

Decision No. 73855**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

GERALD H. KILGORE,

Petitioner,

vs.

GENERAL TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Respondent,

CITY OF LOS ANGELES, a
municipal corporation,

Intervenor.

Case No. 7971

Petition to Amend Order
(Public Utilities Code,
Section 1708)ORDER DISMISSING PETITION TO AMEND DECISION

Decision No. 72782, issued July 18, 1967 concluded that the use to which petitioner Kilgore put certain telephone facilities of General Telephone Company of California, "encourages the perpetration of an unlawful act, namely, bookmaking, and which use is contrary to the public policy of the State of California." It concluded further that Kilgore should be prohibited from using those facilities in furtherance of activities described in the decision. Ordering paragraph 5 of that decision read as follows:

"5. General Telephone Company of California shall forthwith remove all of its telephone facilities from petitioner's offices located at 10687 Santa Monica Boulevard, Los Angeles."

On February 26, 1968 intervenor, City of Los Angeles, filed a "Petition to Amend Order (Public Utilities Code, Section 1708)."

That section provides as follows:

"1708. The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as an original order or decision."

The City's petition alleges that Kilgore has merely changed his location to an address in North Hollywood, is continuing business activities substantially identical to those described in Decision No. 72782, and now receives telephone service from Pacific Telephone and Telegraph Company. It alleges that the effect and intent of the decision has been circumvented and that Kilgore has merely moved his operations and is now using facilities of Pacific Telephone for the same uses heretofore found contrary to public policy. The petition alleges that telephone equipment is supplied by Pacific Telephone at the North Hollywood address to a subscriber listed as Kathleen Alden Publications, and to a subscriber listed as J. K. Sports Journal, such telephone facilities being in a building owned by Kilgore.

All of the above allegations are based "upon the information" contained in affidavits of three police officers attached to the petition.

The first affiant has seen Kilgore entering and leaving the North Hollywood building; has seen a vehicle known to be driven by Kilgore parked at the rear of the building; and states that a check with Pacific Telephone indicated equipment similar to that employed at the former address, certain facilities being listed to Kathleen Alden Publications, other facilities being listed to J. K. Sports Journal, and billing on the latter equipment being to one Dino Natalie, an acquaintance of Kilgore. Affiant states he has been advised by the City Clerk's office that the property was in the name of Kilgore; that in October of 1967 affiant personally arrested an individual at another location, part of the evidence seized being a J. K. Sports Journal listing football games, the schedule imprinted as being published weekly at the old address; and that in December of 1967 a fellow investigator participated in the arrest of other individuals, and related to affiant the circumstances of the arrest and showed affiant certain described evidence.

The second affiant has received information for four years from a confidential source, such information having proven reliable in all instances. The confidential informant has related to affiant that he takes service from "JK", and that "JK" means Gerald Kilgore. The informant told affiant that before November of 1967 he received sports service by dialing specified telephone numbers, and that about the second week in November of 1967 "JK" had changed his telephone number, service now being dispensed to the informant through a new telephone number, but that the procedure for obtaining, and the nature of the information dispensed, had not changed.

The third affidavit is in substance the same as the second affidavit.

Petitioner City requests as follows:

1. That the Commission, pursuant to sec. 1708, upon notice "to the public utilities affected" and after opportunity to be heard, amend the existing decision, "and prohibit continuing operations by Gerald H. Kilgore * * *."
2. That "the public utilities affected", Pacific Telephone and General Telephone, be required to advise the Commission as to the subscribers, equipment, and termination dates at the old address, and the equipment and subscribers supplied at the new address.
3. That the Commission advise all subscribers, affected utilities, and Kilgore of an opportunity to be heard on the requested amendment, and that they be ordered to show cause why the order in Decision No. 72782 should not be amended so as to be applicable to the equipment presently installed and the facilities supplied by Pacific Telephone at the North Hollywood address.

Sokol v. Public Utilities Commission, 65 Cal.2d 247, held unconstitutional the then existing Commission rule (47 Cal. P.U.C.

853) requiring a communications utility to discontinue service to a subscriber if advised by any law enforcement agency that the service is being used for unlawful purposes. The court stated in part as follows:

"* * * whatever new procedure is hereafter devised must at a minimum require that the police obtain prior authorization to secure the termination of service by satisfying an impartial tribunal that they have probable cause to act, in a manner reasonably comparable to a proceeding before a magistrate to obtain a search warrant. In addition, after service is terminated the subscriber must be promptly afforded the opportunity to challenge the allegations of the police and to secure restoration of the service. A procedure incorporating these measures would provide substantial protection to the subscriber without hindering the enforcement of gambling laws." (65 Cal.2d at 256.)

Thereafter the Commission reopened the proceeding in which the "discontinuance" rule had been issued, and after hearing prescribed a new rule. (Decision No. 71797 in Case No. 4930.)

The first paragraph of the revised rule reads as follows:

"1. Any communications utility operating under the jurisdiction of this Commission shall refuse service to a new applicant, and shall disconnect existing service to a subscriber, upon receipt from any authorized official of a law enforcement agency of a writing, signed by a magistrate, as defined by Penal Code Sections 807 and 808, finding that probable cause exists to believe that the use made or to be made of the service is prohibited by law, or that the service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in the violation of the law."

The rule further provides in part that any person aggrieved by action taken or threatened to be taken under the rule has the right to file a complaint with the Commission and to request interim relief.

Decision No. 72782 in Case No. 7971 directed General Telephone to remove its facilities from particular offices at a specified

address. Pacific Telephone was not a party to that proceeding, and is not a public utility affected by the order issued therein. Yet petitioner City seeks to have that order amended so as to apply to facilities of Pacific Telephone at a different address.

Instead of taking appropriate action in accordance with the revised "discontinuance" rule, in effect petitioner is asking the Commission to determine whether probable cause exists to believe that telephone facilities are being used to violate or assist in violation of the law. This is the function of a magistrate, and Sokol does not require the Commission to assume that judicial power.

The petition to amend is dismissed without prejudice.

Dated at San Francisco, California, this 19th day of MARCH, 1968.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners