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Decision 89651 NOV 9 1978

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MICHAEL R. FRIED, publisher, THE FRIDAY OBSERVER, also known as The Metro San Leandro Observer, a newspaper of general circulation, and five other newspapers, Complainant, vs. PACIFIC TELEPHONE & TELEGRAPH COMPANY, a corporation, Defendant.	Case No. 10205 (Filed November 16, 1976)
MICHAEL R. FRIED, ind/dba OBSERVER NEWSPAPERS including Alameda County Observer, Bay Area Observer, Castro Valley Observer, Metro Hayward Observer and The Friday Observer also known as The Metro San Leandro Observer (a newspaper of general circulation) and Washington Manor Reporter, Complainant, vs. PACIFIC TELEPHONE & TELEGRAPH COMPANY, a corporation, Defendant.	Case No. 10275 (Filed March 3, 1977)

ORDER DENYING REHEARING AND/OR RECONSIDERATION

Michael R. Fried has filed petition for rehearing and/or reconsideration of Decision No. 89248. The Commission has considered each and every allegation contained therein and is of the opinion that no good cause for granting rehearing and/or reconsideration has been shown; therefore,

C.10205, C.10275 rh

IT IS ORDERED that rehearing and/or reconsideration of Decision No. 89248 is hereby denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 9th day of NOVEMBER, 1978.

Robert Batinovich
President

William Symons, Jr.

Vernon L. Sharp

Leonard M. Grimes, Jr.

Claire T. Dedrick
Commissioners

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Decision No. 89248 August 22, 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MICHAEL R. FRIED, publisher, THE FRIDAY OBSERVER, also known as The Metro San Leandro Observer, a newspaper of general circulation, and five other newspapers, Complainant, vs. PACIFIC TELEPHONE & TELEGRAPH COMPANY, a corporation, Defendant.	Case No. 10205 (Filed November 16, 1976)
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Michael R. Fried, for himself, complainant.
Stanley J. Moore, Attorney at Law, for The Pacific Telephone and Telegraph Company, defendant.

O P I N I O N

Cases Nos. 10205 and 10275 are complaints filed by Michael R. Fried (Fried) against The Pacific Telephone and Telegraph Company (PT&T). Because of the interrelated subject matter, the complaints were consolidated for hearing. A duly noticed public hearing was held in these consolidated matters before Administrative Law Judge Donald B. Jarvis in San Francisco on October 6 and 7, 1977. The proceedings were submitted subject to the filing of a late-filed exhibit and the transcript, which have been received.

Fried is the publisher of Observer Newspapers which include the following publications: Alameda County Observer, Bay Area Observer, Castro Valley Observer, Metro Hayward Observer, The Friday Observer (also known as the Metro San Leandro Observer), and The Washington Manor Reporter. The complaint in Case No. 10205 alleges that: (1) Charges for installing telephone service at Fried's premises were unreasonable. (2) PT&T refused to adjust directory charges for listings which contained errors. (3) PT&T improperly disconnected Fried's telephone service. (4) PT&T's demand for a reconnection charge to restore discontinued service is illegal. (5) The disputed bill deposit requirements are not valid. (6) PT&T discriminates against the separate geo-political area of San Leandro. (7) The differential in PT&T's telephone rates between residential and business users is unconstitutional. The complaint in Case No. 10275 contains some allegations which are not the proper subject matter of a formal complaint and which

have become moot.[1] The remainder of the complaint alleges that PT&T refused to include both a post office box number and street address in Fried's directory listing.

The material issues in this proceeding are as follows: (1) Are the classification and different treatment of residential and business rates constitutional? (2) Should the question of the division of San Leandro telephone directory listings between two directories be adjudicated in these proceedings? (3) Is Fried entitled to any reparations because of the bifurcated San Leandro directory listings? (4) Did PT&T discriminate against San Leandro by changing its business office to a public one? (5) Should PT&T be ordered to advertise in Fried's Friday Observer? (6) Is Fried entitled to any relief with respect to the listing of his address in PT&T's directories? (7) Is Fried entitled to reparations in connection with the installation of his telephone service? (8) Is Fried entitled to reparations in connection with the temporary disconnection of November 9, 1976? (9) Is Fried entitled to reparations in connection with the temporary disconnection of February 28, 1977? (10) Is PT&T's deposit rule discriminatory?

1/ These allegations relate to the actions of a Commission employee with respect to proffered disputed bill deposits. Section 1702 of the Public Utilities Code provides that the Commission may entertain complaints "setting forth any act or thing done or omitted to be done by any public utility..." A Commission employee is not a public utility within the meaning of Section 1702. Complaints, in the broad sense of expressions of dissatisfaction, may always be brought to the attention of the Commission, the Commissioners, Executive Director, and appropriate personnel where they are handled administratively. As hereafter indicated, the particular matter here involved was resolved to the satisfaction of Fried prior to the hearing.

