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ORIGINAL

Decision No. 87642 JUL 26 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARVIN GOLDIN, dba SUMMERWIND,

Complainant,

vs.

GENERAL TELEPHONE OF CALIFORNIA,

Defendant.

Case No. 10282
(Filed March 14, 1977)

Paul Fitzgerald, Attorney at Law, for complainant.
Louis K. Ito, Deputy District Attorney, County of Los Angeles, for John K. Van De Kamp, Los Angeles County District Attorney; Edward M. Davis, Chief of Police of the City of Los Angeles; and Peter J. Pitchess, Sheriff of Los Angeles County; intervenors.
Hart, Snyder, & Johnson, by Dale W. Johnson, Attorney at Law, for defendant.
Jasper Williams, Attorney at Law, for the Commission staff.

O P I N I O N

The complainant alleges that the defendant terminated complainant's service of thirty-nine telephone numbers at 2:10 p.m. on March 11, 1977 pursuant to Rule 31, Schedule Cal. P.U.C. No. D&R, (Rule 31) Advice Letter No. 1877, based upon Appendix "A" of Decision No. 71797, dated December 30, 1966, which telephone service termination was ordered by Richard L. Olhson, vice president of the defendant, after the defendant was served with a court document denominated "Finding of Probable Cause" signed by Mary E. Waters, Judge of the Municipal Court, Los Angeles Judicial District, dated March 7, 1977. The telephone numbers involved are attached to the complaint as Exhibit A, except that 389-1285, 391-0032, and 822-0864 should have been listed as 390-1285, 391-0037, and 822-8064 respectively.

The complainant alleges that he operates a legitimate legal telephone answering service business and has not used the telephone equipment and numbers for any illegal purpose. In addition he alleges that the telephone service was terminated without prior knowledge, without prior notice, without prior hearing, and without opportunity to present evidence or any defense, in violation of his rights to due process and equal protection of the laws and of the decisional law of California and the United States; and alleges that he has been denied rights guaranteed by the First Amendment to the United States Constitution and related provisions of the California Constitution in that the action taken by defendant constitutes a prior restraint infringing on free speech. Complainant further alleges that to the extent the summary provision involved for termination of service was sanctioned by Decision No. 71797, and promulgation of the resulting tariff, the tariff is unconstitutional and void. The complainant cites cases in his complaint which he believes sustain his position.

The complainant sought an order requiring the defendant to forthwith restore telephone service or, in the alternative, an order setting an immediate hearing, and pending said hearing, granting him the interim relief of the restoration of full telephone service pending decision by the Commission, as provided in defendant's tariff Rule 31.

General's Rule 31 provides in part as follows:

"LEGAL REQUIREMENTS FOR REFUSAL OR DISCONTINUANCE OF SERVICE

"California Public Utilities Commission's Decision No. 71797 in Case No. 4930, requires that each communications utility, operating under the jurisdiction of the Commission, include the provisions of the rule set forth in Appendix 'A' of that decision as a part of the rules in the utility's tariff schedules. Accordingly, Appendix 'A' of Decision No. 71797, Case No. 4930, is quoted herein:

"APPENDIX 'A' OF DECISION NO. 71797

"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 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.

"2. Any person aggrieved by any action taken or threatened to be taken pursuant to this rule shall have the right to file a complaint with the Commission and may include therein a request for interim relief. The remedy provided by this rule shall be exclusive. No other action at law or in equity shall accrue against any communications utility because of, or as a result of, any matter or thing done or threatened to be done pursuant to the provisions of this rule.

"3. If communications facilities have been physically disconnected by law enforcement officials at the premises where located, without central office disconnection, and if there is not presented to the communications utility the written finding of a magistrate, as specified in paragraph 1 of this rule, then upon written request of the subscriber the communications utility shall promptly restore such service.

"4. Any concerned law enforcement agency shall have the right to Commission notice of any hearing held by the Commission pursuant to paragraph 2 of this rule, and shall have the right to participate therein, including the right to present evidence and argument and to present and cross-examine witnesses. Such law enforcement agency shall be entitled to receive copies of all notices and orders issued in such proceeding and shall have both (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 (2) the burden of persuading the Commission that the service should be refused or should be restored."

Pursuant to paragraph 4 of Rule 31, John K. Van De Kamp, Los Angeles County District Attorney; Peter J. Pitchess, Los Angeles County Sheriff; and Edward M. Davis, Chief of Police of the city of Los Angeles, were properly notified of the filing of the complaint and of the date, time, and place of hearing; and thereafter these three persons filed petitions for leave to intervene pursuant to Rule 53 of the Commission's Rules of Practice and Procedure (Commission's Rules), and on March 17, 1977 an answer was filed by John K. Van De Kamp as an intervenor.

The intervenor's answer denies that the complainant operates a legitimate legal telephone answering service business and alleges that the telephones were used directly and indirectly

to violate the penal statutes, or to assist in the violation of penal statutes, and denies that the complainant has been deprived of any rights to due process and equal protection of the laws. The intervenor sought an order denying the complainant immediate restoration of telephone service pending a decision of the Commission and requested the setting of hearings at the earliest possible date.

After proper notice, hearings were held in Los Angeles on March 21, 23, 28, 29, 30, 31, and April 1 and 6, 1977. At the hearing on March 21, 1977 the petitions of Van De Kamp, Pitchess, and Davis to intervene were granted and the intervenors thereafter were permitted to participate in the case as set forth in paragraph 4 of Rule 31. Hearings were not held on March 22, 24, 25, or April 4 or 5 because the complainant's motions on March 21 to continue the matter to March 23, and on March 23 to continue the matter to March 28 and on April 1 to continue the matter to April 6 were granted. The case was submitted on April 6, 1977, before which time the complainant stated that he intended to file a petition for a proposed report pursuant to Rule 78 of the Commission's Rules. There was no objection and the other parties waived their right to object as provided in that Rule.

A proposed report was prepared and filed by the presiding officer in accordance with the direction of the Commission dated April 12, 1977.

The complainant sought immediate interim relief on the grounds that the procedure set forth in Rule 31, which procedure was followed by the law enforcement officials and the defendant involved herein, is illegal, unconstitutional, and void, and that the affidavits of Sergeant R. J. McGuire and Deputy Sheriff Paul George, and the attachments referred to in the "Finding of Probable Cause" dated March 7, 1977 and signed by Judge Mary E. Waters of

the Los Angeles Judicial District, were an insufficient basis for the finding of probable cause that the telephone numbers involved herein were at the time being utilized for illegal purposes, as required by paragraph 1 of Rule 31.

