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Decision No. 77406

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of an Investigation on the Commission's own motion into all rates, conditions or tariff provisions limiting liability of telephone corporations.	Case No. 8593 (Filed February 15, 1967)

Pillsbury, Madison & Sutro, by George A. Sears, Dennis K. Bromley, for The Pacific Telephone and Telegraph Company; A. M. Hart and Donald J. Duckett, for General Telephone Company of California; Noel Dyer and Dudley A. Zinke, and John J. Damerell, for The Western Union Telegraph Company; Bacigalupi, Elkus, Salinger & Rosenberg, by Claude N. Rosenberg and William G. Fleckles; and Neal C. Hasbrook, for California Independent Telephone Association; respondents.

R. W. Russell, by K. D. Walpert, Department of Public Utilities and Transportation, for the City of Los Angeles; Morris M. Conklin, for Committee for Better Telephone Service; Victor Viviano, for himself; and Ralph Leon Isaacs, for himself; interested parties.

Elinore C. Morgan, Counsel, for the Commission staff.

OPINION

This is an investigation on the Commission's own motion into all rules, conditions or tariff provisions limiting the liability of telephone corporations. The Proposed Report of Examiner Donald B. Jarvis was filed in this matter on March 23, 1970. A copy of the Proposed Report is attached hereto as Attachment A. The Commission is of the opinion and finds that the material issues, facts and chronology set forth in the Proposed Report are correct and need not be repeated.

Exceptions to the Proposed Report and replies thereto were filed by the Commission staff and jointly by all of the respondent telephone corporations except Western Union Telegraph Company, which did not file any exceptions or reply thereto.

The Proposed Report found that the present limitation of liability rules do not apply to situations involving willful misconduct, fraudulent conduct or violations of law. It also found that future publications of tariffs and customer information by respondents should specifically state that limitation of liability provisions do not apply to those situations. None of the parties filed exceptions to these findings or the conclusions and proposed order based thereon. They will be adopted by the Commission.

The Proposed Report found that all California telephone corporations and their customers should be subject to the same tariff provisions with respect to the limitation of their liability and that all telephone corporations should use the same information notices concerning these provisions in their telephone directories. None of the parties filed exceptions to these findings or the conclusion and proposed order based thereon. They will be adopted by the Commission.

The Proposed Report found that, in appropriate situations, credit allowance provisions of telephone corporation tariffs may be applied to a greater portion or all of a customer's service for the applicable period rather than be limited solely to the service in which an error or omission was made. None of the parties filed exceptions to this finding or the conclusion and proposed order based thereon. It will be adopted by the Commission.

The exceptions filed by the respondents and the staff deal with the portion of the proposed order and the findings and conclusions in support thereof wherein the Examiner recommended that, for the future, the respondents should be ordered to modify their limitation of liability rules to provide that in situations where there are errors and omissions resulting from gross negligence a respondent with annual gross revenues of $1,000,000 or less may be liable for an amount not to exceed $2,000 and that a respondent with annual gross revenues greater than $1,000,000 may be liable in an amount not to exceed $10,000. We consider the exceptions raised by the parties.

Respondents contend that there is no evidentiary support for the conclusions and recommended order which would impose limited liability for errors or omissions involving gross negligence. There is no merit in this contention. There is abundant evidence in the record of the types of situations in which errors or omissions may occur. The Examiner catalogued some of this evidence at pages 7-8 of the Proposed Report. In addition, the Commission can take official notice of the situations presented in its previous decisions. (Rules of Practice and Procedure, Rule 73; Evidence Code § 452; Pratt v. Coast Trucking, Inc., 228 Cal.App.2d 139, 143-44.) It is also inconsequential that no witness testified about the specific rule proposed by the Examiner. It is supported by the underlying facts. The Commission has held that 'We reject the contention that the Commission is limited in the exercise of its expertise and statutory authority by the solutions proposed by litigants. (Market St. R. Co. v. Railroad Com. of Cal., 324 U. S. 548, 560-61.)" (In re City of Visalia, Dec. No. 75325 at p. 15 in Appl. No. 48658.)

Respondents next contend that the rule proposed by the Examiner which would permit a recovery, to limited amounts, in situations involving gross negligence would represent a retrogression in the law and would be impractical for the courts to administer.

In advancing these contentions respondents ignore the fact, set forth in the Proposed Report, that some states presently permit telephone customers to recover for errors or omissions resulting from gross negligence. There are at least four states, New York, Oregon, Oklahoma and Tennessee, which permit unlimited recovery for acts of gross negligence. (See, e.g., Mortenson v. New York Telephone Co., 38 N.Y.S.2d 949; Hamilton Employment Serv. v. New York Telephone Co., 253 N.Y. 468, 171 N.E. 710; Wheeler Stuckey, Inc. v. Southwestern Bell Telephone Co., (W.D. Okla.) 79 F.Supp. 712; Smith v. Southwestern Bell Telephone and Telegraph Co., (Tenn.) 364 S.W.2d 952, 958-59; Tom Lee, Inc. v. Pacific Telephone and Telegraph Co., (Ore.) 59 P.2d 683, 687.)[1/] The reported cases from these jurisdictions do not indicate that the courts have had any difficulty in determining what constitutes gross negligence with respect to errors or omissions of telephone corporations.

Respondents argue that this Commission should not require them to adopt rules using the standard of gross negligence because the Federal courts do not utilize this standard and it has been criticized by certain legal writers. The difficulty with these arguments is that the Legislature and California Supreme Court have refused to accept them and they are contrary to the law of California.

1/ In Michigan yellow page advertising is not subject to regulation and there is no tariff provision with respect thereto. The Michigan Supreme Court has held that a contractual provision limiting liability for ordinary negligence with respect to yellow page advertising is unenforceable on the ground of unconscionability. (Allen v. Michigan Bell Telephone Co., 171 N.W.2d 691.)

In Donnelly v. Southern Pacific Co., 18 Cal.2d 863, Mr. Justice Traynor acknowledged that "The federal courts, however, have rejected any distinction between negligence and gross negligence; they recognize no degrees of negligence." He then went on to hold that "Some jurisdictions, including California, distinguish between ordinary and gross negligence. (Kastel v. Stieber, 215 Cal. 37 [8 Pac. (2d) 474]; Albers v. Shell Co. of Calif., 104 Cal. App. 733 [286 Pac. 752]; Walther v. Southern Pacific Co., 159 Cal. 769 [116 Pac. 51, 37 L. R. A. (N. S.) 235]; see 6 So. Cal. L. Rev. 91, 127.) This distinction amounts to a rule of policy that a failure to exercise due care in those situations where the risk of harm is great will give rise to legal consequences harsher than those arising from negligence in less hazardous situations." (18 Cal.2d at pp. 870, 871.) In Van Meter v. Bent Construction Co., 46 Cal.2d 588, Chief Justice Gibson speaking for a unanimous court held that "The theory that there are degrees of negligence has been generally criticized by legal writers, but a distinction has been made in this state between ordinary and gross negligence." (46 Cal.2d at p. 594.) Furthermore, the California Supreme Court itself uses the standard of gross negligence in disciplinary proceedings involving attorneys. (Love v. State Bar, 40 Cal.2d 564, 570; Sullivan v. State Bar, 45 Cal.2d 112, 119.)

