

Decision No. 92925

APR 21 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TOWARD UTILITY RATE NORMALIZATION,
a non-profit California
corporation,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a California corporation;
and FOOTE, CONE & BELDING/HONIG,

Defendants.

Case No. 10238
(Filed January 17, 1977)

Edward M. Goebel, Attorney at Law, for Toward
Utility Rate Normalization (TURN), complainant.
Christopher Rasmussen, Attorney at Law, for The
Pacific Telephone and Telegraph Company,
defendant.

O P I N I O N

By its complaint Toward Utility Rate Normalization (TURN) alleges that The Pacific Telephone and Telegraph Company (PT&T) conducted false and misleading radio and newspaper advertising campaigns in San Francisco, Los Angeles, Orange County, and San Diego during the period from November 29, 1976, to January 9, 1977.

Public hearing was held before Administrative Law Judge Daly in San Francisco on January 15, 1979, and February 7, 1979, and the matter was submitted on concurrent opening and closing briefs, the latter having been filed on April 27, 1979.

By Decision No. 83162 dated July 23, 1974, this Commission ordered PT&T to make the public aware of lifeline rates. By Decision No. 85287 dated December 30, 1975, the Commission specifically

ordered that the amount of \$150,000 be spent during the calendar year 1976 for lifeline advertising in areas where lifeline is offered. (San Francisco Bay Area, Los Angeles, Orange County, and San Diego.)

During 1976 PT&T spent slightly in excess of \$150,000 in advertising lifeline rates on radio stations and newspapers aimed at older, black, Spanish, and Chinese audiences. The contents of the advertisements read as follows:

(Newspaper)

WHERE CAN I GET LIFELINE
TELEPHONE SERVICE?

From us, Pacific Telephone. In 1968 we introduced lifeline telephone service for residence customers with fixed or limited incomes. We offer it now for \$2.50 a month for a limited amount of local calling. Additional usage costs more. If lifeline fits your income, call your Pacific Telephone Service Representative (Exhibit 2).

(Radio)

Pacific Telephone has a special service you should know about. It's called lifeline. We designed it for people on fixed or limited incomes, and we offer it for \$2.50 a month for a limited amount of local calling. Additional usage costs more. If lifeline fits your income, call your Pacific Telephone Service Representative (Exhibit 1).

TURN contends that the ads were false and misleading because they implied that only those on fixed and limited incomes could qualify for lifeline telephone service, whereas the service is available to all residential telephone customers, regardless of income.^{1/}

^{1/} Decision No. 83162 dated July 23, 1974, required certification that the combined annual income of all persons living in the residence where the service would be installed would be less than \$7,500. This limitation was removed by Decision No. 83540 dated October 1, 1974.

TURN's Presentation

TURN introduced the testimony of three witnesses. Their testimony is summarized as follows:

Jerry Mander

Received a Bachelor's degree in economics and advertising from the University of Pennsylvania. Received a Master's degree in advertising and international economics from Columbia University. In 1965 joined a San Francisco advertising agency, which became Freeman, Mander & Gossage. Since 1974 has been engaged in speaking and writing articles in the field of advertising. Believes that the ads attempted to tell people that if they are on fixed or limited incomes, poor, they could qualify for a rate category that other people could not.

The restrictive language is:

"We designed it for people on fixed or limited incomes..." "If lifeline fits your income..." Exhibit 1.

"We introduced it for residential customers with fixed or limited incomes..."

"If lifeline fits your income..." Exhibit 2.

Believes that the deliberate design of the ad is to lead people to believe that lifeline telephone service is only for those on fixed and limited incomes.

Nothing in the ads inform the public that anyone can qualify for lifeline service. It should be promoted on the basis of saving money. Many people could have been attracted to the service with the simple approach, "Save money now. Buy this cheaper telephone service."

Eillein Mallory Lappert

Saw and heard the ads after moving to her residence in Mill Valley. Her impression was that the service was not for her because: "The connotations are that it was for the poor, for the people who live on Social Security."

The words "...fixed or limited...." gave her the impression that she did not qualify.

Presently has two sons temporarily living with her and, therefore, makes more than 30 calls a month, but when they leave she will try lifeline service.