Before considering the material issues, we note that Fried had the burden of proof on all issues raised in these complaints. (Evidence Code §§ 500, 550; Shivill v Hurd (1954) 129 CA 2d 320, 324; Ellenberger v City of Oakland (1943) 59 CA 2d 337.)

Business Rates

Fried contends that PT&T's rates are unconstitutional because business rates are different, and higher, than residential rates. It is contended that this situation fails to provide business users with equal protection of law. There is no merit in this contention.

"Discrimination by a public utility does not mean, merely and literally, unlike treatment accorded by the utility to those who may wish to do business with it, but refers to partiality in the treatment of those in like circumstances seeking a class of service offered to the public in general. With respect to a utility's offer to serve the general public or a limited portion thereof, as evidenced by its schedules of rates and rules, the offer is made, to the extent of the utility's ability to provide the service, to serve impartially any member of the public who may qualify under the rules and is willing to pay the rates; here the duty to serve impartially is correlative with the right to demand and receive the service applied for." (Emphasis added. International Cable T.V. Corporation v All Metal Fabricators, Inc. (1966) 66 CPUC 366, 382-83.) Early in its history the Commission determined that reasonable classifications could be established among utility customers. (Palmer v Southern Cal. Mountain Water Co. (1913) 2 CRC 43, 63-64, affd, 167 Cal 163.) It is unnecessary to catalog all the criteria which justify

a difference in classifying residential service different than business service. Suffice it to say that a business may flow through its utility costs in the charges for its product or services. Additional utility plant is often necessary to meet the needs and peak-time requirements of business usage. Furthermore, the legislature has differentiated between residential and other types of service in providing for lifeline rates and in other situations. (Public Util. Code §§ 739; 453.5.) The record is devoid of any evidence which would support a finding that establishing different classifications for residential and business service is not reasonable. The difference in classification is not unconstitutional. (Wood v PG&E (1971) 4C 3d 288, 294; appeal dismissed for want of substantial federal question 404 U.S. 931.)

Alleged Discrimination Against San Leandro

Fried contends that PT&T discriminates against San Leandro. Fried states that "San Leandro with its large industry, with its great cultural centers, and things like that, is a community unto itself. We are not beholden to anybody." The alleged discrimination is that: (1) All of San Leandro is not included in one telephone directory. (2) PT&T has downgraded its San Leandro office so that residents with problems must deal with other offices.

Some background is appropriate before addressing these contentions. On January 15, 1975 Fried filed a complaint (Case No. 9857) against PT&T. One of the issues raised in Case No. 9857 was the failure of PT&T to include all of San Leandro in one telephone directory. Thereafter, the parties entered into an agreement dealing with the matters raised in Case No. 9857 and Fried filed a request for dismissal of the complaint. Case No. 9857 was dismissed without prejudice in Decision No. 84712 entered on July 29, 1975. In the agreement PT&T agreed "to conduct a study of the communities of San Leandro and San Lorenzo to determine what the appropriate directory arrangement for them should be,

and we will take action accordingly. It is understood; however, that any changes which may be deemed appropriate cannot be made until the completion of our Yellow Pages mechanization conversion. Our present schedule calls for the 1978 issue of the Oakland directory to be the last directory converted. We would conduct the study far enough in advance of this date to allow sufficient time to implement whatever changes might be deemed appropriate." PT&T indicated that the survey was in progress at the time of the hearing.

The California Supreme Court has clearly stated that the "Commission is not a body charged with the enforcement of private contracts. (See Hanlon v Eshelman, 169 Cal 200, [146 Pac. 656].) Its function, like that of the Interstate Commerce Commission, is to regulate public utilities and compel the enforcement of their duties to the public...not to compel them to carry out their contract obligations to individuals." (Atchison, T.&S.F. Ry. Co. v Railroad Commission (1916) 173 Cal 577, 582.) When the Commission acts pursuant to Chapter 9 of Division 1 of the Public Utilities Code, it is acting under the police power of the state and is not bound by private contracts in the exercise of that power. (San Bernardino v Railroad Commission (1923) 190 Cal 562; Miller v Railroad Commission (1937) 9C 2d 190, 195-96; Truck Owners, etc., Inc. v Superior Court (1924) 194 Cal 146; People v Superior Court of Sacramento County (1965) 62 C 2d 515, certiorari denied, 85 S Ct 1341; People v Ryerson (1966) 241 CA 2d 115; Pratt v Coast Trucking Inc. (1964) 228 CA 2d 139; Vallejo Bus Co. v Superior Court (1937) 19 CA 2d 201.) The administrative law judge who presided at the hearing correctly ruled, in the light of the foregoing authorities, that Fried was not precluded from raising the bifurcated directory issue in these proceedings. He further indicated that there were reasons why the Commission might defer resolution of the issue herein. The reasons are : (1) The

survey in progress by PT&T would be probative. (2) There is no evidence in the record relating to the costs of implementing the requested relief. (3) The issue should not be decided without the opportunity for presentation of evidence by others who might be affected.[2/] The Commission finds that it would not be in the public interest to adjudicate the bifurcated directory issue in these proceedings.

