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Decision 92-03-084 March 31, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Shane Jonah,

Complainant,

vs.

Pacific Bell Telephone Company,  
a corporation,

Defendant.

**ORIGINAL**

Case 92-01-006  
(Filed January 10, 1992)

Shane Jonah, by Steve Emery Teich and  
David A. Blair, Attorneys at Law,  
complainant.

Colleen M. O'Grady, Attorney at Law,  
for Pacific Bell Telephone Company,  
defendant.

Frank Berry, Attorney at Law, for the  
Santa Clara County District Attorney's  
Office, interested party.

O P I N I O N

Introduction

In this proceeding, Ms. Shane Jonah (Jonah or complainant) dba "Studio 44," an escort service, seeks restoration of service to several telephone lines. Pacific Bell Telephone Company (PacBell or defendant) discontinued service to these telephone lines pursuant to an Order to Discontinue Service issued December 30, 1991 by Hon. Daniel E. Creed, Judge of the Superior Court of the State of California in and for the County of Santa Clara. However, at the hearing on this complaint, the Santa Clara County Deputy District Attorney advised that 4 of the 27 lines servicing the escort services should not have been included in Judge Creed's order or disconnected because they were not listed to

any of the affected escort services. These numbers, all in Area Code 415, are: 456-6249; 332-7323; 495-0400; and 257-4500. If the parties desire to seek amendment of Judge Creed's order to strike these four numbers from the list of numbers to be disconnected, they are free to do so. For our purposes, we will accept the District Attorney's statement and restrict our discussion and decision to the remaining 23 numbers<sup>1</sup>, all in Area Code 415, and consider complainant to be seeking restoration of service to those 23 numbers only.

Background

On or about October 1, 1991, in connection with an investigation of felony pimping and pandering activities by the operators of "College Escorts," "Gentlemen's Choice," both escort services, and the occupants of certain buildings in Marin and Contra Costa Counties, a search warrant was executed by police officers at four locations in Marin and Contra Costa Counties. Location 3 covered by the search warrant was Building 1, 64 Main Street (Upper Level), San Quentin, Marin County, California.

At the time the search warrant was executed at the foregoing San Quentin address, police officers, including at least three officers of the San Jose Police Department (SJPD) Vice Unit, discovered "a thriving outcall prostitution service in operation." (Affidavit of Officer K. Tanaka, SJPD Vice Unit, Exhibit 7.) According to Officer Tanaka, an individual on the premises at the time the search warrant was executed told him that she was one of four telephone operators paid \$500 per week to answer the phones for College Escorts, Gentlemen's Choice and Magique Escorts; and that all three of those agencies were located at that address. She

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1 457-2452; 457-6365; 331-2999; 775-5037; 571-1527; 932-2999;  
490-3915; 343-2800; 468-2800; 827-2800; 457-5163; 457-6369;  
457-6441; 457-6475; 256-4500; 945-4933; 332-2203; 792-0855;  
343-4500; 495-0440; 781-4500; 392-6900; 680-6900.

also stated that many of the callers to those services asked for specific sex acts from the "escorts" (Exh. 7).

While officers were still conducting the search at 64 Main Street, San Quentin, another telephone operator arrived to start her shift for the escort services. Upon being interviewed by officers, this employee stated that about 50 different women worked as "escorts" for the three agencies, but only about 25 or 30 worked reliably. This telephone operator told the officer that \$325 was the going rate for a credit card escort call, and that on a busy night an escort might be sent on five calls. Further, this telephone operator told the investigating officer that she was a convicted prostitute (Exh. 7).

In addition, during the execution of the search warrant, officers found several multi-line telephones. The phones rang often, and a third SJPD officer answered many of the calls, all of which were either men seeking escorts or escorts calling in to start work. Many of the men calling the services reportedly requested certain sex acts in return for payment by cash or credit cards (Exh. 7).

On or about October 14, 1991, a Mrs. Tracy, the owner of the premises [who appears not to have had any connection with the escort service operations] advised the SJPD Vice Unit that she had been to the premises on October 13, 1991, and met a woman who said that she was the "new owner" of Collegé Escorts. Mrs. Tracy told the officer with whom she spoke that at the time of her visit, there was at least one phone active and that at least one call came in while she (Mrs. Tracy) was there (Exh. 7).

Between October 14, 1991 and December 30, 1991, SJPD officers called some of the numbers recorded on the lines serving the premises and learned the businesses were still operating as escort agencies (Exh. 7).

