

ORIGINAL

Decision No. 76512

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Council on Religion and the Homosexual, Inc., a California nonprofit corporation; Society for Individual Rights, Inc., a California nonprofit corporation; Tavern Guild of San Francisco, Inc., a California nonprofit corporation; Daughters of Bilitis, Inc., a California nonprofit corporation,

Complainants,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a corporation,

Defendant.

Case No. 8788
Filed April 25, 1968

David I. Clayton, complainant.
Robert E. Michalski, for The Pacific Telephone and Telegraph Company, defendant.

O P I N I O N

This is a complaint by the Council on Religion and The Homosexual, Inc.; Society for Individual Rights, Inc.; Tavern Guild of San Francisco, Inc.; and Daughters of Bilitis, Inc. against The Pacific Telephone and Telegraph Company (sometimes hereinafter referred to as PT&T). Complainants seek herein an order requiring PT&T to establish a yellow page heading for "Homophile Organizations" and to list each of the complainants thereunder.

A duly noticed public hearing was held in this matter on September 10, 11 and 12, 1968. The matter was submitted on October 1, 1968.

Each complainant presently receives telephone service from PT&T. Each is listed in the white and yellow pages of PT&T's San Francisco Directory. In the yellow pages the Council on Religion and the Homosexual is listed under the heading of Religious Organizations. The other complainants are listed under the heading of Associations. Complainants contend that the yellow page headings under which they appear do not accurately describe them; that the heading "Homophile Organizations" does accurately describe them; that they have requested PT&T to establish that heading and list them thereunder and that PT&T has discriminated against them by unjustly and unreasonably refusing their request. PT&T contends that it has not discriminated against complainants and that its refusal to establish a yellow page heading of "Homophile Organizations" and list complainants thereunder is consonant with its tariff.

The issue raised by this complaint is: Are PT&T's tariff provisions dealing with establishing classified headings and rules promulgated thereunder unjust, unreasonable, improper or discriminatory in themselves or as applied to complainants?

Item 4 of the Special Conditions in PT&T's Tariff No. 39-T provides that "The Company reserves the right to establish or refuse the establishment of any heading in the Classified Telephone Directory." However, this right is not unbridled. It must be exercised in accordance with applicable provisions of law. (Pub.Util. Code Sections 453, and 761; Huntley v. Public Utilities Comm., 69 Adv. Cal. 62, 71; Viviano v. PT&T Co., Decision No. 75019 in Case No. 8754.) In practice, PT&T applies seven principles in determining whether or not to establish or retain a classified heading. These principles are as follows:

- "1. Headings are provided to identify a business as it is generally conducted in the area.
- "2. When a phase of an existing business becomes a separate business, specific heading classifications may be provided.
- "3. Avoid synonomous or near duplicate terminology.
- "4. Headings must not be too broad or too limited.
- "5. Registered trade names and coined words are not acceptable.
- "6. Avoid headings which are requested for alphabetical preference.
- "7. Heading terminology must coincide with the local reference habits of the directory user."

Complainants do not attack PT&T's authority to promulgate reasonable tariff provisions and rules with respect to establishing classified headings. Nor do complainants attack per se Item 4 of the Special Conditions in Tariff No. 39-T or the seven principles promulgated thereunder. Obviously, PT&T has the right to promulgate reasonable rules with respect to its classified advertising directories. The establishment of classified headings cannot be left to the whim of each subscriber. To do so would invite jockeying for commercial advantages and cause proliferation of the yellow pages so they would not be useful to PT&T's subscribers, generally. In the circumstances we treat Item 4 of the Special Conditions in Tariff No. 39-T and the seven principles promulgated thereunder as lawful. We next examine their application to complainants under the facts at bar.

PT&T's statewide general directory sales supervisor testified that the reason complainants' request for establishing a listing of "Homophile Organizations" was turned down was because the requested listing was too limited. He testified that he had no objection to the use of the words "homophile" or "homosexual" as such in the yellow pages.

The Council on Religion and the Homosexual is a California corporation. Its president testified that the Council receives requests for counseling from members of the clergy and that persons seeking such counseling often have difficulty locating the organization. He was of the opinion that if a classified heading of Homophile Organizations was established it would enable persons desiring to contact such organization to reach them more expeditiously.

The president of the Society for Individual Rights testified that the organization was "working in the area of reform of the laws which deal with criminal treatment of the homosexuals...." The organization has a speakers' bureau and a monthly publication called Vector. It produces and distributes publications. It has social activities for its members. It cooperates with research projects by organizations investigating homosexuality. The organization has monthly meetings which are open to the public. These meetings have had speakers from the San Francisco Police Department, Suicide Prevention and a lecturer from the University of California. The president of the Society also testified that it referred people for counseling and other professional advice. He indicated that in his opinion many professional people are not equipped to handle matters involving homosexuals. He stated that his organization did not "propose any illegal activity." He stated that if the requested classified heading were established it would enable a significant part of the population to more easily contact socially useful organizations.