Reparations for Bifurcation

As indicated, the Commission will not adjudicate the question of bifurcation in these proceedings. The previous discussion, however, is necessary to understand a related contention by Fried. He contends that certain of the advertising charges assessed by PT&T were unreasonable because it was necessary to have classified advertisements for The Metro San Leandro Observer in two directories rather than one. The contention is not sustainable. PT&T's directory structure has been approved by the Commission. At the time of the events here involved, PT&T's rates, as applied to the directory structure, had been authorized and found to be reasonable by the Commission (Decision No. 85287 in Case No. 9832 and Application No. 55214, entered on December 30, 1975). Public Utilities Code Section 734 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..." Thus, if, in an appropriate proceeding, the Commission were to find the bifurcation of San Leandro for directory listing purposes to be

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2/ The possible actions which might be taken with respect to the bifurcated directory are: (1) Retain the status quo. (2) Establish a San Leandro directory. (3) Include all San Leandro listings in the Oakland directory. (4) Include all San Leandro listings in the Fremont-Hayward directory. If alternates 2, 3, and 4 are to be considered, the opportunity for public input should be provided.

unreasonable, it could only do so on a prospective basis. Fried is entitled to no reparations with respect to this contention.

San Leandro Business Office

During 1972 PT&T established a business office in its directory assistance facility in San Leandro. Sometime thereafter PT&T changed the office from a business one to a public office. A business office has personnel who deal with customer problems whereas a public office is only a depository for the payment of bills. Fried contends that the failure of PT&T to maintain a business office in San Leandro constitutes discrimination. Aside from statements relating to civic pride and personal inconvenience, there is no evidence in the record which would justify a finding that PT&T acted unreasonably in changing the San Leandro office from a business to a public one. There is no evidence of relative costs, usage, demand, and impact on PT&T's entire system. Fried has failed to meet the evidentiary burden on this issue.

PT&T Advertising Issue

In June 1972 The Friday Observer (also known as The Metro San Leandro Observer) published an article critical of PT&T. Fried contends that PT&T has refused to advertise in The Friday Observer (or any other Fried newspaper) as a result of the article. He seeks an order requiring PT&T to advertise in The Friday Observer.

Again, Fried's allegations must fall for lack of proof. Assuming, arguendo, that the Commission has jurisdiction to order PT&T to advertise in a specific newspaper, there is no evidence in this record to support such an order. The record shows that The Friday Observer is a newspaper of general circulation. PT&T has never advertised in it or any other Fried newspaper, either before or after publication of the critical article. There is nothing in the record to show

that PT&T has a duty to advertise in any of Fried's newspapers. There is no evidence of any of PT&T's advertising practices. Aside from the surmise and conjecture of Fried, there is no evidence that PT&T has treated The Friday Observer differently than other local newspapers similarly situated.

Address Controversy

Fried contends that PT&T has refused to list both his post office box number and street address in directory advertising. Fried asserts that he is entitled to reparations in connection therewith. Fried argues that his address is both the post office box and street address and that PT&T's alleged failure " places us as a newspaper in jeopardy under the libel laws, because a Civil Code Section, Section 48 A requires a serving of a demand, and people who serve demands would look us up in the phone book as their easiest reference for a correct address; when it is incorrect in there, we are going to get a faulty demand, get a lawsuit because of the incorrect address, as we have testified to." (RT 193.) Fried also cites Business and Professions Code Section 17538.5, which requires mail order and catalog sales businesses to list their street address whenever a post office box is used.

The record indicates that the classified advertisements in question contained Fried's street address. We fail to perceive how this placed Fried in any jeopardy under the above-cited code provisions. In a letter to Fried, dated February 10, 1977, PT&T indicated, in part, that:

> "1. You may show either an address of '709 MacArthur Boulevard' or, if you prefer, 'Box 817' as the listed address for 'Hayward Observer'. The charge of $0.75 for the 'Business Additional Listing' includes your name, one of the above address and your telephone number.

"2. If you wish to show both the 'Box 817' and '709 MacArthur Boulevard', it can be set up with one or the other on the address line and a 'Line of Information' which would show the remaining address on a separate line. There is a charge of $0.40 per month for the 'Line of Information', plus the $0.75 per month charge for the 'Business Additional Listing', or a total charge of $1.15 per month for the combination listing."