The Legislature uses the standard of gross negligence in various statutes. Respondents' brief states that the standard "is still apparently involved in three old statutes dealing with gratuitous bailment (Civ.Code § 1846), gratuitous carriage (Civ.Code § 2114) and gratuitous service (Lab.Code § 2850)."

The Legislature has enacted various statutes using gross negligence as a standard of conduct. The principal statute using this standard is Penal Code Section 192 which in part provides that:

> "Manslaughter is the unlawful killing of a human being without malice. It is of three kinds:
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> * * *
>
> 3. In the driving of a vehicle--
>
> (a) In the commission of an unlawful act, not amounting to felony, with gross negligence; or in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.
>
> (b) In the commission of an unlawful act, not amounting to felony, without gross negligence; or in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence...."

There is a large body of California case law dealing with gross negligence under this statute. (*E.g.*, *People* v. *Costa*, 40 Cal.2d 160, 166; *People* v. *Markham*, 153 Cal.App.2d 260, 273-74.) Other statutes using the standard of gross negligence are Civil Code Sections 1846, 2114, 2175; Harbors and Navigation Code Section 264 and Labor Code Section 2850.

If the respondents' limitation of liability rules are modified to permit limited recovery for errors or omissions resulting from gross negligence the forum for such recovery will be the courts and not the Commission. (*Faia* v. *P.T.&T. Co.*, Decision No. 75379 in Case No. 8647 at p. 2.) As indicated, the courts of New York, Oregon, Oklahoma and Tennessee have no difficulty in applying a gross negligence standard in this type of case. We do not perceive that the California courts, which use the standard of gross negligence in other situations, will have any difficulty either. (*Van Meter* v. *Bent Construction Co.*, *supra*; *Donnelly* v. *Southern Pacific Co.*, *supra*; *Lowe* v. *State Bar*, *supra*; *Sullivan* v. *State Bar*, *supra*; *People* v. *Costa*, *supra*; *People* v. *Markham*, *supra*.)

Respondents next contend that the dollar limitations in the rule proposed by the Examiner are arbitrary and unreasonable. They rely on a minority concurring opinion in Cotting v. Kansas City Stockyards Co., 183 U. S. 79, in support of this proposition. The fallacy of this contention was pointed out by Judge Learned Hand when he stated:

> "...The plaintiff sets its chief reliance upon Cotting v. Kansas City Stockyards Co., 183 U. S. 79, 22 S. Ct. 30, 46 L. Ed. 92, and Smith v. Cahoon, 283 U. S. 553, 51 S. Ct. 582, 75 L. Ed. 1264. Some of the language of the minority opinion in the first case might indeed give it comfort, but the case concerned a statute which singled out one company alone, and that was the only ground for the decision of six of the justices who concurred. It has been so interpreted. Consol. Coal Co. of St. Louis v. Illinois, 185 U. S. 203, 207, 208, 22 S. Ct. 616, 46 L. Ed. 872; Arkadelphia Milling Co. v. St. Louis, etc., Ry., 249 U. S. 134, 149, 39 S. Ct. 237, 63 L. Ed. 517."

(Borden's Farm Products Co. v. Baldwin, 7 F.Supp. 352, 354, remanded on other grounds, 293 U. S. 194, affirmed, 297 U. S. 251.) The United States Supreme Court has also refused to interpret the Cotting case as supporting the proposition argued by respondents:

> "In the Cotting case this Court held that a regulatory statute that in fact applied to only one stockyard in a state violated the Equal Protection Clause." (Morey v. Doud, 354 U. S. 457, 467; see also Cincinnati Street R. Co. v. Snell, 193 U. S. 30, 38.)

In the present case the rule proposed by the Examiner applies to all California telephone corporations. These corporations are classified into two groups for the purpose of determining the extent of their limited liability for gross negligence. Many cases decided by the United States and California Supreme Courts subsequent to Cotting hold that if the purpose of a rule is justified and the rule reasonably relates to that purpose it involves a reasonable classification. (Nebbia v. New York, 291 U. S. 502;

Burks v. Poppy Construction Co., 57 Cal.2d 463, 475-76; In re Fuller 15 Cal.2d 425, 428, 437; Wholesale T. Dealers v. National etc. Co., 11 Cal.2d 634; Max Factor & Co. v. Kunsman, 5 Cal.2d 446; Beyerback v. Juno Oil Co., 42 Cal.2d 11, 22.

Among the factors to be considered with respect to limitation of liability rules are: (1) their impact on persons damaged, (2) their impact on ratepayers generally and (3) their impact on telephone corporations. The Examiner properly concluded that relief should be granted to persons suffering damage from errors or omissions resulting from the gross negligence of telephone corporations. In determining the extent of such relief the Examiner took into consideration the potential impact on the various telephone corporations and their ratepayers. Finding of Fact 16, which is unchallenged indicates that in 1966 there were 22 California independent telephone companies serving 3,000 or less stations. In that year the net income of these companies ranged from a net profit, in one instance, of $79,492 to, in another instance, a net loss of $5,815. The Examiner reasonably found and concluded from these facts that the smaller telephone corporations and their ratepayers should not be subject to the same amount of financial liability as the larger telephone corporations because of the potential impact on their ratepayers and their ability to continue operations. Respondents argue that there are differences among the smaller and larger telephone corporations. This may be so. However, the question is not whether the Examiner could have classified telephone corporations into more than two groups but whether the classification which he made was reasonable. We hold that under the facts herein presented and the authorities heretofore cited that the rule which would permit recovery up to $2,000 in the case of telephone corporations having annual gross revenues of $1,000,000 or less and up to $10,000 in the case of telephone corporations having annual gross revenues greater than $1,000,000, for errors or omissions resulting from gross negligence, is reasonable.

Respondents also contend that the costs of administering a gross negligence rule would be much greater than those of applying the present rule. There is no merit in this contention. First, there is no evidence in the record to indicate what respondents' costs are in administering their existing rules. Second, respondents concede that "No one can make a precise dollars-and-cents prediction of the additional expenses that would flow from the gross negligence proposal." Since respondents presently have procedures and personnel dealing with situations relating to their acts or omissions and lawsuits resulting therefrom, the speculative conjecture about additional costs should not preclude granting relief to those injured by their gross negligence.

Respondents argue that a gross negligence liability rule will not improve the quality of telephone service. We disagree. The prospect of being liable for monetary damages for errors or omissions resulting from gross negligence will be an incentive to respondents' management to attempt to reduce such errors. (Connor v. Great Western Sav. & Loan Assn., 69 Cal.2d 850, 867.) Furthermore, it is the law of the State of California that "Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages." (Civil Code § 3281.) Limitation of liability rules are legal restrictions on this general principle.

To the extent the general principle can be given effect in situations involving gross negligence, which will not result in undue detriment to respondents or their ratepayers, it should be done.