The Public Relations Director of the Daughters of Bilitis testified that the organization received calls from lesbians wanting information about the organization or assistance, and from professional persons seeking information about lesbianism or to refer someone for assistance.

The record indicates that PT&T received approximately 300 requests per year for new classified headings and about 10 percent of these requests are granted. PT&T's directory sales supervisor testified that in determining whether to establish a new classified heading no distinction was made between business and nonbusiness organizations. We agree with PT&T's witness that the establishment of classified headings is not a precise science. The company must, to a certain degree, rely upon its past experience and sound judgment in determining whether a requested classified heading should be established, as a myriad of headings would be confusing and render the classified section less useful to the customers. The record shows that there is no such known public telephone directory listing in the United States as "Homophile Organization". The word "Homophile" does not appear in Webster's Third New International Dictionary.

In considering the record, the Commission is of the opinion that PT&T has properly applied the provisions of its tariff in denying the yellow page heading requested by complainants.

In addition to the present listings of complainants under the headings of "Religious Organizations" and "Associations," there are also available to them the classified directory headings of "Social Service and Welfare Organizations" and "Suicide Prevention." The testimony indicates that such services are included in the functions complainants perform.

The Commission makes the following findings and conclusion.

Findings of Fact

1. The classified heading of Homophile Organizations requested by complainants is too limited and was properly refused by PT&T in accordance with PT&T's Tariff No. 39-T and company principles promulgated thereunder.

2. PT&T's refusal to establish the classified heading of Homophile Organizations, requested by complainants, was not arbitrary, discriminatory, unjust, unreasonable or improper.

Conclusion of Law

Complainants are not entitled to any relief in this proceeding.

O R D E R

IT IS ORDERED that none of the complainants is entitled to any relief in this proceeding, and the complaint in Case No. 8788 is denied. ✓

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

Dated at San Francisco, California, this 2nd day of DECEMBER, 1969.

William J. ...
President

J. ...

Vernon L. Sturgeon
Commissioners

*Will file dissent.
JM*

*I will file a dissent
Algeria*

I will file a concerning ...

COMMISSIONER A. W. GATOV, Dissenting:

I dissent.

The majority's decision in this case is a travesty. It was not supported by the Examiner who heard the case and, in my opinion, will not stand judicial review.

Notwithstanding the wording of the majority's decision, the record is clear that the only reason given by the Pacific Telephone and Telegraph Company for refusing to establish the yellow-page heading requested is that the heading is too limited. PT&T did not dispute that the complainants are legitimate organizations. The majority, therefore, supports an untenable position which, in my opinion, is not only arbitrary, discriminatory, and contrary to law, but is also illogical, inconsistent, and just plain nonsense.

PT&T has no objective criteria by which to determine whether or not a heading is too limited. Such determinations, as we shall illustrate from the record, are capricious and dictated by the whims, prejudices, or vagaries of an individual or individuals in PT&T's directory sales department. For example, the PT&T directory sales supervisor testified that he would not approve a separate classification heading for clarinets, which in his opinion would be too limited and properly belonged under the heading of musical instruments. He was unable to adequately explain, however, why violins, accordions, and pianos were permitted separate classification headings. He also testified that in determining whether to establish a new classification heading, the same principles were applied to organizations, businesses, professions, civil groups, and non-profit groups. Having thereafter testified that headings of

Chinese, Italian, or Jewish organizations would be rejected as being too limited, he had understandable difficulty reconciling this determination with the fact that the current San Francisco directory contains classification headings for "Hawaiian Goods", "Mexican Goods", and "Oriental Goods". He testified that whereas a request for a classification heading of "French Goods" would not automatically be granted, it would be "entitled to consideration". Furthermore, he apparently balanced off his inability to explain why Bridge Clubs but not Mah-Jongg Societies were given a classification heading by pointing out that even though a "Cuspidor" heading is not in current use, it is not considered too limited and is still available.

Since a purveyor of Diatomaceous Earth and an Archery Instructor made the grade, it is difficult to perceive, considering the overwhelming evidence to the contrary, how the majority could conclude as too limited a separate heading which directly relates to some 90,000 people in one city, and perhaps to thousands more indirectly.

Furthermore, the majority's attempt to hide behind the fortress of Webster is futile. It is true, as they point out, that the word "Homophile" does not appear in Webster's Third New International Dictionary. On the other hand, neither does "Scientology" or "Personology", both of which have headings in the current San Francisco yellow-page section.

In light of the applicable law and this record, there is no legal or logical justification for denying the requested yellow-page heading, and the majority should have so found.

