

Decision No. S0976 NOV 6 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM McILLWAIN, RONALD GREG
McAFFERY,

Complainants,

vs.

PACIFIC TELEPHONE,

Defendant.

Case No. 10501
(Filed February 17, 1978)

William McIllwain, for himself, complainant.
R. P. Downes and Robert L. Bachman, Attorneys
at Law, for The Pacific Telephone and
Telegraph Company, defendant.
John Witt, City Attorney for the City of
San Diego, by David W. Ryan, Deputy City
Attorney, for the City of San Diego,
intervenor.

ORDER OF DISMISSAL

William McIllwain and Ronald Greg McAffery (complainants), operators of several massage establishments in the City of San Diego, allege that on or about January 30, 1978, Pacific Telephone and Telegraph Company (Pacific) discontinued telephone service to complainants' 28 telephone lines without probable cause and request restoration of service.

Pacific admits disconnecting service to the 28 lines, as alleged in the complaint, stating that disconnection was made after being served with an affidavit for probable cause signed by Judge Kenneth Johns of the San Diego Municipal Court of the San Diego Judicial District and dated January 27, 1978, pursuant to tariff schedule Cal. PUC No. 35-T, Rule 31 (Rule 31).

In determining the validity of the utilities' Rule 31, in Decision No. 87642, dated July 26, 1977, we stated:

"In Sokol v Public Utilities Commission (1966) 65 Cal 2d 247, the California Supreme Court 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 provides for no review of the bare allegations of the police prior to the termination of service, and found that the rule was unconstitutional. 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 and as such is constitutional, lawful, and valid, unless a subsequent decision of the California Supreme Court or the United States Supreme Court has declared to the contrary."

In Marvin Goldin v Public Utilities Commission, (1979) 23 Cal. 3d 638, the Supreme Court upheld the Commission's holding in Sokol, finding that Rule 31 was generally consistent with the requirements of its Sokol decision and the requirements of

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applicable principles of state and federal constitutional law. Although two changes to Rule 31 were suggested by the court with regard to the magistrate's finding of probable cause and the need for an early hearing for interim relief following the discontinuance of service, these changes are not applicable in this instance since the action herein took place prior to the issuance of the court's Goldin decision.

Although a public hearing was held, we deferred a decision in this matter awaiting a determination by the Supreme Court in Goldin v PUC, supra. Accordingly, on August 21, 1979, the assigned Administrative Law Judge (ALJ) advised complainants ✓ that in the Goldin case the court upheld the Commission's determination that the telephone utilities' Rule 31 regarding the disconnection of telephone service upon receipt of a Certificate of Finding of Probable Cause signed by a magistrate complied 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 U.S. Constitutions, and requested that complainants advise the Commission with respect to their proposed disposition of the complaint. There has been no response from complainants.

In view of the Supreme Court holding in the Goldin case, we believe that the issues raised in the complaint are moot. Further, complainants' failure to respond to the ALJ's request

shows a lack of interest in pursuing the complaint on the part of complainants. We conclude that the complaint should be dismissed.

IT IS ORDERED that the complaint is dismissed.

The effective date of this order shall be thirty days from the date hereof.

Dated NOV 6 1979, at San Francisco, California.

John E. Burns

President
Henry P. ...

Richard D. ...

Alan ...

Donald M. ...

Commissioners