

ORIGINAL

Decision No. **88312** JAN 10 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TOWARD UTILITY RATE NORMALIZATION,
a non-profit California corporation,

Complainant,

Case No. 10238

(Filed January 7, 1977)

v.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a California corporation;
and FOOTE, CONE & BELDING/HONIG,

Defendants.

Ann Murphy, Attorney at Law, for TURN,
complainant.

Christopher Lee Rasmussen and Duane G.

Henry, Attorneys at Law, for The

Pacific Telephone and Telegraph

Company, and R. Quincy White, Attorney

at Law (Illinois), for Foote, Cone &

Belding/Honig, defendants.

Jasper Williams, Jr., Attorney at Law,

for the Commission staff.

ORDER DISMISSING PARTY DEFENDANT

Case No. 10238 is a complaint by Toward Utility Rate Normalization (TURN) against The Pacific Telephone and Telegraph Company (PT&T) and Foote, Cone & Belding/Honig (Foote). The gravamen of the complaint is the allegation that the defendants disseminated false and misleading advertisements about PT&T's life-

line rates. As to TURN v. PT&T (Holtz v. Turner) "complaints of false evidence presented to the Commission in Case No. 10238 dated August 18, 1977, and the President's Administrative Law Judge's decision dated August 18, 1977, the Commission has received evidence that may be discovered prior to hearing pursuant to Section 1794 of the Public Utilities Code.

FOOTE

Foote filed a motion to have itself dismissed as a party defendant on the basis of lack of jurisdiction. At a hearing on motions and prehearing conference in the matter the presiding Administrative Law Judge indicated he would recommend that the Commission grant the motion. Thereafter, on November 18, 1977, he issued a ruling that pending disposition of the motion, Foote would not have to respond to interrogatories propounded to parties, but that it was subject to having depositions taken pursuant to Section 1794 of the Public Utilities Code. The motion to dismiss is before the Commission.

Section 1702 of the Public Utilities Code provides in part that:

"Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or any body politic or municipal corporation, by written petition or complaint, 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 or claimed to be in violation, of any provision of law or of any order or rule of the commission." (Emphasis added.)

Foote contends that it is not a public utility and, therefore, the Commission lacks jurisdiction to entertain this complaint against it. We agree. There is no evidence that Foote is a public utility or is acting as one. Paragraph 3 of the complaint alleges that it is an advertising agency. Foote is not subject to the jurisdiction of the Commission under the circumstances of this case. Furthermore, it has been held that "a corporation or sole individual may not be named as a defendant simply because it might possess evidence useful to a complainant." (Holcard v PT&T et al., Decision No. 87714 in Case No. 10240, dated August 16, 1977, at p.3.) The presiding Administrative Law Judge correctly ruled that if Foote possess relevant evidence, it may be discovered prior to hearing pursuant to Section 1794 of the Public Utilities Code.

The Commission makes the following finding and conclusion.

Finding of Fact

Foote is an advertising agency. It is not a public utility nor is it acting or purporting to act as one.

Conclusion of Law

The Commission lacks jurisdiction to entertain this complaint against Foote and it should be dismissed as a party defendant.

IT IS ORDERED that Foote, Cone & Belding/Honig is dismissed as a party defendant in Case No. 10238.

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

Dated at San Francisco, California, this 10th day of JANUARY, 1978.

Robert Batmonek
President
William Sproule Jr.
Terrence L. Stuegen
Robert D. Givelle
Walter T. Belding
Commissioners