

Decision 83 16 C16 October 5, 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Karl Douglas Cummings,

Complainant,

vs.

Pacific Telephone & Telegraph,

Defendant.

Case 83-04-05  
(Filed April 11, 1983)

O P I N I O N

In his complaint against The Pacific Telephone and Telegraph Company (Pacific), Karl Douglas Cummings (Cummings) seeks an order that would:

1. Refund to Cummings the disputed amount of \$77.54, which he has deposited with the Commission.
2. Order Pacific to cease and desist its practice regarding advanced listing to directory (ALTD).
3. Award Cummings his cost related to this complaint.

The complaint alleges substantially as follows:

1. Cummings contacted Pacific to arrange for the listing of his name in the January 1983 issue of the Sacramento area telephone directory in advance of his actually subscribing to service for the listed number. Cummings was advised that he would have to have "a working telephone number" before Pacific could adopt his application to list his name and number in the yellow pages of the directory.

2. Having no requirement for the telephone service prior to January 1983, Cummings objected without success to Pacific's ALTD policy. To obtain the listing, therefore, he was required to subscribe to service prior to the directory advertising cut-off date and in advance of his need for the service.
3. In January 1983, Cummings terminated the service, which was established in October 1982. No calls were placed or received over the service. Cummings having set up the service merely to satisfy the working number requirement imposed by Pacific's ALTD policy. The amount billed to Cummings by Pacific for the installation and monthly service is the \$77.54 he has deposited with the Commission.
4. Pacific's ALTD policy is unlawful and unjustified; it has no valid supporting tariff provision; and it is administered in a discriminatory manner.

On May 13, 1983, Pacific filed a motion to dismiss and its answer to the complaint. In moving that the complaint in this case be dismissed, Pacific contends as follows:

"Complainant bases his complaint on Pacific's refusal to give him an advanced listing in the Yellow Pages of the Sacramento area telephone directory under the section devoted to attorneys.

"Section 728.2 of the California Public Utilities Code provides in pertinent part as follows:

'[T]he commission shall have no jurisdiction or control over classified telephone directories or commercial advertising included as part of the corporation's alphabetical telephone directories, including the charges for and the form and content of such advertising

...

'.....

'... The commission shall also have no jurisdiction over the following:

'(i) The form and content of the advertising in alphabetical and classified directories of telephone corporations.

'(ii) The form and content of the a directories in which that advertising appears.

'(iii) Directory advertising practices.

'.....

'(v) Complaints by any corporation or person regarding directory advertising.'

"At all relevant times herein, Section 728.2 was in full force and effect. Therefore, the Commission has no jurisdiction over the subject matter of the complaint. Accordingly, the complaint should be dismissed."

In its answer to the complaint Pacific included, as Exhibit A, a copy of its Universal Service Order 813.00, pages 20 and 21, which sets forth Pacific's standard practice regarding ALTD. Exhibit A bears out Cummings' allegation, to which Pacific admits, that Pacific does place advanced listings with no requirement for a

working telephone number. However, none of the special circumstances under which Pacific will make such a listing pertain even remotely to Cummings' situation. Pacific appears to have handled Mr. Cummings' request for ALTD in accordance with the standard practice.

We have reviewed Exhibit A attached to Pacific's answer. The standard practice which Exhibit A describes does not appear to violate Pacific's filed tariffs or any external regulation or any law. In this instance, there is no indication that Pacific has performed in an unlawful or discriminatory manner by following the standard practice.

Pacific concedes that there is no evidence that Cummings used the working line during the period it was in service, from October 1982 to January 1983. However, Cummings did subscribe to the service, and Pacific did install the working line and did make it available for Cummings' use until the time that Pacific disconnected it for nonpayment of charges.

Based upon our review of the complaint and Pacific's answer, we make the following findings of fact:

1. A public hearing is not required.
2. Pacific furnished Cummings the service for which he has been billed \$77.54.
3. In its handling of Cummings' service, Pacific did not deviate from its standard practice regarding ALTD, and it did not violate any provision of its tariffs or any external regulation.
4. Pacific did not act in a discriminatory or unlawful manner in this situation.

We make the following conclusions of law:

1. The disputed amount of \$77.54 now on deposit with the Commission should be paid to Pacific.

2. The complaint should be dismissed.
3. Cummings is entitled to recover no costs related to the filing of this complaint.

O R D E R

IT IS ORDERED that:

1. Deposits by complainant in the sum of \$77.54, and any other sums deposited with the Commission by complainant with respect to this complaint, shall be disbursed to The Pacific Telephone and Telegraph Company.

2. The complaint is dismissed.

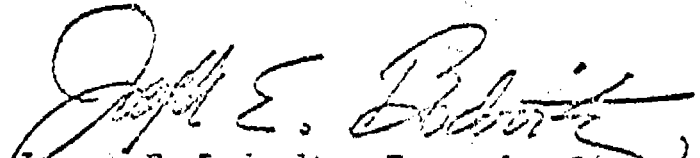
This order becomes effective 30 days from today.

Dated OCT 5 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director

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