

ORIGINAL

Decision No. 78101

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SOCIETY FOR INDIVIDUAL RIGHTS,)
Incorporated, a California)
Nonprofit Corporation,)

Complainant,)

vs.)

THE PACIFIC TELEPHONE AND)
TELEGRAPH COMPANY, a)
Corporation,)

Defendant.)

Case No. 8818
(Filed July 10, 1968)

B. J. Beckwith, David I. Clayton and J. R. Mayhall, Attorneys at Law, for Society for Individual Rights, complainant.
Robert E. Michalski, Attorney at Law, for The Pacific Telephone and Telegraph Company, defendant.

O P I N I O N

This is a complaint by the Society for Individual Rights (hereinafter referred to as SIR) against The Pacific Telephone and Telegraph Company (hereinafter referred to as PT&T). PT&T has refused to accept an advertisement tendered by SIR for inclusion in the yellow pages of PT&T's San Francisco Telephone Directory. SIR seeks herein an order requiring PT&T to accept the proffered advertisement subject to the payment of the applicable tariff charges.

A duly noticed public hearing was held in this matter before Examiner Jarvis in San Francisco on April 14, 15, 1969. The matter was submitted subject to the filing of a late filed exhibit and briefs, which were filed by July 3, 1969.

SIR presently receives telephone service from PT&T. It is listed in the white pages of PT&T's San Francisco directory. It

is listed in the yellow pages of that directory under the heading of "associations". On June 6, 1968, SIR formally requested that PT&T include the following advertisement along with its yellow page listing:

"Homosexuals, know and protect your rights.
If over twenty-one write or visit Society
for Individual Rights, 83 - 6th Street,
San Francisco, 781-1570."

PT&T refused, and continues to refuse, the advertisement on the ground that the proffered advertisement is offensive to good taste.

The material issues presented in this proceeding are: (1) Does PT&T's refusal to publish the proffered advertisement deprive SIR of any constitutional rights? (2) Was PT&T's refusal to publish the proffered advertisement arbitrary, discriminatory, unjust, unreasonable or improper?

It was stipulated between the parties that SIR is a California nonprofit corporation; that it has been organized for the social, political, and economic advancement of the homosexual citizen, and dedicated to the objectives that homosexuals are entitled to equal treatment under the laws and that sexual orientation and practices between consenting adults are not a proper subject for state regulation and that SIR has actively pursued its purposes through a balance of political, educational and social programs. The parties further stipulated to the truth of the facts and allegations in the complaint setting forth SIR's political goals, educational goals and social goals and the activities engaged in to achieve these goals. The parties also stipulated that many homosexuals and their families are unaware of the existence of SIR and that many of these individuals would benefit from SIR's programs if they were aware of its existence.

SIR produced evidence which provided details of its political, educational and social programs. SIR's president testified that it receives, on the average, 30 telephone calls a month requesting referrals for legal assistance, 30 telephone calls a month for information with regard to homosexuals and selective service, 20 telephone calls a month seeking medical assistance, 20 telephone calls a month relating to employment matters, 5 telephone calls a month seeking religious assistance, 5 telephone calls a month seeking psychiatric assistance and 5 telephone calls a month relating to suicide prevention. The record also indicates that the advertisement which PT&T refuses to accept for the yellow pages was published in the "Want Ads" of the San Francisco Chronicle on April 16, 17, 18, 19, 21 and 22, 1969.

PT&T's directory sales supervisor for California testified that different media and publications establish varying standards for the types of advertisements they will publish; that these standards range from ultra-conservative to extremely liberal; that PT&T has adopted advertising copy standards that are more restrictive than those of most media; that the reason for such standards is that individuals can evidence dissatisfaction with other media by immediately eliminating offensive material (e.g., throwing out a newspaper or magazine, cancelling a subscription, turning off a radio or television set, or switching to another station or channel) whereas the same is not true of a telephone directory; that a telephone directory is a tool which is essential to good telephone service and that if a telephone directory contains material which is offensive to a subscriber, he cannot cast it out without diminishing his telephone service.

PT&T's directory sales supervisor also testified that the proffered advertisement, dealing with the subject of homosexuality, would be found offensive by most directory users. PT&T placed in evidence an exhibit containing 38 letters written after this proceeding was commenced supporting its position refusing the advertisement. PT&T contends that the exhibit is supportive of its contention that the advertisement would be offensive to most of its subscribers.