At the hearing the presiding officer stated that in his opinion the procedure set forth in Rule 31 was legal, that there was sufficient basis for the Finding of Probable Cause, and therefore the request for interim relief should be denied. The complainant requested that the question of interim relief be submitted for decision of the Commission and the request was granted.

By Decision No. 87170 dated April 5, 1977, the complainant's request for interim relief was granted because we found that the complainant could suffer business hardship by being deprived of service pending final determination of the case (Finding 6), and we ordered restoration of his telephone service pending the disposition of the case on its merits.

In final argument the complainant contended that Rule 31 was invalid based in part upon his contention that the termination of service on March 11 was unlawful. In our opinion, since we exercised our discretion to restore telephone service to the complainant prior to the completion of hearings by Decision No. 87170, the question of the constitutionality of General's Rule 31, as it pertains to allowing discontinuance of service prior to completion of hearings, is moot.

At the hearing to determine whether interim relief should be granted the complainant and the intervenors stipulated that Judge Mary E. Waters read Exhibit 1, and perused Exhibit 2, and thereafter signed Exhibit 3, Finding of Probable Cause. The Commission took official notice that as of March 7, 1977, the date Exhibit 3 was

signed, Mary E. Waters was a judge of the Municipal Court of the Los Angeles Judicial District and as such was a magistrate as defined by Sections 807 and 808 of the Penal Code. None of the other parties had any objections to the stipulation.

Rule 31

We stated above that the constitutionality of Rule 31, as it pertains to summary termination of service, is rendered moot by our Decision No. 87170. However, the complainant states that Rule 31 is unconstitutional because it is vague and overbroad; that objection apparently goes to Rule 31 generally. We will discuss the constitutionality of Rule 31 generally, and specifically address complainant's contentions that it is vague and overbroad.

Is Rule 31 unconstitutionally vague? The test for vagueness is:

> "A law violates due process if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves the judge and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case." (Myers v Arcata Union High School District (1969) 269 CA 2d 549, 560).

Rule 31 provides for the termination of telephone service if the use of the service is prohibited by law or if it is used directly or indirectly to assist in the violation of the law. We underscore "law" because law refers generally to the laws of the State of California and of the United States. Had Rule 31, for example, provided for termination of service for "Undesirable" use of telephone service it would indeed be vague. Since Rule 31 could not be drafted to list every federal and state offense, it necessarily refers to the "law". We conclude that Rule 31 is clear as to the conduct for which service may be terminated.

Is Rule 31 unconstitutionally overbroad? We conclude it is not. The test for overbreadth is whether a provision of the

statute (or in this case a regulation) is potentially so broad that in its application it may apply to constitutionally protected rights. Rule 31 applies only to unlawful activity, and is not implemented unless a magistrate initially finds probable cause that telephones are directly or indirectly being used to further unlawful activity. It is not a regulation that could arbitrarily and capriciously interfere with freedom of speech or expression.

Although the complainant's contention that Rule 31 is unconstitutional in its provisions for termination of service prior to a full hearing is rendered moot by our interim decision to restore service, we will discuss generally the background of Rule 31. It should be noted that under California law this Commission has exclusive jurisdiction over public utility service, and standards for the termination of service is a matter we regulate very carefully. There is no statute which allows criminal courts to order the direct and final termination of service without involvement by this Commission. The Supreme Court was aware of this when it ordered procedural changes to be reflected in the tariff rules we establish for telephone utilities regarding termination of service for alleged illegal activity. (Sokol v PUC (1966) 65 Cal 2d 247.) Sokol held that the Commission rule then in effect pursuant to Decision No. 41415, which required a communication utility to summarily discontinue service to a subscriber if advised by any law enforcement agency that the service is being used for unlawful purposes, did not conform to the due process requirements of the State and Federal Constitutions in that it provided for no review of the bare allegations of the police prior to the termination of service. The court stated at page 256:

> "However, whatever new procedure is hereafter devised must add a minimum requirement 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 service. A procedure incorporating these measures would provide substantial protection to the subscribers without hindering the enforcement of gambling laws."

The procedure set forth in Rule 31 is consistent with the requirements as set forth in the Sokol case.

In his complaint and his brief the complainant directed attention to Rios v Cozens (1972) 7 Cal 3d 792 and the cases cited therein: Goldberg v Kelly (1970) 397 US 254, 266; Sniadach v Family Finance Corporation (1969) 395 US 337, 342; Randone v Appellate Department (1971) 5 Cal 3d 536, 547; Blair v Pitchess (1971) 5 Cal 3d 258; McCallop v Carberry (1970) 1 Cal 3d 903; and Kline v Credit Bureau of Santa Clara Valley (1970) 1 Cal 3d 908. In addition the complainant sought to rely on Carrera v Kings County Animal Control Officer, No. Civil 2713, filed November 12, 1976, 5th District Court of Appeal, California, and the cases cited therein. The complainant contended that these cases, more recent than Sokol, stand for the principle that an individual is entitled to a hearing prior to being deprived of a significant interest, and that Rule 31 does not provide such a hearing for the complainant. The complainant also cited other cases for his contention that he has been denied rights guaranteed by the First Amendment to the United States Constitution and related provisions of the California Constitution in that the action taken by the defendant constituted a prior restraint infringment on free speech.

The procedure for requiring a public utility to terminate telephone service if a subscriber allegedly uses the service for illegal purposes requires that the police obtain prior authorization to secure termination of service by satisfying an impartial tribunal that the police have reasonable cause to act, in a manner reasonably comparable to the procedure before a magistrate to obtain a search warrant. After service is terminated, the subscriber is afforded a prompt opportunity to challenge the allegations of the police and to seek restoration of service.

Generally, the cases cited by the complainant have to do with lack of due process of law in depriving an individual of his driver's license under the uninsured motorist provision of the Financial Responsibility Law, prejudgment replevin prior to notice or hearing, attachment of a debtor's property without affording him either notice of the attachment or a prior hearing to contest the attachment, prejudgment wage garnishment statutes, and other matters not relating to prompt prevention of the use of property or instrumentalities to commit, assist in the commission of, or continue to commit a public offense, and are distinguishable on that basis.

Under the penal statutory scheme in California, property used to commit a public offense may be seized pursuant to a warrant signed by a magistrate upon a showing of probable cause, and the person from whom such property is taken is not entitled to a prior hearing (Sections 1523-1528, California Penal Code). Subsequent to the seizure of the property, the party claiming rights to the property may request a hearing to determine whether there was probable cause for believing the existence of the grounds on which the warrant was issued. (See Section 1538.5 of the Penal Code.) If it appears that there was no such probable cause or that the property taken is not the same described in the warrant, the property is restored

to the person from whom it was taken. The complainant could have challenged the magistrate's Finding of Probable Cause before the appropriate criminal court but did not choose to do so.

