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ORIGINAL

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DEAN COLLINS AND MARY COLLINS, )

Complainants, )

vs. )

PACIFIC TELEPHONE COMPANY, )

Defendant. )

(ECP)

Case No. 10532

(Filed March 27, 1978;  
amended May 31, 1978)

Dean Collins, for complainants.  
Ms. V. Henderson, for defendant.

O P I N I O N

The complainants allege that: (1) during the past five years the defendant has been grossly negligent in charging them for a listing in its yellow pages directory which the complainants contend they ordered and never received, and that the defendant has refused to reimburse them for service they paid for and did not receive, in violation of its tariff P.U.C. No. 36-T, Rule No. 14(2); (2) the Los Angeles office of the Commission has refused to accept their deposits concerning a disputed charge by the defendant; and (3) because the complainants have complained about the poor service at the defendant's Glendale business office, they have been subjected to severe harassment. The complainants request the Commission to order that: (1) the defendant reimburse funds to them for the five years that they have paid for yellow page directory service and not received such service, plus interest on the sum due; (2) the Commission's Los Angeles office be instructed to accept deposits pursuant to the Commission's rules relating to disputed

charges; (3) the defendant be ordered to return the deposit heretofore made by the complainants, plus interest on such amounts; and (4) the defendant be ordered to upgrade its service in its Glendale business office and to cease harassing the complainants.

The case was originally set for hearing on June 8, 1978, but at the request of the complainant Dean Collins by letter of June 3, 1978, the matter was taken off calendar and thereafter reset for Thursday, July 13, 1978. At the request of the same complainant by letter of July 11, 1978, the hearing was again removed from the calendar and set for October 16, 1978 at 9:30 a.m. in Los Angeles before Administrative Law Judge James D. Tante, at which time the hearing was held and the matter was submitted on that date. The hearing was held pursuant to Section 1702.1 of the Public Utilities Code and Rule 13.2 of the Commission's Rules of Practice and Procedure (Expedited Complaint Procedure).

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On May 31, 1978 the complainants filed an amendment to the complaint, which was subsequently withdrawn by their letter of July 11, 1978.

Prior to the hearing the complainants deposited with the Commission by Cash State Receipts No. 24222, April 4, 1978; No. 24325, May 11, 1978; and No. 24455, July 12, 1978; in the amounts of \$83.94, \$67.93, and \$190.28, respectively; and impounds MI 8314 and MI 8315, February 28, 1978; in the amounts of \$24.88 and \$50.36, respectively, for a total sum of \$417.39.

Except as admitted by the answer, the defendant denies the allegations of the complaint. The defendant alleges that the complaint does not state facts sufficient to constitute a cause of action and that the cause of action is barred, at least in part, by Section 735 of the Public Utilities Code,<sup>1/</sup> in that any claim for reparation prior to March 24, 1976 is barred by that statute. In addition, the defendant alleges that it has no record of the complainant Dean Collins as a customer and the services complained of relate to services provided only to Mary Collins, therefore, the complainant Dean Collins has no standing to proceed with the complaint and the complaint should be dismissed.

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Dean Collins testified for the complainants. Gordon Schmidt, an administration manager in its directory department, and Patricia Ann Arkes, its manager for customer operations in the business section of the Glendale office, testified for the defendant.

The complainants' witness testified that he was president of the California Swing Club and in that capacity had service with the defendant during approximately January 1, 1973 to December 31, 1977, a period of five years. He stated that approximately on January 1, 1973 he requested that the defendant place an ad in the classified directory at a cost of \$3.75 per month, which during a five-year period would amount to \$225. He stated that during the five-year period, the ad did not appear in the classified directory and he is entitled to have the \$225 plus \$50 interest returned to him. He stated that the defendant has already repaid \$227, so only approximately \$50 still remains due and unpaid.

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<sup>1/</sup> The two-year statute of limitations under Section 735 rather than the three-year statute of limitations under Section 736 applies because complainants, although seeking reparations, do not allege the violation of any of the provisions of Sections 494 and 532.

The witness testified that when he subscribed for the business telephone approximately January 1, 1973, he was told that he could have the listing in block letters in the white pages or a line in the yellow pages, and he ordered a line in the yellow pages under the heading "Organizations and Clubs".

He testified that the defendant's Glendale office has been harassing him. He stated that at approximately 4:15 p.m. to 4:30 p.m. on a Friday he was in a line at that office waiting for a teller, there was only one person at the teller's window, and he had to wait a long time.

The defendant's witness Schmidt testified that upon the complainant subscribing for a business listing, he received a one-line listing in the yellow pages, which was under the sub-heading "Associations", at no additional charge. He stated that the complainant was billed \$3.75 a month for a boldface listing in the white pages, and was not billed for any listing in the yellow pages. He stated that the \$3.75 charge was set forth on the complainant's bill each month during the five-year period as directory advertising.