The Commission staff contends that Finding 11 of the Proposed Report, which deals with the general reliability of telephone service, should be struck. It argues that the statistics upon which the finding is made are based on evidence for a one-month period, which is alleged to be an insufficient period to support the finding. The staff also argues that the Commission should take official notice of Application No. 51774, filed by The Pacific Telephone and Telegraph Company (the specific statistics in Finding 11 relate to Pacific) which in part states that Pacific's service is "not as good as Pacific believes it could, or should be." It is alleged that this admission shows Finding 11 to be erroneous. There is no merit to the staff's position. A one-month period is a sufficient basis for the challenged finding and the staff has not shown by evidence or argument why a longer period would yield a substantially different result. The fact that Pacific's service is not as good as it can or should be does not mean that it is not generally reliable.

The staff also contends that the phrase "negligence of the customer" be substituted for "conduct of the customer" in certain tariff provisions and customer notices recommended by the Examiner. There is no merit in this contention. The challenged phrase occurs in recommended tariff provisions dealing with interruptions in service not caused by the willful misconduct, fraudulent conduct, violation of law or gross negligence of respondents (the credit allowance only situation). The challenged provisions generally provide that "The utility shall allow, for interruptions in service...not due to the conduct of the customer, an amount equal to the...charges [for the period of interruption]." Substitution of the word "negligence" for the word "conduct" in this context would mean that respondents could be required to grant a credit allowance in a situation where an interruption of service was caused by the customer himself. Whether or not such act of a customer constitutes negligence, it would be absurd to require respondents to give a credit allowance to a customer, whose conduct they do not control, for an interruption in service caused by the customer.

No other points require discussion.

The Commission adopts as its own all of the findings and conclusions made by the Examiner in the Proposed Report.

O R D E R

IT IS ORDERED that the order recommended by the Examiner in the Proposed Report is hereby made the order of the Commission.

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

Dated at San Francisco, California, this 30th day of JUNE, 1970.

Commissioner William Symons, Jr.
Present but not participating.

Commissioner VERNON L. STURGEON
Present but not participating.

President

Commissioners

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ATTACHMENT A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of an Investigation on the Commission's own motion into all rates, conditions or tariff provisions limiting liability of telephone corporations.

Case No. 8593

Pillsbury, Madison & Sutro, By George A. Sears, Dennis K. Bromley, for The Pacific Telephone and Telegraph Company; A. M. Hart and Donald J. Duckett, for General Telephone Company of California; Noel Dyer and Dudley A. Zinke, and John J. Damerell, for The Western Union Telegraph Company; Bacigalupi, Elkus, Salinger & Rosenberg, by Claude N. Rosenberg and William G. Fleckles; and Neal C. Hasbrook, for California Independent Telephone Association; respondents.

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Elinore C. Morgan, Counsel, for the Commission staff.

PROPOSED REPORT OF EXAMINER DONALD B. JARVIS

This is an investigation on the Commission's own motion into all rules, conditions or tariff provisions limiting the liability of telephone corporations. A duly noticed public hearing was held before me at San Francisco on September 19, November 7, 1967, April 2, 3 and June 18, 1968; at Sacramento on October 10, 1967 and at Los Angeles on November 14, 15, 1967 and January 25 and April 17, 1968. The matter was submitted subject to the filing of briefs which were filed by October 31, 1968. The Commission authorized a Proposed Report herein on February 4, 1969.

The material issues presented in this proceeding are as follows:

ATTACHMENT A

1. To what extent, if any, may the liability of telephone corporations be limited under applicable constitutional and legal provisions?

2. To the extent that the liability of telephone corporations may be limited, to what degree should the Commission authorize such limitation?

3. Should any of the existing tariff provisions, practices or rules of telephone corporations in connection with the limitation of their liability be modified or changed?

The respondents candidly concede that the rules which limit their liability do not apply to situations which involve willful misconduct, fraudulent conduct or violations of law. This is correct. (Civil Code §1668; Barkett v. Brucato, 122 Cal.App.2d 264, 276-78; Loughran v. Harger-Haldeman, 184 Cal.App.2d 495, 506; Mortenson v. New York Telephone Co., 38 N.Y.S.2d 949; Hamilton Employment Serv. v. New York Telephone Co., 253 N.Y. 468, 171 N.E. 710; Wheeler Stuckey, Inc. v. Southwestern Bell Telephone Co., (W.D. Okla.) 279 F. Supp. 712, 714; Cf., Western Union Tel. Co. v. Esteve Bros. & Co., 256 U.S. 566, 569.)

It is clear from the foregoing that the limitation of liability rules do not apply to the following types of situations:

> Example 1. An advertising solicitor for Telephone Company A calls upon a businessman who has customarily taken a double half-column ad in the yellow pages. The businessman informs the solicitor that, because of economic conditions, he desires to reduce the size of his ad to an Informational Listing of one-half a columnar inch. The solicitor becomes angered at the businessman because the reduction in the size of the ad will substantially diminish his commission thereon. He purposefully withholds transmitting the smaller ad to the company and no ad appears in the next telephone directory. Since the failure to place the requested ad was due to the willful conduct of the solicitor, the limitation of liability provisions in Telephone Company A's tariff do not apply to this situation.

Example 2. A customer of Telephone Company B contracts and pays for single-party service. The customer has a wife who is sick and bedridden. She can only be transported by ambulance. The customer's primary reason for obtaining single-party service is to have access to a telephone line which has no other parties so that he can summon medical assistance for his wife, if necessary. Telephone Company B finds it has a lack of proper equipment in the customer's neighborhood. In order to provide service to a second customer and unknown to the first customer and without his knowledge or consent, Telephone Company B knowingly adds the second customer to the first customer's line. The second customer leaves his telephone off the hook, thereby preventing the first customer from using his telephone. The first customer's wife has a flareup of her illness and the customer is unable to promptly summon an ambulance because of the inoperative telephone. As a result the first customer incurs additional medical expenses. Because the company knowingly, improperly changed the type of service the limitation of liability provisions in Telephone Company B's tariff do not apply to this situation.

Example 3. A communications consultant employed by Telephone Company C contacts a businessman who is establishing a new store in the area. The consultant offers to evaluate the businessman's communications needs and recommend a system to meet those needs. The consultant determines that a PBX and other ancillary services are necessary. The consultant knows that System 1 with a monthly charge of $500 will be adequate to meet the businessman's current and estimated future needs. He does not disclose this to the businessman. Instead, he recommends System 2 which is a more elaborate system with a monthly charge of $1,500. The businessman, relying on the representations of the consultant, contracts for System 2. He later discovers that System 1 was available and would have met his needs. Because of the fraud practiced by the communications consultant the limitation of liability provisions of Telephone Company C's tariff do not apply to this situation.

Example 4. A customer of Telephone Company D changes his residence and makes arrangements with the company to have a two-party service installed at his new residence. Telephone Company D's installer is several hours late in arriving to make the scheduled installation. The customer makes a comment about the delay. The installer becomes angered at the customer and reverses the tip and ring in making the installation. As a result, the customer is billed for all the metered calls made by both parties on the line. Because of the willful misconduct of the installer, the limitation of liability provisions of Telephone Company D's tariffs do not apply.