The termination of the complainant's telephone service is analogous to the above-described search warrant procedure permitting seizure of property pursuant to the Penal Code. We reiterate our discussion in Decision No. 87170. This Commission is not the forum to litigate the validity of a magistrate's action; the complainant must avail himself of procedures before the criminal courts to address that issue.

The Intervenors' Evidence

The testimony of 17 of the 20 male police officers was substantially the same. Each testified that at some time during May 29, 1975 to March 3, 1977 he procured a telephone number from a picture ad advertising outcall massage or nude modeling from the Hollywood Press or the Los Angeles Free Press newspaper, telephoned the number obtained therefrom, the telephone was answered by a male or female voice, and the caller requested that a girl be sent to him for the services provided at his location, which in most instances was a hotel or motel room, but in one instance was an office in a medical building and on another occasion was an office in an automobile repair shop. The answering voice explained the charge, which was approximately $35 or $40 for the service rendered, and on occasion stated that the girls would accept tips. The answering voice inquired and was informed of the identification of the caller, his telephone number, and his location; and the caller was informed that a girl would call him in a very short time to arrange for providing the service. Shortly thereafter, a girl called the telephone number which had been given by the officer, stated that she was from the service in response to the officer's call, requested directions to get to the location of the officer, and stated that she would arrive shortly. Shortly thereafter, a girl did arrive, stated that the amount to be collected, approximately $35, was either all for the service or all but $5 or $10 was for the service, and that she received only that $5 or $10 for her transportation and her services. She

would check the identification of the officer by looking at his driver's license and a business card which did not reflect the true nature of his business, but which was prepared and used for the occasion.

One officer testified that in addition to the incident of July 16, 1975 (one of the incidents included above) on March 11, 1977 while certain officers were conducting a search, pursuant to a search warrant at the complainant's premises, one of the girls who performed services for the complainant telephoned and requested a referral. She was referred to him and proceeded in the same manner as set forth above.

After arriving at the designated location, in 16 of the 18 cases, the girls solicited acts of prostitution in violation of Section 647(b) of the Penal Code,[1/] and were arrested. The acts consisted of offering to perform acts of oral copulation (fellatio) or sexual intercourse, or both, for sums ranging from $40 to $100 over and above the cost of the massage service or nude modeling session.

In one case the girl quoted her price for prostitution service but did not solicit the officer so she was not arrested. In one other case the girl did not solicit an act of prostitution but left the premises. Thereafter the telephone rang and a male voice stated that the girl had left because she thought the customer was a "cop" but the male voice said he would send her back. However, the officer did not wait but communicated with his fellow officer who arrested her for violation of a court order. (Section 166.4 of the Penal Code.)

1/ This section provides that:

"Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

* * *

"(b) Who solicits or who engages in any act of prostitution. As used in this subdivision 'prostitution' includes any lewd act between persons for money or other consideration."

The telephone numbers called by the police officers were obtained from the Los Angeles Free Press or the Hollywood Press newpapers which are available in Los Angeles County. The telephone numbers and the dates they were called by the officers are as follows: 823-5573, February 1, 1977; 821-8623, February 4, 1977; 391-9444, February 7, 1977; 823-5573, February 17, 1977; 821-9723, February 25, 1977; 923-5573, July 16, 1975; 922-3967, January 5, 1977; 398-2449, March 2, 1977; 823-3802, May 29, 1975; 823-3802, October 23, 1975; 823-3802, June 11, 1976; 821-6235, February 24, 1977; 390-1285, September 26, 1976; 822-4642, March 3, 1977; 398-5257, June 9, 1976; 823-3802, June 5, 1975; and 821-4806, June 26, 1975.

Numbers 821-8623, 823-5573, 821-9973, 822-3967, 398-2449, 823-3802, 822-4642, 821-6235,390-1285, 398-5257, and 821-4806 are 11 of the 39 numbers set forth in Appendix A to the complaint which the complainant alleges were assigned to him at 4676 Admiralty Way, Suite 406, Marina Del Rey, and for which he seeks restoration of service.

The security manager of the defendant testified that the telephone numbers listed in Appendix A to the complaint were incorrect in three cases because of a transposition; 389-1285 should have been 390-1285, 391-0032 should have been 391-0037, and 822-0864 should have been 822-8064. With that correction he testified that the subscriber for the 39 telephone numbers was the complainant and upon receipt of the proper notice, the Finding of Probable Cause, and the affidavit upon which the finding was based, the service of the above telephone numbers was discontinued on March 11, 1977. At a later time he also testified that the telephone numbers 822-9618, 822-5082, and 822-8623[2/] were telephone numbers now

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2/ Telephone numbers used by the complainant after March 11 when his 39 number service was terminated.

assigned to the complainant as the subscriber.

One officer testified that on March 10 and 11, 1977, he telephoned the 39 telephone numbers involved herein. What occurred with respect to his telephone calls is set forth adjacent to the numbers 44 to the end on Exhibit 9.

The female police officer testified that approximately June 5, 1975 she was assigned to the administrative vice division and had received information that the business of massage was beginning to be used on an outcall basis. She stated that she secured an advertisement in the Los Angeles Free Press issue of May 23, 1975 which contained the phone number 821-4806 and stated "sexy and beautiful girls wanted for outcall massage, $500 a week guaranteed". She stated that she telephoned the number 821-4806 and a male voice answered saying "Summerwind, Bob". She inquired about the advertisement and he stated that he did not wish to discuss the matter on the telephone but requested her to meet him at a restaurant in Marina Del Rey to discuss the particulars of the job and she agreed to do so. She went to the restaurant that evening and shortly after she arrived she met a male who identified himself as Bob Rankin and whose voice she identified as that of Bob from the earlier phone conversation. She identified the individual as the complainant in this case. She stated that the complainant said that he ordinarily would not meet her without his attorney present and if she commences to perform work for him and is arrested that he would have nothing to do with her and she would be fired. She stated that she said she was of the opinion that outcall massage was mostly prostitution and he stated that that was probably true. He stated that she would have to come with him to his apartment, take off all her clothes, and "get it on." She stated that the latter words meant to have sex with him. She stated that he said he intended to tape the conversation that he and she would have at his apartment to make sure she was not a policewoman.