A past president of the San Francisco Council of Women's Clubs testified on behalf of that organization and the San Francisco Council of the National Council of Catholic Women. She testified that both organizations supported PT&T's refusal to accept the proffered advertisement; that a telephone book is a necessity in every home and that PT&T should not be required to publish an advertisement which is offensive to many subscribers in a book which they need to keep in their homes.

With the foregoing factual background we turn now to the consideration of the material issues herein presented.

At the time of the hearing, PT&T's Tariff Schedule Cal. PUC No. 39-T, 2nd Revised Sheet 4 and 7th Revised Sheet 5, Conditions 2 and 7, provides as follows:^{1/}

^{1/} PT&T's Tariff Schedule Cal. PUC No. 39-T, 3rd Revised Sheet 4 and 10th Revised Sheet 5, Conditions 2 and 9, presently provides as follows:

Condition 2: "Advertising copy furnished by the advertiser must be acceptable to the utility and the printing of the advertising specified in the contract will constitute such approval."

Condition 9: "The utility reserves the right to accept or refuse any advertising when such action will not result in unlawful discrimination. Such acceptance or refusal is subject to the review of the Public Utilities Commission of the State of California."

Condition 2: "Advertising copy furnished by the advertiser must be acceptable to the company and the printing of the advertising specified in the contract will constitute such approval."

Condition 7: "The company reserves the right to accept or refuse any advertising when such action will not result in unlawful discrimination. Such acceptance or refusal is subject to the review of the Public Utilities Commission of the State of California."

Pursuant to the aforesaid tariff provisions, PT&T has adopted the following standard:

"Advertisements which are offensive to good taste either in direct presentation or by suggestion in text or illustration are not acceptable."

SIR contends that the refusal to publish the proffered advertisement under the aforesaid tariff provisions and standard constitutes an unconstitutional impairment of free speech and a denial of equal protection of the laws.

In Council on Religion and the Homosexual v. P.T.&T.

(Decision No. 76512 in Case No. 8788) a majority of this Commission held that PT&T properly applied its Tariff No. 39-T in denying a classified heading of "Homophile Organizations" in its yellow pages. Implied in that holding is that PT&T's Tariff No. 39-T is constitutional. On July 29, 1970, the California Supreme Court denied a Petition for a Writ of Review in that case (S.F. No. 22734). The denial of the petition for a writ of review was a decision on the merits as to the law and facts presented therein. (People v. Western Airlines, 42 Cal. 2d 621, 630-631; Union City v. Southern Pacific Co. 261 Cal. App. 2d 277, 279.) It was also tantamount to a decision that the tariff provision therein considered is constitutional.

(Napa Valley Elec. Co. v. Railroad Com'n, 251 U.S. 366, 372-373.)

In the circumstances we hold the application of PT&T's Tariff No. 39-T to SIR to be constitutional.

The next issue to be determined is whether PT&T's refusal to publish the proffered advertisement is arbitrary, discriminatory, unjust, unreasonable or improper. (Public Util. Code §§ 453, 761.) PT&T's directory sales supervisor testified about the types of advertisements which PT&T will not accept under Tariff No. 39-T and of instances in which other proffered advertisements were rejected. SIR produced no evidence which would indicate that PT&T has published any advertisement in its yellow pages which is offensive to many or a majority of PT&T's subscribers. SIR has failed to establish that PT&T has acted in an arbitrary, discriminatory, unjust, unreasonable or improper manner in rejecting the proffered advertisement.

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

Findings of Fact

1. SIR is a California nonprofit corporation. It has been organized for the social, political and economic advancement of homosexual citizens. SIR engages in political, educational and social activities. It receives approximately 115 telephone calls a month requesting referrals for legal assistance, medical assistance, religious assistance, psychiatric assistance, employment matters, suicide prevention and information respecting homosexuals and selective service.

2. SIR presently receives telephone service from PT&T. It is listed in the white pages of PT&T's San Francisco Directory. It is listed in the yellow pages of that directory under the heading of "Associations".