Fried contends that at a subsequent meeting with PT&T personnel he was told he could not have both addresses listed. We find that if Fried had requested the listings in accordance with PT&T's letter of February 10, 1977, they would have been provided. The letter was in accord with PT&T's tariffs and practices. Fried is not entitled to any reparations with respect to the address listings.

Installation Charges

Fried contends that the installation charges for his telephone service at 709 MacArthur Boulevard, Oakland, "were excessive and unreasonable because: at defendant's own volition, telephone lines for complainant's installation were strung across the private property adjacent to complainant's site; defendant did not have right of way to string said lines; and said improper stringing of lines was along a longer route which required more 'inside work' at complainant's site than if the defendant had tied into lines which could have been on utilities poles just outside front of complainant's building along right of way granted by City." (C.10205, para. III.)

He also contends that "defendant infringed on property rights of complainant by placing wires across complainant's property for use by neighboring property. Utility has better access to neighboring property along right of way given by City which does not infringe on

complainant's rights." (C.10205, para IV.) There is no merit to either contention for the reasons which follow.

The record clearly indicates that under PT&T's tariffs the charges for installing the telephone service were fixed charges and not dependent on the length of the drop wires or the amount of inside work. The record also shows that at the time Fried purchased the property at 709 MacArthur Boulevard there were PT&T drop wires affixed to it which served the building and also 715, 721, and 725 MacArthur Boulevard. PT&T contends that the drop wires had been installed with the consent of previous owners. Fried complained to PT&T about the drop wires. Except for the drop wire presently serving Fried's property at 709 MacArthur Boulevard, PT&T removed and rerouted the other drop wires which had been affixed to the building at no expense to Fried. The Commission fails to perceive how any of Fried's rights were violated in these circumstances.

November 9, 1976 Disconnection

On November 9, 1976 PT&T disconnected Fried's telephone service for failure to pay $343.63 in a bill dated August 17, 1976. Fried contends the disconnect was improper as were the reconnect charges he was required to pay when service was restored.

The evidence indicates that on August 3, 1976, PT&T called Fried regarding the prior service for 357-4700 which at that time had a balance of $159.22. On August 6 PT&T spoke to Mr. Ad Fried (Fried's father) who explained they had just moved, they had lost their records, and would like to pay that charge of $159.22 with the forthcoming August bill. On August 24 PT&T advised Fried that payment with the forthcoming bill was acceptable and mailed a duplicate copy of the previous bill. On August 30 PT&T left word for Fried to call. On September 2 PT&T called Fried, was advised he did not have time to talk, and to please call back in five minutes. PT&T called back and Fried refused

to talk. PT&T mailed another copy of the August bill. On September 14 PT&T left word on Fried's answering machine to call PT&T. Fried returned the call and said he would put a check for $300 in the mail that evening. He refused to talk further with PT&T. On September 20 PT&T received the $300. It mailed a denial notice to Fried on September 27 for the balance of the August bill, which was $343.63. On October 1 PT&T called Fried and explained that the charges were still outstanding and that it needed a minimum payment on the account of $400 at that time. Fried advised PT&T that he could not afford to do that and he wanted to pay the current charges and whatever else he could afford at that time. On October 13 Fried made a $200 deposit. PT&T called Fried and spoke with Ad Fried who indicated that his son was out of town on his honeymoon and had the checkbook with him. PT&T stated it would take a $200 payment with the balance due on Monday, October 18. A payment of $200 was made on October 13, which was reflected on the October 17 bill. That bill was for $572.08, which included the outstanding balance as well as the $200 credit. PT&T contacted Fried on October 20 and explained that it had not disconnected his service because he was away on his honeymoon, but the charges were due. PT&T asked for the full amount of $385.68 by 5:00 p.m. that evening and indicated that if it was not received the service was to be disconnected. Fried was unhappy with that arrangement, and the matter was referred to PT&T's district manager. Fried subsequently spoke with the district manager, who agreed to continue service if Fried paid $225.96 by 5:00 p.m. on October 22 and the balance by 5:00 p.m. on October 27. Fried was told by the district manager that failure to do so would result in disconnection and a requirement to pay restoration charges and deposit fees. Fried paid $225.96 on October 22. He paid $160 on October 27 by cash and check. However, on November 2, his $100 check was returned by the bank for insufficient funds. On November 3 PT&T called Fried

about the returned check. He said he would put the money in PT&T's night deposit box on Friday, November 5 in the San Leandro office for receipt on Monday morning, November 8. The money was not received by PT&T. PT&T called and left messages on Fried's answering machine on November 8 and November 9. Fried did not respond to the messages, and on Tuesday, November 9, the service was temporarily disconnected for nonpayment.

