

Decision No. 91373 MAR 4 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

United Publishers Corporation,)
)
 Complainant,)
)
 vs.)
)
 The General Telephone Company)
 of California,)
)
 Defendant.)

Case No. 10699
(Filed December 11, 1978)

Gardner & Anten, by Lewis Anten,
 Attorney at Law, for complainant.
 H. Ralph Snyder, Jr., and Richard
 Pötter, by Richard Potter, Attorney
 at Law, for defendant.

O P I N I O N

General Telephone Company of California (General), a public utility, is a telephone corporation, as defined in Section 234^{1/} of the Public Utilities Code, providing fixed and mobile telephone service in portions of the State of California. In connection with its telephone service General supplies its customers with white page directories listing subscribers' names, addresses, and telephone numbers and with yellow page advertising directories. The directories, inter alia, include information on telephone rates, calling areas, use of the telephone, and public service information. Some of the listings are for subscribers not served by General.

^{1/} "234. 'Telephone corporation' includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this State."

An affiliate of General, General Telephone of California Publishing Company (GP), solicits yellow page advertising for various communities in California. Pursuant to an agreement between General and GP, 57 percent of the revenues derived from the publication of yellow page directories is remitted to General as other operating revenues.

On August 21, 1978 General filed with the Commission Advice Letter No. 4286 which sought authority to establish a new "Marina Del Rey-Venice" neighborhood directory (MV directory) in its Santa Monica Exchange, encompassing its Ocean Park^{2/} and Del Rey central office boundaries. The 44,571 station count (excluding General's administrative stations), used for establishing the directory rate group number for the proposed directory, was increased to 77,690 in a supplemental filing dated August 23, 1978. General's original station count did not include its Ocean Park central office stations. As a consequence of the increased station count, the directory rate group number was increased from 17 to 21. General's tariffs contain higher advertising rates based on ascending rate group numbers. The territorial map shown on General's MV directory overlaps a portion of its Western section white and yellow page directory map. The MV directory area also overlaps areas in which United Publishers Corporation (United) publishes a neighborhood directory.

^{2/} Ocean Park is an area within the city of Santa Monica whose boundaries probably do not coincide with General's Ocean Park central office boundaries.

Inter alia, Advice Letter No. 4286 states:

"Copies of this Advice have been mailed to those interested utilities and/or parties indicated in our letter to the Public Utilities Commission dated August 21, 1973 and also to all parties of record in Cases No. 10327 and No. 10346."^{3/}

United sought an order prohibiting General from going forward with its proposal to publish and distribute its MV directory on public interest grounds. United requested a temporary injunction and a permanent injunction restraining General from implementing Advice Letter No. 4286 because General's proposal is inconsistent with the public interest because: (a) it would result in an increase in rates since potential advertisers would be coerced into subscribing for additional advertising in General's MV directory to avoid losing business; (b) General's neighborhood directory would encompass only a portion of the city of Santa Monica which would result in a loss of community identity; (c) advertisers would receive fewer benefits from their advertisements in General's area-wide Santa Monica telephone directory due to a lesser utilization of that directory; and (d) publication of overlapping directories would increase the cost of advertising which, in turn, would result in increased prices.

^{3/} The parties include Rick M. Stein, Attorney at Law (Texas), appearing for Western Independent Directory Publishers Association. Clarke Directory Publications, Inc. (Clarke) was permitted to become a co-complainant in C.10327. No separate appearance for Clarke was listed in D.88552 dated March 7, 1978 in C.10327 and C.10346. The supplemental filing did not contain a mailing notification.

After notice, public hearings were held before Administrative Law Judge (ALJ) Levander on February 15 and 20, 1979 in the city of Los Angeles. The matter was submitted on the latter date subject to receipt of concurrent briefs, a reconciliation of discrepancies between General's map Exhibits 17 to 19, and the filing of additional maps as late-filed Exhibit 20.^{4/} This proceeding is submitted.

Notice of Advice Letter Filing

This Commission's General Order No. 96-A sets forth rules governing the filing and posting of schedules of rates, rules, and contracts relating to rates applicable to telephone utilities. At the time General filed Advice Letter No. 4286 the following provisions of General Order No. 96-A were in effect.