3. On June 6, 1968, SIR formally requested that PT&T include the following advertisement along with its yellow page listing:

"Homosexuals, know and protect your rights.
If over twenty-one write or visit Society
for Individual Rights, 83 - 6th Street,
San Francisco, 781-1570."

4. PT&T refused to publish the aforesaid advertisement on the ground that it is offensive to good taste.

5. The aforesaid advertisement would be found to be offensive by many users of PT&T's San Francisco Directory if it were included therein.

6. At the time of the hearing, PT&T's Tariff Schedule Cal. PUC No. 39-T, 2nd Revised Sheet 4 and 7th Revised Sheet 5, Conditions 2 and 7, provided as follows:

Condition 2: "Advertising copy furnished by the advertiser must be acceptable to the company and the printing of the advertising specified in the contract will constitute such approval."

Condition 7: "The company reserves the right to accept or refuse any advertising when such action will not result in unlawful discrimination. Such acceptance or refusal is subject to the review of the Public Utilities Commission of the State of California."

Pursuant to the aforesaid tariff provisions, PT&T has adopted the following standard:

"Advertisements which are offensive to good taste either in direct presentation or by suggestion in text or illustration are not acceptable."

7. SIR has failed to establish that PT&T has published any advertisement in its yellow pages which is offensive to many of PT&T's subscribers.

8. SIR has failed to establish that PT&T has acted in an arbitrary, discriminatory, unjust, unreasonable or improper manner in rejecting the proffered advertisement.

Conclusions of Law

1. PT&T's Tariff No. 39-T is constitutional and its application to SIR is not an unconstitutional impairment of free speech or a denial of equal protection of the laws.

2. PT&T has not acted in an arbitrary, discriminatory, unjust, unreasonable or improper manner in refusing to publish the proffered advertisement.

3. SIR is not entitled to any relief in this proceeding.

O R D E R

IT IS ORDERED that complainant is entitled to no relief in this proceeding, and the complaint in Case No. 8818 is denied.

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

Dated at San Francisco, California, this 15th day of DECEMBER, 1970.

[Signature]
Chairman

William J. ...

[Signature]

Vernon L. Sturgeon
Commissioner

*will file a
dissent.*

Thomas Moran

*I will file a dissent.
Angela*

COMMISSIONER A. W. GATOV, Dissenting:

I dissent.

The complainant wants the following ad in the yellow page section of the telephone directory:

"Homosexuals, know and protect your rights. If over twenty-one write or visit Society for Individual Rights, 33 - 7th Street, San Francisco, 781-1570."


Without stating how he determined it, the PT&T directory sales supervisor testified that the proffered advertisement would be found offensive by most directory users. PT&T thus refused and continues to refuse the advertisement on the ground that it is offensive to good taste. The sanctity of the home PT&T states, and the Commission agrees, can be protected from offensive newspapers and magazines (throw them out or cancel the subscription), from offensive radio and T.V. programs (turn them off or switch stations), but because it must remain in the home there would be no protection from a filthy phone book!

My view that PT&T has no reasonable standards by which it measures good taste can perhaps be best illustrated by comparing the innocuous little proffered ad with those which PT&T has published and which presumably have met its lofty standards. One advertisement in the San Francisco telephone book, issued September, 1970, is for a night club which features topless and sometimes bottomless nude girls in the bedroom, and another tastefully advertises that it features topless-bottomless gun

molls and has nightly raids. For music lovers, another club advertises, with illustration, that it has a nude girl on the piano.

Out of deference to the wives of America, I have avoided outlining the details of six pages of massage parlor advertisements.

PT&T's action was arbitrary, discriminatory, unjust, unreasonable and improper. It should have been ordered to publish the advertisement.



Commissioner


Dated at San Francisco, California,
December 15, 1970.

C. 8818
D. 78101

COMMISSIONER MORAN DISSENTING.

I dissent.

I dissent for the simple reason that elementary equity as well as constitutional law dictates that any citizen who is entitled to and does subscribe to a monopoly telephone utility service is by reason thereof entitled to any reasonable listing and advertising in the yellow pages directory. Any private company which accepts from governmental authority a monopoly on any service thereby forfeits whatever right it otherwise might have to discriminate between its various subscribers or customers.


THOMAS MORAN
Commissioner

December 15, 1970
San Francisco, California