The qualification, that limitation of liability rules do not apply to willful misconduct, fraudulent conduct or violations of law, is not disseminated to the general public in any printed information dealing with the rules or communicated orally to customers seeking redress under them. It will be considered later under the nonjurisdictional issue of whether or not present tariffs, rules and practices should be revised.

Although limitation of liability rules do not apply to willful misconduct, fraudulent conduct or illegal conduct the courts have consistently held that such rules are constitutional and legal when applied to situations involving negligence. (Western Union Tel. Co. v. Esteve Bros. & Co., supra, 256 U.S. 566; Cole v. Pacific Tel. & Tel. Co., 112 Cal.App.2d 416; Riaboff v. Pacific Tel. & Tel. Co., 39 Cal. App.2d Supp. 775; Correll v. Ohio Bell Telephone Co., 630 Ohio 491, 27 N.E.2d 173.) However, the court decisions indicate that such rules are constitutionally and legally permissible, not that they are required. The Commission, an expert administrative body with pervasive regulatory authority has the jurisdiction and authority to modify or abrogate the rules if the public interest so requires. (S.U. Sugar Co. v. River Terminals, 360 U.S. 411, 417, 421.) I now consider the question of the degree to which the rules should be authorized.

Over a period of years the Commission has authorized limitation of liability rules which are coextensive with the constitutionally and legally permissible limits. Most of the Commission's decisions passing upon these rules came in cases by individual complainants against various telephone companies. (Eg., Horton v. General Telephone Co. (D.72506 in Case No. 8226), 69 P.U.R.3d 55; Warren v. P.T.&T. Co., 54 Cal.P.U.C. 704; Sommer v. P.T.&T. Co., 55 Cal.P.U.C. 84; O'Donnell

v. P.T.&T. Co., 52 Cal.P.U.C. 584.) Furthermore, once a given rule of a particular company was found to be reasonable, the Commission could not grant a complainant relief inconsistent with that rule. (S.N. Ross v. P.T.&T. Co., 61 Cal.P.U.C. 760, 770.) The only recent case in which the prospective application of any of the limitation of liability rules has been considered is P.T.&T. Co.'s Rules 17(b) etc., 65 Cal.P.U.C. 103. That case only involved limitation of liability tariff provisions dealing with directory advertising. The present investigation is broader in scope because it involves all tariff provisions limiting the liability of telephone corporations. In the Rules 17(b) etc. case the Commission rejected a staff proposal which would have established a plan under which a customer could purchase, by paying a higher rate, insurance which would recompense him, up to a specified limit, for any errors in connection with his directory advertising. However, the Commission did order certain changes in PT&T's rules dealing with limiting its liability in connection with directory advertising. The primary change was to require PT&T to use language in its tariff and notices to the general public that the provisions involved were those dealing with a "credit allowance".

The Commission staff contends that in an era where the rights of injured persons have been enlarged, where the Federal Government and the State of California have to a great degree relinquished their sovereign immunity from suits for injuries caused by the negligence of their employees, it is difficult to understand why telephone corporations are permitted as broad an immunity against liability for negligence as now exists. The staff also contends that it is illogical to protect telephone corporations from their negligence with regard to directory errors and service failures when no such protection is afforded the same telephone corporations for their negligence in situations involving personal injuries. The staff argues that other types of utilities regulated by the Commission do not have as broad provisions limiting liability and that they have not suffered any adverse effects. The staff proposes, in the alternative, that: 1. The Commission cancel all tariff provisions which limit the liability of telephone corporations thereby permitting aggrieved persons to have a remedy for damages in an appropriate court of law. 2. That the present limitation of liability rules be made uniform for all telephone corporations. 3. That the present limitation of liability rules be changed to exclude actions for gross negligence. 4. That the rules reflect that they do not apply to fraud or willful misconduct.

The respondents contend that no reason for changing the present limitation of liability rules has been shown herein and that with the increasing number of telephone subscribers and greater complexity in telephone equipment there is more reason than ever for the rules. They cite eight points to support retention of the current rules:

> "1. Reasonable limitation of liabilities is a correlative of reasonable limitation of earnings of telephone utilities.
>
> "2. Reasonable rates for telephone service are in part dependent upon the limitation rule.
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> "3. The scope and complexity of the telephone system make inevitable the occurrence of some errors and interruptions despite the best efforts of design, operation and maintenance.
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> "4. Subscribers control a number of factors essential to placing and completion of telephone calls. Misdialing, absence of called party from home or office, refusal to answer the telephone, inadvertent disconnects by calling or called party, are all beyond the control of telephone utilities.

"5. The cause of failure to complete a call or of interruption in a circuit or of other service error is often difficult and may be impossible to determine.

"6. Alleged loss from service interruption or directory error is typically in the nature of a temporary personal or business inconvenience (not personal injury or property damage), and is speculative and uncertain to evaluate.

"7. Telephone companies do not and cannot know the substance of given telephone conversations or the consequence to customers of any interruption in them.

"8. Abrogation of the rule would not improve the quality of telephone services, but would result in subscribers paying more for the same services."

At the hearing a staff engineer testified about the limitation of liability provisions in the tariffs of telephone corporations and other utilities. He made certain recommendations, some of which are reflected in the staff's position heretofore set forth. Thirty-four members of the public testified with respect to alleged service and directory errors. Their testimony was received for the purpose of showing actual situations in which the limitation of liability rules precluded the recovery of monetary damages greater than presently authorized. I ruled that none of the specific incidents testified to by the public witnesses would be adjudicated herein, but that they would properly be the subject matter of timely complaints filed with the Commission.[1/] The respondents produced operating witnesses who testified in support of their position outlined above.

The record indicates that on occasion the following types of situations may occur:

1. The omitting of a residential or business listing or portion thereof.

1/ Some of the public witnesses had pending before the Commission complaints about the same or other subject matter which were resolved in the complaint proceedings. (See, eg., Faia v. P.T.&T. Co., Decision No. 75379, in Case No. 8647; Viviano v. P.T.&T. Co., Decision No. 75019 in Case No. 8754.)

2. The omitting of a yellow page listing of the type of specialization of a physician or other professional person.

3. The omitting of an essential element (street address, city, etc.) in a yellow page advertisement.

4. Telephone equipment when installed is not, or does not perform, as represented.

5. A businessman, replying on the representation of a telephone company representative that telephone facilities will be installed by a date certain, spends a large sum of money on an advertising campaign. The company does not install the equipment by the specified date, or if installed, it does not function.

6. Telephone equipment does not function properly so that persons attempting to do so cannot reach a subscriber's number.

7. A residential subscriber's number is erroneously listed in another's yellow page advertisement.

8. The name of a business competitor is placed in a business subscriber's yellow page advertisement.

9. A yellow page advertisement is listed under the wrong classification.

10. A change is made in a yellow page classified listing which has the effect of favoring one business advertiser over another.

