

ORIGINAL

Decision No. 79778

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MISSION COALITION ORGANIZATION,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
CO., a corporation,

Defendant.

Case No. 9277
(Filed September 30, 1971;
Amended December 31, 1971)O P I N I O N

On September 30, 1971, the complainant Mission Coalition Organization (hereinafter called Mission) filed a complaint against defendant The Pacific Telephone and Telegraph Company (hereinafter called Pacific) alleging that: 1. Pacific has failed to provide the necessary bilingual services for the many thousands of Spanish-speaking residents of the City and County of San Francisco. 2. Numerous problems for the Spanish-speaking community have been occasioned because Pacific does not have operators, supervisors, telephone installers, and other personnel who are able to handle requests, provide service and answer complaints both in English and Spanish.

Mission requests the Commission to order Pacific to remedy the foregoing alleged deficiencies in service by hiring bilingual personnel at all job levels.

On October 22, 1971 Pacific filed (1) an answer, (2) a motion to dismiss and (3) a Memorandum of Points and Authorities in support of Motion to Dismiss.

Pacific moves that the complaint be dismissed for the following reasons:

1. To relitigate the issue of bilingual service within four months of a Commission decision (Decision No. 78851 issued June 22, 1971 in Case No. 9042, et al.) holding that Pacific's present Spanish language service is reasonable, would result in an unwarranted duplication of Commission effort and impose an unnecessary burden on this Commission.

2. Even if there were some basis (which there is not) for relitigating this issue, the relief requested in the complaint is beyond the jurisdiction of the Commission.

This Commission takes official notice of the following discussion regarding Case No. 9042, 144 Spanish-Speaking Telephone Subscribers from San Francisco, Sonoma, and Imperial Counties, The Spanish-Speaking Surnamed Political Association, the Mexican-American Political Association, the Healdsburg and Windsor Local Action Councils vs. The Pacific Telephone and Telegraph Company which appears in Decision No. 78851 (mimeo. Op., pp. 63-64):

"Full Bilingual Service

"Complainants in Case No. 9042 ask that Pacific be required to provide 'full bilingual service' so that a subscriber in the portions of the state with significant numbers of Spanish-speaking residents could obtain essentially the same service in Spanish as in English.

"Numerous witnesses were presented by complainants to testify regarding the telephone problems encountered by persons who do not speak English. Some of these witnesses were employees of Pacific. Ironically, several of those employees who speak Spanish consider Pacific callous in not providing full bilingual service at no extra charge but testified that they themselves would not assist Spanish-speaking subscribers unless Pacific pays a premium for their linguistic talents.

"Historically, Pacific at one time would not permit operators to speak to subscribers in other than English. In more recent years, however, operators have been encouraged to assist subscribers in whatever tongue the operator and subscriber could communicate. Apparently, however, this has given rise to a labor dispute. As an alternative, Pacific has arranged to transfer Spanish-speaking subscribers to a private translation service which assists the subscriber.

"There is no doubt that subscribers who cannot speak English may find it difficult to make operator-assisted calls or transact business with Pacific. Unfortunately, our society apparently has not yet provided facilities to teach and sufficient incentive for all to learn English. We cannot conclude, however, that it is the responsibility of Pacific to overcome fully this deficiency. The steps already taken by Pacific appear reasonable and no further requirements will be made at this time."

In its memorandum of points and authorities Pacific points out that there is no legal requirement that Pacific provide multilingual service.

In Castro v. State of California (1970), 2 Cal. 3rd 223, the California Supreme Court in rejecting an attempt to compel the State to provide a bilingual electoral system said:

"...California is not required to adopt a bilingual electoral apparatus as a result of our decision today that it may no longer exclude Spanish illiterates from the polls." (2 Cal. 3rd 223, 242.)

In granting the State of California's motion to dismiss, the United States District Court for the Northern District of California in Carmona v. Sheffield (March 24, 1971), File No. C-702375 said:

"In essence, plaintiffs' contention would require the State of California and, presumably, all other States and the Federal Government to provide forms and to conduct its affairs and proceedings in whatever language is spoken and understood by any person or group affected thereby. The breadth and scope of such a contention is as staggering as virtually to constitute its own refutation. If adopted in as cosmopolitan a society as ours, enriched as it has been by the immigration of persons from many lands with their distinctive linguistic and cultural heritages, it would virtually cause the processes of government to grind to a halt. The conduct of official business, including the proceedings and enactments of Congress, the Courts and administrative agencies, would become all but impossible. The application of Federal and State statutes, regulations and proceedings would be called into serious question." (Mimeo. Op., p. 2.)

Pacific has also pointed out in its memorandum of points and authorities that where the Commission has recently decided an issue, its discretion to reexamine that issue should be used sparingly. In Southern Pacific Company, Decision No. 76133 (1971) (Mimeo. Op., p. 4) this Commission held:

"...sound procedural policy requires that such discretion be applied very restrictively. If the Commission were to automatically permit a disappointed litigant to obtain a complete hearing de novo by the simple expedient of filing a new application without a significant period of repose, the result would be near chaos."