She further testified that the complainant stated that "you might say I know all the girls are prostitutes who work for me" but he said that he felt he was doing them a favor because the girls were not required to have pimps and were able to keep all of their money. He said that the recent Orange County arrest gave him a great deal of publicity and would not be adverse to him. He stated that he had attempted to use the telephone in the men's room but it was out of order and asked the witness to telephone 789-6625 and tell the person who answered to warn the girls that tonight is bust night and not to take any calls except for callers who were able to show out-of-state driver's licenses, or the callers might be police officers. She did so and a girl named Debbie answered and when she delivered the message Debbie stated that she had already warned the girls accordingly. The witness testified that the complainant stated that he intended to extend his business into five states and then cross-country. He did not intend to expand to Europe because the girls there would sell themselves on the street for $5.

The witness further testified that the complainant stated that he knew that one in a thousand calls that he received was actually for a massage and if he read his ads he would be expected to be laid; and he knew most of his girls were prostitutes but it did not make any difference to him what they did. He stated that if the city of Los Angeles changed its license policies, he would be out of business, but until that time the city was giving him a license to run a whorehouse.

The female police officer also testified that on August 13, 1975 she and other police officers were in the premises of the complainant at 14007 Palawan Way, Apartment 319, Marina Del Rey, as a result of serving a duly executed search warrant. She stated that while there she answered the telephones when they rang,

several girls called to be sent out on calls or to report clearing the clients at the locations where they had been dispatched, and one girl telephoned and said to leave a message for the complainant that she would be back to work the next day, and that she could work straight through and do other things even if her bleeding continued. A telephone caller identified himself as Jim, stated that he was a regular customer and had been promised by Goldin that he would get a deal and a reduced price. A caller stated that he had Tiffany at a cost of $100 the last time but inquired as to whom he could get for $75. A person named David telephoned and stated that he desired to have a girl. On each of these occasions, the witness stated that she would deliver the message to the complainant.

While at that location on that date, she stated that as a result of telephone calls by two girls seeking to be dispatched to certain locations to perform work, she dispatched one to an officer at one location and another to an officer at another location, and both of the girls were subsequently arrested.

At that time and place the complainant telephoned the apartment, she talked to him on the telephone, and thereafter he arrived and was arrested pursuant to a warrant, charged with three counts of pandering, and the district attorney subsequently filed a formal complaint charging the complainant with pandering. The complainant has been held to answer in the superior court on the charge but the trial has been continued many times at the request of the complainant.

The deputy sheriff in charge of the investigation testified that on March 11, 1977 he and other law enforcement officers went to the premises at 4676 Admiralty Way, Marina Del Rey, with a duly executed search warrant (Exhibit 16). He knocked loudly on the door, announced that he was a deputy sheriff, wanted the

door open and had a search warrant for the premises. A female voice asked who was there and he repeated that he was a deputy sheriff and was there to serve a search warrant. There was no response, he knocked again and identified himself the third time, there was no response, the door was locked, and he forced entry. Inside he saw a female who was the sole occupant, identified himself, served the search warrant, and proceeded to search the premises pursuant to the search warrant. He stated that thereafter he left a copy of the property seized with the complainant who had arrived by that time and he filed the return with the clerk of the municipal court within ten days as required by law, and the custody of the property taken is with the sheriff's department. He stated that at the completion of this hearing he intended to continue the investigation with respect to the complainant and file a criminal complaint against him at the conclusion of the investigation. He stated that he had not been able to continue and complete the investigation because he was involved in this proceeding and intended to resume the investigation immediately after the conclusion of our hearings.

Exhibits 17 to 30, including 17-A to 17-Z, were obtained as a result of the search which occurred as set forth above pursuant to the search warrant. The complainant objected to these exhibits being received in evidence contending that they were illegally obtained. Since this evidence was obtained after the issuance of a search warrant, the proper forum for the complainant to raise this contention is the criminal courts.

Exhibits 17-A to 17-Z are color photographs. Exhibit 17-A is a large map of Los Angeles and Orange Counties. At the top of the map there are several 3" x 5" index cards with notations, names, and locations of police officers, or locations where arrests have been effected. Exhibit 17-D is a close-up of the left side of the map to which are attached pin flags. Written on the pin flags are girls' names which the witness stated are employees of the complainant and the pin flags denote the location of areas of female employees handling outcall massages. Exhibit 17-E depicts the desk in the office at the

location and on top of the desk is a daily working calendar, a credit card imprinter, and other items. Exhibit 17-H depicts two checks signed by the complainant: one in favor of the Hollywood Press in the sum of $3,000 and one in favor of Playhouse for $300. Exhibit 17-I depicts sample forms of how to fill out Bank of America, Mastercharge, and American Express credit cards. The witness testified that these three credit cards are used as means of payment for massage or nude modeling service. Exhibits 17-J, K, and L depict seven daily working calendars with numerous female employees' working days and hours set forth thereon. Exhibits 17-N to R depict various telephones in Suite 406, the location involved. Exhibit 17-S depicts the female who was present when the search warrant was served. Exhibits 17-T to Y depict different portions of the wall at the premises to which was attached ads removed from newspapers advertising outcall massage and nude modeling service, the same as the witness had seen in the Hollywood Press and Los Angeles Free Press. Exhibit 17-Z depicts the complainant and a police officer.

He testified that on that occasion when he was at those premises he observed the 39 telephone numbers there and with the possible exception of one or two they were the same as those in Exhibit 1, which were the same as those set forth in the complaint.

Exhibit 18 depicts 12 3" x 5" cards that were obtained there, which had been attached to the upper portion of the pin map (Exhibit 17-A). Exhibit 19 contains the names, addresses, phone numbers, and vital statistics of employees or applicants for employment of the complainant and with respect to one such name, there are the notations "dominance and equipment", and "couples". The witness testified that dominance relates to sexual gratification attempted or achieved by one person dominating another, and that equipment refers to mechanical devices which may be used in the accomplishment of such gratification such as whips, chains, racks, leather and rubber apparatus, vibrators, and items of enslavement. He stated that such equipment is used to inflict harm or injury to a person. He stated that Exhibit 19 indicates that the name of the person thereon will engage in bondage, or sado-masochism.

Exhibit 18 contains the name, addresses, phone numbers, and a partial description of individuals, the names of persons who are police officers, and other persons to whom girls should not be sent inasmuch as such person may be a rapist, a "creep", or a person for whom the service would be rendered for cash only.

Exhibit 21 contains a list of the names of females and letters and numbers as codes for the use of radio beepers. The witness stated that these beepers are used for the purpose of contacting the complainant's employees. Exhibit 21 also contains an owe-pay sheet which is used by the complainant to keep track of money collected by females to be paid to him as the operator of the service.

