Other advertisements in the 1967 Sacramento directory besides Mr. Conlee's advertisement have show-through to some extent.

4. All telephone directories have show-through to some extent or degree.

5. Defendant has definite standards and specifications as regards paper size, weight and thickness of the paper, type sizes, borders, density of cuts and ornaments which are used in the printing of its yellow-page section of the telephone directories.

6. Such standards and specifications control the readability and usability of the advertisements in the directories and operate to prevent excessive show-through.

7. The advertisements behind Mr. Conlee's advertisement in the 1967 Sacramento telephone directory meet the specifications imposed by the defendant on ads in the yellow pages and do not have excessive screening.

8. The show-through on the Conlee advertisement in the 1967 Sacramento telephone directory is a little greyer than in some of the other advertisements in the directory because the Conlee advertisement has a lot of white space and it happens that the advertisement behind it is a blacker advertisement.

9. The defendant has no policy of positioning advertisements based on show-through, but it has a long standing policy of paging advertisements by size and seniority. The larger advertisements and those which have been published for a longer period of time are positioned ahead of smaller advertisements and those which have been printed for a shorter period of time.

10. Show-through to the degree that it exists in the yellow pages of defendant's telephone directories does not influence the effectiveness of the advertisement.

11. Although by using a heavier grade of paper in its directories defendant would reduce the show-through, the directories' bulk and cost would be unreasonably increased.

12. Usability and serviceability of directories and the cost of printing and handling the directories are important considerations in fixing the specifications for paper used in directories.

13. The 1967 Sacramento directory met the specifications applicable to defendant's directories.

14. By reason of complainant's refusal to pay the \$576 due for his classified advertisement in the 1967 Sacramento telephone directory defendant discontinued complainant's telephone service on October 17, 1967.

15. Complainant reported the disconnection of his service to this Commission and his service was reconnected on October 19, 1967.

16. The basic exchange charge for complainant's telephone service at the time of the disconnection of his service was \$8.80 per month.

17. The first paragraph of Rules and Regulations 14 set forth in The Pacific Telephone and Telegraph Company Schedule Cal. P.U.C. No. 36-T, 1st Revised Sheet 56, reads as follows:

"14. Interruptions and Failure of Service

"(a) Credit Allowance for Interruption to Service

"Upon request of the subscriber the Company will allow subscribers credit in all cases where telephones are 'out of service' except when the 'out of service' is due to the fault of the subscriber, for periods of one day or more from the time the fact is reported by the subscriber or detected by the Company, of an amount equal to the total fixed monthly charges for exchange service multiplied by the ratio of the number of days 'out of service' to the number of calendar days in the billing month."

18. Defendant is willing to allow complainant a credit of 3/30ths of \$8.80 by reason of the disconnection of his telephone service for the period October 17 to October 19, 1967.

19. The following erroneous listing, which should have been deleted, appeared in the white pages of the 1966 and 1967 Sacramento telephone directories immediately following the alphabetical listing of Conlee Glass Co.:

"If no answer call ...455-8383"

20. No charge was made by defendant to complainant for the erroneous listing referred to in finding 19 above subsequent to its correct appearance in the 1965 Sacramento telephone directory.

21. Some of the complainant's customers told complainant that when they were unable to reach him at his alphabetical listing they called the erroneous listing referred to in finding 19 above without success, but at a later time they reached complainant at the correct telephone number shown in his alphabetical listing preceding the erroneous listing.

22. The inclusion of the erroneous listing did not impair the effectiveness of the correct alphabetical listing nor the telephone service of complainant and his customers.

Conclusions

Based upon a consideration of the foregoing findings the Commission concludes as follows:

1. Complainant is entitled to no credit for the show-through on his advertisement in the classified section of the 1967 Sacramento telephone directory published by defendant.

2. Complainant is entitled to a credit of \$0.88 which is 3/30ths of the \$8.80 monthly charge for his exchange service, by reason of the temporary disconnection of his telephone service from October 17 to October 19, 1967.

3. Complainant is not entitled to any credit allowance for the erroneous listing which appeared in the white pages of the 1966 and 1967 Sacramento telephone directories following the alphabetical listing of Conlee Glass Co.

C. 8723 hjh

O R D E R

IT IS ORDERED that:

1. The defendant, The Pacific Telephone and Telegraph Company, shall extend to the complainant Jack D. Conlee a credit allowance of \$0.88 on the first bill for telephone service which is submitted to complainant by defendant following the effective date of this order.

2. Except to the extent that relief has been granted to complainant by ordering paragraph number 1 above, the complaint herein is dismissed.

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

Dated at San Francisco, California, this 9th day of APRIL, 1968.

John E. Mitchell
President

Augustin
William Francis J.
Fred P. Monsey
Commissioners

C. 8723 and C. 8689

7 3 777

WILLIAM M. BENNETT, COMMISSIONER, Dissenting Opinion

This order arises from the anachronism known as corporate immunity. It is in reality private immunity giving the Pacific Telephone and Telegraph Company immunity from mistake or civil wrong. This is an odd doctrine in 1968 particularly in view of the developments in case law of this State and other jurisdictions which have substantially curtailed indeed in some cases eliminated sovereign immunity. It seems odd that a private public utility telephone corporation enjoys immunity from mistake while the sovereign State of California has been deprived of immunity status in many fields.

I do not quarrel necessarily with the facts of either of these cases but I do object vigorously to the continuance of the notion and to the partnership arrangements between this Commission and the telephone company that they are protected from lawsuit and that we are sentinels against liability brought into that partnership by a tariff filing. I can find no justification either in the past or the present for giving immunity from mistake to a private entity. So far as I am concerned immunity cannot be justified on any rational basis and it is high time that it be case aside. What persuasive reason can be advanced in support of the proposition that when the telephone company makes a mistake it is not to be held accountable for its wrong doing? And it is no comfort that this Commission which possesses no expertise in the field of civil liability or civil damages has volunteered to work out a meaningless noncompensatory formula. Note today's order in the Conlee case which gave to plaintiff therein the magnificent sum of .88 cents and not by way of cash payment but by way of a credit allowance. We do not even leave to the complainant the option to taking money payment--instead we dictate a credit on the bill.

William M. Bennett
/s/ WILLIAM M. BENNETT

WILLIAM M. BENNETT
Commissioner

Dated: San Francisco, California
April 9, 1968