As the second ground for dismissal Pacific contends that the Commission does not have jurisdiction to require Pacific to hire "bilingual personnel at all job levels."

In Pacific Telephone and Telegraph Company vs. Public Utilities Commission (1950), 34 Cal. 2d 822, 829, the Supreme Court stated:

"In the absence of statutory authorization, however, it would hardly be contended that the Commission has power to formulate the labor policies of utilities, to fix wages or to arbitrate labor disputes."

The Commission in NAACP, Western Region, et al., v. General Telephone Company of California, et al., Decision No. 77781, has recognized its lack of jurisdiction over hiring practices of utilities as follows:

"The California Supreme Court has declared that this Commission does not have jurisdiction over labor-management relations which would include employment practices." (Mimeo. Op., p. 7.)

The California Supreme Court denied a petition for writ of review of Decision No. 77781 on April 28, 1971 (NAACP, Western Region, et al., v. Public Utilities Commission, S. F. 22792, 4 Cal. 3d Minutes, Number 13, p. 6). Such a denial constitutes a decision on the merits (People v. Western Air Lines (1954) 42 Cal. 2d 621, 630).

This Commission does have jurisdiction over the service rendered by public utilities, however. Section 451 of the Public Utilities Code in part provides as follows:

"451. ...

"Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

"All rules made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable."

Section 761 of the Public Utilities Code in part provides as follows:

"761. Whenever the Commission, after a hearing, finds that the rules, practices, ... or service of any public utility ... are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the Commission shall determine and, by order or rule,

fix the rules, practices, ... service, or methods to be observed, furnished, ... enforced or employed. The Commission shall prescribe rules for the performance of any service ... furnished or supplied by any public utility, and, on proper demand and tender of rates such public utility shall ... render such service within the time and upon the conditions provided in such rules."

On December 31, 1971, the complainant through thirty of its members filed a first amended complaint further alleging that because of the lack of Spanish-speaking personnel competent to service the Spanish-speaking clientele in the Spanish language, that the Spanish-speaking clientele does not receive the same level of service provided the English-speaking clientele of Pacific. Nevertheless, Pacific charges the Spanish-speaking clientele the same rates as it charges its English-speaking clientele.

In the amended complaint, complainant further requests, in the alternative, that Pacific be ordered to remedy the alleged disparity existing in the level of service provided and the rates charged the Spanish-speaking clientele by:

- (a) Either improving the quality and level of services provided Pacific's Spanish-speaking clientele; or
- (b) By refunding the value of the differences between the rate charged and the level of service provided Pacific's Spanish-speaking clientele.

In its answer to the first amended complaint Pacific alleges that it charges Spanish-speaking customers the same rates as the Pacific's other customers for the same service. As a separate and affirmative defense, Pacific again points out that the Commission, in Decision No. 78851, issued June 22, 1971, has found that the present service provided to Pacific's Spanish-speaking customers is adequate, just and reasonable in all respects.

The first paragraph of Section 728 of the Public Utilities Code provides:

"728. Whenever the Commission, after a hearing, finds that the rates or classifications, demanded, observed, charged, or collected by any public utility for or in connection with any service, product, or commodity, or the rules, practices, or contracts affecting such rates or classifications are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the Commission shall determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and in force."

Based upon a consideration of the foregoing the Commission finds:

1. By furnishing telephone service in English to its Spanish-speaking customers as well as to its English-speaking customers, Pacific is furnishing the same level of service to the Spanish-speaking customers as to the English-speaking customers.

2. The difficulties which some Spanish-speaking customers experience with the telephone service of Pacific are caused by their lack of knowledge of the English language.

3. From the allegations of the complaint and the first amended complaint herein, the Commission cannot find that the rates or classifications demanded, observed, charged or collected by Pacific from its Spanish-speaking customers are unlawful, unjust, unreasonable or discriminatory.

Based upon a consideration of the foregoing the Commission concludes:

1. This Commission has authority to regulate the service rendered and the rates charged by Pacific.

2. The Commission, after several days of hearing, has recently held that it cannot conclude that it is the responsibility of Pacific to provide "full bilingual service" so that a subscriber in the

portions of the state with significant numbers of Spanish-speaking residents could obtain essentially the same service in Spanish as in English and the steps already taken by Pacific with regard to bilingual service appear reasonable.

3. Where the Commission has recently decided an issue, its discretion to reexamine the issue through another full hearing should be used sparingly.

4. This Commission does not have jurisdiction over labor-management relations of Pacific which would include employment practices.

5. This Commission does not have jurisdiction to require Pacific to hire "bilingual personnel at all job levels."

6. The complaint herein should be dismissed.

7. Pacific should not be ordered to improve the quality and level of services provided Pacific's Spanish-speaking customers.

8. Pacific should not be required to make refunds of any portion of the rates charged Pacific's Spanish-speaking customers by reason of the level of service furnished to such customers.

9. The first amended complaint herein should be dismissed.

C. 9277 JR

O R D E R

IT IS ORDERED that the complaint and the first amended complaint herein are dismissed.

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

Dated at San Francisco, California, this 7th
day of MARCH, 1972.

[Signature]
Chairman
[Signature]
[Signature]
Commissioners