Exhibit 23 is a daily record of a worksheet which the witness stated contains the names of girls who were sent on out-call duty on March 10, 1977, the telephone numbers of calls received at the location of the outcall service, the time of arrival at the customer's location, the time the girl left the customer's location, the name of the customer, the location and telephone number, the type of identification obtained from the customer, the extension on which the call was received at the headquarters location, the newspaper ad containing the telephone number used on that occasion, and the amount and type of payment to be collected from the customer. It also contained the name of the girl, the type of credit card and number, the expiration date of the credit card, and the credit card verification number.

Exhibit 30 is in part a list of names of suspected police officers to whom the complainant would not send a girl under the name listed on Exhibit 30, the addresses where arrests have taken place, and the names, addresses, and phone numbers of pranks or bad calls, or persons with whom the service did not wish to deal. It also contains the names of males, and females with

beepers, and certain telephone numbers. He stated that beepers are used as a means of communication between prostitutes and their employers.

The witness expressed the opinion that the 39 telephone numbers involved herein were used directly and indirectly in the furtherance of violation of law, Section 647(b) of the Penal Code, prostitution.

Some of the ads placed by the complainant were entitled "Sex Unlimited" (Exhibit 8), and "Anything Goes" (Exhibit 5). In Exhibit 10, a copy of the Hollywood Press dated February 25, 1977 a witness marked the ads subscribed to by the complainant containing one or more of the 39 telephone numbers involved herein, and found there were 35 picture ads in that publication. In Exhibit 11 there were 24 picture ads, and in addition there were personal ads. In Exhibit 12 there were six picture ads relating to Summerwind or Goldin telephone numbers, 822-5082, 822-8623, and 822-9618, and although these telephone numbers are registered to the complainant, they are not the numbers set forth in Exhibit A attached to the complaint. In Exhibit 13 there are five picture ads, in Exhibit 14 there are eight picture ads, and in Exhibit 15 there are eight picture ads. In Exhibits 14 and 15 the picture ads are approximately the same as Exhibits 10 and 11, but the telephone numbers are different.

Some of the ads contain pictures of semi-nude girls and contain: "Call me so I can rush to you, I know what you want and I am ready to give it to you"; "pleasures are a sign - have you had a good sign lately?"; "tender love - when you want young, tender, sensuous and tempting girls to fulfill your desires, call us!"; "quickie outcall"; "swing outcall"; "sexy student nurses"; "the swinging nymphos"; "the french connection"; "try me - I'm easy".

Some of the personal ads contained the language "quick draw sugar - I'll be in and out of your pants in a splash"; "hot and horny young thing looking for same"; and "discreet beauty - will come to you and f--- and s---".

The Complainant's Evidence

The first witness called by the complainant testified that she was 19 years old, had resided in California approximately four months, had resided in Phoenix for two months before that, and prior to that time lived in Chicago. The first job she ever had was as a waitress in Los Angeles where she worked for one and one-half weeks, but did not like that type of work and resigned. She worked for the complainant as a masseuse, in areas where it was not unlawful to perform such service, and as a nude model from March 7 to the present except for a few days after his telephones were disconnected on March 11. Her stepmother told her about the job opportunity with the complainant and she went to the complainant's office, was interviewed, was told that if she received the services of the complainant and performed acts of prostitution she would be fired, and she signed a document that under such circumstances the complainant would not be liable for her conduct in any manner.

The witness testified that her working shift was 10 hours during which time she usually serviced four calls which took 4 hours and she averaged $50 income per night. She charged $40 for her service, kept $5, and submitted the $35 to the complainant the next morning at an appointed place. She informed the customers that she only earned $5 of the $40, and that she worked primarily for tips. She stated that she was always tipped $10, $15, or $20 for her service and for her company. She stated that the customers mostly wanted to talk to her and appeared to be lonesome. They liked to talk about their jobs or their problems

since some were recently divorced. She stated that some of her customers told her that they were lawyers, doctors, painters, or janitors. She would not perform her services for more than one person at a time and she would not perform any dominant massage which she stated meant being rough on the customer. She has never had any training in massage and does not have a license as a masseuse, but states that all she does is give the customer a rubdown. She stated that she has never performed sex activity with any of her customers and she would not massage a customer in his genital area, but massaged the back, legs, and chest of the customer.

She testified that the procedure followed was that she would call one of the complainant's telephone numbers, usually 822-8623 or 822-5086, and get a referral to a customer, together with his phone number. She would then phone that telephone number and after stating the reason for her call, and telling the customer that her name was Sandra (not her true name) she would determine the address of the customer and the directions to get to his address and proceed to that location. She never used the complainant's telephone and she does not have a beeper. At the location she would check the identification of the customer, get payment for the services to be performed, call the office of the complainant, and report that she was at that location and was to proceed with the service requested.

She stated that she was an independent contractor but was vague about explaining what an independent contractor was. She has worked for the complainant approximately two and one-half weeks, has serviced approximately 30 calls, and earns from $250 to $320 per week. She doesn't keep a list of the names of her customers, but is able to remember the extent of her earnings

for the purpose of filing her income tax returns. She ascertains the identification of the customers in order to be sure that any check that she might receive is in fact the check of the customer himself. She avoids performing services for police officers because of what some of her friends have told her. She has talked to some of her friends who have committed prostitution and they have stated that they do so because they are able to make more money in that manner. She stated that she has never solicited a customer with respect to acts of prostitution.

The second witness for the complainant stated that she was a telephone dispatcher and she booked appointments for the complainant and had been doing so for one year. She stated that her duties were to answer the phones, speak to potential customers and if they appeared sincere to book appointments, and that 34 of the 39 telephone numbers at the location on Admiralty Way had appeared in picture ads placed by the complainant in publications such as the Hollywood Press, the Los Angeles Free Press, Playhouse, and Lust, a magazine, advertising outcall massage and nude modeling. She has answered approximately 250,000 telephone calls in the period of one year that she worked for the complainant prior to March 11, 1977 when the telephones were disconnected. Some of the phone calls are from girls who are inquiring about employment and some are business calls for the complainant.

She stated that she interviewed, hired, and fired employees, booked appointments, and kept daily business records. She would write down the name and address of each caller whether he appeared to be sincere or not. The service extended into Los Angeles and Orange County areas. She would determine the location of the prospective customer because in certain areas outcall massage is prohibited without a license, and in those areas she would provide a girl for a nude modeling session only.