Herbert Chao Gunther

Executive Director of Public Media Center, a national advertising agency, which specializes in public service advertising. Was invited by PT&T to sit on their Consumer Advisory Board to evaluate the effectiveness of its advertising. Has seen a presentation of PT&T's entire campaigns for radio and television for the years 1976, 1977, and 1978.

Believes the lifeline campaign as set forth in Exhibits 1 and 2 is poor because it is unclear and fails to communicate the central message and that corrective advertising would be appropriate. The largest audience is defined as the elderly, minority groups, and people on fixed and limited incomes. The easiest kind of advertising campaign is the one that features financial incentives as its key point. A service that would provide 30 calls for \$2.50 would have a strong appeal to minority groups and those on fixed incomes.

PT&T's Presentation

PT&T presented, as its sole witness, Mr. J. P. Golightly, who is staff director of advertising for PT&T. His testimony is summarized as follows:

J. P. Golightly

Handled the 1976 lifeline advertising campaign. Commenced with a review of the order (Decision No. 85287) that directed PT&T to use mass media advertising for lifeline service. Believes that the 1976 campaign fulfilled the purpose for which it was intended. Bases his opinion upon the results of a study conducted immediately after the campaign (Exhibit 3), which indicates

that new lifeline subscribers interviewed had a 51 percent awareness of the ads and the target audience had a 52 percent awareness of the ads. The study indicates that the main features of the ads recalled by those interviewed were: lifeline was for older folks; lifeline would provide access to the outside world in emergencies; the service was cheaper; and that the price was \$2.50 a month. It was not the purpose of the 1976 lifeline campaign to create the impression that the service was limited to low and fixed income subscribers, nor to minority subscribers, nor to elderly subscribers. ✓

Lifeline is not a profitable service and PT&T tries to make the public aware of the service, but not to promote it. Promotional advertising attempts to get the customer to act in some fashion and is usually designed to generate revenue. The lifeline campaign was conducted on an informational basis. There was no call for action and there was no attempt to promote or control the service.

Discussion

Lifeline service was originally designed for persons on a limited or low income. PT&T's reference to this historical fact was accurate. We are persuaded, however, that it was also misleading. By referring to the original purpose of lifeline service, PT&T's advertisements suggested that the service is available only to those on a low or limited income, which, of course, is no longer true and was not true at the time the advertisements ran.

PT&T's advertising studies conducted following the 1976 campaign and following a similar 1977 advertising campaign confirm the deceptive effect of the 1976 advertisements. In contrast to the 1976 campaign, the 1977 advertising indicated that residence customers could make

up to thirty local calls for \$2.50 per month, but did not mention that it was for people with fixed or limited incomes. In studies following both the 1976 and 1977 campaigns, new lifeline subscribers and members of the targeted subscriber groups were asked questions to determine their awareness of the advertising and its content. The results were as follows:

<u>Recall New Lifeline Subscribers</u>		<u>Recall Target Subscribers</u>	
<u>1976</u>	<u>1977</u>	<u>1976</u>	<u>1977</u>
51%	49%	52%	48%

When those respondents with specific recall of the ads were asked what the main idea of the advertising was, the answers given were:

	<u>1976</u>		<u>1977</u>	
	<u>New Lifeline Subscribers</u>	<u>Targeted Subscribers</u>	<u>New Lifeline Subscribers</u>	<u>Targeted Subscribers</u>
Proven Recall	25%	18%	24%	14%
Specific Recall				
(1) For people with low or fixed incomes	9%	10%	3%	5%
(2) For people who do not make many calls	8%	5%	8%	9%
(3) For older people	7%	7%	6%	4%
(4) Have access to outside for emergencies	2%	-	1%	1%
(5) To save money/get phone for \$2.50	1%	-	14%	8%

The number of respondents who understood that lifeline service can save money increased rather dramatically when the reference to the historical purpose of lifeline was deleted. The studies display a similar decline in the percentage of respondents who indicated that lifeline service is for people with low or fixed incomes.