The November 9 disconnect was proper and in accordance with Rule 11(2)a of PT&T's Tariff 36-T. Fried's argument that he disputed some of the charges does not make the disconnect improper. His remedy was to pay the bill and seek reparations or deposit the money with the Commission and seek appropriate relief.

February 28, 1977 Disconnection

Fried's service was restored after the November 9, 1976 disconnection on November 16, 1976 after Fried deposited $533.62 with the Commission. Thereafter, Fried was in arrears with his November and December 1976 bills. On December 22, 1976, PT&T sent Fried a notice stating that his service was subject to disconnection. Fried did not respond to the notice. On December 29 PT&T left a message on Fried's answering machine requesting that he contact PT&T. Fried returned the call and said that he did not have time to talk and that he would be back in his office on January 5 or 6 and would call PT&T on January 7. Fried did not call PT&T on January 7. On January 13 PT&T called Fried and left word on his answering machine for him to call PT&T. Fried called PT&T on January 14 and made arrangements to pay $225.76 in PT&T's San Leandro public office on January 18. Fried did not keep that commitment. Since Fried had posted money with the Commission, PT&T checked with its staff and were advised that further payment had not been

received by the Commission. PT&T mailed another denial notice for the amount due for the November, December, and January bills. Fried did not respond to the second notice. On February 25, 1977 PT&T contacted its internal regulatory staff and was informed that their checking with the Commission staff indicated that Fried had not contacted the Commission and to proceed with its normal course of business. Fried's service was temporarily disconnected on the 28th of February. On March 1 Fried called PT&T and informed it that he would not pay PT&T directly and that the Public Utilities Commission had refused to accept his money. He wanted to know if he could pay to a third party. PT&T told Fried that he could only make his payments to it or to the Commission. PT&T also agreed to and did send Fried a letter specifying the payments which were needed to restore service. The letter was as follows:

"Dear Mr. Fried:

"Per our conversation on March 2, I am writing to advise you of the amount needed to restore full telephone service. The amount needed is $478.57. This is comprised of outstanding charges for the bills dated:

"November 17 in the amount of	$189.29
"December 17 in the amount of	106.76
"January 17 in the amount of	122.52
"Total	$418.57
"and a restoral charge of	60.00
"GRAND TOTAL	$478.57

"These charges exclude monthly advertising charges and any monies already posted with the Public Utilities Commission.

"Sincerely,
"Mrs. L. Dupuis"

Case No. 10205 was filed on November 16, 1976 along with the aforesaid customer deposit of $533.62. As indicated, as a result of the deposit, the Commission directed PT&T to end the November 9 disconnection

and restore service to Fried. However, the dispute between the parties did not abate. Pending disposition of Case No. 10205, Fried withheld monies from PT&T. He attempted to deposit the money with the Commission but the deposits were refused by a staff engineer with whom Fried dealt. Thus, at the time of the February 28 disconnection, Fried owed money to PT&T which had not been paid nor deposited with the Commission.

On March 3, 1977 Fried filed Case No. 10275 along with a customer deposit of $478.57, which was received by the Commission. PT&T was directed to restore service. On March 28, 1977 in response to a five-day disconnection notice, Fried sought to deposit $85.33 with the Commission. After a temporary refusal, the matter was brought to the attention of the administrative law judge assigned to Cases Nos. 10205 and 10275 who directed that the money be received. The administrative law judge also provided for the receipt by the Commission of all disputed bill deposits by Fried pending disposition of these cases, which has been done.

Fried filed a claim against the Commission with the State Board of Control, which was denied. Thereafter, Fried filed Case No. 332041-5 in the Small Claims Court of Alameda County against the State of California seeking damages for the Commission's refusal to accept the disputed bill deposits. Judgment was initially entered against the State for $200 plus costs. On September 14, 1977 the judgment was vacated and modified to $150 plus $4 costs. That judgment has become final.

The foregoing facts clearly indicate that PT&T properly applied its tariff rules in connection with the February 28 disconnect. The fault was that of the Commission. Fried has been compensated for this in the judgment against the State. He is not entitled to any reparations from PT&T.

Deposit to Reestablish Credit

Fried contends that PT&T's tariff provisions requiring a deposit to reestablish credit after a disconnection are discriminatory. The contention has no merit. The rule is part of PT&T's establishment of credit rules which were found to be constitutional in Wood v Public Utilities Commission, supra, where the court stated at page 291: "[The establishment of credit rules] were adopted as part of the utilities' rate tariffs for the purpose of reducing bad debt losses, and they have resulted in a substantial reduction of such losses."

