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Decision No. 74942

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JACK HENDERSON, dba VANESSA WIGS,)
 Complainant,)
 vs.)
 THE PACIFIC TELEPHONE AND)
 TELEGRAPH COMPANY,)
 Defendant.)

Case No. 8789
(Filed April 30, 1968)

Jack A. Henderson, in propria persona, for complainant.
Robert E. Michalski, for defendant.
Daniel R. Paige, for the Commission staff.

O P I N I O N

Complainant Jack A. Henderson, dba Vanessa Wigs, a subscriber of The Pacific Telephone and Telegraph Company (Pacific) with a business service listing in its Sonoma County directory, seeks an order from the Commission that would permit him to have his post office box number substituted for his street address in his listing in the white section of the directory. The matter was heard in a public hearing before Examiner Foley on July 22, 1968 in Santa Rosa and submitted on such date.

Complainant maintains that such a substitution is permissible and reasonable under Pacific's tariff Schedule Cal.P.U.C. No. 17-T relating to Business Service Primary Listings. Pacific denies this assertion and maintains that tariff Schedules Cal.P.U.C. Nos. 17-T and 36-T prohibit any such substitution. The Commission staff participated in the proceeding and at the close of the hearing took the position that the complainant's request should be granted.

The parties agree as to the basic facts. Complainant conducts a wholesale wig business in Napa, Solano, Marin and Sonoma Counties. This business is primarily conducted by traveling and visiting beauty salons in these counties. Orders for wigs are frequently made by telephone or mail. During most of 1967, however, complainant did maintain a business office at 1516 - 4th Street in Santa Rosa. He maintained his inventory of wigs at this address and also received orders there by phone and mail. This address appears in his listing in the 1967 directory as "Vanessa Wigs".

In October or November, 1967 complainant left this address and he now conducts the business from his residence, which is about six miles from Santa Rosa. His inventory of wigs is now maintained there and he receives orders by phone located there and by mail delivered to a post office box located in Santa Rosa. The telephone located at his residence is his business telephone listed under "Vanessa Wigs". He further testified that he intended to order and pay for an additional business listing under his last name in the white section of the 1968 directory.

During January 1968 complainant requested that defendant substitute his post office box number in place of the street address on Fourth Street. Complainant further requested that his listing in the 1968 directory appear as "Vanessa Wigs, P. O. Box No. 3114, Santa Rosa" and that it not include his residence street address.

Mr. Henderson asserts that his request is permitted by a reasonable interpretation of Pacific's tariff Schedule Cal. P.U.C. No. 17-T concerning Business Service Primary Listings, in that the tariff does not prohibit the listing of a post office box number.

He testified that such a listing is important to him and his business for the following reasons: (1) that it would aid in the protection of his wig inventory maintained at his residence; (2) that at the same time it is necessary for his business to have a mailing address published in the directory which is not his residence address; (3) that the post office box number would assist telephone users in ascertaining his telephone number in the directory because he directly associates his name and business with the box number; (4) that confusion may result between his listing in the white section and the one in the yellow section because Pacific is willing to list his post office box number in the letter.

With regard to the first reason complainant testified that wig inventories are very valuable and highly susceptible to theft. He stated that "90 percent of wholesale wig places have been broken into at one time or another." (R.7.) On cross-examination as to this unusual risk of burglary he testified:

"Q. There is something particular about the wig business that makes it more attractive to burglars?

"A. Yes.

No. 1, because of the very size of the product and the cost of the product and the ease of getting rid of it. There are no serial numbers to check. A burglar can go in and take out your entire stock and you would have a very difficult time identifying one thing you have there.

If you check on your statistics, about 90 percent of your wig places have been broken into and goods stolen. In fact, it is --the insurance on it is just prohibitive against theft of wigs." (R.22-3.)

When his inventory was located at his former business office on Fourth Street in Santa Rosa it was protected by a burglar alarm system which was directly wired to the city police department. No such system at his residence is effective, he maintains, because

the location is six miles outside the city and therefore too far for any prompt action by the county sheriff's department. Mr. Henderson believes that the publishing of his residence address along with his business listing needlessly subjects his inventory of wigs to the risk of burglary by advertising the somewhat remote location of his business and its inventory.

As to the second reason, Mr. Henderson states that the absence of any mailing address in his listing would obstruct and hinder his business. He explained that very few, if any, customers actually come to a wholesale wig business to buy wigs. Most wigs are purchased by beauty salon operators as needed. Orders are placed either by telephone or by mail. Also, hair samples are frequently mailed to him in order to assure proper matching of hair and wig. He described the operation as follows:

"Q. Could you briefly indicate why you wish your post office box shown as an address in the telephone directory in lieu of the street address?