Dated at San Francisco, California,
December 2, 1969.


Commissioner

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THOMAS MORAN, COMMISSIONER, Dissenting:

I dissent.

Any individuals or organizations if entitled to telephone service at all, have a right to a reasonable listing in the directory yellow pages upon payment of the applicable charges of the telephone company therefor. The phone company being a public utility, has no right, and should not be permitted, to refuse any yellow page heading requested by ratepayers unless such heading would mislead or confuse the public. A cursory review of the yellow pages of the San Francisco directory shows that the phone company has regularly granted a great number of specific headings to individuals and organizations requesting the same. For example, popcorn vendors are granted a listing under "Popcorn" rather than being included under the more general heading "Food Products". Three vendors of pencils have been granted a yellow page heading of their own rather than inclusion under the more general heading of "Stationers". So too with vendors of pens.

The four nonprofit organizations who are the complainants herein, by this order are denied a heading which indicates their field of work. Yet bridge clubs, athletic organizations, fraternal organizations, business and trade organizations, labor organizations, professional organizations, religious organizations, and veterans and military organizations are permitted to have themselves listed under these individual narrow category headings rather than be lumped in under the general and uninformative heading of "Associations".

The Commission's own Examiner who heard all of the evidence in this case, as well as all the other Commission personnel concerned, have unanimously recommended to this Commission that

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the relief sought should be granted. It is obvious that in its decision today the Commission has arbitrarily denied the relief sought by the complainants solely because the complainants work primarily with individuals who are part of an unpopular minority.

Discrimination by a public utility against a substantial segment of the population because it holds unpopular views, is prohibited by both the Constitution of the State of California and the Constitution of the United States of America.


THOMAS MORAN
Commissioner

Dated: San Francisco, California
December 2, 1969

COMMISSIONER J. P. VUKASIN, JR., CONCURRING:

Although arriving at a sound conclusion, the foregoing decision does not give sufficient emphasis to the moral responsibility of this Commission to protect the public interest.

In this case, respondent The Pacific Telephone and Telegraph Company, under its duly promulgated rules, refused complainants' request for a new heading in its classified directory for "Homophile Organizations." The complainants then brought this action before this Commission, complaining of Pacific's refusal to grant them a separate listing and in effect asking this Commission to order Pacific to offer such a listing.

It is beyond my comprehension how this Commission could issue such an order, charged, as it is, with the responsibility of protecting the public interest.

In California homosexual conduct is illegal (Calif. Penal Code §286). Hence, complainants are asking this Commission to require Pacific to make available a listing which would facilitate illegal activity.

I take official notice of the fact that advertising is one of the fundamental purposes and reasons for classified directory listings. Telephone subscribers pay an additional fee for the privilege and opportunity of bringing to the attention of prospective customers, the availability of their wares, merchandise, and services. It would be highly improper for this Commission to require Pacific to make such advertising facilities available for illegal activities.

More important, it would be unconscionable for this Commission to require this or any telephone company to make such advertising facilities available to organizations which openly encourage and advocate homosexual activity, Lesbian conduct, and other perverted activities which run counter to the basic moral

fiber of our civilized Western society. Were the Commission to authorize this advertising, can the day be far away when commercials on radio and television, and advertisements in our family newspapers, will appear, stressing an awareness and a need for the services offered by the subject organizations?

There is a growing subscription today in the belief that the social mores of the individual are completely personal and must be left free of restraint without regard to society. I do not agree. I would reaffirm the contention set forth in Sarac v. State Board of Education that ". . . Homosexual behavior has long been contrary and abhorrent to the social mores and moral standards of the people of California as it has been since antiquity to those of many other peoples. . . ." Sarac v. State Board of Education (1967) 249 Cal.App.2d 58, 63.


Whether we single out our young people enticed into drug addiction, the devotees of alcohol, homosexuals, or other victims of moral aberration, the emphasis now is on the rights of the transgressor, to pervert himself (and any guileless associates) if he desires. Indeed it is demanded by some that the state protect and even expand those rights.

Such is the nature of the matter before us. It calls for the California Public Utilities Commission to compel Pacific to establish a yellow page heading for "Homophile Organizations" and to list each of the complainants thereunder. It is apparent that the only valid purpose of such a listing is to afford the applicants and their followers the opportunity and means of procuring the development of their own socio-moral code.

The disorders of drug addiction, alcoholism, and homosexuality cannot be corrected by encouraging those afflicted to further persevere in such behavior. Additional immersion will

only bring about emotional and physical destruction of the unfortunates involved.

The efforts of the applicants herein would be far better spent in the dedication of time and financial resources to the restoration of their members as respected and dignified citizens of the community.



J. P. Vukasin, Jr., Commissioner

San Francisco, California

December 2, 1969