Rule 7(B)3 of PT&T's Tariff No. 36-T provides that "The amount of deposit required to reestablish credit is equal to twice the estimated average monthly bill for the last three months, when available." The tariff also provides for refund of the deposit with simple interest at the rate of 7 percent per annum after the customer has paid bills for twelve consecutive months without the service having been disconnected for nonpayment of bills. (PT&T Tariff No. 36-T, Rule 7(C), 7(D).) A deposit was properly required in connection with the restoration of service after the disconnection which occurred on November 9, 1976. However, in light of the circumstances which occurred in connection with the February 28, 1977 disconnection, the time of deposit should not be extended because of that incident. The remaining amounts to date have been paid to the Commission as disputed bill deposits. Since more than one year has elapsed since payment of the deposit, it should be refunded to Fried with interest at 7 percent per annum. The record indicates that Fried was required to post a credit deposit of $280. This should be refunded to Fried, with interest, in accordance with Rule 7 of PT&T's Tariff No. 36-T.

Adjusted Items

The record shows that certain errors or omissions occurred with respect to Fried's classified advertising.[3/] However, some time prior to the hearing, PT&T properly adjusted Fried's account with respect to these matters. They will not be further discussed because there is nothing about them to be adjudicated in these proceedings.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. The record is devoid of any evidence which would support a finding that PT&T's tariffs which establish different classifications for residential and business service are unreasonable.

2. It is not in the public interest to adjudicate in these proceedings the question of whether all the directory listings for San Leandro should appear in one directory.

3. The Commission previously approved PT&T's directory structure. The directory advertising rates in effect with respect to the approved structure were found to be reasonable in Decision No. 85287 entered on December 30, 1975. Under Section 734 of the Public Utilities Code, the Commission is precluded from awarding reparations with respect to those rates.

4. There is no evidence in the record which would justify a finding that PT&T acted unreasonably in changing its San Leandro office from a business to a public one.

5. There is no evidence in the record which would sustain a finding requiring PT&T to place advertisements in The Friday Observer.

3/ On occasion PT&T confused the identity of Fried's newspapers and on one occasion omitted an additional listing in one directory. PT&T overbilled for certain installation charges.

6. Fried sought to have both his post office box and street address listed in directory advertising. Fried contends that both items constitute his address. PT&T indicated that both items could be included as follows:

> "1. You may show either an address of '709 MacArthur Boulevard' or, if you prefer, 'Box 817' as the listed address for 'Hayward Observer'. The charge of $0.75 for the 'Business Additional Listing' includes your name, one of the above address and your telephone number.
>
> "2. If you wish to show both the 'Box 817' and '709 MacArthur Boulevard', it can be set up with one or the other on the address line and a 'Line of Information' which would show the remaining address on a separate line. There is a charge of $0.40 per month for the 'Line of Information', plus the $0.75 per month charge for the 'Business Additional Listing', or a total charge of $1.15 per month for the combination listing."

PT&T's offer was in accordance with its tariffs and practices. If Fried had requested listings in accordance with the PT&T proposal, they would have been furnished. Fried's listings appeared with his street address only. He was not charged for any additional lines of information. Fried is not entitled to any reparations with respect to this transaction.

7. PT&T's charges for the installation of Fried's telephone service at 709 MacArthur Boulevard, Oakland, California, were in accordance with its Tariffs 22-T, 28-T, and 132-T. These charges were fixed ones and not dependent on the length of the drop wires or the amount of inside work.

8. At the time Fried purchased the property at 709 MacArthur Boulevard, Oakland, California, there were PT&T drop wires affixed which served the building and also 715, 721, and 725 MacArthur Boulevard.

Fried complained to PT&T about the presence of the drop wires on the building. Except for the drop wire presently serving 709 MacArthur Boulevard, PT&T removed and rerouted the other drop wires which had been affixed to the building at no expense to Fried. None of Fried's rights were violated in these circumstances nor was any provision of law or order or rule of the Commission.

9. On August 3, 1976 PT&T called Fried regarding his prior service for 357-4700 which at that time had a balance of $159.22. On August 6 PT&T spoke to Mr. Ad Fried (Fried's father) who explained they had just moved, they had lost their records, and would like to pay that charge of $159.22 with the forthcoming August bill. On August 24 PT&T advised Fried that payment with the forthcoming bill was acceptable and mailed a duplicate copy of the previous bill. On August 30 PT&T left word for Fried to call. On September 2 PT&T called Fried, was advised he did not have time to talk, and to please call back in five minutes. PT&T called back and Fried refused to talk. PT&T mailed another copy of the August bill. On September 14 PT&T left word on Fried's answering machine to call PT&T. Fried returned the call and said he would put a check for $300 in the mail that evening. He refused to talk further with PT&T. On September 20 PT&T received the $300. It mailed a denial notice to Fried on September 27 for the balance of the August bill, which was $343.63. On October 1 PT&T called Fried and explained that the charges were still outstanding and that it needed a minimum payment on the account of $400 at that time. Fried advised PT&T that he could not afford to do that and he wanted to pay the current charges and whatever else he could afford at that time. On October 13 Fried made a $200 deposit. PT&T called Fried and spoke with Ad Fried who indicated that his son was out of town on his honeymoon and had the checkbook with him. PT&T stated that it would take a $200 payment with the balance due on Monday,