"A. Yes, I can.

If, for example, I call on a salon on Tuesday and on Wednesday an operator gets an order for a hairpiece, they have color rings so they can just write on a postcard and say, 'Send me a hairpiece of a certain style and a certain color number,' and mail it to me.

Then, when I get that I can fill the order and deliver it the following week.

It is very essential that I have a mailing address. If I have my street address, immediately I am notifying the whole world where I live. If I have a post office box, well, all they know is that I will get the mail." (R.8.)

Again, on cross-examination, Mr. Henderson explained as follows:

"Q. Now, you mentioned that one of the reasons why you wanted the post office box listing was so customers could mail, is it, samples of hair to you?

"A. Yes.

"Q. Again to facilitate the mailing of the samples to you and your prompt receipt of those samples, is that correct?

"A. Yes.

"Q. This has nothing to do with their telephoning you at all?

"A. At times it does, yes, but that is what I was stating earlier, if they never ever see a street address and every time they see an invoice or anything concerning my business all they have is a post office box, if they don't remember the name they will remember that, well, if they call the operator and say, 'Well, do you have a listing for Jack Henderson?'

Well, they would say, 'Which Jack Henderson?'

'Well, I believe he has a post office box.'

I believe it would associate my name and business name.

"Q. Well, wouldn't the Timber Hill Road Association be equally easy for your customers?

"A. Yes, but if I have Timber Hill Road I am saying to the whole world, 'This man is in the wig business and there is a good chance he might pick up some wigs free.'

"Q. Pick up some wigs free?

You mean steal the wigs?

"A. Yes, sir, that is exactly what I mean.

"Q. Well, other businesses have their address listed and face the same risk, don't they?

"A. Not to the extent that the wig business does." (R.21-2.)

In support of the third reason complainant testified that his calls upon beauty salons are essentially for goodwill purposes (i.e., to maintain contacts for possible future orders) and that his post office box number constitutes an essential means of identifying him and of locating his phone number for the purpose of placing orders. He explained as follows:

"Q. Would your post office box address assist telephone users in ascertaining your telephone number?

"A. Yes, it would because I never give an address. So, over a period of years it's going to soak in, over a period of years people will know me as my name or my business name and a post office box. If they were looking in the directory they would look down and say, 'Jack Henderson, Post Office Box,' and they would immediately identify me as being with that business." (R.8.)

Pacific further inquired on cross-examination as to how the appearance of a post office box number would assist in use of the telephone:

"Q. You are trying to protect your mail through this listing in the telephone book, is that correct?

"A. No.

I am trying to do two things. I am trying to protect my mail and I am trying to increase my business and I am trying to associate my telephone number with the post office box.

"Q. You are trying to expedite the delivery of mail to you too?

"A. This is one of the things I am also trying; it is part of it, yes.

"Q. You did mention that the post office box would assist people in phoning you and I am afraid I didn't understand that, could you repeat that again?

"A. Would assist people in phoning?

"Q. Yes.

"A. As a good example, if you call on these beauty operators and maybe this shop will have 10 or 15 operators, maybe they will know it was Jack Henderson that came in there, maybe they might never know it was Vanessa Wigs because chances are even just the owner would know it was Vanessa Wigs. So, in most cases the operators themselves, it is up to them to do the calling because they are the one that gets the commission on it, the managers will not do it for them. If they call Santa Rosa and say, 'I want to talk to Jack Henderson,' and there are several Hendersons listed.

Well, they say, 'Which Henderson would it be?'

Well, the operator says, 'We have one listed for so and so and one for so and so,' and as soon as she came to this post office box I know that as many times as I tell them I am associated with the post office box then the association would bring that in with the telephone number.

"Q. You don't think this would confuse people in attempting to find you?

"A. No, I do not." (R.23-5.)

As for the fourth reason, Mr. Henderson believes that if Pacific substitutes his post office box number for his address in the yellow pages but refuses to publish it in the white pages confusion will possibly result in that the two listings will not be the same. A customer might not utilize the yellow pages to find the complainant's mailing address or telephone number and might not place the order with him after failing to find his listing in the white pages or after failing to find his mailing address if the customer does locate the listing. Mr. Henderson also states that a business listing in the white pages without any address is unsatisfactory because it raises doubts as to what kind of business he is conducting. (R.13-14.)

Defendant refused to make the substitution on the ground that it is not permitted by the tariffs applicable to directory listings. Pacific also alleges that a post office box number fails to aid the use of telephone service in any manner; and that such a listing might be a hindrance to the proper routing of telephone traffic.

