SW/ei/gl **

ORIGINAL

Decision No. 81354

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AAA GRANGER'S and all others similarly situated, Complainants, vs. THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY, and GENERAL TELEPHONE COMPANY OF CALIFORNIA, Defendants.	Case No. 9412 (Filed July 28, 1972)

Eischen & Kast, Inc., by Joseph Calvin Eischen, Attorney at Law, for complainant.
Albert M. Hart, H. Ralph Snyder, Jr., and Dennis L. Dechert, by Dennis L. Dechert, Attorney at Law, for General Telephone Directory Company and General Telephone Company of California; and Mrs. Katherine V. Tooks, Attorney at Law, for The Pacific Telephone and Telegraph Company, defendants.

O P I N I O N

Roger A. Granger, an individual doing business as AAA Granger's (Granger), filed a complaint which, omitting immaterial portions, reads:

"2. That the complainant is a duly licensed warm air heating, ventilation, and air conditioning contractor holding a specialty contractor's license of C-20 classification, License No. 273569 issued by The State Contractors License Board of California.

"3. That the complainant carries on his business in the greater San Gabriel Valley having offices in Pasadena, Irwindale, and Pomona.

"4. Complainant lists and advertises his trade in the classified section of the Pacific Telephone Directory for the areas of Pasadena, Alhambra, and Montebello and in the General Telephone Directory for the areas of Covina, Monrovia, Sierra Madre, Ontario, Pomona, and Whittier.

"5. In order for complainant to fully advertise his trade, he must list and advertise in two sections of each classified directory. Once under Air Conditioning and once under Furnaces--Heating.

"6. Complainant is charged the full rate for each heading under which he lists and advertises.

"8. Complainant has approached both defendants requesting consolidation of the headings of Air Conditioning and Heating into one heading. Complainants contention being that since he operates under one license, he should only have to advertise his trade once or in the alternative be required to pay a rate comparable to other trades who list and advertise only once even though complainant must list and advertise twice. Defendants' replies to complainant's requests have been in the negative.

"10. Complainant wishes to continue to fully advertise his trade in the classified directories of defendants but is financially unable to do so under the present headings and rates charged.

"WHEREFORE, complainant requests an order requiring:

"1. The defendants to consolidate the heading of air conditioning and the heading of heating so that a licensed warm air heating, ventilation, and air conditioning contractor holding a single license in the C-20 classification will be fully covered with a single listing and advertising layout.

"2. Or in the alternative, that the rate schedule be changed so that while a licensed warm air heating, ventilation, and air conditioning contractor holding a single license in the C-20 classification must continue listing and advertising under both the heading of air conditioning and the heading of heating the rates charged will be comparable to those of other trades required to list and advertise once to receive complete coverage of their trade."

Each of the defendants filed an answer to the complaint and a motion to dismiss the complaint.

Public hearings were held before Examiner Rogers in Los Angeles on March 22 and 23, 1973 and the complaint was submitted.

Evidence was presented by all parties. In addition, both defendants moved to dismiss the complaint on identical grounds. We find that the motions should be granted.

The Motions to Dismiss

Section 1702 of the Public Utilities Code[1/] provides in part:

> "Complaint may be made...setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation of or claimed to be in violation of any provision of law or of any order or rule of the Commission."

There is no allegation in the complaint and no evidence presented at the hearings to show that either defendant violated any law, rule, regulation, or tariff. There is no allegation in the pleadings, nor was any evidence presented at the hearing, that either defendant in any way breached any legal duty to the complainant or any other party similarily situated.

There is nothing in the Commission's rules or regulations or in defendants' tariffs which requires either defendant to file a tariff providing for the merging and combination of and directory advertising headings of air conditioning and heating or any other such headings into one heading, or for the forgiving of, granting

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1/ Hereinafter references to code sections will be Public Utilities Code sections.

a preference for or granting reparation for rates charged for directory advertising placed under more than one heading, or the setting of a separate charge therefor.

The complaint contains no allegations that the existing rates of either defendant are not the rates found reasonable by the Commission.

The defendants are prohibited by Sections 453 and 532 from discriminating or from charging other than the tariff rates (Robinson et al v Cal. Water and Telephone Co. (1963) 60 CPUC 687, 688).

When a complaint shows on its face that the utility has not violated any provision of law or any order of rule of the Commission but has acted in compliance with the utilities' filed tariff rules, the complaint will be dismissed for failure to state a cause of action (J. M. Nissen v Pac. Gas and Elec. Co. (1963) 60 CPUC 663-664).

As we have previously held:

> ". . . Obviously, PT&T has the right to promulgate reasonable rules with respect to its classified advertising directories. The establishment of classified headings cannot be left to the whim of each subscriber. To do so would invite jockeying for commercial advantages and cause proliferation of the yellow pages so they would not be useful to PT&T's subscribers generally. . . . We agree with PT&T's witness that the establishment of classified headings is not a precise science. The company must, to a certain degree, rely on its past experience and sound judgment in determining whether a requested classified heading should be established, ..." (Council on Religion and the Homosexual, Inc., etc., et al v PT&T (1969) 70 CPUC 471, 473-474.)

This complaint is not a proper vehicle by which to secure the changes sought by the complainant. Our Rule No. 9 (Order Revising Rules of Practice and Procedure) provides that ". . . No complaint shall be entertained by the Commission, except upon its own motion, as to the reasonableness of any rates or charges of any...telephone corporation, unless it is signed by...not less than 25 actual or prospective consumers or purchasers of such...telephone service."

We find that the complainant may not maintain the action herein inasmuch as it is a direct attack on the reasonableness of the defendants' rates and charges for directory advertising. We conclude that the relief requested should be denied.

O R D E R

IT IS ORDERED that the relief requested is denied.

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

Dated at San Francisco, California, this 9th day of MAY, 1973.

I dissent

Thomas Moran
Commissioner

Vernon L. Sturgeon
President

William Symons Jr.

Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.