"G. Notice. At the time of making a tariff filing with the Commission, each gas, electric, telephone (including radiotelephone), telegraph, water, and heat utility shall furnish a copy of the advice letter and a copy of each of the related tariff sheets to the following:

1. Competing utilities either privately or publicly owned.
2. Adjacent utilities either privately or publicly owned.
3. Utilities, either privately or publicly owned, having requested such notification.
4. Other interested parties having requested such notification.
5. In the event of increases not previously authorized by Commission order, or in the event of changes in a directory which reduce community listings in the directory, affected customers where practicable, or in lieu thereof, a statement in the advice letter of other means of notification of said customers. Utilities requesting authority to increase rates by advice letter filing in accordance with Section VI shall give written notification to each customer

^{4/} General states that there were no additional maps to be filed as Exhibit 20.

of the present and proposed rates, including a statement that the customer may communicate with the Commission regarding the proposed increase not later than fifteen days after the date of distribution of the notice.

"In the advice letter, include a list of the parties receiving the tariff filing and other customers notified.

"H. Protest. Any protest should be filed by letter or telegram and received not less than 10 days prior to the regular effective date of the tariff filing."

United contends that: (a) General has been misleading the Commission concerning purported notifications given to independent directory companies to preclude timely protests; and (b) General is not entitled to equitable considerations from the Commission due to its inequitable conduct.

United's witness, Clarke, (see footnote 3) testified that: (a) he did not receive a copy of General's Advice Letter No. 4286; and (b) if he had received the advice letter, he would have promptly notified United's president. Sworn ^{depositions} ~~dispositions~~ from the secretary/ treasurer and from the special counsel to Western Independent Directory Publishers Association (WIDPA) state that they had not received General's Advice Letter No. 4286.

General's revenue director, Marshall Hea, testified that: (a) he was responsible for filing Advice Letter No. 4286 and the supplement; (b) WIDPA was on General's mailing list for all advice letters concerning directory advertising until August 10, 1978; (c) WIDPA was removed from General's mailing list after two other advice letter filings sent to WIDPA were returned in the mail with the notation "Addressee Unknown, Return to Sender"; (d) General was unable to place a call or get a new listing for WIDPA at the latter's old address; (e) General did not mail its Advice Letter No. 4286 to

WIDPA; (f) General informally notified the Commission staff that WIDPA had been removed from its mailing list; (g) the Commission was not notified that WIDPA did not receive a copy of Advice Letter No. 4286; (h) General did not attempt to contact Mr. Stein (who previously represented WIDPA and Clarke); (i) in December 1978 WIDPA furnished General with a new mailing address beginning in January 1979; and (j) General is now sending directory advice letters to WIDPA at its new address.

Mr. Hea also testified that: (a) the following statement contained in Advice Letter No. 4286, which was copied from a previous filing, was in error: "Analysis revealed that the majority of local calls were completed within existing central office boundary areas or within combined central office boundaries"; and (b) substantially less^{5/} than a majority of calls were made within those boundaries.

United attacks General for its careless attitude in reporting customer calling patterns to the Commission, since this information cannot be tested without an opportunity for hearing.

5/ Another witness for General, Mr. Baker, testified that: (a) over 25 percent of the local calls, which is probably below the average for this type of survey, were made within the MV directory central office boundaries; (b) he believed there were extenuating circumstances for the lower than average percentage of local calls because the affected exchanges are extremely large permitting local calling, rather than toll calls, from Reseda and Van Nuys to El Segundo and Hawthorne; and (c) another directory was discontinued due to lack of local interest-11 percent of the calls in that central office area were local calls.

General argues that: (a) since Advice Letter No. 4286 had not been suspended within 30 days after it was filed, pursuant to Section 455 of the Public Utilities Code, no restraining order could be issued prior to completion of the hearing; and (b) the request for a temporary restraining order (TRO) should be denied because United did not press the issue in a timely fashion, United was not entitled to notice, General would be injured by such action, and United did not show that it would be irreparably damaged.

At the time General filed Advice Letter No. 4286 and the supplement thereto, United was not entitled to notice of the filings. General should have mentioned the removal of WIDPA from its advice letter mailing list in its filing.

General made reasonable attempts to contact WIDPA, the organization after prior mailings to WIDPA had been returned. Absent instructions, it is not clear that General should notify WIDPA's special counsel in C.10327 of its filing involving a different directory area. As noted above, Clarke was permitted to be listed as co-complainant in C.10327. Clarke's president was a witness in that proceeding but D.88552 does not indicate that an appearance slip for Clarke was filed.

At the first day of hearing, the ALJ stated that he advised Presiding Commissioner Richard D. Gravelle that if United's evidence convinced him that the Commission should grant the extraordinary relief sought, he would bring the matter to the Commissioner's immediate attention to permit the Commission to act upon the request.

