

ORIGINAL

Decision No. 91188 JAN 8 - 1980

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
(Order Reopening filed
May 8, 1979)

OPINION AFTER FURTHER HEARING

In the case of Goldin, et al. v Public Utilities Commission, et al., (1979) 23 Cal 3d 638, the California Supreme Court generally upheld Tariff Rule 31 of The Pacific Telephone and Telegraph Company (Pacific) and General Telephone Company of California, which the Commission had ordered those companies to adopt in Decision No. 71797 (Petition for Rehearing denied February 7, 1967) in Case No. 4930. That decision set forth the procedure that must be followed before a telephone utility may refuse service to an applicant or discontinue service to a subscriber if advised by any law enforcement agency that the service is or will be used for unlawful purposes. However, the court found that modifications and improvements in the rule are required relative to (a) the basis of summary action to discontinue service and (b) the addition of an explicit provision requiring early hearing. The Commission reopened Case No. 4930 to determine how best to modify the rule to satisfy its shortcomings as pointed out by the court.

A proposed rule which sought to embody the changes suggested by the court was prepared by the Commission staff and sent

to respondents and parties in Case No. 4930 with a request for written comments on the staff's proposed rule. The staff's proposed rule is set forth in Appendix A hereto.

Written comments were received from Pacific which recommends three changes to the proposed rule. It recommends that the word "and" be deleted and the word "or" be substituted in the last phrase in paragraph 1 which now reads "significant dangers to public health, safety, and welfare will result" so that the phrase is identical as that set forth at page 664 of the Goldin case, supra. It recommends the deletion of the words in the second sentence of paragraph 2 which reads "within 20 calendar days of the filing date of the complaint" and that the words "to be held within 20 calendar days of the filing of the complaint" be substituted so as to remove a potential ambiguity by clarifying that "20 calendar days" refers to the time for the hearing itself rather than the time within which the Commission shall schedule a hearing. Lastly, it recommends that language be inserted in paragraph 4 to parallel the wording to be added to paragraph 1 by adding the words to the end of paragraph 4(1) "and 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". Appendix B sets forth the staff's proposed rule modified as recommended by Pacific.

The only other written comments that were received were from the California Attorney General who urged that we adopt the staff's proposed changes, ~~and not impose further burdens upon law enforcement.~~

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There have been no requests for public hearings.

We think the suggestions put forth by Pacific are well taken.

We find that the modifications to the rule, as proposed by the staff with the clarifying language suggested by Pacific, correct the defects pointed out by the court in the present rule and are

reasonable and conclude that the present rule should be amended in accordance with such proposals and suggested modifications thereof.

For the purpose of simplifying the adoption of the modifications by communications utilities, we will rescind the present and previous rules in toto and order the adoption of a complete rule as set out in Appendix B.

O R D E R

IT IS ORDERED that:

1. The rules adopted by the Commission by Decision No. 41415 and Decision No. 71797, heretofore issued in the proceeding, are rescinded and the rule set forth in Appendix B, attached hereto and made a part of this order, is adopted.

2. Every communications utility subject to the jurisdiction of this Commission shall, within sixty days after the effective date of this order and on not less than five days' notice to the Commission and the public, amend its existing tariff schedules, in accordance with the provisions of General Order No. 96-A, so as to include in such amended schedules the provisions of the rule set forth in Appendix B attached to this order.

A copy of this order shall be served forthwith by certified mail upon each communications utility subject to the jurisdiction of this Commission and by regular mail upon each of the other parties of record herein.

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

Dated JAN 8 - 1980, at San Francisco, California.

John E. Bryan
President

William L. Sturgeon

Richard D. Howell

Clarence J. DeLoach

Samuel L. Jones
Commissioners

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THE CURRENT RULE WITH THE
STAFF'S PROPOSED CHANGES ADDED

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

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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 15 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 copartnership, 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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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, or welfare will result.
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