

ORIGINAL

Decision No. 75379

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHN FAIA, III, D.D.S.,
Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a corporation,
Defendant.

Case No. 8647
(Filed June 20, 1967)

Michael Meheen, for Dr. John Faia, III,
complainant.

Robert E. Michalski, for The Pacific Telephone
and Telegraph Company, defendant.

O P I N I O N

This is a complaint by Dr. John Faia, III, (hereinafter referred to as Faia) against The Pacific Telephone and Telegraph Company (hereinafter referred to as PT&T).

A duly noticed public hearing was held in this matter before Examiner Jarvis in San Francisco on April 25, 1968. The matter was submitted on May 14, 1968.

The complaint resulted from PT&T's failure to list certain lines of information in connection with Faia's listing in the yellow pages of the 1966 Monterey and San Benito Counties Telephone Directory. The complaint, as filed, requested four types of relief: 1. Reimbursement for one year's telephone service and directory listing. 2. Compensation for damages suffered by Faia as the result of the omission of the lines of information. 3. Costs and fees. 4. General relief. At the beginning of the

hearing the Examiner ruled that the Commission did not have jurisdiction to award general damages or costs and fees herein. (See Johnson v. P.T.&T., Decision No. 75307 in Case No. 8685; Williams v. P.T.&T.Co., 64 Cal.P.U.C. 736.) Faia does not contest this ruling. The Examiner properly ruled that the main issue in this matter is whether Faia is entitled to reparations or a credit allowance in connection with the telephone service for the year in question.

There is conflicting evidence on certain points. In general, the evidence produced in behalf of Faia was direct evidence, whereas the evidence produced by PT&T related primarily to its standard operating procedures and the lack of certain documents or memoranda in its files. No useful purpose would be served by detailing all of the evidence. In considering the questions herein presented the Commission will utilize the facts hereinafter found to be true.

Faia is a dentist. He commenced the practice of dentistry in August of 1964. He is a member of the American Dental Association and limits his practice to dentistry for children. The first time he was listed as a dentist in a telephone directory was in 1965. In 1965 Faia shared an office in Monterey with his father (also a dentist) and in Seaside with Dr. Erickson. In 1965 he had the following listing in the yellow pages of the telephone directory:

Faia John III
Member American Dental Association
Practice Limited to
Dentistry for Children
Monterey Ofc 30 Dormody Ct---372-0440
Seaside Ofc 775 Kimball Av(SE)-394-5544

Early in 1966 Faia decided to change his office arrangements to a single, different office in Monterey. Faia was scheduled to move

into the new office in August of 1966 and actually made the move in September of that year. On or about May 31, 1966, Faia's receptionist called PT&T's Monterey office and requested an advance assignment of a new telephone number and a new listing in the yellow pages to reflect the change in number. The Monterey office indicated that the telephone number 375-4877 would be reserved for Faia and it eventually became and now is his number. The Monterey office advised the receptionist that yellow page advertising was handled through PT&T's San Francisco office and that she would be contacted by that office. On or about May 31, 1966, the receptionist received a telephone call from someone in the San Francisco office about yellow page advertising. She told the PT&T representative that Faia wanted the old listing at the obsolete addresses removed and a new listing inserted showing: Faia's new address, Faia's new telephone number, the fact that he limited his practice to children and that he is a member of the American Dental Association. The PT&T representative affirmed that the requested listing would be included in the yellow pages of the 1966 directory.

The receptionist received no written confirmation of the aforesaid telephone call. On or about June 7, 1966, she telephoned the number in San Francisco which the PT&T representative had given her to check on the status of the yellow page advertising. She was assured that the ad had been sent to the printer as requested. No confirmation of the requested listing was ever sent to Faia. When the 1966 Monterey and San Benito Counties Telephone Book was printed in July of 1966, Faia's listing in the yellow pages was as follows:

Faia John III 400 Pacific---375-4877

The lines of information indicating that Faia restricted his practice to children and is a member of the American Dental Association were omitted. Dr. Faia was never billed for and did not pay

for the requested lines of information. He did pay during the life of the 1966 directory the monthly rate of \$9.05 for a one-party flat rate business line plus \$3.00 a month for two extensions.

Faia testified that the Monterey area has a large transient military population which has a turnover every two years; that transients rely very heavily on the yellow pages of the telephone directory to locate professional persons such as dentists and, at the time of hearing, he obtained an average of one new patient a week as a result of his yellow page listing. Faia also testified that he would rather have had the 1965 listing with the proper lines of information but obsolete address and telephone number than the listing which appeared in the 1966 yellow pages.

PT&T contends that Faia is entitled to no relief herein. It argues that Faia was only billed for a business service listing and received a correct listing. Faia contends that the requested listing, which included the lines of information, was indivisible and that the failure to include the lines of information diminished the value of the listing which appeared. We agree with Faia's contention. To artificially fragment an entire transaction and apply tariff provisions to the fragmented portions may distort the transaction and may result in a situation where relief can be given for a small error but not for a larger one. Such results should be avoided unless compelled by law. Under the present facts, there is authority to look to the entire transaction to determine whether relief should be granted.