On December 30, 1991, based on the affidavit of Officer Tanaka setting forth the above information, Judge Creed made a finding that "probable cause exists to believe that the use made or to be made of the [telephone] service is prohibited by law, and that the service is being or is to be used instrumentally, directly, or indirectly, to violate or assist in the violation of law." The Court further found "probable cause to believe not only that the subject telephone facilities have been or are to be used in the commission or facilitation of illegal acts, but that the character of such acts is such that, absent immediate and summary action in the premises, significant dangers to public health, safety or welfare will result," and signed an Order directing PacBell to disconnect the existing service to the 27 designated telephone numbers and not reissue any of those numbers for a one-year period (Exh. 7).

In conformity to Judge Creed's Order to Disconnect Service, PacBell disconnected service to all 27 numbers listed in the Order.

Following the disconnection of the 27 lines, Jonah filed the complaint herein seeking restoration of service to those 27 numbers. In her complaint, Jonah claims that she bought the business known as "Garnet Company dba College Coed Escorts, Gentlemen's Choice and Magique" located at upper Building 64, Main Street, San Quentin, Marin County, California, including all furniture and fixtures, as well as the telephones and numbers serving those phones. In support of her claim, Jonah attached to her complaint a copy of the Bill of Sale and Agreement covering the transaction.

Upon notification of the filing seeking restoration of service, the SJPD objected.

PacBell Tariff Rule 31, "Legal Requirements for Refusal or Discontinuance of Service" (Exh. 3), is pertinent to this case. Section 1 of that Rule requires PacBell to disconnect existing

service to a customer upon receipt from any authorized official of a law enforcement agency of a magistrate's written finding that probable cause exists to believe that the telephone facilities have been or are to be used in the commission or facilitation of illegal acts and that the character of such acts is such that, absent immediate action, significant dangers to public health, safety or welfare will result.

In compliance with this part of the Rule, the SJPD filed Judge Creed's December 30, 1991 Order to Disconnect, together with the supporting affidavit of Officer Tanaka (Exh. 7). Judge Creed's Order contained the required findings and conclusions.

Upon receipt of the complaint, a Notice of Evidentiary hearing was served on all parties within the time limitations contained in Rule 31, and an evidentiary hearing was held before administrative law judge (ALJ) Ramsey within 20 days of the filing of the complaint as required by said Tariff Rule.

The SJPD, as the concerned law enforcement agency under Tariff Rule 31, has:

- "(1) the burden of proving 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, and that the character of such acts is such that, absent immediate and summary action in the premises, significant dangers to public health, safety and welfare will result and
- "(2) the burden of persuading the Commission that the service should be refused or should not be restored."

At the evidentiary hearing, the SJPD was represented by Frank Berry, Esq., a Deputy District Attorney of Santa Clara County; PacBell was represented by Colleen M. O'Grady, Esq.; and the complainant was represented by Steve Emery Teich, Esq. and David A. Blair, Esq. Each party was afforded the opportunity to

make an opening statement, call and cross-examine witnesses, offer exhibits, and make a closing argument. At the hearing, witnesses were called on behalf of the District Attorney and on behalf of PacBell and were cross-examined by counsel for complainant. Though afforded the opportunity, counsel for complainant did not call any witnesses nor offer any exhibits. When called as a witness by the District Attorney, complainant refused to testify on the basis of the privilege against self-incrimination granted by the Fifth Amendment to the Constitution. Further, during the hearing, 6 exhibits were received in evidence. At the conclusion of the hearing, each party waived a closing argument; however, counsel for the complainant requested and was granted permission to file a post-hearing memorandum. Because of its importance to this proceeding, and because no party offered it as an exhibit, the presiding ALJ, on his own motion, took Official Notice of Judge Creed's December 30, 1991 Order and the attached supporting affidavit of Officer K. Tanaka, dated December 30, 1991. For purposes of the record, Judge Creed's Order and the attached affidavit of Officer Tanaka have been received in evidence as Exhibit 7. The memorandum of complainant was filed on January 27, 1992, at which time the matter was submitted.

Discussion

At the outset of our discussion, we must decide, as a threshold issue, whether Ms. Jonah's complaint states a cause of action upon which the relief she seeks may be granted. We find that the complainant does not fall into the categories of persons covered or contemplated by Rule 31 and that under the facts of this case, complainant lacks standing to contest the disconnection or to request reconnection of the specified telephone numbers, and for that reason, the complaint should be dismissed with prejudice.

Basically, it is PacBell's position that Jonah neither is nor was the applicant for or subscriber to any of the telephone lines here involved, has never been assigned any of the telephone

numbers ordered disconnected, nor has she ever signed a supersedure request or agreement with PacBell concerning these lines or numbers. According to the testimony of Sally Varao, Security Supervisor for PacBell, the subscriber of record to each of the numbers ordered disconnected was a woman named Terry Cantrell, and as far as PacBell's records disclose, no request for restoration of service to the affected lines has been received from Cantrell. According to Officer Tanaka, Cantrell is currently incarcerated in the Santa Clara County Jail on various vice charges. Jonah did not contest any of the above, but in her complaint alleged that:

"The service of these numbers [those ordered disconnected by Judge Creed] should be restored since there is no cause under Rule 31 for the discontinuance to apply to the current owner of the telephone lines. On October 8, 1991, the company, which included the telephone lines since disconnected, was sold to Ms. Shane Jonah." (Complaint, paragraph 2, emphasis added.)

