

Decision No. 83488

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

LOUIS SAMUEL, individually and  
in a representative capacity,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY, a corporation,

Defendant.

Case No. 9493  
(Filed January 3, 1973)

Law Offices of David Daar, by David Daar and  
Michael R. Newman, Attorneys at Law, for Louis  
Samuel, individually and in a representative  
capacity, complainant.  
Milton J. Morris, Attorney at Law, for The Pacific  
Telephone and Telegraph Company, defendant.

O P I N I O N

Complainant Louis Samuel (Samuel) alleges that on May 27, 1972 defendant The Pacific Telephone and Telegraph Company (Pacific) initiated a charge of 15 cents per month to telephone subscribers who have their names and telephone numbers omitted from the telephone directory and that such charge is in violation of Sections 451 and 453 of the Public Utilities Code and Proposition 11 enacted by the people of California on November 7, 1972, which establishes the right of privacy. Samuel further alleges that the omission of a subscriber's name and number from the telephone directory is neither a commodity, product, or service within the meaning of Section 451 of the Public Utilities Code and that Pacific may not lawfully charge a fee for abstaining from the performance of an act which Pacific could not lawfully do in the first place, to wit, invade the privacy of its subscriber.

Samuel requests an order making the imposition of a charge to a subscriber for the omission of that subscriber's name from the telephone directory unlawful and void and requiring Pacific to refund to all subscribers any such charges made and received in the past by Pacific.

Pacific filed an answer alleging that the charges made for Pacific's nonpublished service are made pursuant to Pacific's Schedule Cal. P.U.C. No. 17-T, 15th Revised Sheet 4, effective August 8, 1972, which was filed pursuant to Decision No. 80347, wherein the Commission found such charges to be fair and reasonable. Pacific further alleged that the request that Pacific refund its nonpublished service charges must fail because the Commission, in Decision No. 80347, has already found such charges to be reasonable.

Section 734 of the Public Utilities Code provides in part that "no order for the payment of reparation upon the ground of unreasonableness shall be made by the Commission in any instance wherein the rate in question has, by formal finding, been declared by the Commission to be reasonable...".

Pacific requests that the complaint be dismissed.

Public hearing on the complaint was held before Examiner Cline in Los Angeles on June 5 and October 9, 1973. The matter was taken under submission on the filing of Pacific's reply brief on December 11, 1973.

#### Issues

1. Is the only difference between basic telephone service and nonpublished service the omitting of a customer's name and telephone number from the white pages of the telephone directory?
2. Is Pacific's charge for nonpublished telephone service a lawful charge?

3. Should Pacific be required to refund to its customers all charges for nonpublished telephone service?

Samuel asserts that the difference between the basic telephone service and nonpublished service is the omission of the customer's name and telephone number from the white pages of the telephone directory. He contends that such omission would not be a commodity, product, or service for which Pacific is entitled to make a charge, especially since the publication of the name and telephone number of the customer in the telephone directory without the customer's consent would be an invasion of the customer's right of privacy.

Pacific introduced evidence to show that nonpublished service involves not only the omission of the customer's name and telephone number from the telephone directory but the providing at substantial cost of services additional to those included in the basic telephone service.

Nonpublished service places a special burden on Pacific to protect the anonymity of the customer, while maintaining proper records and procedures so that the customer can be reached in emergencies, if he so chooses. However, if the customer so specifies, Pacific will not call him at any time as a result of an emergency request.

The daily addition sheets for the nonpublished service are locked in a sealed container and signed for and delivered by special messenger to one of two nonpublished traffic bureaus, one of which is located in Sacramento and the other in Los Angeles, for posting to special records maintained by them. After posting, the old records are macerated and destroyed to maintain anonymity. The empty cases are returned, as they are specially designed and expensive.

The nonpublished traffic bureaus are operated by selected people. They maintain a special list of Pacific personnel who are authorized to request nonpublished numbers.

One of the bureaus is contacted by authorized personnel whenever there is an emergency request for a nonpublished number. The bureau logs the call, verifies the name of the calling party, and calls the nonpublished customer to explain that a party has been trying to reach him. If the nonpublished party refuses to call the party placing the emergency call, the nonpublished bureau contacts the party placing the emergency call and so advises him.

Customers frequently require an explanation that the party they are attempting to call may have nonpublished service, if a search of the telephone directory reveals no listing. This is added work.

Customer service representatives must be trained to handle requests for nonpublished service. Over 80 percent of all requests for nonpublished service result in a customer request for a number change, and each of these requests requires a service order that requires special handling by all the departments involved.

Approximately 20.4 percent of Pacific's total main telephones involve nonpublished telephone service. There are about 1.4 million nonpublished residence subscribers and 26,000 nonpublished business subscribers.

The monthly costs associated with providing nonpublished service is 19 cents in direct charges plus 62 cents per month related to telephone number changes.

Findings of Fact

The Commission finds as follows:

1. The charge for nonpublished telephone service was originally authorized in Decision No. 79873, issued April 4, 1972 in Application No. 52794, wherein the Commission stated: "When the free provision of nonpublished numbers incurs costs which are being borne by all subscribers, however, it is not unreasonable to change the rates so that those who cause the additional expense will pay more for telephone service than those whose numbers are listed. Instead of the requested 50-cent charge, we will authorize a 25-cent charge which should cover a significant portion of Pacific's out-of-pocket costs for this special treatment. . . . "

2. Decision No. 79873 was modified by Decision No. 79941, issued April 11, 1972 in Application No. 52794, wherein the Commission stated: "We find that it is appropriate to effect the approximately 1.1 million dollar reduction from the rates authorized in Decision No. 79873 by lowering the authorized 25-cent monthly charge for nonpublished directory service to 15 cents per month. This will cover most of the directly assignable costs related to such service."

3. Nonpublished service is provided by Pacific pursuant to Schedule Cal. P.U.C. No. 17-T, 15th Revised Sheet 4, which was filed pursuant to the Commission's Decision No. 80348, issued August 8, 1972 in Application No. 52794, wherein the rates for such service are found to be reasonable by the Commission.

4. Nonpublished telephone service is more than the mere deletion of the name of the subscriber and his telephone number from the telephone directory. It is, in fact, a special classification of telephone service provided by Pacific.

5. Based on the only cost evidence in this proceeding, the costs incurred by Pacific in providing nonpublished telephone service exceed the charges made for such service.

6. There is nothing preferential or discriminatory in imposing charges for nonpublished telephone service to cover the cost of providing such service.

7. Samuel has failed to produce evidence to support his contention that the charge for nonpublished telephone service violates Sections 451 or 453 of the Public Utilities Code or Article 1, Section 1, as amended November 7, 1972, of the California Constitution.

Conclusions of Law

The Commission concludes as follows:

1. The charges made by Pacific for nonpublished telephone service pursuant to Schedule Cal. P.U.C. No. 17-T, 15th Revised Sheet 4, which was filed pursuant to the Commission's Decision No. 80348, issued August 8, 1972 in Application No. 52794, are lawful.

2. The relief requested by Samuel should be denied.

O R D E R

IT IS ORDERED that the relief requested in Case No. 9493 is denied.

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

Dated at San Francisco, California, this 24<sup>th</sup> day of SEPTEMBER, 1974.

Veronica L. Shuman  
President  
William L. Shuman  
J. William  
Thomas Moran  
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.