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Decision No. 45516

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JEROME B. ROSENTHAL and SAMUEL P. NORTON individually and doing business as a partnership under the name of Rosenthal and Norton, Petitioners, vs. PACIFIC TELEPHONE AND TELEGRAPH COMPANY, a Public Utilities, Respondent.	Case No. 5449

Samuel P. Norton, for petitioners.
Pillsbury, Madison & Sutro, by Alexander Imlay, and Lawler, Felix & Hall, by by Leslie C. Tupper, for respondent.
Edward R. Brand, in propria persona, protestant.

O P I N I O N

The petitioners herein, a partnership engaged in the practice of law and composed of Jerome B. Rosenthal and Samuel P. Norton, allege in their complaint that their offices are located at 242 North Canon Drive, Beverly Hills, California, and that in the conduct of their law practice they presently use telephone service under numbers CRestview 6-7121-2-3-4-5-6-7 and 8, and BRadshaw 2-5435-6 and 7. They further allege that on April 1, 1950 the law firm of Beilenson, Rosenthal & Norton became the subscribers to the aforesaid telephone numbers and that on March 30, 1951 this law firm was dissolved and Beilenson moved from the premises, the telephones remaining in the same location and under the same numbers. On May 1, 1951 the law firm of Brand, Rosenthal, Norton & Miller became the subscribers to the above-mentioned telephone service. They likewise allege that on

February 23, 1953 this last-named law firm was dissolved and on March 7, 1953 Brand moved from the premises. Petitioners contend that they are entitled to the continued use of the same telephone numbers, that they have applied to the telephone company for supersedure therefor, and that they will suffer great and irreparable injury, damage and harm if they are deprived of these numbers.

Under date of March 31, 1953, the respondent telephone company filed an answer admitting certain of the facts alleged in the petition and denying others and contending that under the rules of the telephone company the petitioners have failed to allege facts which would entitle them to supersede to the service in question or that would entitle them to the relief sought.

A public hearing was held in Los Angeles on April 24, 1953 before Commissioner Huls and Examiner Syphers at which time evidence was adduced and the matter submitted.

At the hearing, through testimony presented, it was established that the law firm of Beilenson, Rosenthal & Norton became subscribers to telephones CRestview 6-7121-2-3-4-5-6-7-8-9-0 and BRadshaw 2-5435-6-7 on April 1, 1950. This installation consisted of a PBX board having the above-listed rotary phone numbers. On April 1, 1951 Mr. Beilenson withdrew from the partnership and became a subscriber to a different number. During the month of April, 1951 the telephone service continued in the name of Beilenson, Rosenthal & Norton. On May 1, 1951 the law firm of Brand, Rosenthal, Norton & Miller began the practice of law and on that date an application for supersedure service was made by representatives of that firm to the telephone company. Exhibit 5 is a request for supersedure dated August 1, 1951, signed by Lawrence W. Beilenson and Edward R. Brand relating to the Crestview numbers listed above. Exhibit 6 is a service application card

signed by Edward R. Brand for Brand, Rosenthal, Norton & Miller relating to the Crestview numbers. Exhibit 7 is a request for supersedure relating to the Bradshaw numbers and signed by Lawrence W. Beilenson and Edward R. Brand, and Exhibit 8 is a service application card for these Bradshaw numbers signed by Edward R. Brand for Brand, Rosenthal, Norton & Miller.

The facts further disclosed that on February 23, 1953 Edward R. Brand received a letter signed by Jerome B. Rosenthal, in which Rosenthal & Norton purport to terminate the partnership of Brand, Rosenthal, Norton & Miller. On February 26, 1953 the secretary to Mr. Brand received a letter from Rosenthal & Norton advising that the firm of Rosenthal & Norton no longer required her services. On February 27 a Mr. Cooper, one of the junior lawyers in the firm of Brand, Rosenthal, Norton & Miller, received a letter advising that his services were no longer required, and on the same date Mr. Brand received a letter from Rosenthal & Norton stating that certain employees were no longer employed by the firm of Brand, Rosenthal, Norton & Miller. Likewise, on the same date, Mr. Brand received another letter from Rosenthal & Norton advising that they had taken steps to terminate the lease on the premises as of April 30, 1953.

On March 6, 1953 Mr. Brand applied for supersedure service for the telephone numbers in question to a new firm of Brand & Cooper and the following day moved from the premises. On March 9, 1953 Rosenthal & Norton also applied for supersedure service for the same telephone numbers. Exhibits 10 and 12 are the requests for supersedure which were signed by Rosenthal & Norton on March 9 relating to the telephone service in question, and Exhibits 9 and 11 are the service application cards signed by Rosenthal & Norton on this same date. Exhibit 13 is the request

for supersedure signed by Brand for CRestview 6-7121 on March 6, 1953, and Exhibit 14 is the service card signed by Brand on the same day for the same telephone.

On March 9 Rosenthal & Norton wrote a letter to the telephone company, Exhibit 1, advising that they were the remaining members of the firm of Brand, Rosenthal, Norton & Miller, that they had formed a new firm, and that they desired to retain the telephones in question.