She would quote the price of $35 for a one-hour massage or nude modeling session and if the caller was interested in an appointment she would get his name, address, telephone number, the method of payment that would be made, the newspaper from which he had seen the advertisement, his occupation, and his age. If asked what service was offered, she would say massage and nude modeling, but not massage in areas where it was prohibited. She was often asked if the service offered sexual services and when that occurred she would hang up the telephone, and if the caller called back again she would simply tell him that such service was not available. A customer would ask if the girls would accept tips and she would say, yes. She stated that the girls accepted tips the same as waitresses, bellmen, or masseurs.

She would tell the customer that a girl would be available in 25 or 30 minutes. She would signal a certain girl in a certain area who had a beeper system and that girl would return the call and be dispatched. The girl would then telephone the customer, state the reason for her call, and obtain directions to get to the location of the customer. The girl would go to the customer's location, and if she decided to stay and perform the service, she would call the witness and advise her accordingly. The witness would then keep track of the time because of her concern for the service performed and the girl's safety. If the girl did not call in at an appropriate time when it appeared the service should be completed, the witness would attempt to locate the girl by means of the beeper system and if not successful, would then call the location of the customer, and in certain instances was required to advise the police because of fear for the safety of the girl involved.

Referring to Exhibit 17-D, she stated that the pin flags represented the fact that a girl was waiting for a call in a

certain location, or was on her way to a call, or was in the process of completing a call. At the conclusion of a call the girl would call the witness and usually be dispatched to another location or would wait for a later time to be so dispatched. At the end of the shift (the witness worked from 9:00 p.m. to 5:00 a.m.) the girls would usually telephone the witness and state that they were alright.

Exhibit 30 represents a ledger kept by the witness of customers' names, telephone numbers, and addresses to whom girls are not to be sent. In this exhibit are names of police, persons who have physically hurt girls, and pranksters. Exhibit 18, referring to a rapist, indicates that the girl sent to that customer was raped. She stated that there are many prank calls such as calls from persons to dispatch girls to places where there is actually no such address or no such person at the address. There are from 20 to 30 such calls each day, but only two girls are dispatched daily to such calls because she is able to determine the insincerity of the call from Exhibit 30.

During the period that the witness has been employed by the complainant, there have been six other operators working at the Admiralty location. She stated that the names of certain persons in Exhibit 30 had paid by check which was returned for nonsufficient funds, or the payment of the check had been canceled, or had paid by means of a credit card and that the credit card was invalid.

She testified that some of the customers gave their true names but approximately 60 percent gave false names. Exhibit 30 also contained the names of persons who had requested sex services and girls would not be sent to such customers. This exhibit contains calls concerning "bust pads", which she explained were locations where girls had been arrested. She

stated that she would not send girls to places where she suspected that there would be a police officer because the girls have told her that they have been arrested without any cause when sent on such calls.

Her standard order of procedure in interviewing girls for employment is set forth in Exhibit 20 on page 3. She has interviewed about 20 girls. She would not discuss sex activity in the course of their work with the girls, but did discuss the nature of the work and would require the girls to sign a statement, to be acknowledged by a notary public, and to be returned to her the next day. Exhibits 31 and 32 are copies of such forms. The identification of the girl and her photograph would be stapled to the application. No girl would be dispatched without signing such a document.

She stated that as to Exhibit 29, page 14, dominance meant that the girl is an overaggressive female and does dominant sessions in which case the female is aggressive and the male is passive. The complainant advertises providing dominant services, but such services do not involve sexual activity. Dominance applies to a situation where the customer desires to be physically abused. Light dominance means that he wishes to be tied up, spanked, pushed around, or verbally abused. English dominance means heavy physical abuse, such as whipping and other activity which would cause severe pain. Such service was not provided. She testified that the typical occupation revealed to her by persons who requested dominant sessions were primarily attorneys and engineers, but also doctors and other professional men. In some cases the customer would request a girl that had certain equipment, which would be a chain, or a whip, or equipment by which severe pain could be inflicted; but such customers' requests would be refused.

She testified that there were usually from eight to 15 girls working at a time and that any girl had the right to reject any call at any time. She stated that she would refuse to refer a girl if the caller appeared to be intoxicated, used abusive language, or expected service that was not provided.

Exhibit 29, the 14 cards from the map as indicated on Exhibit 17-B and Exhibit 17-C, were attached to the map as recent bad calls so that the girls could see them when they came into the office which occurred once a day or sometimes only once a week.

The stencilled sign, Exhibit 27, is for the purpose of advising the girls that the complainant relies on the girls to work at the time when they say they will and if they do not do so, it causes the complainant inconvenience and the girls are therefore fined the sum of $60.

Exhibit 26 advises the girls that there is a penalty of $30 for failure to remit the sums due to the complainant each night unless prior arrangements are made for them to remit such sums the following morning.

The daily working calendar, the names of the girls, the days worked, the days off, and the schedules are posted prominently in the office. There is no safe in the office, nothing is locked up, and there is no secret place for hiding documents. There are credit card embossers for credit card service.

She testified that prior to March 11 there was a list of retired and not active police officers who were not working in the Vice Division in the office. She stated that the complainant would provide girls for these persons but that upon her return to the office the list was no longer there. On March 18 when she returned, there were no records, and no map except a small map, and now in performing the service she must rely on her memory.

The witness further testified that she had been known under a different name than she uses at the present time; that she has owned and operated an outcall massage service which operated in much the same manner as that of the complainant; she has never been arrested for prostitution; she knows of no instance where any of the girls have solicited police officers for acts of prostitution but knows of 15 occasions where girls have been arrested; on occasion she has bailed the girls out of jail; the rate charged at the present time is $40, of which $35 goes to the complainant and $5 goes to the girl who performs the service; the complainant decides the language to be used in the ads; the number of ads changes each week and may be 20, 25, or 45; and 34 of the 39 telephone numbers involved herein have appeared in the ads. She stated that as of the date of her testimony April 1, 1977, the complainant is still in the outcall massage and modeling business operating from 14007 Palowan Way, Marina Del Rey. There are from eight to ten girls used for the purpose of accepting calls for service whereas before March 11 there were from eight to 15 such girls. She stated that she is at present filling from seven to 12 calls each day whereas prior to March 11 she was filling from 30 to 33 calls per day. The "heat sheet" means a police officer list. Everytime she dispatches a girl to a police officer, with few exceptions, the girl is arrested and goes to jail.