The witness testified that upon subscribing to the service in 1973 the complainants requested the boldface listing in the white pages for which they were billed during the five-year period and signed a contract to that effect; however, the defendant does not keep such contracts for more than three years and the contract was destroyed. He also testified that the computer printouts indicate that the subscribers requested the boldface type. He stated that the defendant was first questioned concerning the boldface type listing on November 7, 1977, almost five years after the first monthly charge of \$3.75 for the listing, when the complainants changed their business service to residence service.

He testified that pursuant to the defendant's policy the contract had been destroyed after three years, and the defendant returned payments to the complainants of \$3.75 per month for the period March 1975 to November 1977, in an amount of \$119.13 plus \$9.45 interest, for a total of \$128.58. He stated that the repayment to the complainants for any period prior to March of 1975 was not made inasmuch as the complainants' claim for the earlier period was barred by the statute of limitations.

The witness testified that in the ordinary course of business of the defendant boldface listings in the white pages are inserted only when and as requested by the subscriber. He stated that the cost for such a listing in the yellow pages would be \$2.50 or \$2.75, instead of \$3.75.

The defendant's witness Arkes testified that the complainant Collins talked to her concerning his complaint and her investigation revealed that on July 29, 1977 he was there a short time before 5:00 p.m., and there were approximately 15 persons in line at the teller's window. She stated that at that time there was one teller and a cashier who would assist during the busy period, that 80 percent of the time there was no one waiting in line, on other occasions there was a delay of approximately 10 minutes, and on very unusual occasions there was a longer wait. She stated that the teller who handles the night-box payment has also been assisting since October 1977 in order to make an effort to eliminate any waiting problem.

She stated that at the present time at the complainant's address there are two residential services, one in the name of Mary Collins and one in the name of M. Viera (apparently the maiden name of Mary Collins). She testified that the \$95 deposit that was made on September 7, 1977 was refunded to the complainant Mary Collins on September 8, 1978.

She testified that the complainant Mary Collins' bill of July 29, 1977 was \$51.01, was unpaid, on August 23, 1977 she was given five days' notice, and on August 30, 1977 payment had not yet been received, so the telephone was temporarily disconnected. Payment was received on September 2, 1977.

She testified that on November 7, 1977, when the service was changed from business to residential, the complainant Dean Collins was no longer a subscriber.

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Discussion

Section 1702 of the Public Utilities Code provides in part that a complaint must set forth:

"...any act or thing done or admitted to be done by any public utility, including any rule or charge heretofore established where fixed by or for any public utility in violation or claim to be in violation, of any provision of law or of any order or rule of the commission."

A complaint which does not allege a violation by a utility of a provision of law or order of the Commission will be dismissed.

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Except for the complainants' allegations relating to their request for reparation for payment of directory advertising and return of their deposit, their complaint does not allege any act or thing done in violation or claimed to be in violation of any provision of law or of any order or rule of the Commission.

The evidence shows that in the ordinary course of business the defendant would not provide such boldface listing without a request of the complainants, and it is difficult to understand that the complainants would pay the \$3.75 monthly bill for five years before bringing the alleged error to the attention of the defendant. In addition, the complaint herein was filed on March 27, 1978, so the request for reparation by the complainants for any period prior to two years before that date, March 28, 1976, is barred by Section 735 of the Public Utilities Code. (Advisor v Pacific Tel. & Tel., Decision No. 87959 dated October 12, 1977 in Case No. 9931.) The maximum amount of reparation which may have been due between March 28, 1976 and March 27, 1978 is \$90, which is considerably less than the \$227 which the complainant testified that he had been repaid, or the \$119.13 plus \$9.45 interest (or \$128.58) which one of the defendant's witnesses testified had been repaid to the complainants. Therefore, the complainants are not entitled to any reparation.

The complainant Dean Collins testified that the Los Angeles office of the Commission is accepting his deposits concerning disputed charges, therefore, the complaint he has had with that office appears to have been remedied. The situation which occurred on the one occasion complained of by the complainant in the defendant's Glendale business office appeared to have been unusual and did not occur on many occasions. In addition, it appears that the defendant has taken steps to prevent that situation from recurring in the future. The complainants' request that the Commission order the defendant to refrain from sending him notices that his telephone will be disconnected unless he

pays his bill within a certain period of time has no merit, inasmuch as the defendant is merely complying with its properly filed tariff. The complainants have not and are not being harassed by the defendant. The complainants' deposit has been returned by the defendant.

The complainants are not entitled to the relief sought herein and their requests should be denied. The sums heretofore deposited by the complainants with the Commission of \$417.39, and any other sums so deposited in connection with this complaint should be remitted to the defendant.

O R D E R

IT IS ORDERED that the relief sought herein is denied, and the sum of \$417.39 and any and all other sums, if any, heretofore deposited with the Commission in connection with this



complaint by the complainants Dean and Mary Collins, or either of them, shall be remitted to the defendant, The Pacific Telephone and Telegraph Company.

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

Dated at San Francisco, California, this 30<sup>th</sup> day of January, 1979.

Robert D. Howell  
President  
Leonard M. Grimes, Jr.  
Clair T. Delrish

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Commissioners

Commissioner Leonard M. Grimes, Jr.  
Present but not participating.

Commissioner John E. Bryson  
Present but not participating.