In B. U. Beckman v. P.T.&T.Co., 63 Cal.P.U.C. 305, the complainant, an electrical appliance repair service, subscribed to local business extended exchange service and foreign exchange service. He advertised in the yellow pages. The complainant

placed an order to continue his listing and yellow page advertising, including his existing telephone numbers. He ordered stationery and advertising material based on these numbers. PT&T, because of the installation of improved switching equipment, changed his foreign exchange number. The ensuing telephone directory contained the new number in the yellow page advertising. The complainant was not aware that a new foreign exchange number would be issued to him until shortly prior to the issuance of the new telephone directory. The complainant claimed damages for the aforesaid expenditures and loss of business, because many persons thought the new number was not a local call and his business diminished. General damages were denied in Beckman for the reasons heretofore discussed. However, a partial credit allowance was ordered even though the listing and advertising which appeared in the yellow pages was correct. The Commission considered the entire transaction and found that the complainant's foreign exchange service and yellow page advertising had been impaired by the conduct of PT&T.

In Frost v. P.T.&T.Co., 63 Cal.P.U.C. 301, the complainant applied for joint user telephone service. Because of an error by PT&T, the complainant's listings were omitted from PT&T's information records for a period of time and from PT&T's telephone directories for a period of one year. In Frost, PT&T contended that its liability was limited to a credit allowance for the joint user charge and informational listing. The Commission did not accept this contention. We construed PT&T's tariff provisions in the light of the whole transaction and awarded reparations for the entire amount of the basic exchange service for the period involved.

Where an omission occurs which diminishes the utility of the main exchange listing PT&T's liability is limited to the amount of the main exchange service during the life of the directory in which the omission occurred. (PT&T Rule 17(B)1.) As indicated, Faia's basic exchange rate was \$9.05 per month. In the light of the evidence we find that Faia's damage was at least equal to \$108.60, an amount equal to the basic exchange rate for one year. Faia should have been given a credit allowance for that amount and, therefore, is entitled to reparations for that sum.

No other points require discussion. The Commission makes the following findings and conclusion.

Findings of Fact

1. Faia is a dentist. He commenced the practice of dentistry in August of 1964. He is a member of the American Dental Association and limits his practice to dentistry for children.

2. The first time Faia was listed as a dentist in a telephone directory was in 1965. In 1965 Faia shared an office in Monterey with his father (also a dentist) and in Seaside with Dr. Erickson. In 1965 he had the following listing in the yellow pages of the telephone directory:

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Member American Dental Association
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Monterey Ofc 30 Dormody Ct---372-0440
Seaside Ofc 775 Kimball Av(SE)-394-5544

3. Early in 1966 Faia decided to change his office arrangements to a single, different office in Monterey. Faia was scheduled to move into the new office in August of 1966 and actually made the move in September of that year.

4. On or about May 31, 1966, Faia's receptionist called PT&T's Monterey office and requested an advance assignment of a new telephone number and a new listing in the yellow pages to reflect the change in number. The Monterey office indicated that the telephone number 375-4877 would be reserved for Faia and it eventually became and now is his number. The Monterey office advised the receptionist that yellow page advertising was handled through PT&T's San Francisco office and that she would be contacted by that office. On or about May 31, 1966, the receptionist received a telephone call from someone in the San Francisco office about yellow page advertising. She told the PT&T representative that Faia wanted the old listing at the obsolete addresses removed and a new listing inserted showing: Faia's new address, Faia's new telephone number, the fact that he limited his practice to children and that he is a member of the American Dental Association. The PT&T representative affirmed that the requested listing would be included in the yellow pages of the 1966 directory. The receptionist received no written confirmation of the aforesaid telephone call. On or about June 7, 1966, she telephoned the number in San Francisco which the PT&T representative had given her to check on the status of the yellow page advertising. She was assured that the ad had been sent to the printer as requested. No confirmation of the requested listing was ever sent to Faia. When the 1966 Monterey and San Benito Counties Telephone Book was printed in July of 1966, Faia's listing in the yellow pages was as follows:

Faia John III 400 Pacific----375-4877

The lines of information indicating that Faia restricted his practice to children and is a member of the American Dental Association were omitted.

5. Faia was never billed for and did not pay for the requested lines of information which were omitted from the 1966 telephone directory. He did pay during the life of the 1966 directory the monthly rate of \$9.05 for a one-party flat rate business line plus \$3.00 a month for two extension telephones.

6. The Monterey area has a large transient military population which has a turnover approximately every two years and these transients rely very heavily on the yellow pages of the telephone directory to locate professional persons such as dentists.

7. At the time of hearing, Faia obtained an average of one new patient a week as a result of his yellow page listing.

8. PT&T's failure to include the lines of information requested by Faia diminished the utility of the main business exchange listing for the year in which the 1966 telephone directory was in use.

9. Faia suffered damage as a result of PT&T's aforesaid conduct of at least \$108.60.

10. Faia should have received a credit allowance from PT&T of \$9.05 per month for the months of July, August, September, October, November and December 1966 and January, February, March, April, May and June 1967. No discrimination will result from the payment of interest on reparations for said amount.

Conclusion of Law

PT&T should be ordered to pay Faia reparations calculated at \$9.05 per month for the months of July, August, September, October, November and December of 1966 and January, February, March, April, May and June 1967 with interest of 7 percent per annum on each \$9.05 calculated from the last day of the month for which the reparation is allowed for a total of \$108.60 plus interest.

O R D E R

IT IS ORDERED that The Pacific Telephone and Telegraph Company is ordered to pay to Dr. John Faia, III, reparations calculated at the rate of \$9.05 per month for the months of July, August, September, October, November and December 1966 and January, February, March, April, May and June 1967 with interest on each \$9.05 at the rate of 7 percent per annum, calculated from the last day of the month for which the reparation is allowed, for a total of \$108.60 plus interest.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 1st day of MARCH, 1969.

William S. Quinn
President

Wogata

Fred R. Morrissey

C. M. ...

Commissioners