She testified that she had a list of names of persons who had been involved in arrests which was taken from the Los Angeles County records, and included a list of police officers involved in such arrests which she had purchased on a previous occasion and had given to the complainant. She stated that she worked as a masseuse in 1975 for three days and took 12 appointments to perform massage. She earned $200 of which $80 was tips.

This witness explained the nature of many of the exhibits which were taken by the law enforcement officials at the time of the search made pursuant to the search warrant (Exhibits 17 to 30). She stated that of the 250,000 telephone calls that she dealt with each year, 10 to 15 percent of the callers requested sexual acitivity. She stated that three to five of 32 calls are turned down by girls because the customer requested sex. She stated that during the course of the year there were seven or eight girls whose services were terminated because she had received information from customers that the girls had offered sex services to such customers.

In addition to herself, there are normally three or four other operators in any 24-hour period and the shifts are from 5:00 a.m. to 1:00 p.m., 1:00 p.m. to 9:00 p.m., and 9:00 p.m. to 5:00 a.m. when there are usually two operators on duty. Her salary is $40 per day for a five-day week, or $200 per week. In eight hours one telephone line would ring once per minute for a total of 480 telephone calls.

The next witness for the complainant testified that she was arrested for prostitution on February 1, 1977 (one of the cases testified to by one of the officers as set forth above). She stated that after she received the call she telephoned the customer, received directions, and went to that location. The customer was outside, dressed in blue jeans; he met the witness and they went inside. They had a drink and talked in a general manner for 35 to 40 minutes. She then told him that she was ready for the nude modeling session and wanted to know where the bedroom was. She went into the bedroom, disrobed, and adopted certain poses so that the customer was able to take pictures with his camera. After the session and while she was still nude she went into the bathroom and two other officers arrived and placed her under arrest for violation of Section 647(b) of the Penal Code. She stated that she had not

solicited the officer or engaged in any act of prostitution. Deputy Sheriff Pitts testified that while she was being booked on February 1, 1977, she said that she did not know that the customer was a police officer, that she was usually able to tell police officers without any difficulty, but that on this occasion the police officer had her fooled.

She further testified that she was at the complainant's office on March 11, 1977 when the search warrant was served. She had been performing the service of answering the telephones and dispatching the girls on that morning. She had started work that morning at 5:00 a.m. and had answered only ten calls by the time the officers arrived. She stated that she never answered the phone by saying "1285 Massage Service" and that she made no mention of tips on the telephone. The testimony of this witness was inconsistent with the testimony of the police officer who testified that he made the telephone calls set forth on Exhibit 9 (Nos. 48 to 83) on March 11, 1977. She also denied that she solicited an act of prostitution during the nude modeling session as testified to by the officer involved therein, and denied that she made any statement to Officer Pitts to the effect that she did not know the officer involved at the time of the nude modeling session was a police officer. In addition, she is an employee of the complainant and will probably lose her employment in the event that his telephone service is terminated. It is, therefore, very difficult to give credibility to her testimony.

Discussion

Rule 31 requires a showing that the telephone service in question was used directly or indirectly to assist in the violation of law. There is no requirement of proof beyond a reasonable doubt that the subscriber of the telephone service committed a violation of any law.

The intervenors' contention is that the telephone service operated by the complainant at 4676 Admiralty Way, Suite 406, Marina Del Rey, was used for the purpose of dispatching prostitutes to various locations throughout Los Angeles and Orange Counties to solicit and engage in acts of prostitution. We concur.

Without the extensive advertising by the complainant in the various newspapers which contained articles and ads of a sexually provocative nature and his referral system, the acts of soliciting or engaging in prostitution would not have occurred. His telephone service played a major role in facilitating the dispatching of prostitutes to customers' homes, offices, motels, and in one case to a boat, and the complainant was aware of this fact.

The complainant's massage service is a sophisticated system of permitting prostitutes to ply their trade, not in a house of prostitution, but in the privacy of the customer's home or place of business. The system is lucrative for the complainant and for the girls who receive referrals. The complainant was guaranteed $30 or $35 of the basic service fee while the girls kept their "tips" which was apparently their only real objective in making the service call. The girls had no advertising expense, did not have to share their "tips" with pimps, enjoyed some legal protection through the Summerwind service, and were bailed out if arrested.

The complainant has attempted to insulate himself from the prostitution activities of his "independent contractors" whom he has the power to hire and fire. He contends he is running a legitimate outcall massage and nude modeling service, but in fact is masterminding a prostitution service throughout the county of Los Angeles.

The complainant advertises in newspapers in Los Angeles County which appear to be designed to attract the attention of persons who seek illicit sexual activities and his ads are such that cater to readers who have sexual interest. The words and pictures used in some of the ads are such that the average reader cannot but believe that acts of prostitution are available by calling the number contained in the ad.

Inasmuch as the girls who perform the service keep only approximately $5 of the fee collected for the service, it is reasonable to believe that they make the calls for some other purpose in order to earn a reasonable income. It is difficult to believe that the girls would receive sufficient income in tips merely by performing the service which they were engaged to perform.

The complainant argued that Rule 31 was invalid and unenforceable for many reasons including:

1. It provided for cruel or unusual punishment;
2. The Commission is not authorized to proceed in a manner of this nature;
3. There is an indiscriminate use of Rule 31 with respect to subscribers of the defendant;
4. The Rule unduly discriminates against the users of telephones;
5. The provisions of Rule 31 are vague and ambiguous; and
6. The subject matter of Rule 31 is preempted by the general law of California.

We are unable to find that the contentions of the complainant with respect to the invalidity of Rule 31 have merit.

The complainant contends that evidence adduced at the hearing does not support a finding that the 39 telephone numbers in question are subscribed to by the complainant. The complainant has filed his pleadings and briefs under the case title of "Marvin

Goldin, dba Summerwind". Deputy Paul George testified that he observed all 39 telephone numbers in the location when he went to the location to serve the search warrant, at which time the complainant arrived and was arrested on an unrelated charge.

Many persons used different telephones from different locations each of which facilitated an act of prostitution or the solicitation of such an act. However, the evidence has clearly shown that complainant's telephones were continually and systematically used to facilitate the prostitution activities under the guise of an outcall massage and nude modeling service.

A violation of Penal Code Section 647(b) occurs when a person solicits or engages in any act of prostitution. When the girls dispatched by Summerwind solicited the undercover police officers for various acts of prostitution, each committed a violation of Penal Code 647(b) without having actually engaged in acts of prostitution.

