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Decision 90 11 055 NOV 21 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation
and Suspension on the Commission's
own motion of tariffs filed by Advice
Letters No. 8 and 9 of Telesphere
Network, Inc.)

ORIGINAL

(I&S) Case 89-11-020
(Filed November 22, 1989)

ORDER TO SHOW CAUSE

On March 14, 1990, the Commission issued Decision (D.)90-03-030. In this decision, we ordered the suspension of Advice Letters No. 8 and 9 of Telesphere Network, Inc. ("Telesphere"). These Advice Letters proposed the offering of intrastate, interLATA 900 services. Accordingly, Telesphere does not have Commission authority to offer and/or provide intrastate 900 telephone services.

In monitoring the compliance by public utilities of state law, Commission orders, and related rules and regulations, Commission Staff ("Staff") in the Telecommunications Branch of the Commission Advisory and Compliance Division ("CACD") has discovered, investigated and concluded that Telesphere has and is continuing to hold itself out and act as a provider of intrastate 900 telephone services, although Telesphere has no Commission authority to offer or provide such services. The Staff's conclusions regarding Telesphere's unauthorized conduct are supported by facts set forth in the attached affidavit of Martha J. Sullivan, a public utilities regulatory program specialist in the Telecommunications Branch of CACD. The evidence proffered by Staff is summarized below.

On August 30, 1990, KRON (San Francisco Channel 4) featured a news story about "900-4-LOW GAS," an information line which provided details about cheap gas in six Bay Area cities. The

news story described it as a "toll call." The transcribed telephone number is (900) 456-9427. According to the Bellcore "900 Table" in Staff's possession, the "456" prefix is allocated to Telesphere. In a certified letter, dated September 12, 1990, the Chief of the Telecommunications Branch, Kevin P. Coughlan, notified Telesphere about this matter and requested an explanation. In a letter, dated September 20, 1990, Telesphere's attorney, Thomas J. MacBride, Jr., stated that Telesphere terminated the service when it was apprised of the unauthorized conduct by Mr. Coughlan's letter. On November 6, 1990, Ms. Sullivan called the same telephone number and found that the information line had not been terminated as Telesphere's attorney had claimed. However, in a letter dated November 19, 1990, Mr. MacBride indicated that this number was terminated on November 13, 1990, rather than September 18, 1990. Although the information provider ("IP") has retained the number for a new program, (900)456-9427 is no longer operational.

On October 11, 1990, the Telecommunications Branch reviewed an advertising insert (copy provided as Exhibit A in the attached Affidavit) in the San Francisco Bay Guardian for that week, which was entitled "Dial 900 Directory." All but one of the more than thirty 900 telephone numbers listed in this directory had prefixes which are allocated to Telesphere. The directory's address is Temecula, California. All four of the 900 numbers listing an address are located in California.

On October 30, 1990, Ms. Sullivan heard advertised the number (900) 234-5477 on radio station KKIS 990 AM, which operates from Contra Costa County in the San Francisco Bay Area. Listeners were solicited to call this number to indicate how they intended to vote on a local county ballot measure in the November 1990 election. According to the Bellcore "900 Table" in Staff's possession, the prefix 234 is allocated to Telesphere.

In a letter, dated November 15, 1990, and accompanying its responses to CACD's data requests of November 9, 1990, Telesphere acknowledged the following: (1) some of its California located IPs employ 900 telephone numbers, calls to which are

terminated exclusively inside California; and (2) calls involving Telesphere's 900 services do geographically originate and terminate in California.

By the foregoing, it appears that Telesphere previously may have held itself out and acted as a provider of intrastate 900 telephone services, and that it may be continuing to act in such a manner. Accordingly, Telesphere may have violated and may be in continuing violation of D.90-03-030, which suspended Telesphere's tariff offering said services on March 14, 1990.