It would unduly enlarge this Proposed Report to set forth all of the situations which the record shows may occur. The preceding ten examples are indicative and a sufficient basis for the ensuing discussion.

The record and common sense indicate that some directory errors and interruptions of service are inevitable in the operation of a telephone company. In the Rules 17(b) etc. case, which dealt only with directory advertising, PT&T was found to have had in 1962 an over-all directory reliability of 99.92 percent with an error rate of .08 percent, and in the year 1963, ten independent telephone companies had an error rate of .796 percent. (65 Cal.P.U.C. at pp. 107, 108.) On occasion it may be impossible to determine the cause of a failure to complete a telephone call or of an interruption in a circuit. In my opinion the rules limiting the liability of telephone corporations have worked reasonably well and one effect of these rules has been to enable the respondents to provide service to the public at a lesser cost than would be the case if the rules permitted greater liability for errors and omissions. (S.N. Ross v. P.T.&T. Co., supra, at p. 767.) However, the record discloses certain types of situations to which the application of the rules limiting liability, in the future, would be unreasonable. The following examples illustrate these situations.

> Example 1. A businessman decides to open a take-out or home-delivery-only food service. There are no restaurant facilities on his premises. The business is intended to rely primarily on telephone orders.
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> The businessman contacts Telephone Company A about the installation of telephone service. He meets with a company communications consultant who advises the businessman about his equipment needs. The businessman inquires when he can expect the agreed-upon telephone equipment to be installed so that he can conduct an advertising compaign to inform the public of the opening of the new enterprise and the telephone number assigned to the new telephone service. The communications consultant, based on his experience and knowing Telephone Company A's equipment, operations, policies and personnel, reasonably believes that the telephone equipment can be installed in 30 days. He so advises the businessman. The businessman allows a 10-day leeway and determines to publicize the opening of the business 40 days hence.
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> The businessman spends $10,000 to advertise the opening date and telephone number in newspapers, on television and by circulars. During the 40-day period the businessman talks to employees of Telephone Company A who assure him that the equipment will be installed on time. However, because of the unintentional lack of supervision and coordination by Telephone Company A, parts for the installation are not timely ordered and personnel are diverted to other jobs so that it takes 90 days to install the telephone equipment.
>
> Example 2. A farmer is a customer of Telephone Company B. The farmer lives in a forest fire area. His nearest neighbor who has a telephone is 2 miles distant over a

curved, rural road in poor condition. The farmer discovers that his telephone does not work. He knows that there are some small forest fires burning in the area. He drives to the neighbor's house and at 2:30 p.m. notifies Telephone Company B of the outage and fire situation. Telephone Company B has a repair crew available to correct the trouble on the farmer's line. The repair crew decides that answering the farmer's service call would interfere with their forthcoming 3:00 p.m. coffee break and agree to defer making the service call until the next morning.

This conduct occurs because of lack of supervision by Telephone Company B. That night a high wind carries sparks which ignite an area close to the farmer's house. He cannot use his telephone to summon assistance. By the time he drives the 2 miles to his neighbor's house and telephones for assistance and fire-fighting equipment arrives, his house has burned down.

Example 3. Dentist X restricts his practice to orthodontia. He cannot advertise. He obtains patients by referrals from other dentists and by prospective patients selecting him from other orthodontists listed in the yellow pages of the telephone directory. Dentist X decides to relocate his practice into an area where he is not known which is within the service area of Telephone Company C, from which he has never had service. He arranges for telephone service including a yellow page listing with a line of information indicating that he restricts his practice to orthodontia. Because of negligence on the part of employees of Telephone Company C, the ensuing telephone directory appears and omits the line of information from the yellow page listing. A dispute ensues between Dentist X and Telephone Company C. Telephone calls and correspondence are exchanged. Dentist X is given a credit allowance for the year in question. He is concerned about his listing for the next year's directory. He writes to Telephone Company C asking them to be sure that the forthcoming listing will include the line of information. Representatives of Telephone Company C assure him the error will be corrected in the next year's directory. Because of the negligence of a clerk, the line of information is omitted for the second time in the next directory.

Under the present limitation of liability rules the businessman, farmer and orthodontist in the preceding examples cannot bring an action in court for damages because no fraud or willful misconduct was present. At most, each would be entitled to a credit allowance for the telephone service and/or directory advertising involved - in other words, a year of "free" telephone service and/or directory advertising.

In the three foregoing examples not only was there negligence but the specific consequences of the particular acts of negligence were known to employees of the telephone companies before the negligence occurred. The California Supreme Court has held that "Rules that tend to discourage misconduct are particularly appropriate when applied to an established industry." (Connor v. Great Western Sav. & Loan Assn., 69 Cal.2d 850, 867.) I am of the opinion that the record indicates that the limitation of liability rules should be modified to permit some type of recovery of damages, beyond a credit allowance, in the types of situations just discussed.

As indicated, one of the staff proposals is that the limitation of liability rules be modified to exclude therefrom damage caused by the gross negligence of telephone company employees. The respondents treated this contention casually in their brief by relegating it to a footnote.[2/] The respondents contend that rules which excluded gross negligence therefrom would be "difficult to administer, particularly for ordinary employees."

It has heretofore been established that the limitation of liability rules do not apply to situations of fraud or willful misconduct. The primary authority for this finding and conclusion is Civil Code Section 1668, which provides as follows:

> "All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law."

2/ All the respondents, except the Western Union Telegraph Company, filed a joint Opening and Closing Brief. Western Union, which had a limited interest in the proceeding filed separate briefs which did not discuss this staff contention.

Other jurisdictions, however, do not permit the application of limitation of liability rules to situations involving gross negligence. (Mortenson v. New York Telephone Co., supra; Hamilton Employment Serv. v. New York Telephone Co., supra; Thon v. New York Telephone Co., 285 N.Y.S.2d 926; Wheeler Stuckey, Inc. v. Southwestern Bell Telephone Co., supra.)

I am of the opinion that the types of situations heretofore discussed in which liability should not be limited to a credit allowance involve what may be called gross negligence. I do not believe, however, that the limitation of liability should be completely removed from acts of gross negligence for the reasons which follow.

In passing upon rules limiting liability the Commission must consider various factors, including the impact of the rule on persons who may be damaged and the general ratepayers who may be called upon to pay higher rates. The record indicates that, at the present time, no liability insurance is available to insure against service or directory errors. If a change in the rule results in payouts greater than at present the money must come from the revenues of the companies affected. Each side offered opinions on the economic effect of a change in the rules on the general rate structure. The staff tended to minimize the effect and the respondents to maximize it. Furthermore, the record indicates that there are, among the California independent telephone companies, 22 telephone companies serving 3,000 or less stations. In 1966, the net income of these companies ranged from a net profit, in one instance, of $79,492 to, in another instance, a net loss of $5,815.