A copy of the "Bill of Sale and Agreement" purporting to transfer the business, which according to Jonah included the now disconnected phone lines and their assigned numbers, is attached to the complaint. We note that the seller is identified in the agreement as one Richard William Miller, and the document bears the signature "Richard W. Miller." According to information elicited at the hearing, Mr. Miller is Terry Cantrell's common law husband or live-in boyfriend, and like Cantrell, is currently incarcerated in the Santa Clara County Jail on vice charges.

Like Jonah, Richard William Miller is a legal stranger to the disconnected phones. He is not the subscriber to the lines, none of the numbers involved are or were assigned to him, and he has never signed a supersedure agreement or request concerning any of the disconnected numbers. While Miller may have been the owner of the business allegedly sold, he had no legal right to include the transfer of the disconnected telephone lines or their assigned

numbers in the sale as he possessed no conveyable interest in the lines or numbers. The party who owns those lines and the numbers assigned to them is not Richard William Miller nor even Terry Cantrell. All telephone lines and numbers in this case are owned by PacBell and their use was authorized by PacBell to a subscriber, Terry Cantrell. Subscribing to telephone service merely results in a revocable license allowing the subscriber to use the line and/or number; it does not convey title nor an alienable interest in the line or to the number assigned to the line (Pac Bell Tariff A-2.1.17 B). Insofar as the phone lines and numbers at issue are concerned, Miller has no contractual agreement with PacBell, the owner of the telephone lines and numbers. Thus, neither Terry Cantrell, the actual subscriber to the lines and the assignee of the numbers, nor Richard William Miller, the owner of the business utilizing the lines and numbers, had the legal capacity to transfer the disconnected line or numbers to Jonah.

From all of the foregoing, we find that under the peculiar circumstances of this case, the complainant, Jonah, is a stranger to the telephone service which is the subject of this proceeding under Rule 31, and has no standing to challenge the disconnection or to request restoration of the involved telephone lines and the numbers assigned to them. In short, the complaint fails to state a cause of action upon which the relief sought may be granted, and the complaint should be dismissed with prejudice.

Alternative Disposition

As an alternative to disposing of this matter on a procedural basis we offer the following discussion of the merits.

At the hearing held on January 23, 1992, the representative of the Santa Clara County District Attorney's Office called two witnesses; Kenneth Tanaka and Morgan S. Fay, both police officers assigned to the Vice Unit of the SJPd. Each of these officers testified that he actively participated in an investigation of felony pimping and pandering activities conducted



by the operators of "College Escorts" and "Gentlemen's Choice" escort services, and the occupants of certain buildings in Marin and Contra Costa Counties. One of the locations in Marin County whose occupants were under investigation was Building 1, 64 Main Street (Upper Level), in San Quentin, where the telephone facilities involved in this matter were located.

The officers described in detail the manner in which the investigation was conducted and progressed, as well as specifics of their interviews of telephone operators. Their testimony establishes to our satisfaction that the "escort services" served by the telephone lines and numbers here involved, were, in fact, engaged in commercial prostitution activities.

The officers testified that in connection with their investigation, they interviewed 15 "escorts" including complainant, associated with the above-described escort services, and that 14 admitted engaging in prostitution. The remaining escort, Jonah, the complainant herein, refused to answer any questions asked by the officers.

The officers testified that during their investigation, police officers assigned to the investigation made calls to several of the numbers involved in this proceeding, spoke to an operator and requested to talk to an escort. The officers, upon request, gave the operator the phone number of a motel from which they were operating and within a short time, an "escort" returned the call, whereupon arrangements were made for the "escort" to come to the room occupied by an officer. They further testified that when the "escort" arrived at the room, arrangements for sexual services were agreed upon between the officer and the "escort," and upon payment, the "escort" was arrested. While more vivid testimony concerning the activities of one or more of the "escorts" was elicited, its description here would add little to our overall assessment of the activities and the true nature of the "escorts" and escort services served by the telephone facilities involved herein.

The officers also testified that subsequent to October 9, 1991, the date Jonah allegedly bought the businesses served by the phone lines here involved, police officers made calls to at least two of the indicated numbers and verified that certain named escorts, whom they had identified as prostitutes working out of the businesses when operated by Jonah's predecessor, were still available.

