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Decision No. 87714 AUG 16 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Holocard, a California partnership,
Complainant,

vs.

The Pacific Telephone and Telegraph
Company, a California corporation,
General Telephone Company of Cali-
fornia, a California corporation,
American Telephone & Telegraph
Company, a New York corporation,
and General Telephone & Electronics
Co., a New York corporation,

Defendants.

Case No. 10240
(Filed January 18, 1977)

Gordon S. MacDonnell and Thomas E. Flowers, for
Holocard, complainant.
Edward D. Schoch, Attorney at Law, for General
Telephone Company of California and General
Telephone & Electronics Co.; Richard A. Bromley,
Attorney at Law, for American Telephone and
Telegraph Company; and Gerald H. Genard and
Norah S. Freitas, Attorneys at Law, for The Pac-
ific Telephone and Telegraph Company, defendants.
Maxine Dremann, Attorney at Law, and Ernet Macario,
for the Commission staff.

INTERIM OPINION

Holocard is the proprietor of a credit verification system. The substance of its complaint is that defendants have unreasonably refused to provide a variety of services needed to support the proposed operation of the system.

Answers were filed by all defendants except General Telephone & Electronics Co. (GTE) which appeared specially to contest the Commission's jurisdiction. American Telephone & Telegraph

Company (AT&T) raised several affirmative defenses, one of which was a claim of misjoinder. To support this claim, AT&T argued that the Commission could grant all the relief sought without any order requiring it to do, or refrain from doing, any act.

At the prehearing conference the assigned Administrative Law Judge, John C. Gilman, received oral argument on this issue. He permitted subsequent filings by AT&T in conjunction with GTE and by Holocard stating, however, his tentative opinion that neither GTE nor AT&T was properly joined.

The defendants' pleading was filed on June 2, 1977. The pleading moved to have the complaint dismissed as to both nonutility defendants.

Holocard, on June 3, 1977, filed a response in opposition to the defendants' proposal. Holocard's response contended that it would be impossible to discover material evidence in the possession of the nonutility defendants, unless they were retained as parties.

Both the premise and the conclusion are incorrect. Under Section 312 of the Public Utilities Code the Commission has the power to enforce discovery evidence in the possession of an entity which is not a party. Even if this were not so, a corporation or individual may not be named as a defendant simply because it might possess evidence useful to a complainant.

Holocard further argues as follows:

"It has been stated that, if the Commission were to grant the relief requested by the Complainant, it could do so without any reference to defendants AT&T and GTE. On the face of the matter, that may be so. However, the implementation of the Holocard program may be difficult and delayed by the continuing opposition of officials and employees of AT&T and GTE without the full legal and moral weight of an order from the Commission to AT&T and GTE as well as Pacific and General."

By so arguing, Holocard has effectively conceded that the remaining utility defendants have the power to provide all the relief sought by the complaint.

We conclude that complainant does not seek nor require any relief from AT&T or GTE and that they are not proper parties to this complaint.

INTERIM ORDER

IT IS ORDERED that this complaint is dismissed as to General Telephone & Electronics Co. and American Telephone & Telegraph Company.

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

Dated at San Francisco, California, this 16th day of AUGUST, 1977.

Robert Bateman
President
William Agnew Jr.
James S. Stinson
Charles D. Howell
Clair L. DeLoach
Commissioners