United presented its entire case framing the issues it wished the Commission to consider. These issues included: (a) lack of notice and misrepresentation; (b) the superiority of its directory versus that of General's; (c) its lower rates; (d) its success in attracting new business—including a 28.3 percent increase in revenues

with no increase in rates-in a head-to-head competition with GP for advertising in the Marina Del Rey area; (e) preservation of community identity in a directory; (f) purported rate increases by General; (g) increased costs of doing business; (h) coercion of potential advertisers; and (i) overall public policy questions.

At the end of that day, General advised the Commission of the advancement of its scheduling-distribution of the MV directory was to begin the next day.

After that hearing, the ALJ contacted Commissioner Gravelle with his recommendation on the TRO. Commissioner Gravelle did not recommend preparation of a TRO for immediate Commission consideration but he requested the ALJ to immediately contact other Commissioners to determine if there was support for issuance of a TRO. There was not any support for a TRO. We reaffirm that United had not shown that any irreparable damage to it would occur if General's MV directory was to be distributed. The ALJ promptly notified United's president and General of the Commission's position on the TRO.

General was remiss in not tracking the distribution date of a disputed directory. General's failure to notify the Commission of the changed distribution date created unnecessary time pressures on the Commission.

The remaining issues raised by United boil down to issues of Commission policy in regulating yellow page advertising and whether General's filing was a rate increase. On the latter question the rates charged by General are the authorized rates contained in its tariffs. There is no rate increase involved in Advice Letter No. 4286.

Since the TRO requested by United was not issued, the thrust of the remaining issues concern whether the Commission should prevent General from issuing future MV directories. The Legislature has precluded Commission action on these issues prior to January 1, 1983 through passage of Section 728.2 of the Public Utilities Code which states:

"728.2. The commission shall have no jurisdiction or control over classified telephone directories or commercial advertising included as part of the corporation's alphabetical telephone directories, including the charges for and the form and content of such advertising, except that the commission shall investigate and consider revenues and expenses with regard to the acceptance and publication of such advertising for purposes of establishing rates for other services offered by telephone corporations.

"This section shall remain in effect only until January 1, 1983, and on such date is repealed, unless a later enacted statute chaptered on or before January 1, 1983, deletes or extends that date.

"SEC.2. The commission shall study and report to the Legislature on or before January 1, 1982, on the impact of the provisions of Section 728.2 of the Public Utilities Code as added by this act upon competition in the telephone directory advertising industry."

If the statute is not extended, United may file a new complaint to preclude General from issuing a MV directory in 1983 or petition for the reopening of this case.

Findings of Fact

1. In the latter part of 1978 WIDPA moved and did not supply General with a new address for receiving directory advice letters.

2. General made reasonable efforts to contact WIDPA before removing WIDPA from its mailing list.

3. General did not give the Commission notice in writing of its removal of WIDPA from its directory advice letter mailing list. However, General informally notified the staff of its action. Written notice should have been given in Advice Letter No. 4286.

4. Since United did not request notice of directory advice letter filings by General, it was not entitled to notice of or receipt of a copy of the filing of Advice Letter No. 4286 by General.

5. United did not file a timely protest requesting suspension of General's Advice Letter No. 4286.

6. A timely protest requesting suspension of an advice letter does not automatically result in a suspension.

7. General proposed to charge its authorized rates for advertising in its Advice Letter No. 4286.

8. United's directory advertising revenues increased while it was directly competing with General for directory advertising.

9. United showed no irreparable injury to itself requiring a TRO.

10. United seeks Commission action to prevent General from publishing future MV directories.

11. Section 728.2 of the Public Utilities Code removes publication jurisdiction and control of classified telephone directories from the Commission until January 1, 1983.

12. Absent a change in legislation, the Commission cannot act on United's request prior to January 1, 1983.

Conclusions of Law

1. United was not entitled to notice of the filing of Advice Letter No. 4286 by General.

2. United did not file a timely protest requesting suspension of General's Advice Letter No. 4286.

3. United showed no irreparable injury to itself requiring a TRO.

4. The rates proposed by General in Advice Letter No. 4286 are not an increase in rates.

5. The Commission cannot consider granting the relief sought by United before January 1, 1983 due to the passage of Section 728.2 of the Public Utilities Code.

6. Future Commission action on United's complaint is dependent on future legislative actions.

7. The complaint should be dismissed without prejudice.

O R D E R

IT IS ORDERED that Case No. 10699 is dismissed without prejudice.

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

Dated MAR 4 1980, at San Francisco, California.

John E. Byron
President
Vernon L. Stutzman
Charles W. Shuck
Robert T. DeLoach
Thomas W. Quinn
Commissioners