In our opinion, the record in this case establishes that both before and subsequent to the sale of the businesses served by the telephone lines and numbers involved in this proceeding, those businesses and those individuals associated therewith were and, with the possible exception of those incarcerated, continue to be involved in activities prohibited by law, and that the telephone facilities here involved were, until their disconnection, used instrumentally, directly or indirectly, to violate or assist in the violation of the law. We are further of the opinion that the subject telephone facilities were used in the commission or facilitation of illegal acts that are such that significant dangers to the public health, safety, and welfare resulted.

In view of all of the foregoing, we find that the law enforcement agency involved in this case has carried the burden imposed upon it by Rule 31, and that the relief sought by the complainant should be denied, the complaint dismissed with prejudice, and PacBell directed not to reissue the 23 telephone numbers here involved (see footnote 1) for a period of one year from the date of disconnection.

Should complainant wish to apply to PacBell for supersedure to the lines and numbers involved in this proceeding, such request or application is to be denied by PacBell.

Findings of Fact

1. By order dated December 30, 1991, Hon. Daniel E. Creed, Judge of the Superior Court of the State of California, in and for the County of Santa Clara, directed PacBell to disconnect

27 telephone lines and not to reissue the numbers assigned to those lines for a period of one year.

2. By a complaint filed January 10, 1992, Jonah seeks restoration of the disconnected lines pursuant to PacBell Tariff Rule 31.

3. Notice of Evidentiary Hearing before an ALJ was served upon all parties within the time limits contained in said Rule.

4. An evidentiary hearing was held within the time prescribed by said Rule.

5. At the hearing, the burden was on the law enforcement agency involved, the SJPd as represented by the Santa Clara County District Attorney's Office, to satisfy certain requirements set forth in Section A.4.(1) and (2) of Rule 31.

6. At the hearing, the law enforcement agency advised that four telephone numbers should not have been included in Judge Creed's disconnect order of December 30, 1991. Those numbers, all in Area Code 415, are: 456-6249; 332-7323; 495-0400; and 257-4500.

7. Complainant alleges that service to the disconnected numbers should be restored because on or about October 9, 1991, subsequent to the acts upon which the disconnect order was based, she purchased the businesses serviced by the disconnected phones from one Richard William Miller, and that the sale included the telephone lines and numbers assigned thereto.

8. Evidence produced at the hearing indicates the subscriber of record to the telephone lines and the numbers assigned thereto is one Terry Cantrell, not Richard William Miller.

9. Evidence produced at the hearing indicates that neither before nor subsequent to the date of the disconnect order, any party to this proceeding sought supersedure to the lines and numbers here involved.

10. Evidence produced at the hearing indicates that subsequent to the alleged purchase of the businesses serviced by

the telephone lines and numbers involved, police officers verified that one or more prostitutes associated with the businesses before its alleged sale were still available through the lines and numbers here involved.

11. The law enforcement agency in this case has carried the two burdens placed upon it by Rule 31.

Conclusions of Law

1. Complainant, Jonah, does not qualify as a subscriber or applicant as those terms are used in PacBell Tariff 31.

2. Complainant, Jonah, may not avail herself of the provisions of PacBell Tariff 31.

3. No rights to either the telephone lines or the numbers assigned to them were transferred by the "Bill of Sale and Agreement" between Richard William Miller and Jonah, dated October 9, 1991.

4. Complainant offered no evidence that she has requested or sought supersedure from PacBell with respect to the telephone lines and numbers involved in this proceeding.

5. The telephone lines and numbers servicing the businesses allegedly purchased by complainant were, prior to such purchase, used in a manner prohibited by law, and used instrumentally, directly or indirectly, to violate or assist in the violation of law, and were used in the commission or facilitation of illegal acts of such a character that significant dangers to public health, safety, and welfare resulted.

6. The telephone numbers involved in this proceeding should not be reissued by PacBell to any subscriber for a period of one year from the effective date of this decision.

ORDER

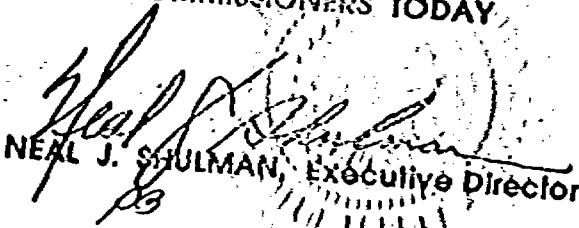
IT IS ORDERED that:

1. The complaint filed in this matter by Shane Jonah is dismissed with prejudice.
2. The telephone numbers involved in this proceeding shall not be reissued by Pacific Bell Telephone Company to any subscriber for a period of one year from the effective date of this decision. This order is effective today.

Dated March 31, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
Commissioners

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

  
NEAL J. SHULMAN, Executive Director