In balancing the rights of those suffering damage because of gross negligence and the general ratepayers, I am of the opinion that any changes in the limitation of liability rules should not be permitted to have such a profound impact that smaller telephone companies might be faced with financial disaster and larger ones suffer dramatic changes in earnings which might prompt substantial rate increases. Therefore, considering the evidence of the number and types of complaints filed with various telephone companies for directory and service errors, in the light of the financial situations of the respondents, I find that it is reasonable to limit the liability of telephone corporations for gross negligence to the sum of $2,000 for telephone corporations having gross revenues of $1,000,000 or less and the sum of $10,000 for telephone corporations having gross revenues greater than $1,000,000.

The final issue to be considered is whether or not any of the existing tariff provisions, rules or practices of telephone corporations in connection with the limitation of their liability should be modified or changed.

The record discloses that the respondents do not have uniform rules dealing with the limitation of their liability. The only reason for the different rules is historical accident. Therefore, I am of the opinion that sound regulatory policy should provide that all California telephone corporations and their subscribers be subject to the same tariff provisions and that all telephone corporations utilize the same information notices concerning these rules in their telephone directories. The respondents agree that the issuance of uniform rules herein "would be appropriate". They propose the rules presently in the PT&T tariff as the suggested example. Since PT&T's rules and practices have been intensely examined by the Commission in recent years (P.T.&T. Co.'s Rules 17(b) etc., supra; S. N. Ross v. P.T.&T., supra), I am of the opinion that those rules should be used as the basis for uniform rules to be required herein.

I have previously indicated that although the limitation of liability rules do not apply to situations involving fraud, willful misconduct or violations of law there is nothing in any of the respondents' tariffs or printed information dealing with the rules which so advises the public. Nor do the respondents give this information in oral communications with subscribers. The respondents argue that "Such notice would merely encourage spurious claims by the litigious, without serving any useful purpose." I find this position to be unconscionable. The record clearly establishes that in practice the respondents do not inform customers who seek redress for directory or service errors that the limitation of liability rules do not apply to situations involving fraud, willful misconduct or violations of law. In fact, these practices tend to mislead the customers into thinking that the rules do apply to those situations. The only time a customer may find out that the rules do not apply to fraud, willful misconduct or violations of law is if he hires an attorney, and counsel for one of the respondents advises it that a settlement above a credit allowance be negotiated on that basis.

The failure to inform the general public that the limitation of liability provisions do not apply to fraud, willful misconduct or violations of law places respondents in the position of acting as the judge of the character of their actions to the detriment of their subscribers. Respondents' customers are entitled to be advised of their rights and not have them concealed. To the extent the respondents may pick and choose which customers may be informed that the rules do not apply to fraud, willful misconduct or violations of law, this constitutes unlawful discrimination. (Public Util. Code §§ 453, 494, 532.) I find that any future tariff provisions and customer information which does not inform telephone subscribers of the exception to the rules will be unjust, unreasonable and improper.[3/] (Public Util. Code § 761.)

The record also discloses that there are some problems with the application of the credit allowance provisions of the limitation of liability rules in the respondents' tariffs. These provisions apply to situations involving ordinary negligence and will remain unchanged. They represent the largest number of errors.

The difficulties with the credit allowance provisions stem from the fact that each type of service offered by the respondents has a separate credit allowance provision and these provisions give no recognition that an error involving one may have also affected other services. The respondents have applied these provisions literally. The Commission, in order to avoid absurd results, has by decision recognized that in appropriate situations the credit allowance may be applied to all of the customer's service for the applicable period. (Faia v. P.T.&T. Co., Decision No. 75379 in Case No. 8647; B. U. Beckman v. P.T.&T. Co., 63 Cal.P.U.C. 305; Frost v. P.T.&T. Co., 63 Cal.P.U.C. 801.) The following language from the Faia case illustrates this point:

> "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.

3/ The proposed tariff change will also include a provision for the gross negligence exception heretofore discussed but not presently applicable.

> "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 the light of the Commission's decisions on the application of the credit allowance provisions, I find that a provision should be added to the respondents' limitation of liability rules which provides that where an error involving one of the services diminishes the value of the basic service or other services for which the customer has contracted, a credit allowance may be granted for an amount not to exceed the total amount for all of these services.

No other points require discussion. I make the following findings and conclusions.

Findings of Fact

1. This investigation deals only with telephone corporations as defined in Section 234 of the Public Utilities Code. All of the respondents, except the Western Union Telegraph Company, are telephone corporations. Western Union is primarily a telegraph corporation as defined in Section 236 of the Public Utilities Code. Western Union conducts some telephone services within the meaning of the Public Utilities Code. In the case of Western Union, the findings, conclusions and order to be entered herein will apply only to its telephone corporation services and not to any services rendered as a telegraph corporation.

2. The Commission has previously entered final decisions which found the limitation of liability rules of PT&T and General Telephone Company to be reasonable. Insofar as other respondents may have similar rules they also must be deemed to be reasonable. In the light of the aforesaid decisions, the Commission in this proceeding cannot enter an order which changes the rules with respect to directory or service errors which have occurred. It may only enter an order which makes prospective changes.

3. The present limitation of liability rules do not apply to situations which involve willful misconduct, fraudulent conduct or violations of law. This fact does not appear in any of the respondents' tariffs. It is not disseminated to the general public in any written material dealing with the limitation of liability rules. A customer who orally contacts any of the respondents complaining about a service or directory error is never, in the first contact, informed of this fact. The operating practices of the respondents are designed to create the impression that their limitation of liability rules apply to all errors, including those involving willful misconduct, fraudulent conduct and violations of law.

4. The future publication of tariffs by respondents which contain limitation of liability rules which do not specifically state that they do not apply to acts involving willful misconduct, fraudulent conduct or violations of law will be unjust, unreasonable, improper, inadequate and insufficient.

5. The future publication of information by respondents dealing with the limitation of liability rules which does not specifically state that they do not apply to acts involving willful misconduct, fraudulent conduct or violations of law will be unjust, unreasonable, improper, inadequate and insufficient.

6. Respondents present limitation of liability rules apply to situations involving negligence and gross negligence.

7. One effect of the respondents' limitation of liability rules has been to enable the respondents to provide service to the public at a lesser cost than may have been the case if the rules permitted greater liability for errors and omissions.

8. The scope and complexity of the telephone system, and the nature of telephone service, make inevitable the occurrence of some errors and interruptions despite the efforts of design, operation and maintenance on the part of telephone utilities.

9. In 1967 in the State of California, PT&T had 5,412,000 subscribers; its facilities handled over 11,255,000,000 telephone conversations, a daily average of over 35,300,000 conversations; it prepared 53 alphabetical directories and 62 classified directories containing a total of more than 6,760,000 listings.

10. There is a high standard of accuracy in telephone directories. In 1967, in the State of California, out of 6,761,599 listings in PT&T's directories only 895 listings (0.013%) were omitted. There were in total 9,876 directory errors of all kinds from all causes, or an overall reliability of 99.85%.

11. Telephone service is generally reliable. For example, during the month of November, 1967, in the State of California, PT&T received a total of 422,386 customer trouble reports. In comparison to the total of over 1,200,000,000 telephone conversations PT&T handled in California in November, 1967, this represents an incidence of 0.034%. No trouble was found in 33.4% of the reported instances. Of instances in which trouble of any degree was found, 48.3% were attributed to difficulties in telephone facilities or conduct of telephone employees.

