

SW

ORIGINAL

Decision No. 87171

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DENNIS TINERINO dba JEAN LAFFITE  
ANSWERING SERVICE,

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH  
COMPANY,

Defendant.

Case No. 10298  
(Filed March 25, 1977)

INTERIM OPINION

The complainant alleges that on March 11, 1977 forty-four telephone numbers at 1017 N. La Cienega Boulevard, Suite 109A, in Los Angeles, were disconnected by defendant pursuant to a search warrant and Finding of Probable Cause signed by Mary E. Waters, Judge, Municipal Court of Los Angeles County, on or about March 7, 1977, and served upon defendant thereafter. (Exhibit B of complaint.)

Among other things, the complaint alleges that thirty-seven of the phone numbers (listed in Exhibit A of complaint) disconnected are not referred to in the Affidavit in Support of the Search Warrant, or in any exhibits in support of the search warrant. Therefore, none of these numbers "tend to lead one to believe that complainant is engaged in any purported illegal activities." (Paragraph G of complaint.) The only interim relief sought, prior to a hearing on the merits of the complaint, is that the Commission, and not the hearing officer, issue an

interim order for relief restoring the thirty-seven numbers in Exhibit A described above.

Pursuant to the request of Examiner Phillip E. Blecher, the assigned hearing officer, complainant on March 29, 1977 filed a "Request to the Public Utilities Commission for Interim Relief to Reconnect Only Telephone Lines not Involved in Court Order" pursuant to D.71797, Appendix A (Exhibit G of complaint). Paragraph 2 of Appendix A provides in part that "Any person aggrieved by any action taken...shall have the right to file a complaint with the Commission and may include therein a request for interim relief." Paragraph 6 of Appendix A provides in part that, "...Nothing in this paragraph shall be construed to preclude the granting of interim relief in a proceeding initiated pursuant to Paragraph 2 of this rule." (Rule 31.)

The petition for interim relief further restates the allegations of the complaint and specifically, those of paragraph G requesting interim relief as described above. This petition also attaches as Exhibits A and B, respectively, copies of the Affidavit in Support of the Search Warrant (68 pages) and all arrest reports allegedly relevant to this case. It is also alleged: That a Motion to Quash the Search Warrant is pending in the Los Angeles Municipal Court; and that the procedures of Appendix A of D.71797 violate the Fifth Amendment to the U.S. Constitution, for various reasons.

Commencing on page 66 of Exhibit A of the petition for interim relief, the affidavit of Deputy Sheriff Paul George reads, in part, as follows:

"Your affiant, through his investigation, has comprised a list of telephone numbers utilized by the owners, operators or agents of the two locations known as T.A.B. (complainant herein) ...which have been used for the purpose of advertising. The following telephone numbers were traced through Sheriff's departmental facilities to their respective locations and which appear in newspaper advertisements and to which investigations have resulted in prostitution arrests:

"T.A.B., 1017 N. La Cienega, Suite 109A, West Hollywood, California, Pacific Telephone numbers:"

"...(There follows all 44 phone numbers later disconnected, including the 37 numbers for which interim relief is sought.)"

The complaint and petition for interim relief base their request for relief in part on the allegations that none of the numbers sought to be reconnected are referred to in the Affidavit in Support of the Search Warrant. The quotation above from that document clearly shows this allegation to be inaccurate. Since probable cause (based in part on this affidavit) has already been found to exist by a judge of the Municipal Court, we will not second guess that judgment, particularly where the allegations of the petition are not supported by the facts. Therefore, we shall deny the request for interim relief and direct the examiner to expeditiously set this matter for hearing.

INTERIM ORDER

IT IS HEREBY ORDERED that the petition for interim relief is denied.

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

Dated at Sacramento, California,  
this 5th day of APRIL, 1977.

*Labsteris*  
*William Sprouer, Jr.*  
Commissioner

*I dissent*  
*Vernon L. Sturgeon*  
Commissioner

*Robert Bateman*  
\_\_\_\_\_  
President

*Leonard Ross*  
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*Richard D. Shovel*  
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Commissioners