IT IS ORDERED that Telesphere shall show cause why it should not be held, pursuant to Public Utilities Code Section 2113, in contempt for its failure to comply with Commission orders; why Telesphere and its employees and/or agents should not be ordered to immediately cease and desist from violating D.90-03-030; and why other specific remedies and/or penalties, including but not limited to reopening the record in I & S Case 89-11-020 to consider further evidence brought forth by this Order to Show Cause, should not be ordered, as deemed necessary by the Commission, to assure that intrastate 900 information service is not offered or provided in contravention of the aforementioned Commission order. Telesphere has the burden of showing, given the facts documented by the CACD, why the Commission should not issue such a cease and desist order, and other specific remedies and/or penalties as it deems necessary.

IT IS FURTHER ORDERED that Telesphere may file a written response to this order, as may other interested parties. Said responses shall be filed no later than December 7, 1990. An original and twelve (12) copies shall be filed with the Commission's Docket Office and a copy served upon each of the parties on the service list for C.89-11-020. Prehearing shall be held on December 17, 1990, at 10:00 a.m. in the Commission Courtroom at 505 Van Ness Avenue, San Francisco, California, at which time Telesphere shall, and other parties may, appear and be heard. At a hearing, on a date to be set by the Administrative Law Judge, staff will present testimony, as to the matters contained in the attached Affidavit, and may present additional evidence either by testimony or through documentation concerning

the matters relevant to this Order to Show Cause. Telesphere is directed to present testimony responsive to the matters asserted in Staff's affidavit, and more particularly the items cited in the previous paragraphs of this Order to Show Cause.

The Executive Director is directed to cause a copy of this order and the affidavit of Martha J. Sullivan to be served by certified mail upon Telesphere Network, Inc., whose mailing address is: Attention: Mr. Jack A. Pace, Two Mid America Plaza #500, Oak Brook Ter, IL 60181-4451; and to serve one copy by mail upon Telesphere Network, Inc.'s attorney at 505 Sansome St., Ste. 900, San Francisco CA 94111, Attention: Thomas J. MacBride, Jr., and upon each of the parties in the service list for C.89-11-020.

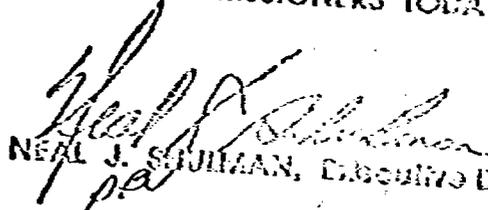
This order is effective today.

Dated NOV 21 1990, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. ORANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda being necessarily absent, did not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SULLIVAN, Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
and Suspension on the Commission's)
own motion of tariffs filed by Advice)
Letters No. 8 and 9 of Telesphere)
Network, Inc.)

(I&S) Case 89-11-020
(Filed November 22, 1989)

AFFIDAVIT OF MARTHA J. SULLIVAN
IN SUPPORT OF THE
ORDER TO SHOW CAUSE

My name is Martha J. Sullivan. I am employed by the California Public Utilities Commission as a public utilities regulatory program specialist. I am assigned to the Telecommunications Branch of the Commission Advisory and Compliance Division ("CACD"). My assigned duties include the monitoring of interexchange carriers' regulated telephone operations for compliance with Commission orders, rules and regulations and state law. I declare under oath that the following is true and correct, and based on my personal knowledge. If called as a witness, I could testify competently to the matters contained below.

1. In a letter, dated April 3, 1990, the Chief of the Telecommunications Branch of the CACD, Kevin P. Coughlan, confirmed with Telesphere Network, Inc. ("Telesphere") and its counsel, Thomas J. MacBride, Jr., that pursuant to Commission Decision (D.)90-03-030, Telesphere remained without the legally-required Commission authorization to provide intrastate 900 service and could not hold itself out nor act as a provider of 900 telephone service originated and terminated within the state of California; and that Telesphere Network, Inc. was not authorized to hold itself out to provide intraLATA transport of telephone services;

2. That in the course of compliance monitoring, I have become aware of several incidents in which Telesphere has and is continuing to offer and/or provide intrastate 900 service subsequent to the Commission's suspension of its 900 service

tariffs on March 14, 1990, in Decision 90-03-030. Those incidents are elaborated below.

