

Decision No. 90298 MAY 8 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the use being made of communications facilities and instrumentalities for the purpose of determining if such use, in any instance, is in violation of law or is aiding or abetting, directly or indirectly, a violation of law or is not in the public interest.

Case No. 4930  
(Further Hearing)

ORDER REOPENING CASE NO. 4930

The California Supreme Court on March 15, 1979 issued its decision in Marvin Goldin v. Public Utilities Commission, 23 C 3rd 638. The Court found that improvements in Appendix A of Decision No. 71797 are required relative to (a) the basis of summary action to discontinue service; and (b) addition of an explicit provision requiring an early hearing. The Commission has reviewed the Court decision and is of the opinion that reopening of this proceeding is necessary to appropriately modify Appendix A; therefore,

IT IS ORDERED, that Case No. 4930 is hereby reopened.

The Executive Director shall serve a copy of this order to each of the parties whose names and addresses are shown in the attachment hereto.

The effective date of this order is the date hereof.

Dated at San Francisco, California this 8th day of MAY, 1979.

John E. Boyce  
President  
Vernon L. Stuyver

Richard D. Gravelle  
James J. [unclear]  
Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

PROPOSED CHANGES TO APPENDIX A OF D-71797 OF C-4930

APPENDIX A

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 customer, upon receipt from any authorized official of a law enforcement agency of a writing, signed by a magistrate, as defined by Penal Code Sections 807 and 808, finding that probable cause exists to believe that the use made or to be made of the service is prohibited by law, or that the service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in the violation of the law. Included in the magistrate's writing shall be a finding that there is 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 and welfare will result.
  
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 Commission shall schedule a public hearing on the complaint within 20 calendar days of the filing date of the complaint. 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 not be restored.
5. The utility, immediately upon refusal or disconnection of service in accordance with paragraph 1 of this rule, shall notify the applicant or subscriber in writing that such refusal or disconnection has been made pursuant to a request by a law enforcement agency, naming the agency, and shall include with said notice a copy of this rule together with a statement that the applicant or subscriber may request information and assistance from the Commission at its San Francisco or Los Angeles office concerning any provision of this rule.
6. At the expiration of fifteen days after refusal or disconnection of service pursuant to paragraph 1 of this rule, the utility, upon written request of the applicant or subscriber, shall provide or restore such service unless the law enforcement agency concerned shall have notified the utility in writing of its objection to such provision or restoration of service, in which event service may be provided or restored only in a complaint proceeding pursuant to paragraph 2 of this rule. At the time of giving any such notice of objection, the law enforcement agency shall mail or deliver a copy thereof to the applicant or subscriber. 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.
7. Each contract for communications service, by operation of law, shall be deemed to contain the provisions of this rule. Such provisions shall be deemed to be a part of any application for communications service. Applicants for service shall be deemed to have consented to the provisions of this rule as a consideration for the furnishing of such service.
8. The term 'person', as used herein, includes a subscriber to communications service, an applicant for such service, a corporation, a company, a co-partnership, an association, a political subdivision, a public officer, a governmental agency, and an individual.
9. The term 'communications utility', as used herein, includes a 'telephone corporation' and a 'telegraph corporation', as defined in Division 1 of the California Public Utilities Code."

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ALSO SENT TO ALL TELEGRAPH & TELEPHONE UTILITIES, AND RADIOTELEPHONE UTILITIES.