During the period between March 9 and March 23, 1953, there were discussions between the parties concerned and representatives of the telephone company but no agreement was reached. On this last-named date the telephone company wrote a letter to Rosenthal & Norton stating that the company was arranging to intercept all calls to CRestview 6-7121 and BRadshaw 2-5435 effective March 25, 1953. On March 25 this interception commenced for the numbers CRestview 6-7121-2 and BRadshaw 2-5435. Exhibit 3 is a letter dated March 23 from Rosenthal & Norton to the telephone company protesting the interception of calls. On this same date a second letter was addressed to the president of the telephone company setting out the stand of Rosenthal & Norton in this matter.

Additional testimony was presented by employees of the telephone company relating to conversations had with the parties in question concerning the telephone service. From the time the interception of calls was commenced on March 25, 1953 to April 21, 1953, the telephone company kept a record of the number of calls intercepted for Rosenthal & Norton and their employees, those intercepted for Brand & Cooper and their employees, and those intercepted for Mr. Miller. This record was received as Exhibit 15.

It should be noted that Mr. Miller did not take part in this controversy and made no claims to the former telephone service.

At the conclusion of the testimony counsel for the respondent telephone company moved that the complaint be dismissed on the grounds that this was a contest between former law partners and that the telephone company had followed its normal procedure. Both parties had filed requests for supersedure and could not agree; therefore, the telephone company, it was contended, had no alternative but to assign new numbers to each of the parties and to intercept the calls. It was further contended that the telephone company, in taking the action it did, followed its published tariffs and, further, that the petitioners have no proprietary right to the telephone numbers. This motion was joined in by Mr. Brand.

The motion was opposed by Mr. Norton on the grounds that Rosenthal & Norton are on the same premises and that they are entitled to continue with the same telephone numbers. It was contended that the telephone company had received notice from the prior firm of Brand, Rosenthal, Norton & Miller in that the majority of the partners, namely Rosenthal and Norton, had signed an application for supersedure and, further, that the new firm of Rosenthal & Norton likewise had signed this application for supersedure. To conform to the telephone company's rules, it was pointed out, it was not necessary for all partners to sign an application, it being observed that the prior applications, as mentioned in this record, had been signed by representatives of the partnership concerned and not by all parties. It was further contended that while the partnership of Brand, Rosenthal, Norton & Miller may be dissolved for some purposes, it was not discontinued but was still in existence for the purpose of winding up its affairs and, in this connection, a majority of the partners may

request a supersedure of telephone service. At the conclusion of the hearing the motion was taken under submission.

After consideration of all of this record we hereby find that the complaint should be dismissed. The most recent subscriber to the telephone service here in question was the law firm of Brand, Rosenthal, Norton & Miller. We do not here decide the effect of the actions of the partners in attempting to terminate this partnership but it is clear from this record that the relations of the individual partners who comprised the firm became such that they did not desire to continue telephone service under that firm name. Brand, Rosenthal, Norton & Miller ceased to exist as a subscriber to telephone service as evidenced by the testimony in this record and the exhibits constituting the requests for supersedure and service applications which were filed by both Mr. Brand and Messrs. Rosenthal and Norton.

Under this state of facts we further find that the action of the telephone company in setting up the interception of calls for CRestview 6-7121-2 and BRadshaw 2-5435 was reasonable and in accordance with their published rules and regulations. Rule and Regulation No. 23 (B) reads as follows:

"(B) Supersedure

An applicant who otherwise qualifies for the immediate establishment of service under Section (A) of this Rule and Regulation, may supersede the service of a subscriber discontinuing that service, when the applicant is to take service on the premises where that service is being rendered and a written notice to that effect from both the subscriber and applicant is presented to the Company and where an arrangement, acceptable to the Company, is made to pay outstanding charges against the service."

The requests of Mr. Brand and Messrs. Rosenthal and Norton for supersedure do not meet the requirement of this rule

inasmuch as in neither case is there a satisfactory notice from the subscriber. The telephone company apparently was faced with opposing requests by members of the same partnership.

In taking the action it did in assigning new numbers to each subscriber and intercepting calls to the old numbers, the telephone company was merely acting within the provisions of its rules permitting assignment of numbers and permitting reasonable changes in telephone numbers. Rule No. 17 (D) reads as follows:

"(D) Changes in Telephone Numbers

> The assignment of a number to a subscriber's telephone service will be made at the discretion of the Company. The subscriber has no proprietary right in the number, and the Company may make such reasonable changes in telephone number or central office designation as the requirements of the service may demand."

By this decision we do not propose to interfere with the dissolution of the partnership nor with any court proceedings related thereto. What we decide here is simply that under the complaint and evidence in this case the partners are not entitled to a restoration of the old telephone numbers. This is a matter properly within the jurisdiction of this Commission. In Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853), we stated at page 858:

> "The right of a person to utility services, such as telephone and telegraph, is not an inherent right but is due solely to the fact that the State, in the exercise of its police powers, has seen fit, under the provisions of the Public Utilities Act, to require the utility to serve the public without undue or unreasonable discrimination. ..."

We here reaffirm the principle therein stated, in so far as it is applicable to the facts of the instant case.

O R D E R

A petition and answer having been filed in the above-entitled case, a public hearing having been held thereon, the Commission being fully advised in the premises and basing its decision upon the record in this case,

IT IS ORDERED that the complaint be, and it hereby is, dismissed.

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

Dated at San Francisco, California, this 19th day of May, 1953.

R. J. Dwyer
President.
Justus F. Craemer
Harold P. Huls
Kenneth Potter
Thos. E. Whelan
Commissioners.