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ORIGINAL

Decision No. 89002 JUN 27 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE SELTEN AGENCY, INC.,
a California corporation,

Complainant,

v.

PACIFIC TELEPHONE &
TELEGRAPH COMPANY,

Defendant.

Case No. 10588
(Filed June 8, 1978)

ORDER DENYING INJUNCTIVE RELIEF

The Selten Agency, Inc. (Selten) is an advertising agency which places yellow page advertising on behalf of its clients. Heretofore, Selten has been able to deal with The Pacific Telephone and Telegraph Company (Pacific) for the placement of yellow page ads not only in Pacific's directories but in the directories of other telephone companies nationwide. Pacific no longer accepts national yellow page ads, (ads placed in other states), but relies instead only on authorized agents (selling companies) which represent Pacific as a publisher. Advertising agencies which desire to publish a national ad in Pacific's directories must either become a selling company or act through one of the selling companies. The selling companies provide numerous services to Pacific, chief among which is that they pay Pacific's invoices without recourse within 30 days of receipt thereof, notwithstanding the selling company's collection status with advertisers or their agencies.

Selten's complaint seeks an order requiring Pacific to continue to receive national ads from Selten directly, without the necessity of going through a selling company or becoming one itself.

It appears from the allegations of the verified complaint and from attachments thereto that all advertising agencies were notified as early as June 15, 1977 that Pacific would discontinue its national ad activities as of September 1, 1977. A letter from Pacific dated August 15, 1977, addressed to Selten, reiterated this information.

It further appears from the pleadings, including Pacific's response dated June 12, 1978 and the declaration of Allan R. McKeown, a Pacific employee, that Pacific and Selten have not been able to reach an agreement regarding the handling of Selten's national ads and that there is now due and owing to Pacific from Selten a sum in excess of \$500,000 for advertising orders placed with Pacific by Selten on behalf of its clients. A portion of the \$500,000 represents payments made by Pacific to other yellow page publishers for national ads placed by Selten. Were the Commission to order Pacific to accept further advertising from Selten, it would only increase Pacific's receivables and further burden Pacific and ultimately Pacific's ratepayers in general.

Moreover, Selten has not diligently pursued its remedies before the Commission. More than one year has passed since Selten was informed of Pacific's change in operations. Yet Selten brought its problem to the Commission on June 8, 1978, eight days prior to the close of certain directories in San Diego County. ✓

We are not inclined to reward such dilatory conduct with the issuance of the temporary restraining order or the order to show cause sought by Selten. However, we believe it would be equitable to order Pacific to continue to accept ads from Selten for the directories it publishes on condition that Selten prepays 70 percent^{1/} of the annual directory charges and submits its advertising orders to Pacific by 5:00 p.m. on June 30, 1978. If these conditions are met, then Pacific will be required to publish Selten's ads in its three San Diego directories with closing dates of June 16, 1978, which date Pacific is willing to extend until June 30, 1978. For other Pacific directories Selten's ads shall be accepted if orders are submitted prior to the closing dates, together with prepayment of 70 percent of the annual charges.

In view of the dilatory conduct of Selten, the serious questions of fact raised by the pleadings, and the real question remaining of our jurisdiction to issue an order which would have an effect upon telephone companies outside of California, we conclude that the request for an ex parte temporary restraining order and for the issuance of an order to show cause should be denied. However, the more limited relief described above should be granted. Since the closing date has already passed, the effective date of this order should be the date hereof.

IT IS ORDERED that:

1. The request of The Selten Agency, Inc. (Selten) for a temporary restraining order and for the issuance of an order to show cause is denied.
2. The Pacific Telephone and Telegraph Company (Pacific) shall accept ads from Selten for its three San Diego directories with closing dates of June 16, 1978, if Selten prepays 70 percent of the annual directory charges and submits its advertising orders by 5:00 p.m. on June 30, 1978.

^{1/} The percentage is that suggested by Selten.

3. Pacific shall accept ads from Selten for its other California directories if Selten prepays 70 percent of the annual directory charges and submits its advertising orders prior to the closing dates of such directories. ✓

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 27th day of JUNE, 1978. ✓

William J. Green - Jr. President
Vernon L. Stutzman
Robert D. Shovell
Clair L. DeLoach Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.