October 18. A payment of $200 was made on October 13, which was reflected on the October 17 bill. That bill was for $572.08, which included the outstanding balance as well as the $200 credit. PT&T contacted Fried on October 20 and explained that it had not disconnected his service because he was away on his honeymoon, but the charges were due. PT&T asked for the full amount of $385.68 by 5:00 p.m. that evening and indicated that if it was not received the service was to be disconnected. Fried was unhappy with that arrangement, and the matter was referred to PT&T's district manager. Fried subsequently spoke with the district manager, who agreed to continue service if Fried paid $225.96 by 5:00 p.m. on October 22 and the balance by 5:00 p.m. on October 27. Fried was told by the district manager that failure to do so would result in disconnection and a requirement to pay restoration charges and deposit fees. Fried paid $225.96 on October 22. He paid $160 on October 27 by cash and check. However, on November 2, his $100 check was returned by the bank for insufficient funds. On November 3 PT&T called Fried about the returned check. He said he would put the money in PT&T's night deposit box on Friday, November 5, in the San Leandro office for receipt on Monday morning, November 8. The money was not received by PT&T. PT&T called and left messages on Fried's answering machine on November 8 and November 9. Fried did not respond to the messages, and on Tuesday, November 9, the service was temporarily disconnected for nonpayment. The November 9 disconnect was proper and in accordance with Rule 11(2)a of PT&T's Tariff No. 36-T.

10. Fried's service was restored after the November 9, 1976 disconnection on November 16, 1976 after Fried deposited $533.62 with the Commission. Thereafter, Fried was in arrears with his November and December 1976 bills. On December 22, 1976 PT&T sent Fried a notice stating that his service was subject to disconnection. Fried did not

respond to the notice. On December 29 PT&T left a message on Fried's answering machine requesting that he contact PT&T. Fried returned the call and said that he did not have time to talk and that he would be back in his office on January 5 or 6 and would call PT&T on January 7. Fried did not call PT&T on January 7. On January 13 PT&T called Fried and left word on his answering machine for him to call PT&T. Fried called PT&T on January 14 and made arrangements to pay $225.76 in PT&T's San Leandro public office on January 18. Fried did not keep that commitment. Since Fried had posted money with the Commission, PT&T checked with its staff and was advised that further payment had not been received by the Commission. PT&T mailed another denial notice for the amount due for the November, December, and January bills. Fried did not respond to the second notice. On February 25, 1977 PT&T contacted its internal regulatory staff and was informed that their checking with the Commission staff indicated that Fried had not contacted the Commission and to proceed with its normal course of business. Fried's service was temporarily disconnected on the 28th of February.

11. On March 1 Fried called PT&T and informed it that he would not pay PT&T directly and that the Public Utilities Commission had refused to accept his money. He wanted to know if he could pay to a third party. PT&T told Fried that he could only make his payments to it or to the Commission. PT&T also agreed to and did send Fried a letter specifying the payments which were needed to restore service. The letter was as follows:

> "Dear Mr. Fried:
>
> "Per our conversation on March 2, I am writing to advise you of the amount needed to restore full telephone service. The amount needed is $478.57. This is

comprised of outstanding charges for the bills dated:

"November 17 in the amount of	$189.29
"December 17 in the amount of	106.76
"January 17 in the amount of	122.52
"Total	$418.57
"and a restoral charge of	60.00
"GRAND TOTAL	$478.57

"These charges exclude monthly advertising charges and any monies already posted with the Public Utilities Commission.

"Sincerely,
"Mrs. L. Dupuis"

12. Case No. 10205 was filed on November 16, 1976 along with a customer deposit of $533.62. As a result of the deposit, the Commission directed PT&T to end the November 9 disconnection and restore service to Fried. However, the dispute between the parties did not abate. Pending disposition of Case No. 10205, Fried withheld monies from PT&T. He attempted to deposit the money with the Commission but the deposits were refused by a staff engineer with whom Fried dealt. Thus, at the time of the February 28 disconnection, Fried owed money to PT&T which had not been paid nor deposited with the Commission.

