

ORIGINAL

Decision No. ~~73050~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

L. DAVID FOX, consumer spokesman,
and the NATIONAL BUSINESSMAN'S
ASSOCIATION, an association,

Complainants,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation, and GENERAL
TELEPHONE COMPANY, a corporation,

Defendants.

Case No. 9135
(Filed October 20, 1970)

L. David Fox, for complainants.
Robert E. Michalski, Attorney at Law,
for Pacific Telephone & Telegraph
Company. Albert M. Hart and Walter
Rook, Attorneys at Law, by Walter
Rook, for General Telephone Company
of California, defendants.

O P I N I O N

Complainants allege that defendants are misrepresenting the terms and conditions of existing tariffs and regulations and are resorting to unfair practices in the collection of past due directory advertising accounts and threatening accounts with discontinuance of telephone service if they do not pay the total amount owed including advertising. Complainants request that defendants be required to mail a notice to each customer explaining 36T Sheet 53A, Rule No. 11, cease sending out five-day notices of discontinuance of telephone service for nonpayment of advertising, cease other misrepresentation of said rules, send two bills, one for telephone service and one for directory advertising, and explain to customers their rights in this connection as to directory advertising.

Defendant, Pacific Telephone and Telegraph Company, answered the complaint and denied the allegations and requested dismissal. Defendant, General Telephone Company, filed a Motion to Dismiss and Motion to Strike and answered the complaint denying the allegations. Each of defendants filed affirmative defenses to the allegations in the complaint.

Public hearing was held at Santa Ana on May 13, 1971, before Examiner DeWolf and the matter was submitted.

The complainants called as witnesses three telephone subscribers who testified that they had difficulties with the telephone company in connection with threats for disconnection of their telephone service for nonpayment of their bills, all or part of which was for directory advertising which was not billed separately.

One witness testified that his business in heating and air conditioning fluctuated very much and that he had some difficulty in meeting regular \$300 monthly payments for directory advertising but had paid these bills for eight years. This telephone was never disconnected but the party testified that he was inconvenienced by threats of disconnection and because he did not know that he could have separate billing.

A dentist who maintained listings of quarter page size in several different telephone books claimed he was greatly inconvenienced by threats from the telephone company to disconnect his telephone for nonpayment of \$493.50 for his monthly listings in the directory. His telephone was never disconnected.

The owner of a small bookkeeping firm testified that his business slowed in November and he was 2-1/2 months behind in his combined bill for directory advertising when the telephone company demanded the full amount of \$178 which he did not have and then it disconnected his telephone. He did not know that he could have separate billing. A few days later the phone was restored after payment of the telephone bill, separated from directory advertising.

There was no testimony of any disconnection of telephone service for nonpayment of directory advertising. All of the witnesses admitted more or less delinquency in the payment of their bills due to fluctuating income in their business. All of the witnesses complained about threatening calls from the credit department of the telephone company, but they admitted they were behind in payments. The witnesses claimed to have no knowledge concerning their rights to separate billing and stated that they misunderstood the important disconnection notices.

Each of the defendants called a witness to testify as to its collection procedures. Exhibits 2, 3, 4, 5 and 6 were received in evidence on behalf of Pacific and Exhibits 7, 8 and 9 were received in evidence on behalf of General.

Defendants denied making or threatening disconnections for nonpayment of directory advertising but conceded that errors by employees could have been made which would be contrary to the regulations and instructions of the company. Both the defendants have volunteered to change their forms to avoid the misunderstandings experienced by the three customers who testified. Changes are proposed as set forth in Appendices A and B, attached hereto. It is proposed by defendants that the reverse side of the collection forms contain the following:

"The 'Amount Due' as shown on the front of this notice may include charges for directory advertising. A customer's telephone service will not be disconnected because of delinquent directory advertising charges."

The evidence of all the witnesses establishes that customers who request separate billing for directory advertising may have it.

It is also apparent that the defendants cannot jeopardize their collection procedures by encouraging delay in payment of past due accounts, as to do so would increase costs and penalize those customers who pay their bills promptly.

Findings and Conclusions

1. The complainants have failed to show any violation or improper application by defendants, Pacific and General, of their tariff schedules on file with the Commission.

2. The proposed changes by defendants in billing procedures filed in Exhibits 6, 7 and 8 as shown in Appendices A and B, attached, are reasonable and will aid in correcting customer misunderstandings as to disconnection of telephone and separate billing.

3. The request of complainants for mailing copies of tariffs and billing procedures to millions of customers is an unreasonable, costly and unnecessary expense.

4. The Commission concludes that the complaints should be denied.

O R D E R

IT IS ORDERED that:

1. The complaints herein are hereby denied as to defendants, The Pacific Telephone and Telegraph Company, a corporation, and General Telephone Company, a corporation.

2. The Pacific Telephone and Telegraph Company, a corporation, and General Telephone Company, a corporation, within sixty days after the effective date of this order shall if they have not already done so make the changes in billing procedures as hereinabove proposed.

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

Dated at San Francisco, California, this 24th
day of AUGUST, 1971.

[Signature]
Chairman
William L. Thomas Jr.
[Signature]
Norman L. Shingler
[Signature]
Commissioners

*Will file a
concurring opinion
[Signature] - [Signature]*

PRESENT**IMPORTANT****NOTICE:**

Please pay this bill within 5 days from the date of this notice to prevent discontinuance of your service.

In addition to what you already owe, a deposit may be requested if the service is interrupted.

If you have any question about the bill or its payment, please call me.

Your Service Representative

AMOUNT DUE \$

*If you have already paid,
please accept our thanks and disregard this notice.*

PACIFIC TELEPHONE

PROPOSED**Your payment hasn't arrived yet.**

Unless we receive payment for your telephone service within five days from the date of this notice, your phone will be subject to disconnection.