In Pacific's tariffs, Schedule Cal. P.U.C. No. 36-T, Sheet 6, Rule 1, Definitions Regarding Directory Listings, defines "Directory Listings" as follows:

"Essential information in the telephone directory whereby telephone users may ascertain the telephone number of a customer's station."

Pacific primarily relies upon Schedule Cal. P.U.C. No. 17-T, Directory Listings - Special Conditions, Sheets 5 and 6. On Sheet 5 the general purpose of listings is described as follows:

"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."

Sheet 6 in Schedule No. 17-T, pertaining to special conditions for business service listings, describes the various items which may be included in such a listing. Under the term "address" the tariff prescribes as follows:

"(3) Address

The address may be that of the premises on which the primary station, extension station, PBX switchboard, PBX station, cord-operated telephone answering system or station, answering line, secretarial line, airport intercommunicating service mechanized station (or switchboard used with such service), receiving station or order receiving equipment (not operated as auxiliary to a private branch exchange) is located, except:

- (a) The address may be omitted from the business listing of a subscriber or joint user where the subscriber or joint user does not conduct business with the public at the address at which the service is furnished.
- (b) Where the type of business generally involves the removal of appliances, furniture or other articles of value from the owners' premises, the address at which the telephone service is rendered must be included in a business listing.
- (c) Joint user listings shall bear the address at which joint user service is rendered."

Pacific's Directory Methods Supervisor explained the company policy underlying its refusal to grant complainant's request. He testified that directory listings are for the purpose of identifying a subscriber's telephone number; and that the subscriber's address where the telephone is located is included because "it is the one way for the user of a telephone directory to identify the particular party he wishes to call".(R.40.) This witness stated that a post office box number does not identify the address at which

the telephone service is located and that such a listing would increase the chance of error in using the directory. (R.41-2.) He also said that Pacific's burden is increased by such a listing because it introduces another piece of information to carry in the company's records. (R.43.) Furthermore, Pacific's witness stated that Mr. Henderson's box number may be published in the yellow pages as a paid line of information at only 50 cents a month. (R.44-6.)

Pacific's basic contention is that the above-quoted tariff provisions prohibit the printing of anything in the white pages other than the street address where the telephone is located. We do not agree. The language in the tariff, particularly with regard to the items included under "Business Service Listings" is permissive and not mandatory. There is no requirement that the address shall be the address of the place where the telephone service is located, although that may be the normal situation and what Pacific normally requires. Pacific's witness admitted on cross-examination that this was the case, although the company policy has been to interpret these provisions as if they were mandatory. (R.47-52.)

Since on their face the tariffs do not bar complainant's request the Commission must weigh the reasonableness of this request against the company's policy reasons advanced in opposition to it in order to determine if Pacific's interpretation is justified.

At the outset we note that Pacific's tariffs include the address as of one of the items to be listed with business service listings. In particular, Pacific's tariffs state that the address at which the telephone service is located may be listed. However, no definition of what constitutes an address is provided.

The Supreme Court has declared that an address is not always synonymous with the name or description of a place of residence or business and that it can be the place where a person may be found or communicated with (Holm v. City of San Diego, 35 Cal.2d 399, 401). A post office box number is certainly the name of a place where a person may be communicated with. We conclude, therefore, that a post office number may reasonably be said to constitute an address.

Pacific advances two primary policy arguments in favor of its interpretation. The first is that the post office box number fails to meet the stated goal or purpose of directory listings in that it does not facilitate the use of the telephone by aiding in the identification of the subscriber. While we agree that only information essential to this purpose should be published in the white pages we believe that, at least in complainant's case, his post office box number does comply with this purpose. Mr. Henderson associates his name with a Santa Rosa post office box when he deals with and visits his customers. Since his potential customers are made aware of the fact that he has a post office box number in Santa Rosa it seems reasonable to conclude that the appearance of this number in the white pages would aid a directory user in identifying Mr. Henderson's telephone number.

Pacific argues that confusion could result from permitting Mr. Henderson's request if, for instance, he listed a Napa post office box number in the directory. By so doing a directory user might be misled into making a longer call (i.e., to Santa Rosa) than he thought he was placing. It is sufficient to say that this argument is inapplicable to the facts before us since complainant

has requested only the listing of a Santa Rosa post office box number. Furthermore, as the staff pointed out on cross-examination, any such confusion can be eliminated by amending the tariff to provide that the post office box listed must be in the same community as the telephone number. This mere possibility of some confusion cannot in itself constitute a hindrance to directory users.