13. On March 3, 1977 Fried filed Case No. 10275 along with a customer deposit of $478.57, which was received by the Commission. PT&T was directed to restore service. On March 28, 1977 in response to a five-day disconnection notice, Fried sought to deposit $85.33 with the Commission. After a temporary refusal, the matter was brought to the attention of the administrative law judge assigned to Cases Nos. 10205 and 10275 who directed that the money be received. The administrative law judge also provided for the receipt by the Commission of all disputed bill deposits by Fried pending disposition of these cases, which has been done.

14. Fried filed a claim against the Commission with the State Board of Control, which was denied. Thereafter, Fried filed Case No. 332041-5 in the Small Claims Court of Alameda County against the State of California seeking damages for the Commission's refusal to accept the disputed bill deposits. Judgment was initially entered against the State for $200 plus costs. On September 14, 1977 the judgment was vacated and modified to $150 plus $4 costs. That judgment has become final.

15. PT&T properly applied its tariff rules in connection with the February 28 disconnect. The fault was that of the Commission. Fried has been compensated for this in the judgment against the State.

16. There is no evidence in the record which would sustain a finding that PT&T's tariff provisions requiring a deposit to reestablish credit after a disconnection are discriminatory.

17. Rule 7(B)3 of PT&T's Tariff No. 36-T provides that "The amount of deposit required to reestablish credit is equal to twice the estimated average monthly bill for the last three months, when available." The tariff also provides for refund of the deposit with simple interest at the rate of 7 percent per annum after the customer has paid bills for twelve consecutive months without the service having been disconnected for nonpayment of bills. (PT&T Tariff No. 36-T, Rule 7(C), 7(D).)

18. A deposit was properly required by PT&T in connection with the restoration of service after the disconnection which occurred on November 9, 1976. In the light of the circumstances which occurred in connection with the February 28, 1977 disconnection, the time of deposit should not be extended because of that incident. Since the remaining amounts to date have been paid to the Commission as disputed bill

deposits and more than one year has elapsed since payment of the deposit, it should be refunded to Fried with interest at 7 percent per annum.

19. Fried was required to post a credit deposit of $280. This should be refunded to Fried, with interest, in accordance with Rule 7 of PT&T's Tariff No. 36-T.

20. Fried has forwarded to the Commission $3,423.89 in disputed bill deposits.

Conclusions of Law

1. The establishment of different classifications for residential and business service is not unconstitutional.

2. The question of whether all telephone directory listings for San Leandro should appear in one directory should not be adjudicated in these proceedings.

3. Fried is entitled to no reparations because all directory listings for San Leandro are not in one directory.

4. PT&T did not act unreasonably in changing its San Leandro office from a business to a public one.

5. Fried is not entitled to an order requiring PT&T to advertise in The Friday Observer.

6. Fried is not entitled to reparations in connection with the listing of his address in PT&T's directories.

7. Fried is not entitled to any reparations in connection with the installation of telephone service at 709 MacArthur Boulevard, Oakland, California.

8. PT&T did not violate any provision of law or order or rule of the Commission in affixing and removing the drop wires at 709 MacArthur Boulevard, Oakland, California.

9. PT&T's temporary disconnection of Fried's telephone service on November 9, 1976 was proper and in accordance with its tariffs. Fried is not entitled to any reparations or other relief in connection with that disconnection.

10. PT&T's temporary disconnection of Fried's telephone service on February 28, 1977 was proper and in accordance with its tariffs. Fried is not entitled to any reparations or other relief in connection with that disconnection.

11. PT&T's tariff provisions requiring a deposit to reestablish credit after a disconnection are not discriminatory.

12. PT&T should be ordered to refund Fried's credit deposit of $280, with interest, in accordance with Rule 7 of its Tariff No. 36-T.

13. The disputed bill deposits made by Fried in connection with these matters should be disbursed to PT&T.

14. Fried is entitled to no other relief in these proceedings.

O R D E R

IT IS ORDERED that:

1. The question of whether all directory listings for San Leandro should appear in one telephone directory is excluded from determination herein and is reserved for an appropriate proceeding with an adequate record.

2. Within five days after the effective date of this order, The Pacific Telephone and Telegraph Company (PT&T) shall refund Fried's credit deposit, with interest, in accordance with the provisions of Rule 7 of PT&T's Tariff No. 36-T.

3. The Executive Director shall disburse to PT&T the disputed bill deposits made by Fried in the sum of $3,423.89, as augmented to the effective date of this order.

4. Except as provided in this order, the relief sought in Cases Nos. 10205 and 10275 is denied.

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

Dated at San Francisco, California, this 22nd day of August, 1978.

ROBERT BATINOVICH
President

WILLIAM SYMONS, JR.

VERNON L. STURGEON

Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.