3. On August 30, 1990, "900-4-LOW GAS" was featured in a KRON (San Francisco Channel 4) evening news story on local responses to the Iraqi invasion of Kuwait as an information line for cheap gas in six Bay Area cities. The news story described it as a "toll call." The transcribed telephone number is (900) 456-9427. According to Bellcore's "NOF Services and Features Committee 900 Table" ("900 Table") in my possession, the "456" prefix is allocated to Telesphere Network, Inc. I called this number from my home telephone in San Francisco, California, on September 7, 1990, at 6:47 a.m. (I called from home because the Commission telephones are blocked from 900 and 976 numbers.) The recorded program I reached offered information on the location of low-priced gasoline in six Bay Area cities. The program did not give the price of the call, nor provide a delayed period during which the caller could hang up before incurring charges.

4. In a certified letter to Telesphere, dated September 12, 1990, Mr. Coughlan inquired about this 900 number which appeared to be targeted to the San Francisco Bay Area. In a letter, dated September 20, 1990, Telesphere's attorney, Thomas J. MacBride, Jr., stated that Telesphere had shut down the number and that:

"The program in question was operated by the information provider ('IP') contrary to Telesphere company policy regarding marketing of 900 service directed solely at local end users in California. The program in question began operating on August 21, 1990 and was terminated when Telesphere became aware of the problem through your letter. (It is my understanding that termination occurred on September 18, 1990.)"

In this letter, Mr. MacBride further provided the address where calls were completed and the address of the information provider ("IP"), which were both in San Francisco, California. He concluded that:

" . . . Telesphere's 900 services are provided on an interstate interLATA national basis such that any intraLATA usage is only incidental. Consistent with PUC regulations, Telesphere has never held itself out as an intraLATA carrier in California. Telesphere's law department has issued a memorandum to the marketing division advising them that company policy is not to provide 900 services to local programs."
(p. 2)

5. On November 6, 1990, at about 6:20 a.m., I called (900)456-9427 from my home telephone. I reached the same "Bay Area Low Gas Prices" program which Mr. MacBride claimed in his letter of September 20, 1990, had been terminated allegedly on September 18, 1990. On November 7, 1990, I verified that the 456 prefix is still allocated to Telesphere.

6. In a letter dated November 19, 1990, Mr. MacBride indicated that this number was terminated on November 13, 1990, rather than September 18, 1990. Although the IP has retained the number for a new program, (900)456-9427 is no longer operational.

7. On October 11, 1990, I was provided with a copy of "Dial 900 Directory" which was an advertising insert (attached as Exhibit A) in the San Francisco Bay Guardian for that week. On this date, I reviewed this directory, in conjunction with Bellcore's "900 Table" in my possession, and noted that all but one of the more than thirty 900 telephone numbers listed in this directory had prefixes which were allocated to Telesphere. The directory's address is in Temecula, California. All four of the 900 numbers listing an address are in California, namely in the cities of Cerritos and Temecula.

8. On October 30, 1990, between 4:00 p.m. and 5:30 p.m., while driving on State business, I heard (900) 234-5477 advertised on radio station KKIS 990 AM, which operates from Contra Costa County in the San Francisco Bay Area. Listeners were solicited to call this number to indicate how they intend to vote on Measure E, a Contra Costa County ballot measure in the November 1990 election; the advertisement stated that the price of the call was \$.95 with

an unspecified portion going to unspecified "charity." According to Bellcore's "900 Table" in my possession, prefix 234 is allocated to Telesphere.

9. On November 9, 1990, the CACD issued a set of data requests, asking for information about where Telesphere's 900 services terminated, delivery of Telesphere's 900 services within the state, the advertisement and/or publicity by Telesphere's customers and/or subscribers regarding 900 services, and the capability and availability of Telesphere's 900 services within California.

10. Along with a letter dated November 15, 1990, Telesphere responded to these data requests by providing a list which contained information about the IPs who were customers and/or subscribers to its 900 services. The list provided the names and addresses of the customers, 900 telephone number or numbers, the state in which the services are terminated, and a brief description of the subject of the 900 service. This list was provided under Section 583 of the Public Utilities Code and General Order 66-C.