12. Subscribers participate in the making of telephone calls. Telephone utilities do not control all the factors essential to completion of telephone calls. Misdialing, absence of called party from home or office, refusal to answer the telephone, and inadvertent disconnects by calling or called party, are all beyond the control of telephone utilities.

13. The cause of failure to complete a telephone call or of interruption in a telephone circuit or of other telephone service error is sometimes difficult and on occasion may be impossible to determine.

14. Abrogation of respondents' limitation of liability rules with respect to errors or omissions involving ordinary negligence would have little if any impact in improving the services of telephone corporations. Said rules, with respect to errors or omissions involving ordinary negligence, are reasonable and for the future will be reasonable.

15. Modification of respondents' limitation of liability rules with respect to errors or omissions involving gross negligence would cause the respondents to institute procedures which would diminish the more serious errors and omissions. Such modification would permit those persons suffering damage because of these more serious errors to be compensated more than the law presently permits.

16. In 1966 there were 22 California independent telephone companies serving 3,000 or less stations. In that year the net income of these companies ranged from a net profit, in one instance, of $79,492 to, in another instance, a net loss of $5,815.

17. For the future, respondents' rules which limit liability for acts or omissions involving gross negligence solely to a credit allowance for the service involved will be unjust, unreasonable,

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improper, inadequate and insufficient. For the future rules which provide that respondents' liability should be limited, for acts or omissions involving gross negligence, to, in the case of telephone corporations having an annual gross revenue of $1,000,000, the sum of $2,000, and in the case of telephone corporations having an annual gross revenue of greater than $1,000,000, the sum of $10,000, will be just and reasonable.

18. The respondents do not have uniform rules dealing with the limitation of their liability. The only reason for the different rules is historical accident.

19. Sound regulatory policy should provide that all California telephone corporations and their customers should be subject to the same tariff provisions with respect to the limitation of their liability and that all telephone corporations use the same information notices concerning these in their telephone directories.

20. The Commission has in previously entered final decisions ruled that, in appropriate situations, credit allowance provisions may be applied to a greater portion or all of the customer's service for the applicable period rather than be limited solely to the service in which the error or omission was made. The credit allowance provisions should be modified to reflect these Commission decisions.

21. The limitation of liability rules set out in Appendix A and by this reference made a part hereof are, for the future, just and reasonable.

22. The notice to subscribers set forth in Appendix B attached hereto and by this reference made a part hereof is, for the future, just and reasonable.

Conclusions of Law

1. The rules in respondents' tariffs dealing with the limitation of their liability for errors or omissions do not apply to situations involving willful misconduct, fraudulent conduct or violations of law. Respondents should be ordered to include in their tariffs and notices to their subscribers concerning said rules the statement that they do not apply to errors or omissions involving willful misconduct, fraudulent conduct or violations of law.

2. The respondents should be ordered to cease and desist from any practices in oral dealings with their customers which might create the impression in the minds of such customers that the limitation of liability rules apply to situations which involve willful misconduct, fraudulent conduct or violations of law.

3. The respondents should be ordered to modify their limitation of liability rules to provide that in situations where there are errors and omissions resulting from gross negligence a respondent with annual gross revenues of $1,000,000 or less may be liable for an amount not to exceed $2,000 and that a respondent with annual gross revenues greater than $1,000,000 may be liable in an amount not to exceed $10,000.

4. The respondents should be ordered to adopt uniform rules dealing with the limitation of liability for telephone corporations.

5. The respondents should be ordered to modify the credit allowance provisions of their rules limiting liability to provide that such provisions may be applied to a greater portion or all of a customer's service for the applicable period rather than be limited solely to the service in which the error or omission was made.

6. Respondents should be ordered to adopt the tariff provisions set forth in Exhibit A and cancel all tariff provisions inconsistent therewith.

7. Respondents should be ordered to adopt the notice to subscribers set forth in Appendix B and, unless modified by further order of the Commission, publish said notice in each subsequent telephone directory issued by them.

I recommend that the Commission enter the following order.

ORDER

IT IS ORDERED that:

1. Within sixty days after the effective date of this order each respondent shall adopt as part of its tariff the rules set forth in Appendix A attached hereto and cancel any tariff provisions inconsistent therewith.

2. Commencing sixty days after the effective date of this order each respondent shall include in each subsequent telephone directory issued by it the notice set forth in Appendix B attached hereto.

3. Respondents shall cease and desist from any operating practice which, in verbal transactions with their customers, has the effect of making the customer believe that the limitation of liability rules apply to situations involving willful misconduct, fraudulent conduct or violations of law.

Dated at San Francisco, California, this 23rd day of March, 1970.

/s/ Donald B. Jarvis

DONALD B. JARVIS
Examiner

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Appendix A

Rule No. (The appropriate number to be filled in by each telephone utility)

LIMITATION OF LIABILITY

(1) The provisions of this rule do not apply to errors and omissions caused by willful misconduct, fraudulent conduct or violations of law.

(2) In the event an error or omission is caused by the gross negligence of the company, the liability of the company shall be limited to and in no event exceed the sum of $______ (companies whose last annual report indicated gross revenues of $1,000,000 or less insert the sum of $2,000. Companies whose last annual report indicated gross revenues greater than $1,000,000 insert the sum of $10,000).

(3) Except as provided in Sections (1) and (2) of this rule, the liability of the utility for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in any of the services or facilities furnished by the utility (including exchange, toll, private line, supplemental equipment, TWX, directory and all other services) shall in no event exceed an amount equal to the pro rata charges to the customer for the period during which the services or facilities are affected by the mistake, omission, interruption, delay, error or defect, provided, however, that where any mistake, omission, interruption, delay, error or defect in any one service or facility affects or diminishes the value of any other service said liability shall include such diminution, but in no event shall the liability exceed the total amount of the charges to the customer for all services or facilities for the period affected by the mistake, omission, interruption, delay, error or defect.

(4) Services other than Directory

The following allowances are provided for interruptions in service, as specified for particular services furnished by the utility:

A. The utility shall allow, for interruptions in service of 24 hours or more not due to conduct of the customer, an amount equal to the pro rata charges for each 24-hour period, or major fraction thereof after the initial period, of interruption in the following services:

1. Mobile telephone service.

2. Private line services and channels, as follows:

(a) Private line telephone service.

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(b) Private line teletypewriter and Morse services.

(c) Channels for data transmission.

(d) Channels for remote metering, supervisory control and miscellaneous signaling purposes.

(e) Channels for telephotograph transmission.

(f) Speaker microphone service.

(g) Channels for one-way speech networks in connection with loudspeakers.

(h) Channels for one-way program transmission networks in connection with loudspeakers.

(i) Channels for farmer lines and toll service station lines.

(j) Bells and lights system attack warning service.

The allowance on items (a) through (f) above applies only to service within the same exchange area. The allowance on items (g) and (h) above applies only to station facilities.