Also, Pacific claims that the white page section of directories will be opened to all kinds of advertising and other non-essential items of information if its interpretation is rejected. (R.57.) We reject this contention. We do not see how the substitution of a post office box number for a street name and number would require Pacific to accept advertising messages, phrases or slogans involving several, or even a few, words. We believe that the difference between these two types of listing data is adequate and substantial enough to prevent any large scale assault on or hindrance of the basic policy regarding this section of the directories. One is a form of an address; the other is a message for commercial purposes.

Pacific's second policy argument is that the above-quoted tariffs would be violated if it granted complainant's request because his telephone equipment is not located at the post office. While it is true that the telephone is not located at the post office Pacific overlooks the fact that the tariff, which it itself drafted and filed with the Commission, is not mandatory in its language. It does not contain an absolute requirement that the street address where the telephone is located must be published in the directory. Moreover, Pacific permits the subscriber to delete entirely the address of the location of the telephone service

under certain circumstances (see Schedule Cal. P.U.C. No. 17-T, Sheet 6, par. 2a(3)(a) supra). By its own tariff only two situations exist where under business service primary listings the address appearing in the listing must be the location of the telephone service (Cal. P.U.C. No. 17-T, Sheet 6, par.2a(3)(b) and (c) supra).

The important question is whether the burden of making the post office box listing would be so onerous on Pacific that the result would clearly be inconsistent with the public interest. We believe that in this case it would not and that such a listing may reasonably be expected to facilitate telephone service. A postal box number is an address form which Mr. Henderson uses in his business and which may reasonably be expected to be helpful to business customers using the telephone directory to identify his telephone number. His customers know his business address as a post office box number which he intentionally makes known to them. And as far as use of the directory by the general public is concerned, we doubt that a postal box number is any less helpful than the complete omission of an address.

We are not convinced that there would be any serious burden placed upon the company since it is already willing to handle and publish such items of information in the yellow pages as a paid additional line of information. Nor can we agree that a postal box number would "clutter" the directory since such a listing may well have fewer letters and numbers in it than the typical street address. (R.58.) The company's witness testified that he had no idea how many business subscribers would substitute postal box numbers if it were permissible to do so. He did not know if any request similar to the complainant's had been made in the past. (R.76.) The witness did not have any information as to what

additional burden, if any, would be placed on Pacific in the event that the Commission required it to substitute postal box numbers. (R.97.)

Finally, Pacific's witness stated that some subscribers' addresses include only the name of the community in which they live or the highway route on which they live. (R.97-8.) Such a listing was consistent with the company's directory tariffs and policies because it was the best address information available to identify the subscribers with their respective telephones. One such listing was: "Parish, Harold O., Keesport, Bodega Bay". We believe that complainant's proposed listing of a postal box number in Santa Rosa is equally satisfactory in complying with Pacific's listing policies.

In short, we are not persuaded by Pacific's policy arguments against granting Mr. Henderson's request. We agree with the position of the Commission staff that his request should be granted as long as no great inconvenience will be caused by it. (R.116.) We doubt that many similar requests will be received. This view is supported by the fact that Pacific's witness did not know of any such request being made in the past. We take notice of the recent liberalization by Pacific's parent, American Telephone and Telegraph Company, with regard to subscribers connecting their own devices to the company's equipment. We think that granting the complainant's request herein is consistent with a policy of authorizing reasonable requests by subscribers. In reaching this result it should be remembered that we are concerned here

with only business listings, and not individual listings.^{1/} This limitation lends additional weight to our conclusion that no great inconvenience will result to the company.

The Commission finds that:

1. Schedule Cal. P.U.C. No. 17-T, Sheet 6, par. 2a(3), relating to the address item of information included in the Business Service Primary Listing in the alphabetical section of defendant's telephone directories, does not prohibit publication of a subscriber's post office box number in lieu of his street name and number as his address.

2. A post office box number is the name of a place where a person may be communicated with and it therefore constitutes an address.

3. Defendant has failed to establish that its interpretation of Schedule Cal. P.U.C. No. 17-T, Sheet 6, par. 2a(3), and that its policy grounds for denying complainant's request are reasonable or that they are required by the public interest.

4. Defendant has failed to show that any unreasonable burden would be placed on it by granting complainant's request.

The Commission concludes that complainant's request is within the limits of reasonable interpretation of defendant's tariffs and that the relief requested by complainant should be granted, provided that the post office box number listed in the directory is located in the same community as his telephone service.

^{1/} It should be noted, however, that if Mr. Henderson orders and pays for a listing in the white pages under his last name in addition to the listing under his business name he is entitled to substitute his postal box number in both since they are both part of a business service primary listing.