11. From the November 15, 1990 letter, the following facts were disclosed by Telesphere:

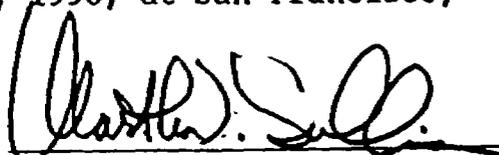
- a. As of November 14, 1990, Telesphere provides service to approximately 140 IPs located in California.
- b. Some of these California-located IPs employ 900 telephone numbers, calls to which terminate exclusively inside California.
- c. The California-located IPs offer 556 lines, of which 226 (40%) terminate outside California. Accordingly, 330 (60%) of these lines terminate inside the state. Therefore, California-located IPs have equipment both in and out of the state.
- d. Calls do geographically originate in the state and terminate at a California location.

12. As of the date of each of the above-mentioned incidents, Telesphere did not have Commission authority to offer and/or provide intrastate 900 telephone service.

13. As of the date of each of the above-mentioned incidents, Telesphere did not have Commission authorized tariffs in effect for intrastate 900 telephone services.

14. Based upon the foregoing, I believe that Telesphere has and is continuing to hold itself out and/or act as a provider of intrastate 900 telephone services without Commission authority, and in violation of Commission order.

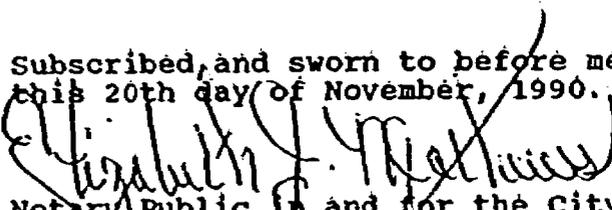
Executed on November 20, 1990, at San Francisco, California.



MARTHA J. SULLIVAN
Public Utilities Regulatory
Program Specialist
CACD Telecommunications Branch
California Public Utilities
Commission



Subscribed, and sworn to before me
this 20th day of November, 1990.



Notary Public in and for the City
and County of San Francisco
State of California
505 Van Ness Ave., Rm. 5300
San Francisco CA 94102

1.9

EXHIBIT A

THE NEXT 16
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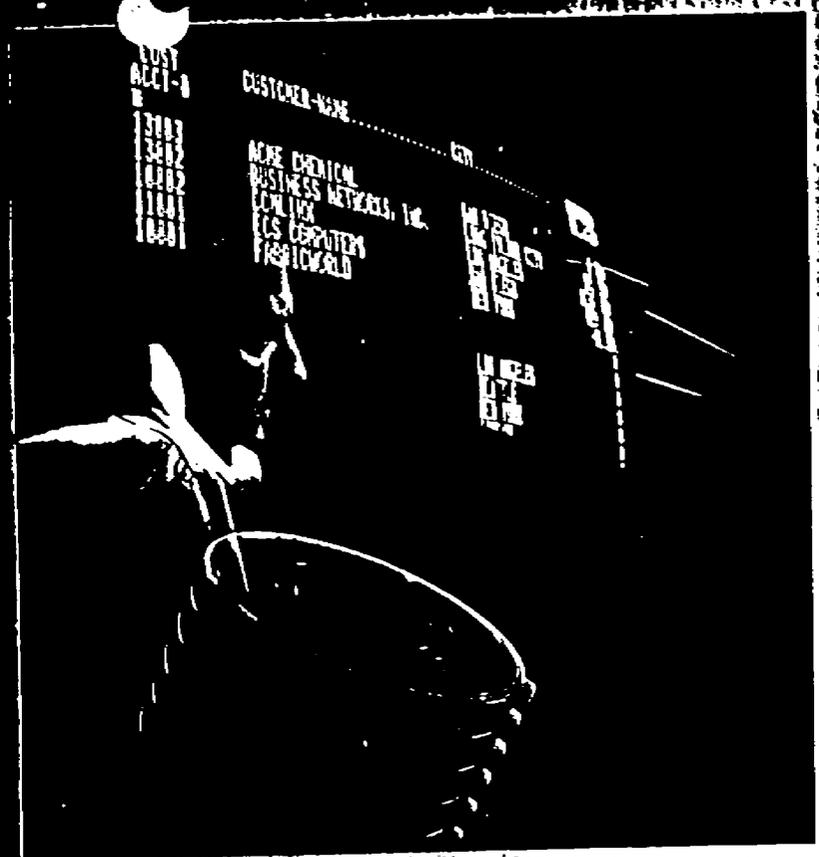


