

Decision No. 91374 MAR 4 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

HOLLYWOOD PROFESSIONAL SCHOOL,
aka HOLLYWOOD CONSERVATORY OF
MUSIC AND ARTS, a Corporation,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,

Defendant.

Case No. 10726
(Filed March 13, 1979)

ORDER OF DISMISSAL

Complainant, Hollywood Professional School, aka Hollywood Conservatory of Music and Arts, a corporation, alleges that it has three semi-public telephones on its premises which are available for its students to telephone their respective parents or guardians or to telephone their respective homes without expense to the complainant. It alleges that in order for one of the students to be excused from school, permission must be obtained from his parent or guardian and such permission must be witnessed by one of the complainant's employees. It alleges that two of the semi-public telephones are advertised in the telephone directory and it receives many incoming calls on those two telephones.

Complainant further alleges that it has one extension on two of the three semi-public telephones, but needs two extensions on each of those two telephones. It alleges that it has requested the defendant to provide two extensions on the two telephones involved herein, (which would enable its personnel to monitor student calls to parents), but defendant has refused to comply with the request because the Commission, by reason of Advice

Letter No. 12799 resulting in Resolution No. T-9837, has prevented defendant from complying with complainant's request. Complainant requests an order permitting and requiring defendant to install and permit the complainant to have two instead of one extension on each of two semi-public telephones described in the complaint.

In addition to requesting an order that the Commission waive the provisions of defendant's tariff preventing defendant from complying with its request, it requests other orders which will become moot in the event that its request for the additional extensions is not granted.

Defendant has filed an answer to and a motion to dismiss the complaint.

Defendant's tariff Schedule Cal. PUC No. 36-T, effective January 5, 1976, Rule No. 1, defines semi-public service as "A customer telephone service designed for use of a customer and the public in locations somewhat public in character."

Defendant's Advice Letter No. 12799 dated July 12, 1978, approved by Commission Resolution No. T-9837, resulted in a change of its tariff Schedule Cal. PUC No. 54-T, Second Revised Sheet 7-A, effective July 12, 1978, under the heading "Special Conditions 2.b. Semi-public Toll Stations", which now provides under Subsection (1), in part, that "one non-dial extension station without coin collector, at the rate shown above, may be installed on the premises on which the associated primary station is located."

Defendant attempted to obtain a deviation from its tariff by its Advice Letter No. 12799 in order to comply with complainant's request. The Commission denied defendant's request for a deviation by its Resolution No. T-10071 dated July 3, 1979.

Complainant seeks relief which defendant cannot legally grant. If additional extensions are placed on a semi-public telephone, defendant will have violated its filed tariff schedules. Furthermore, if complainant received such additional extensions, defendant would be granting a preference in violation of Section 453(a) of the Public Utilities Code, which provides in part:

"No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage."

The complaint does not set forth any act done by defendant which is claimed to be in violation of any provision of law or of any order or rule of the Commission. Section 1702 of the Public Utilities Code provides in part that a complaint may be made:

"...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..."

Rule 9 of the Commission's Rules of Practice and Procedure provides in part:

"A complaint may be filed by any corporation or person,...setting forth any act or thing done or omitted to be done by 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."

A complaint which does not allege a violation by a utility of a provision of law or order of the Commission will be dismissed. (L.J.T. Industries, Inc. and R. H. Mitman v Pacific Tel. & Tel. Co., D.86740, dated December 14, 1976; Saul v General Telephone Company of California, D.86413, dated September 21, 1976; Benton v General Telephone Company, D.86407, dated September 21, 1976; and Blincoe, et al v Pacific Tel. & Tel. Co. (1963) 60 CPUC 432.)

Complainant does not allege that defendant has committed any act or done any thing or omitted to commit any act or do any thing which is in violation or claimed to be in violation of any provision of law or any order or rule of the Commission. Therefore, complainant has not stated facts sufficient to constitute a cause of action and the complaint should be dismissed. In addition, granting complainant's request would be granting a preference in violation of law as set forth in Section 453(a) of the Public Utilities Code quoted above.

The Commission finds that the complaint does not state facts sufficient to constitute a cause of action and should be dismissed. Further, the essence of complainant's request was addressed when we considered defendant's Advice Letter No. 12799 and denied the requested deviation.

IT IS ORDERED that Case No. 10726 is dismissed.

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
William L. Thompson
Richard W. Howell
Alfred T. Wright
Lawrence W. Smith
Commissioners