3. Teletypewriter exchange service.

4. Wide Area Telephone Service.

Where credit is allowed against initial charges, the initial period shall be reduced in the same proportion, and additional hourly rates shall apply to each hour or major fraction thereof for Wide Area Telephone Service furnished in excess of the initial period as so reduced.

B. The utility shall allow, for interruptions in exchange telephone service of 24 hours or more not due to conduct of the customer, an amount equal to the fixed monthly charges for exchange service multiplied by the ratio of the days of interruption to thirty days. When interruptions continue beyond 24 hours, credit allowance will be given in successive 24-hour multiples.

C. The utility shall allow, for interruptions in TELPAK channels and services of two consecutive hours or more not due to conduct of the customer (including failure of facilities provided by the customer), an amount determined as follows:

1. For items other than TELPAK base capacity, an amount equal to 1/720 of the fixed monthly charge for such item for each hour or major fraction thereof of interruption.

2. For TELPAK base capacity furnished for use as a single capacity, an amount computed as in 1 above.

3. For TELPAK base capacity furnished for use as various channels of lesser capacity, (a) if the interrupted channels are less than 50 percent of the equivalent telephone grade channels in the section, no amount allowed, or (b) if the interrupted channels are 50 percent or more of the equivalent telephone grade channels in the section, an amount computed as in 1 above.

For each classification of TELPAK base capacity, credit is computed separately for each two-point section affected.

D. The utility shall allow, for interruptions of 30 minutes or more not due to conduct of the customer (including authorized users), an amount equal to the pro rata charges in half-hour multiples for each 30-minute period, or major fraction thereof after the initial period, of interruption in the following private line services and channels:

1. Private line telephone service.

2. Private line teletypewriter and Morse Services.

3. Channels for data transmission.

4. Channels for remote metering, supervisory control and miscellaneous signaling purposes.

5. Speaker microphone service.

6. Channels for one-way speech networks in connection with loudspeakers.

7. Channels for one-way program transmission networks in connection with loudspeakers.

8. Special assembly services and channels for miscellaneous experimental purposes.

The allowance on item 1 above applies only to full period service. The allowance on items 1 through 5 above applies only to service between separate exchange areas. The allowance on items 6 and 7 above applies only to interexchange and interdistrict channels.

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E. The utility shall allow, for interruptions of 30 seconds or more not due to conduct of the customer (including failure of facilities provided by the customer), an amount equal to the pro rata charges in five-minute multiples for each five minute period or major fraction thereof of interruption in the following private line services and channels:

1. Channels for program transmission in connection with loudspeakers, sound reproduction or sound recording.

2. Channels for video transmission in connection with television viewers.

F. The utility shall allow, for interruptions of short period private line telephone service which aggregate one-sixth or more of the daily contract service not due to conduct of the customer (including authorized users), an amount equal to the pro rata charges for the period of interruption (excluding lost time made up later in the same day at the customer's request).

G. The utility shall allow, for interruptions of two consecutive hours or more not due to conduct of the customer (including failure of facilities provided by the customer), an amount equal to 1/720 of the fixed monthly charge for each hour or major fraction thereof of interruption in private line channels for television transmission for use in educational television systems.

For purposes of these regulations, an interruption is deemed to exist from the time it is reported to or detected by the utility.

(5) Subject to the provisions of Section (3) of this rule the utility shall allow, for errors or omissions in telephone directories, an amount within the following limits:

A. For listings in telephone directories furnished without additional charge, an amount not in excess of the minimum monthly charge to the customer for exchange service during the effective life of the directory in which the error or omission occurred.

B. For listings in telephone directories furnished at additional charge, an amount not in excess of the charge for that listing during the effective life of the directory in which the error or omission occurred.

C. For advertisements in classified directories, an amount based upon pro rata abatement of the charge in such degree as the error or omission affected the advertisement.

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D. For listings in information records furnished without additional charge, an amount not in excess of the minimum monthly charge to the customer for exchange service during the period the error or omission continued.

E. For listings in information records furnished at additional charge, an amount not in excess of the charge for the listing during the period the error or omission continued.

F. For listings in telephone directories furnished in connection with mobile telephone service, an amount not in excess of the guarantee and fixed charges for the service during the effective life of the directory in which the error or omission occurred.

G. For listings in TWX directories, an amount not in excess of the separate charge, if any, for the listing.

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Notice to Subscribers

The (insert name of telephone corporation) has tariff rules dealing with the limitation of its liability in connection with errors and omissions relating to telephone service. These rules do not apply to situations involving willful misconduct, fraudulent conduct or violations of law. There are special provisions dealing with gross negligence. If an error or omission has been made by (insert the name of the telephone corporation) in your listing in the telephone directory, you may be entitled to relief under these tariff provisions. In many instances you may be eligible for a credit allowance in accordance with tariff rules. This information notice summarizes the provisions of such rules. For complete information on the tariff provisions, please contact the nearest (insert the name of the telephone corporation) business office. Thereafter, if you wish further information, you may call the California Public Utilities Commission in San Francisco or Los Angeles.

The purpose of telephone utility credit allowance and limitation of liability tariff rules is to relate the telephone company's responsibility for errors or interruptions to amounts not to exceed the pro rata charges for services rendered. The basic rule applicable to all telephone services is as follows:

> Except as provided in Sections (1) and (2) of this rule, the liability of the utility for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in any of the services or facilities furnished by the utility (including exchange, toll, private line, supplemental equipment, TWX, directory and all other services) shall in no event exceed an amount equal to the pro rata charges to the customer for the period during which the services or facilities are affected by the mistake, omission, interruption, delay, error or defect; provided, however, that where any mistake,

> omission, interruption, delay, error or defect in any one service or facility affects or diminishes the value of any other service said liability shall include such diminution, but in no event shall the liability exceed the total amount of the charges to the customer for all services or facilities for the period affected by the mistake, omission, interruption, delay, error or defect.

The specific form of rule applicable to interruptions in exchange telephone service is as follows:

> The utility shall allow, for interruptions in exchange telephone service of 24 hours or more not due to conduct of the customer, an amount equal to the fixed monthly charges for exchange service multiplied by the ratio of the days of interruption to thirty days. When interruptions continue beyond 24 hours, credit allowance will be given in successive 24-hour multiples.

Similar but not identical provisions apply to private line and other telephone services. For details of provisions covering allowances for interruptions in such other services you should call your nearest (<u>insert name of telephone corporation</u>) business office.

For errors or omissions in listing or advertisements in telephone directories, allowances are provided as follows:

> A. For listings in telephone directories furnished without additional charge, an amount not in excess of the minimum monthly charge to the customer for exchange service during the effective life of the directory in which the error or omission occurred.
>
> B. For listings in telephone directories furnished at additional charge, an amount not in excess of the charge for that listing during the effective life of the directory in which the error or omission occurred.
>
> C. For advertisements in classified directories, an amount based upon pro rata abatement of the charge in such degree as the error or omission affected the advertisement.

For information on allowances available in the event of errors or omissions in information records or in TWX or other special directories, you should contact your nearest (<u>insert name of telephone corporation</u>) business office.