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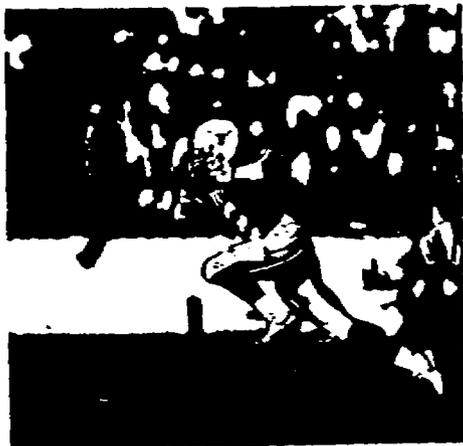
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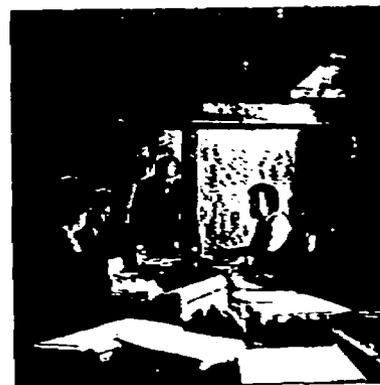
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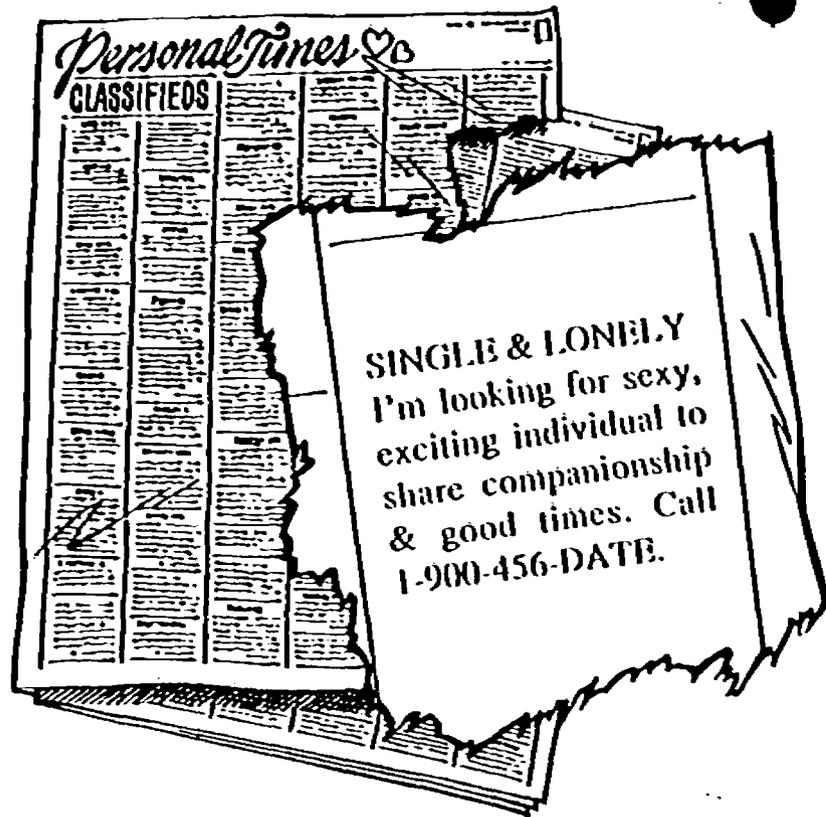
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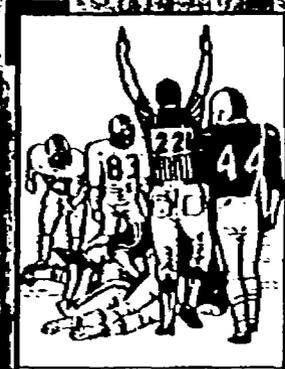
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