If disconnection should become necessary, we will ask you for a deposit in addition to the full payment of the telephone charges before re-establishing service.

So, won't you please send your payment today? If you have any questions, please call our Business Office:

PLEASE SEE REVERSE

AMOUNT DUE \$

**Pacific Telephone**

Shown on reverse
of ~~bill~~ *notice*

The "Amount Due" as shown on the front of this notice may include charges for directory advertising. A customer's telephone service will not be disconnected because of delinquent directory advertising charges.

TEMPORARY DISCONNECT NOTICE
MANUALLY GENERATED
(PROPOSED)

FORM 603540 (5-71)

GTE

GENERAL TELEPHONE COMPANY OF CALIFORNIA
ACCOUNT UNPAID DELINQUENCY NOTICE

WHEN THIS NOTICE WAS MAILED, PAYMENT FOR YOUR TELEPHONE SERVICE HAD NOT BEEN RECEIVED. IF FULL PAYMENT IS NOT RECEIVED WITHIN FIVE DAYS FROM THE DATE SHOWN, SERVICE WILL BE DISCONNECTED. IF DISCONNECTED A RECONNECTION CHARGE WILL APPLY IN ADDITION TO THE DELINQUENT AMOUNT. BOTH CHARGES MUST BE PAID BEFORE SERVICE WILL BE RECONNECTED. IF DELINQUENT AMOUNT HAS BEEN PAID, PLEASE DISREGARD THIS NOTICE.

DATE
TELEPHONE NO.
DELINQUENT AMT.

YOUR ATTENTION IS INVITED TO THE "FINAL DATE FOR
PAYMENT" SHOWN ON YOUR MONTHLY STATEMENT.

(ADCO)
See reverse side

(Telephone Number)

(Service Date)

(Ch Dels, Cr Cl, CR#, Stat Cd)

(REVERSE)

THE "DELINQUENT AMOUNT" AS SHOWN ON THE FRONT OF THIS NOTICE MAY INCLUDE CHARGES FOR DIRECTORY ADVERTISING. DISCONNECTION WILL BE MADE FOR DELINQUENT TELEPHONE SERVICE CHARGES, EXCLUDING DIRECTORY ADVERTISING CHARGES. HOWEVER, ADVERTISING IN FUTURE DIRECTORIES MAY BE DENIED FOR UNPAID DIRECTORY ADVERTISING CHARGES.

J. P. VUKASIN, JR., CHAIRMAN, CONCURRING

This decision orders The Pacific Telephone and Telegraph Company and General Telephone Company to make changes in their billing procedures in order to conform to existing tariffs of these companies now on file with the Commission. Future billing notices to customers for unpaid advertising will no longer refer to a possible discontinuance of service. Tariff No. 36T, Sheet 53A, Rule 11 of Pacific (General has a comparable provision) states that a customer's service will not be temporarily or permanently disconnected for failure of that customer to pay charges for advertising in the telephone directory.

The instant decision acknowledges the applicable tariff schedules and is therefore procedurally sound. In this respect, I concur. However, the aforementioned tariffs are unsound and undesirable, and should be changed.

In the majority of states, directory advertising is not considered a utility function and is not subject to regulation. California under mandate from our Supreme Court does exercise jurisdiction over the content and rates of directory advertising. *California Fire Proof Storage Company v. Railroad Commission*, 199 Cal 185 (1926). See also *Consolidated Telephone Company*, Dec. 36492, Application 26016, where, in an early case, this Commission concluded that, where result of furnishing directory advertising service is a net loss, such service is a burden on the general public.

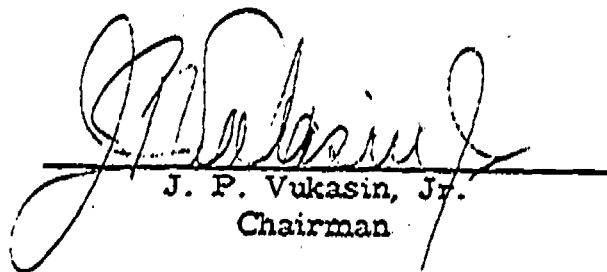
It must be apparent that services such as directory advertising, data transmission and even CATV are integrally linked with the use of telephone facilities; to exempt control of rates and charges for one is to force other innocent rate-payers to pay more.

The California Supreme Court said it clearly in the California Fire Proof Storage Company case Supra: "a telephone directory is an essential instrumentality in connection with the peculiar service which a telephone company offers for the public benefit and convenience. It is as much so as is the telephone receiver itself, which would be practically useless for the receipt and transmission of messages without the accompaniment of such directories."

In this case, we find the Commission ordering, pursuant to filed tariffs, telephone utilities to continue telephone service to nonpayers of a related utility function, directory advertising. This surely is a discrimination and unfair burden against other customers and subscribers who pay their bills. Their rates continue to climb, while the utilities are powerless to act immediately against those who contract for a directory service, and then refuse to pay their just obligations. The only recourse available to the utility is to refuse future advertising or by incurring the cost of instituting litigation to collect the unpaid bill or referring the account to a collection agency. Such procedures are not equitable to the other honest subscribers.

My basic goal has been, and is, to oversee the furnishing of excellent utility service to all users at the lowest reasonable rates. Failure of any subscriber to pay for his utility service creates an additional burden on all other patrons. It is bad regulation to allow one subscriber to benefit at the expense of conscientious rate-payers.

The companies involved should initiate action to revise the tariffs in question so that they affirmatively provide for discontinuance of the telephone service of nonpaying directory advertisers.



J. P. Vukasin, Jr.
Chairman

San Francisco, California

August 26, 1971