The complainant argues that the burden of proof should be "beyond a reasonable doubt" as applied in criminal cases rather than our normal evidentiary standard. There are no penal sanctions imposed under Rule 31. A subscriber whose telephone services have been terminated does not face imprisonment or fine as punishment for using his telephones for an illegal purpose. Therefore, the complainant's characterization of the instant proceeding as quasi-criminal is erroneous. This proceeding remains an administrative proceeding concerning telephone service.

A magistrate has made a finding of probable cause to believe the complainant's telephones were being used for an illegal purpose. The telephones were used as an instrumentality to facilitate prostitution, a criminal offense. The disconnection of telephones which resulted was analogous to a seizure of property which is being used to commit a public offense.

The complainant's first amendment right to free speech has not been abrogated. Just as the United States Supreme Court has held that obscenity is not within the area of protected speech and press (Roth v United States (1957) 354 US 476), the complainant's use of telephones to facilitate violations of the law does not fall within the ambit of protected speech. The California Supreme Court has held that films alleged to be obscene may be seized with a search warrant upon the finding of probable cause without a prior adversary hearing. (Flack v Municipal Court (1967) 66 C 2d 981, 992, 993.)

The complainant argues that the sexually provocative advertisements in the Los Angeles Free Press and Hollywood Press newspapers are designed to sell legitimate outcall massage services. He attempts to analogize this advertisement with other legitimate merchandising where sex appeal attracts potential consumers. However, the complainant's ads only appear in newspapers where the predominant appeal of all advertisements appearing therein are sexually oriented. These advertisements blatantly solicit for all forms of illicit and promiscuous sexual encounters. Under these circumstances, the only reasonable inference a reader can draw from the advertisements is that he can buy sexual favors.

The complainant characterizes prostitution as permissible conduct and appears to be a proponent for the legalization of such activity. Until such time as the California Legislature has repealed Section 647(b), prostitution must be treated as a crime just as any other crime.

Whether or not Exhibits 17 through 30 and the testimony relating thereto are considered, the evidence clearly establishes that the complainant's telephone service was used as an instrumentality, directly and indirectly, to assist in the violation of law and that telephone service should be terminated and not restored.

We are directing the 39 numbers originally terminated be permanently terminated, and that the complainant not be given business service in the service territories of defendant or The Pacific Telephone and Telegraph Company (Pacific) without further order from the Commission. Such an order will only issue if we are convinced that the complainant is not resuming the use of telephone service to facilitate violation of the law. We extend our prohibition to Pacific's service territory because Pacific and General are coterminous utilities in the Southern California area.

Finally, it should be pointed out that complaints such as this have been infrequent. We hope that law enforcement agencies will use the applicable tariff rules dealing with termination of services in conjunction with criminal prosecutions. If there is a proliferation of complaints such as this resulting from service terminations, we may have to revise the applicable tariff rules in the context of an investigation. As a regulatory body we should not shoulder the responsibility to determine and squelch unlawful activity involving telephone use. The criminal court system exists to provide for resolution of alleged unlawful activity.

Findings

1. The procedure set forth in paragraph 1 of defendant's Rule 31 for requiring a public utility to terminate the telephone service of a subscriber allegedly using the service to violate or assist in the violation of law requires that the law enforcement officials obtain prior authorization to secure termination of service by satisfying an impartial tribunal that they have reasonable cause to act, in a manner reasonably comparable to the procedure before a magistrate to obtain a search warrant, and after service is terminated the subscriber is provided with an opportunity to challenge the allegations of the police and secure prompt restoration of service.

2. Rule 31 conforms with the Commission's requirements as ordered in Decision No. 71797 (1966) 66 CPUC 675.

3. The provisions of Rule 31 are consistent with the requirements set forth by the California Supreme Court in Sokol v Public Utilities Commission (1966) 65 C 2d 247, and are consistent with the requirements of due process of law, equal protection of the laws, and the right of freedom of speech, as required by the California and United States Constitutions and other laws pertinent thereto.

4. Exhibit 3, a Finding of Probable Cause, was issued by a magistrate on March 7, 1977, in accordance with the provisions of Rule 31.

5. The requirements of Rule 31 were properly adhered to when the telephone service consisting of 39 telephone numbers of the complainant, as set forth in Exhibit A to the complaint and as corrected for errors in transposition, was terminated on March 11, 1977.

6. There is a reasonable probability that if the termination of the complainant's telephone service involved herein is not permanent and the interim relief heretofore granted is not terminated, the restoration of telephone service to the complainant will result in a continuation of the same type of activity heretofore engaged in, and the telephone service will continue to be used as an instrumentality to violate or to assist in the violation of the law.

7. In order to expedite this matter, because of the extent of harm capable of being done by further delay, and it being reasonable and in the best interests of the public to do so, there is sufficient reason to make this order effective as of the date of the order.

8. The intervenors have satisfied their burden of proof as required by paragraph 4 of Rule 31. During the period of May 29, 1975 to March 3, 1977 the complainant's place of business was at 4676 Admiralty Way, Suite 406, Marina Del Rey, California, at which place

he had service consisting of 39 telephones, which service was used knowingly by the complainant and his agents as an instrumentality to dispatch prostitutes to various locations throughout Los Angeles County to solicit and engage in acts of prostitution.

Conclusions

1. Complainant's telephone service was used during the period May 29, 1975 to March 3, 1977 directly and indirectly, to assist in the violation of the law, to wit, Section 647(b) of the Penal Code.

2. The interim reconnection of service ordered by Decision No. 87170 should be rescinded, and the reconnection charge collected by defendant subject to refund should be retained by defendant.

3. The complainant should not receive further business service in the service territory of defendant or Pacific without prior Commission approval.

O R D E R

IT IS ORDERED that:

1. The interim relief heretofore granted to Marvin Goldin by Decision No. 87170 dated April 5, 1977 is terminated. Within five days of the effective date of this order, any and all telephone service restored pursuant to that decision shall be disconnected, and General Telephone Company of California shall discontinue providing telephone service to Marvin Goldin at 4676 Admiralty Way, Suite 406, Marina Del Rey, California. The reconnection charge collected by General Telephone Company of California, subject to refund pursuant to Decision No. 87170, shall be retained by that utility.

2. General Telephone Company of California and The Pacific Telephone and Telegraph Company shall hereafter refuse new business service to Marvin Goldin or any entity in which he has financial or managerial control, at any location in California, without further order of this Commission.

3. The petition for rehearing of Decision No. 87170 is denied.

4. The Executive Director shall cause a copy of this order to be served on The Pacific Telephone and Telegraph Company.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 26th day of JULY, 1977.

Robert Batinovich
President
William Symons, Jr.
Vernon L. Sharp
Richard D. Gravelle

Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.