TURN contends that by publishing false and misleading advertisements, PT&T is in violation of Sections 1709, 1710, 1711, and 3369 of the California Civil Code, Sections 17500 through 17535 of the California Business and Professions Code, and our Decision No. 85287 in which we ordered PT&T to advertise lifeline service. By way of relief TURN requests that we: (1) order PT&T to cease and desist advertising lifeline service in a manner which implies that eligibility is limited to those on fixed or limited incomes, (2) order PT&T to run corrective advertising, (3) make further advertising of lifeline service subject to prior review by TURN and the Commission, (4) exclude advertising costs incurred by PT&T for the advertising found misleading, (5) order PT&T to create a \$200,000 fund to be administered by TURN for corrective advertising, (6) find PT&T to be in contempt, and (7) fine PT&T under Public Utilities Code Sections 2107 and 2108.

Although we agree with TURN that the advertising was misleading, we do not find the relief requested appropriate at this time.

In Decision No. 83162 the Commission ordered PT&T "to advertise its lifeline service in appropriate media to inform those for whom it was especially designed..." PT&T initiated an advertising campaign pursuant to this directive with advertisements in weekly newspapers containing essentially the same language as involved in this complaint. Subsequently, in Decision No. 85287 the Commission found PT&T's advertising effort to date to be inadequate and ordered PT&T

to spend \$150,000 during 1976 for lifeline advertising, the majority of which was to be devoted to television, radio, and general circulation newspapers. We did not criticize the content of the earlier advertising, although perhaps in retrospect we should have. PT&T responded by expanding the campaign begun pursuant to the directive in Decision No. 83162 incorporating the language of which TURN now complains. We find no evidence, however, that PT&T intended any misrepresentation. Under these circumstances we do not feel it appropriate to find PT&T in contempt, nor do we feel the costs of the advertising should be disallowed.

PT&T no longer advertises lifeline service in a manner which implies that eligibility is limited to low-income persons, nor is there any evidence that it intends to do so in the future. Since this complaint was filed, the availability of lifeline service has become generally well known. Consequently, neither does there appear to be any need at this time for corrective advertising.

The relevant sections of the California Civil Code and Business and Professions Code cited by TURN provide for criminal sanctions and injunctive relief beyond the jurisdiction of this Commission to impose.

Findings of Fact

1. Lifeline service was originally designed for persons on limited or low income.
2. In Decision No. 83162 the Commission ordered PT&T to advertise its lifeline service in appropriate media to inform those for whom it was especially designed.
3. PT&T responded to the directive in Decision No. 83162 by initiating an advertising campaign in weekly newspapers which contained similar language to that later used in the 1976 campaign.

4. Subsequently in Decision No. 85287 the Commission found PT&T's advertising to date to be inadequate and ordered PT&T to spend \$150,000 during 1976 for lifeline advertising, the majority of which was to be spent on television, radio, and general circulation newspapers.

5. The content of PT&T's prior advertisements was not criticized by the Commission in Decision No. 85287.

6. PT&T responded to Decision No. 85287 by expanding their advertising campaign begun pursuant to the directive in Decision No. 83162.

7. Pursuant to Decision No. 85287 PT&T spent in excess of \$150,000 on radio and newspaper advertising in San Francisco, Los Angeles, Orange County, and San Diego during the period from November 29, 1976 to January 9, 1977.

8. By referring to the original purpose of lifeline service these advertisements suggested that the service was available only to persons with limited or low incomes, which is no longer true and was not true at the time the advertisements ran.

9. Studies of PT&T's advertising campaigns in 1976 and 1977 confirm the deceptive nature of the 1976 lifeline advertising.

10. We find no evidence that PT&T intended any misrepresentation.

11. PT&T no longer advertises lifeline service in a manner which implies that eligibility is limited to low-income persons, nor is there any evidence that they intend to do so in the future.

12. There does not appear to be any need for corrective advertising at this time.

13. Under the circumstances involved in this case, we do not feel it appropriate to find PT&T in contempt, nor do we feel the costs of the advertising should be disallowed.

Conclusions of Law

1. The relevant sections of the Civil Code and Business and Professions Code cited by TURN provide for criminal sanctions and injunctive relief beyond the jurisdiction of this Commission to impose.

2. The relief requested should be denied.

O R D E R

IT IS ORDERED that the relief requested in Case No. 10238 is denied.

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

Dated APR 21 1981, at San Francisco, California.

John E. Boyer
President
Richard D. Hight
Donald M. ...
Victor ...
Dorinda C. ...
Commissioners